

# TERMS OF SERVICE AGREEMENT

Last Updated: 09/07/2023

Thank you for signing up for a subscription and/or service with myHRcounsel, LLC ("**Company**"). By placing an order, clicking a button indicating your acceptance (such as the "Subscribe" or "I Agree" button), executing an order form or other document that references this Terms of Service Agreement ("**Agreement**"), or using or accessing any Services or related services, even if earlier than placing an order or subscribing, (the "**Effective Date**"), you agree to all the terms and conditions of this Agreement. If you are using a Service or related services on behalf of a company or other entity, then "**Customer**" or "**you**" means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the Customer is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement. This Agreement supersedes and replaces any previous version. Please note that Company may modify this Agreement as further described below, so you should make sure to check this page from time to time.

This Agreement is a binding agreement between Company and Customer. Company hereby agrees to give an approved business or individual ("**User**") access to certain of Company's Services (as defined below) to User and to provide certain services associated with such Services (the "**Services**") to User, subject to the terms and conditions set forth in this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE, EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SERVICES THAT CUSTOMER DID NOT ACQUIRE LAWFULLY.

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## 1. DEFINITIONS

- 1.1. **5500** means Internal Revenue Service Form 5500, *Annual Return/Report of Employee Benefit Plan*.
- 1.2. **ACA** means the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 et seq.
- 1.3. **Affiliate** means any company that (i) controls, (ii) is controlled by or (iii) is under common control with either Party or its parent corporation. A company shall be deemed to control a company if it has the power to direct or cause the direction of the management or policies of such company, whether through the ownership of voting securities, by contract, or otherwise.
- 1.4. **Agreement** means this Terms of Services Agreement and such other documents, attachments, and exhibits that the parties' authorized representatives mutually agree to in writing.
- 1.5. **ASK Portal** means electronic ticketing system provided by Company for Customer to ask questions. This includes any mobile app that may be made available by the Company from time to time.
- 1.6. **Company Materials** means any documents, manuals, instructions, or other documents or materials that the Company provides or makes available to Customer in any form or medium through the Services.
- 1.7. **Customer Data** means all required electronic data or other information submitted by Customer to Company for the provision of Services.
- 1.8. **Collection Fees** has the meaning set forth in Section 4.3.
- 1.9. **Commercial Collection** means claims for payment for services or materials rendered to an individual as defined by 11 U.S.C. § 101, accompanying regulations, and case law. Whether something is a Commercial Collection or a Consumer Collection will be determined by the Company or a Provider Firm in their sole discretion.
- 1.10. **Component Services** means services described in Section 3.
- 1.11. **Consumer Collection** means claims for payment for services or materials rendered by a business to an individual outside of their organization, such as those related to purchasing services or materials that are used for individual or household consumption.
- 1.12. **Content** means materials provided or posted by Company in connection with the Services, including but not limited to training courses, tests, assessments, surveys, text, images, graphics, audio and sound recordings, and videos and modifications, enhancements, or new versions thereof.
- 1.13. **Disclosing Party** has the meaning set forth in Section 5.2.
- 1.14. **Employee Retention Tax Credit (ERTC)** means a credit that provides tax relief for companies that lost revenue in 2020 and 2021 due to COVID-19.
- 1.15. **ERISA** means the Employee Retirement Income Security Act of 1974.
- 1.16. **Feedback** has the meaning set forth in Section 6.6.
- 1.17. **Initial Term** has the meaning set forth in Section 9.1
- 1.18. **Intellectual Property** means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, User interfaces and screen designs, general purpose consulting and software tools, utilities and routines, logic, coherence and methods of operation of systems, training methodology and materials, which Company has created, acquired or otherwise has rights in, and may, in connection with the performance of Services, create, employ, provide, modify, acquire or otherwise obtain rights in.
- 1.19. **Litigation** means if lawsuit is drafted or filed, if arbitration or mediation is filed, etc. This shall be construed in the sole discretion of Company or Provider Firm.

- 1.20. **Materials** means information, documents, logos, graphics, sounds, videos, and images.
- 1.21. **PEPM** means per employee per month.
- 1.22. **Provider Firm** means a third-party firm that provides Services for Company, such as legal advice or collection work.
- 1.23. **Renewal Term** has the meaning set forth in Section 9.2.
- 1.24. **Resultant Data** means data and information related to Customer's use of the Services that is used by Company in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services
- 1.25. **Service** means each of the services made available by us or our affiliates.
- 1.26. **Site** means <https://www.ask.myhrcounsel.com/>, ASK Portal, or other web interface at a URL designated by Company.
- 1.27. **Subscription Page** means <https://myhrcounsel.com/join-today/> or other web interface at a URL designated by Company.
- 1.28. **Term** has the meaning set forth in Section 9.2.
- 1.29. **User(s)** means those persons who (a) have been authorized by Customer to access and use the Services. Only current employees and independent contractors of Customer are eligible to be Users.

