

## SUBSCRIPTION AND LICENSE AGREEMENT

### GENERAL TERMS AND CONDITIONS

THESE GENERAL TERMS AND CONDITIONS (“**GENERAL TERMS AND CONDITIONS**”), AS MAY BE AMENDED BY SUPPLEMENTAL TERMS AND CONDITIONS (“**SUPPLEMENTAL TERMS AND CONDITIONS**,” IF ANY, TOGETHER WITH THESE GENERAL TERMS AND CONDITIONS, “**TERMS AND CONDITIONS**”) APPLY TO AND GOVERN THE PERFORMANCE OF ANY QUOTE(S), ORDER FORM(S), PURCHASE ORDER(S), RECEIPT(S), INVOICE(S), STATEMENT(S) OF WORK OR OTHER SIMILAR DOCUMENT(S) THAT EXPRESSLY INCORPORATES THE TERMS AND CONDITIONS BY REFERENCE (“**ORDERING DOCUMENT**”) THAT IS AGREED BETWEEN THE PROVIDER IDENTIFIED IN THE ORDERING DOCUMENT (“**PROVIDER**”) AND THE CUSTOMER IDENTIFIED IN THE ORDERING DOCUMENT (“**CUSTOMER**”). THE TERMS AND CONDITIONS AND THE ORDERING DOCUMENT TOGETHER CONSTITUTE THE SUBSCRIPTION AND LICENSE AGREEMENT BY AND BETWEEN THE PARTIES AND ARE REFERRED TO COLLECTIVELY HEREIN AS THE “**AGREEMENT**.”

BY SIGNING AN ORDERING DOCUMENT, CLICKING “I ACCEPT”, OR ACCESSING OR USING THE (1) SUBSCRIPTION SERVICES, IF ANY, IDENTIFIED IN THE APPLICABLE ORDERING DOCUMENT (“**SUBSCRIPTION SERVICE(S)**”); (2) LICENSED PRODUCTS, IF ANY, IDENTIFIED IN THE APPLICABLE ORDERING DOCUMENT (“**LICENSED PRODUCT(S)**”), (3) SUPPORT SERVICES FOR THE SUBSCRIPTION SERVICES OR LICENSED PRODUCTS, IF ANY, IDENTIFIED IN THE APPLICABLE ORDERING DOCUMENT (“**SUPPORT SERVICE(S)**”); OR (4) PROFESSIONAL SERVICES TO SUPPORT IMPLEMENTATION, CONFIGURATION, ENHANCEMENT, AND/OR USE OF THE SUBSCRIPTION SERVICES OR LICENSED PRODUCTS, IF ANY, IDENTIFIED IN THE APPLICABLE ORDERING DOCUMENT (“**PROFESSIONAL SERVICE(S)**”) TOGETHER WITH SUBSCRIPTION SERVICES, LICENSED PRODUCTS, AND SUPPORT SERVICES, “**SOLUTIONS**”), CUSTOMER IS INDICATING THAT CUSTOMER HAS READ, UNDERSTANDS, AND ACCEPTS THESE TERMS AND CONDITIONS. IF CUSTOMER DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS, CUSTOMER MAY NOT ACCESS, INSTALL, OR OTHERWISE USE ANY SOLUTIONS.

#### 1. SUBSCRIPTION.

a. This Section applies to Customer’s purchase of any Subscription Services. Subject to the terms and conditions set forth in the Agreement, including payment of the fees set forth in the applicable Ordering Document, Provider hereby grants, and Customer hereby accepts, a non-exclusive, non-sublicensable, non-transferable, revocable, limited, subscription right to permit Customer’s employees, agents, independent contractors, and/or other authorized users, if any, identified in the applicable Ordering Document or Supplemental Terms and Conditions (collectively, “**Authorized Users**”) to access and use the Subscription Services, solely for Customer’s purposes set forth in the applicable Ordering Document or Supplemental Terms and Conditions (“**Purpose**”), in accordance with any user instructions or other documentation that Provider may, in its sole discretion, provide or make available to Customer in any form or medium and which describes the functionality, components, features, or requirements of the Subscription Service (“**Documentation**”) in the United States and/or other territories, if any, identified in the applicable Ordering Document or Supplemental Terms and Conditions (“**Territory**”) during the term identified in the applicable Ordering Document or Supplemental Terms and Conditions, unless earlier terminated (“**Term**”). Use of the Subscription Services is restricted and subject to the number of users, specifications, and other parameters, if any, set forth in the applicable Ordering Document.

b. “**Beta Features**” as used herein means any new, experimental or temporary functionality, tool, service or feature of a Subscription Service or Licensed Product that is identified as beta, pilot, test, limited release, developer preview, non-production, evaluation, or similar and has not been commercially released and made generally available by Provider. Beta Features may be provided for the purpose of obtaining feedback and identifying defects and are not considered fully tested or operational. As such, they may be less stable than the final, general release versions and are subject to more frequent changes and updates. If, and to the extent that, Customer chooses to utilize Beta Features made available to it, the “**Beta Terms**” set forth in the Supplemental Terms and Conditions apply and shall govern. The Beta Terms are intended to govern use of the Beta Features, applying not only in the event of conflicts but also as the primary rules for all related aspects, despite any other stipulations in this Agreement. Areas

covered explicitly include, but are not limited to, how liabilities are limited, data is handled, services are delivered, and support is provided.

**2. LICENSE.** This Section applies to Customer's purchase of any Licensed Products. Subject to the terms and conditions set forth in the Agreement, including payment of the fees set forth in the applicable Ordering Document, Provider hereby grants, and Customer hereby accepts, a non-exclusive, non-sublicensable, non-transferable, revocable, limited, license to install and use the Licensed Product in machine-readable object code form only, solely for the Purpose, in accordance with the Documentation, in the Territory during the Term. Use of the Licensed Products is restricted and subject to the number of Authorized Users, devices, specifications, and other parameters, if any, set forth in the applicable Ordering Document. In the event that Customer chooses to utilize any Beta Features made available in/through the Licensed Products, the Beta Terms shall apply.

**3. RESERVED RIGHTS.** Provider retains all rights not expressly granted to Customer hereunder. Except for the limited rights expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to any of the Solutions. Provider reserves the right to make changes to the Solutions and Documentation to maintain or enhance the quality, delivery, competitive strength, marketability, cost efficiency, or performance of Provider's products or services, or to comply with applicable law.

#### **4. RESTRICTIONS AND REQUIREMENTS.**

**a.** Customer will not and will not allow any third party to: (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Solutions or Documentation in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Solutions; (b) access all or any part of the Solutions or Documentation if Customer or such third party is a competitor of Provider, or for purposes of monitoring the availability, performance, or functionality of the Solution, or for any other benchmarking or competitive purposes; (c) except to the extent expressly permitted under this Agreement, use the Solutions or Documentation to provide services to any third party; (d) except to the extent expressly permitted under this Agreement, license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit the Solutions or Documentation; (e) attempt to gain unauthorized access to any Solutions, to any non-public account or authentication credentials of, or accounts registered to, others, or to any computers, servers or networks connected to the Solutions by any means other than the user interface provided by Provider, including by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device, or software that is part of Solutions; (f) remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, or other intellectual property or proprietary rights notices from the Solutions or Documentation; (g) use the Solutions to support email messages or other communications that are unsolicited, deceptive, anonymous, excessively voluminous or that contain falsified identifying information, including spamming and phishing; (h) use the name of Provider or any licensor of Provider or any of their respective products or services or any abbreviations of such names or any trademark, trade name, service mark, logo, or other identifying information of Provider or its licensors in the originating or return email address line, header, subject line, or body of any email transmission or any other communication, on a website, in marketing, or other materials, unless approved by Provider and its licensor(s) in writing (any such approval will not relieve Customer of any of its representations, warranties, undertakings and/or indemnities under the Agreement); or (h) use the Solutions in violation of any applicable law, rule, or regulation. All uses in the Agreement of the terms "purchase," "sell," "sale," "price," and the like mean the purchase or sale of a subscription or license by Customer.

