**MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Master Software License and Services Agreement (this “**Agreement**”) is made effective as of [\_\_\_\_\_\_\_\_\_\_\_] (the “**Agreement Effective Date**”), between [Customer] with its principal place of business at [Customer Address] (“**Customer**”) , and \_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_ (“**Contractor**”).

**RECITALS**

1. Contractor is in the business of providing software solutions and related services to its customers.
2. This Agreement sets forth the terms and conditions under which Contractor will license software and provide related services to Customer and/or its Affiliates under one or more Software Orders (as defined below).

**TERMS AND CONDITIONS**

Customer and Contractor agree as follows:

# Definitions. When used in this Agreement, the following capitalized terms will have the meanings assigned to those terms in this Section.

* 1. **“Affiliate”** means, as to either Party, any individual or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Party and where “**control**” for this purpose means the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.
  2. “**Business Day**” means Monday through Friday, excluding legal holidays observed by the United States Government.
  3. “**Documentation**” means all written instructions, user and technical manuals, reference guides, training materials, release notes, installation notes, descriptions, specifications, and any other materials, in paper, electronic or any other form, that describe the requirements, features, functions, support, maintenance and/or use of the Licensed Software, which are delivered or otherwise made available to Customer.
  4. “**Intellectual Property Right**” means all intellectual property rights, including without limitation, any patent, trademark, trade name, copyright, moral right or trade secret proprietary rights, privacy rights, and publicity rights, whether or not those rights have been filed, registered or applied for under any statute or are protected or protectable under applicable law, of a third party.
  5. “**License Parameters**” means any factor that serves as a basis for calculating the amount of the license fee or royalty payable for any Licensed Software, including: (a) the number or names of persons who may use the Licensed Software; (b) the number of persons who may use the Licensed Software at the same time; (c) the type of persons who may use the Licensed Software; (d) the number or locations of sites where the Licensed Software may be deployed; (e) the number of Servers on which the Licensed Software may be deployed or the processing power or number of CPUs in those Servers; (f) the intensity of use by any person, whether measured by time the Licensed Software is executing, processing power, or the types or functions being performed; and/or (g) any other measure.
  6. “**Licensed Software**” means each Software Product described in a duly signed Software Order and all related Documentation delivered or otherwise made available to Customer, together with all Upgrades and other Software Modifications provided or to be provided by or on behalf of Contractor under that Software Order or any other agreement between Contractor and Customer.
  7. “**Maintenance Term**” means the period of time during which Contractor is obligated to furnish maintenance and support Services to Customer under a Software Order.
  8. “**Open Source Code**”means Software governed by a license that requires, as a condition of use, modification, or distribution of such Software that such software or code, and/or other software or code combined and/or distributed with such software or code, be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.
  9. **“Order Effective Date”** means the date specified as the effective date of a Software Order, or if none, then the first date by which both Parties have executed that Software Order.
  10. **“Parties”** means Contractor and Customer or any Customer Affiliate that enters into a Software Order, and “Party” means any of them.
  11. **“Platform”** means the combination of the Servers or other computer hardware or device (regardless of location, type or number of processors), operating system, and other technical architecture elements with which the Licensed Software is designed to operate.
  12. **“Server”** means a single computer, regardless of the number of CPUs or processors or the processing power of that computer, and shall include both physical and virtual computers.
  13. **Services**” means all services that Contractor performs or is to perform under this Agreement and any Software Orders, including installation, implementation, training, maintenance and support of the Licensed Software. Any professional services shall be provided under one or more work orders under a separate written agreement or a written addendum to this Agreement.
  14. “**Software Configuration**” means the creative result of using switches, settings, and options built into the Licensed Software and/or adding creative content to the configurable user interface of the Licensed Software so that the Licensed Software satisfies Customer’s business objectives or conforms to Customer’s functional requirements. Software Configurations do not change the logic of the Source Code for the Licensed Software or require a Software Modification.
  15. “**Software Modification**” means any change to the source code or object code of the Licensed Software.
  16. “**Software Order**” means a written addendum to this Agreement that: (a) lists the specific Software Products to be licensed under this Agreement, the License Parameters for those Software Products, and the date those Software Products are to be delivered and, if applicable, installed; (b) describes any installation, implementation, training, maintenance, support or other Services to be provided by Contractor under this Agreement; (c) sets forth the payment terms, and any special terms or conditions governing, those Software Products and Services; and (d) has been executed by both Parties. A sample form of a Software Order is attached to this Agreement as **Exhibit A**.
  17. “**Software Product**” means (a) each computer program or suite of computer programs listed on a Software Order or on **Exhibit B**;and (b) any other computer program or suite of computer programs that Contractor offers to license to others; in each case including all new and enhanced versions of those programs.
  18. “**Source Code**” means computer programming code, in human-readable form, that is not suitable for machine execution without the intervening steps of interpretation and compilation, together with all specifications, programming and maintenance documentation, related source code trees, all testing tools used in the development and maintenance of the executable version of the related Software Products; all build instructions, commentary and related programmer notes and annotations; the names and current contact information of the principal programmers who developed and/or designed the Software Products; and all other information that would be useful to a reasonably skilled programmer or analyst to understand, support and maintain the Software Products.
  19. “**Upgrade**” means any patch, maintenance release, or new version of a Software Product that Contractor generally makes available to its customers to correct errors and fix bugs in, or to add features and functionality to, a Software Product.
  20. “**Warranty Period**” means, as to any Licensed Software, the ninety (90)-day period beginning on the date on which the Licensed Software is accepted under Section 4 (Delivery; Installation; Acceptance), unless the Software Order for that Licensed Software specifies a different warranty period.

# Orders.

2.1 **Scope**. This Agreement sets forth the terms that apply to each Software Order issued to Contractor for Software Products and Services. Each Software Order is subject to the terms and conditions of this Agreement. Any Customer Affiliate may issue a Software Order under this Agreement, and in that case, (a) all references to “Customer” in this Agreement will refer equally to the Customer Affiliate executing that Software Order; and (b) only the Customer Affiliate executing that Software Order will incur any obligation or liability to Contractor under that particular Software Order.

2.2 No Volume Commitment. This Agreement does not obligate Customer or any of its Affiliates to order any Software Products or Services, and neither Customer nor any of its Affiliates will become obligated in any way to Contractor until Customer or its Affiliate places a Software Order with Contractor, and Contractor accepts that Software Order.

## 2.3 Orders.

(a) Initial Software Order. Concurrently with the execution of this Agreement, Customer has placed an initial Software Order, Software Order No. 1.

(b) Additional Software Orders. Customer may from time-to-time order new Software Products or expand the License Parameters for any previously acquired Licensed Software, by submitting to Contractor a Software Order executed by Customer. Each additional Software Order will be numbered sequentially (i.e., Software Order No. 2, Software Order No. 3, and so on). Customer may revoke a Software Order at any time before Contractor accepts that Software Order. Contractor is not obligated to accept any Software Orders other than Software Order No. 1. Contractor may accept a Software Order only by executing and returning it to Customer. Contractor will invoice Customer, and Customer will pay Contractor, for license rights for those new Software Products and/or expanded License Parameters at Contractor’s then-current list price, provided those prices do not exceed the prices set forth in **Exhibit B*.***

(c) Effect of Software Orders. Upon Contractor’s acceptance of a Software Order in accordance with Section 2.3(a) and (b) above, Customer will be bound to purchase, and Contractor will be bound to provide, the Licensed Software and Services described in that Software Order, subject to the terms and conditions of this Agreement and that Software Order.