## 2. USE RIGHTS

- 2.1. **Grant of Use.** Subject to the terms of the Agreement, Company grants to Customer the right to access and use the Services solely for its internal business purposes and solely in connection with the personal training, analysis, or assessment of its Users or business.
- 2.2. **Documentation License.** Company hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 10.4) license to use the Company Materials during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- 2.3. **Authorized Users.** Customer shall provide Company with the required demographic data for all Users in the specified electronic format provided by Company to complete the initial registration process. Company reserves the right to limit the number of Users per Customer, in its sole discretion.
- 2.4. **Acceptable Use.** Customer and all Users shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Customer agrees and shall ensure that Users agree not to post or upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains computer viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law. Customer further agrees and shall ensure that Users agree not to interfere or disrupt networks connected to the Services, not to interfere with another entity's use of similar services and to comply with all regulations, policies and procedures of networks connected to the Services. Company may remove any violating content posted on the Services or transmitted through the Services without notice. Company may, at its option and without prejudice to its other rights and remedies, suspend or terminate any User's access to the Services in the event that Company reasonably determines that such User has violated the terms and conditions of this Agreement.
- 2.5. **Cooperation.** For all Component Services Customer subscribes to, Customer shall provide Company with good-faith cooperation and access to such information, facilities, personnel and equipment as Company and its affiliates may reasonably require in order to provide the Services. Customer acknowledges that Company's performance is dependent upon the timely and effective completion of Customer's responsibilities hereunder and Customer's timely decisions and approvals in connection with the Services. Company shall be entitled to rely on all such decisions and approvals. Customer agrees that Company may refuse to provide Services if Customer fails to provide any requested information, including but not limited to the identity of any potential adverse parties.
- 2.6. **Restrictions.** Customer shall not itself, or through any affiliate, employee, contractor, agent or other third party (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services, the Site or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Services, in whole or in part; (iii) allow access to, provide, divulge or make available the Site or the Services to anyone other than an authorized User; (iv) create derivative works based upon the Services; or modify, adapt, translate or otherwise make any changes to the Services or any part thereof; (v) use the Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without Company's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (vii) remove from any Services or other materials owned by Company identification, patent, copyright, trademark or other notices. Proprietary notices, including without limitation patents, copyrights and trademarks notices, as well as disclaimer notices, must be reproduced on any such authorized copies.
- 2.7. **Passing Along Information to Third Parties.** Customer understands that information provided to them under the Services is meant for the Customer themselves. Company has no responsibility or liability for information Customer passes along to third parties. In addition, Customer sharing information from the Services may invalidate any attorney-client privilege that may apply to Customer.
- 2.8. **Broker Liability.** Customers who are Brokers, or who otherwise request services and/or submit information on behalf of a third party ("Broker Customer"), shall be liable for and indemnify Company for any adverse outcomes to any Customer or other third party resulting from Broker Customer's negligence, misrepresentation, failure to provide complete and/or accurate information, or other breach of this Agreement. Customer understands and agrees that Company's liability under this Agreement extends only to the Customer, and not to any third party.
- 2.9. **Enforcement.** Customer shall ensure that all Users of the Services comply with the terms and conditions of this Agreement. If you become aware of any violation of your obligations under this Agreement caused by a User, you will immediately suspend access to the Service by such User and promptly notify Company such violations.
- 2.10. **Environment.** The Services will be hosted on a server that is maintained by Company or its designated third-party subcontractor. User access to the Services is provided through the Site. Customer is solely responsible for obtaining and maintaining, at its own expense, all equipment needed to access the Site, including but not limited to Internet access and telecommunications network with adequate bandwidth.

- 2.11. **Availability.** Company shall use commercially reasonable efforts to make the Services available 24x7, except for scheduled downtime events where notice is provided to Customer, emergency downtime events, or Internet service provider failures or delays. Company will use commercially reasonable efforts to perform scheduled downtime events outside of normal business hours. Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications; Company is not responsible for any delays, delivery failures, or other damage resulting from such problems.
- 2.12. **Content.** Access to Content, if applicable, shall be provided by Company through the Services. Customer is responsible for selecting which Content will be available to authorized Users. Company continuously reviews and updates Content based on an ongoing-needs analysis. Company reserves the right to add, revise, or withdraw from its Content any item or part of an item in its sole discretion, at any time and without notice.
- 2.13. **Passwords.** Customer is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized User. Customer is entirely responsible for any and all activities that occur under its account. Customer shall immediately notify Company of any unauthorized use or any other breach of security known to Customer. Company shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements.
- 2.14. **Customer Data Responsibilities.** Customer shall be solely responsible for the accuracy, quality, integrity and legality of data provided or uploaded in the Services by Customer. Customer shall own or shall obtain all proprietary rights necessary, including copyrights, patents, and trade secrets, in and to any content or data it provides, develops, or uploads for use in the Services. Customer authorizes Company and the data center to serve as the host and repository for the data Customer enters into the Services.
- 2.15. **Changes.** Company reserves the right, in its sole discretion, to make changes to the Services and Content that it deems necessary to: (a) maintain or enhance: (i) the quality or delivery of Company's services to its customers; (ii) the competitive strength of or market for Company's services; or (iii) the Services' cost efficiency or performance; (b) to comply with applicable Law; (c) add and/or substitute functionally equivalent products in the event of (i) product unavailability; (ii) end-of-life, changes to software requirements; or (iii) to comply with applicable law. Company regularly updates the Services, meaning that such Services are continually evolving. Some of these changes will occur automatically, while others may require Customer to schedule and implement the changes.
- 2.16. **Third-Party Licenses.** The Services or Site may include software, content, data, or other materials, including related documentation, that are owned by persons other than Company (including partners of Company) and that are provided to Customer on terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). This Agreement and Customer's use of the Software is subject to such Third-Party Licenses. Customer is bound by and shall comply with all Third-Party Licenses. Any breach by Customer of any Third-Party License is also a breach of this Agreement.
- 2.17. **Modifications.** Company may modify this Agreement (including any Policies) at any time by posting a revised version on our Site or by otherwise notifying you in accordance with Section 10.8. The modified terms will become effective upon posting or, if Company notifies you by email, as stated in the email message. If Company makes a material change to the Contract, Company will provide Customer with reasonable notice prior to the change taking effect, either by emailing the email address associated with Customer's account. By continuing to use the Service after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Site regularly for modifications to this Agreement. Company last modified this Agreement on the date listed at the top of this Agreement.

