



REQUEST FOR CONTRACT UPDATE #6

Pursuant to the terms of your awarded contract, all Contractors must notify and receive approval from Region 14 Education Service Center ("Region 14 ESC") when there is an update to the contract. No request will be officially approved without the prior written authorization from Region 14 ESC. Region 14 ESC reserves the right to accept or reject any request.

Iron Brick Associates LLC (Contractor Name) hereby provides notice of the following update to Region 14 ESC contract number 159124 for OMNIA Partners: Cloud Solutions for HR, Finance and Planning (Contract Title) on this date 6/10/26.

Instructions:

Vendors must check all that may apply and provide supporting documentation. Be sure to sign the signature page with all required signatures, prior to submitting your update for approval.

This form is not intended for use if there is a change in operations, which may adversely affect members, i.e. assignment, bankruptcy, change of ownership, merger, etc.

Authorized Affiliates/Dealers/Distributors/Resellers

- ☒ Additions
- ☐ Deletions

Products/Services (check all that apply)

- ☒ Additions
- ☐ Deletions
- ☐ Modifications
- ☐ Pricing Update

Other Vendor may include other notes regarding the contract update here: (attach another page if necessary).

IronBrick would like to add the products and services of Splash Business Intelligence, Inc. (SplashBI), Genius SIS LLC (Genius) and Pension Technology Group LLC (PTG).

Their products and services, as described on the attached pages, are often procured in combination with Workday as S&L organizations modernize their ERP environments. We have seen this in a number of recent clients and solicitations in the market and wish to enhance our solution offering in an effort to secure additional OMNIA awards.

Iron Brick Associates LLC

Vendor Name

Jason A. Ogle, VP of Legal and Contracts

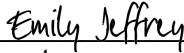
Submitted By


Signature

6/10/26
Date

FOR USE BY Region 14 ESC ONLY:

Emily Jeffrey, Chief Financial Officer

Signed by:

Signature

6/22/2026
Date

New products and services:

Splash Business Intelligence, Inc. has a distinctive analytics platform enhanced by AI capabilities, offering conversational insights, unified reporting, and advanced analytics. As a rapidly expanding, privately held international SaaS provider, they deliver innovative, cloud-based and on-prem solutions to a global client base. With significant operations across North America, Europe, and APAC, SplashBI empowers organizations to achieve smarter, faster decision-making throughout the enterprise.

The Genius SIS LLC solution addresses the most complex educational problems and anticipates new obstacles with an intuitive and adaptable user interface that functions across any industry. The result is our four purpose-built SaaS platforms:

Genius Class: Addressing the needs of online and hybrid K -12 educators.

Genius CE: Providing a complete platform for continuing education and workforce development programs.

Genius LACES: Supporting adult education and literacy at local, state, and federal levels.

Genius Enterprise: Empowering corporations, non-profits, professional associations, and government agencies to share knowledge and upskill their workforce, their customers, and their stakeholders.

Pension Technology Group LLC has been developing innovative software solutions for pension fund administration since 2006 and is trusted by hundreds of state and local organizations. The PensionPro+ SaaS software solution is designed to seamlessly support both your team and your members, offering a user-friendly experience that enhances efficiency and service quality.



June 10, 2026

OMNIA Partners
Attn: Deborah Bushnell
5001 Aspen Grove
Franklin, TN 37067

Subject: IronBrick Master Agreement. 159124 dated 2-1-25 Request
for Product/Services Additions #6

Deborah,

As per Region 14 terms "Products, and Services Additions" IronBrick requests the following change(s):

Product/Service Additions

1. These additional Products/Services align with the scope of the existing Agreement because they are complimentary to the Workday offering and frequently used by our SLED Clients.
2. These Products/Services are being added in accordance with the goals and requirements of Section II - Availability Of Products And Pricing, in the Master Agreement.
3. A detailed description of the specific products and/or services being added
 - SplashBI is a distinctive analytics platform enhanced by AI capabilities, offering conversational insights, unified reporting, and advanced analytics. As a rapidly expanding, privately held international SaaS provider, they deliver innovative, cloud-based and on-prem solutions to a global client base. With significant operations across North America, Europe, and APAC, SplashBI empowers organizations to achieve smarter, faster decision-making throughout the enterprise.
 - The Genius solution addresses the most complex educational problems and anticipates new obstacles with an intuitive and adaptable user interface that functions across any industry. The result is our four purpose-built SaaS platforms: Genius Class: Addressing the needs of online and hybrid K -12 educators.
Genius CE: Providing a complete platform for continuing education and workforce development programs.
Genius LACES: Supporting adult education and literacy at local, state, and federal levels.
Genius Enterprise: Empowering corporations, non-profits, professional associations, and government agencies to share knowledge and upskill their workforce, their customers, and their stakeholders.
 - PTG has been developing innovative software solutions for pension fund administration since 2006 and is trusted by hundreds of state and local organizations. The PensionPro+ SaaS software solution is designed to seamlessly support both your team and your members, offering a user-friendly experience that enhances efficiency and service quality.
4. Pricing for all added products/services shall remain consistent with the MA's terms and conditions.
5. Additional information relevant to each provider is included in the attached files.



Please let me know if this requested Product/Services Additions is acceptable. I would be happy to discuss this request further if additional clarification or supporting documents are needed.

Sincerely,

A handwritten signature in black ink that reads "Jason Ogle".

Jason A. Ogle
VP of Legal and Contracts
979/429-3137
Jason.ogle@ironbrick.com

Exhibits Enclosed:

Request for Contract Update Form
Vendor Add Spreadsheet
OEM Product and Pricing Forms
OEM Service Terms and Conditions

Supplier Name: Iron Brick Associates LLC Contract # 159124

Contract Title: OMNIA Partners: Cloud Solutions for HR, Finance and Planning

Manufacturer	Discount off List	Website	Summary of Offering and How it falls within the Scope
SplashBI	provided at the order level (expecting a minimum of 5% off list)	https://splashbi.com/	Critical to any successful ERP environment is the ability to report on the HR, FINS and Planning data. SplashBI is a distinctive, ERP-focused analytics platform enhanced by AI capabilities, offering conversational insights, unified reporting, and advanced analytics. As a rapidly expanding, privately held international SaaS provider, they deliver innovative, cloud-based and on-prem solutions to a global client base. With significant operations across North America, Europe, and APAC, SplashBI empowers organizations to achieve smarter, faster decision-making throughout the enterprise.
Genius	provided at the order level, based on purchase volume	https://geniuslearning.com/	As Higher Education clients modernize their ERP systems, many decide to modernize their Continuing Education systems as well. The Genius solution addresses the most complex educational problems and anticipates new obstacles with an intuitive and adaptable user interface that functions across any industry. The result is our four purpose-built SaaS platforms: Genius Class: Addressing the needs of online and hybrid K -12 educators. Genius CE: Providing a complete platform for continuing education and workforce development programs. Genius LACES: Supporting adult education and literacy at local, state, and federal levels. Genius Enterprise: Empowering corporations, non-profits, professional associations, and government agencies to share knowledge and upskill their workforce, their customers, and their stakeholders.
PTG	provided at the order level, based on purchase volume	https://ptg-usa.com/	Pension systems are the backbone of many public sector organizations and require a tight integration with core ERP systems like Human Resources and Finance. PTG has been developing innovative software solutions for pension fund administration since 2006 and is trusted by hundreds of state and local organizations. The PensionPro+ SaaS software solution is designed to seamlessly support both your team and your members, offering a user-friendly experience that enhances efficiency and service quality.



FEE SCHEDULE

SplashBI Product	Description	Purchase Unit of Measure (Subscription Fees – Year over Year)
SQLConnect	Provides authorized users with secure, direct access to query and extract data from supported cloud and on-premise systems. It enables real-time, ad hoc SQL querying, data exploration, and export for reporting and analysis through a centralized interface for Oracle Cloud Fusion Applications	Per User
GLConnect	SplashBI Finance Reporting Tool users allow for the generation and modification of financial statements. Client data is added to GLC for additional analysis and drill down capability for Oracle EBS and Oracle Cloud Fusion Applications	Per User
Cloak	AI-powered accessibility platform that helps public sector organizations achieve compliance with DOJ Title II, WCAG 2.1 AA, and PDF/UA accessibility standards. Designed specifically for counties, municipalities, school districts, and government agencies, Cloak automates the process of transforming inaccessible PDF documents into accessible, screen-reader-friendly content.	Per page
Connectors	Enables secure, governed connectivity between SplashBI and a wide range of cloud applications, databases, and data sources. These connectors support both real-time query access and scheduled data ingestion,	Per Connection
Data Pipeline	Prebuilt data integration solution that automates the extraction, transformation, and delivery of data from cloud and on-premise systems into data warehouses, analytics platforms, and downstream applications. It enables organizations to move data in real time or on a scheduled basis, delivering structured, analytics-ready datasets without manual intervention or coding.	Per Connection
SplashBI Platform	Enterprise analytics and business intelligence solution that provides a complete framework for extracting, loading, and transforming (ELT) data from cloud and on-premise systems to prepare it for reporting, dashboards, and analytics. The platform enables organizations to unify data from multiple sources, structure it for analysis, and deliver real-time, actionable insights	Per Platform
SplashAI Platform	Enterprise-grade artificial intelligence capability that enhances analytics by enabling users to	Per User



	interact with their data using natural language. It allows users to ask questions, generate insights, and explore data in real time without requiring technical expertise or complex queries. Integrated directly within dashboards and workflows, SplashAI provides contextual insights, predictive recommendations, and guided analysis while maintaining strict governance, security, and role-based access controls.	
Splash Reporting	Enterprise analytics and reporting solution that delivers prebuilt and customizable dashboards across finance, HR, payroll, and other business functions. It enables users to access, visualize, and analyze data from cloud and on-premise systems through an intuitive, web-based interface	Per Module
SplashBI Dashboards/Analytics	Interactive, web-based visualizations that provide real-time and actionable insights across key business functions (but not limited to) such as Financial Analytics and People Analytics (Core HR, Recruit, T&L, etc.) and Operational Analytics, etc. They enable users to monitor performance, track KPIs, and explore data through intuitive charts, graphs, and drill-down capabilities.	Per Module
Read Access Users	Licensed users who are granted view-only access to dashboards, reports, and data visualizations within the SplashBI platform. These users can interact with existing content—such as applying filters, drilling down into data, and exporting results—but do not have permissions to create, modify, or administer reports, dashboards, or underlying data structures	Per User
Admin Developer Users	licensed users with full access to the SplashBI platform, including the ability to create, modify, and manage dashboards, reports, data pipelines, and integrations. These users can develop custom queries, build new visualizations, configure data sources, and administer user roles and permissions.	Per User
Hosting	Platform fees from SplashBI to host client data in an SBI Cloud. This is a Yearly Subscription Fee.	Per Environment



MANUFACTURER'S SOFTWARE AND PROFESSIONAL SERVICES FOR RESALE

SplashBI Product	Description
SQLConnect	Provides authorized users with secure, direct access to query and extract data from supported cloud and on-premise systems. It enables real-time, ad hoc SQL querying, data exploration, and export for reporting and analysis through a centralized interface for Oracle Cloud Fusion Applications
GLConnect	SplashBI Finance Reporting Tool users allow for the generation and modification of financial statements. Client data is added to GLC for additional analysis and drill down capability for Oracle EBS and Oracle Cloud Fusion Applications
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Connectors	Enables secure, governed connectivity between SplashBI and a wide range of cloud applications, databases, and data sources. These connectors support both real-time query access and scheduled data ingestion,
Data Pipeline	Prebuilt data integration solution that automates the extraction, transformation, and delivery of data from cloud and on-premise systems into data warehouses, analytics platforms, and downstream applications. It enables organizations to move data in real time or on a scheduled basis, delivering structured, analytics-ready datasets without manual intervention or coding.
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SplashAI Platform	Enterprise-grade artificial intelligence capability that enhances analytics by enabling users to interact with their data using natural language. It allows users to ask questions, generate insights, and explore data in real time without requiring technical expertise or complex queries. Integrated directly within dashboards and workflows, SplashAI provides contextual insights, predictive recommendations, and guided analysis while maintaining strict governance, security, and role-based access controls.
Splash Reporting	Enterprise analytics and reporting solution that delivers prebuilt and customizable dashboards across finance, HR, payroll, and other business functions. It enables users to access, visualize, and analyze data from cloud and on-premise systems through an intuitive, web-based interface
SplashBI Dashboards/Analytics	Interactive, web-based visualizations that provide real-time and actionable insights across key business functions (but not limited to) such as Financial Analytics and People Analytics (Core HR, Recruit, T&L, etc.) and Operational Analytics, etc. They enable users to monitor performance, track KPIs, and explore data through intuitive charts, graphs, and drill-down capabilities.
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Admin Developer Users	licensed users with full access to the SplashBI platform, including the ability to create, modify, and manage dashboards, reports, data pipelines, and integrations. These users can develop custom queries, build new visualizations, configure data sources, and administer user roles and permissions.
Hosting	Platform fees from SplashBI to host client data in an



	SBI Cloud. This is a Yearly Subscription Fee
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Category	Description	Onshore Rate (Per Hour)	Offshore Rate (Per Hour)
IT Program Manager	Acts as overall program manager and central point of contact for program wide IT solution activities. Responsible for planning and executing a project. Prepares and maintains the project schedule and budget. Prepares and delivers status reports to the customer. Oversees all work and takes corrective action as necessary to ensure project success. Manages staffing, budget, prioritization, and other personnel matters.	\$230.00	\$70.00
Reports Developer	- Create ad-hoc queries and reports as requested and provide on-going analytical support for these requests - Use SplashBI for developing reports and dynamic dashboards, and any additional BI tools - Tune SplashBI queries to run efficiently in a large data volume environment	\$207.00	\$63.00
SplashBI Implementation Rate	The SplashBI Hourly Implementation rate is used for all activities related to the plan, coordination, education, and implementation of our software.	\$230.00	\$70.00
Applications Technical Consultant	- Perform SplashBI deployments and Support configuration management. - Perform ongoing maintenance and support for SplashBI application, backups, recovery, and system reliability. - Participate in technology discussions and recommend improvements to database architecture, infrastructure, and operational best practices.	\$230.00	\$70.00
Applications Functional Consultant	Gather Business requirements, Analyze and transform to application requirements, Fit-Gap Analysis, Functional Design approval process and strong interaction with development team to test and delivery the solution.	\$230.00	\$70.00
Remote Trainings	This is used for any additional SplashBI product training beyond the scope of Implementation	\$288.0	NA

Rates for professional services are for SplashBI to Ironbrick.



EXHIBIT C
MANUFACTURER’S END USER LICENSING AGREEMENT

Part 1: End-User License Agreement and Order Form for SplashBI

**SplashBI Customer Order Form
and End-User License Agreement**

Section I. Customer Information

Customer Legal Name: ("Customer")	Address:
Is Purchase Order Required?: 	Purchase Order Number:

Main Contact Name: 	Billing Main Contact:
Phone: 	Phone:
Email: 	Email:
SplashBI Contact: 	SplashBI Contact Email:

Section II. Overview

Contract Initial Term: 	Platform: 	
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Contract Date: Date of Last Signature below	Total Contract Value:	
Total First Year:	Total Year After Year:	
License Type: User Based	Hosting Type: <u>Customer Hosted:</u> <u>SplashBI Hosted:</u>	☐ On-Premise ☐ Customer's Cloud Instance ☐ SplashBI Private Cloud ☐ SaaS (<i>not yet available</i>)

Section III. Configuration & Products

Configuration				
Deployment Type:		Servers/Instances:		
Product	Quantity	Sale Price	Discount	Annual Net Total
		\$	%	\$

<u>Total First Year Cost:</u>	\$
<u>Total Year After Year Cost:</u>	\$
<u>Total Professional Services:</u>	\$
<u>Total Contract Value:</u>	\$

If needed, minimum number of users to be added shall be in blocks of 10% of original purchase	Payment terms as set out in EULA Any state, local, or use tax will be paid by the Customer Method of Payment: Bank Wire or Check
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Contract Term: The initial term of this Order Form and End-User License Agreement ("Agreement") shall be the number of years set out above (the "Initial Term"). Subscription fees listed above remain constant for the Initial Term. No reductions in the quantities or configurations are permitted during the Initial Term and any reductions following the Initial Term may result in lost discounts and/or increased charges. Following the Initial Term, this Agreement may be renewed for successive terms at then negotiated rates (each a "**Renewal Term**").



To the extent applicable, the parties shall comply with the terms set out in the Appendices, which shall form part of the Agreement:

Appendix 1: Hosting Provisions

Appendix 2: SplashBI's Support Policy

Appendix 3: SplashAI and Telemetry



Section IV. Grant of License with Definitions, Terms and Conditions

1. Parties and Definitions

- 1.1. The parties to this Agreement are (1) Splash Business Intelligence, Inc. (“**SplashBI**”) and (2) Customer indicated in the attached Order Form.
- 1.2. **Software** means the proprietary:
 - 1.2.1. SplashBI software platform(s) (including, without limitation, SplashBI platform(s) and SplashAI platform(s), and the ability to build analytics, dashboards, reports, Excel connect, mobile application, connectors); and
 - 1.2.2. SplashBI software product(s) (including, without limitation, pre-built analytics (reports, dashboards, etc.), and any derivative thereof),
 provided in connection with this Agreement in object code form and as set out in the corresponding Order Form. “**Software**” shall also include any support services and maintenance releases provided to Customer under this Agreement. Unless otherwise noted, the Software and Documentation are referred to collectively herein as “**Software**”.
- 1.3. **Affiliate** means each legal entity that is directly or indirectly controlled by Customer on or after the Effective Date or for so long as such entity remains directly or indirectly controlled by Customer (where “controlled” means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).
- 1.4. **Agreement** means this End-User License Agreement and the Order Form (and any renewal and/or addendum entered into by the parties from time to time) between Splash BI and Customer.
- 1.5. **Authorized User** means those uniquely identified individuals for whom the applicable license fees have been paid, as stated in the Order Form, who are authorized by Customer to install and/or use the functionality in the Software for any purpose regardless of whether those individuals are actively using the programs at any given time. Licenses granted on an Authorized User basis may be reassigned between uniquely identified individuals over time but may not be reassigned so frequently as to enable the sharing of a single license between multiple users.
- 1.6. **Instance** means an installation of SplashBI on a server with a given port number. Multiple instances can be installed on a physical server on different port numbers.
- 1.7. **Connector** means a component of SplashBI that helps it to connect to the source system and extract the relevant data. There are three types of connectors. Database, File Based and Cloud Based.
- 1.8. **Users** can mean different types of users:
 - 1.8.1. **Admin User.** Users with this type of role have most comprehensive control over Software functionality including user administration, connection maintenance, configure system-wide settings, ERP Mapping, license administration, user permissions and more. This user can also schedule and monitor system maintenance jobs required for optimum performance of the software. An admin user can perform all the activities of a Developer User and of a User.



- 1.8.2. **Developer User.** Developer Users are able to perform advanced technical functions including (but not limited to) the ability to create new domains, connect to databases, import views/tables, establish joins, review entity relationship diagram, create new reports/visualizations, export reports/visualizations, copy reports/visualization, domain filters, manage LOVs, develop drilldowns, and synchronize domains with database.
- A. **User.** Users are provided with rich self-service functionality allowing them to develop powerful reports and visualizations without requiring intense technical know-how. Authorized Users can run reports/visualizations, copy & save them, add/remove available columns, manage filters, create pivot tables, define sorting, drill down, change visual attributes in charts, choose chart types, schedule reports, distribute them, export to Excel and much more. Authorized Users cannot create net new reports but if they have permissions, they can copy existing reports and develop/modify/edit/save their copies without consuming Developer User licenses.
 - B. **Mobile and Excel Connect User.** These roles enable XLConnect and mobile functionality for Software accounts. These are “add-on” roles, and their underlying capabilities remain tied to the three primary roles (Administrator, Developer and User) as described above.
 - C. **GL Connect User.** GL Connect User runs FIN reporting using an Excel Plug-In to create, edit and share reports. One-button refresh of multiple reports directly in Excel across many tabs. Access GL Only Data with automatic drilldowns to subledger details, ad hoc reporting, financial statement tool. It also provides journal entry and budget uploading features for actual vs budget reports to replace Web ADI & FSG's for Oracle EBS only.
 - D. **SplashGL User.** SplashGL User runs FIN reporting using an Excel Plug-In to create, edit and share financial reports. One-button refresh of multiple reports directly in Excel across many tabs. Access GL Only Data with automatic drilldowns to subledger details, ad hoc reporting, financial statement tool for Oracle ERP Cloud only or Oracle EBS.
- 1.9. **Pre-built Content/Analytics/Data Models:** Pre-built Content or Pre-built Analytics refers to the out of the box or seeded reports and dashboards that SplashBI offers for various data sources. Some of the Pre-built Analytics include pre-built SplashBI data models where data is stored to analyze. Customer is not allowed to modify the seeded content, but can copy and make changes (filter, color, pivots, columns, charts, etc.) to the format.
- 1.10. **Key:** In order to use the Software under this Agreement, Customer must activate its copy of the Software with the valid license key or activation code provided to it (“Product Key”) at the time of purchase and/or submit a uniquely identifiable user registration when prompted, in accordance with the scope of use and other terms specified for each type of Software, in the Documentation. SplashBI may ask to audit Customer User and License counts annually. Once completed, SplashBI will issue a key for the Software to operate year after year upon: (a) the payment of an automatic renewal; or (b) the payment of the renewal invoice which will be sent approximately 60 days prior to expiration.
- 1.11. **User-Based Server License:** If Customer’s server Software License is designated as User-Based, the count of Authorized Users enabled to use such Server Software in all production and non-production environments must not exceed the number of User Licenses purchased on the applicable Order Form. For the avoidance of doubt, “User-Based” Server Licenses may also be referred to in the Order Form or Documentation as “Web Client” Server Licenses or “Interactor” Server Licenses.



