

## **Master Subscription Agreement**

This Master Subscription Agreement (“AGREEMENT”) is entered into as of the last signature date (“EFFECTIVE DATE”) on the initial Order Form that references this agreement, between EqualLevel, Inc., a Delaware Corporation (“COMPANY”), and the entity (“LICENSEE”) that has executed the respective Order Form (as defined below).

### **Section 1 – Definitions**

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As used in this Agreement (including in any amendments, schedules, and exhibits) the following definitions, and certain other terms as defined herein, will apply, unless explicitly stated to the contrary and except as the context otherwise requires:

#### **1.1 “Application Generated Data”**

means all information, documentation, files, data and materials, whether in hard copy, electronic or other format, that have been generated by or that result from running or making assessable to LICENSEE the particular applications delivered by COMPANY in connection with this Agreement; such information to specifically include all information and data supplied directly or indirectly by LICENSEE.

#### **1.2 “Confidential Information”**

means any non-public proprietary or sensitive information, excluding Trade Secrets, which is learned by one party about the other's business affairs, property, methods of operation, processing systems or other information which reasonably could be considered to have business or proprietary value or to be personal or otherwise confidential in nature. Confidential Information shall include, (a) except as limited herein, as Confidential Information of COMPANY, the Hosted Application and Documentation and (b) as Confidential Information of LICENSEE, all data provided by or regarding LICENSEE and including, without limitation, all data entered into the Hosted Application by LICENSEE (“Customer Data”), and all information regarding LICENSEE's and its affiliates' employees and independent contractors.

#### **1.3 “Customer Data”**

refers to any data, information, or material that LICENSEE or its representatives provide or submit to the COMPANY Platform while utilizing the Hosted Applications.

#### **1.4 “Documentation”**

means all operator, technical and user manuals, training materials, guides, listings, specifications, flow charts, program descriptions and other materials for use in conjunction with the Hosted Application, whether in hard copy or electronic forms, as furnished by COMPANY pursuant to this Agreement.

#### **1.5 “Hosted Application(s)”**

means applications and associated content (as identified on an Order Form) to be provided by COMPANY to LICENSEE as a subscription service and made accessible on a website designated by COMPANY or by other means as described in the Order Form.

### **1.6 “Intellectual Property”**

means any and all now known or hereafter known tangible and intangible: (a) rights associated with works of authorship, including, but not limited to, copyrights; (b) trademark and trade name rights and similar rights; (c) Trade Secrets; (d) patents, designs, algorithms and other industrial property rights; (e) all other intellectual and industrial property rights, whether arising by operation of law, contract, license or otherwise; and (f) all registrations, initial applications, renewals, extensions, continuations now or hereafter in force.

### **1.7 “Order Form”**

means an order form mutually executed by COMPANY and LICENSEE evidencing the purchase of subscriptions to the Hosted Applications specifying, among other things, the Subscription Term, the number of Users, the applicable fees, and the billing period and any other commercial terms as agreed to between the parties. Each Order Form, once mutually executed, shall be governed by, and become part of this Agreement, and is hereby incorporated by this reference.

### **1.8 “Proprietary Information”**

means Confidential Information and Trade Secrets, whether in written, oral, electronic or other form, furnished, transmitted to, observed or obtained by one of the parties. Proprietary Information also includes any Confidential Information or Trade Secrets that are in a party’s facility and are viewable, accessible or otherwise made available to the other party (“Recipient”). Proprietary Information shall also include Customer Data and Application Generated Data. The following information, all as reasonably substantiated by documentation, however, is not Proprietary Information and Recipient is not restricted as to its use or disclosure:

- a) information already in the possession of, or already known to, the Recipient as of the Effective Date, and not under any other obligations of confidentiality due to any other agreements between the parties;
- b) information that enters the public domain after the Effective Date, or which, after such disclosure, enters the public domain through no fault of the Recipient;
- c) information lawfully furnished or disclosed to the Recipient by a non-party to this Agreement without any obligation of confidentiality;
- d) information independently developed by any party without use of any Proprietary Information;
- e) information required to be disclosed by law but only to the extent of such legal requirements; or
- f) information that is explicitly approved for release by the Discloser of the information.

### **1.9 “Subscription Term”**

means the period(s) during which LICENSEE is authorized to use the Hosted Applications pursuant to an Order Form.