### 3. COMPONENT SERVICES

- 3.1. **Component Services.** Company provides different levels of services, depending on your subscription. Sections 3.2 through 3.11 below each describe a different Component Service. Each below section may or may not apply to you, depending on which Component Service(s) you signed up for. All services are provided in English only.
  - 3.1.1. **Response Times.** With the applicable Component Service(s), you will receive an initial response to tickets opened in the ASK Portal within two (2) business hours. You may access the ASK Portal 24/7, but Company cannot guarantee a two-hour turnaround time outside of normal business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m. Central Time.
  - 3.1.2. **Calls.** With the applicable Component Service(s), you may also request a telephone consultation with a licensed attorney but are not guaranteed a two-hour response time. Phone calls are only available Monday through Friday from 8:00 a.m. to 5:00 p.m. Central Time.
- 3.2. **HR Solutions Center**
  - 3.2.1. **Fees:** As indicated on Subscription Page or other agreement between the parties.
  - 3.2.2. **Benefits:** Access to premium forms and documents library on Site.
  - 3.2.3. **Limitations:** – No consultation benefits with an attorney from provider firm. No editing or modifications of forms by Company.
  - 3.2.4. **Not Legal Advice.** The HR Solutions Center Component Service may provide information concerning potential legal issues, but this Component Service alone is not a substitute for legal advice. Communication with an attorney through Company with Provider Firm is required to obtain legal advice, opinions, or recommendations about appropriateness of a document, legal rights, remedies, defenses, options, or strategies. Use of the Services does not create any fiduciary or attorney-client relationship between Customer and Company. The accuracy of the Services is neither warranted nor guaranteed and Customer uses the Services at its own risk. Documents provided by or created using the Services may require consultation with an attorney prior to use. Use of the Service for the benefit of another if Customer and/or User is not licensed to practice law may subject Customer to civil and criminal penalties for the unauthorized practice of law.
- 3.3. **Employee Handbook+**
  - 3.3.1. **Fees:** As indicated on Subscription Page or other agreement between the parties.
  - 3.3.2. **Benefits:** Access to premium forms and documents library on Site plus one annual attorney-created, multi-state compliant, employee handbook.

3.3.3. **Limitations:** – No consultation benefits with an attorney from Provider Firm. No editing or modifications of other forms by Company. Customer must agree to use myHRcounsel employee handbook templates and complete employee handbook online questionnaire.

3.3.4. **Not Legal Advice.** The HR Solutions Center Component Service may provide information concerning potential legal issues, but this Component Service alone is not a substitute for legal advice. Communication with an attorney through Company with Provider Firm is required to obtain legal advice, opinions, or recommendations about appropriateness of a document, legal rights, remedies, defenses, options, or strategies. Use of the Services does not create any fiduciary or attorney-client relationship between Customer and Company. The accuracy of the output using this Component Service is neither warranted nor guaranteed and Customer uses the Component Service at its own risk. Documents provided by or created using this Component Service may require consultation with an attorney prior to use. Use of the Component Service for the benefit of another if Customer and/or User is not licensed to practice law may subject Customer to civil and criminal penalties for the unauthorized practice of law.

#### 3.4. **ASK HR Lite.**

3.4.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.

3.4.2. **Benefits.** Access to employment and HR forms and documents library on Site; consultations with a Provider Firm attorney on HR and employment law advice through the ASK Portal which are limited to initial review of each matter.

3.4.3. **Limitations.** No review or revision of forms on Site.

#### 3.5. **ASK HR.**

3.5.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.