- 1.12. **Concurrent User/Concurrency**: means the active number of Users (Admin Users, Developer Users, Users, Mobile Users, Excel Connect Users) that are logged in at the same time within the SplashBI system.
- 1.13. **Non-Production Environments**: Customer may use the Server Software in a technical environment and on the platforms and configurations specified in the Documentation, solely for internal development and testing in connection with Customer's Licensed Software, or for disaster recovery purposes ("Non-Production Environment"). Customer's installation, activation or use of a copy of the Software in a Non- Production Environment is limited to the same number of Authorized Users and/or computers as provided on the SplashBI Customer Order Form. Customer's use of the Server Software in a Non- Production Environment may be concurrent with its use of the Licensed Software in a Production Environment, and such use is conditioned on Customer having sufficient authorized Licenses for the Software. Customer is only entitled to two (2) Non-Production Environments under this Agreement. Any additional Licenses for Non-Production Environments, other than what is described in this Section, can be purchased by Customer and shall be subject to the additional terms and conditions contained in the applicable Order Form.
- 1.14. **Production Environments**. As it relates to the Server Software, use of the Software for the purpose of creating, sharing, viewing and/or revising visualizations is considered use within a "Production Environment" and Customer is entitled to one (1) Production Environment for each Server Software License purchased by it pursuant to an Order Form.
- 1.15. **Deployment Type**: SplashBI Software can be deployed in the following manner:
 - 1.15.1. On Premises: SplashBI Software is installed on premises in Customer's environment that includes servers in its data centers, or its private cloud (AWS, Azure, RackSpace, etc.), or in third party hosted data centers.
 - 1.15.2. Private Cloud (SplashBI): An environment created exclusively for Customer by SplashBI. This environment can be maintained by Customer or by SplashBI for an appropriate fee. This can be accessed only from Customer worksite or publicly (via a URL) as desired by Customers.
 - 1.15.3. Public Cloud (SplashBI): A partitioned environment created for Customer by SplashBI which co-exists with other customers. This environment will be maintained by SplashBI for an appropriate fee. This can be accessed only publicly via a URL.
- 1.16. **Customer Data**: means data generated by Customer or Customer's Authorized User and used by or imported into the Software, but excludes data generated by a Customer Sublicensee unless such data is combined with Customer's data or is relevant to Customer's provision of Services to such Customer Sublicensee.
- 1.17. **Documentation**: means any supporting product help and technical specifications documentation provided by SplashBI with the Software to Customer, as the same may be modified from time to time in the sole discretion of SplashBI. Documentation is available upon the request of Customer at any time or upon Software download or service completion. Customer's use of the SplashBI products is subject to the terms of the documentation as if such documentation was attached to and made a part of this agreement.
- 1.18. **Effective Date**: means the last date signed below.
- 1.19. **Term**: means the Initial Term specified on the Order Form, together with any Renewal Term.



- 1.20. **Order Form:** means any order on a SplashBI order form that references this Agreement, including the order form attached hereto. Each Order Form which references this Agreement shall be deemed to be a part of this Agreement.
- 1.21. **party or parties:** means SplashBI and Customer, individually and collectively, as the case may be.
- 1.22. **Services:** shall mean installation, configuration, and implementation; customization, integration and acceptance testing; custom development, consulting and other professional services performed by SplashBI for Customer pursuant to a SOW, the Order Form or a master services agreement between the parties. The SOW will include a schedule for the performance of the Services, subject to availability of SplashBI personnel.
- 1.23. **SOW:** shall mean SplashBI's statement of work which shall specify the Services to be provided, the scope and specifications of such Services and the applicable fees and specific payment terms applicable to the Services.

2. GRANT OF LICENSE. SOFTWARE, SERVICES AND SUPPORT

- 2.1. Subject to the terms and conditions of this Agreement and payment of license fees under an Order Form, from the Effective Date, SplashBI hereby grants to Customer, and Customer hereby accepts, a personal, non-transferable, non-sublicensable, nonexclusive limited subscription license to access and use the Software and Services set forth on each SplashBI Order Form in accordance with the documentation supplied by SplashBI, only during the Term set forth on such SplashBI Order Form and solely for Customer's internal business purposes, including its operations, strategy and decision making process, in accordance with the license scope and terms set forth in the Order Form ("**Licensed Software**"). The Software and Services are subject to modification from time to time at SplashBI's sole discretion, for any purpose deemed appropriate by SplashBI. SplashBI will use reasonable efforts to give Customer prior written notice of any such modification.
- 2.2. If Splash BI is hosting the Software, SplashBI will undertake commercially reasonable efforts to make the Software and Services available twenty-four (24) hours a day, seven (7) days a week, excluding scheduled or emergency maintenance or downtime caused by matters beyond its reasonable control. However, SplashBI does not warrant that Customer's use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure or that it will be compatible with all of Customer's equipment or software configuration or that the Software is designed to meet all Licensee's business requirements. Notwithstanding the foregoing, SplashBI reserves the right to suspend Customer's access to the Software and Services in the event Customer is in breach of this Agreement, including failure to pay any amounts due to SplashBI.
- 2.3. Subject to the terms hereof, SplashBI will provide reasonable support to Customer for the Software and Services from Monday through Friday during SplashBI's normal business hours and provision up to 5 Customer User ID's on its Support Portal. Customer will remain current with SplashBI version and release levels as SplashBI will support only the then current version and one prior.
- 2.4. Custom reports developed by or converted for the Customer are not covered in SplashBI standard maintenance and support. Services for same shall be negotiated prior to delivery of the service.
- 2.5. The Discoverer Migration Utility from SplashBI, if included, does not guarantee 100% conversion of Customer workbooks.
- 2.6. Any service hours quoted will expire 12 months from execution of this Agreement unless otherwise agreed to in writing.



- 2.7. Professional Services. SplashBI shall provide the number of hours of professional consulting or training services ("Professional Services") purchased, if any. The parties acknowledge that the scope of the Professional Services provided may include any or all of the following: assistance with Software installation, deployment and usage; training on the use of the Software; building data strategy or custom development of data model, reports, dashboards, etc.; or any other related services.
- 2.8. Customer shall have the right to use any deliverables (including any documentation, code, Software, training materials or other work product) delivered as part of the Services solely in connection with Customer's use of the Licensed Software, subject to all the same terms and conditions as apply to the Licensed Software, and subject to any additional terms and conditions provided from time to time in writing by SplashBI. Customer may order Services under a mutually executed SOW describing the Services to be performed, fees and any applicable milestones, dependencies, assumptions and other technical specifications.

3. RESTRICTIONS AND RESPONSIBILITIES

- 3.1. Access to the Software and Services may require the Customer to install certain other software applications. Customer agrees to be bound by any end-user software agreements that govern the installation and use of such software applications.
- 3.2. Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to obtain, discover, receive, review or otherwise use or have access to the source code, object code or underlying structure, ideas or algorithms of the Software and Services or any documentation or data related to the Software and Services (or any part thereof) ("Software") (except to the extent applicable laws specifically prohibit such restriction); modify, translate, or create derivative works based on the Software and Services; use the Software and Services for time sharing or service bureau purposes or for any purpose other than its own use for internal business purposes; or use the Software and Services other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws, intellectual property, consumer and child protection, obscenity or defamation). For the avoidance of doubt, Customer may not use the Software and Services in order to engage, directly or through any third party, in development of any product which is or may constitute a derivative work of the Software or may infringe on SplashBI's intellectual property rights.
- 3.3. Customer will cooperate with SplashBI in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required and taking such other actions as SplashBI may reasonably request. Customer will also cooperate with SplashBI in establishing a password or other procedures for verifying that only designated employees of Customer have access to the Software and Services.
- 3.4. Customer acknowledges and agrees that the Software and Services operates on or with applications operated by third parties ("Third Party Software"). SplashBI is not responsible for the operation of any Third-Party Software nor the availability or operation of the Software and Services to the extent such availability and operation is dependent upon Third Party Software. The Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Software and for complying with any applicable terms or conditions thereof. SplashBI does not make any representations or warranties with respect to Third Party Software or any third-party providers. Any exchange of data or other interaction between Customer and a third-party provider is solely between Customer and such third-party provider and is governed by such third party's terms and conditions.



- 3.5. Customer will designate an employee who will be responsible for all matters relating to this Agreement (“Primary Contact”). Customer may change the individual designated as Primary Contact at any time by providing written notice to SplashBI.
- 3.6. Customer hereby agrees to indemnify and hold harmless SplashBI against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any third-party claim or action that arises from an alleged violation of the foregoing. Although SplashBI has no obligation to monitor the content provided by Customer or Customer’s use of the Software and Services, SplashBI may do so and may remove any such content or prohibit any use of the Software and Services it believes may be (or alleged to be) in violation of the foregoing.
- 3.7. Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent.
- 3.8. Customer further acknowledges and agrees that any Third-Party software licenses (any database or application such as Microsoft Office, Oracle, SAP, PeopleSoft Java, Adobe, Salesforce, etc.) that are required for the operation of SplashBI are the obligation of the Customer to obtain prior to the implementation of the Software.
- 3.9. Third-Party Code.
- 3.9.1. The Software may contain or be provided with components which are licensed from third parties including components subject to the terms and conditions of “open source” software licenses (“Open-Source Software”). Open-Source Software may be identified in the Documentation, or in a list of the Open-Source Software provided to Customer upon its written request. To the extent required by the license that accompanies the Open-Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open-Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.
- 3.9.2. The Software consumes certain services (Web Services, Extracts, Integrations, etc.) that may be allowed and available by the Source Software (including Open-Source Software) for computing or providing results. In the event any such services are discontinued by the source application for any reason, SplashBI may provide other alternatives to provide similar outcomes, but is under no obligation to do so and will not incur any liability for failing to do so.

4. CONFIDENTIALITY

- 4.1. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Confidential Information” of the Disclosing Party).



- 4.2. The Receiving Party agrees: (i) not to divulge to any third person any such Confidential Information, (ii) to give access to such Confidential Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own proprietary and confidential information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, SplashBI may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Services' performance.
- 4.3. Customer acknowledges that SplashBI does not wish to receive any Confidential Information from Customer that is not necessary for SplashBI to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, SplashBI may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information.
- 4.4. Each party will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by the other party prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary in connection with bona fide financing or acquisition due diligence. Neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. Except as expressly set forth herein, SplashBI alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services or the Software. Customer may, at its discretion, provide feedback, suggestions, improvements, enhancements and/or feature requests to SplashBI with respect to its use of the Services. Customer shall and hereby does assign all right, title and interest in and to such feedback to SplashBI and SplashBI may use or modify such feedback for any purpose, including developing and improving the SplashBI Software without any liability, restriction or payment to Customer. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. Customer is hereby granted a non-exclusive, nontransferable, revocable right to use the resulting data for its internal business analysis purposes only. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights.
- 5.2. SplashBI may obtain and process content/data provided by or on behalf of Customer ("Content") only to perform its obligations under this Agreement. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content submitted to the Services and the intellectual property rights with respect to that Content. If SplashBI receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a "Claim"), SplashBI may (but is not required



to) suspend activity hereunder with respect to that Content and Customer will indemnify SplashBI from all liability, damages, settlements, attorneys' fees and other costs and expenses in connection with any such Claim, as incurred.

- 5.3. SplashBI will indemnify, defend and hold Customer harmless from and against any and all third party claims, liabilities, losses, damages and/or costs and expenses (including reasonable attorneys' fees) which are paid or payable to an unaffiliated third party relating to any claim that the Software and related services, as provided by SplashBI to Customer under this Agreement and used within the scope of this Agreement, violates, infringes or misappropriates any U.S. patent rights, copyright rights, trade secret rights or any other intellectual property or proprietary rights of such third parties; provided that Customer (a) promptly notifies SplashBI in writing of each such claim, (b) grants SplashBI the option to assume sole control of the defense and settlement of such claim, and (c) provides SplashBI, at SplashBI's expense, with all assistance, information and authority reasonably required for the defense and settlement of such claim. The foregoing obligations do not apply with respect to portions or components of the Software and/or Services (i) not created by SplashBI, (ii) resulting in whole or in part in accordance from Customer specifications, (iii) that are modified by any party other than SplashBI or its agents, (iv) combined with other products, processes or materials not provided or approved by SplashBI, (v) where Customer continues using the Software and Services after being notified of modifications that are necessary, or (vi) where Customer's use of the Software and Services is not strictly in accordance with this Agreement and all related documentation. Customer will indemnify SplashBI from all damages, costs, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from SplashBI's indemnity obligation by the preceding sentence.

6. PAYMENT OF FEES

- 6.1. Customer will pay SplashBI the applicable fees as set forth on the SplashBI Order Form (the "Fees"). If Customer's use of the Software and/or Services exceeds the users/connections/headcounts/content/services set forth on the SplashBI Order Form, Customer will be invoiced at the end of each calendar month for the excess usage over the Software and/or Services Capacity, at the rate set forth on the SplashBI Order Form, and Customer agrees to pay the additional fees without any right of set-off or deduction. Payment of all Fees will be due within thirty (30) days of the invoice date in which the Fees are stated.
- 6.2. Unpaid Fees not subject to good-faith dispute are subject to a finance charge of the lower of 1.5% per month or the maximum amount permitted by law, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state and local use, sales, value-added, property and similar taxes, levies, duties, imposts and excises, if any. Customer agrees to pay such amounts (excluding national, regional, or local taxes based on SplashBI's net income) unless Customer has provided SplashBI with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to SplashBI on account thereof.

7. TERMINATION

- 7.1. Subject to earlier termination as provided below, this Agreement is for the Initial Term as specified in the SplashBI Order Form, and each Renewal Term.



7.2. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period.

7.3. Upon termination or expiration of this Agreement, the rights and licenses granted to Customer hereunder shall terminate and Customer shall immediately return anything Customer has obtained in connection with the Services, together with any and all documents, notes and other materials regarding the Services, to SplashBI, including, without limitation, all Confidential Information of SplashBI, and all copies and extracts of the foregoing. The following sections will survive termination or expiration of this Agreement: Sections 2, 3, 4, and 6-11, and any outstanding payment obligation. To be clear, in the event of termination for any reason, SplashBI will not refund any portion of the fees paid by Customer to SplashBI and Customer will be liable for the fees for the entire Service Term.

8. CUSTOMER SOFTWARE SECURITY

SplashBI represents and warrants that it will not knowingly include, in any SplashBI software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, SplashBI fails to comply with the warranty in this Section, Customer will promptly notify SplashBI in writing of any such noncompliance. SplashBI will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

9. WARRANTY DISCLAIMER

WITHOUT LIMITING SPLASHBI'S OBLIGATIONS UNDER SECTION 1.2, SPLASHBI SOFTWARE, SERVICES, CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT. SPLASHBI DOES NOT WARRANT THAT THE SPLASHBI PRODUCTS WILL BE ENTIRELY FREE FROM DEFECTS OR OPERATE UNINTERRUPTED OR ERROR FREE.

10. LIMITATION OF LIABILITY

IN NO EVENT WILL SPLASHBI, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR LICENSORS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGE OF ANY KIND WHATSOEVER (HOWEVER ARISING) OR (II) FOR ANY DIRECT DAMAGES, WHICH WILL IN NO EVENT EXCEED (IN THE AGGREGATE) THE LICENSE FEES PAID BY CUSTOMER TO SPLASHBI ATTRIBUTABLE TO THE SPECIFIC PRODUCTS GIVING RISE TO SUCH DAMAGES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States



Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. By using the Software and/or Services, Customer represents and warrants that it is not located in, under the control of, or a national or resident of a country subject to United States embargo. Customer agrees to comply strictly with all applicable regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import software.

12. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub licensable by Customer except with SplashBI's prior written consent. SplashBI may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. The failure of either party to act with respect to a breach of this Agreement by the other party or others shall not constitute a waiver and shall not limit the non-breaching party's rights with respect to such breach or any subsequent breaches. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind SplashBI in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Neither party will be liable to the other by reason of failure or delay in the performance of this Agreement if the failure arises out of any circumstance beyond such party's reasonable control, including acts of God, flood, fire, natural disaster, war, terrorism, invasion, riot, civil unrest, embargos, national or regional emergency, strikes, labor disruptions, law changes, or power or telecommunication interruptions or shortages. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. SplashBI will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the laws of the State of Georgia, USA. without regard to its conflict of law's provisions. The federal and state courts sitting in Georgia, USA. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek immediate injunctive relief in any court of competent jurisdiction. This Agreement, together with the Order Form and any corresponding, master services agreement and SOW, constitute the complete agreement between the parties relating to the provision by SplashBI to Customer of the Software and Services, and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. To the extent that the provisions are applicable to Software and Services being provided by SplashBI hereunder, the provisions of Appendix, 1, 2 and 3 shall apply. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which all together shall be deemed to constitute one and the same instrument.

The person(s) signing below represents and warrants that they have the necessary authority to bind the principal set forth below.

SPLASH Business Intelligence, Inc.

Customer:

Signed: _____

Signed: _____

Print Name:

Print Name:

Title:

Title:

Date:

Date:

Approved by SplashBI Legal _____



APPENDIX 1: HOSTING PROVISIONS

Part A – Customer Hosted (only applicable if Customer is hosting)

1. The following provisions shall apply when Customer Hosting is selected on the Order Form, and the Customer is hosting **on-premise** or in a **Customer instance/environment**:
 - 1.1. The Customer server (and related or peripheral equipment and software) or instance on which the SplashBI software is to be installed (“Equipment”) will not be used in any manner that would impair, harm or otherwise damage the Software. Customer will not transfer any such Equipment until all Software has been permanently removed. Customer will maintain Equipment in good working order (including but not limited to backup, recovery, and reboot services as necessary). Customer will have full responsibility for security of all Equipment (physical, electronic and otherwise) such that (except for use of the Service as expressly and unambiguously authorized in Sections 1 and 2 of this Agreement) no person or entity other than SplashBI will have any direct or indirect access to any Software. Customer will not transfer any such Equipment until all Software has been permanently removed.
 - 1.2. Customer acknowledges and agrees that SplashBI will, with prior approval, have access to Equipment (including but not limited to onsite access and electronic access) to engage in any activity or action relating to Software (including but not limited to maintenance and installation of Software) subject to Customer’s standard reasonable security procedures.
 - 1.3. Splash BI will have no obligation to insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or its employees, contractors, and agents.
 - 1.4. Upon termination, Customer will permit SplashBI to access the Equipment to remove all SplashBI property, including but not limited to the Software.
 - 1.5. Customer will not allow any lien to attach to any Software, will not remove any notice SplashBI may apply to the Equipment indicating that the Software is not owned by Customer and will publicly file any documents requested by SplashBI to such effect.