**b.** Customer will have sole responsibility for all content and other materials, including text, images, videos, and audio, input into the Subscription Services or otherwise provided to Provider by or on behalf of Customer ("**Customer Content**") and data and other information, including personal data, input into the Subscription Services or otherwise provided to Provider by or on behalf of Customer or Authorized Users ("**Customer Data**"), including the legality, consent for processing, reliability, integrity, accuracy, and quality of Customer Content and Customer Data. Customer acknowledges that Customer: (a) controls the type and substance of Customer Content and Customer Data; and (b) sets permissions to access Customer Content and Customer Data; and therefore, Customer is responsible

for reviewing and evaluating whether the documented functionality of the Solutions meets Customer's security requirements and obligations relating to Customer Content and Customer Data under applicable laws. Customer will secure and maintain all rights in Customer Content and Customer Data necessary for Provider to provide the Solutions to Customer without violating the rights of any Authorized User or other third party or otherwise obligating Provider to any Authorized User or any third party. Provider may access and use the Customer Content and Customer Data solely to provide the Solutions and as otherwise agreed by the parties.

c. If Customer provides any Customer Data to Provider or Provider collects or otherwise uses any Customer Data via the Solutions, Customer will ensure that such collection and use complies with all applicable laws and Customer's privacy policy that will be made available and agreed to by the Authorized Users.

d. Customer will not use the Solutions to collect or otherwise use any "**Prohibited Data**" which means any:

- i) Special categories of and/or sensitive personal data, including but not limited to racial or ethnic origin, citizenship or immigration status, political opinions, religious or philosophical beliefs, trade union membership, military or veteran status, genetic data, biometric data for the purpose of uniquely identifying a natural person, health data, data concerning a person's sex life, sexual orientation or gender identification, social security, driver's license, state identification card, or passport number; credentials granting access to online accounts, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; precise geolocation; contents of mail, email, and text messages unless Customer or Provider is the intended recipient of the communication;
- ii) Personal data relating to individuals under the age of 16; or
- iii) Any other personal data that is subject to heightened protections, additional obligations, or extends further rights to data subjects under any applicable laws, including those concerning consumer protection, financial services, health information, and children's privacy.

Customer agrees to also refrain from using the Subscription Services in connection with any activities where its use or failure could lead to death, personal injury, or environmental damage, such as in life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control (collectively, "**High Risk Activities**").

Customer acknowledges that the Solutions are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Provider is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything else in this Agreement, Provider has no liability for Prohibited Data processed, or High-Risk Activity-related use, in connection with the Solutions.

e. Customer will comply with Provider's acceptable use and related guidelines for the Solutions. Without limiting the generality of the foregoing, Customer will not access, store, distribute, upload, or transmit to or from the Solutions, include in the Customer Content or Customer Data, or utilize the Solutions to create anything (including any software, code, file, program or other material) which may: (1) prevent, impair, or otherwise adversely affect the operation of the Solutions or any computer software, hardware, or network, any telecommunications service, equipment, or network, or any other service or device, or user experience; (2) prevent, impair, or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering, or erasing the program or data in whole or part or otherwise); (3) contain any viruses, malware, worms, spyware, or other components or instructions that are malicious, deceptive, or designed to limit or harm the functionality of the Solutions or any other service or device or use experience; (4) promotes, conveys, or furthers harassment, bigotry, racism, hatred, violence, bullying, or other harm against any group or individual or promotes discrimination based on race, gender, religion, nationality, disability, sexual orientation, or age; (5) be inappropriate, offensive, profane, indecent, obscene, pornographic, hateful, tortious, untruthful, inaccurate, defamatory, slanderous, or libelous; (6) promote any political agenda; (7) facilitates, furthers, or promotes illegal activity or provides instructional information about illegal activities; (8) cause damage or injury to any person or property; or (9) otherwise violates applicable laws. Provider reserves the right, without liability or prejudice to its other rights to Customer, to remove or disable access to any material that breaches this Agreement; provided, however, Provider will have no obligation to screen, verify, censor, or disable access to such material.

f. Customer will comply with Provider's technical requirements for the Solutions. Customer is responsible for controlling access to and use of the Solutions in accordance with this Agreement. Customer is responsible for maintaining the confidentiality of any non-public account or authentication credentials associated with Customer's use of the Solutions. Customer will promptly notify Provider about any possible misuse of Customer's account or authentication credentials, or any security incident related to the Solutions. Customer will ensure that Authorized Users comply with this Agreement. Customer will ensure that its network and systems comply with the relevant specifications provided by Provider from time to time; and be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Provider's data centers, and all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet.

g. Customer acknowledges and agrees that Provider may access via the Solutions and/or obtain from Customer, information, assets, and services, including Customer Data and security access information, to facilitate Provider's performance of its obligations, respond to support requests, detect, prevent, or otherwise address fraud, security, legal, or technical issues, verify Customer's performance of its payment and other obligations hereunder, and enforce the terms and conditions of this Agreement. Customer further acknowledges and agrees that Provider may use Customer Data to provide notifications to Authorized Users regarding usage, including comparisons of usage between Authorized Users.

**5. SUPPORT SERVICES.** During the Term, Provider will support the Solutions in accordance with the applicable standard support policy for the Solutions then in effect, if any, unless otherwise set forth in the applicable Supplemental Terms and Conditions or Ordering Document.

**6. PROFESSIONAL SERVICES.** This Section applies to Customer's purchase of any Professional Services. Provider may offer and Customer may purchase Professional Services through an Ordering Document. For Professional Services engagements, Customer will, at its expense, provide Provider with secure remote access to its systems and network to the extent required to perform the Professional Services, which access must meet market-prevailing security standards applicable to the information and data accessed and any other security Provider may reasonably request. Throughout all Professional Services engagements, Customer will assign adequate personnel and resources and reasonably cooperate with Provider for completion of Professional Services as scheduled, including (i) assigning a project contact authorized to provide required decisions and approvals, (ii) providing timely, complete, and accurate responses to information requested by Provider. Provider will not be responsible for any incremental costs or damages resulting from a Professional Services performance delay caused by Customer's failure to perform or timely perform any of its obligations. Customer will be charged at Provider's then-current daily rates for any additional time needed by Provider to complete the Professional Services due to such delays. Unless expressly provided otherwise in an Ordering Document, any project extensions will be charged at Provider's then-current daily rates.

**7. PRIVACY AND SECURITY.** Provider's provision of and Customer's use of the Solutions involves the processing of personal data of Authorized Users and/or those individuals tasked by Customer with overseeing, managing, or administratively supporting the Provider's delivery of Solutions ("**Customer Coordinators**"). The personal data required by Provider to deliver the Solutions includes only the email addresses and first and last name. However, where applicable, the telephone numbers of Authorized Users designated by Customer to administer its account and/or Customer Coordinators, may be needed to support such administration. Customer acknowledges that, except for this specified personal data, Customer retains sole control over the categories, types, and specific data elements of personal data made available to Provider and shall ensure that no unnecessary personal data is provided. The Parties agree that the rights, obligations, and restrictions set forth in Provider's [Data Processing Addendum](#) ("**DPA**") shall apply to the processing of personal data of Authorized Users and Customer Coordinators under this Agreement and that the DPA is hereby incorporated into this Agreement by this reference. Provider's [Privacy Policy](#) shall apply Provider's processing of personal data, to the extent not in conflict with the DPA. Provider will implement and maintain reasonable technical and organizational measures to protect personal data against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, or access set forth in **Schedule B** of the [DPA](#).

**8. FEES.**

a. Fees are specified in the applicable Ordering Document. Unless otherwise set forth in the Ordering Document, payment terms are net thirty (30) days from the date of invoice. All amounts payable to Provider under this Agreement will be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction,

debit, or withholding for any reason. If Customer fails to make any payment when due, then in addition to all other remedies that may be available: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer will reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and (iii) Provider may suspend Customer's access to the Solutions until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer by reason of such suspension.