3.5.2. **Benefits.** Access to employment and HR forms and documents library on Site; unlimited consultations with a Provider Firm attorney on HR and employment law advice through the ASK Portal; preparation of a legally completed handbook, with unlimited annual updates, based upon Company's templates; review or preparation of certain human resource and employment law documents in Company's or Provider Firm attorney's sole discretion, including where you are one of the contracting parties. For purposes of illustration, that includes:

- Offer Letters
- Nondisclosure Agreements
- Employee Activity Waivers
- Performance Improvement Plans
- Separation Agreements

Benefits also include up to three (3) attorney-drafted responses per year to an employment-related EEOC charge, equivalent state agency charge, present or former employee attorney letter, or pro se demand letter, subject to the following conditions:

- Any charge or demand received must first be tendered to your insurance carrier(s). This benefit will not apply if you are covered by an insurance policy or insured under an insurance policy which requires the insurer to defend (see 3.12.5)
- If the charge or demand is not covered by your insurance, or you don't have insurance, you will be required to fully investigate the matter and timely provide all necessary materials to the Provider Firm attorney for the attorney to prepare a response. Those materials include, but are not limited to, policies, emails, notes, witness statements, files, phone records, photos, and other items as required by the Provider Firm attorney in their sole discretion. Prompt cooperation with the Provider Firm attorney in the process is also required.

#### 3.6. **ASK Pro.**

3.6.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.

3.6.2. **Benefits.** All the benefits in §3.5, above; unlimited access to business forms and documents on Site; business law advice from a Provider Firm licensed attorney through the ASK Portal (including assistance with corporate policies and procedures); unlimited drafting & review of business forms on Site (including, for example, master service agreements, license agreements, and non-disclosure agreements); review and redlining of up to two (2) business documents not provided by Company per calendar month; Commercial Collection claims submitted through the ASK Portal handled at a 15% contingent fee on pre-Litigation and 30% contingent fee (Customer required to pay 5% suit fee and costs upfront) if local counsel is required or if the matter goes to Litigation, defense to counterclaims are handled on an hourly fee basis.

3.6.3. **Limitations:** Issues related to mergers and acquisitions and securities

#### 3.7. **myERISA Wrap.**

3.7.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.

3.7.2. **Benefits.** One attorney-created ERISA compliant wrap document for ERISA health and welfare benefit plans, annually.

3.7.3. **Limitations:** – No consultation benefits with an attorney from provider firm. Company will perform no editing or modifications of other forms. Customer must agree to use myHRcounsel ERISA wrap document templates and complete ERISA wrap document questionnaire.

#### 3.8. **ERISA Complete without 5500.**

3.8.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.

3.8.2. **Benefits.** The benefits provided in 3.2 and 3.7.2 above; annual ERISA notices required for health and welfare plans, legal advice on ERISA health and welfare benefits through the ASK Portal; access to ERISA compliance documents on Company's Site.

- 3.8.3. **Limitations.** Customer must agree to use myHRcounsel ERISA wrap document templates and complete questionnaire as provided to Customer by Company.
- 3.9. **ERISA Complete.**
- 3.9.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.
- 3.9.2. **Benefits.** The benefits provided in 3.7.2 above; legal advice on ERISA health and welfare benefits through ASK Portal; access to ERISA compliance documents on Company's Site; preparation and filing of one 5500 included, additional 5500 filings for additional fees.
- 3.9.3. **Limitations.** Same as 3.8.3, above.
- 3.10. **Standalone 5500**
- 3.10.1. **Fees.** As indicated on Subscription Page or other agreement between the parties.
- 3.10.2. **Benefits.** Users may elect to engage myHRcounsel to complete stand-alone Form 5500 filings without any of the other services provided in the ERISA offerings noted in §3.7 through 3.9.
- 3.10.3. **Limitations.** Customer must complete questionnaire as provided to Customer by Company.
- 3.11. **Employee Retention Tax Credit (ERTC)**
- 3.11.1. **Fees.** As indicated on Subscription Page or other agreement between the parties. Hourly charge of \$325.00 for work performed after initial review of materials. Contingent fee payments due to myHRcounsel within seven days after each payment or payments received by you from IRS.
- 3.11.2. **Benefits.** Users may elect to engage myHRcounsel to complete ERTC filings.
- 3.11.3. **Limitations.** User must timely provide required information to the Company or Provider Firm for completion of the ERTC filings.
- 3.12. **Limitations and Exclusions for All Component Benefits.** The following items and matters are specifically excluded from all of the Component Services:
- 3.12.1. Any service provided by a Component Service that you do not have a valid subscription to.
- 3.12.2. Anything not specifically listed under the Component Service you have a valid subscription for.
- 3.12.3. Any matter where an attorney needs to enter an appearance before a court, administrative agency, or in alternative dispute resolution (e.g., litigation, arbitration, mediation, etc.), except as expressly provided elsewhere in this Agreement.
- 3.12.4. Any appeal to an appellate court; provided, however, that the Company or a Provider Firm may, in its sole discretion and at its sole risk, disregard this exclusion.
- 3.12.5. Any matter for which you are covered by an insurance policy.
- 3.12.6. Except for the ERISA- and ERTC-related Component Services noted above (§§ 3.7-3.11), any federal, state, or local tax matters.
- 3.12.7. Consultation on matters related to a security as regulated by federal, state, or local law. Whether something is a security or not shall be determined in Company's or Provider Firm's sole discretion.
- 3.12.8. Consultation on and preparation of letters in response to IRS 226-J penalty letters, assessment letters, or other ACA related IRS notices.
- 3.12.9. Any matter involving ongoing litigation or other matter in which the Customer is already represented by an attorney.
- 3.12.10. Any action that directly or indirectly involves the Company, or any of its Affiliates, owners, directors, agents, employees, or Provider Firms.
- 3.12.11. Any action that directly or indirectly involves any other Provider Firm; provided, however, that a Provider Firm may, at its sole discretion and risk, represent a Customer in a matter in which another Provider Firm is representing another party as legal counsel.
- 3.12.12. Any action by a Customer that directly or indirectly involves any other Customer.
- 3.12.13. Any action by a Customer that would directly or indirectly create a conflict of interest for the Provider Firm.
- 3.12.14. Any matter that, in the opinion of the Company or a Provider Firm, is frivolous in nature or objectionable.
- 3.12.15. Lease documents. However, lease documents may be reviewed at the sole discretion of the Provider Firm and for an hourly fee.
- 3.12.16. Any case, matter, or requested service that is determined by the Company or an Provider Firm to lack sufficient merit to warrant pursuit, or that the Company or Provider Firm decides has been raised an inordinate or unreasonable number of times without a change in circumstances.
- 3.12.17. Any matter that will result in violation of an attorney's rules of professional conduct or other law, as determined in the sole discretion of the Provider Firm.
- 3.12.18. Any course of action involving Company's Services that the Provider Firm reasonably believes is criminal or fraudulent.
- 3.12.19. Any legal matters that are those of third parties (e.g., customers of Customer or a Customer's employee's personal legal issue).
- 3.12.20. Matters not involving United States law or laws of any U.S. state, county, or municipality.
- 3.12.21. Consumer Collection.
- 3.12.22. Matters involving product or service development or maintenance, including software development and review of software.
- 3.12.23. Education-related matters involving students, parents, guardians, and other non-employee personnel. Such matters include, but are not limited to, individual education plans (IEPs), waivers, authorizations, health records, and education records.
- 3.13. **Independent Attorney Judgment.** Attorneys at Provider Firms providing Services for Customers under the terms of this Agreement are not agents or employees of Company. Any attorney rendering legal services to Customers under a Component Service shall maintain the attorney-client