(d) Additional and/or Inconsistent Terms. Contractor acknowledges and agrees that its acceptance of a Software Order is limited to the terms of that Software Order and this Agreement, and both Parties acknowledge and agree that any inconsistent, additional, or different terms in any other document, including in any prior, contemporaneous, or subsequent proposal, bid, purchase order, invoice, acknowledgement, confirmation or other document, will not have any force or effect unless and until it has been executed by the Parties in accordance with Section 28 (Amendments).

# License.

## 3.1 License. Except as expressly provided otherwise in a Software Order, Contractor hereby grants to Customer a non-exclusive, non-transferable, perpetual, worldwide license to install, access and use the Licensed Software, and to modify the training materials as necessary to satisfy the business purposes of Customer and its Affiliates. In addition, except as expressly provided otherwise in a Software Order, Contractor hereby agrees that Customer may authorize any or all of the persons described below to exercise or benefit from Customer’s rights under the preceding sentence, provided that (a) Customer at all times remains responsible and liable for any breach of this Agreement or any Software Order by any of those persons; (b) use of the Licensed Software by any of those persons will be counted when applying any applicable License Parameters set forth in the Software Order; and (c) those persons will not be third party beneficiaries under and will not have any right to take any legal action against Contractor under this Agreement or any Software Order:

(i) Customer, its Affiliates’, and their respective employees and temporary staff (whether or not they constitute Customer’s or its Affiliates’ statutory employees), their consultants and third party service providers (such as systems integrators or information technology outsourcing providers) and their employees and temporary staff, solely for the purpose of assisting Customer or its Affiliates with their business operations; and

(ii) Customer’s and its Affiliates’ customers and suppliers, and their employees and temporary staff, solely for the purpose of doing business with Customer or its Affiliates.

## 3.2 Restrictions on Use. Customer will not: (a) copy the Licensed Software except in connection with its normal back up and disaster recovery procedures or as reasonably required for Customer’s or its Affiliates’ business purposes, and then only if each copy contains the same copyright notices and other proprietary legends that appeared in the original supplied by Contractor; (b) modify, adapt, alter, translate or create derivative works of the Licensed Software, except as expressly permitted in Section 3.1 above; (c) reverse engineer, decompile, disassemble or otherwise attempt to derive the Source Code of the Licensed Software, except to the extent required by law; or (d) distribute, sublicense, loan, or otherwise transfer the Licensed Software, except as expressly permitted in Section 3.1 above.

## 3.3 Other Restrictions. Except for the restrictions in Section 3.2 above and any License Parameters set forth in a Software Order, nothing will limit (a) the number, names or types of persons authorized to install, access, use or modify the Licensed Software; (b) the number or location of sites at which the Licensed Software is deployed; (c) the number or type or processing power of Servers on which the Licensed Software may be installed; (d) the intensity of use of the Licensed Software, whether measured by time the Licensed Software is executing, processing power, functions being performed, or any other measure; (e) the type of Platform or computing environment (e.g. test or evaluation vs. production) in which the Licensed Software may be used; or (f) users from accessing the Licensed Software from a portable or home computer.

3.4 **Alternative Platforms.** Customer and its Affiliates will have the right to use the Licensed Software on any Platform described in the Documentation or the Software Order, or supported by Contractor. If a particular Software Product has been licensed for a designated Platform, Customer may at any time, by way of written notice to Contractor, request delivery of that Licensed Software for a different Platform supported by Contractor, and in that case Contractor will provide the requested version at no additional license fee.

# Delivery; Installation; Acceptance. Contractor will deliver the Licensed Software to, and if indicated in the Software Order, Contractor will install the Licensed Software at, the locations indicated in that Software Order. Unless the Software Order specifically requires acceptance testing, the Licensed Software will be deemed accepted on delivery.

# Property Rights. Except as expressly provided otherwise in this Agreement, a Software Order, or in any other agreement between Customer and Contractor:

## Ownership of Licensed Software. Contractor will retain all ownership rights, including all Intellectual Property Rights, in the Licensed Software (including Software Modifications).

## 5.2 Software Configurations. Customer may configure the Licensed Software. However, nothing in this Agreement will prevent Contractor from configuring the Licensed Software for other customers in a manner similar or identical to Customer’s Software Configurations, as long as Contractor removes any express or implied references to Customer or its Affiliates and does not disclose the fact that Customer configured the Licensed Software in a specific way.

5.3 **Open Source Software Code**. Unless expressly stated in a Software Order, Contractor will not incorporate any Software that is subject to any Open Source Code (including any obligation or condition under any “open source” license such as the GNU Public License, Lesser GNU Public License, or Mozilla Public License).

# Services.

## Training Services. Training Services ordered within the one (1) year period beginning on the Agreement Effective Date will be invoiced at the rate specified in Exhibit C. Following the expiration of that one (1) year period, Contractor will provide training Services at Contractor’s then-current list price unless otherwise agreed to by the Parties under one or more Order Forms.

## Maintenance and Support Services. At Customer’s election, as indicated in the applicable Software Order, Contractor will provide maintenance and support Services as described in Exhibit D. In addition, during any Maintenance Term, Contractor will provide maintenance and support Services to any Customer Affiliates and any of the other persons permitted to use the Licensed Software under Section 3.1 above.

1. Maintenance Fees. Customer will pay Contractor the annual maintenance and support Services fee set forth in the applicable Software Order for each Maintenance Term*; provided,* that after the expiration of the initial Maintenance Term, the percentage rate used to calculate the annual maintenance and support Services fee for any subsequent annual renewal Maintenance Term will not increase by more than three percent (3%) the fee applicable to the immediately preceding Maintenance Term.
2. Duration of Maintenance and Support Services. Contractor will make maintenance and support Services available on the terms set forth in this Agreement and in each Software Order for a period of at least three years after the Order Effective Date and will support the current and at least the immediately preceding version of each Software Product.
3. Change in Support Level. Customer may at any time by written notice upgrade the maintenance or support Service level for a Software Product, in which case Contractor will invoice Customer for any difference in fees, prorated for the unexpired portion of the then-current Maintenance Term.
4. Expiration of Maintenance and Support Services.Contractor will submit to Customer at least 60 days before the expiration of the initial and any subsequent renewal Maintenance Term an invoice for maintenance and support Services for a Software Product for the next renewal term, which Customer may elect to pay or not. Upon Customer’s payment of that invoice, the Maintenance Term for that Software Product will automatically renew for an additional one-year period. If Customer does not pay that invoice, Contractor’s obligation to provide maintenance and support Services will, subject to Section 6.2(e) below, terminate for that Software Product.
5. Lapse and Reinstatement. If Customer suspends any maintenance or support Services for a Software Product, Customer may thereafter renew those Services by giving Contractor notice, in which case Contractor will reinstate those maintenance and support Services upon Customer’s payment of: (1) the then-applicable annual maintenance and support Service fee for that Software Product, prorated for the portion of the year that remains until the anniversary of the Agreement Effective Date; plus (2) an amount equal to the cumulative fees that would have been payable had maintenance and support Services not lapsed, pro-rated for any portion of a year.
6. Decommissioning. Customer may by notice to Contractor surrender some or all of its license rights for any Licensed Software, in which case Contractor will (i) adjust the annual maintenance and support Service fee for that Software Product for the following year on a pro-rata basis taking into account the change in the affected License Parameters; and (ii) have the right to initiate an audit as described in Section 13 to verify actual use.
7. No Waiver of Remedies. Nothing in this Section ‎6.2 or in the attached **Exhibit D** will limit Customer’s remedies under Section ‎11 (Remedies).
8. **Hosting Services.** Notwithstanding any provision to the contrary in this Agreement or any Software Order, Customer and its Affiliates will have the right to host the Licensed Software internally, or with any external third party hosting provider, without incurring any additional license fees, costs and/or expenses due to Contractor and without the requirement to obtain any prior written consent from Contractor. In the event of a conflict between the terms and conditions of this provision and any other provision in the Agreement and a Software Order, this provision shall control and prevail.