**b.** All fees are exclusive of any applicable taxes, levies, duties, or other similar exactions imposed by a legal, governmental, or regulatory authority in any applicable jurisdiction, including, without limitation, sales, use, value-added, consumption, communications, or withholding taxes (collectively, "**Taxes**"). Customer will pay all Taxes associated with this Agreement, excluding any taxes based on Provider's net income, property, or employees. If Customer is required by applicable law to withhold any Taxes from payments owed to Provider, Customer will reduce or eliminate such withheld Taxes upon receipt of the appropriate tax certificate or document provided by Provider. Customer will provide Provider with proof of payment of any withheld Taxes to the appropriate authority. Taxes will be shown as a separate line item on an invoice.

## **9. TERM AND TERMINATION.**

**a.** This Agreement is effective as of the effective date of the initial Ordering Document and will continue until the expiration of the last Term, unless earlier terminated.

**b.** If this Agreement terminates as a result of there being no active Ordering Document, this Agreement will automatically become effective again in the event that a new Ordering Document is entered into by and between the parties.

**c.** Without prejudice to any other rights or remedies to which Provider may be entitled, Provider may at any time terminate this Agreement, any Ordering Document, and Customer's access to any and all Solutions if Customer breaches any provision of this Agreement, if Provider is required to do so by law, or if Provider elects to discontinue the Solutions, in whole or in part, because it becomes impractical for Provider to continue offering the Solutions due to a change of law.

**d.** Customer may terminate this Agreement, effective on written notice to Provider, if Provider materially breaches this Agreement, and such breach remains uncured thirty (30) days after Customer provides Provider with written notice of such breach.

**e.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement, (i) all rights, licenses, consents, and authorizations granted by Provider to Customer hereunder will immediately terminate; (ii) Customer will immediately cease all use of the Solutions and Documentation; and (iii) no portion of any prior payments will be repayable to Customer, and any and all payments due or to become due will be immediately due and payable. By the very nature of the Solutions and the way Customer uploads Customer Content to the Solutions and accesses Customer Data from the Solutions, Customer Content and Customer Data will not be retrievable from the Solutions following expiration of terminations of Term. Provider will either delete or irreversibly anonymize the Customer Content and Customer Data residing on its servers.

**f.** Provisions that survive termination or expiration of this Agreement are those relating to confidentiality, limitation of liability, indemnification, payment, and others which by their nature are intended to survive. Without limiting the generality of foregoing, Sections 8 through 19 will survive expiration or termination of this Agreement.

## **10. PROPRIETARY RIGHTS.**

**a.** Provider acknowledges and agrees that, as between Provider and Customer, Customer owns all intellectual property rights in Customer Content and Customer Data. Customer acknowledges and agrees that, as between Provider and Customer, Provider owns all intellectual property rights in the Solutions and Documentation. Except as expressly stated in the Agreement, Provider does not grant Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Solutions or Documentation. Any and all updates, enhancements, modifications, corrections, and derivative works that are made to the Solutions and Documentation will be owned by Provider.

b. Provider may compile aggregate data, anonymous data, and other statistical information related to Customer's use of the Solutions and may make such information publicly available, provided that such information does not incorporate Customer's Confidential Information, Customer Content, or Customer Data that contains any personally identifiable information. Without limiting the generality of the foregoing, Provider may use in its marketing and advertising, non-Customer specific Service activity, including the total number of users, average time spent per user, success metrics, activities used by users and other performance-based statistics to attract new customers.

c. Provider owns all intellectual property rights in such aggregate data, anonymous data, and other statistical information.

d. Provider may use tools, scripts, software, and utilities (collectively, "Tools") to monitor and administer the Solutions and to help resolve service requests. The Tools will not collect, report, or store any Customer Data residing in the service production environment, except as necessary to monitor and administer the Solutions and to help resolve service requests. Data collected by the Tools (excluding production data) may also be used to analyze certain information about the actual use of the Solution by the Customer (such as pages viewed, links clicked, help functions used, and other workflow information); such data shall not be considered Confidential Information of Customer hereunder, and may be used by the Provider for assisting in managing Provider' product and service portfolio, error resolution, product analytics and improvement, and for license administration and management. Provider and its licensors own all intellectual property rights in such Tools; and Provider owns all intellectual property rights in such resulting data.

e. Customer acknowledges and agrees that Provider owns all rights to any feedback provided to Provider, including any survey responses, bug reports, enhancement requests, issue reports, and support information; and Provider will be free to use such feedback for any purpose.

**11. CONFIDENTIALITY.** Each party will maintain as confidential and will not disclose (except to its employees, accountants, attorneys, advisors, affiliates, consultants, outsourcers and third party service providers of recipient with a need to know in connection with recipient's performance under this Agreement, and who have been advised of the obligation of confidentiality hereunder), copy or use for purposes other than the performance of this Agreement, any information which relates to the other party's business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement ("**Confidential Information**") and each party agrees to protect all received Confidential Information with the same degree of care that it would use with its own Confidential Information and to prevent unauthorized, negligent or inadvertent use, disclosure or publication thereof. Breach of this Section may cause irreparable harm and damage. Thus, in addition to all other remedies available at law or in equity, the disclosing party will have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. The recipient will be liable to the disclosing party for any use or disclosure in violation of this Section by recipient or its affiliates, employees, third party service providers or any other related party. Confidential Information will not include information that: (i) is already known prior to the disclosure by the owning party; (ii) is or becomes publicly known through no breach of this Agreement; (iii) is independently developed without the use of the other party's Confidential Information and evidence exists to substantiate such independent development; (iv) information that is obtained from a third party, and that third party is not, in good faith belief of the recipient, under any legal obligation of confidentiality; or (v) the recipient receives written permission from the disclosing party for the right to disclose any Confidential Information.

**12. PUBLICITY.** Neither party will, except as otherwise required by applicable law, issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other party's name or trademarks without the prior written consent of the other party; provided, however, that Provider may identify Customer as a recipient of Solutions and use Customer's logo in websites, sales presentations, marketing materials, and press releases: (i) to develop a brief customer profile for use by Provider on Provider's websites for promotional purposes; and (ii) use the email addresses of Authorized Users for the purpose of communicating program enhancements and information about Provider's other products and services during the term of the Agreement.

### **13. REPRESENTATIONS AND WARRANTIES.**

a. Each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other

organization; (ii) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (iii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**b.** Provider warrants that: (i) the Subscription Services will perform in material conformity with the functions described in the applicable Documentation during the applicable Term of the applicable Subscription Services; and (ii) the Licensed Products will perform in material conformity with the functions described in the applicable Documentation for thirty (30) days after delivery. Provider will use commercially reasonable efforts to remedy any material non-conformity of the Subscription Services or the Licensed Products that is discovered and made known to Provider by Customer during the applicable warranty period. If Provider is unable to remedy such material non-conformity within thirty (30) days or such other commercially reasonable period agreed between the parties, and the non-conformity materially and adversely affects the functionality of the Subscription Services or the Licensed Products, Customer may terminate the applicable Term of the Subscription Services or the Licensed Products and receive a refund of the unused portion of any fees that Customer has previously prepaid to Provider for the terminated Subscription Services or the Licensed Products. This Section contains Customer's sole and exclusive remedy, and Provider's entire liability, for any breach of Provider's warranties.