relationship with the Customer, and is solely responsible to the Customer for all legal services provided. It is within the sole discretion of the attorney to determine whether any Services a Customer requests under this Agreement present a frivolous or otherwise unmeritorious issue. Participating attorneys reserve the right to make independent professional judgments regarding such presentations. Company will in no way influence or attempt to affect the rendering of professional services of the participating attorneys.

#### 4. FINANCIAL TERMS

- 4.1. **Fees.** Customer will pay Company on a PEPM basis based upon the Component Services Customer has signed up for and the cost for each Component Service detailed in Section 3.
- 4.2. **Payment Terms and Taxes.** All payments made hereunder shall be in US Dollars. Company may, after the first twelve (12) months of the initial term, and not more than once in a twelve (12) month period, modify the fees for Services upon thirty (30) days' written notice. Payment of all fees is due thirty (30) days after the invoice date. Interest accrues on past-due balances at 1% per month.
- 4.3. **Late Payment.** All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Failure to make timely payments shall be a material breach of the Agreement. Customer shall reimburse Company for all costs incurred by Company in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees (collectively the "**Collection Fees**"). Failure to make timely payments shall be a material breach of the Agreement.
- 4.4. **Suspension of Services.** Company may suspend, terminate, or otherwise deny Customer's or any User's access to or use of all or any part of the Services or Content, without incurring any resulting obligation or liability: (i) immediately in the event Customer is in breach of Sections 2.4 or 2.6; or (ii) hereunder upon thirty (30) days' written notice to Customer until all past due amounts have been paid, inclusive of any Collection Fees; or (iii) upon thirty (30) days' written notice to Customer in the event Customer is otherwise in breach of this Agreement; or (iv) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so. Company may impose an additional charge to reinstate service following such suspension; or (v) Company believes, in its sole discretion, that: (a) Customer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the specifications; (b) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (c) this Agreement expires or is terminated. This Section 4.4 does not limit any of Company's other rights or remedies, whether at law, in equity, or under this Agreement.
- 4.5. **Taxes.** Unless expressly provided otherwise, prices do not include taxes. Customer agrees to pay any federal, state or local sales, use, personal property, excise taxes or other taxes arising out of this Agreement.
- 4.6. **No Deductions or Setoffs.** All amounts payable to Company under this Agreement shall be paid by Customer to Company in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).
- 4.7. **No Contingencies.** Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Company regarding future functionality or features.
- 4.8. **Credit Card on File.** If paying by credit card, you hereby authorize Company to charge the credit card supplied for the payment of all Services and Fees. The credit card provided will be kept on file and will remain in effect until the expiration of the credit card account. Customer may revoke this authorization by submitting a written request to Company. Customer agrees to pay the cost for any returned or challenged payments.
- 4.9. **Audit.** Customer shall establish and maintain a system that allows Company to readily identify the number of employees for the purposes of calculating the Fee. During the term of this Agreement, on request and during regular business hours, Company may inspect or have its representatives or an independent third party inspect and audit Customer's books, records, and other documents as necessary to verify compliance with the terms and conditions of this Agreement in general and specifically Section 4.1. Costs of any audits conducted under the authority of this right to audit will be borne by Company unless one of the following applies. If the audit identifies underbilling or undercharging in excess of one-half of one percent (.5%) of the total contract billings, the Customer shall reimburse Company for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, Company may recoup the costs of the audit work from Customer. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Customer's records shall be made within a reasonable amount of time (not to exceed 30 days) from presentation of Company's findings to Customer.