### **1.10 “Support”**

refers to the technical support provided by the COMPANY, as outlined in the Order Form and governed by the terms outlined in the Order Form.

### **1.11 “Trade Secrets”**

means technical and non-technical information (regardless of whether such information is in tangible or intangible form) including data, ideas, concepts, formulae, methods, techniques, processes, financial business plans and business methods (including any derivatives of any of the foregoing) disclosed to either party by or on behalf of the other party that derive economic value, actual or potential, from not being generally known to other persons who could obtain economic value from the disclosure or use thereof, and which are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

### **1.12 “Updates”**

refers to the modifications, improvements, or new features applied by COMPANY to the Hosted Applications for repairs or enhancements in LICENSEE’s instances. This includes updates to the Documentation resulting from such modifications, provided at no extra cost during the Subscription Term. However, Updates do not encompass additional functionalities or upgrades to modules or applications that LICENSEE has not already subscribed to in an Order Form and for which COMPANY imposes a separate charge, distinct from its general practice for such new modules or applications.

### **1.13 “Users”**

means (i) the employees or independent contractors of LICENSEE who are authorized to utilize the Platform and have been issued distinct user identifications and passwords by LICENSEE; and (ii) suppliers that have agreements with LICENSEE to access the Hosted Application.

### **1.14 “Use” or “Usage”**

means the use of Hosted Application in the ordinary course of LICENSEE’s business, including actual use of the Hosted Application to obtain the benefits of its functionality or the ability to obtain the benefits of the Hosted Application.

## **Section 2 – COMPANY’s Obligations**

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### **2.1 Supply of Hosted Applications**

COMPANY is committed to providing LICENSEE access to and authorization for the use of the Hosted Applications throughout the Subscription Term, as specified in the relevant Order Form, for internal business purposes of LICENSEE and its Affiliates, all in accordance with the provided Documentation.

### **2.2 Support, Uptime & Updates**

COMPANY is obligated to: (i) furnish the specified level of support as outlined in the Order Form; (ii) deliver Updates, incurring no extra charges, as an integral part of LICENSEE’s subscription during the Subscription Term, as specified in the Order Form; and (iii) ensure the availability of the Hosted Applications in alignment with the provisions set forth in the Order Form.

## 2.3 Security

COMPANY is obligated to maintain a written information security program encompassing policies, procedures, and controls ("Security Program") that govern the processing, storage, transmission, and security of Customer Data. The details of the Security Program as of the Effective Date are outlined in the Order Form. This Security Program is designed to incorporate industry-standard practices to safeguard Customer Data from unauthorized access, acquisition, use, disclosure, or destruction. COMPANY reserves the right to periodically review and update the Security Program to address emerging security technologies, modifications to industry standard practices, and evolving security threats. It is understood, however, that any such update shall not significantly diminish the overall level of security provided to LICENSEE as delineated herein.

## Section 3 – Hosted Application

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### 3.1 Hosted Application Access Rights

Subject to the terms and conditions of this Agreement and any associated Product Schedule and Order Form, COMPANY grants to LICENSEE, and LICENSEE hereby accepts, a non-exclusive, non-transferable license allowing LICENSEE Users, wherever they may be located, to access the Hosted Application delivered by COMPANY.

### 3.2 Ownership

COMPANY and/or its third-party suppliers shall retain all ownership rights and title in and to, without limitation, the Hosted Application, all functional enhancements to the Hosted Application developed by COMPANY, all LICENSEE Customized Enhancements (except as set forth in Section 2.4) ("COMPANY Property"), and the license and access rights hereunder grant no title or rights of ownership therein to LICENSEE. No license, right or interest in any COMPANY or COMPANY trademark, trade name, or service mark is granted to hereunder. LICENSEE shall retain all ownership rights and title to all Customer Data.

### 3.3 User Accounts

LICENSEE is responsible for activity occurring under its User accounts and shall ensure that it and its Users abide by all laws, treaties and regulations applicable to LICENSEE's use of the Hosted Applications. LICENSEE shall: (i) notify COMPANY promptly of any unauthorized use of any password or account or any other breach of security; (ii) notify COMPANY promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Hosted Applications that is known or suspected by LICENSEE or its Users; and (iii) not impersonate another user or provide false identity information to gain access to or use the Hosted Applications or COMPANY Platform.