**14. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13, PROVIDER MAKES NO, AND HEREBY DISCLAIMS ALL, WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SOLUTIONS OR DOCUMENTATION, OR ANY RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER PRODUCTS OR SERVICES, OR BE ACCURATE, COMPLETE OR ERROR FREE. PROVIDER WILL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND CUSTOMER ACKNOWLEDGES THAT THE SOLUTIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PROVIDER WILL NOT BE RESPONSIBLE FOR ANY LOSS, DESTRUCTION, ALTERATION, OR DISCLOSURE OF CUSTOMER CONTENT OR CUSTOMER DATA CAUSED BY ANY THIRD PARTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW. ALL THIRD-PARTY PRODUCTS AND SERVICES THAT ARE SEPARATELY LICENSED BY A THIRD PARTY ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY PRODUCTS OR SERVICES IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. TRANSLATIONS OF THE SOLUTIONS OR DOCUMENTATION INTO LANGUAGES OTHER THAN ENGLISH ARE INTENDED SOLELY AS A CONVENIENCE. SOME SOLUTIONS OR DOCUMENTATION MAY NOT WORK AS EXPECTED WHEN TRANSLATED DUE TO LANGUAGE RESTRICTIONS. NO LIABILITY IS ASSUMED BY PROVIDER FOR ANY ERRORS, OMISSIONS, OR AMBIGUITIES IN TRANSLATIONS. THE SOLUTIONS ARE NOT DESIGNED OR INTENDED FOR USE IN MEDICAL, NUCLEAR, AVIATION, NAVIGATION, MILITARY OR OTHER HIGH-RISK ACTIVITIES WHERE FAILURE OF THE SOLUTIONS COULD RESULT IN DEATH, PERSONAL INJURY, AND/OR SUBSTANTIAL PROPERTY DAMAGE. PROVIDER EXPRESSLY DISCLAIMS AND IS RELEASED FROM ANY RESPONSIBILITY OR LIABILITY FOR ANY AND ALL DAMAGES THAT MAY BE INCURRED DUE TO THE USE OF THE SOLUTIONS FOR SUCH APPLICATIONS. PRE-RELEASE, BETA, TRIAL, AND FREE PRODUCTS AND SERVICES, IF ANY, ARE PROVIDED "AS-IS" AND "AS-AVAILABLE."

#### **15. LIMITATION OF LIABILITY.**

**a.** IN NO EVENT WILL PROVIDER BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF PROVIDER HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT. THE CUMULATIVE LIABILITY OF PROVIDER TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO PROVIDER FOR THE SPECIFIC SOLUTION GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE ORDERING DOCUMENT WITHIN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY.

b. Notwithstanding anything to the contrary set forth in this Agreement, Provider will have no obligation or liability, including (without limitation) with respect to support, warranties, indemnification, or otherwise in connection with any: (i) unauthorized use of any Solutions or Documentation; (ii) any Solutions or Documentation that is altered, damaged, or modified by Customer or any third party; (iii) any Solutions or Documentation that is not the then current release available from Provider; (iv) problems caused by Customer's or any third party's negligence, hardware malfunction, or other causes beyond the control of Provider; (v) any Solutions accessed on a hardware or operating system environment that is not supported by Provider; (vi) the combination, operation, or use of any Solutions with other product(s) or service(s) not supplied by Provider; (vii) pre-release, beta, trial, or free Solutions; (viii) Customer Content, Customer Data, or any other technology, materials or information provided by Customer or any third party; or (ix) any actions taken by Provider at Customer's direction.

## **16. INDEMNIFICATION.**

a. If a third-party claims that a Solution infringe any U.S. patent, copyright, or trade secret, Provider will defend Customer against such claim at Provider's expense and pay all damages finally awarded through judgment or settlement, provided that Customer promptly notifies Provider in writing of the claim, allows Provider sole control of the defense and/or settlement, and cooperates with Provider in, the defense or settlement of such action. If such a claim is made or appears possible, Provider may, at its option, secure for Customer the right to continue to use the Solution, modify or replace the Solution so that the Solution is non-infringing, or, if neither of the foregoing options is available in Provider's reasonable opinion, terminate this Agreement and refund to Customer any unamortized prepaid fees for use of the Solution. THIS PARAGRAPH STATES PROVIDER'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

b. Customer will indemnify, defend and hold harmless Provider and its officers, directors, employees, agents, successors and assigns from and against any and all claims, losses, liabilities, damages, causes of action, suits, expenses, and costs (including reasonable attorneys and expert witness fees) which result from or arise out of a claim by a third party that, if true, would constitute a breach of any representation, warranty, or covenant made by Customer hereunder; or relating to Customer Content, Customer Data, or any other materials or information provided by or on behalf of Customer, including without limitation: (a) claims by Authorized Users; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information by Customer; (c) claims related to infringement or violation of any applicable law; and (d) claims that use of the Solutions through Customer's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising.

**17. ALLOCATION OF RISK.** Customer acknowledges and agrees that Provider has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability in this Agreement, that the same reflect an allocation of risk between Provider and Customer (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between Provider and Customer. If Customer is subject to applicable laws that prohibit Customer from indemnifying Provider as set forth herein or prohibit Customer from entering into the risk allocation arrangement set forth herein, then (a) the terms of such provisions of this Agreement shall apply to Customer only to the fullest extent permitted by applicable law, it being understood that Customer and Provider each wish to enforce the provisions of this Agreement to the maximum extent permitted by applicable law; and (b) Customer must, within thirty (30) days of the commencement of the Term, notify Provider to specifically identify the applicable laws that apply to Customer and the resulting modifications to the risk allocation and indemnification provisions of this Agreement as a result of the application of such applicable laws.

**18. THIRD PARTY PRODUCTS AND SERVICES.** The Solutions may contain features and functionalities linking Customer or providing Customer with certain functionality and access to third party products and services, including content, websites, directories, servers, networks, systems, information, databases, applications, and software. Customer acknowledges that Provider is not responsible for such third-party products and services. Any



terms associated with such third-party products and services are solely between Customer and the applicable third party.

## 19. GENERAL.

**a. RELATIONSHIP OF PARTIES.** This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

**b. ASSIGNMENT.** This Agreement may not be assigned or transferred by Customer, whether by operation of law or otherwise, without Provider's prior written consent.

**c. FORCE MAJEURE.** Provider will have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, work stoppage, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, or direction, accident, breakdown of plant or machinery, fire, flood, storm, tornado, technological, computer hardware or software errors, delays, or breakdowns, including those caused by attacks from unauthorized users who access the technological infrastructure, *e.g.*, hackers, or default of sub-contractors or other third parties.

**d. WAIVER.** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**e. SEVERABILITY.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**f. NOTICES.** Any notice required to be given under this Agreement will be in writing and will be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by electronic mail to the other party's address as set out in this Agreement or as the other party may specify in writing. A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by electronic mail will be deemed to have been received when the recipient acknowledges receipt of such notice.

**g. GOVERNING LAW AND DISPUTES.** This Agreement and any dispute arising hereunder will be governed by and interpreted and construed in accordance with the laws of the State of Delaware, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The place of performance and exclusive jurisdiction for any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) is the principal place of business of the Provider. The Uniform Computer Information Transactions Act or the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or purchases placed under it.

**h. EXPORT LAWS.** Each party will (i) comply with applicable laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions ("**Export Laws**"), including designating countries, entities and persons ("**Sanctions Targets**") and (ii) not directly or indirectly export, re-export or otherwise deliver Solutions to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer

represents that it is not a Sanctions Target or prohibited from receiving Solutions pursuant to this Agreement under applicable laws, including Export Laws.

**i. GOVERNMENT USE.** If Customer is a branch or agency of the U.S. Government, then use, duplication, or disclosure of the Solutions are subject to the restrictions set forth in this Agreement, except that this Agreement shall be governed by federal law.

**j. ANTI-CORRUPTION.** Each Party acknowledges its obligation to comply with all applicable anti-corruption legislation and represents that, to its knowledge, no money or other consideration of any kind paid or payable under this Agreement or by separate agreement is, has been or will be used for unlawful purposes, including purposes violating anti-corruption laws, including making or causing to be made payments to any employee of either party or anyone acting on their behalf to assist in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.

**k. ENTIRE AGREEMENT.** This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. If these General Terms and Conditions conflict with any of the terms or conditions of any Ordering Document, Supplemental Terms and Conditions, or Documentation, then the order of precedence will be: (i) Supplemental Terms and Conditions; (ii) General Terms and Conditions; (iii) the Ordering Document; and (iv) the Documentation; provided that a conflicting term in an Ordering Document will take precedence over the Terms and Conditions if the Ordering Document (a) is signed by an authorized representative of both parties, (b) expressly states that the parties intend to override or replace a provision of the Terms and Conditions that it overrides, and (c) identifies the particular provision in the Terms and Conditions being overridden or replaced. Any purchase orders issued by Customer will be deemed to be for Customer's convenience only and, notwithstanding acceptance of such orders by Provider, will in no way change, override, or supplement this Agreement. This Agreement applies to the exclusion of any terms or conditions Customer seeks to impose or incorporate, or that might be implied by usage of trade, custom, practice, course of dealing, course of performance or otherwise. Any term or agreement related to the subject matter hereof or any change, addition, or modification to the terms of the Agreement shall be valid and enforceable only if it is made in writing as an amendment or addendum to the Agreement and executed by Customer and a duly authorized officer of Provider.