#### 5. CONFIDENTIALITY

- 5.1. **Confidential Information.** Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. Confidential Information means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary" or which should be reasonably understood by each party to be confidential or proprietary, including, but not limited to, the terms and conditions (but not the existence) of this Agreement, all trade secrets, Intellectual Property as well as results of testing and benchmarking of the Services. Each party will protect the other party's Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Company may use, for purposes outside of this Agreement, anonymous, de-identified data; however, Company agrees not to use or disclose this information to the extent prohibited by applicable law. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was lawfully in the receiving party's possession before receipt from the disclosing party without a duty of confidentiality; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

- 5.2. **Compelled Disclosure.** A party ("**Disclosing Party**") may disclose Confidential Information of the other party if it is compelled by law to do so, provided the Disclosing Party gives the other party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
- 5.3. **Attorney-Client Privilege.** Communications between Customer and Company are not protected by attorney-client privilege or as work product. Communications between Customer and a Provider Firm are subject to attorney-client privilege and work product. This does not mean that everything you say to a Provider Firm is confidential; even attorney-client privilege has its limits (for example, including a third party on a communication will usually break attorney-client privilege). Should Customer have questions as to whether an action would invalidate that privilege, Customer should ask Provider Firm before they take any such action.

## 6. OWNERSHIP

- 6.1. **Reservation of Rights.** All rights not expressly granted in this Agreement are reserved by Company and its licensors.
- 6.2. **Services.** Company and its licensors shall retain sole and exclusive ownership of, and all rights, title, and interest in, Services and the Site, including without limitation (a) Intellectual Property embodied or associated therein, and (b) all derivative works and copies thereof.
- 6.3. **Service and System Control.** Company has and will retain sole and exclusive ownership of, and all rights, title, and interest in, Services and the Site, including without limitation (a) Intellectual Property embodied or associated therein, and (b) all derivative works and copies thereof.
- 6.4. **Company Materials.** All right, title, and interest in and to the Company Materials, including all Intellectual Property Rights therein, are and will remain with Company and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Company Materials except as expressly set forth in Section 2.2. All other rights in and to the Company Materials are expressly reserved by Company. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Company an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.
- 6.5. **Collection and Use of Information.** Customer acknowledges that Company may, directly or indirectly through the services of third parties, collect, use, and store information regarding Customer's use of the Software to improve the performance of, or develop updates to, the Software.
- 6.6. **Feedback.** If Customer or User elects to provide any suggestions, comments, improvements, information, ideas or other feedback or related materials to Company (collectively, "**Feedback**"), Customer and/or hereby grants Company a worldwide, perpetual, non-revocable, sublicensable, royalty-free right and license to use, copy, disclose, license, distribute, and exploit any Feedback in any format and in any manner without any obligation, payment, or restriction based on intellectual property rights or otherwise, however Company will not identify Customer or User as the source of the Feedback. Nothing in this Agreement limits Company's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.
- 6.7. **Customer List.** You agree that Company may disclose you as a customer of Company and use your name and logo on Company's web site and in Company's promotional materials.

## 7. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY

- 7.1. The services are not a substitute for accounting, business, tax, or other professional advice or services. No attorney-client relationship is created between Customer and Company.
- 7.2. **DISCLAIMER.** ALL DESIGNATED SERVICES, AND SERVICES RENDERED IN CONNECTION WITH THIS AGREEMENT, ARE RENDERED AND SUPPLIED "AS IS" AND "AS AVAILABLE" UNLESS SPECIFICALLY NOTED TO THE CONTRARY.  
THE SITE AND ALL MATERIALS, DOCUMENTS OR FORMS PROVIDED ON OR THROUGH YOUR USE OF THE SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE COMPANY MAKES NO WARRANTY THAT: (A) THE SITE OR THE MATERIALS WILL MEET YOUR REQUIREMENTS; (B) THE SITE, APPLICATIONS, OR THE MATERIALS WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR ANY MATERIALS OFFERED THROUGH THE SITE WILL BE ACCURATE OR RELIABLE; OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SITE, APPLICATIONS, OR IN RELIANCE ON THE MATERIALS WILL MEET YOUR EXPECTATIONS. OBTAINING ANY MATERIALS THROUGH THE USE OF THE SITE IS DONE AT YOUR OWN DISCRETION AND AT YOUR OWN RISK. THE COMPANY SHALL HAVE NO RESPONSIBILITY FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY CONTENT, MATERIALS, INFORMATION, OR SOFTWARE.
- 7.3. THE COMPANY AND ITS AFFILIATES MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE DESIGNATED SERVICES, AND SERVICES RENDERED IN CONNECTION WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 7.4. **NO LIABILITY FOR INACCURATE CUSTOMER DATA.** COMPANY DOES NOT VALIDATE THE RELIABILITY OR THE ACCURACY OF THE CUSTOMER DATA PROVIDED. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE NATURE, QUALITY AND ACCURACY OF THE CUSTOMER DATA AND THE RESULTANT ADVICE OR WORK PRODUCT BASED UPON THAT CUSTOMER DATA.
- 7.5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL THE COMPANY'S LIABILITY OR THE LIABILITY OF ITS AFFILIATES, ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR ANY DAMAGES OR LIABILITY FROM ANY CAUSE WHATSOEVER, REGARDLESS OF FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE, OR OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO THE COMPANY HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO ANY CLAIM. EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES,

INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THE PARTY OTHERWISE LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY WILL BE LIABLE FOR ANY ACTUAL OR ALLEGED INFRINGEMENT BY ANY THIRD-PARTY MATERIALS ACCESSED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE DESIGNATED SERVICES OR THE COMPANY OR CUSTOMER TECHNOLOGY. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO: (A) THE COMPANY'S INDEMNIFICATION OBLIGATION; (B) BREACHES OF SECTION 5, CONFIDENTIALITY; (C) COMPANY'S INTENTIONAL WRONGDOING; AND (D) COMPANY'S GROSS NEGLIGENCE. IN THE CASE WHERE NO AMOUNT WAS PAID FOR THE SERVICES GIVING RISE TO THE CLAIM, COMPANY'S ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED USD\$100. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE PRIOR LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

- 7.6. **FAILURE OF ESSENTIAL PURPOSE.** EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS SECTION 7 IS A FUNDAMENTAL BASIS OF THE BARGAIN AND A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES AND WILL SURVIVE AND APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY RELATED SERVICES, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF ANY LIMITED REMEDY IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## 8. INDEMNIFICATION

- 8.1. **Customer Indemnification.** Customer shall indemnify and hold Company, its affiliates, suppliers, Provider Firms, employees, officers, and owners ("**Company Indemnified Parties**") harmless from and against all liability, claims, damages, fines, losses, expenses (including reasonable attorney's fees and court costs, and the cost of enforcing this indemnity) suffered or incurred by Company or any Company Indemnified Party arising out of, or in connection with (a) any material breach by Customer or any User of any of the terms of this Agreement; or (b) any use or reliance by Customer or any User of any Services, including all third-party claims, causes of action, suits, and legal proceedings asserted against Company or a Company Indemnified Party arising out of, or relating to, the use of or reliance by Customer or any User on any Services.
- 8.2. **Company Indemnity.** The Company will defend Customer from and against all Claims against Customer and pay all related damages, costs, and other liabilities, including attorneys' fees, up to a maximum of \$2,000,000, limited to the extent of the proceeds from malpractice and/or general liability insurance maintained by the Company, resulting from the negligence by the Company in the performance of obligations under this Agreement. Notwithstanding the foregoing, Company will not indemnify Customer for any damages that result from advice Customer receives from a Provider Firm. In addition, Company will not indemnify Customer unless all invoice amounts billed from Company to Customer have been timely paid to Company. Customer payment of all invoice amounts to Company on or before the invoice due date is a condition precedent to Company's obligation to indemnify Customer. Late payment will not cure or restore Company's obligation to indemnify Customer.

## 9. TERM AND TERMINATION

- 9.1. **Initial Term.** This Agreement shall remain in effect for one (1) year from Effective Date, unless otherwise terminated as set forth herein (the "**Initial Term**").
- 9.2. **Renewal Term.** This Agreement will automatically renew for successive 30-day terms at the then-current rates unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**"). The pricing for any Renewal Term shall be provided by Company to Customer in writing no less than 30 days prior to the end of the initial term or any renewal term.
- 9.3. **Termination.** Either party may terminate the Agreement immediately upon written notice (i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach; or (ii) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.
- 9.4. **Partial Termination.** Where a party has rights to terminate, the non-breaching party may, at its discretion, terminate either the entire Agreement or the applicable Component Service. Component Services that are not terminated shall continue in full force and effect under the terms of this Agreement.
- 9.5. **Effect of Termination or Expiration.** Following termination or expiration of this Agreement (for whatever reason provided for under the Agreement), Customer shall certify that Customer has returned or destroyed all copies of the Services, Confidential Information and Intellectual Property of Company and all materials or documents relating to the Services in any format and residing on any media. Customer acknowledges that its rights to use the same are relinquished and shall immediately cease all use of any Services. If Company terminates this Agreement pursuant to Section 9.3, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid. Termination for any reason shall not excuse Customer's obligation to pay in full any and all amounts due or that become due through such termination or that arise under Section 10.19, nor shall termination result in a refund of fees paid, except as expressly provided otherwise in this Agreement.
- 9.6. **Customer Data after Termination or Expiration.** Company has no obligation to retain Customer Data after sixty (60) days following the expiration or termination of Services, provided that Customer has at that time paid all then outstanding and any amounts payable after or as a result of such expiration or termination, including Collection Fees; however, Company shall provide Customer Data to Customer, upon reasonable request and during Company's normal business hours, for no additional fee during these sixty (60) days, after which additional fees may be incurred. Customer Data will be provided to Customer in whatever manner Company deems appropriate.