# Fees and Payment Terms.

1. **Payment.** Customer will pay Contractor the amount properly invoiced within sixty (60) days after Customer’s receipt of (a) each undisputed invoice that complies with this Section 8; or (b) the Licensed Software described in a Software Order, whichever is later. If Customer in good faith disputes a portion of the amount owing, Customer will pay the undisputed portion. Unless otherwise provided in the Software Order, Customer will make all payments in the operational currency of the Customer Affiliate that signed that Software Order.
   1. **Taxes.** Contractor will invoice Customer for, and Customer will pay to Contractor, all federal, state and local sales and use taxes, ad valorem taxes, value added taxes, tariffs and duties that Contractor is legally required to collect from Customer and remit to governmental authorities. If Contractor breaches its obligation under the preceding sentence, Contractor will indemnify, defend and hold harmless Customer against any resulting government penalties and interest accruing before Customer is notified of any unpaid tax obligation. Contractor will be responsible for (a) any taxes imposed upon Contractor based upon Contractor’s income, gross receipts or assets, and (b) payroll taxes in respect of Contractor’s employees.

# Representations, Warranties and Covenants. Contractor represents, warrants and covenants that:

## Licensed Software Performance Warranties. During the Warranty Period:

(a) The Licensed Software will perform in accordance with the Documentation; however, Contractor does not warrant that the operation of the Licensed Software will be uninterrupted or error-free;

(b) The Documentation contains an accurate and complete list of all third party software and the minimum hardware requirements necessary to operate the Licensed Software;

(c) The Licensed Software is compatible with and runs on the Platform specified in the applicable Software Order and in any operating environment described in the Documentation for that Licensed Software;

(d) The media on which the Licensed Software is delivered will be free from defects;

(e) Except as clearly disclosed in the Documentation, as of the date the Licensed Software is delivered to Customer, the Licensed Software delivered by Contractor does not contain (and Contractor agrees that during any Maintenance Term, the Licensed Software delivered by Contractor will be free from) any computer code that is designed to:

1. Disrupt, disable, erase, alter, harm, or otherwise impair in any manner the operation of the Licensed Software or any other software, firmware, files, data, hardware, computer software or networks (sometimes referred to as “viruses” or “worms”); and
2. Disrupt, disable, erase, alter, harm, or otherwise impair in any manner the operation of the Licensed Software based on the elapse of a period of time, exceeding an authorized number of copies, Users or Servers or the advancement to a particular date or other numeral (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices); or
3. Permit Contractor to access the Licensed Software to disable or impair in any way its operations (sometimes referred to as “traps,” “access codes” or “trap door” devices) or any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause that Licensed Software to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with the Users’ operations, including Trojan horses; or
4. Perform any functions other than those specified or expressly contemplated by the Documentation

## Performance Warranty for Services. The Services will be provided in a professional, competent and timely manner in accordance with this Agreement and the standards in Contractor’s industry.

## Compliance with Law and Third Party Contracts. Contractor has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of this Agreement, and Customer’s use of the Licensed Software or Services as contemplated by the Software Order and Documentation will not violate any applicable law, regulation or order of any national, state or local governmental authorities, whether domestic or foreign, or interfere with any third party contracts.

1. **Disclaimer of Implied Warranties.** Except for the warranties expressly included in this Agreement, the Software Order or the Documentation, Contractor disclaims all other warranties, express and implied, including the implied warranties of merchantability and fitness for a particular purpose.

# Accessibility. If Contractor is providing Licensed Software (as defined in *Exhibit H),* then Vendor shall comply with the terms of *Exhibit H*.

# Remedies. If the Licensed Software or any other goods or Services furnished by Contractor are defective in any way or fail to conform in all respects to both the representations, warranties and covenants set forth in this Agreement, the Software Order or the Documentation, Contractor will at its own expense within a reasonable time after notice, repair, replace, cure, re-perform, or correct those defective or non-conforming goods or Services. If Contractor fails to replace or correct the Licensed Software to Customer’s reasonable satisfaction within thirty (30) days after notice of a defect given pursuant to Section 9.1 (Licensed Software Performance Warranties ) during the Warranty Period, or such longer period of time as the Parties may agree on a case-by-case basis, then Customer may, at its option, de-install the Licensed Software and return all copies of the Licensed Software to Contractor. Upon return of the Licensed Software Contractor will, upon Customer’s request, refund all software license, training, support and maintenance and all other fees paid to Contractor under this Agreement.

# Limitation of Damages; Limitation of Liability.

## Limitations. Neither Party will be liable to the other Party for any indirect, consequential, special, punitive, exemplary or incidental damages of any kind, however caused, arising out of or related to this Agreement, the Licensed Software to be licensed or the Services to be provided under this Agreement, even if it has been advised of the possibility of those damages, and neither Party’s liability for money damages, however caused, arising out of or related to this Agreement, the Licensed Software to be licensed or the Services to be provided under this Agreement will exceed the total amount paid or payable under this Agreement. These limitations will apply regardless of the legal theory of liability, whether under contract, tort (including negligence and strict liability), or any other theory whatsoever. In addition, the aggregate and cumulative liability of either Party to the other Party for damages under this Agreement shall not exceed one and one-half the amount of fees paid or payable by Customer under this Agreement.

## Exceptions. The limitations in Section 12.1 will not apply to any claim (a) arising out of bodily injury (including death); (b) for fraud, gross negligence or willful misconduct; (c) for Losses (as that term is defined in Section 13.1 below) in the Indemnification Section of this Agreement; (d) for Losses (as that term is defined in Section 13.1 below) incurred by Customer directly or indirectly as a result of Contractor’s breach of Section 15 (Artificial Intelligence) or Section 17 (Confidentiality); or (e) arising from Contractor’s breach of Exhibit E (Artificial Intelligence), Exhibit F (Data Protection), Exhibit G (Information Security Exhibit), or Exhibit H (Digital Accessibility). If this provision conflicts with any other provision of this Agreement, this provision will control.

## Relationship with Other Agreements. The limitations in Section 12.1 apply only to claims arising under this Agreement and the Software Orders entered into under this Agreement and will not apply to any claims by either Party under any professional services or any other agreement between the Parties.

# Indemnification.

## 13.1 Definitions. “Loss” or “Losses” means (a) all reasonable attorney fees paid or payable by an Indemnitee (as defined in Section 13.2 below) in defense of any third party claim subject to indemnification under this Section 13, whether prior to, at trial or any other proceeding and in any appeal or other post judgment proceeding; and (b) all sums paid or payable to any third party, including all direct losses and damages (including property damage and injuries (including personal injury, sickness and death), interest, costs, fines, taxes, premiums, assessments, penalties, expenses, attorney fees (whether incurred prior to, at trial or any other proceeding and in any appeal or other post judgment proceedings).

## 13.2. Indemnification Obligations. Each Party (the “Indemnitor”) will indemnify, defend, and hold harmless the other Party, its Affiliates, and their respective officers, directors, shareholders, employees and agents (jointly and severally, the “Indemnitees”) from and against all Losses asserted directly or indirectly by any other person for any actual or alleged: (a) infringement or misappropriation of any Intellectual Property Right; (b) defect in the Licensed Software, goods or services provided by the Indemnitor; (c) negligent act or omission by the Indemnitor; (d) breach of any representation, warranty or covenant in this Agreement, any Software Order or elsewhere by the Indemnitor; (e) intentional misconduct by the Indemnitor; (f) violation of any applicable law by the Indemnitor; and (g) claim that any of the Indemnitor’s employees, principals, contractors or subcontractors are employees of an Indemnitee; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding (including proceedings under the US Bankruptcy Code), judgment, settlement, appeal or other post judgment proceeding and whether asserted in contract, tort, strict liability or otherwise.