Part B – SplashBI Hosted (only applicable if SplashBI’s private cloud environment is being used)

2. The following provisions shall apply when Customer Hosting is selected on the Order Form, and the Customer is hosting in its **private cloud environment/instance**:
 - 2.1. Instances. SplashBI will provide One Production and One Non-Production Instance.
 - 2.2. Hosting Fees. Any additional hosting fees mentioned in the EULA or the Order Form will be charged for the duration of the agreed term.
 - 2.3. Included Services. As part of the Hosting Agreement the following services will be provided and are included:
 - 2.3.1. System Access: SplashBI shall provide Application access (User Interface and Metadata) for the Licensee to setup purchased connectors from Company, build reports and dashboards thus enabling the users to perform day to day operations.
 - 2.3.2. System Updates: As part of the System Maintenance, the SplashBI shall be responsible for:
 - 2.3.3. Infrastructure Updates: The SplashBI will perform activities such as (but not limited to) patching of the operating system, data encryption, security updates to the instances.
 - 2.3.4. Application updates: SplashBI will support the initial implementation and subsequent “Updates” or “Upgrades” consisting of a new releases or versions of the SplashBI Products. SplashBI will implement Patches, Updates and Upgrades in accordance with the Change Management Section set forth herein.
 - 2.3.5. Backups: SplashBI shall create and maintain a backup plan whereby Licensee Content is backed up. SplashBI shall take a nightly electronic backup of the Licensee Content, as defined below, for the purpose of archival storage in the case of Disaster
 - 2.4. Disaster Recovery: The potential maximum time period of data loss is measured from the onset of the Disaster (“Recovery Point Objective”, or “RPO”), and the objective for the potential maximum period of time to restore production use of the Production Environment(s) as part of the services (“Recovery Time Objective”, or “RTO”), is measured from the declaration of a Disaster.
 - 2.5. Recovery Time Objective: SplashBI’s objective for the time to re-establish the services from a Production Environment at a Secondary Site is eight hours from the declaration of Disaster (“Recovery Time Objective”).
 - 2.6. Recovery Point Objective: SplashBI’s objective for which backup is used to re-establish the services from a Production Environment at a Secondary Site is twenty-four hours or the last backup whichever is the least from the declaration of Disaster (“Recovery Point Objective”).
 - 2.7. Data Security and Breach Notification: Company will implement commercially reasonable administrative, physical, and technical safeguards designed to secure Licensee's property and Personally Identifiable Information (PII) from unauthorized access, disclosure, or use, which could include where commercially reasonable or to the extent required by Law, data encrypting, firewalls, and physical access controls to buildings and files. In the event the Provider has a reasonable, good faith belief that an unauthorized party has gained access to or been disclosed PII, that License has provided Provider or that Provider has collected on Licensee's behalf under the Agreement, Provider will promptly, or if required by Law in such other time required by such Law, notify Licensee and will use reasonable efforts to cooperate with your investigation of the incident.
 - 2.8. Data Source Connectivity: Company SplashBI shall work with the Licensee or Licensee’s Vendor to establish connectivity between a data source present in Licensee Local Area Network/ Vendor’s Network and SplashBI Hosted Application. Company and Licensee/Licensee’s Vendor will be both responsible to make sure that this connectivity is available in accordance with System Availability section set forth herein.
 - 2.9. Cloning: Licensee can request On-Demand clone of Production Environment to a Non-Production Environment. Each request will be processed as per the mutually agreed timelines. A non-production environment is not designed to fully replicate or clone the production environment in terms of physical infrastructure. Per request, Provider will provide up to two clones of the production per quarter. This cloned instance will not be backed up. Non-production instances are designed for Customers to test and approve new update software and changes in software configuration before implementing such software in a production environment. It may not be used for production purposes.
 - 2.10. Excluded Services. The following Services are excluded:

- 2.10.1. Support of Client Desktops
- 2.10.2. Support or diagnosis of Local Area Network connectivity.
- 2.10.3. Local Area Network device configuration such as proxy servers

2.11. System Availability. Subject to the terms and conditions of this Agreement and being available 24*7*365, Provider shall use its best commercial efforts to provide 99.90% monthly average availability of production environments, throughout the term of this agreement. For purposes of this section "Availability" means that the Provider is able to execute a simulated application login test and run a sample report. The Production System Availability will be calculated as follows:

$$\text{Production System Availability Percentage} = ((a - b) \times 100) / a$$

In the equation above, "a" equals the total number of minutes in each calendar month, and "b" ("Outage Minutes") equals the total number of applicable minutes that service is not available in each month. Specifically excluded from "b" are the downtime & advance notice scenarios as described in sections 3.1 and 3.2 below and the time lost due to support cases "Waiting on Customer".

- 2.12. Downtime : Licensee agrees that from time to time the SplashBI may be inaccessible or inoperable for various reasons, including (i) periodic, scheduled, maintenance procedures or repairs which Provider may undertake from time to time; or (ii) causes beyond the control of Provider or which are not reasonably foreseeable by Provider, including interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion or other failures (collectively "Downtime").
- 2.13. Advance Notice: Provider shall provide five (5) business days' advance notice to Licensee in the event of any scheduled Downtime and shall provide notice to Licensee of unscheduled downtime as soon as reasonably possible. If possible and in the control of Provider, Scheduled Downtime will occur outside of normal business hours (6am Eastern – 9pm Eastern), unless otherwise specified and agreed to by both parties.
- 2.14. Monitoring and Performance: Provider will provide network and system performance reports on a quarterly basis, at a minimum, or as requested by Licensee. These reports are designed to provide usage and performance information to help with the continual monitoring and improvement of the design and operation of the hosted environment.
- 2.15. Production System Availability Credits:(optional) In the event that Provider fails to meet the Production System Availability objective specified, with respect in any given calendar month, Client will receive a Hosting & Managed Services credit for the specific failed Hosting Application on a future invoice equal to the corresponding percentage indicated below:
- | Level | Availability Low % | Availability High % | Outage Duration - Low
HR: MIN | Outage Duration High
HR: MIN | Percent of Monthly Invoice Credit |
|-------|--------------------|---------------------|----------------------------------|---------------------------------|-----------------------------------|
| 1 | 99% | 100% | 0 | 8:00 | 0% |
| 2 | 96% | 99% | 8:01 | 29:00 | Prorate from 0 to 5% |
| 3 | 0% | 96% | 29:01 | 720:00 | Prorate from 0 to 5% |
- In the event the Production System Availability Level 3 is missed in successive months, the credit for each successive failure will be doubled. Maximum Annual credit allowed will be no more than 30% of the annual Hosting and Managed Services Fees.
- 2.16. If for any reason, Provider has outages of Level 3 service credits for 4 consecutive months in a row, Licensee may terminate this Hosting and Managed Services agreement.
- 2.17. Within seven (7) days from the end of the applicable calendar month, Provider will provide a report showing service level performance for the preceding month. The aggregate maximum number of service credits to be issued by Provider to Licensee for all such failures during any given calendar month shall not exceed 10% of the total fees for one month of service. All service credits earned during the initial term shall be totaled at the end of the term and may be applied to the next period's SplashBI Software fees or used as a refund payment to Customer.
- 2.18. Change Management. For all Production Environments, SplashBI will follow "Change Management Procedures" in completing changes in the Products or product release levels used in the Service and in implementing Patches and Upgrades (collectively "Change Events").



2.19. Change Management Procedures will in all cases provide for the following:

- 2.19.1. Advance notification to the Licensee of the Change Event, its nature and expected timetable.
- 2.19.2. Pre-testing of changes in SplashBI or Licensee non-Production testing environments.
- 2.19.3. Coordination of the implementation of the Change Event with the Licensee.

2.20. Product Upgrades: License will receive updates notifications of change event/SplashBI App version releases. Refer to Addendum A (“Support Policy”) section 7(“Updates”). Customer logs the ticket and below timeline will be honored based on once ticket is received. SplashBI has the right to modify the timeline provided Customer agrees:

Instance Name	Timeline
UAT (Non-Prod)	1 week for patching and 2 weeks for user/Customer testing
Prod	Weekend/Date Agreed with Customer

APPENDIX 2: SUPPORT POLICY

This Support Policy ("Policy") describes the current practices of SplashBI with regard to its provision of Support Services and Maintenance Services for Software as defined below (collectively "Support") to customers with an Agreement ("Customer(s)"). Prior versions of this Policy were titled "Support Procedures" and any reference to such Support Procedures in any customer agreement shall be deemed a reference to this Policy.

1. **Number of Licensee Support Contacts:** Customer is provided up to 5 support accounts to access SplashBI Support portal. Customer is responsible for activating their Support Portal accounts during implementation. An invitation will be emailed to each support contact with instructions on their Support portal access and usage of the portal.
2. **Support Contact Information:**
 - (i) **Web Portal:** www.support.splashbi.com
 - (ii) **Web Portal Procedure:** The correct procedure for requesting Support on a product issue will be handled using the Support Portal. The Support Portal is accessible through the listed URL and through a link on the SplashBI corporate web site. SplashBI can only accept formal requests for assistance on a product support matter through the SplashBI Support Portal. Direct forms of communications to SplashBI personnel by Licensee personnel, such as phone calls and emails, are not precluded. However, these direct forms of communication do not constitute the formal logging of a Licensee Support Request. SplashBI will provide Support Portal usernames and passwords for all applicable Licensee named accounts upon request of Licensee.
 - (iii) **Telephone:** 866-363-1752. Web portal is used as the primary medium for logging support requests. Licensees may also log support cases through the automated telephone line. Calls to the support phone number will create a support request in the support portal. This telephone line is only for logging automated support requests using the phone service. There will be no support engineer answering calls made to this number.
3. **Support Services:** SplashBI will provide the following Support service:
 - (i) Error corrections and Updates to the SplashBI products and standard content. **Any custom reports developed by SplashBI, or Customer are not included within the support services and will be addressed via a consulting engagement.**
 - (ii) Inquiries related to functionality of SplashBI product family.
 - (iii) Requests for Software upgrades. See section 6 for more details on software updates.
 - (iv) All service requests logged with support are assigned a severity level from 1 to 4 based on the impact on your business. The customer determines the initial severity level when placing a request for assistance. Severity levels may be changed after initial contact and assessment of the issue from a Support Engineer, providing the customer is in agreement.
4. **Technical Assistance.** SplashBI will respond to requests for assistance and software corrections in accordance with response times matrix published below. Customer's representatives who request technical assistance must be reasonably proficient in the use of the SplashBI Technology.
5. **Changes to Policy:** Subject to the terms of the Agreement, SplashBI reserves the right, at its discretion, to change the Policy at any time based on prevailing market practices and the evolution of SplashBI's products and services.
6. **Updates:** SplashBI will make updates available to all customers with current Agreement, when and if SplashBI elects to make them generally commercially available. All updates provided to any Customer under this Policy will be made available upon Customer request or SplashBI discretion in the form of digital medium. Unless other agreed



in writing, Customer shall be responsible for installation of all updates. SplashBI is under no obligation to develop any functionality, programs, services, or enhancements. SplashBI is under no obligation to make any customizations provided to Customers on older versions to be compatible with the latest releases even if such customizations were delivered by SplashBI as a part of paid services.

Support commitments under this Exhibit cover the version of the Software that is current on the date of Product purchase and subsequent versions provided to Customer as part of Support until the later of (i) the release of a second subsequent major version, or (ii) one year from the release of the major version of which that version is a part. *For example, if the version of the Software that is current as of the date of Product purchase is version 4.5, SplashBI support commitments under this Exhibit shall continue until the later to occur of the release of version 6, or one year from the release of version 4.*

7. **Term, Renewals:** Support shall be provided for as long as Customer maintains active Software licenses.
8. **Support Exclusions:** Notwithstanding anything in this Policy to the contrary, SplashBI will have no obligation to provide any Support Services in connection with:
 - (i) any issue or problem that SplashBI determines is not due to any Error or deficiency in the Software (including without limitation, issues or problems caused by stand-alone third-party software products or services used in conjunction with the Software, the Internet or other communications, Customer network or browser matters, or login issues).
 - (ii) use of the Software other than in accordance with the Documentation and the Agreement.
 - (iii) use of the Software provided on a trial or evaluation basis or for which Customer has not paid any fees.
 - (iv) any Errors or problems with the applicable Software that are not reproducible.
 - (v) any Error or problem that is reported by Customer via any SplashBI support telephone number or email address associated with any geographic territory other than the one to which Customer has been assigned on the Support Portal; or
 - (vi) any Errors or problems with the Software that result from:
 - a. the use of the Software with software or hardware not designed for use with the operating systems approved by SplashBI in the Documentation.
 - b. the use of the Software with hardware that does not satisfy the minimum system requirements specified by SplashBI in the Documentation.
 - c. changes, modifications, or alterations to the Software not approved in writing by SplashBI or its authorized representatives.
 - d. use of the Software with third party operating systems, databases, data sources, network software and Customer applications that are no longer supported by the related product vendors, or
 - e. use of other than a Supported Version of the Software as defined in the applicable Release Management Policy. If SplashBI does correct any of the Errors described in subsections (a)-(e) above, or otherwise provides support for a Software that is not covered by the terms and conditions contained in this Policy, such Error resolution or support will be provided only following Customer's written request and approval of all charges, and Customer will be invoiced for such support at SplashBI's then current "time and materials" rates for such services. Without limiting any of the foregoing, SplashBI has no obligation to provide support for any third-party software, data, or other materials distributed or bundled with Software.
9. **Ticket response times & Priorities:** The following table defines the severity levels and the targeted initial response time and response frequency. It is helpful to clearly explain the business impact of your issue when contacting the Support Center.

Severity Level	Description	Initial Response	Response Frequency
Urgent/ Level 1	Business impact: Critical Customer's production use of our products on a primary business service, major application or mission-critical system is stopped or so severely impacted that the customer cannot reasonably continue work. For Severity Level 1 problems, SplashBI will begin work on the problem within one hour of notification and handle as the highest priority until the customer is given a fix or workaround. Customer resources must be made available in Severity Level 1 situations and reasonably cooperate to help resolve the issue. Severity Level 1 problems could have the following characteristics: • System hangs or crash situations • Data loss or data corruption • Critical functionality not available • Affecting critical financial operations	Within 1 hour	4 hours
High/ Level 2	Business Impact: Significant Important product features are unavailable with no acceptable workaround. Customer's implementation or production use of our products in a primary business service, major applications or mission critical systems are functioning with limited capabilities or are unstable with periodic interruptions. The software may be operating but is severely restricted. Severity Level 2 problems could have the following characteristics: • Product error or failure forcing a restart or recovery • Severely degraded performance • Functionality is unavailable but the system can operate in a restricted fashion.	Within 4 hours	24 hours
Normal/ Level 3	Business Impact: Minimal Product features are unavailable, but a workaround exists,	Within 8 hours	48 hours

	and most software functions are still useable. Minor function/feature failure that the customer can easily circumvent or avoid. Customer's work has minor loss of operational functionality. Severity Level 3 problems could have the following characteristics: • Error message with workaround • Minimal performance degradation • Incorrect product behavior with minor impact • Questions on product functionality or configuration during implementation		
Low/ Level 4	Business Impact: Nominal Minor problem or question that does not affect the software function such as How To's, documentation, general questions, software requests or enhancement requests. There is no impact to product usage or customer's operations. Severity Level 4 problems could have the following characteristics: • General requests for advice on product usage • Clarification on product documentation or release notes • Request for product upgrades • Product enhancement request • Request for managed services	Within 1 Business Day	4 Business Days

APPENDIX 3 – SPLASHAI AND TELEMETRY

Part A – Artificial Intelligence Terms and Conditions

This Part A of Appendix 3 sets forth the terms and conditions governing Customer’s use of “SplashAI”, a proprietary artificial intelligence–powered solution offered by SplashBI. The purpose of this Appendix is to ensure transparency, establish data usage and processing guidelines, and define the responsibilities and limitations of both SplashBI and Customer regarding the use of SplashAI.

By accessing or using SplashAI, Customer acknowledges and agrees to these terms, which are designed to safeguard Customer’s data, ensure compliance with applicable regulations, and clarify the scope of SplashBI’s obligations and liability.

1. No Training on User Data

SplashBI confirms that SplashAI does not utilize any Customer data, end-user queries, uploaded documents, conversational logs, or other content inputs to train, fine-tune, or improve any underlying machine learning or language models. All interactions are processed statelessly, and user data is never persisted or transmitted to third parties for training purposes.

2. Data Residency and Processing Control

SplashAI supports multiple deployment models, including SaaS, Private Cloud, and On-Premises. In each model, Customer data is processed and stored in accordance with the Customer’s selected region and infrastructure, seeking to ensure compliance with applicable data residency and privacy regulations such as the General Data Protection Regulation (GDPR) and SOC 2.

3. Access Control and Data Isolation

SplashAI enforces Role-Based Access Control (RBAC) to restrict access to conversational data and analytics output based on defined user roles. All data is tenant-isolated by design, and no cross-customer data access is permitted under any deployment configuration. Customers are solely responsible for managing and maintaining access permissions in accordance with their internal security policies.

4. AI Output Disclaimer and Limitation of Liability

SplashAI generates content using artificial intelligence for informational and operational purposes only. SplashBI does not warrant or represent that AI-generated outputs are accurate, complete, current, or reliable. Customers and users are solely responsible for reviewing and validating AI-generated outputs prior to use. SplashBI disclaims all liability for decisions made in reliance on such outputs.

To the fullest extent permitted by law, SplashBI shall not be liable for any direct, indirect, incidental, special, consequential, or exemplary damages arising out of or in connection with Customer’s use of or reliance on SplashAI outputs, including but not limited to loss of revenue, profits, goodwill, or data, even if SplashBI has been advised of the possibility of such damages.

5. Prohibited Uses

Customers shall not use SplashAI to:

- Violate intellectual property rights, privacy laws, or regulatory restrictions.
- Generate or disseminate unlawful, discriminatory, false, misleading or hallucinatory content.
- Attempt to reverse-engineer or extract proprietary model behavior.
- Circumvent system safeguards or misuse the platform in a manner inconsistent with its intended use.



Customer misuse may result in suspension or termination of access, in accordance with the Agreement.

Part B – Telemetry Terms and Conditions

Customer acknowledges and understands the collection and use of telemetry data associated with the “Telemetry – SplashBI Usage Metric Report” (as amended in writing from time to time) in SplashBI Version 6/Tahoe, as outlined in this Appendix. This agreement ensures transparency regarding the nature of the data being collected, the limited scope of its use, and SplashBI’s commitment to safeguarding Customer information. By defining how telemetry metrics are transmitted, stored, and analyzed, this agreement establishes the foundation for improving platform stability, optimizing performance, and enhancing the overall Customer experience while protecting Customer confidentiality and sensitive business data.

Scope of Telemetry Collection

When the report titled “Telemetry – SplashBI Usage Metric Report” is executed, a predefined set of telemetry metrics will be automatically collected and securely transmitted to SplashBI’s hosted environment. These telemetry metrics are limited to system usage, feature adoption, and performance statistics. They expressly exclude any Customer-specific business data, confidential report content, or personally identifiable information (“PII”).

Metrics include, but may not be limited to:

Telemetry Metric Name	Telemetry Metric Description
Total Users Created	Total users created in the system including enabled and disabled
Enabled Users Count	Total enabled users in the system
Disabled Users Count	Total disabled users in the system
Native Authentication Users Count	Total native users in the system
Oracle E-Business Suite Users Count	Total Oracle E Business suite roles users in the system
SAML Authentication Method Users Count	Total SAML authentication method users in the system
Admin Developer Role User Count	Total admin or developer roles users in the system
Read Only User Count	Total read-only roles users in the system
Non Licensed User Count	Total non-licensed roles users the system
Mobile User Count	Total mobile users in the system
Excel User Count	Total EXCEL users in the system
GLConnect User Count	Total GLC users in the system
Custom Dashboards Count	Total custom dashboards in the system
Custom Domains Count	Total custom domains in the system
Custom Jobs Count	Total custom jobs in the system
Custom Data Pipelines Count	Total custom pipelines in the system
Custom Reports Count	Total custom reports in the system
Custom Report sets Count	Total custom report sets in the system
Seeded Dashboards Count	Total seeded dashboards in the system
Seeded Domains Count	Total seeded domains in the system
Seeded Jobs Count	Total seeded jobs in the system
Seeded Reports Count	Total seeded reports in the system
Different Table Types Created	Total table types in the system
SQL Table Types Count	Total SQL table types in the system
View Table Types Count	Total VIEW table types in the system
CSV Table Types Count	Total CSV table types in the system
Excel Table Types Count	Total EXCEL table types in the system
Synonym Table Type Count	Total synonym table types in the system
Materialized View Table Types Count	Total materialized view table types in the system
Connections Count	Total connections in the system including enabled and disabled
Database Connections Count	Total database connections in the system
Cloud Connections Count	Total cloud connections in the system
FTP Connections Count	Total FTP connections in the system
Network Connections Count	Total network connections in the system
Active Directory Connections Count	Total active directory connections in the system



Job Processes Count	Total job processes in the system
Data Pipeline Configure Processes Count	Total data pipeline configure processes in the system
Data Pipeline Run Processes Count	Total data pipeline processes in the system
Dashboard Processes Count	Total dashboard processes in the system
Report Processes Count	Total report processes in the system
Verification Job Processes Count	Total job roles processes in the system
Import Processes Count	Total import processes in the system
Report View Now Processes Count	Total report view now processes in the system
Export Processes Count	Total export processes in the system
Report Set Processes Count	Total report set processes in the system
Table Processes Count	Total table processes in the system
File Data Loader Processes Count	Total file data loader processes in the system
Published Processes Count	Total published process processes in the system
Scheduled Seeded Reports Count	Total seeded reports scheduled in the system
Custom Reports Scheduled Count	Total custom reports scheduled in the system
Custom Dashboards Scheduled Count	Total custom dashboards scheduled in the system
Custom Jobs Scheduled Count	Total custom jobs scheduled in the system
Custom Report Sets Scheduled Count	Total custom report sets scheduled in the system
Custom Data Pipelines Scheduled Count	Total custom pipelines scheduled in the system
Dashboards Object History Count	Total dashboards object history count in the system
Reports Object History Count	Total reports object history count in the system
Unknown Users Count	Total unknown users in the system
Dashboards Submitted By User Count	Total users that triggered dashboards submissions
Data Pipeline Configure Process Submitted By User Count	Total users that triggered configure data pipelines process submissions
Data Pipelines Submitted By User Count	Total users that triggered data pipelines submissions
Exports Submitted By User Count	Total users that triggered object export activity
File Data Loader Processes Submitted By User Count	Total file data loader processes submitted by user count in the system
GLConnect Balance Refresh Process Submitted By User Count	Total glconnect balance refresh process submitted by user count in the system
Import Processes Submitted By User Count	Total import processes submitted by user count in the system
Report Processes Submitted By User Count	Total report processes submitted by user count in the system
Report Set Processes Submitted By User Count	Total report set processes submitted by user count in the system
Report View Now Processes Submitted By User Count	Total report view now processes submitted by user count in the system
Table Processes Submitted By User Count	Total table processes submitted by user count in the system
Verification Jobs Submitted By User count	Total verification jobs submitted by user count in the system
Seeded Data Pipelines Count	Total seeded data pipelines in the system

Purpose of Collection

The telemetry data collected under this feature shall be used solely for analytical, diagnostic, and performance improvement purposes. Such data will not be used for any commercial exploitation unrelated to the operation, maintenance, or enhancement of the SplashBI platform.