### 3.4 No Sublicense

Without limitation, LICENSEE has no rights in respect of the Hosted Application beyond its limited remote access and Use rights as stated above, and LICENSEE may not, without limitation; (i) license, sublicense, loan, sell, resell, transfer, rent, lease, assign, or distribute the Hosted Applications; (ii) replicate, alter, or create derivative works based on the Hosted Applications; (iii) "frame" or "mirror" the Hosted Applications on any other server or device; (iv) access the Hosted Applications for competitive purposes, or utilize them for application service

provider, timesharing, or service bureau purposes, or any purpose other than its own internal use; (v) decompile, disassemble, reverse engineer, or attempt to unveil any source code or underlying ideas or algorithms of the Hosted Applications; (vi) eliminate, obscure, or modify any copyright or other proprietary rights notice within the Hosted Applications; (vii) employ the Hosted Applications for the transmission or storage of infringing, obscene, threatening, libelous, or otherwise unlawful material; (viii) use the Hosted Applications to generate, employ, send, store, or execute material containing software viruses, worms, Trojan horses, or engage in any malicious activity that may disrupt the security, integrity, or operation of the Hosted Applications or the Coupa Platform; (ix) endeavor to gain or authorize unauthorized access to the Hosted Applications or its related systems or networks; or (x) authorize or aid any other party (including any User) to engage in any of the aforementioned activities.

### 3.5 LICENSEE Ownership

Excluding any background Intellectual Property or other property of COMPANY or its licensors embedded or included therein, LICENSEE shall own those enhancements made by COMPANY in performing any professional services (the "Services") hereunder that are (i) developed as part of a special project under a statement of work, (ii) paid for by LICENSEE ("LICENSEE Customized Enhancements"). Additionally, LICENSEE hereby grants COMPANY and its agents, subcontractors, consultants and representatives a royalty-free license to use the LICENSEE Customized Enhancements solely as necessary in the course of performing the Services hereunder for or on behalf of LICENSEE or any LICENSEE Contractor, LICENSEE user or LICENSEE supplier.

### 3.6 Third Party Interactions

- a) *No Supplier Fees for Standard Use.* Unless otherwise specified in an Order Form COMPANY agrees not to impose charges on LICENSEE's suppliers for the privilege of engaging with LICENSEE through COMPANY Platform. Standard Use includes the ability to submit and manage punchout credentials for supplier owned sites and utilization of GO Catalog Sync for the upload and management of product catalogs and receipt of electronic orders.
- b) *Supplier Interactions.* While utilizing the Hosted Applications, LICENSEE may engage in communications and procure goods and/or services from suppliers. All such interactions and related terms are exclusively between LICENSEE and the relevant third-party supplier. COMPANY assumes no obligation or responsibility for such correspondence or transactions between LICENSEE and said third-party supplier.

## Section 4 – Fees

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### 4.1 Fees

In connection with access and delivery of the Hosted Applications, COMPANY shall charge LICENSEE the fees described in the Order Form. Fees for additional Services will be charged separately at applicable rates.

## 4.2 General payment terms

LICENSEE is obligated to make annual advance payments for subscription fees to access the Hosted Applications. All payment commitments are irrevocable, and any amounts remitted are nonrefundable, unless expressly stated otherwise in this Agreement. COMPANY will issue invoices to LICENSEE and LICENSEE agrees to pay undisputed fees within 30 calendar days of receipt of a valid COMPANY invoice. In the event that any undisputed invoice remains overdue by more than 30 days, COMPANY reserves the right, without prejudice to its other rights and remedies, to suspend access to the Hosted Applications until the outstanding invoice is paid in full. COMPANY will provide written notice at least 30 days in advance of any such suspension due to payment delinquency. Should LICENSEE believe that an invoice is inaccurate, written notification must be submitted to COMPANY within 60 days of the invoice date containing the disputed amount, to be eligible for an adjustment or credit. All Fees are payable in US dollars. All amounts not paid within 60 days of their due date (the "Delinquency Date") shall bear interest at the rate of one percent (1%) per month from the Delinquency Date.

## 4.3 Taxes

COMPANY's fees exclude all taxes, levies, or duties imposed by taxing authorities, including but not limited to value-added, sales, use, or withholding taxes, imposed by any jurisdiction (collectively referred to as "Taxes"). LICENSEE is responsible for the payment of all Taxes associated with this Agreement and all Order Forms, except for taxes assessed against COMPANY.