## 13.3 Exceptions. The indemnification obligations described above will not apply to a Loss to the extent that Loss was caused by: (a) the Indemnitees’ negligent acts or omissions; (b) the Indemnitees’ breach of any representation, warranty or covenant in this Agreement or elsewhere; (c) the Indemnitees’ intentional misconduct; (d) the Indemnitees’ violation of any applicable law; (e) the Indemnitor’s compliance with specifications or detailed instructions submitted by an Indemnitee, but only if the Loss would not have arisen but for that compliance; (f) the Indemnitees’ modification of the Licensed Software, goods or services provided by the Indemnitor without the Indemnitor’s consent (other than those modifications contemplated by the Parties); (g) the Indemnitees’ use of Licensed Software, goods or services provided by the Indemnitor in combination with software, goods or services that were not provided or recommended by the Indemnitor or contemplated by the Parties, except that this exception will apply only if (i) there are other commercially reasonable non-infringing alternative uses for the Licensed Software, goods or services provided by the Indemnitor; and (ii) the Loss would not have arisen but for that combination; or (h) the Indemnitees’ use of any Licensed Software, goods or services after the Indemnitor has furnished to the Indemnitees, at no additional cost, a non-infringing version of the Licensed Software, goods and services that provide the same or greater functionality and performance as the original Licensed Software, goods and services.

## 13.4 Procedure. The Indemnitor’s duty to indemnify the Indemnitees under this Section 13 is subject to the Indemnitees’ compliance with each of the following conditions:

* + 1. Notice. The Indemnitees promptly notify the Indemnitor of the Loss (except that the Indemnitees’ failure to promptly notify the Indemnitor of a Loss will not limit, impair or otherwise affect the Indemnitees’ rights under this Section 13 unless the Indemnitor is prejudiced by that failure, and then only to the extent of the prejudice); and
    2. Authority. The Indemnitees give the Indemnitor full and complete authority (including settlement authority) and reasonable assistance (including reasonable access to information in the Indemnitees’ possession) for that defense. However, the Indemnitor’s rights under this subsection are contingent on its agreement that it will not settle any claim without the Indemnitees’ prior written consent unless that settlement includes a full and final release of all claims against the Indemnitees and does not impose any obligations on the Indemnitees.

**13.5 Additional Remedies.** If any Licensed Software or other goods or Services provided by Contractor are held in any infringement suit to infringe the Intellectual Property Right of another person, and their use is enjoined, or if in Contractor’s reasonable opinion those goods or Services are likely to become the subject of such a claim, Contractor will, at its own expense, and in the order provided here: (a) immediately obtain a license for Customer to continue using the Licensed Software and accepting those Services and pay any fee that may be charged in connection with that license; and (b) modify, replace or re-perform the Licensed Software or Services so they become non-infringing while giving substantially equivalent performance, along with training that is functionally equivalent with the original training. If neither of the preceding is commercially feasible, Customer may elect to terminate this Agreement or the applicable Software Order, either in full or only as to the infringing Licensed Software and Services, and Contractor will refund all license, training, maintenance, support and other fees paid to Contractor under the Software Order or in respect of the infringing Software and Services, as applicable, in which case Customer will de-install the relevant Licensed Software and return all copies to Contractor.

# Audit. During the term of this Agreement, Contractor shall have the right to initiate audits to verify that Customer’s use of the Licensed Software is in accordance with the terms and conditions of this Agreement, and Customer shall cooperate with Contractor’s reasonable requests for assistance and access to books, records, equipment, information and personnel for such purpose; provided, however, that Customer’s obligation to cooperate in any such audit and provide such assistance and access is conditioned upon Contractor’s acceptance and compliance with the agreements, restrictions and limitations set out in Sections 14.1 through 14.7 below.

14..1 **Notice.** Contractor must give at least sixty (60) days’ prior written notice to Customer’s Legal Department before commencing audit activities.

14.2 **Frequency and Completion.**Contractor may not initiate an audit if Contractor or any Affiliate of Contractor has conducted any audit activities with respect to software licensed under this Agreement or any other agreement within the thirty-six (36) month period preceding Customer’s receipt of Contractor’s written audit notice. Each audit will be completed within forty-five (45) days of commencement of the audit.

14.3 **Independent Auditor.**  Contractor must use an Independent Auditor to perform all audit activities that involve access to or interaction with Customer’s books, records, equipment, information or personnel.  As used in this Section 14, the term “**Independent Auditor**” means a national (or with Customer’s consent, a regional) accounting firm that (a) does not directly or indirectly provide routine auditing or accounting services to Contractor or any Affiliate of Contractor or to Customer and (b) has signed a written Non-Disclosure Agreement with Customer under which such firm has agreed (i) not to use any confidential or proprietary information of Customer or its Affiliates for any purpose other than to perform the audit and (ii) not to disclose any such information to Contractor or to any other person, except as reasonably agreed in writing by Customer, or in response to evidentiary process in any arbitration or any other legal proceeding relating to the audit.  No finding of such Independent Auditor shall be binding upon Customer until such time as Customer reasonably agrees in writing to such finding or the finding is finally confirmed as fact in any arbitration or other legal proceeding.

# 14.4 Access.  The Independent Auditor’s access to Customer’s books, records, equipment, information and personnel shall be limited to normal business hours, and Customer may condition such access on compliance with Customer’s reasonable physical and electronic security measures.  Customer may also schedule interactions with the Independent Auditor so as to avoid unreasonable disruption of Customer’s business activities.  The Independent Auditor’s access shall be limited to books, records, equipment, information and personnel that are relevant to the Independent Auditor’s assessment of compliance with this Agreement.

# 14.5 Audit Costs.  Contractor shall not compensate the Independent Auditor on a contingent fee or other basis that ties the Independent Auditor’s compensation to amounts recovered.  The costs of conducting the audit, including the cost of paying the Independent Auditor’s fees and expenses, shall be borne by Contractor.

# 14.6 Automated Auditing Tools.  The Independent Auditor will not be permitted to use any automated measurement tools unless the appropriate Customer information technology Vice President level or higher officer agrees in writing to the manner and timing of the use of such tools in conjunction with the

# 14.7 Right to Cure and Exclusive Remedy.  If the audit reveals that Customer has failed to pay any amount owing to Contractor under this Agreement, Customer shall have the right to cure the breach by paying the amount owed in full within thirty (30) days after the amount owed is finally determined by agreement between Customer and Contractor or in any arbitration or other legal proceeding. Customer’s payment to Contractor of any underpayment shall be Contractor’s exclusive remedy for any underpayment.

## Artificial Intelligence. If Contractor is providing an AI Solution (as defined in *Exhibit E* ), Contractor will comply with *Exhibit* E (Artificial Intelligence).