Transmission and Storage

The collection and transmission of telemetry metrics occur automatically upon execution of the telemetry report. All transmitted data will be stored and analyzed within SplashBI's hosted environment, subject to applicable data usage and privacy policies.

Use of Telemetry Data

SplashBI may utilize telemetry data to:

- Improve platform stability, reliability, and security.
- Optimize product performance and feature functionality.
- Enhance the overall Customer experience.
- Identify patterns or anomalies and, where appropriate, proactively alert Customer, recommend alternative approaches, or provide product fixes and enhancements.

Acknowledgment and Consent

By executing the "Telemetry – SplashBI Usage Metric Report," Customer expressly acknowledges and agrees that such telemetry data will be collected, transmitted, stored, analyzed, and used by SplashBI in accordance with these Terms and Conditions and SplashBI's applicable data usage and privacy policies.

Part 2: SQLConnect License Agreement

SPLASHBI SQLCONNECT SOFTWARE LICENSE AGREEMENT

PLEASE REVIEW THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY. THIS IS A BINDING LEGAL CONTRACT BETWEEN YOU ("LICENSEE") AND SPLASH BUSINESS INTELLIGENCE, INC. ("SPLASHBI" or "LICENSOR"). THIS AGREEMENT GOVERNS YOUR USE OF THE SQLCONNECT SOFTWARE (THE "LICENSED SOFTWARE"). BY USING THE LICENSED SOFTWARE, YOU ACCEPT THE TERMS OF THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF YOUR COMPANY, YOU ARE REPRESENTING TO US THAT YOU HAVE READ THE AGREEMENT, YOU HAVE THE AUTHORITY TO BIND YOUR COMPANY, AND THE TERM "YOU" SHALL REFER TO YOUR COMPANY. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS THEN YOU MAY NOT USE THE LICENSED SOFTWARE. THESE TERMS ALSO INCLUDE AND INCORPORATE ANY TERMS OR POLICY POSTED ON SPLASHBI.COM. THE LICENSOR AND THE LICENSEE MAY BE REFERRED TO HEREIN, EACH A PARTY OR TOGETHER AS THE PARTIES.

WHEREAS Licensor is the legal and beneficial owner of the Licensed Software and desires to license the Licensed Software to Licensee; and

WHEREAS Licensee desires to obtain a license to use the Licensed Software subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement,

- a. **"Agreement"** has the meaning set forth in the preamble above.
- b. **"Confidential Information"** means any non-public information in any form and however transmitted, whether orally, visually, in writing, or by electronic communication, that both Parties reasonably and in good faith deem to be confidential or proprietary. Confidential Information includes, but is not limited to, technological disclosures, trade secrets, ideas, concepts, know-how, business operations, plans, strategies, customer information, pricing information, and any other information that the disclosing Party is contractually or otherwise bound to keep confidential. Confidential Information may, but is not obligated to be designated, marked, or otherwise identified as "confidential." See exclusions in the section titled "CONFIDENTIALITY" below.
- c. **"Documentation"** means any and all manuals, instructions, and other end user materials that Licensor provides to Licensee describing the Licensed Software's functionality, components, technical specifications, capabilities, requirements, or limitations. Documentation may include, but is not limited to, aspects of the Licensed Software that are of practical importance to Licensee, such as instructions on installation, configuration, integration, operation, use, support, or maintenance.
- d. **"Effective Date"** is the issue of the Software License to the Licensee by the Licensor, and is the start date for this Agreement where all rights and obligations herein become operational and enforceable.
- e. **"Intellectual Property Rights"** means any and all registered and unregistered rights to plans, ideas, designs, or other intangible assets. Such rights are granted, applied for, or otherwise now or hereafter in

existence under or related to any patent, copyright, trademark, trade secret, database protection, right of publicity, other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

- f. **"Law"** means any statute, code, ordinance, rule, regulation, constitution, order, treaty, precedent, judgment, or other legal requirements of any authority of competent jurisdiction, including, but not limited to, federal, state, local, or foreign governments, political agencies or subdivisions thereof, or any appropriate courts or tribunals.
- g. **"Licensed Software"** means software version Rel 2.0 of SQLConnect, any ancillary data files, modules, libraries, tutorials, or demonstration programs, and any Maintenance Release(s) provided to Licensee according to this Agreement.
- h. **"Licensee"** has the meaning set forth in the preamble above.
- i. **"Licensor"** has the meaning set forth in the preamble above.
- j. **"Maintenance Release"** means any update, upgrade, release, or other adaptation or modification of the Licensed Software or Documentation that Licensor may optionally and periodically provide to Licensee during the Term. Such release may include, but is not limited to, error corrections, enhancements, improvements, or other changes to the Licensed Software's functionality, compatibility, capabilities, performance, efficiency, user interface, or quality. Such release is separate and distinct from any New Version Licensor may choose to release during the Term.
- k. **"New Version"** means any new variant of the Licensed Software that Licensor may introduce and market from time to time as a distinct licensed product. A New Version may be indicated by Licensor's designation of a new version or release number. Licensor may make a New Version available to Licensee at an additional cost under a separate agreement or by written amendment to this Agreement.
- l. **"Parties"** mean the Licensor and Licensee, collectively.
- m. **"Party"** means the Licensor or Licensee, individually.
- n. **"Permitted Use"** means use of the Licensed Software by an authorized user for the benefit of Licensee in its ordinary course of internal business operations.
- o. **"Open-Source Components"** means any software component that is subject to an open-source copyright license agreement. Qualifying open-source copyright license agreements include, but are not limited to, Apache License 2.0, BSD 3-Clause "New" or "Revised" license, BSD 20-Clause "Simplified" or "FreeBSD" license, GNU General Public License, GNU Library or "Lesser" General Public License, MIT License, Mozilla Public License 2.0, Common Development and Distribution License, Eclipse Public License, and any other obligations, restrictions, or license agreements that substantially conform to the "Open Source Definition" as prescribed by the Open Source Initiative or otherwise may require third-party disclosure or licensing if any source code of such software components is used or compiled.
- p. **"Term"** has the meaning set forth in the Term section.

2. **LICENSE GRANT.** Subject to the terms and conditions of this Agreement and the Parties' compliance therewith, and from the Effective Date, Licensor hereby grants to Licensee, solely for defined Permitted Use, a non-exclusive, non-sublicensable, and non-transferable license to use the Licensed Software and Documentation during the Agreement Term.



- a. **Scope of Licensed Access and Use.** Licensee can install, use, and run the Licensed Software on computers or electronic devices. For each authorized user, subscription fees have to be paid on a monthly basis, or prepaid in advance for the duration of usage.
- b. **Additional Copy.** Licensee is permitted to duplicate a copy of the Licensed Software exclusively for testing, disaster recovery, or archival purposes. Any copy of the Licensed Software made by Licensee, for any authorized or unauthorized purposes, continues to be Licensor's exclusive property, is subject to the terms and conditions of this Agreement, and must include all Intellectual Property Rights notices contained in the original Licensed Software and Documentation.
- c. **Open-Source Licenses.** Should the Licensed Software include any Open-Source Components, Licensee's use of the Open-Source Components will be governed by, and subject to, the terms and conditions of the related open-source and public licenses. Licensor will provide Licensee with the license name, author information, license source, access information, and other relevant information for Open-Source Components. To the extent required by the license that accompanies the Open-Source Components, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open-Source Components, including, without limitation, any provisions governing access to source code, modification or reverse engineering.
- d. **Third Party Software.** Licensee further acknowledges and agrees that any third-party software licenses (any database or application such as Microsoft Office, Oracle, SAP, PeopleSoft Java, Adobe, Salesforce, etc.) that are required for the operation of the Licensed Software are the obligation of the Licensee to obtain.
- e. **Third-Party Code.** The Licensed Software may contain or be provided with components which are licensed from third parties ("Third Party Code"). The Licensed Software consumes certain services (Web Services, Extracts, Integrations, etc.) that may be allowed and available by the source software (including Open-Source Components) for computing or providing results. In the event any such services are discontinued by the source application for any reason, Licensor may provide other alternatives to provide similar outcomes but is under no obligation to do so and will not incur any liability for failing to do so.

3. **LICENSE RESTRICTIONS.** Except as expressly permitted in this Agreement, and subject to the Open-Source Components if applicable, Licensee will not, and will not permit any third party to,

- a. reproduce any portion of the Licensed Software for any purpose except as otherwise authorized in this Agreement;
- b. decode, disassemble, reverse engineer, or otherwise attempt to derive or gain access to any portion of the Licensed Software's source code;
- c. adopt, build upon, correct, modify, translate, or otherwise improve or create derivative works of the Licensed Software;
- d. lend, publish, rent, lease, sell, sublicense, assign, transfer, or otherwise make available to any third party not authorized within this Agreement the Licensed Software in any manner, including, but not limited to, access to the Licensed Software on the internet or any time sharing, service bureau, software as a service, cloud, or similar technology or service;
- e. breach or circumvent any disclosed or undisclosed security device or intended protection used for or contained in the Licensed Software or Documentation;



- f. efface, alter, obscure, translate, combine, or otherwise change any trademarks, disclaimers, warranties, Documentation terms, Intellectual Property Rights, proprietary rights, or any symbols, notices, marks, serial numbers, or identification on or relating to any copy of the Licensed Software or Documentation;
- g. use the Licensed Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or any applicable Law;
- h. use the Licensed Software for the purposes of (i) comparative or competitive analysis of the Licensed Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;
- i. use the Licensed Software, alone or in part, in connection with any hazardous environments, systems, or applications; any safety response systems; any safety-critical applications; or any applications where the failure of the Licensed Software may reasonably and foreseeably lead to personal injury, severe physical damage, or severe property damage; or
- j. use the Licensed Software, Documentation, or any Open-Source Components for any purpose not expressly permitted under Permitted Use or in any manner not expressly permitted by this Agreement or the controlling Open-Source License.

4. **TERM.** The term of this Agreement commences as of the Effective Date and shall be for initial term set out in the corresponding order form (the "Initial Term"). No reductions in the quantities or configuration are permitted during the Initial Term and any reductions following the Initial Term may result in lost discounts and/or increased charges. Following the Initial Term, this Agreement will Auto Renew for successive annual terms, unless notice to terminate is given to the Licensor within 60 days of the expiration of the relevant term. Fees for each successive term will be at Licensor's then current rates.

5. **DELIVERY.** Licensor will deliver one copy of the Licensed Software electronically to the Licensee on receiving quote approval or Purchase order.

6. **FEES AND TAXES.** In consideration of the rights granted to Licensee under this Agreement, Licensee agrees to pay to Licensor in accordance to the payment terms set forth in this Agreement. All fees are exclusive of taxes, duties, and other similar assessments. Licensee is responsible for all sales, service, use, exercise, and all other similar taxes, duties, and charges of any kind imposed by any governmental, federal, state, local, or regulatory authority on any amounts payable by Licensee hereunder. Notwithstanding the foregoing, the Licensor is solely responsible for its own income tax.

7. PAYMENT

- a. **Payment Terms.** Licensee will pay all license fees due and owing under this Agreement on or before 30 days from the invoice date. Licensee will make all payments in U.S. currency by check to the Notice address, by wire transfer/ACH to any account as Licensor may specify in writing from time to time, or via credit card to Licensor at time of order.
- b. **Late Payment.** If any payment to Licensor is delinquent, then in addition to all other remedies available to Licensor,
 - i. Licensor may charge interest on the past due amount at a rate no higher than the highest rate permitted under applicable Law;
 - ii. Licensee must reimburse Licensor for all reasonable costs incurred to collect any and all late payment and associated interest amounts, including, but not limited to, any attorneys' fee, court costs, and collection agency fees; and

- iii. if payment delinquency continues for five business days following written notice or demand for payment, Licensor may exercise any or all of the following remedies: (1) technologically disable Licensee's use of the Licensed Software; (2) withhold, suspend, or revoke this license grant; and (3) terminate this Agreement pursuant to the Termination section.

8. TESTING AND ACCEPTANCE

- a. **Acceptance Parameters and Testing.** Acceptance testing will be conducted by Licensor to establish whether the Licensed Software operates properly and in accordance with Documentation. Licensee will supply to Licensor suitable test data, and the associated results Licensee reasonably expects to be achieved by using the Licensed Software. Licensor will carry out testing, in the presence of Licensee or its authorized representative, upon a mutually acceptable date and time after delivery of Licensed Software.
- b. **Testing Failure.** If the initial acceptance testing does not yield expected results, Licensor will, at its own cost, correct the errors and repeat the acceptance testing again under the same testing conditions as the initial test in the presence of Licensee or its authorized representatives. If the subsequent acceptance testing also fails to yield expected results and such failure is reasonably determined to be caused solely by the Licensed Software, Licensee may terminate this Agreement upon written notice to the Licensor. On termination, Licensor will refund any and all license fees already paid by Licensee to Licensor under this Agreement. This is Licensee's sole and exclusive remedy for any unresolved acceptance testing failures.
- c. **Acceptance.** Notwithstanding any acceptance testing rights, requirements, and obligations herein, Licensee is deemed to have accepted the Licensed Software if
 - i. the acceptance testing conducted by Licensor and witnessed by Licensee or its authorized representative is successful;
 - ii. Licensee fails to provide the acceptance test parameters or voluntarily forgoes the acceptance testing process; or
 - iii. Licensee commences intended use of Licensed Software irrespective of acceptance testing parameters, process, or result.

- 9. **MAINTENANCE RELEASE.** During the Term, Licensor will provide Licensee with any new Maintenance Releases, Versions, or updated Documentation that are announced by Licensor so long as Licensee is current with their monthly or annual subscription fees. All Maintenance Releases are considered part of the Licensed Software and are subject to all applicable terms and conditions in this Agreement. Licensee agrees to install all Maintenance Releases as soon as practicable after receipt.

- 10. **NEW VERSION.** Licensee does not have any right or option to receive any New Versions of the Licensed Software that Licensor, in its sole discretion, may release either during or after the Term. Licensee may seek to negotiate a new, separate, or amended license grant for any New Version at Licensor's then-current price for the New Version, provided Licensee is in compliance with the terms and conditions of this Agreement.

11. TITLE, INTELLECTUAL PROPERTY RIGHTS, AND INFRINGEMENT

- a. **Ownership.** Licensee acknowledges and agrees that:
 - i. Licensor is and will remain the sole and exclusive owner of all rights, title, and interest in and to the Licensed Software, Documentation, Maintenance Release, New Version, and all Intellectual Property Rights associated herein, subject only to the rights of any disclosed third parties, within any Open-Source Components, and the limited license granted to Licensee under this Agreement;



- ii. the Licensed Software, Documentation, and Intellectual Property Rights are licensed, not sold, to Licensee. Licensee does not, has not, and will not acquire any ownership interest in the Licensed Software, Documentation, or any related Intellectual Property Rights through this Agreement; and
- iii. nothing in this Agreement grants any implied rights to Licensee, including by implication, waiver, or estoppel, in any Intellectual Property Rights or other rights, title, or interest in any portion of the Licensed Software and Documentation.

b. Licensee Cooperation and Notice of Infringement. Licensee will, during the Term,

- i. secure and protect the Licensed Software and Documentation from infringement, misappropriation, misuse, theft, or other unauthorized access through all commercially reasonable measures and precautions similar to those Licensee would employ to secure and protect its own intellectual property;
- ii. take all reasonable steps as Licensors may require and request to maintain the validity, enforceability, and ownership of all Licensors' Intellectual Property Rights herein;
- iii. promptly notify Licensors in writing if Licensee becomes aware of any actual or suspected infringement, misappropriation, misuse, theft, unauthorized access, or other violations of Licensors' Intellectual Property Rights in or relating to the Licensed Software or Documentation;
- iv. promptly notify Licensors in writing of any claim that the Licensed Software or Documentation, in whole or in part, infringes, misappropriates, or otherwise violates any rights, including Intellectual Property Rights, of other persons or entities; and
- v. fully cooperate with and assist Licensors in all commercially reasonable ways, including but not limited to providing records, information, depositions, and testimonies, and at Licensors' sole expense, in any claim, suit, action, or proceeding to prosecute or defend Licensors' rights in the Licensed Software, Documentation, and any Intellectual Property Rights herein.

12. SECURITY MEASURE DISCLOSURE. The Licensed Software may contain security features that prevent unauthorized or illegal use of the Licensed Software. Licensee acknowledges and agrees that Licensors may use these features and other lawful measures to verify Licensee's compliance and to enforce Licensors' rights under this Agreement. Licensee further acknowledges and agrees that Licensors may, from time to time at Licensors' sole discretion, gather Licensee's technical, usage, and other related information without disruption to Licensee's use and for the sole purpose of improving the Licensed Software's performance, developing Maintenance Releases, and developing New Versions.

13. VERIFICATION AND AUDIT

- a. **Verification.** At Licensors' written request, Licensee will confirm in writing the actual scope of Licensee's access and use of Licensed Software and list all locations of actual use if applicable.
- b. **Audit Procedure.** Licensors or its representative may inspect and audit Licensee's use of the Licensed Software under this Agreement at any time during the Term upon reasonable notice and request. All such audits will be conducted during regular business hours. Licensors will cooperate with Licensee to ensure such audits do not unreasonably interfere with Licensee's business operations. Licensee agrees to make available all technology, records, equipment, information, and personnel, and to provide all cooperation and assistance as necessary for the Licensors to reasonably conduct the audit. Licensors agree to only examine information directly related to Licensee's Licensed Software use. Licensors will keep confidential any information Licensee deems confidential that may be directly or incidentally disclosed during such audits.



- c. **Excessive Use Result.** If the verification or audit determines that Licensee's Licensed Software use exceeds the usage or scope permitted by this Agreement, Licensee agrees to pay Licensors all amounts due for excessive use of the Licensed Software as negotiated at such time.

14. CONFIDENTIALITY

- a. **Confidential Information.** In connection with this Agreement, each Party may disclose or make available to the other Party Confidential Information which includes, but is not limited to, the Licensed Software, Documentation, and any terms of this Agreement.
- b. **Exclusions and Exceptions.** Confidential Information excludes information that
 - i. was rightfully and lawfully known to the recipient without any restrictions on use or disclosure prior to disclosure by disclosing Party in connection with this Agreement;
 - ii. was or becomes part of the public domain by means other than by the recipient or any of the recipient's representatives' violations of this Agreement;
 - iii. was or is received by the recipient on a non-confidential basis from a third party that was not, or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or
 - iv. was or is independently developed by the recipient without reference to or use of any Confidential Information.
- c. **Protection of Confidential Information.** As a condition of receiving any Confidential Information, the recipient will, for one year (1 year),
 - i. only access or use Confidential Information if absolutely necessary to exercise the recipient's rights or perform the recipient's obligations under this Agreement;
 - ii. except when compelled by Law, not disclose or permit access to Confidential Information other than to the recipient's representatives on a need-to-know basis for the recipient to exercise its rights or perform its obligations under this Agreement, under strict information and understanding of the confidential nature of Confidential Information and the recipient's obligations to protect Confidential Information, and with acknowledgment from such representatives that they too are bound by the confidentiality and restricted use obligations set forth herein;
 - iii. use, at minimum, the same degree of care that recipient uses to protect its own similarly sensitive information, and no less than a generally commercially reasonable degree of care, to secure and protect Confidential Information from unauthorized use, access, or disclosure;
 - iv. promptly notify the disclosing Party in writing of any actual or suspected unauthorized use or disclosure of Confidential Information and cooperate with disclosing Party by taking all reasonable steps to prevent further unauthorized use or disclosure; and
 - v. ensure recipient's representatives comply with the terms of this section and are responsible and liable for their noncompliance, if any.
- d. **Trade Secrets Confidentiality Duration.** Notwithstanding any other provisions in this Agreement, the recipient is obligated to protect any Confidential Information that constitutes trade secrets under any applicable Law until such Confidential Information ceases to qualify for trade secret protection by operation of Law.