## SUPPLEMENTAL TERMS AND CONDITIONS

### BETA TERMS

**1. LICENSE.** Subject to the terms and conditions set forth in the Agreement, Provider hereby grants, and Customer hereby accepts, a non-exclusive, non-sublicensable, non-transferable, revocable, limited, right to permit Authorized Users to access and use the Beta Features solely for the Beta Feature Purpose (as defined in the applicable Subscription Services Supplemental Terms and Conditions set forth below), in accordance with any Documentation in the Territory during the Beta Feature Period (as defined below).

**2. BETA FEATURE PERIOD.** The “Beta Feature Period” begins on the date the Beta Feature(s) was/were first made available to Customer and continues until the earlier of: (a) the date on which the Provider begins charging Customer for the functionality as a stand-alone feature of the applicable Solution; or (b) the date on which Provider, at its sole discretion, expressly notifies Customer of the removal of the Beta designation in writing (including via email and/or the administrative portal), such notification clearly and conspicuously marked to indicate the removal of the Beta designation. Access to the Beta Features will be free during the Beta Feature Period. Provider does not make any commitment to provide Beta Features in any specific Solution, include Beta Features in any future versions of any Solution, or maintain Beta Features in any Solution. Provider may immediately and without notice remove any Beta Feature for any reason without liability to Customer.

**3. DISCLAIMER.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, ALL BETA FEATURES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WITHOUT ANY PERFORMANCE OBLIGATIONS, AND PROVIDER SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE BETA FEATURES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE PROVIDER'S LIABILITY WITH RESPECT TO THE APPLICABLE BETA FEATURE SHALL NOT EXCEED \$100.00

**4. CONFIDENTIALITY & FEEDBACK.** Customer acknowledges that the Beta Features are provided for the purpose of testing and feedback and may contain errors, failures, or performance issues. Customer agrees to treat any information regarding the performance of the Beta Features, including their existence and any errors, failures, or other malfunctions associated with them, as confidential information of the Provider. Customer shall not make any public statements, reviews, or disclosures that imply any deficiencies, errors, or failures in the Beta Features without the prior written consent of the Provider. This includes, but is not limited to, discussions in forums, reviews on websites, social media posts, and comments to the press. Any feedback or reports on the performance of the Beta Features shall be provided directly and exclusively to the Provider in a manner outlined by the Provider. Customer agrees to provide detailed, constructive, and honest feedback on the Beta Features, including reporting any failures, deficiencies, or suggestions for improvement directly to the Provider.

**5. LIABILITY, INDEMNIFICATION, & RISK OF LOSS.**

**a.** Provider shall not be liable for any claim, damage, or loss arising from the Customer's use of any Beta Feature.

**b.** Customer agrees to indemnify, defend, and hold harmless Provider from any claims, damages, losses, costs, or expenses incurred as a result of the Customer's use of any Beta Feature). For the avoidance of doubt, Provider shall not be subject to any indemnification obligations set forth in the General Terms and Conditions as they may relate to the Beta Features.

**c.** Any Customer Data entered, used, or generated with a Beta Feature may be permanently lost without notice during the Beta Feature Period.

## SUPPLEMENTAL TERMS AND CONDITIONS

### ASSET LIBRARY

If, and to the extent that the Solution includes the Asset Library, then these Supplemental Terms and Conditions apply.

A. Sections 1 and 2 of the General Terms and Conditions are hereby amended to add the following:

#### 1. Purpose for Template

If, and to the extent that, the Licensed Product includes any template available in the Asset Library (“**Template**”), then the license to use such Template is limited to the creation of items for the following Purpose: Customer’s general business purposes, including but not limited to training and professional development, advertising, and marketing.

Customer may not distribute any stand-alone Template. See additional prohibited uses of Asset Library below.

Examples of permitted uses of a Template include training materials, printed materials, product packaging, presentations, film and video presentations, commercials, catalogs, brochures, promotional greeting cards, and promotional postcards.

Examples of prohibited uses of a Template include design template applications, website templates, eLearning templates, flash templates, business card templates, electronic greeting card templates, and brochure design templates.

#### 2. Purpose for Cutout People

If, and to the extent that, the Licensed Product includes any cutout people available in the Asset Library (“**Cutout People**”), then the license to use such Cutout People is limited to the creation of items for the following Purpose: Customer’s general business purposes, including but not limited to training and professional development, advertising, and marketing.

Customer may not distribute any stand-alone Cutout People. See additional prohibited uses of Asset Library below.

Examples of permitted uses of Cutout People include training materials, printed materials, product packaging, presentations, film and video presentations, commercials, catalogs, brochures, promotional greeting cards, and promotional postcards.

Examples of prohibited uses of Cutout People include cutout applications and cutout libraries.

#### 3. Purpose for Stock Asset

If, and to the extent that, the Licensed Product includes any stock image, vector, or video available in the Asset Library (“**Stock Asset**”), then the license to use such Stock Asset is limited to the creation of items for the following Purpose: Customer’s training and professional development.

Customer may not distribute any stand-alone Stock Asset. See additional prohibited uses of Asset Library below.

Examples of permitted uses of a Stock Asset include Customer's eLearning, training and professional development, classroom training, instructor lead training, web-based training, online learning, mobile learning, course development, webinars, webcasts, self-paced learning, live online learning, pre-recorded classrooms, educational lectures, instructional design, k-12 and higher education, educational promotion, learning management systems, corporate universities, and other training courses.

Examples of prohibited uses of a Stock Asset include marketing, advertising, logo, social media, or any website purposes unrelated to Customer's training and professional development.

#### **4. Purpose for Music**

If, and to the extent that, the Licensed Product includes any music available in the Asset Library ("**Music**"), then the license to use such Music is limited to the creation of audio-visual or audio content solely for the following Purpose: Customer's training and professional development.

Customer may not:

- i. Substantively modify Music (e.g., modulate, remix, change tempo, key, etc.), provided that Customer may apply minor changes such as arranging Music with each other or cutting/ fading Music;
- ii. Reproduce, export, or otherwise embody Music in any physical items or devices for sale or free distribution where the Music are used outside of creative content permitted above; or
- iii. Use Music as a major part of audio-only content; use Music as a primary, defining, or important part of an item; use Music to increase the intrinsic value of an item; or use Music to influence a customer's preference for a particular item.

Customer may not distribute stand-alone Music. See additional prohibited uses of Asset Library below.

Examples of permitted uses of Music include incidental use in Customer's eLearning, training and professional development, classroom training, instructor lead training, web based training, online learning, mobile learning, course development, webinars, webcasts, self-paced learning, live online learning, pre-recorded classrooms, educational lectures, instructional design, k-12 and higher education, educational promotion, learning management systems, corporate universities, and other training courses.

Examples of prohibited uses of Music include marketing, advertising, logo, social media, or any website purposes unrelated to Customer's training and professional development.

#### **5. Purpose for Icon**

If, and to the extent that, the Licensed Product includes any icon available in the Asset Library ("**Icon**"), then the license to use such Icon is limited to the creation of items for the following Purpose: Customer's training and professional development.

Customer may not distribute any stand-alone Icon. See additional prohibited uses of Asset Library below.

Examples of permitted uses of an Icon include Customer's eLearning, training and professional development, classroom training, instructor lead training, web-based training, online learning, mobile learning, course development, webinars, webcasts, self-paced learning, live online learning, pre-recorded classrooms, educational lectures, instructional design, k-12 and higher education, educational promotion, learning management systems, corporate universities, and other training courses.

Examples of prohibited uses of an Icon include marketing, advertising, logo, social media, or any website purposes unrelated to Customer's training and professional development.