## Section 5 – Term and Termination

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### 5.1 Term

This Agreement shall become effective as of the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated, unless terminated earlier in accordance with Section 10. User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for an initial term of three (3) years unless and until terminated as provided for herein. The Agreement may be renewed for two additional one (1) year extensions if mutually agreed upon by the parties in writing. The Annual License fee for the renewal period will be subject to a cost-of-living increase of 5% over the prior year subscription fee.

### 5.2 Termination of this Agreement for Cause

This Agreement may be terminated for cause by either party if the other party breaches the terms or materially defaults on the performance of any of its duties or obligations set forth herein (including, but not limited to, the failure of the Hosted Application to meet LICENSEE's reasonable needs), provided that such default is not cured within thirty (30) days, or as otherwise may be agreed to by both parties, after written notice is given to the defaulting party by the non-defaulting party which specifies the faulty performance and acceptable means of correction. In such event, termination of the Agreement shall be effective as of the date specified in such notice of such termination.

### 5.3 Bankruptcy

In the event that COMPANY shall file a petition for bankruptcy, reorganization, readjustment or rearrangement of its business or affairs under any laws or governmental regulations relating to bankruptcy or insolvency, or is adjudicated as bankrupt, or if a receiver is appointed for COMPANY or such third-party, or if COMPANY or such third-party makes or attempts an assignment for the benefit of creditors or is unable to meet its or their obligations in the normal course of business as they fall due, then COMPANY shall promptly inform LICENSEE of such actions and LICENSEE may terminate for cause this Agreement.

### 5.4 Events Upon Termination

The following events shall occur following the termination of this Agreement hereunder, as applicable:

- a) **Payments.** COMPANY shall submit to LICENSEE an invoice for any outstanding Fees and approved expenses applicable to periods prior to the effective date of termination of this Agreement, and LICENSEE shall pay such fees and expenses within 30 calendar days of receipt of such valid COMPANY invoice. In the event that the termination is effective before the end of the Term (other than a termination by LICENSEE as a result of an uncured default by COMPANY), COMPANY shall pay LICENSEE any prorated Fee for the portion unused within 30 calendar days of the effective date of termination of this Agreement.
- b) **Return of Proprietary Information.** Each party shall immediately following termination collect and deliver to the other party, all of the requesting party's Proprietary Information and all copies thereof, unless it is expressly authorized by the requesting party to use such Proprietary Information or unless required by law or governmental regulations to retain such Proprietary Information.

### 5.5 Transition Services

In the event of the Agreement's termination, at the discretion of LICENSEE, COMPANY will offer transition services to facilitate the organized and comprehensive transfer of the Customer Data to LICENSEE or any replacement provider designated by LICENSEE ("Transition Services"). However, the extent and fees associated with the Transition Services must be mutually agreed upon in a statement of work before commencing such services. It is emphasized that, under no circumstances, COMPANY is obligated to disclose any of its Confidential Information or provide a license under any of its intellectual property to LICENSEE or any third party as part of the Transition Services. To clarify, should LICENSEE opt to receive Transition Services, it remains obligated to pay pro-rated subscription fees for the continued use of the Hosted Applications during the transition period.

### 5.6 Survival

Upon expiration or termination of the Agreement, Sections 1 (Definitions), 3.4 (No Sublicense), 4 (Fees), 5 (Term and Termination), 6 (Proprietary Information and Other Rights), 7 (Warranties), 8 (Indemnification), 9 (Limitations of Liability), and 10 (General Provisions) of this Agreement shall survive.

## Section 6 – Proprietary Information and Other Rights

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### 6.1 Protection of Proprietary Information

If Proprietary Information is disclosed to a party ("Recipient") by the other party ("Discloser"), then Recipient agrees that it shall hold such Proprietary Information in confidence, agrees not to disclose any Proprietary Information to persons not having a need to know such Proprietary Information consistent with the purpose for which it was transmitted and such Proprietary Information will not be used, directly or indirectly, for any nonprofit, commercial, business or other purpose or in any way detrimental to Discloser. Recipient shall take reasonable precautions to protect the confidentiality and value of Proprietary Information to Discloser including measures to prevent disclosure, loss, theft and misuse with the same degree of care that it uses to protect the confidentiality of its own Confidential Information and, in any event, not less than reasonable care. Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Proprietary Information. Recipient agrees to assist Discloser in remedying any unauthorized use or disclosure of Proprietary Information caused by such Recipient.