- e. **Compelled Disclosure.** To the extent permitted by Law, if the recipient or its representatives are compelled by Law to disclose any Confidential Information, the recipient must promptly, and prior to such disclosure, notify the disclosing Party in writing of such requirement to allow the disclosing Party the opportunity to seek a protective order or other legal remedy. The recipient must also provide reasonable assistance to the disclosing Party to oppose such disclosure, to seek a protective order, or to seek other disclosure limitations or remedies. If disclosure is unavoidable, the recipient may disclose only such Confidential Information that the recipient is legally required to disclose. Upon disclosing Party's request, the recipient must use commercially reasonable efforts to obtain assurances of confidential treatment of all compelled Confidential Information from the applicable court or legal authority.

15. TERMINATION. This Agreement may be terminated at any time

- a. by Licensor if Licensee fails to make payment where such failures continue more than five business days after the due date, effective on written notice of termination to Licensee;
- b. by either Party for the other Party's material breach of this Agreement that is incurable or uncured by breaching party for 30 days after being served with notice of breach and demand for cure, effective on written termination notice to the breaching Party;
- c. by Licensor, effective immediately irrespective of written notice, if Licensee
 - i. is dissolved or liquidated or takes any corporate action for such purposes;
 - ii. becomes insolvent or is generally unable to pay its debts as they become due;
 - iii. becomes the subject of any bankruptcy proceedings, voluntary or involuntary, under any domestic or foreign bankruptcy or insolvency Law;
 - iv. makes or seeks to make a general assignment for the benefit of its creditors; or
 - v. applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

16. TERMINATION OR EXPIRATION EFFECTS. Upon early termination or the natural expiration of this Agreement,

- a. all licenses, rights, and authorizations granted to Licensee herein will immediately terminate and Licensee will
 - i. promptly cease all use of the Licensed Software and Documentation;
 - ii. within five business days deliver to Licensor, or at Licensor's written request, destroy and permanently erase from all Licensee's and their representatives' devices, equipment, and systems, the Licensed Software, Documentation, and all Licensor's Confidential Information; and
 - iii. certify in writing that Licensee, and any of Licensee's representatives, has complied with the termination requirements herein; and
- b. all amounts payable of any kind under this Agreement are immediately due and payable effective on the expiration date or early termination date.

17. MUTUAL REPRESENTATIONS AND WARRANTIES. Each Party represents, warrants, and covenants to the other Party that



- a. it is duly established, validly existing, and in good standing to conduct business as a sole proprietorship, partnership, company, corporation, trust, organization, or any other valid entity under the Laws of its jurisdiction;
- b. it has the full right, power, and authority to enter into this Agreement;
- c. it is capable of performing its obligations and granting any licenses, rights, and authorizations specified under this Agreement;
- d. the executing representative for each Party is duly authorized to represent each Party in this Agreement by all necessary business formalities and organizational actions; and
- e. this Agreement is legal, valid, binding on, and enforceable against each Party when fully and mutually executed and delivered.

18. LIMITED WARRANTY

- a. **Warranty.** Licensor warrants to Licensee, for 90 calendar days from the Effective Date or for the Term, whichever is less, that
 - i. the Licensed Software substantially conforms in all material respect to the Documentation specifications when it is installed, operated, and used as recommended in the Documentation and in accordance with this Agreement;
 - ii. all Maintenance Releases, when correctly and promptly installed in compliance with the Documentation and this Agreement, will not materially affect the Licensed Software's functionality; and
 - iii. any storage media on which the Licensed Software may be provided will be free of substantial defect under normal use.
- b. **Conditions.** Licensor's aforementioned limited warranties are valid and apply only if Licensee complies with the following conditions:
 - i. Licensee notifies Licensor in writing of any warranty breach during the limited warranty period.
 - ii. Licensee promptly installs all Maintenance Releases that Licensor previously made available to Licensee in order of distribution.
 - iii. Licensee is in compliance with and current on all terms and conditions of this Agreement, including the payment terms, as of the warranty breach notification date.
- c. **Exceptions.** Notwithstanding any provisions to the contrary, Licensor's aforementioned limited warranties are not valid and do not apply to problems arising out of or relating to
 - i. any modification or damage to the Licensed Software or its storage media caused by the Licensee or its representatives;
 - ii. any Licensed Software operation or use not expressly specified and permitted in the Documentation or this Agreement, including incorporating the Licensed Software in or with any non-Licensor approved technology or service unless otherwise expressly permitted by Licensor in writing;

- iii. Licensee's, its representatives', or any third party's negligence, abuse, misapplication, or misuse of the Licensed Software, including any use not expressly specified and permitted in the Documentation or otherwise expressly authorized by Licensor in writing;
 - iv. Licensee's failure to promptly install the Maintenance Releases previously provided by Licensor in the order it was received;
 - v. Licensee's or a third party's system or network;
 - vi. any Open-Source Components, beta software, incomplete sample, demonstration or testing software, temporary software modules, or any software for which Licensor does not receive a license fee;
 - vii. Licensee's breach of any material provision of this Agreement; or
 - viii. any other causes or conditions outside the Licensor's reasonable control.
- d. **Remedy.** If Licensor breaches, or is alleged to have breached, any limited warranties herein, Licensor may, at its sole option and expense, take any of the following steps to appropriately remedy such breach:
- i. repair the Licensed Software.
 - ii. amend, supplement, or replace any incomplete or inaccurate Documentation.
 - iii. replace the Licensed Software or Maintenance Releases with functionally equivalent software that, upon its replacement, constitutes the Licensed Software hereunder.
 - iv. replace any defective storage media on which the Licensor provided the Licensed Software.
 - v. terminate this Agreement and, provided that Licensee fully complies with its post-termination obligations, promptly prorate and refund Licensee any prepaid amount by Licensee for any period after the termination date.
- e. **Sole Remedy.** Should Licensor fail to cure a warranty breach or terminate this Agreement within a reasonable time period after Licensor's receipt of Licensee's timely written notice of such breach, Licensee can terminate this Agreement as provided herein. THIS IS LICENSEE'S SOLE REMEDY AND LICENSOR'S ENTIRE OBLIGATION AND LIABILITY FOR ANY LIMITED WARRANTY BREACH UNDER THIS AGREEMENT.
- f. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND FOR THE EXPRESS LIMITED WARRANTIES HEREIN, ALL LICENSED SOFTWARE, DOCUMENTATION, MAINTENANCE RELEASE, PRODUCTS, INFORMATION, MATERIAL, AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS, WHERE IS," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS TO THIRD PARTIES, PATENT VALIDITY, OPERATION WITHOUT INTERRUPTION, ACHIEVEMENT OF LICENSEE'S REQUIREMENTS OR INTENDED RESULTS, OR COMPATIBILITY WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, OR MATERIALS EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION. FURTHERMORE, AND WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION IS OR WILL BE SECURE, ACCURATE, COMPLETE, OR FREE OF HARMFUL CODE OR ERROR. ALL



OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. ANY OPEN-SOURCE COMPONENTS OR THIRD-PARTY REPRESENTATION OR WARRANTY IS STRICTLY LIMITED TO LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS AND UNRELATED TO LICENSOR.

19. INDEMNIFICATION

- a. **Licensor Indemnification.** Licensor will indemnify, defend, and hold harmless Licensee, its officers, directors, employees, agents, affiliates, and other representatives from and against any and all direct losses incurred by Licensee arising from any third-party action, suit, or claim that alleges the Licensed Software, or any use of the Licensed Software in accordance with this Agreement, infringes any Intellectual Property Rights.
- b. **Licensor Indemnification Exceptions.** The foregoing Licensor indemnification does not apply to the extent that such actions or losses arise from any allegation of or relating to any
 - i. patent, copyright, or trademarks issued on a patent, copyright, or trademark application published or granted after the Effective Date;
 - ii. unauthorized, unlicensed, and unpermitted modification of the Licensed Software without Licensor's express knowledge, written consent, and in direct contradiction to Licensor's Documentation specifications;
 - iii. unauthorized, unlicensed, and unpermitted use of the Licensed Software outside the purpose, scope, or manner authorized by this Agreement or in any manner contrary to Licensor's instructions;
 - iv. Open-Source Components, other third-party materials, or any material outside of Licensor's exclusive control;
 - v. failure to promptly install and implement any Maintenance Release or Licensed Software replacement in order received and made available to Licensee by Licensor;
 - vi. Licensed Software use after Licensee's receipt of Licensor's written notice that such continued use may be alleged to or actually infringe upon, misappropriate, or otherwise violate a third party's rights;
 - vii. Open-Source Components or other third-party materials;
 - viii. negligence, abuse, misapplication, or misuse of the Licensed Software by or on behalf of Licensee, its representatives, or a third party; or
 - ix. causes or conditions outside Licensor's commercially reasonable control, including, but not limited to, any third-party equipment error or Licensee's own system bugs, defects, or malfunctions; or
 - x. actions or losses for which Licensee is obligated to indemnify Licensor pursuant to this Agreement.
- c. **Licensee Indemnification.** Licensee will indemnify, defend, and hold harmless Licensor and its officers, directors, employees, agents, affiliates, and other representatives from and against any and all losses incurred by Licensor due to any third-party actions, claims, or suits should such losses relate to any allegation



- i. that any rights, including Intellectual Property Rights, is or will be infringed, misappropriated, or otherwise violated by Licensee's unauthorized Licensed Software use in a manner inconsistent with the license grant in this Agreement and Documentation;
 - ii. of or relating to matters that would be deemed a Licensee breach of representation, obligation, covenant, or warranty under this Agreement if proven true;
 - iii. of or relating to negligence, abuse, misapplication, misuse, or other culpable acts or omissions by or on behalf of Licensee or its representatives with respect to the Licensed Software or otherwise in connection with this Agreement; of or relating to the unauthorized, unlicensed, and unpermitted use of the Licensed Software or Documentation outside the purpose, scope, or manner authorized by this Agreement or in any manner contrary to Licensor's instructions.
- d. **Mitigation.** Should Licensor believe the Licensed Software, in whole or in part, may be claimed by any third party to be in violation of another's Intellectual Property Right, or if Licensee's use of the Licensed Software is enjoined or threatened to be enjoined, Licensor may mitigate the situation at its own option and expense by
 - i. obtaining the right from the appropriate third party for Licensee to continue to use the Licensed Software materially as intended in and for the Term duration of this Agreement;
 - ii. modifying or replacing the Licensed Software to the extent that it becomes non-infringing while still providing the materially equivalent features and functionalities of the original software, and such modification or replacement will constitute the Licensed Software thereunder; or
 - iii. terminating this Agreement, in whole or in part, effective immediately upon written notice to Licensee and, provided that Licensee fully complies with its post-termination obligations, promptly prorate and refund Licensee any prepaid amount by Licensee for any period after the termination date.
- e. **Sole Remedy.** THIS SECTION CONSTITUTES LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE OBLIGATIONS AND LIABILITIES FOR ANY CLAIMS OR ALLEGATIONS, WHETHER ACTUAL OR THREATENED, THAT THIS AGREEMENT, SOFTWARE, DOCUMENTATION, OR ANY SUBJECT MATTER HEREOF, INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

20. LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCE, INCLUDING WHERE PARTIES WERE ADVISED THAT LOSSES OR DAMAGES WERE POSSIBLE OR FORESEEABLE, WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY COST INCREASE; BUSINESS, PRODUCTION, REVENUES, OR PROFITS LOST; VALUE DIMINUTION; REPUTATIONAL LOSS; DAMAGED GOOD WILL; USE, INABILITY TO USE, DELAY, INTERRUPTION, LOSS, OR RECOVERY OF ANY LICENSED SOFTWARE, OPEN-SOURCE COMPONENTS, OR ANY THIRD-PARTY MATERIALS; DATA OR SYSTEM SECURITY BREACH, CORRUPTION, DAMAGE OR RECOVERY; REPLACEMENT COST OF GOODS, SOFTWARE, OR SERVICES; OR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, ENHANCED, OR PUNITIVE DAMAGES UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT, NEGLIGENCE, AND STRICT LIABILITY WHICH WILL IN NO EVENT EXCEED (IN THE AGGREGATE) THE FEES PAID BY LICENSEE TO LICENSOR ATTRIBUTABLE TO THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO SUCH DAMAGES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

21. **EXPORT REGULATION.** Licensee acknowledges that the Licensed Software may be subject to applicable United States export Laws, including the United States Export Administration Act and its associated regulations. Licensee agrees to comply with provisions of such export Laws. Compliance may include, but is not limited to, obtaining any and all necessary export license or other governmental approval. Licensee shall not itself or permit any third party to directly or indirectly export, re-export, or release the Licensed Software, or use the Licensed Software, in any country prohibited or restricted under United States export Laws.
22. **FORCE MAJEURE.** Neither Party will be liable to the other by reason of failure or delay in the performance of this Agreement if the failure arises out of any circumstance beyond such Party's reasonable control, including acts of God, flood, fire, natural disaster, war, terrorism, invasion, riot, civil unrest, embargos, national or regional emergency, strikes, labor disruptions, Law changes, or power or telecommunication interruptions or shortages. The Party failing or delaying in performance of this Agreement due to circumstances beyond their control must give prompt written notice to the other Party stating the estimated length of time the occurrence is expected to continue. Either Party may terminate this Agreement if such uncontrollable circumstance continues for longer than 30 days.

23. **GENERAL PROVISIONS**

- a. **Relationship of the Parties.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, or any other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party shall have the authority to bind the other in any manner.
- b. **Notices.** Notices will be deemed effectively given when received if delivered by hand; when received if sent by a nationally recognized courier with required signature upon receipt; when sent if delivered by email with transmission confirmation and sent during receiving party's normal business hours; and on the next business day if delivered by email with transmission confirmation and sent after normal business hours. Any notice or other communication under this Agreement for the attention of the Licensee must be in writing and addressed to the address provided to the Licensor by the Licensee. Any payment, notice, request, consent, claim demand, waiver, or other communication under this Agreement must be in writing and addressed to the Licensor follows:

Splash Business Intelligence, Inc

3079 Peachtree Industrial Blvd

Duluth, GA 30097

Email: AR@splashbi.com

- c. **Publicity.** Each Party agrees to seek express permission and written consent before using the other Party's trademarks, service marks, trade names, logo, domain names, or other indicia of source, association, or sponsorship for any purpose but specifically relating to publicity, marketing, or commercial materials.
- d. **Governing Law.** This Agreement is governed by and construed in accordance with the laws of the state of Georgia without giving effect to any choice or conflict of law provisions or rules that would permit the application of the laws of any other jurisdiction.
- e. **Arbitration.** Unless all Parties agree otherwise, Licensor and Licensee agree that any dispute, claim, or controversy arising out of or relating to this Agreement will be resolved through mandatory binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and the judgment of its arbitrator(s) may be entered by any court of competent jurisdiction. Licensor and Licensee further agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY AND ALL RIGHTS TO BRING OR PARTICIPATE

IN A CLASS ACTION OR MULTI-PARTY ACTION IN ANY ACTION, PROCEEDING, OR COUNTER-CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. ALL CLAIMS AND DISPUTES ARISING OUT OF THIS AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. ANY DISPUTE, CLAIM, OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION WILL BE PERMANENTLY BARRED. This provision will survive the termination of this Agreement.

- f. **Headings.** The section and subsection headings or captions in this Agreement are for reference only and do not affect the meaning or interpretation of this Agreement.
- g. **Further Assurances.** The Parties will cooperate with each other, execute and deliver such documents or instruments, and take all further actions as may be reasonably requested by the Parties from time to time in order to carry out, evidence, or confirm their rights or obligations or as may be reasonably necessary or helpful to give full effect to this Agreement.
- h. **Amendment and Modifications.** This Agreement may be supplemented, amended, or modified only by mutual and written agreement of all Parties. No amendment, modification, rescission, or termination is effective unless it is in writing and executed by all Parties or their authorized representatives.
- i. **Waiver.** No Party to this Agreement is deemed to have waived any of their rights, powers, remedies, or privileges under this Agreement unless such waiver is expressly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, the failure to exercise or enforce any rights, powers, remedies, or privileges under this Agreement will in no way be construed as a present or future waiver of such rights, powers, remedies, or privileges.
- j. **Assignment.** Except as otherwise expressly permitted in this Agreement, Licensee may not, directly or indirectly, sell, assign, sublicense, lease, rent, distribute, or otherwise transfer the Licensed Software or any license rights and obligations under this Agreement, to any other person or entity without express written consent by Licensor.
- k. **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the Parties. Nothing in this Agreement, express or implied, is intended to or shall confer on or create to any other person or entity any legal or equitable right, benefit, or remedy of any kind whatsoever.
- l. **Severability.** If any provision of this Agreement or the application thereof is held to be invalid or unenforceable for any reason and to any extent, then that provision will be considered removed from this Agreement. However, the remaining provisions will continue to be valid and enforceable according to the intentions of all Parties and to the maximum extent permitted by Law. If it is held that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- m. **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole, entire, and final agreement of the Parties with respect to the subject of this Software License Agreement. This Agreement supersedes all prior and contemporaneous understandings, representations, agreements, and warranties, whether written, oral, or implied. Should any inconsistency occur between statements made in the body of this Agreement, any related exhibits, schedules, attachments, and appendices, and any other documents incorporated herein by reference, the following order of precedence governs: (i) this Agreement, excluding any exhibits, schedules, attachments, appendices, or any other documents incorporated herein by reference; (ii) this Agreement's exhibits,



schedules, attachments, and appendices, if any; and (iii) any other documents incorporated in this Agreement by reference.



SUBSCRIPTION AGREEMENT

This **SUBSCRIPTION AGREEMENT** ("Agreement") is made and entered into as of XXXXXXXX ("Effective Date"), by and between Genius SIS LLC, a Delaware LLC, 14359 Miramar Parkway #376, Miramar, FL 33027 ("Company") and XXXXXXXXXXXX ("Customer"). Company and Customer are each referred to herein as a "Party" and are collectively referred to herein as the "Parties." In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have their meanings specified below or elsewhere in this Agreement, the plural use of defined terms shall have the same meaning as the singular and vice versa, and the use of defined terms in all capital letters shall have the same meaning as a defined term which uses the first letter of each word as capitalized.

1.1 **"Company Data"** means information or data (excluding Student Data), that is compiled, generated, or collected by the Subscription Service in connection with the access and use of the Subscription Service by Customer or End User or any information or data that identifies or describes the operation or performance of the Subscription Service.

1.2 **"Confidential Information"** means any information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, regarding this Agreement, Company's products or business, including the Subscription Service, information regarding a Party's products, services, software, intellectual property, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality; provided that, "Confidential Information" shall not include any of such information which: (a) was publicly available at the time of disclosure by the disclosing Party; (b) became publicly available after disclosure through no fault of the receiving Party; (c) was known to the receiving Party prior to disclosure by the disclosing Party; or (d) was rightfully acquired by the receiving Party after disclosure by the disclosing Party from a third party who was lawfully in possession of the information and was under no legal duty to the disclosing Party to maintain the confidentiality of the information.

1.3 **"Connection Hardware"** means the following supplied by the End User, Customer, or a third party: any component used to connect computers (e.g. HDMI cables, ethernet cables, WiFi, wireless networks); modem; broadband filter; router; NAT router; any hardware component in the Open Systems Interconnection Model; server; computer; mobile device; smart phone; tablet; any device which can access a web browser; hardware in IEEE 802 networks; hardware used in Bluetooth, Ethernet, near field communication, or USB standards; or cabling, hardware or other connection devices provided by an internet

service provider either at an End User location, Customer location, or at another location.

1.4 **"Connection Software"** means any software, firmware, library, utility, tool, computer program, program code, or protocol supplied by the Customer, an End User, or a third party which is: a component of the Open Systems Interconnection Model; Application Programming Interface; software in IEEE 802 networks; software used in Bluetooth, Ethernet, near field communication, or USB standards; or a part of Connection Hardware.

1.5 **"Customer Data"** means information or data (excluding Student Data or Company Data), that is compiled, generated or collected by the Subscription Service in connection with the access and use of the Subscription Service by Customer or any information or data that identifies or describes the operation or performance of the Customer.