#### **6. Additional Prohibited Uses of Asset Library, including Templates, Cutout People, Stock Images, Music, and Icons (each, "**Asset**")**

Customer may not:

- a. Use any Asset in any way that allows others to download, extract or redistribute the Asset as a standalone file;
- b. Use any Asset to create an item after expiration or termination of the Term;
- c. Stockpile, download, or otherwise store any Asset that is not used in any item during the Term;
- d. Make the Asset available for free download on a shared drive, service, software, or website for the purpose of exchanging, transferring, or distributing;
- e. Transfer, resell, sub-license, rent, donate, or otherwise transfer the Asset or rights to it to third parties;
- f. Establish conditions under which the Asset may be extracted from a product or content;
- g. Allow third parties access to the Asset for further use;
- h. Use the Asset to create an official logo, company name, trademark or otherwise register any intellectual property rights in and to the Assets with any governmental authority or non-governmental organization;
- i. Use the Asset in a way that infringes the Asset's intellectual property rights or a third party's trademark or that would lead to a complaint about deceptive advertising or unfair competition;
- j. Use the Asset for SPAM mailings;
- k. Use the Asset in a way that competes with Provider's or its affiliates' or their respective licensors' businesses;
- l. Display, use, or post the Asset in a way that would lead to the conclusion that the model in the Asset approves of or endorses the items or services of any venture or trademark;
- m. Show a person depicted in the Asset in sensitive scenarios that could reasonably be considered offensive or unflattering to that person (e.g., related to mental and physical deficits, sexual or implied sexual activity or preferences, crime, physical or mental abuse or ailments);
- n. Use the Asset for pornographic, illegal, or immoral purposes;
- o. Use the Asset in items or products that could embarrass or humiliate a person or model in the Asset;
- p. Use the Asset for advertisement or promotion of tobacco or alcohol products; or
- q. Display, use, or post the Asset in a way that would lead to the conclusion that the model in the Asset approves of or endorses any political party, policy, candidate, or elected official.

**B.** Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the use of the Licensed Product at <https://knowledgebase.elblearning.com/>.

## SUPPLEMENTAL TERMS AND CONDITIONS

### CENARIOVR®

If, and to the extent that the Solution includes CenarioVR, then these Supplemental Terms and Conditions apply.

- A. Section 1 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer's general business purposes, including but not limited to training and professional development.

- B. Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the use of the Subscription Service at <https://knowledgebase.elblearning.com/>.

**SUPPLEMENTAL TERMS AND CONDITIONS:**

**COURSEMILL® HOSTED (SUBSCRIPTION SERVICES) AND/OR  
ON-PREMISES, ENTERPRISE VERSION (LICENSED PRODUCT)**

If, and to the extent that, the Solution includes CourseMill® Hosted (Subscription Services) and/or On-Premises, Enterprise Version, then these Supplemental Terms and Conditions apply.

**A.** Sections 1 and 2 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer’s general business purposes, including but not limited to training and professional development

**B.** Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the proper use of the Subscription Services and/or the installation and use of the Licensed Product at <https://knowledgebase.elblearning.com/>. For the on-premises, licensed version of CourseMill®, an on-going support and maintenance contract may be required. Please contact your account representative for details.



## SUPPLEMENTAL TERMS AND CONDITIONS

### LECTORA® ONLINE (Subscription Services) and/or DESKTOP (Licensed Product)

If, and to the extent that, the Solution includes Lectora Online and/or Desktop, then these Supplemental Terms and Conditions apply.

- A. Sections 1 and 2 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer's general business purposes, including but not limited to training and professional development

- B. Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the proper use of the Subscription Services and/or the installation and use of the Licensed Product at <https://knowledgebase.elblearning.com/>.

- C. The General Terms and Conditions are hereby amended to add the following:

The Licensed Product includes certain open-source software or code developed by The Apache Software Foundation and governed by the Apache License version 2.0 found at [www.apache.org/licenses/](http://www.apache.org/licenses/). Use of the Desktop Software in accordance with this Agreement without modification will not impose any affirmative obligations on Customer under such license.

## SUPPLEMENTAL TERMS AND CONDITIONS

### REHEARSAL

If, and to the extent that the Solution includes Rehearsal, then these Supplemental Terms and Conditions apply.

- A. Section 1 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer’s training and professional development.

**Authorized User:** An employee, agent, or independent contractor of Customer who are designated by Customer via the Subscription Services as “**Primary Administrator**”, “**Author**”, “**Mentor**”, or “**Learner**”. The Primary Administrator is designated by the Customer during the Subscription Service setup process. The Primary Administrator(s) and Author(s) may access the authoring tools to populate the tools with Customer Content and to invite Mentors and Learners to access the tools via the Subscription Services. The Primary Administrator(s) and Author(s) may view the tool’s analytics dashboard via the Subscription Services if purchased, and as permissions have been granted by the Primary Administrator(s), within the Subscription Services. The Primary Administrator(s), Author(s), Mentors(s) and Learner(s) may view the tool’s leaderboard via the Subscription Services, as permissions are granted within the Subscription Services. The Learner(s) and Mentor(s) may access assigned tools, as provided to them by the Primary Administrator(s) and Author(s) via the Subscription Services.

Authorized User(s), up to the number indicated in the Ordering Document, whether such is uniquely identified through a data field (such as an email address, or personally identifiable number as designated by purchased SSO integrations), may access the tools as identified in the Subscription Services, and, if purchased, during the Term in the Territory in accordance with this Agreement for the fee indicated in the Ordering Documents. All Authorized User(s) uniquely identified through a data field such as described herein are counted as a Seat once during the Term.

- B. Section 5 of the General Terms and Conditions is hereby amended to add the following: Provider shall provide Customer with access to support for assistance in the use of the Subscription Service at <https://knowledgebase.elblearning.com/>.

C. **AI Functionality(ies)**. Rehearsal may use, incorporate, or make available artificial intelligence technologies, including but not limited to machine learning (“ML”), deep learning, neural networks, large language models (“LLMs”), and natural language processing (“NLP”) (“**Rehearsal AI Functionalities**”). In the course of Customer’s use of the Rehearsal Functionalities, it may submit Customer Data (including in the form of prompts, queries, or files) to the Rehearsal AI Functionality (“**Inputs**”) and receive outputs from the Rehearsal AI Functionalities (“**Outputs**”).

1) Applicability of Beta Terms

Rehearsal AI Functionality is a Beta Feature and, accordingly, Customer acknowledges and agrees that, in addition to the specific terms related to the Rehearsal AI Functionality below, its use of Rehearsal AI Functionality is subject to the [Beta Terms](#) as set forth in the SUPPLEMENTAL TERMS AND CONDITIONS - BETA TERMS above.

2) Training

Provider may not use Inputs or Outputs to train or otherwise improve AI Functionality, except solely for the benefit of Customer.

3) Intellectual Property

- a) Except for Provider’s express rights in the Agreement, as between the parties, Customer retains all intellectual property and other rights in Customer’s Inputs and Outputs as Customer Data.