### 6.2 Customer Data

In the relationship between LICENSEE and COMPANY, LICENSEE retains exclusive ownership of all rights, title, and interest in and to all Customer Data. LICENSEE assumes full responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data. LICENSEE warrants that it currently possesses and will maintain all necessary rights and consents to enable COMPANY to use such data as outlined in this Agreement. LICENSEE hereby grants COMPANY a royalty-free, fully paid, non-exclusive, non-transferable, sublicensable right and license to reproduce, use, process, transfer, and store Customer Data solely for the purpose of fulfilling COMPANY's obligations under this Agreement and any other activities expressly agreed upon by LICENSEE.

### 6.3 Utilization of Aggregate Data

LICENSEE acknowledges that, in delivering the Hosted Applications, COMPANY may gather, utilize, and disclose quantitative data derived from the usage of the Hosted Applications for purposes such as industry analysis, benchmarking, analytics, and other business-related objectives. All data collected, utilized, and disclosed will be presented solely in aggregate form, ensuring that neither LICENSEE nor its Users are individually identified.

### 6.4 Disclosure Required by Law

Notwithstanding any provision in this Agreement to the contrary, a disclosure of Proprietary Information in response to a valid order by a court or other governmental body or otherwise required by law, is not considered to be a breach of this Agreement or a waiver of confidentiality for other purposes. Before any such disclosure, when practical, Recipient shall provide prompt written notice to Discloser to enable it to seek a protective order or prevent disclosure.

If LICENSEE is subject to any local, state or federal law, regulation or ordinance requiring the disclosure of public records (collectively, a "Public Records Act"), then, in that case, in the event that a request for information is made to LICENSEE pursuant to a Public Records Act concerning documents, items or other information in the possession of LICENSEE that arguably and in good faith may be Proprietary Information or otherwise exempt from disclosure related to COMPANY, LICENSEE shall promptly, but in any event within five (5) business days, provide notice of the

request to COMPANY. Within five (5) business days, COMPANY shall notify LICENSEE of COMPANY's position regarding the release of the documents, items or other information. LICENSEE, to the extent permitted by law, agrees to abide by the position taken by COMPANY concerning the release of the requested documents, items or other information. In the event COMPANY takes the position that requested documents, items or other information are not required to be released by LICENSEE and requests LICENSEE not to release the requested documents, items or other information, LICENSEE, to the extent permitted by law, shall cooperate with COMPANY, if it so requests and at the sole cost and expense of COMPANY, in responding to any such request or judicial proceedings brought to compel the release of the documents, items or other information and, in such event, COMPANY shall pay any monetary penalty assessed against LICENSEE together with all attorney's fees incurred by LICENSEE. The obligation of LICENSEE to cooperate with COMPANY under the circumstances described in this paragraph shall not diminish in any way the right of COMPANY to assert independently its interest in limiting, and its right to seek relief from, the disclosure of Confidential Information.

If LICENSEE becomes legally compelled by interrogatories, subpoena, civil or criminal investigative demand or similar process, including processes under state or federal rules of criminal and/or civil procedure, to make any disclosure that arguably and in good faith may be prohibited or otherwise constrained by a Public Records Act, LICENSEE shall provide COMPANY with prompt notice of such legal proceedings, so that COMPANY may seek an appropriate protective order or other appropriate relief or waive compliance by LICENSEE with the provisions of this paragraph. In the absence of a protective order or other appropriate relief or receipt of such a waiver, LICENSEE shall be permitted to disclose that portion of the information that LICENSEE is legally compelled to disclose.

Notwithstanding the foregoing, if LICENSEE is ordered by a court of competent jurisdiction to disclose financial and proprietary information and Trade Secrets, LICENSEE may disclose such information. LICENSEE shall not be liable, and COMPANY shall hold LICENSEE harmless, for damages resulting from such disclosure.