1.6 **"Customer Marks"** means and any trademarks, service marks, or trade names that Customer may designate from time-to-time.

1.7 **"Days"** means calendar days.

1.8 **"Documentation"** means the documents, agreements, user manuals and any technical publications and specifications, as applicable, made generally available by Company to customers relating to the operation and use of the Subscription Service.

1.9 **"End User"** means a person who meets all of the following criteria: a person verified by the Company to be the Customer's user(s) who are authorized by the Customer to use the Subscription Service.

1.10 **"Fees"** means the pricing and fees for the Subscription Service are forth in Exhibit A (Fees and Pricing)

1.11 **"Intellectual Property Rights"** means all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including patents, copyrights, trademarks, service marks, trade names, design rights, database rights, trade secrets, know-how, methods, and any applications for the protection or registration of such rights that may now exist or may be created subsequent to the date of this Agreement, and all renewals, and extensions thereof throughout the world.

1.12 **"Security Standards"** are set forth on Exhibit B

1.13 **"Standard Interoperability"** means as to that the Customer's or the End User's server; computer; mobile device; smart phone; or tablet which accesses the Subscription Services through the following web browsers: Chrome, Firefox, Microsoft Edge, and Safari.

1.14 **"Student Data"** means any of the following data: (i) that is directly related to an identifiable current or former student, or personally identifies a current or former student of Customer; (ii) To the extent U.S. law applies, Student Data may include "educational records" as presently defined by the regulations related to the Family Educational Rights and Privacy Act in title 34 of the Code of Federal Regulations ("FERPA REGS") § 99.31 and "private information" as presently defined by New York State

Education Law § 2-d'; (iii) is provided by Customer or an End User, or compiled, generated or collected by Customer or the Company in connection with the Subscription Service; (iv) user name or ID, account number, user profile or preferences, credit card or other payment information, mailing address, email address, IP address, landline or cellular telephone numbers, Social Security number and date of birth; or (v) that identifies the End User individually, or that when compared to or otherwise combined or processed with other information enables an individual End User to be identified

1.15 **"Subscription Service"** means the software application including file formats, standard and customized portal screens, rules engine algorithms, electronic applications, executable code, Documentation, "look and feel," artwork, design, illustration, image, user interface and processes which facilitate the Genius SIS software and its features designed to support the operation of an online school or training program as well as any Custom Development Services.

1.16 **"Supported by Others"** means software, hardware, servers, or web browsers, whose security, software, updates, patches, bug fixes, or other features are maintained by third parties.

2. SUBSCRIPTION SERVICE USE AND RESTRICTIONS

2.1 **Right to Use Subscription Service.** Subject to the terms and conditions of this Agreement and the payment of all applicable Fees, Company hereby grants Customer a limited, non-transferable, non-sublicensable, non-exclusive right, during the Term, for the Customer and its End Users to use the Subscription Service solely for the Customer's internal business purposes including to allow End Users to interact, create, edit, and review Student Data.

2.2 **Limitations.** Customer shall not allow its End Users to: (a) modify or make derivative works based on the Subscription Service or ; (b) use the Subscription Service other than as permitted under this Agreement; (c) remove any product identification or other notices contained in the Subscription Service or ; or (d) reverse engineer the Subscription Service or to access the Subscription Service to: (i) build a competitive product or service, (ii) build a product using similar features, functions, or graphics of the Subscription Service or , or (iii) copy any features, functions, or graphics of the Subscription Service .

2.3 **Support.** Company will provide technical support to Customer support staff. Except for Federal holidays, support shall be available Monday – Friday from 9 AM to 6 PM Eastern Time, via telephone, email and ticketing system. Customer shall receive support calls from End Users. Customer's technical support staff will answer and address these calls. If Customer's support staff is unable to resolve the support issue, they may contact Company Technical Support through a ticketing system, email or by telephone for resolution.

2.4 **Unauthorized Access.** Customer shall promptly notify Company of any unauthorized use, copying, or disclosure of the Subscription Service of which it becomes aware and further agrees to take such commercially reasonable measures necessary to end and prevent any such further use, copying, and disclosure, including canceling any End User account associated with an End User who engages in the intentional unauthorized access to any Student Data not associated with such End User.

2.5 **Breach.** Company, in its sole and exclusive discretion, may immediately terminate this Agreement in the event Customer, or any of Customer's End Users, violate the grant of rights made herein or any provision of this Section 2 (Subscription Service Use and Restrictions). Each Party acknowledges and agrees that any breach of rights grants made herein or any provision of this Section 2 (Subscription Service Use and Restrictions) by Customer or its End Users, shall cause immediate and irreparable injury to Company, and in the event of such breach, Company shall be entitled to seek and obtain injunctive relief, without bond or other security, and all other remedies available at law and in equity.

2.6 **Service Level Agreement.** Exhibit C contains the Service Level Agreement for the Company which is not a guarantee, but reasonable goals which the Company will use best efforts to meet under the circumstances, and subject to any Force Majeure Events under Section 11.10 (Force Majeure) below.

2.7 **Standard Interoperability.** During the Term, if a web browser associated with Standard Interoperability becomes, in the Company's sole discretion, not sufficiently Supported by Others, then the Company can change Standard Interoperability.

3. CUSTOM DEVELOPMENT SERVICES

3.1 **Custom Development.** If a Customer requests custom development work, or customizations of the Subscription Service ("**Custom Development Services**"), Customer shall notify Company in writing. If, in Company's sole and exclusive discretion, Company agrees to provide the Custom Development Services, such Custom Development Services shall be billed to Customer at Company's then-current rates for development services or upon a mutually agreed upon price in a completed Statement of Work ("**SOW**") requested through the Company's ticketing system, Redmine or any similar future system.

3.2 Any Custom Development Services shall be performed pursuant to a SOW between Company and the Customer to be incorporated herein. Company will own all right, title and interest in any Custom Development Services used in the Subscription Service. Customer will be granted a right to use hereunder to such Custom Development Services as incorporated into the Subscription Service subject to any mutually agreed upon fees or price adjustments. To the extent, if any, that ownership of any of the Custom Development Services does not reside or automatically vest in Company, Customer hereby transfers and assigns to Company all rights, title interest and goodwill which Customer may have in and to such Custom Development Services. Without prejudice to the generality of the foregoing, in the event that ownership of any Custom Development Services vests in Company for any reason, Customer agrees to execute all such instruments and do all such things as Company may require to transfer or assign such ownership to, or perfect such ownership in the name of the Company.

3.3 **Customer Personnel, Facilities and Resources.** If applicable to any Custom Development Services, Customer will provide Company with timely access to appropriate Customer personnel and will arrange for Company personnel to have suitable and safe access to Customer's facilities and applicable systems. Customer will also provide suitable office space and associated resources for Company personnel working on-site,

including all necessary computing and office support resources, and will undertake any other responsibilities described in the applicable SOW. The SOW may also specify tasks or activities for which Customer is responsible and, if applicable, those tasks or activities that will be performed jointly by Customer and Company.

3.4 *Approvals and Information.* Customer will respond promptly to any request by the Company for information, approvals, decisions or authorizations that are needed by Company to perform the Custom Development Services. Company may also describe the course of action Company intends to follow if it does not receive a timely response from Customer, which may include suspension of the affected Custom Development Services. Company may follow the described course of action in the absence of a timely response from Customer. Any subsequent change to a SOW requested by Customer will be subject to mutual agreement and may result in a change request ("**Change Request**") which is considered part of a SOW. A Change Request must be submitted on the Company's Redmine system, or similar future system.

3.5 *Proceeding on Oral Instructions.* Company may proceed with and be compensated for performing a Change Request or Custom Development Services for a period of up to thirty (30) Days if Company receives an oral instruction to proceed from Customer's authorized representation and Company sends a written confirmation (email is sufficient) of the oral instruction to Customer.

3.6 *Incorporation of This Agreement by Reference.* Each SOW and Change Request is deemed to incorporate the Terms and Conditions of this Agreement by reference. In the event of any express conflict or inconsistency between the provisions of a SOW/Change Request and the provisions of this Agreement, this Agreement controls unless the SOW or Change Request explicitly identifies the section of this Agreement and states that it is being superseded by that specific term in the SOW or Change Request. Any change to a SOW or Change Request meeting the requirements of this Section will apply only to that SOW or Change Request.

3.7 *Customer Delays.* If action or inaction by Customer, or Customer's suppliers' failure to perform their responsibilities in a timely manner, delays or prevents Company from performing the Custom Development Services, Company will be entitled to a Change Request documenting an equitable adjustment in the schedule for performance and the fees under the applicable SOW.

4 INTELLECTUAL PROPERTY

4.1 *Protection of Proprietary Rights.* Customer acknowledges and agrees that the Subscription Service including Custom Development Services and all modifications and other updates thereto are commercially valuable assets of Company, the development of which required the investment of substantial time, effort, and cost by Company. Customer further acknowledges and agrees that the Subscription Service contains the trade secrets of Company and that it is Company's Confidential Information and is proprietary to Company. Accordingly, Customer hereby agrees that Customer and Customer's End Users will use the highest degree of care to

maintain the confidentiality of the Subscription Service. Customer and Customer's End Users shall comply with the obligations in Section 2 (Subscription Service Use and Restrictions) including (and without limiting the generality of the foregoing) limiting the use of and access to the Subscription Service, and only to Customer's End Users.

4.2. *Subscription Service and Ownership.* As between Customer and Company, Company owns all rights, title and interest in and to the Subscription Service. Except for the rights to use granted in Sections 2.1 (Right to Use Subscription Service) and 2.2 (Limitations), this Agreement does not grant Customer any right, title, or interest in any Intellectual Property Rights owned or licensed by Company, including the Subscription Service and Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices and restrictions contained in this Agreement.

4.3 *Data Ownership.* As between Customer and Company, Customer owns all right, title, and interest, including copyright and other proprietary rights, in Customer Data and Student Data, whether collected by Customer or Company. As between Customer and Company, the Company owns all right, title, and interest, including copyright and other proprietary rights, in Company Data.

4.4 *Customer Data and Student Data License.* During the Term, and during any transition period as specified in Section 7.4 (Effect of Termination) plus seven (7) Days, Customer grants to Company a limited, nonexclusive, non-transferable, fully paid-up, royalty-free license to the Customer Data and Student Data copy, store, display and use for purposes of providing Company, Customer, or End Users access and use of Subscription Service. Customer grants to Company a worldwide, perpetual, nonexclusive, fully paid-up and royalty-free license to Customer Data, and Student Data to copy, store, display, use, collect and aggregate such Customer Data, Student Data to the extent that such Customer Data, Student Data, alone or in the aggregate, does not individually identify the Customer, a specific End User or other End User.

4.5 *Student Data Access.* To the extent necessary to provide Customer access and use of the Subscription Service to the extent using Student Data, Customer authorizes Company to access or collect Student Data and shall facilitate a reasonable method for Company to obtain such information, for example records stored in Customer's student information systems, or collect data and Student Data through other secure transfer methods. In the US, Company shall access, collect and process Student Data: (1) under the FERPA REGS CFR § 99.31; (2) subject to the requirements of § 99.33 governing the use and redisclosure of personally identifiable information from educational records; (3) under direct control of the Customer with respect to the use and maintenance of education records; and (4) as a service for which the Customer, without the Company, would use employees. Customer agrees that, as between the Customer and Company, Customer is solely responsible for all Student Data, whether provided by Customer, End Users, or any other third-party. Customer represents and warrants that Customer has the authority to provide Student Data to Company, and that Customer has provided appropriate disclosures to all of the End

Users regarding the Customer's sharing of Student Data with Company and has otherwise complied with any disclosure requirements pursuant to FERPA and FERPA REGS.

4.6 *Third-Party Access and Remote Access to Student Data.* Customer consents to allow Company to provide access to Student Data to Company employees and to certain third-party service providers including any Company independent contractors which have a legitimate need to access such data in order to provide their services to Company as part of Company's provision of the Subscription Service to Customer. Customer also acknowledges that, subject to the terms of this Agreement and to the extent permitted by law, Student Data may be accessed and processed by Company support or (if applicable) managed and cloud hosting personnel in foreign countries, including countries other than the jurisdiction from which the Student Data was collected, and Customer hereby authorizes such access and processing. If explicitly authorized by Customer or End User, Customer consents to allow Company to provide access to Student Data to third parties that Company designates through the provision of Subscription Service under this Agreement. Customer hereby agrees that the Company is not responsible for the data breaches, theft or destruction that is caused by or relating to any Force Majeure Event, including data practices of third parties with whom the Customer elects to share Student Data or any data breaches or destruction (collectively, "**Adverse Third Party Data Events**") that occurs while any such Student Data is in the custody or control of such third parties. Customer also agrees that the Company is not responsible for any Adverse Third Party Data Events that result from Customer or End Users access or use of the Subscription Services including as related to Connection Software, or Connection Hardware.

4.7 *Student Data Retention and Deletion Requests.* Customer may request that Company delete or retrieve Student Data in Company's possession at any time by providing such a request in writing (email or on Redmine is sufficient), which request Company shall then comply with in a commercially reasonable time not to exceed two (2) weeks unless a shorter time is required by law. Company will otherwise delete Student Data within the time periods required by law, and at a minimum other than in relation to ordinary course backups within a commercially reasonable time following the end of the term of the Agreement.

4.8 *License to Customer Trademarks.* Customer hereby grants to Company and Company's independent contractors a limited, non-transferable (except for under the terms of 11.8), non-sublicensable, non-exclusive license, during the Term, to use, reproduce, display, and distribute the Customer Marks in connection the Subscription Service to Customer and its End Users, subject to the terms of this Agreement. Customer further grants Company the right to display the Customer Marks on Company's website and marketing materials. Company shall comply with Customer's reasonable requests regarding the use of Customer's Marks. Company acknowledges and agrees that all Intellectual Property Rights in the Customer Marks belong to and shall continue to belong to Customer (or its licensors or other third-party owners), and Company shall have no rights in or to the

Customer Marks other than as specifically set forth in this Agreement.

5 FEES AND PAYMENT

5.1 *Subscription Service Fees.* Fees will be invoiced in accordance with the provisions set forth in Exhibit A or in Section 5.2 (Payment Terms).

5.2 *Payment Terms.* All amounts to be paid by Customer hereunder shall be due and payable thirty (30) Days after Customer's receipt of the invoice therefor, except as stated in Exhibit A. All payments not made by Customer when due shall be subject to late charges of the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law.

5.3 *Taxes.* Customer shall pay all sales, use, and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Company's net income, unless Customer is exempt from the payment of such taxes and provides Company with sufficient evidence of such exemption.

6 CONFIDENTIALITY

6.1 *Confidentiality Obligations.* The Parties agree to hold each other's Confidential Information in strict confidence. Except for disclosure under reasonable obligations of confidentiality to a Party's independent contractors, consultants, affiliates, and employees, the Parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than as specified in this Agreement. Each Party agrees to take all reasonable steps to ensure that Confidential Information of either Party is not disclosed or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. Each Party's Confidential Information shall remain the sole and exclusive property of that Party. Each Party acknowledges that any use or disclosure of the other Party's Confidential Information other than as specifically provided for in this Agreement may result in irreparable injury and damage to the non-using or non-disclosing Party. Accordingly, each Party hereby agrees that, in the event of use or disclosure by the other Party other than as specifically provided for in this Agreement, the non-using or non-disclosing Party may be entitled to equitable relief as granted by any appropriate judicial body.

6.2 *Duration.* The obligations under this Section 6 (Confidentiality) shall terminate five (5) years following expiration or termination of this Agreement (except with regard to trade secrets, which shall remain confidential for so long as the information remains protected as a trade secret).

6.3 *Feedback.* Customer or its End Users may provide suggestions, comments or other feedback to Company with respect to the products and services, including the Subscription Service ("**Feedback**"). Feedback is voluntary and the Company is not required to hold it in confidence. Feedback may be used by Company for any purpose without obligation of any kind. Nothing contained herein shall preclude either Party from developing any products or services or enhancing any existing products or services, including but not limited to the products that are the subject of this Agreement, provided any such developments or enhancements are not based on or derived from the other Party's Intellectual Property Rights or Confidential Information.

6.4 **FERPA.** Company shall comply, as though it were Customer, with all of the requirements of the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. §1232g) and the FERPA REGS that address disclosures to third parties of student information, and other local, state or federal laws regulating the use and dissemination of Customer's constituent information. Customer acknowledges that the Company and the Company's employees/independent contractors/vendors are a school official under FERPA REGS CFR § 99.31(a)(1)(i)(B), with respect to course enrollments and other information needed to be provided to students or End Users as applicable. Customer has determined that Company has a "legitimate educational interest" in responding to such requests, as that phrase is used in the previously cited regulations.

6.5 **Security.** Company will implement reasonable physical, administrative and technical security measures for the Subscription Service designed to: (a) protect the security and confidentiality of the Customer and Student Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Subscription Service and Customer Student Data, and (c) protect against unauthorized use of or access to the Subscription Service and Customer and Student Data. Company shall also establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Subscription Service and the Customer and Student Data stored therein. With respect to any Student Data, Company's security policies and practices are FERPA compliant, and Company certifies that it will not make or permit unauthorized use of any information systems or records containing such Student Data, including: change, delete or add data to any information systems or files outside the scope of designated responsibilities.

7 TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue for twelve (12) months (the "**Initial Term**") unless otherwise mutually agreed to in Exhibit A. Unless at least thirty (30) Days prior written notice is provided, upon expiration of the Initial Term, this Agreement is automatically renewed for successive twelve (12) month terms (each a "**Renewal Term**") unless otherwise mutually agreed to in Exhibit A. The Initial Term and any Renewal Terms are referred to herein collectively as the "**Term**."

7.2 **Termination for Breach.** Either Party may terminate this Agreement with thirty (30) Days prior written notice if the other Party has failed to comply with any material term, condition, or obligation of this Agreement, and such Party subsequently has failed to remedy the default within thirty (30) Days after such notice by the non-defaulting Party. Any failure to timely pay Fees will constitute a material breach of this Agreement by Customer. Without limiting Company's termination rights, Company shall have the right and option to suspend the Subscription Service in the event Customer fails to pay any Fees when due.

7.3 **Termination for Insolvency.** If Company believes in good faith that Customer's ability to make payments may be impaired, or if Customer fails to pay any invoice when due and does not make such payment within ten (10) Days after receipt of notice

from Company of such failure, then Company may, in its sole discretion, either: (a) suspend the Subscription Service until such payment is made; or (b) terminate the Subscription Service. In either event, Customer shall remain liable to pay all Fees under this Agreement.

7.4 **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all rights granted to Customer shall terminate and immediately revert to Company, all sums owed to Company by Customer will become immediately due and payable upon the effective date of termination, and each Party shall immediately cease use of all Confidential Information belonging to the other Party and shall irretrievably delete and/or remove such items from all computer hardware and storage media, including backups. Additionally, following termination of this Agreement, Customer shall immediately cease use of the Subscription Service. Additionally, following termination, Customer shall have fourteen (14) DAYS to export Student Data at the Customer's expense. Fourteen Days prior to the end of the Term, the Customer, at the Customer's expense, may start the process of exporting Student Data. After fourteen (14) Days after the end of the Term, the Company may destroy the Student Data.

7.5 **Survival.** Notwithstanding any provisions contained in this Agreement to the contrary, in addition to any provisions that by their express terms survive expiration and termination of this Agreement, or by their nature may be reasonably inferred to have been intended to survive expiration and termination of this Agreement, the following provisions shall survive expiration and termination of this Agreement: 1 (DEFINITIONS), 4 (INTELLECTUAL PROPERTY), 5 (FEES AND PAYMENT), 6 (CONFIDENTIALITY), 7.4 (Effect of Termination), 7.5 (Survival), 9 (INDEMNIFICATION), 10 (LIMITATION OF LIABILITY) and 11 (GENERAL).

8 WARRANTIES

8.1 **Limited Warranty.** Each Party represents and warrants that (a) it has the authority to enter into this Agreement and to grant the rights and licenses provided herein, and that by entering into this Agreement such Party is not in violation of any previous agreement between such Party and any third party, and (b) it will comply with all laws and regulations applicable to the obligations assumed under this Agreement.

8.2 **No Other Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8 (WARRANTIES), Company DOES NOT MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICE (INCLUDING ANY WARRANTY AS TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), NOR WITH RESPECT TO ANY OTHER MATTER SET FORTH IN THIS AGREEMENT.