- b) Customer acknowledges that Outputs provided to Customer may be similar or identical to Outputs independently provided by Provider to others.
  - c) Provider disclaims infringement liability for Outputs. Outputs are generated through machine learning processes and are not tested, verified, endorsed or guaranteed to be accurate, complete or current by Provider. Customer should independently review and verify all Outputs as to appropriateness for any and all Customer use cases and applications. Customer agrees to indemnify and hold harmless Provider from any claims, damages, losses, costs, or expenses incurred as a result of Customer's use of Rehearsal AI Functionality, Inputs, or Outputs.
- 4) Third-Party Providers and Terms
- a) Customer acknowledges that the following third parties provide the Rehearsal AI Functionality: OpenAI LLC and Amazon Web Services (“**Third-Party Providers**”).
  - b) Customer acknowledges that Third-Party Providers are subprocessors engaged in processing Customer Content and Data.
  - c) Customer agrees to abide by Third-Party Provider’s terms and conditions relating to the Rehearsal AI Functionality including, [OpenAI Terms](#) and [AWS Service Terms](#) (“**Third-Party Terms**”).
- 5) Special Restrictions on Use of Rehearsal AI Functionality
- a) Without limiting any restrictions on use of the Solutions in the Agreement, Customer will not and will not permit anyone else to:
    - i. use the Rehearsal AI Functionality or any Output to infringe any third-party rights,
    - ii. use the Rehearsal AI Functionality or any Output to develop, train or improve any AI or ML models,
    - iii. represent any Output as being approved or vetted by Provider or any Third-Party Provider,
    - iv. represent any Output as being an original work or a wholly human-generated work,
    - v. use the Rehearsal AI Functionality for automated decision-making that has legal or similarly significant effects on individuals, unless it does so with adequate human review and in compliance with applicable laws, or
    - vi. use the Rehearsal AI Functionality for purposes or with effects that are discriminatory, harassing, harmful or unethical.
  - b) Customer acknowledges and agrees that the Rehearsal AI Functionality is subject to certain restrictions in their use, particularly concerning decision-making processes. Customer shall ensure that the Rehearsal AI Functionality is not used as the sole basis for making decisions that could significantly affect the rights and freedoms of individuals, especially in contexts related to employment, credit eligibility, healthcare decisions, insurance underwriting and claims, or any other decision-making processes that could lead to legal or significant personal impacts.
- 6) Compliance with Laws and Regulations
- a) Customer agrees to use the Rehearsal AI Functionality in compliance with all applicable local, state, national, and international laws and regulations, including but not limited to those pertaining to data protection, privacy, non-discrimination, and employment.
  - b) Customer is responsible for ensuring that the use of Rehearsal AI Functionality in decision-making processes adheres to all relevant legal standards and ethical guidelines, including obtaining necessary consents and providing requisite disclosures and explanations to affected individuals.
  - c) Customer is responsible for complying with its own policies, including any AI policy.

7) Review and Attribution

Customer commits to manually reviewing each generation of Output before sharing or streaming and to accurately attribute the content. Additionally, Customer shall clearly indicate that the content is AI-generated in a way that no user could reasonably miss or misunderstand. Customer agrees to adhere to the specific requirements and conditions set forth in the Third-Party Terms regarding the sharing of content on social media, livestreaming, demonstrations, and the publication of content.

8) Modification and Termination

These Supplemental Terms may be modified in response to evolving technology, legal changes, or amendments in Third-Party Terms. In the event of any breach of these Supplemental Terms by Customer, Publisher reserves the right to discontinue the provision of the Rehearsal AI Functionality to the Customer immediately.

## SUPPLEMENTAL TERMS AND CONDITIONS

### REVIEWLINK®

If, and to the extent that, the Solution includes ReviewLink®, then these Supplemental Terms and Conditions apply.

- A.** Section 1 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer's general business purposes, including but not limited to training and professional development

- B.** Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the use of the Subscription Service at <https://knowledgebase.elblearning.com/>.

## SUPPLEMENTAL TERMS AND CONDITIONS

### ROCKSTAR LEARNING PLATFORM

If, and to the extent that, the Solution includes the Rockstar Learning Platform, then these Supplemental Terms and Conditions apply.

- A. Section 1 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer's general business purposes, including but not limited to training and professional development

- B. Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the use of the Subscription Service at <https://knowledgebase.elblearning.com/>.

- C. The Rockstar Learning Platform includes The Studio MicroBuilder. Accordingly, the [SUPPLEMENTAL TERMS & CONDITIONS - STUDIO MICROBUILDER](#), including without limitation, those terms and conditions applicable to the MicroBuilder AI Functionalities apply.

## SUPPLEMENTAL TERMS AND CONDITIONS

### STUDIO MICROBUILDER™

If, and to the extent that, the Solution includes Studio MicroBuilder (“SMB”), then these Supplemental Terms and Conditions apply.

A. Sections 1 and 2 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer’s general business purposes, including but not limited to training and professional development.

B. Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support for assistance in the proper use of the Subscription Services at <https://knowledgebase.elblearning.com/>

C. **AI Functionality(ies).** SMB may use, incorporate, or make available certain artificial intelligence technologies, including but not limited to machine learning (“ML”), deep learning, neural networks, large language models (“LLMs”), natural language processing (“NLP”), generative AI, and AI-powered avatars (“SMB AI Functionalities”). These functionalities are designed to enhance the Solutions and improve the experience of Authorized Users in various ways. Enhancements may include, but are not limited to, supporting the rapid ideation and development of training content, providing accurate transcription and translation services, enhancing interactive learning environments, engaging learners through AI avatars, and elevating overall learner engagement. Current SMB AI Functionalities enable the creation of learning content (“SMB AI Functionality No. 1”) and others provide digital avatars that can act as presenters in video Output (“Avatars”) (“SMB AI Functionality No. 2”). In the course of Customer’s use of SMB AI Functionalities, Customer may submit Customer Data (including in the form of prompts, queries, or files) to SMB AI Functionality (“Inputs”) and receive outputs from SMB AI Functionality (“Outputs”).

1) Applicability of Beta Terms

SMB AI Functionalities are Beta Features and, accordingly, Customer acknowledges and agrees that, in addition to the specific terms related to the SMB AI Functionalities below, its use of SMB AI Functionalities is subject to the [Beta Terms](#) as set forth in the SUPPLEMENTAL TERMS AND CONDITIONS - BETA TERMS above.

2) Training

Provider may use Inputs and Outputs to train or otherwise improve the SMB AI Functionalities, but only if such Inputs and Outputs have been (a) de-identified so that they do not identify Customer or its Authorized Users; and (b) aggregated with data across other customers.

3) Intellectual Property

- a) Except for Provider’s express rights in the Agreement, as between the parties, Customer retains all intellectual property and other rights in Customer’s Inputs.
- b) Customer is authorized to use Outputs subject to the Agreement, including these Supplemental Terms and Conditions.
- c) Customer acknowledges that Outputs provided to Customer may be similar or identical to Outputs independently provided by Provider to others.

4) Disclaimer

Provider disclaims infringement liability for Outputs. Outputs are generated through machine learning processes and are not tested, verified, endorsed or guaranteed to be accurate, complete or current by Provider. Customer should independently review and verify all Outputs as to appropriateness for any and all Customer

use cases and applications. Customer agrees to indemnify, defend, and hold harmless Provider from any claims, damages, losses, costs, or expenses incurred as a result of Customer's use of SMB AI Functionality, Inputs, or Outputs.

5) Third-Party Providers

- a) Customer acknowledges that the following third parties (each, "**Third-Party Provider**") provide the SMB AI Functionalities: [OpenAI, LLC](#) and [Colossyan Inc.](#)
- b) Customer acknowledges that each Third-Party Provider will process Customer Data. In the event that any Third-Party Provider processes personal data of Authorized Users, such Third-Party Provider will be identified as a Sub-processor in the [DPA](#).
- c) Customer agrees to abide by the Third-Party Provider's terms and conditions relating to SMB AI Functionality No. 1 at <https://openai.com/policies>.
- d) Customer agrees to abide by the Third-Party Provider's terms and conditions relating to SMB Functionality No. 2, at <https://www.colossyan.com/terms> including the Colossyan [Acceptable Use Policy](#).

6) SMB AI Functionality No. 2 provides Customer with an option to use synthetic avatars as presenters in video Output based on real-life persons ("**Avatar**"). Customer understands and acknowledges that Avatars available in SMB AI Functionality No. 2 are based-on real people ("**Actors**") and the use of Avatars is subject to additional restrictions. Accordingly, if Customer wishes to use an Avatar, then the following additional restrictions apply. Customer may not use Avatars:

- i. in a way that it damages or falsifies the Actor's reputation or otherwise defamatory;
- ii. in a way that a person would reasonably find offensive;
- iii. alongside or in connection with regulated or not age-appropriate goods or services, such as gambling, or the sale or use of liquor, tobacco products or illicit drugs, except as specifically provided below;
- iv. in which the Avatar is making any kind of statement of opinion, including expressing any personal preferences or experiences as their own preferences or experiences, except as specifically provided below;
- v. in which the Avatar is making any kind of statement of fact regarding religion, politics, race, gender, sexuality, or other similar topics that are known to be sensitive to certain demographics, except as specifically provided below;
- vi. to create trademarks, design-marks, service-marks, or other similar protected or registrable rights, as or part of non-fungible tokens (NFTs) or similar; or
- vii. for television broadcasting.