## **Section 7 – Warranties**

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### **7.1**

EXCEPT AS EXPRESSLY INDICATED HEREIN, COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE HOSTED APPLICATION. COMPANY DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE HOSTED APPLICATION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE HOSTED APPLICATION WILL MEET LICENSEE's REQUIREMENTS OR EXPECTATIONS, (C) ERRORS OR DEFECTS WILL BE CORRECTED, OR (D) THE HOSTED APPLICATION IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS EXPRESSLY INDICATED HEREIN, THE HOSTED APPLICATION IS PROVIDED TO LICENSEE STRICTLY ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY INDICATED HEREIN, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESSED, IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY

APPLICABLE LAW BY COMPANY. NOTWITHSTANDING THE FOREGOING, EVEN THOUGH COMPANY MAKES NO REPRESENTATIONS WITH REGARD TO THE ABOVE MATTERS, IF (A) THE USE OF THE HOSTED APPLICATION IS NOT SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR CANNOT OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE HOSTED APPLICATION DOES NOT MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS, (C) ERRORS OR DEFECTS RELATING TO THE HOSTED APPLICATION ARE NOT CORRECTED, OR (D) THE HOSTED APPLICATION IS NOT FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THEN, IN THAT EVENT, LICENSEE MAY TERMINATE THIS AGREEMENT FOR CAUSE UPON 30 DAYS NOTICE TO COMPANY IN THE SAME MANNER AS IF THERE WAS A DEFAULT BY COMPANY.

## 7.2

COMPANY warrants that (i) the Hosted Application will conform to the Documentation, the Implementation Project Plan and any SOW; (ii) the Hosted Application will be available and fully functional to LICENSEE at least 99.5% of 24 hours per day, 7 days per week, and 365 days per year, subject to reasonable outage for maintenance or repairs between the hours of 12a.m. and 8a.m. Eastern Time; (iii) Services shall be performed in a professional, workmanlike manner consistent with industry standards; (iv) the Hosted Application will not infringe third party intellectual property rights. Any failure of the warranties contained herein shall constitute a material default under this Agreement entitling LICENSEE to terminate this Agreement for cause pursuant to Section 4.2 above.

## Section 8 – Indemnification

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### 8.1 LICENSEE'S RESPONSIBILITIES

Subject to Section 7.4, LICENSEE shall: (a) undertake the defense of COMPANY, its officers, directors, and employees against any Claim arising from the Customer Data or related to a disagreement between LICENSEE and its supplier; and (b) bear the costs of any court-ordered damages or settlement amount, including any expenses, liabilities, losses, damages, costs, or reasonable attorneys' fees, to the extent payable to a third party, arising from such Claims. However, LICENSEE's indemnification obligation shall not apply: (i) if the Customer Data is altered by COMPANY or any party under COMPANY's control without LICENSEE's consent, but only to the extent the Claim is caused by such modification; or (ii) if the Claim arises due to any use or disclosure of the Customer Data by COMPANY not envisaged by this Agreement.

### 8.2 Intellectual Property Indemnification By COMPANY

In the event that any Hosted Application as provided by COMPANY to LICENSEE under this Agreement is accused of infringing the intellectual property rights in a claim or cause of action by a third party and LICENSEE promptly provides notice that it seeks COMPANY's indemnification, COMPANY shall indemnify LICENSEE in respect of such claim or cause of action as follows: (i) COMPANY shall defend and hold LICENSEE harmless against any legal action accusing infringement of such intellectual property rights; and additionally (ii) COMPANY may obtain appropriate licenses under such intellectual property rights; or (iii) COMPANY may modify or replace the Hosted Application to be non-infringing while preserving equivalent functionality of the original Hosted Application, so long as such modification or replacement

conforms to the Documentation and the functional descriptions in the Implementation Project Plan and any SOW, and is otherwise acceptable to LICENSEE and meets LICENSEE's needs. To the extent COMPANY is required to defend under clause (i), COMPANY shall pay all damages or settlements and control the legal defense to such claim or cause of action, including without limitation attorney selection, strategy, discovery, trial, appeal, and settlement, and LICENSEE shall, at COMPANY's cost and expense (with respect to reasonable out of pocket costs and expenses incurred by LICENSEE which shall be reimbursed to LICENSEE by COMPANY), provide all commercially reasonable assistance requested by COMPANY.

### **8.3 Other Indemnification By COMPANY**

COMPANY agrees to protect, indemnify and hold LICENSEE harmless from and against any and all losses, claims, actions, demands, allegations, suits, judgments, costs and expenses, and all other liability of any nature whatsoever, incurred as a result of: (i) COMPANY's breach of this Agreement; and (ii) any unauthorized, negligent or wrongful use of, or a data breach incident and viruses or other corrupting agents involving, LICENSEE's Proprietary Information, computers, or other hardware or software systems; and (iii) any damage, loss of use or function of, the computer or information systems of the LICENSEE or its participating members.