9 INDEMNIFICATION

9.1 **Mutual Indemnification.** Subject to Section 10.2, each Party (the "**Indemnifying Party**") agrees to indemnify and hold harmless the other Party (the "**Indemnified Party**") from and against any and all causes of action, penalties, fines, forfeitures, claims, damages, liabilities, losses, judgments, and costs (including reasonable attorneys' fees and disbursements)

(collectively, "**Claims**") by third parties arising out of or relating to: (a) the Indemnifying Party's gross negligence or willful misconduct which no event can occur when a Party's lacks responsibility under this Agreement (e.g. Company not responsible for certain third party security under Section 4.5 (Third Party Access and Remote Access to Student Data)); (b) any breach of this Agreement by the Indemnifying Party; (c) the Indemnifying Party's use of any of the Indemnified Party's trademarks not in compliance with the terms hereof; (d) any third-party claims that any of the Indemnifying Party's trademarks infringes on any Intellectual Property Rights of such third party; or (e) claims or actions resulting under FERPA, state, local, or other federal laws regulating the use and dissemination of Student Data to the extent such Claims are caused by or arise out of the negligence or misconduct of the Indemnifying Party, and with the condition that Indemnified Party must handle such Student Data consistent with the terms of this Agreement. If the indemnification claim is related to local, Customer, or state laws or regulations, then the Customer's breach of Section 11.3 (Compliance with Laws) would eliminate any indemnification requirement by the Company under this section.

9.2 *Indemnification Procedure.* Subject to Section 10.2, The Parties' indemnification obligations are conditioned upon: (a) the Indemnified Party promptly notifying the Indemnifying Party of any Claims for which indemnification is sought, provided, that any failure or delay to provide such notice shall not constitute a breach of this Agreement and shall not excuse the Indemnifying Party from its obligations under this Section 9 (Indemnification), except to the extent (if any) that the Indemnifying Party is prejudiced by such failure or delay; (b) the Indemnified Party cooperating with the Indemnifying Party in its defense or settlement of any such Claim; (c) the Indemnifying Party completely controlling the defense or settlement of any such Claim; and (d) the Indemnified Party using commercially reasonable efforts to mitigate the damages, if applicable. The Indemnified Party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. The foregoing notwithstanding, the Indemnifying Party shall not finalize any settlement that prejudices or materially, adversely affects the Indemnified Party without the prior written consent of the Indemnified Party.

10 LIMITATION OF LIABILITY

10.1 *Disclaimer of Consequential Damages.* OTHER THAN AS REQUIRED UNDER APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, COSTS OF RECREATING LOST DATA, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF. **COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ADVERSE THIRD-PARTY DATA EVENTS.**

10.2 *Cap on Damages and Indemnification.* NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER

PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES, ATTORNEY'S FEES, AND INDEMNIFICATION UNDER SECTION 9, IN EXCESS OF THE FEES AND ROYALTIES PAID BY Customer TO Company IN THE TWELVE (12) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

10.3 *Compliance with Laws and Export.* In connection with Customer's access to and use of the Subscription Service, Customer and Company are responsible for complying with all laws, regulations and policies of all relevant jurisdictions.

11 GENERAL

11.1 *Nature of Relationship.* In entering this Agreement, Customer does so as an independent party and not as an agent, partner, or joint ventures of Company. Customer does not have any right or authority, nor shall Customer hold itself out as having any right or authority, to assume, create, or enter into any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon, Company.

11.2 *Press Release.* Each Party will have the right to issue a press release about the relationship between the Parties with the other Party's prior written approval (which shall not be unreasonably withheld or delayed).

11.3 *Compliance with Laws.* The Parties shall comply with all applicable local, state, and federal laws and regulations, including all export laws and regulations of the United States. After the Effective Date, the Customer must immediately, and at least thirty (30) days before such changes become law, notify the Company in writing of any changes in local, Customer, or state laws or regulations which materially affect the Security Standards. After the Effective Date, any changes to the Security Standards caused by a change in local, state, or Customer laws or regulations are in the Company's discretion. Custom Development Services and require a SOW.

11.4 *Construction.* The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." The word "or" is not exclusive (i.e., has the same meaning as and/or)

11.5 *Inapplicability of UCITA.* THE PARTIES AGREE THAT NO PROVISION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) IS INTENDED TO APPLY TO THE INTERPRETATIONS OF THIS AGREEMENT, WHETHER OR NOT UCITA IS ENACTED IN THE LEGAL JURISDICTION WHOSE LAW GOVERNS THIS AGREEMENT AS SET FORTH IN THIS AGREEMENT.

11.6 *Governing Law; Venue; Severability.* This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and constructed in accordance with the laws of the State of Florida, without reference to conflicts of laws, rules, and without regard to its location of

execution or performance. With respect to any relief authorized under this Agreement, the Parties accept the exclusive jurisdiction of the state and federal courts in Florida and agree that venue shall lie exclusively in Broward County, Florida. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, then such provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.

11.7 Assignment. Customer shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of Company. Any assignment or transfer in violation of the foregoing will be null and void. Company reserves the right to assign this Agreement to any affiliate or any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of Company. Subject to all of the terms and conditions hereof, this Agreement inures to the benefit of and is binding upon the Parties hereto and their permitted successors and assigns.

11.8 Waiver. The failure to enforce or the waiver by either Party of one default or breach of the other Party shall not be considered to be a waiver of any subsequent default or breach.

11.9 Notices. Except as specifically stated otherwise herein, all notices required or permitted hereunder shall be in writing, delivered personally, by facsimile, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx) at the Parties respective addresses set forth in the signature lines to this Agreement. All notices shall be deemed effective upon personal delivery; or on the business day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight courier.

11.10 Force Majeure. Except with regard to payment obligations, either Party shall be excused from delays in performing or from failing to perform its obligations under this

Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party, including, but not limited to: default of subcontractors or suppliers; failures of third party software; the failures of what is Supported by Others; failures in web browsers associated with Standard Interoperability; default of third party vendors; acts of God or of the public enemy; U.S. or foreign governmental actions; labor shortages or strikes; communications or utility interruption or failure including national, local or regional shortage of adequate power or telecommunications, Internet access or transportation facilities; fire; flood; epidemic; pandemic; and freight embargoes (collectively "**Force Majeure Events**"). However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

11.11 Remedy. The rights and remedies of the Parties will be cumulative (and not alternative). In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expert witness fees, and court costs from the other Party.

11.12 Entire Agreement. This Agreement, and each exhibit hereto, together constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. Except Company approved SOW/Change Requests, no modification of this Agreement shall be binding on either Party unless it is in writing and signed by both Parties. In the event of any conflict or inconsistency between this Agreement and any exhibit, the terms and conditions of this Agreement shall prevail.

11.13 Counterparts. This Agreement may be executed in counterpart copies (including DocuSign and PDF), each of which will be deemed an original and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers as of the day and year below.

Company

Signature

MATTHEW SCHNITTMAN

Printed Name

CEO

Title

Date

14359 Miramar Parkway #376, Miramar – FL 33027

Address for Notice

matthew@geniussis.com

Company's Primary Contact

Customer

Signature

Printed Name

Title

Date

Address for Notice

Customer's Primary Contact

EXHIBIT A (STANDARD FEES AND PRICING)

[INSERT APPROPRIATE EXHIBIT A]

Exhibit B
"Security Standards"

1. Compliance

The Company presently hosts its software and database with Amazon AWS and/or Microsoft Azure, which provides secured data center with industry- standard fire and flood protection. Data centers are staffed 24x7 by trained security guards, and access is authorized strictly on a least-privilege basis.

For more information, please refer to <https://aws.amazon.com/compliance/>

The Company employs active uptime and performance monitoring so that we are notified of any issues the moment they happen.

The Company adheres to FERPA's and FERPA REGS' standards.

2. Disaster Recovery Plan

This section identifies the disaster recovery plan in case of a hardware, software or network malfunction that makes the Subscription Services unavailable.

1. An automated task running in an independent server connects to the application server over port 80 every 5 minutes to monitor the health and response time of the Subscription Services;
2. In case it fails for two consecutive times, the monitoring application sends an email to the Subscription Services support team;
3. The Subscription Services support team attempts to connect to the application via the public URL. If the application is available, no recovery is needed however the logs of the server are inspected to identify why the monitoring application detected a failure;
4. If the public URL is not accessible, the Subscription Services support team will try to access the server via Remote Desktop Access. If this is available, the Subscription Services support team will start troubleshooting the server and the application to find out why it is not responsive. If the server is unavailable, the failover is initiated;
5. The most recent back-up (from the previous night) is copied from the back-up repository and restored in a DR server, typically in a separate region;
6. The affected domain is redirected to the new server;
7. Subscription Services support confirms the new deployment is available and accessible;
8. Once the production server is fixed or replaced, and at an agreed time, a back-up of the temporary server is taken and restored in the production server. The DNS is redirected to the production server. Company support confirms the production instance is available and accessible;

3. Monitoring

The Subscription Services use an internally developed application as well as a commercial tool (Zabbix) that monitor availability and performance. Email alerts are automatically sent to the technical team when the site is not reachable, when the performance has fallen below pre-defined thresholds or when an issue is identified with the automated backups.

4. Vulnerability Management

The Subscription Services uses a service provided by its hosting company that automatically patches the servers with any updates and patches.

5. Information Security

The Company ensures appropriate access controls are in place to protect clients' information, including, but not limited to, the requirements below:

Access Justification/Authorization Process

The Company has in place a process that ensures that only authorized personnel are granted access to Student Data, and such authorization is limited to those having a business need.

Each authorization must be approved by the CTO. A process is in place that will immediately remove all access for employees that leave the company or change jobs within the company and no longer need access.

Compartmentalization

Student Data are logically segregated from other clients through a dedicated database.

Resources

Any new employee or contractor goes through 3 rounds of interviews to assess their suitability from a technical point-of-view, from a personality point-of-view and from a work ethic. A final interview is then scheduled with the CEO who can vet the hiring.

Once a new hire or contractor is approved, he/she undergoes an orientation about regulations (such as FERPA), confidentiality and security policies.

Employees who violate confidentiality and security policies are subject to disciplinary action to be decided by the CTO, CEO and/or CISO in accordance to the severity, including employment termination.

Encryption

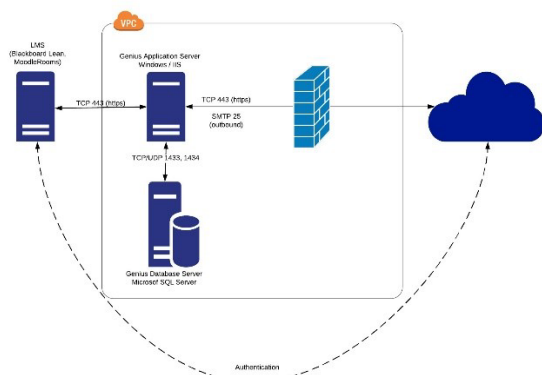
Whenever Student Data is transmitted over public networks, this information is encrypted with strong cryptographic techniques (2,048 bits) via SSL. Sensitive data (such as passwords) are stored encrypted in the database.

Change Management

The Company keeps separate development and production environments. Any changes/patches are first tested in the development environment before moved to production. Production data is not used for testing or development, and any changes are documented through a Software Requirement Specification document.

Any change has to be requested through our ticketing system, Redmine. Once requested, an effort estimate is provided (if a change request) and the estimate must be approved by a client's authorized user before it is implemented. Once implemented, the change is deployed to sandbox to be reviewed by the client. Once the ticket is marked as tested, a production deployment is scheduled and the change is pushed live.

6. Network Diagram



The above diagram is the network diagram as of the Effective Date. The Company reserves the right to make reasonably necessary changes to this network diagram in its discretion.

7. Security Incidents

The Company has an internal security team consisting of the CISO, a technical first point of contact and the CTO.

In case of a suspected or confirmed security incident or breach regarding the Student Data, the first point of contact would notify the CISO and initiate the investigation over the causes, impact and mitigation actions.

The CTO and CISO will then contact the Customer within 4 hours of discovery to notify them about the suspected breach and mitigation steps. This may include contacting the hosting providers, reviewing audit logs and checking firewall configurations.

The CTO and CISO will then provide daily updates to the Customer with the status of the mitigation efforts, as well as any additional information that may become available during the investigation.

Once the incident is addressed, a document will be created describing the causes of the incident, the scope of the incident and actions that will be taken to prevent it from happening again in the future.

8. Security Infrastructure

As of the Effective Date, the Subscription Services use the following multiple layers of protection in its web applications.

- Firewall – the Subscription Services uses firewalls provided by AWS and/or Azure to prevent unauthorized access to the hosting environment. Typically, only ports 443 and 80 are open to the public internet, with traffic being re-routed automatically to port 443. Firewalls also provide protection against DDoS and are managed through Security Groups managed by the Company;
- Web Application Firewall – If the Customer uses geniussis.com subdomains, the Subscription Services use Cloudflare as an additional layer of protection of its web applications. Cloudflare's WAF (<https://www.cloudflare.com/waf/>) may provide additional protections against many threats such as SQL Injection and bots access as well as rate limits to help prevent brute-force attacks;
- Encryption – Data is encrypted in transit using SSL and sensitive data such as passwords are encrypted at rest in the database;
- Management – The Company uses Zabbix as a monitoring tool of its servers, as well as Windows Server Update Services (WSUS) to manage the distribution of updates and hotfixes released for Microsoft products;

The Company reserves the right to make reasonably necessary changes to this security infrastructure in its discretion.

9. Data Retention

Application transactions logs will be kept for 18 months, and not included in the nightly backup.

Database with Student Data will be backed-up nightly.

Historic backups of the Student Data database will be stored with the following schedule:

- a. Last 2 Days
- b. Latest Sunday
- c. Latest 1st of the Month
- d. Latest July 1st
- e. Latest January 1st

10. Use of Student Data

Company will not sell Student Data.

Company does not use Student Data for any commercial or marketing purposes.

Company does not use Student Data for advertising purposes.

Company does not use Student Data to market products or services to End Users.

Exhibit C
“Service Level Agreement”

Error Classification / Description	Description & Expected Action(s) & Response Times
CRITICAL	
The Error is classified as Critical if any of the following occurs: Subscription Services cannot run; Subscription Services are crippled as to be useless; a time critical user job is stopped; or, there are data corruption problems or problems which could corrupt data.	Company will provide an e-mail response to Customer stating the status and action plan in less than four (4) hour(s) from the time the Company is notified of the Error (for Critical Errors first occurring during business hours 9 AM to 5 PM EST) or prior to 12 PM EST on the Next Business Day (for Critical Errors first occurring during non-business hours). Every attempt is to be made by Genius SIS to resolve the Error within twenty-four (24) hour(s) (i.e., allocate as many resources as are required to resolve a problem ASAP). Company will give the highest scheduling priority and devote its best efforts and best available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within twenty-four (24) hour(s), Company shall ensure that its most senior personnel are assigned to the work on resolving the Error, on a full-time basis.
HIGH PRIORITY	
High Priority - The Error is classified as a High Priority Error if any of the following occur: an important operational user job is stopped; a time critical user job is at risk of stopping or malfunctioning; an important function of the Subscription Services is malfunctioning; system response times do not meet the requirements of this Agreement; or, there is a frequent failure of any important function of the Subscription Services.	The Company will provide an e-mail response to Customer stating the status and action plan in less than twenty-four (24) hour(s) from the time the Company is notified of the Error (for Critical Errors first occurring during business hours 9 AM to 5 PM EST) or prior to 5 PM EST on the Next Business Day (for High Priority Errors first occurring during non-business hours). Every attempt is to be made by the Company to resolve the Error within Seventy-Two (72) hour(s) (i.e., allocate as many resources as are required to resolve a problem ASAP). Company will give the highest scheduling priority and devote its best efforts and best available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within Seventy-Two (72) hour(s), company shall ensure that its most senior personnel are assigned to the work on resolving the Error, on a full-time basis.

MEDIUM PRIORITY	
Medium Priority - The Error is classified as a Medium Priority Error if any of the following occur: a non-urgent job is not executable; or, Subscription Services malfunction has infrequent or minor user impact.	Company will provide an e-mail response to Customer stating the status and action plan in less than forty-eight (48) hour(s) from the time Company is notified of the Error (for Medium Priority Errors first occurring during business hours 9 AM to 5 PM EST). Every attempt is to be made by Company to resolve the Error within one hundred twenty (120) hour(s) (. The Company will give the highest scheduling priority and devote its best efforts and best available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within one hundred twenty (120) hour(s), Company shall ensure that its most senior personnel are assigned to the work on resolving the Error.
LOW PRIORITY	
Low Priority - The Error is classified as a Low Priority Error if any of the following occur: The Error has no current impact on any end user; or, there is a locally identified cure or workaround available.	Company will provide an e-mail response to Customer stating the status and action plan in less than one hundred twenty (120) hour(s) from the time Genius SIS is notified of the Error (for Low Priority Errors first occurring during business hours 9 AM to 5 PM EST). Every attempt is to be made by the Company to resolve the Error within two hundred forty (240) hour(s) (i.e., allocate as many resources as are required to resolve a problem ASAP). Company will give the highest scheduling priority and devote its best efforts and best available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within two hundred forty (240) hour(s), the Company shall ensure that its most senior personnel are assigned to the work on resolving the Error.



Pension Technology Group LLC

FEE SCHEDULE

Pricing is customized by Pension Technology Group LLC per pension fund opportunity and stated in the applicable Order Form based on desired SKUs and quantities. PTG will issue written quotes valid for a minimum of 90 days.

MANUFACTURER'S CLOUD SERVICES FOR RESALE

PensionPro+ by Pension Technology Group LLC("PTG")

Cloud-based (SaaS) pension administration software for U.S. public sector defined benefit pension funds

Core Plans (tiered)

- **Basic:** Member and beneficiary demographics, employer contribution reporting, buybacks, annual interest rollover, refund processing, annual member statements, actuarial extract
- **Advanced:** All Basic features plus benefit calculations and estimates (retirement, disability, death), custom reports (up to 5), custom outgoing documents (up to 5)
- **Complete:** All Advanced features plus retiree payroll processing, 1099/W-2 processing, DROP, one-time payment processing, payment adjustments, and payment interfaces (incoming/outgoing)

Add-On Modules (available with any plan)

- Member Self-Service Portal
- Employer Self-Service Portal
- Document Scanning
- DocuSign Integration
- Workflow Automation
- Single Sign-On (SSO)

Implementation Services: Project management, business analysis, data migration, system configuration, interface development, testing, training, and production rollout (scoped per Statement of Work)

PENSION TECHNOLOGY GROUP, LLC

Software as a Service Agreement

This Software as a Service Agreement (the “**Agreement**”), effective as of [REDACTED], 202[REDACTED] (the “**Effective Date**”), is by and between **Pension Technology Group LLC**, a Delaware limited liability company with offices located at PO Box 421, Billerica, MA 01821 (“**Provider**” or “**PTG**”) and [REDACTED] (“**Customer**”). Customer and PTG may be referred to herein, individually, as a “party” or, collectively, as the “parties.”

WHEREAS, Provider provides access to its customers to its software-as-a-service offerings, including its application, *PensionPro+*, for use in connection with the processing and management of retirement system data;

WHEREAS, Customer desires to access certain software-as-a-service offerings described herein, and Provider desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

“**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” means any person, firm, corporation, partnership, limited liability company, joint venture, business trust, association or other entity that now or in the future, directly or indirectly: controls, is controlled by or is under common control with a party to this Agreement. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Authorized User**” means Customer’s plan participants, employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

“**Availability Requirement**” has the meaning set forth in [Section 5.1](#).

“**Available**” has the meaning set forth in [Section 5.1](#).

“Confidential Information” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and any information with respect to which the Disclosing Party has contractual or other confidentiality obligations. For the avoidance of doubt, all Provider Materials, including but not limited to the Services, Provider Systems, Documentation, and Resultant Data, are deemed Confidential Information of Provider, whether or not marked, designated, or otherwise identified as "confidential." Confidential Information does not include information that falls under the exclusions set forth in [Section 9.2](#). Provider's Confidential Information is deemed to include any data or insights derived from the operation or performance of the Services, even if aggregated or anonymized, to the extent such data or insights are not identifiable as Customer Data.

“Customer” has the meaning set forth in the preamble.

“Customer Data” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Services for processing as part of the Services. For the avoidance of doubt, Customer Data does not include Provider Materials, Resultant Data, or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User that has been anonymized or aggregated such that it cannot reasonably be used to identify Customer or any individual Authorized User. Provider shall have no liability for the content, accuracy, or legality of Customer Data, and Customer retains sole responsibility for ensuring compliance with applicable Law regarding its use and transmission through the Services.

“Customer Failure” has the meaning set forth in [Section 4.2](#).

“Customer Systems” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“Disclosing Party” has the meaning set forth in [Section 9.1](#).

“Documentation” means then current manuals, instructions, or other documents or materials that the Provider provides or makes generally available to its customers in any form or medium regarding use of the Services or Provider Materials.

“Effective Date” has the meaning set forth in the preamble.

“Exceptions” has the meaning set forth in [Section 5.1](#).

“Fees” has the meaning set forth in [Section 8.1](#).

“Force Majeure Event” has the meaning set forth in [Section 15.9](#).