Notwithstanding anything to the contrary set forth above, the prohibitions set forth in clauses (iii), (iv), and (v) above do not apply to Customer's use of Avatars solely for legitimate educational, training, and professional development purposes; provided and to the extent that that Customer does not use Avatars in way that is demonstrably harmful to or could reasonably be expected to result in significant reputational damage to an Actor.

7) Special Restrictions on use of AI Functionality

- a) Without limiting any restrictions on use of the Solutions in the Agreement, Customer will not and will not permit anyone else to:
  - i. use the SMB AI Functionality or any Output to infringe any third-party rights,
  - ii. use the SMB AI Functionality or any Output to develop, train or improve any AI or ML models,



- iii. use the SMB AI Functionality to create Output that contains any personal data,
  - iv. represent any Output as being approved or vetted by Provider or Third-Party Provider,
  - v. represent any Output as being an original work or a wholly human-generated work,
  - vi. use the SMB AI Functionality for automated decision-making that has legal or similarly significant effects on individuals, unless it does so with adequate human review and in compliance with laws, or
  - vii. use the SMB AI Functionality for purposes or with effects that are discriminatory, harassing, harmful or unethical.
- b) Customer acknowledges and agrees that the SMB AI Functionality is subject to certain restrictions in their use, particularly concerning decision-making processes. Customer shall ensure that the SMB AI Functionality is not used as the sole basis for making decisions that could significantly affect the rights and freedoms of individuals, especially in contexts related to employment, credit eligibility, healthcare decisions, insurance underwriting and claims, or any other decision-making processes that could lead to legal or significant personal impacts.

**8) Compliance with Laws and Regulations**

- a) Customer agrees to use the AI Functionality in compliance with all applicable local, state, national, and international laws and regulations, including but not limited to those pertaining to data protection, privacy, non-discrimination, and employment.
- b) Customer is responsible for ensuring that the use of AI Functionality in decision-making processes adheres to all relevant legal standards and ethical guidelines, including obtaining necessary consents and providing requisite disclosures and explanations to affected individuals.
- c) Customer is responsible for complying with its own policies, including any AI policy.

**9) Review and Attribution**

Customer commits to manually reviewing each generation of Output before sharing or streaming and to accurately attribute the content. Additionally, Customer shall clearly indicate that the content is AI-generated in a way that no user could reasonably miss or misunderstand. Customer agrees to adhere to the specific requirements and conditions set forth in the Third-Party Terms regarding the sharing of content on social media, livestreaming, demonstrations, and the publication of content.

**10) Modification and Termination**

These Supplemental Terms may be modified in response to evolving technology, legal changes, or amendments in Third-Party Terms. In the event of any breach of these Supplemental Terms by Customer, Publisher reserves the right to discontinue the provision of the SMB AI Functionality to the Customer immediately.

## SUPPLEMENTAL TERMS AND CONDITIONS

### THE TRAINING ARCADE®

If, and to the extent that, the Solution includes The Training Arcade, then these Supplemental Terms and Conditions apply.

- A. Section 1 of the General Terms and Conditions is hereby amended to add the following:

**Purpose:** Customer's training and professional development

**Game Type:** Customizable game template in The Training Arcade for the reinforcement, evaluation, and optimization of training, as set forth in the Ordering Document.

**Game:** Game Type populated with Customer Content via The Training Arcade.

**Authorized User:** An employee, agent, or independent contractor of Customer who are designated by Customer via the Subscription Services as "**Primary Administrator**," "**Author**," "**Viewer/Facilitator**," or "**Learner**." The Primary Administrator is designated by the Customer during the online setup process. The Primary Administrator and Author(s) may access the Game Type authoring tools to populate the Game Types with Customer Content and to invite Learners to access the Games via the Subscription Services. The Primary Administrator, Author(s), and Viewer(s)/Facilitator(s) may view the Game analytics dashboard and leaderboard via the Subscription Services. The Learners may access and play the Games as provided to them by the Primary Administrator or Author via the Subscription Services.

Learners (up to the number indicated in the Ordering Document, whether such Learner is uniquely identified through a data field such as an email address or unregistered playing anonymously) may access the Games and Arcades, if purchased, during the Term in the Territory in accordance with this Agreement for the fee indicated in the Ordering Documents. Learners uniquely identified through a data field such as an email address or employee ID # are counted only once during the Term. In anonymous gameplay, each session counts toward the Learner threshold.

- B. Section 3 of the General Terms and Conditions is hereby amended to add the following:

All aspects of running challenges, contests, and other promotions and/or awarding, purchasing, and delivering prizes and incentives, including drafting rules and compliance with all contest, promotion, tax, and other applicable laws, are the sole responsibility of the Customer, and neither Provider nor its licensors bear any risk or responsibility thereunder.

Customer will not place a link to any functionality available from the Subscription Service onto a public-facing website or social media site.

- C. Section 5 of the General Terms and Conditions is hereby amended to add the following:

Provider shall provide Customer with access to support personnel for assistance in the use of the Subscription Service as indicated at <https://thetrainingarcade.com/faqs-the-training-arcade/>.

- D. Section 9 of the General Terms and Conditions is hereby amended to add the following:

**Post-Expiration Period:** Commences on the date of expiration of the Term and expires three months thereafter, unless earlier terminated. During the Post-Expiration Period, subject to Customer's payment of applicable fees as set forth in the Order Form and fulfillment of all other obligations under this Agreement, Learners will continue to have access to the single Learner (not multi-learner nor instructor-led) Games via The Training Arcade. During such Post Expiration Period, no other functionality for the Subscription Services will be available to the Customer, and nor will Provider have any support or other obligations in connection therewith. After the Post-Expiration Period, if any, or termination of this Agreement, Provider

will have the right, without obligation, to disable Customer's access to the Subscription Services, including links, and dispose of, or archive any of Customer Content and Customer Data in its possession. Such disposal will be in the form of anonymizing Customer Content and Customer Data.

E. If, and to the extent that, Customer is a Publisher (as defined below), the following applies:

**"Publisher"** means a Customer who purchases a Subscription for Publisher's Primary Author and Publisher's Author(s) to access the Game Type authoring tools to populate the Game Types with Customer Content and to invite all or a subset of Publisher Client's Learners to access the Games via The Training Arcade; for the Publisher's Primary Author, Publisher's Author(s), Publisher's Viewer Author(s), and Publisher Client's Viewer Author(s) to view the Game analytics dashboard and leaderboard via The Training Arcade; and for the Publisher Client's Learners to access and play the Games via The Training Arcade ("**Publisher Rights**"). Publisher may designate an employee, agent, and independent contractor of Publisher (but not Publisher Client) as Publisher's Author and Publisher's Primary Author. Publisher may designate employees, agents, and independent contractors of Publisher Client as Publisher's Viewer Author(s) and Publisher's Learners.

**"Publisher Client"** means a client of Publisher who enters into a written agreement with Publisher to have Publisher exercise Publisher Rights for such client.

**"Customer Content"** includes the questions, answers, images, videos, sounds, and other materials that the Publisher's Primary Author or Publisher's Author provides and populates in Game Types on behalf of Publisher Client for the purpose of facilitating internal training of Learners in accordance with this Agreement.

Publisher may exercise the Publisher Rights solely for Publisher Client's non-commercial internal training purposes in the Territory during the applicable Term, provided however that Publisher must designate a unique subdomain for each Publisher Client. Accordingly, if Publisher wishes to have more than one (1) Publisher Client, then Publisher must purchase another Subscription for each additional Publisher Client and enter into separate agreements for each Subscription. Publisher will not permit any third party to access and play the Games, other than Publisher Client's Learners.

Publisher represents and warrants that (a) it is authorized to act as Customer on behalf of Publisher Client and to bind Publisher Client to the terms and conditions of this Agreement; and (b) Publisher has and will have the necessary rights and consents from Publisher Client.

Last updated: June 19, 2024

**Previous Versions**

[v3 \(February 14, 2024\)](#)

[v2 \(April 14, 2023\)](#)

[v1 \(January 2022\)](#)