### **8.4 Procedure**

The indemnity obligations of each party are subject to the following conditions: (i) the indemnified party shall promptly notify the indemnifier in writing of any Claims (provided, however, that the failure to provide prompt written notice shall not restrict the rights to indemnification except to the extent that the indemnifier is materially prejudiced by such failure); (ii) the indemnifier shall have exclusive control of the defense and all related settlement negotiations concerning any Claims (provided that the indemnifier may not settle any Claims requiring the indemnified party to acknowledge any civil or criminal liability or incur any financial obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and (iii) the indemnified party shall fully cooperate, at the indemnifier's expense, as necessary in such defense and settlement.

## **Section 9 – Limitations of Liability**

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### **9.1 LIMITATIONS OF LIABILITY**

To the extent permitted by applicable law, the total and aggregated liability of either party arising from or in connection with this Agreement or the services provided hereunder, whether based on contract, tort (including negligence), or any other legal or equitable theory, shall not exceed the total amounts actually paid by and/or due from LICENSEE under this Agreement in the twelve (12) month period immediately preceding the event giving rise to such liability under this Agreement. This limitation shall not be expanded by the existence of multiple claims. However, this provision shall not restrict LICENSEE's obligation to pay fees legally owed under this Agreement.

### **9.2 LIMITATION OF DAMAGES**

To the extent permitted by applicable law, in no event shall either party be held liable for any indirect, punitive, special, exemplary, incidental, consequential, cover, business interruption, or

other similar damages of any nature or kind (including, without limitation, loss of revenue, profits, use, goodwill, or other economic advantage), regardless of the cause, arising out of or in connection with the Agreement or the services provided hereunder. This limitation applies even if the party has been previously advised of the possibility of such damages or if a party's remedy otherwise fails to fulfill its essential purpose.

### **9.3 LIMITATION OF LIABILITY EXCLUSIONS**

Notwithstanding the foregoing, the limitations set forth herein shall not restrict a party's liability for its (A) gross negligence or willful misconduct, (B) fraud or fraudulent misrepresentation, (C) death or bodily injury caused by negligence, (D) obligations explicitly stated under Section 8 (Indemnification), or (E) infringement by a party of the other party's intellectual property rights.

## **Section 9 – General**

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### **10.1**

Neither Party may assign this Agreement, in whole nor in part, without the other Party's written consent, which shall not be unreasonably withheld, except that no such consent will be required in connection with a merger, reorganization or sale of all, or substantially all, of either Party's assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of and be enforceable against the Parties and their respective successors and assigns. Any attempt to assign this Agreement other than as permitted above will be void. This Agreement is solely for the benefit of the Parties and their successors and permitted assigns and does not confer any rights or remedies on any other person or entity.

### **10.2**

This Agreement constitutes the entire understanding between LICENSEE and COMPANY, supplanting all prior or concurrent negotiations, discussions, or agreements, whether in written or oral form, pertaining to the subject matter herein. In the event of any conflict between this Agreement and the Order Form, the Order Form shall take precedence. No text or information on any other purchase order, preprinted form, or document shall augment or modify the terms and conditions of this Agreement. Amendments or modifications to this Agreement shall be valid only if in writing and signed by duly authorized representatives of both parties. For purposes hereof, a facsimile or PDF copy of this Agreement, including the signature page hereto, shall be deemed to be an original and will have the same force and effect as an original document with original signatures. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the intent of this Agreement. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, such provision(s) shall be construed, to the extent feasible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. LICENSEE acknowledges that the purchase of any subscription is not contingent upon the delivery of future functionality or features, nor is it dependent on any oral or written comments made by COMPANY regarding such features. The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors, and nothing herein or in the transactions contemplated by this Agreement shall be construed as, or deemed to be, the formation of a partnership, association, joint venture, or similar entity by or between the parties. Each party shall comply with the provisions of all applicable federal, state, county, municipal, and local laws, ordinances, regulations, and codes in the performance of this Agreement.

### **10.3**

This Agreement may not be altered, amended, or modified, except as set forth herein, or except by written instrument signed by the duly authorized representatives of both parties. The parties may waive any provision in this Agreement only by a writing executed by the party against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, will operate as a waiver of any continuing or succeeding breach, or as a waiver of any right, remedy or condition.

### **10.4**

The laws of the United States and the State of Delaware shall govern this Agreement.