# Export. Subject to the restrictions set forth below, Customer and the other persons authorized to use the Licensed Software under Section 3 (License) will have the right to use the Licensed Software outside the United States. If any such person wishes to use the Licensed Software outside the United States, Customer may provide Contractor with written notice identifying the person, and location to which the Licensed Software is to be transferred, whereupon Contractor will promptly deliver the Licensed Software to those persons and locations. Contractor represents and warrants that any delivery by Contractor of the Licensed Software will be in compliance with all applicable local, state, federal, and international laws, treaties, regulations, and ordinances; and in particular, that delivery will comply with the US Department of Commerce Export Administration Regulations. Both Parties agree not to export or re-export the Licensed Software to any country in violation of United States law, including to anyone on the US Treasury Department’s list of Specially Designated Nationals or the US Commerce Department’s Table of Denial orders, or to any country for which the United States Export Administration Act, or any similar United States law or regulation requires an export license or other US Government approval, unless the appropriate export license or approval has first been obtained. In no event will Customer incur additional license fees or “uplift” charges in connection with use of the Licensed Software outside the United States; *provided, however*, that Customer will, upon prior notice from Contractor, pay any taxes, tariffs, or export fees that may be validly imposed upon Contractor by a government properly asserting jurisdiction, in order for Contractor to effect the export of the Licensed Software. Contractor will assist Customer in obtaining such permits, licenses, and certifications as may be required by the destination country, in order to use the Licensed Software outside the USA. Customer will (a) use its best efforts to comply with all the legal requirements established under applicable export controls; and (b) cooperate with Contractor in any official audit or inspection by any governmental agency that relates to applicable export controls.

# Confidentiality. The Non-Disclosure Agreement executed by the Parties and dated \_\_\_\_\_\_\_\_\_, 20\_\_ (the “Non-Disclosure Agreement”) will govern the exchange of all confidential, proprietary, and other similarly sensitive information under this Agreement. Contractor will cause its employees (and, if permitted in the Non-Disclosure Agreement, its independent contractors) to sign an instrument agreeing to be bound by confidentiality, restricted use, and nondisclosure obligations substantially similar to those in the Non-Disclosure Agreement. Contractor acknowledges and agrees that the Software Configurations created by Customer constitute Customer’s “Confidential Information” as that term is defined in the Non-Disclosure Agreement.

# Publicity Restrictions. Contractor will not (a) disclose to any other person the monetary value of this Agreement; (b) make any public announcement regarding Contractor’s association with Customer; (c) use Customer’s name or any Customer trademark, service mark, logo or copyright protected work (whether or not registered) in any of Contractor’s promotional materials, marketing activities or elsewhere; (d) identify Customer on Contractor’s customer list or website (or on any other person’s website that identifies Contractor) or in any metatags or key words for those websites; or (e) include a hyperlink from any website maintained by Contractor to any Customer website. For the purposes of this Section 18, each reference to “Customer” means Customer or any of its Affiliates.

# Notices. Each notice, consent, request, or other communication required or permitted under this Agreement shall be in writing, will be delivered personally or sent by certified mail (postage prepaid, return receipt requested), by facsimile (with electronic confirmation of receipt and a confirmation hard copy sent by regular mail no later than the following Business Day) or by a recognized US overnight courier, and will be addressed as follows:

**If to Customer: With a copy to:**

|  |  |  |
| --- | --- | --- |
| [Customer Name] |  | [Customer Name] |
| Attn: |  | Attn: |
| [Customer Address] |  | [Customer Address] |

**If to Contractor: With a copy to:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
|  |  |  |
| Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Each notice, consent, request, or other communication will be deemed to have been received by the Party to whom it was addressed (a) when delivered if delivered personally; (b) on the fifth Business Day after the date of mailing if mailed; (c) on the first Business Day after the facsimile transmission if delivered by facsimile; or (d) on the date officially recorded as delivered according to the record of delivery if delivered by overnight courier. Each Party may change its address for purposes of this Agreement by giving written notice to the other Party in the manner set forth above.

# Term. The term of this Agreement (the “Term”) will begin on the Agreement Effective Date and will continue in effect until it is terminated under Section 21 or 22 below.

# Termination of this Agreement. Either Party may terminate this Agreement, effective immediately, by giving the other Party notice if the other Party has breached a material provision of this Agreement and that breach (a) is not capable of being cured; or (b) if it is capable of being cured, that breach remains uncured for thirty (30) days after the breaching Party receives notice of that breach. For purposes of this Section, a breach of Section 3.2 (Restrictions on Use), Section 15 (Artificial Intelligence), Section 17 (Confidentiality), Section 18 (Publicity Restrictions), Exhibit E (Artificial Intelligence), or Exhibit F (Data Protection), or Exhibit G (Information Security Exhibit) will constitute a material breach that is incapable of being cured. Termination of this Agreement for any reason other than Customer’s breach of Section 3.2 (Restrictions on Use) will not terminate (x) any license granted and paid for under this Agreement, whether a perpetual license or a license for a term; or (y) any Software Order executed by both Parties before the termination of this Agreement.

# Termination of Software Orders. Customer may at any time terminate a Software Order, with or without cause and without liability, by notifying Contractor of the effective date of that termination. If termination is without cause, Customer will pay Contractor for Licensed Software accepted and Services satisfactorily performed through the effective date of the termination.

# Survival. Section 3.2 (Restrictions on Use), Section 5 (Property Rights), Sections 10 through 33, Exhibit F (Data Protection), Exhibit G (Information Security Exhibit), Exhibit H (Digital Accessibility) and each other provision of this Agreement that by its nature extends beyond the expiration or earlier termination of this Agreement, will survive and continue in full force and effect after this Agreement expires or is earlier terminated. For purposes of clarity, the terms and conditions of the Non-Disclosure Agreement will remain in full force and effect during the term of this Agreement notwithstanding any termination provisions in the Non-Disclosure Agreement. In the event of a conflict between the terms and conditions of the Non-Disclosure Agreement and this Agreement, the terms and conditions of this Agreement will control and prevail.

# Assignment. Except as expressly permitted in Section 3.1 (License), neither Party will assign any right or delegate any duty under this Agreement, whether by transfer, merger, operation of law, or otherwise, without the consent of an authorized representative of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. A change in the control (voting or otherwise) of a Party will not be deemed an assignment for purposes of this Section. If a Party authorizes an assignment or delegation, that authorization will not release the other Party from any of its obligations under this Agreement or any Software Order unless: (a) that authorization expressly releases the other Party; (b) the assignee or delegate agrees in writing to be bound by this Agreement and any Software Orders; and (c) any agreement between the assigning or delegating Party and the assignee or delegate states that the other Party has the right to enforce the assigning or delegating Party’s rights against the assignee or delegate. Any attempted assignment or delegation in violation of this Section 24 will be void.

# Succession. This Agreement will bind and inure to the benefit of each Party and their respective permitted successors, assigns, and delegates.

# Governing Law; Jurisdiction and Venue. This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of \_\_\_\_\_\_ without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods (“CISG”) and the Uniform Computer Information Transactions Act (“UCITA”) shall not apply to the interpretation of this Agreement or any performance hereunder and the parties expressly opt-out of the applicability of the CISG and the UCITA to this Agreement. Each Party irrevocably consents to the jurisdiction of the state and federal courts located in the State of \_\_\_\_\_\_\_\_, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. Each Party further agrees that it will not initiate any action against the other Party in any other jurisdiction. Each Party agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction (including the appropriate courts of the jurisdiction in which such Party is a resident or in which any property or an office of such Party is located) by suit on the judgment or in any other manner provided by law.

# Waiver. A Party’s delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. A Party’s waiver of any right granted under this Agreement on one occasion will not (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

# Amendments. The Parties may amend this Agreement only by a written instrument that: (a) expressly refers to the provision(s) of this Agreement to be amended; (b) provides the full text of the amendment; and (c) is signed by an authorized representative of each Party. Contractor acknowledges and agrees that any “shrink-wrap” agreement, invoice, or other standard form which purports to govern the acquisition of products or the provision of Services will be ineffective to modify this Agreement unless it is executed by the Parties as required by this Section. Any amendment to this Agreement that is contained in a Software Order will be effective only with respect to the Licensed Software and Services described in that Software Order.