## 10. GENERAL PROVISIONS



- 10.1. **Authority to Enter Agreement.** If you are entering into this Agreement upon behalf of a corporation, governmental organization, or other legal entity, you represent that you have the right, power, and authority to enter into this agreement on behalf of that entity and bind the entity to its terms, in which case, "you" and "your" shall refer to such entity. If you do not agree to the terms of this agreement, Company will not and does not license the services to customer and you may not sign up for or use services. If, after you subscribe to the Services, Company finds that you do not have authority to bind the entity for which you ordered, you will be personally responsible for the obligations in this Agreement and the Services you subscribed to, including without limitation, section 4, FINANCIAL TERMS. Company is not liable for any loss or damage resulting from our reliance on any instruction, notice, document or communication, reasonably believed by Company to be genuine and originating from an authorized representative of your company. If there is reasonable doubt about the authenticity of any such instruction, notice, document, or communication, Company may, but is not obliged to, require additional authentication from you.
- 10.2. **Force Majeure.** Neither party shall incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform any part of this Agreement (except for payment obligations) to the extent caused, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this subsection. Such events may include, but are not limited to acts of God, pandemics, government shut-down, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions; however lack of funds shall not be deemed to be a reason beyond a party's control. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
- 10.3. **Subcontractors.** Company, in its sole discretion, may subcontract or delegate Services to any third party without Customer's prior written consent, provided that Company shall remain responsible to Customer for any services for which it subcontracts or delegates.
- 10.4. **Assignment Generally.** This Agreement is binding upon the successors and assigns of the parties hereto. This Agreement is not assignable, sub-licensable or transferrable, except as follows below.
  - 10.4.1. **Assignment by Company.** Company may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Company's assets or voting securities.
  - 10.4.2. **Assignment by Customer.** Customer may not assign or transfer this Agreement, in whole or in part, without Company's written consent except that you may assign your rights and obligations under this Agreement, in whole but not in part, without Company's written consent in connection with any merger, consolidation, sale of all or substantially all of your assets, or any other similar transaction provided that: (a) the assignee is not a direct competitor of Company; (b) you provide prompt written notice of such assignment to Company; (c) the assignee is capable of fully performing your obligations under this Agreement; and (d) the assignee agrees to be bound by the terms and conditions of this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void. Assigning, transferring or sublicensing this Agreement shall not relieve Customer of its obligations hereunder.
- 10.5. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year following its termination, neither party will solicit for employment directly or through other parties, without the other party's written permission, any individual employed by the other party, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.
- 10.6. **Compliance.** Company reserves the right to utilize Customer Data to verify compliance with the terms of this Agreement. Company may monitor the usage, performance and operation of the Services using electronic, remote and other means and without notice to Customer.
- 10.7. **Construction.** Headings in this Agreement are inserted solely for convenience of reference and will neither constitute a part of this Agreement nor affect its meaning, construction or intent. Whenever used in this Agreement the singular will include the plural, the plural will include the singular. The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation," unless otherwise specified.
- 10.8. **Notices.** Whenever any notice may be or is required to be given hereunder, such notice shall be in writing and sent by United States first class mail, postage prepaid; or by overnight delivery service, where receipt is given, and addressed to such party at its last address appearing in the records of the party who is providing the notice; or by e-mailing such person at his, her or its last known e-mail address with a confirmation copy delivered in accordance with this provision.
- 10.9. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 10.10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired to the fullest extent permitted by applicable law.
- 10.11. **No Waiver.** No waiver or failure by either party to exercise any option, right or privilege under the terms of this Agreement on any occasion or occasions will be construed to be a waiver of the same on any other occasion or of any other option, right or privilege. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such party's right to take subsequent action.
- 10.12. **Entire Agreement.** This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, proposals, conditions, representations, warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to the Agreement will be binding unless in writing signed by an authorized representative of each party. All pre-printed or standard terms of any of Customer's purchase order or other business processing document shall have no effect.
- 10.13. **No Third-Party Beneficiaries.** No provision of this Agreement shall confer upon any person, including but not limited to, Customers, other than the parties hereto any rights or remedies hereunder.
- 10.14. **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

- 10.15. **Attorneys' Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party
- 10.16. **Governing Law and Venue.** This Agreement shall be construed and governed by the laws of the State of Minnesota without regard to principles of conflicts of law. The parties agree, and despite any choice of law, statute, rule, or other jurisdictional law, that they affirmatively waive any objection to venue of any action brought pursuant to this Agreement and/or services shall be only in the State of Minnesota, County of Hennepin, or the United States District Court for Minnesota.
- 10.17. **Headings and Drafting.** The headings in the Agreement shall not be used to construe or interpret the Agreement. The Agreement shall not be construed in favor of or against a party based on the author of the document.
- 10.18. **Conflict of Documents.** If there is a conflict between the provisions of this Services Agreement and any other documents concerning the Services performed under this Services Agreement, the order of precedence for purposes of resolution shall be: (i) this Services Agreement, (ii) any applicable Schedule identified in this Agreement, (iii) any other document executed by the parties.
- 10.19. **Survival.** The following provisions will survive any termination or expiration of the Agreement: Sections 3-10.

[END DOCUMENT]