# Interpretation. Section and paragraph headings are for convenience only and do not affect the meaning or interpretation of this Agreement. The words “includes” and “including” are not limited in any way and mean “includes or including without limitation.” The word “person” includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term “and/or” means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word “will” is a synonym for the word “shall.” Time is of the essence with respect to all dates specified in each Software Order. All exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. To the extent a Software Order is inconsistent or conflicts with any other portion of this Agreement, the terms of the Software Order will control, except that the following provisions of this Agreement cannot be modified by the Software Order unless the Software Order expressly refers to the provision(s) to be modified and provides the full text of the modification: (a) Section 3.1 (License); (b) Section 3.2 (Restrictions on Use); (c) Section 5 (Property Rights); (d) Section 13 (Indemnification); (e) Section 15 (Artificial Intelligence); Section 17 (Confidentiality); and (f) Section 18 (Publicity Restrictions). Both Parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.

# Severability. If any court, arbitrator, or arbitration panel finds any provision of this Agreement to be invalid or otherwise unenforceable, that provision will be void to the extent it is contrary to applicable law. However, that finding will not affect the validity of any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect unless enforcement of this Agreement without the invalidated provision would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Agreement. Alternatively, if a court, arbitrator, or arbitration panel determines that any provision of this Agreement is not enforceable as expressly written, it is the intention of the Parties that those provisions be modified by the court, arbitrator, or arbitration panel only as is necessary for them to be enforceable.

# Counterparts and Delivery. This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile and digital signatures will be deemed original signatures for all purposes under this Agreement. When properly signed, this Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

1. **Electronic Signature**. Customer may make available a digital solution to streamline follow-on contracting related to this Agreement (a “**Digital Transaction Platform**”). Notwithstanding anything to the contrary in this Agreement, any follow-on contracting to this Agreement, including without limitation Software Orders, work orders, statements of work, other ordering document, change orders, amendments, local country agreements, addendums, and the like, that is transacted via the Digital Transaction Platform and approved by both Parties via a digital approval mechanism of the Digital Transaction Platform shall be deemed to be in writing, acceptable and binding for purposes of this Agreement. Electronic approvals submitted to the Digital Transaction Platform by a Party (such as clicking on an acceptance button or checkbox) shall be deemed to constitute the electronic signature of that Party’s authorized representative. By way of example, and without limitation, the Parties may use the Digital Transaction Platform to (i) amend the Agreement to establish standardized terms and conditions that shall be applicable to specified categories of products or services that may be procured under Software Orders (“**Default Work Order Terms**”), or (ii) enter into simplified electronic orders for products or services that are deemed for all purposes to constitute ordering documentation under the Agreement and are deemed to include such Default Work Order Terms.

# Integration. This Agreement (including the Exhibits) is the entire agreement between the Parties concerning its subject matter; and supersedes all prior and contemporaneous oral and written agreements, commitments, and understandings concerning its subject matter.

This Agreement is executed by the Parties’ duly authorized representatives effective as of the Agreement Effective Date.

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”)** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Contractor”)** |
| By:  Signature | By:  Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date: | Date: |

**EXHIBIT A**

**TEMPLATE FOR SOFTWARE ORDER**

------------------------------------------------------------------------

## SOFTWARE ORDER NO. \_\_\_

This Software Order No. \_\_ (this “**Software Order**”), dated effective as of \_\_\_\_\_\_\_\_, (the “**Order Effective Date**”), is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Customer”**) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Contractor”**).

This Software Order is incorporated into, forms a part of, and is in all respects subject to the terms of the Master Software License and Services Agreement between Customer and Contractor dated \_\_\_\_\_\_\_\_\_\_ (the “**Agreement**”). All capitalized terms that are not defined in this Software Order will have the meanings assigned to those terms in the Agreement.

*Note: At a minimum, the Software Order should include:*

(a) A list of the specific Software Products to be licensed under the Software Order, including Platform limitations;

(b) The gross and net (discounted) license fee for the Software Products, and the percentage discount;

(c) The License Parameters for those Software Products;

(d) The date the Software Products are to be delivered and, if applicable, installed;

(e) A description of the level of maintenance and support Services being purchased and the price for such Services during the initial Maintenance Term, expressed as a dollar amount and as a percentage of the net license fee;

(f) A description of any installation or implementation Services being purchased and the price for such Services (generally, such services are provided and invoiced pursuant to a separate service agreement);

(g) A description of any acceptance criteria or contingencies affecting Customer’s payment obligation (e.g., acceptance of Software Modifications or Software Configurations under a separate service agreement);

(h) A description of any training Services being purchased and the price for such Services;

(i) Any other special provisions or terms and conditions intended to modify or supplement the terms.

The Parties have caused this Software Order to be executed as of the Order Effective Date.

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”)** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”)** |
| By:  Signature | By:  Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date: | Date: |

## EXHIBIT B

##### *SOFTWARE PRODUCT PRICE LIST*

*(To be Inserted)*

**EXHIBIT C**

**TRAINING SERVICES AND FEES**

*(To be Inserted)*

**EXHIBIT** **D**

**MAINTENANCE AND SUPPORT SERVICES**

**TERMS & CONDITIONS**

*(To be Inserted)*

**Exhibit E**

**ARTIFICIAL INTILLEGENCE**

**1. Definitions and Scope.** Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. Capitalized terms which are not otherwise defined in the Agreement shall have the following meanings:

* 1. **Definitions**:

1. **"AI Solutions"** means any products, goods, services (including SaaS), work product, or deliverables created, developed, licensed, sold, or otherwise provided (or to be provided) under the Agreement that include or use AI Technology, including, without limitation any feature, functionality, customization, or component of any product, good, service or deliverable procured or provided under the Agreement that incorporates, uses, depends on, is supported by, or employs any AI Technology.
2. **“AI Technology”** means any and all machine learning, deep learning, and other artificial intelligence technologies, including statistical learning algorithms, models (including large language models), neural networks, and other artificial intelligence tools or methodologies, all software implementations of any of the foregoing, and related hardware or equipment.
3. **“Applicable Rules”** means all present or future laws, regulations, standards, and regulatory guidance related to AI Technology in any jurisdiction, and includes, without limitation, (i) the EU AI Act, (ii) the UK AI Strategy and Guidelines, (iii) OECD Principles on AI, (iv) United States federal, state, or local laws, regulations, rules, and agency guidance, (v) other analogous international, federal, state, or local laws, regulations, rules and agency guidance, and (vi) industry standards and standards implemented, promulgated, published, adopted, or recommended by any governmental authority, recognized standards organization, or recognized industry group, whether binding or non-binding.
4. **“Training Data”** means all content and other information, other than Restricted Data, used to train any AI Technology that is used for or included in any AI Solution.

1.2 **Scope.** These terms apply to all AI Solutions provided, or to be provided, by the Contractor under the Agreement. Contractor represents and warrants that the Agreement or applicable Order Document includes a complete and accurate list of all AI Technology and AI Solutions used or incorporated in the products, goods, services, work product or deliverables provided thereunder.

**2. Compliance with Applicable Rules.** The Contractor shall comply with Applicable Rules and be responsible for ensuring that all AI Solutions provided under the Agreement comply with the requirements of all Applicable Rules.

**3. Restriction.** Contractor shall not process or otherwise in any way use (a) the Confidential Information of Customer or its Affiliates, or (b) any other information, materials, works, or other content input, provided or otherwise made available to Contractor, its Affiliates, or any of their subcontractors or representatives by or on behalf of Customer, its Affiliates or any of their users (collectively, “**Restricted Data**”), for purposes of training, creating, or otherwise modifying any AI Solution or AI Technology without Customer’s prior written authorization in each instance. If Contractor becomes aware of any use of Restricted Data in violation of the foregoing restriction, Contractor shall promptly notify Customer and take steps in cooperation with Customer to remediate and/or mitigate such unauthorized use.

**4. Representations and Warranties.** Contractor represents, warrants, and covenants to Customer that:

(A) neither Contractor’s grant of the rights or licenses under the Agreement nor its provision of any AI Solutions or performance of other obligations under the Agreement, nor Customer's use of any AI Solution or exercise of its rights in accordance with the Agreement, does or at any time will: (i) conflict with or violate any Applicable Rules, including any Applicable Rules relating to the development, creation, training, fine-tuning, use, implementation, or provision of AI Technology; (ii) require the consent, approval, or authorization of any governmental authority or other third party; or (iii) require the provision of any payment or other consideration by Customer or any user to any third party;

(B) it has obtained and will maintain all licenses, consents, and permissions, and otherwise has all rights, including in each case as required under Applicable Rules, to collect and use all Training Data, including to train AI Technology, and for Provider to grant the rights and licenses granted to Customer under the Agreement;

(C) it has complied, and will remain in compliance, with all applicable laws and regulations and other third-party contractual or other rights or requirements (including any use restrictions and other requirements of any license, consent, permission, or other contract and any website terms of use, terms of service, or other terms) applicable to: (x) collection and use of such Training Data; (y) the development, creation, training, fine-tuning, use, implementation, and provision of AI Technology; and (z) Customer's use of the AI Solutions and AI Technology as contemplated under the Agreement; and

(D) it regularly monitors, measures, and assesses the AI Solutions for accuracy and reliability, considering computational-centric measures (for example, false positive and false negative rates), human-artificial intelligence teaming, and external validity (generalizable beyond the training conditions), in accordance with Applicable Rules.

**5. Documentation, Transparency, and Data Quality**

5.1 **Documentation**. Contractor shall provide comprehensive documentation for all AI Solutions, including details of the AI’s functionality, risk assessments, and compliance with Applicable Rules. Such documentation shall be updated regularly and made available to Customer upon its request.

5.2 **Transparency**. Contractor shall maintain transparency in the functioning of AI Solutions, including the algorithms used, data sources, and any potential biases or limitations of the AI Solutions. Contractor will also provide clear information about how the AI Solution makes decisions, including details on the logic and criteria used in its decision-making processes. Contractor shall retain information in human-readable form that explains or could be used to explain the decisions made or facilitated by the AI Solutions.

5.3 **Data Quality**. Contractor shall ensure that all data used in the development, training, and operation of the AI Solution is of high quality, accurate, and representative. Contractor shall implement robust data management practices, including data validation, regular updates, and documentation of data sources.

**6. Risk Management and Mitigation**

1. Contractor shall conduct regular risk assessments of the AI Solution to identify and mitigate potential risks associated with its deployment and use. Contractor agrees to implement appropriate risk management measures, including but not limited to, safety features, error handling mechanisms, and contingency plans.
2. Contractor must not use or supply any AI Solution that includes or makes use of Prohibited AI. As used herein, “**Prohibited AI**” means any AI Technology that: (i) deploys subliminal, manipulative or deceptive techniques which materially distort a person's behavior by impairing informed decision-making or autonomy in a way that is reasonably likely to cause significant harm; (ii) exploits vulnerable groups (such as children or religious minorities) to materially distort their behavior in a way that is reasonably likely to cause significant harm; (iii) evaluates or classifies people based on their social behavior or personality characteristics to create a 'social score' which leads to defined detrimental or unfavorable treatment of those people; (iv) assesses or predicts the risk of an individual committing a criminal offence based solely on profiling or assessing personality traits and characteristics; (v) creates facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage; (vi) enables emotional recognition in the workplace or educational institutions (other than for medical or safety purposes expressly permitted under Applicable Rules); (vii) categorizes people based on biometric data to infer race, political opinions, trade union membership, religious or philosophical beliefs or sex life or orientation; or (viii) uses "real-time" biometric identification in publicly accessible spaces for law enforcement purposes.

**7. Ethical and Responsible AI Use**

7.1 **Ethical Standards**. The Contractor shall adhere to ethical AI guidelines, standards and best practices, ensuring that AI Solutions do not perpetuate discrimination, bias, or any other unethical practices.

7.2 **Human Oversight**. The Contractor shall ensure that appropriate human oversight mechanisms are in place for all AI Solutions, allowing for intervention and review in cases where AI decisions have significant impacts. Customer will have the ability to override or correct decisions made by the AI Solution. Contractor will provide the necessary tools and interfaces to facilitate effective human oversite.

7.3 **Bias and Fairness**. The Contractor shall actively work to identify and mitigate biases in AI Solutions, ensuring fairness in outcomes and compliance with ethical guidelines.

**8. Audit and Monitoring**

8.1 **Regular Audits**. The Contractor shall cooperate in Company’s vendor AI assessment program, and permit regular audits and inspections by the Company or an appointed third party to verify compliance with Applicable Rules and this Exhibit. Contractor agrees to cooperate with such audits, respond to questionnaires from Company, provide necessary documentation, and address any identified issues promptly.

8.2 **Reporting Obligations**. The Contractor shall promptly report any issues, failures, or breaches related to the AI Solutions, including non-compliance with Applicable Rules or the Exhibit.

**9. Termination**

9.1 **Termination for Non-Compliance**. Without limiting any other right or remedy of Company, Company may terminate the Agreement on written notice to Contractor if the Contractor fails to comply with the terms and conditions of this Exhibit in any material respect.

9.2 **Termination for Changes**. Contractor shall not implement any changes to the AI Solution that impact its functionality or performance in any material respect. Without limiting any other right or remedy of Company, Company may terminate the Agreement on written notice to Contractor if the Contractor implements any changes to the AI Solution that impact its functionality, performance, or compliance with Applicable Rules.

**10. Notification of Incidents and Updates.** Contractor agrees to promptly notify Customer of any incidents, failures, or breaches related to the AI Solution that could affect its compliance with Applicable Rules. Contractor will also provide advance written notice of any planned changes to the AI Solution that may impact its functionality or compliance with Applicable Rules or this Exhibit.

**11. Training and Support.** At no additional cost to Customer, Contractor shall provide Customer with training on the use and management of the AI Solution, including all training necessary to ensure compliance with Applicable Rules. This includes training on interpreting AI outputs, managing system updates, and handling any issues related to the AI Solution’s performance.

**12. Indemnification.** Contractor agrees to indemnify, defend, and hold Customer, its Affiliates and their respective employees, directors, agents, successors and permitted assigns (“Customer Parties”) harmless from and against any and all liabilities, damages, losses, expenses, fines, penalties, and/or judgments, including reasonable attorneys' fees, costs, and expenses incidental thereto, awarded against any Customer Parties or agreed in settlement by Contractor, by reason of any demand, proceeding, action, regulatory action, lawsuit, and/or claim, in each case asserted against a Customer Party by a third party, to the extent arising out of or relating to any breach by Contractor of this Exhibit or any breach of Applicable Rules by Contractor.

**13. Liability.** Notwithstanding anything to the contrary in the Agreement or any Order Document, any limitation of liability and/or waiver of damages set forth in the Agreement or any Order Document will not apply to Contractor’s obligations as they relate to this Exhibit.

**14. General.** Contractor certifies that it understands the requirements and limitations of the Agreement, this Exhibit, and Applicable Rules. In the event of conflict between or among the provision(s) in any Agreement, Order Document, or this Exhibit, the parties will endeavor to interpret any such conflicting provision(s) in a consistent manner. In the event of an irreconcilable conflict, the provision(s) of the aforementioned documents (to the extent applicable) will govern in the following order of precedence: (i) this Exhibit, (ii) the Agreement, and (iii) the applicable Order Document.

**Exhibit F**

**DATA PROTECTION EXHIBIT**

**[Customer to insert appropriate Data Protection Exhibit]**

**EXHIBIT G**

**INFORMATION SECURITY**

**EXHIBIT H**

**DIGITAL ACCESSIBILITY**

To the extent that any term, condition, or provision of this Accessibility Exhibit (this “Exhibit”) conflicts or is inconsistent with any other term, condition, or provision of the Agreement, unless specifically provided otherwise herein, the term, condition, or provision of this Exhibit shall control. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. 

1. Definitions. For purposes of this Exhibit, Capitalized terms which are not otherwise defined in the Agreement shall have the following meanings:

1. “**Accessibility** **Requirements**” means the most recent version of or successor version to Web Content Accessibility Guidelines (minimum Level AA),  or version agreed upon by the Parties, as published by the Web Accessibility Initiative of the World Wide Web Consortium. If a document is published in Portable Document Format (PDF) and accessed through digital channels, the document must be PDF/Universal Accessibility (UA) conformant (the “**Accessibility** **Requirements**”).

1. “**Assistive Technology**” means products, equipment, and systems that enhance learning, working, and daily living for persons with disabilities.

1. “**Licensed Software**” means any technology, computer system, website, web application, web interface, cloud network, software, technology, content, and/or technology-based services and its component parts, modified and/or delivered by Contractor to Customer under the Agreement that is intended to be accessed and used by applicable users.

1. “**VPAT**” means Voluntary Product Accessibility Template, an industry-standard report template from the Information Technology Industry Council used to generate an Accessibility Conformance Report, which is a Contractor-generated statement documenting the conformance of the Licensed Software with each criterion of the Accessibility Requirements.

1. **Conformance**. Contractor covenants and agrees that: (a) the Licensed Software will comply with the applicable sections of the most current version of the Web Content Accessibility Guidelines minimum Level AA, as published by the Web Accessibility Initiative of the World Wide Web Consortium, the European Accessibility Act, and any applicable current federal and state disability laws upon delivery or within the timeframes mutually agreed to by the Parties in writing; (b) Accessibility Requirements will be upheld throughout the term of the Agreement, applicable to and including all revisions, updates, patches, and new releases of products and services; and (c) Contractor will accurately and completely document compliance, or specific plans to comply with the Accessibility Requirements. If Contractor provides installation, configuration, integration, or hosting services under the Agreement or any applicable Work Order, Contractor shall not implement the product/system in a manner that reduces the existing level of conformance with the Accessibility Requirements. To the extent that the Licensed Software permits Customer or intended users to post content or enables the dissemination of content for access, review, and/or use by users, Contractor shall ensure that such Licensed Software enables access, review, dissemination and/or use of content in a format that conforms to the Accessibility Requirements and does not interfere with the ability of content providers to post such content in a format that conforms to the Accessibility Requirements.

1. **Exceptions to Conformance**. The Parties acknowledge that some WCAG conformance level AA success criteria address features or design elements that may not be relevant to the Licensed Software under the Agreement, and in such circumstances conformance with those Success Criteria will not be required. The Parties also acknowledge that to the extent the Success Criteria do not address certain features or elements, this provision shall not apply to those features and elements.

1. **Testing and Acceptance**.Prior to delivery, or on a timetable mutually agreed to by the Parties, Contractor shall:
2. **Standards Testing.** Conduct internal and field testing of the Licensed Software (collectively, “**Testing**”) against the Accessibility Requirements, and ensure that Licensed Software conforms with the Accessibility Requirements;

1. **Assistive Technologies Testing.**  Without limiting the foregoing, conduct Testing to ensure the interoperability of the Licensed Software with the applicable Assistive Technologies covered within the Accessibility Requirements, including but not limited to screen reader and speech recognition software;

1. **Notification and Resolution of Open Issues.** Notify Customer of any Accessibility Requirements compliance or Assistive Technology interoperability issue (“**Open Issue**”) that Contractor reasonably and in good faith believes cannot be resolved prior to the delivery or incorporation of the Licensed Software, including an explanation of the Open Issue and projected date for the conduct and completion of resolutions. With respect to the portions of the Licensed Software subject to an Open Issues, Contractor may: (a) proceed with delivery or incorporation only if approved by Customer in writing and (b) if so approved, use all reasonable efforts to resolve each Open Issue to Customer’s satisfaction within a period of time mutually agreed by Contractor and Customer in writing.

1. **Accessibility Feedback**.Contractor shall include within the Licensed Software, in a manner that is accessible to all intended users thereof, and approved in advance in writing by Customer, a method to contact knowledgeable personnel for all users having trouble accessing, perceiving, operating, or understanding content. Such knowledgeable personal shall also be responsible for addressing feedback, questions, concerns, comments, issues and/or complaints regarding accessibility of the Licensed Software. Contractor will promptly bring to Customer’s attention any issues that come to its attention regarding the accessibility of the Licensed Software and/or the conformance of the Licensed Software to the Accessibility Requirements.
2. **Continued Compliance**. Contractor shall:

1. Promptly notify Customer of all accessibility complaints that implicate Licensed Software and respond to and resolve all such complaints that indicate nonconformance to this Exhibit (“**Defects**”);

1. Ensure that each Defect is remedied with the same level of priority as any equivalent loss of function for individuals without disabilities;

1. Ensure that all upgrades, versions and releases that Contractor is obligated to provide to Customer under the Agreement also conform to this Exhibit; and

1. Conduct annual accessibility testing to ensure the Licensed Software continues to conform to this Exhibit, and in addition, upon Customer’s reasonable request, provide Customer with accurate and complete written reports (in the form of a VPAT) of all final Testing results.

1. **Maintenance, Upgrades & Replacements**. Contractor shall ensure maintenance, substitutions, and replacements to equipment and software pursuant to the Agreement and any applicable Work Orders conform with Accessibility Requirements and do not reduce the original level of conformance, applicable to and including all revisions, updates, patches, and new releases of the Licensed Software. Contractor shall incur all costs and expenses attributable to the Licensed Software complying with the Accessibility Requirements, throughout the term of the Agreement, including any modification of digital or other systems and/or all components of digital or other systems which form part of the Licensed Software, to ensure such compliance.

1. **Termination**. Notwithstanding the foregoing, if at any time Contractor breaches or allegedly breaches any covenants set forth in Section 2 and/or delivers a Licensed Software with an Open Issue that Customer determines cannot be resolved to Customer’s satisfaction, in addition to any other rights or remedies of Customer hereunder, Customer shall have the right to terminate the Agreement. Any termination by Customer of the Agreement made pursuant to this provision shall be deemed a “for cause” termination. In the event of such termination, Customer shall be entitled to recover an amount equal to all fees paid for the affected Licensed Software, plus all fees paid to Contractor for Services related to the Licensed Software and for any other products furnished by Contractor to Customer that were provided in conjunction with the Licensed Software and that cannot be utilized effectively or completely by Customer without using the Licensed Software.

1. **Indemnification**. Notwithstanding anything contrary to this Exhibit, Contractor shall indemnify, defend, and hold harmless Customer and its affiliates and employees from and against any and all claims, losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees) arising out of, relating,  and attributable to: (i) Contractor’s breach or alleged breach of any provision of this Exhibit, (ii) inaccessibility of the Licensed Software including without limitation Customer’s use of such Licensed Software, and (iii) Contractor’s negligence or willful misconduct (collectively, “**Claims**”). Customer shall promptly notify Contractor of any such Claims. Customer may participate in the defense of any claim by counsel of its own choosing, at its cost and expense and Contractor will not settle any claim without Customer’s prior written consent, unless the settlement fully and unconditionally releases Customer and does not require Customer to pay any amount, take any action, or admit any liability.