“Harmful Code” means any virus, worm, malware, ransomware, spyware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this

Agreement. Harmful Code does not include any Provider Disabling Device. Provider shall have no liability for any Harmful Code introduced by Customer or its Authorized Users through Customer Data or Customer Systems, and Customer assumes sole responsibility for preventing and mitigating such introductions.

“**Indemnitee**” has the meaning set forth in [Section 12.3](#).

“**Indemnitor**” has the meaning set forth in [Section 12.3](#).

“**Initial Term**” has the meaning set forth in [Section 14.1](#).

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Privacy and Security Policy**” has the meaning set forth in [Section 7.1](#).

“**Provider**” has the meaning set forth in the preamble.

“**Provider Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Customer’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

“**Provider Materials**” means the Services, Documentation, and Provider Systems, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any modifications, changes, deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided, created, or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include, without limitation, Resultant Data and any information, data, or other content derived from Provider’s monitoring or analysis of Customer’s access to or use of the Services, but do not include Customer Data.

“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

“Provider Systems” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

“Receiving Party” has the meaning set forth in [Section 9.1](#).

“Renewal Term” has the meaning set forth in [Section 14.2](#).

“Representatives” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“Resultant Data” means information, data, and other content that is derived by or through the Services from processing Customer Data by permanently removing or obscuring any and all information that identifies, or could reasonably be used to identify, Customer or any individual Authorized User, such that the original Customer Data cannot be re-identified or reverse-engineered from the Resultant Data. For the avoidance of doubt, once created, Resultant Data is the sole and exclusive property of PTG, constitutes Provider Materials under this Agreement, and is not subject to any rights, claims, or obligations related to Customer Data. PTG may use Resultant Data for any purpose, including but not limited to industry benchmarking, developing and improving the Services and Provider Materials, and creating new products and services. Customer hereby irrevocably waives any claim or right to Resultant Data and acknowledges that PTG has no obligation to provide access to or return Resultant Data to Customer under any circumstances.

“Scheduled Downtime” has the meaning set forth in [Section 5.3](#).

“Service Credit” has the meaning set forth in [Section 5.2](#).

“Service Level Failure” has the meaning set forth in [Section 5.1](#).

“Service Period” has the meaning set forth in [Section 5.1](#).

“Services” means the software-as-a-service offerings described in **Exhibit A**.

“Subcontractor” has the meaning set forth in [Section 2.8](#).

“Support Services” has the meaning set forth in [Section 5.4](#).

“Term” has the meaning set forth in [Section 14.1/Section 14.2](#).

“Third-Party Materials” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are furnished by a third party and not proprietary to Provider.

2. Services.

2.1 Access and Use. Subject to and conditioned on Customer's and its Authorized Users' ongoing compliance with all terms and conditions of this Agreement, Provider grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to access and use the Services during the Term, solely for Customer's internal business purposes and only by Authorized Users. Provider may

immediately suspend or terminate access, without liability, if Customer or its Authorized Users breach this Agreement or use the Services in a manner that, in Provider's reasonable judgment, threatens the security, integrity, or availability of the Services or Provider Materials. Nothing in this Agreement grants Customer any rights to possess, download, or receive a copy of the software or source code underlying the Services.

2.2 Documentation License. Provider grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to use the Documentation solely during the Term and solely as reasonably necessary for Customer's internal use of the Services in accordance with this Agreement. All other rights in the Documentation are expressly reserved by Provider.

2.3 Implementation and Professional Services. Provider will furnish Customer those implementation and other professional services as described in one or more statements of work under the separately executed Master Services Agreement, which will exclusively govern such services. Statements of Work under the Master Services Agreement may contain additional specifications, operating requirements, and obligations for both parties.

2.4 Service and System Control.

(a) Provider retains sole and exclusive control over the operation, provision, maintenance, and management of the Services and Provider Materials, including the selection, deployment, and updating of software, hardware, and hosting environments.

(b) Customer retains sole responsibility for the operation, maintenance, and management of, and all access to and use of, Customer Systems, and for all access to and use of the Services or Provider Materials by any Person by or through Customer Systems or any other means controlled by Customer or any Authorized User. Provider shall have no liability for any delay, failure, or degradation of the Services caused by Customer Systems, Customer Data, or any act or omission of Customer or its Authorized Users.

2.5 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Provider Materials, and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

2.6 Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

2.7 Changes. Provider may, in its sole discretion, make any changes to the Services or Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) comply with specific, applicable U.S. federal and state laws directly related to the provision of the Services under this Agreement, to the extent Provider is made aware of or reasonably should be aware of such laws. Provider will use commercially

reasonable efforts to notify Customer in advance of material changes that may adversely affect Customer's use of the Services, but shall have no liability for any failure to do so. Customer shall have no right to object to, delay, or prevent any such changes.

2.8 Subcontractors. Provider may engage third parties (each, a "**Subcontractor**") to perform any or all of its obligations under this Agreement. Provider will remain responsible for the performance of its obligations under this Agreement, but shall not be liable for any act or omission of a Subcontractor to the extent such act or omission was caused by Customer's instructions, data, or systems, or by events outside Provider's reasonable control.

2.9 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; (iii) this Agreement expires or is terminated; or (iv) such suspension or termination is necessary to protect the security, integrity, or availability of the Services, Provider Materials, or data of Provider or its other customers. Suspension or termination under this Section 2.9 does not relieve Customer of its payment obligations or entitle Customer to any refund or credit.

3. Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify, or create derivative works or improvements of the Services or Provider Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

- (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Provider Systems, or Provider's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter, or obscure any trademarks, Documentation, EULA, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- (h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider customer), or that violates any applicable Law;
- (i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or
- (j) use any automated means, including bots, scripts, scrapers, or spiders, to access or use the Services or Provider Materials, except as expressly permitted by Provider in writing;
- (k) use the Services or Provider Materials to send unsolicited communications or spam;
- (l) use the Services or Provider Materials in violation of any applicable export or import laws or regulations, or any applicable anti-bribery, anti-corruption, or anti-money laundering laws;
- (m) use the Services or Provider Materials to store or transmit any data that is illegal, harmful, or otherwise objectionable;
- (n) attempt to circumvent any usage limits or restrictions set forth in this Agreement or the Documentation;
- (o) use the Services or Provider Materials in a manner that could adversely affect the security, integrity, or availability of the Services, Provider Systems, or Provider's reputation or business;
- (p) permit any third party to do any of the foregoing;
- (q) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under this Section 3.

4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement. Provider shall have no responsibility or liability for any delay, failure, or degradation of the Services to the extent caused by Customer's failure to comply with this Section 4.1, including but not limited to any failure, malfunction, or inadequacy of Customer

Systems, or any delay or failure by Customer to provide required access, cooperation, or information.

4.2 Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**"). In addition to any other remedies available to Provider, Provider may charge Customer at Provider's then current time and material rates for any additional work, resources, or costs incurred by Provider as a result of any such Customer Failures. Any deadlines or milestones affected by a Customer Failure shall be extended on a day-for-day basis (or longer if reasonably required) at Provider's discretion, and Provider shall have no liability for any failure to meet such deadlines or milestones as a result.

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by [Section 3](#), Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity. Provider shall have no liability for any damages, losses, or claims arising from Customer's failure to promptly take such corrective action or provide such notice.

5. Service Levels.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Services Available at least ninety-nine percent (99.0%) of the time as measured over the course of each calendar quarter during the Term (each such quarter, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this [Section 5.1](#) (the "**Availability Requirement**"). For purposes of this Agreement, the calculation of the Availability Requirement will be based solely on monitoring performed by Provider's systems and tools. "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Documentation. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User, including access to or use of the Services by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Documentation; (b) Customer Systems; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event, including general internet failures; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or service not supplied by Provider, including, without limitation, failures of third-party cloud hosting providers (e.g., Amazon Web Services, Microsoft Azure), domain name system (DNS) services, or other third-party services that are integrated with or used to provide the Services; (f) Scheduled Downtime or emergency downtime; (g) disabling, suspension, or termination of the Services pursuant to [Section 2.9](#); (h) any malicious attacks or security intrusions, including but not limited to, denial-of-service (DoS) or distributed denial-of-service (DDoS) attacks, hacking attempts, or other third-party malicious acts directed at Provider's systems or the Services; (i) any performance degradation or unavailability resulting from Customer's or its Authorized Users' use of the Services in a manner that exceeds reasonable or documented usage parameters, quotas, or fair use policies; or (j) any Services, features, or functionality identified as alpha, beta, trial, early

access, or otherwise not generally available. Provider's total liability for any Service Level Failure shall not exceed the Service Credits specified in [Section 5.2](#), and Provider shall not be liable for any indirect, incidental, consequential, or punitive damages arising from such failures, regardless of whether Provider was advised of the possibility of such damages.

5.2 Service Level Failures and Remedies. In the event of a Service Level Failure, Provider shall issue a credit to Customer in the amount of three percent (3%) of the Fees for the Services due for the Service Period in which the Service Level Failure occurred (each a "**Service Credit**"), subject to the following:

- (a) Provider has no obligation to issue any Service Credit unless: (i) Customer reports the Service Level Failure to Provider at the designated email address (servicefailure@ptg-usa.com) immediately upon becoming aware of it; and (ii) requests such Service Credit in writing within ten (10) business days of the Service Level Failure;
- (b) any Service Credit payable to Customer under this Agreement will be applied to the Fees due from Customer for the next Renewal Term following the Service Period in which the Service Level Failure occurred. If the Agreement is not renewed, any unused Service Credit will expire and no cash refund or other compensation will be provided;

This [Section 5.2](#) sets forth Provider's sole obligation and liability and Customer's sole remedy for any Service Level Failure.

5.3 Scheduled Downtime. Provider will use commercially reasonable efforts to give Customer at least twenty-four (24) hours prior notice of all scheduled outages of the Services ("**Scheduled Downtime**").

5.4 Service Support. The Services include Provider's customer support services set forth in Exhibit B ("**Support Services**"). Provider's obligations under this Section 5.4 are subject to the limitations and exclusions set forth in Exhibit B, and Provider shall not be liable for any failure to meet Support Service levels if such failure results from Customer's or its Authorized Users' actions or omissions, including but not limited to failure to comply with obligations under this Agreement or Exhibit B.

6. Data Backup. Provider Systems are programmed to perform routine data backups in accordance with the backup policy(ies) of Provider's cloud computing solutions providers in effect from time to time (the "Backup Policy"). In the event of any loss, destruction, damage, or corruption of Customer Data caused by Provider Systems or Services, Provider will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from the most current backup of such Customer Data in accordance with the then-current Backup Policy, provided that such loss is not attributable to Customer's or its Authorized Users' actions or omissions, including but not limited to failure to comply with obligations under [Section 7.4](#) (Customer Control and Responsibility). Provider shall not be liable for any failure to restore Customer Data if such failure results from Customer-induced issues, third-party actions, or events beyond Provider's reasonable control, including but not limited to Force Majeure Events as defined in [Section 15.6](#). The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Customer acknowledges and agrees that it retains sole responsibility for implementing its own backup and recovery strategies to ensure the integrity and availability of Customer Data, independent of Provider's Backup Policy.

7. Security.

7.1 Provider Systems and Security Obligations. Provider will employ security measures in accordance with specific, applicable U.S. federal and state Laws directly related to the provision of the Services under this Agreement, to the extent Provider is made aware of or reasonably should be aware of such Laws, and consistent with Provider's data privacy and security policy as amended from time to time ("**Privacy and Security Policy**"), provided that such measures are consistent with industry standards for similar SaaS providers. Upon Customer's reasonable written request, not more than once per calendar year, Provider will furnish Customer with a copy of its most recent third party audit report (the "**Audit**"). Upon execution of a mutually agreeable nondisclosure agreement, Provider will deliver to Customer a summary of Provider's compliance report or its equivalent. Provider's obligation to provide audit reports or summaries is limited to information that does not compromise the security of Provider Systems or other customers' data, as determined in Provider's sole discretion. Provider shall not be liable for any failure to meet security standards if such failure results from Customer's or its Authorized Users' actions or omissions, including but not limited to failure to comply with security obligations under [Section 7.4](#).

7.2 Data Breach Procedures. Provider maintains a data breach plan in accordance with applicable Law and the criteria set forth in Provider's Privacy and Security Policy and shall implement the procedures required under such Law and data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

7.3 Shared Responsibility. Customer acknowledges and agrees that while there is no hardware or software currently required for Customer or its Authorized Users to install to access and use Provider's software-as-a-service application, PensionPro+, security is a shared responsibility between Provider and Customer. Customer retains sole responsibility for ensuring the security of its own systems, data, and access credentials as set forth in [Section 7.4](#). Customer and Provider acknowledge and agree that the Services and Provider Materials shall be subject to the PTG PensionPro+ Shared Responsibility Model set forth in Exhibit B. Provider shall not be liable for any security incidents, data breaches, or losses resulting from Customer's failure to adhere to its responsibilities under the Shared Responsibility Model or this Agreement.

7.4 Customer Control and Responsibility. Customer has and will retain sole responsibility for:

- (a) all Customer Data, including its content and use and security prior to transmission to Provider;
- (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services;
- (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**");
- (d) the security and use of Customer's and its Authorized Users' Access Credentials, including but not limited to implementing strong password policies and preventing unauthorized sharing or use; and
- (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (i) securely administer the distribution and use of all

Access Credentials and protect against any unauthorized access to or use of the Services; and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data by the Services. Customer shall require all Authorized Users to utilize multi-factor authentication to access the Services and Provider Materials. Provider shall not be liable for any security incidents or data breaches resulting from Customer's failure to comply with the obligations set forth in this [Section 7.4](#).

8. Fees and Payment.

8.1 Fees. Customer shall pay Provider the fees set forth in Exhibit A (collectively, "**Fees**") in accordance with this [Section 8](#). Unless otherwise specified in Exhibit A, all Fees are non-refundable and non-cancellable, except as expressly provided in this Agreement. Provider reserves the right to adjust Fees for any additional services or usage beyond the scope set forth in Exhibit A at Provider's then-current rates, subject to Customer's prior written approval or as documented in a mutually agreed amendment to Exhibit A.

8.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income. In conjunction with the execution of this agreement and at any time reasonably requested by Provider, if Customer is a tax exempt entity, it shall furnish Provider with a certificate of that status.

8.3 Payment. Customer shall pay all Fees on or prior to the due date set forth in Exhibit A, or as invoiced by Provider consistent with the time periods in such exhibit. Unless specified otherwise in Exhibit A, all Fees are due within thirty (30) days of the date of invoice. Customer shall make payments to such address or account as Provider may specify in writing from time to time via ACH or wire transfer. Payments made via wire transfer will incur a \$25 charge. If Customer submits payment via check, such payment will incur a fee of the greater of \$200 or 3% of the payment amount. Customer acknowledges that timely payment is a material condition of this Agreement, and failure to pay on time may result in suspension of Services as set forth in Section 8.4. Invoices not disputed in good faith within ten (10) days of receipt shall be deemed accepted by Customer.

8.4 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

- (a) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;
- (b) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees, to the extent permitted by applicable Law; and
- (c) if such failure continues for ten (10) business days following written notice thereof, Provider may, at its sole discretion, suspend performance of the Services or limit access to certain features until all past due amounts and any applicable interest or fees have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension. Provider shall provide written notice of any suspension at least five (5) business days prior to its implementation, unless immediate suspension is necessary to protect Provider's interests. Suspension under this [Section 8.4\(c\)](#) does not relieve Customer of its obligation to pay all Fees due under this Agreement.

8.5 No Deductions or Setoffs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to [Section 5.2](#) or any deduction or withholding of tax as may be required by applicable Law).

8.6 Fee Increases. Unless Exhibit A sets forth Fees fixed for a particular duration (in which event such Fees shall be fixed for such duration), Provider may increase Fees no more than once annually for any contract year after the first contract year of the Initial Term, including any contract year of any Renewal Term, by providing written notice to Customer at least thirty (30) days prior to such increase. No such increase, however, shall exceed the greater of eight percent (8%) or the year-over-year percentage change in the Consumer Price Index (CPI-U, US City Average, All Items) rate for the immediately preceding 12-month period; provided, however, that such limits will not apply to fee increases imposed by Provider's third-party cloud providers and similar vendors, and Provider shall pass through such increases to Customer upon written notice.

9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 9.2, "Confidential Information" has the meaning set forth in Section 1, and for clarity, all Provider Materials, including but not limited to the Services, Provider Systems, Documentation, and Resultant Data, are deemed Confidential Information of Provider, whether or not marked, designated, or otherwise identified as "confidential." Customer acknowledges that Provider's Confidential Information constitutes valuable trade secrets and proprietary information critical to Provider's business, and any unauthorized disclosure or use could cause irreparable harm to Provider.

9.2 Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information; or (e) is the subject of a legitimate disclosure request under applicable open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event Customer's received an open records or other similar applicable request, Customer will provide Provider prompt notice and otherwise perform the functions required by applicable law.

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with [Section 9.4](#), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's

obligations under this [Section 9.3](#); and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this [Section 9](#);

(c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this [Section 9](#); and

(e) promptly notify the Disclosing Party in writing of any unauthorized disclosure or use of Confidential Information upon becoming aware of such event, and cooperate with the Disclosing Party, at the Disclosing Party's sole cost and expense, in mitigating any resulting harm or damage. Notwithstanding the foregoing, Provider shall not be liable for any unauthorized disclosure or use of Customer's Confidential Information to the extent such disclosure or use results from Customer's or its Authorized Users' failure to comply with security obligations under this Agreement, including but not limited to those set forth in [Section 7.4](#).

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall:

(a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under [Section 9.3](#); and

(b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If the Disclosing Party waives compliance or, after providing the notice and assistance required under this [Section 9.4](#), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose. Notwithstanding the foregoing, Provider shall not be liable for any disclosure of Customer's Confidential Information compelled by Law if Provider has complied with the notice and assistance obligations set forth in this [Section 9.4](#).

10. Intellectual Property Rights.

10.1 Provider Materials. This is not a work made-for-hire Agreement, as that term is defined in Section 101 of Title 17 of the United States Code (the "Copyright Act"). All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain exclusively with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in [Section 2.1](#) or the applicable third-party license, in each case subject to [Section 3](#). All other rights in and to the Provider Materials are expressly reserved by Provider. For the avoidance of doubt, Provider Materials include, without limitation, Resultant Data, and Customer acknowledges and agrees that Resultant Data is the sole and exclusive property of Provider, free from any claim or right of Customer. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably assigns to Provider all right, title, and interest in and to the Resultant

Data, including all Intellectual Property Rights relating thereto, effective immediately upon creation of such Resultant Data.

10.2 Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in [Section 10.3](#).

10.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce this Agreement and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder.

10.4 Feedback. Customer may provide suggestions, comments, or other feedback (collectively, "**Feedback**") to Provider with respect to its products and services, including the Provider Materials. Feedback is voluntary and Provider is not required to hold it in confidence. Provider may use Feedback for any purpose without obligation of any kind, including but not limited to the enhancement, modification, or commercialization of the Services or Provider Materials. To the extent a license is required under Customer's Intellectual Property Rights to make use of the Feedback, Customer hereby grants Provider an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use, reproduce, modify, distribute, and create derivative works from the Feedback in connection with Provider's business.

11. Warranties.

11.1 Customer Warranties. Customer represents and warrants that:

- (a) it will comply with all applicable Laws in its performance of this Agreement;
- (b) it owns or otherwise has and will have the necessary rights, licenses, and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, privacy rights, or other rights of any third party or violate any applicable Law; and
- (c) its use of the Services will not introduce any Harmful Code into the Provider Systems or otherwise disrupt or impair the Services or Provider Materials.

Customer acknowledges that Provider's performance of its obligations under this Agreement relies on the accuracy and completeness of these warranties.

11.2 Provider Warranties. Provider represents and warrants that (i) during the Term the Services will materially conform to the Documentation when used as permitted herein; and (ii) it will comply with specific, applicable U.S. federal and state laws directly related to the provision of the Services under this Agreement, to the extent Provider is made aware of or reasonably should be aware of such laws.. Provider's exclusive liability and Customer's exclusive remedy for breach of the warranty in (i), above, shall be Provider's Support Services as described in Exhibit B.

11.3 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 11.2, AND TO THE MAXIMUM EXTENT PERMITTED BY

APPLICABLE LAW, PROVIDER PROVIDES THE SERVICES AND PROVIDER MATERIALS ON AN “AS IS” AND “AS AVAILABLE” BASIS AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ACCURACY. PROVIDER DOES NOT WARRANT THAT THE SERVICES OR PROVIDER MATERIALS WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT THEY WILL MEET CUSTOMER’S SPECIFIC REQUIREMENTS OR EXPECTATIONS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PROVIDER OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY IN SECTION 11.2. ANY REPRESENTATION OR WARRANTY CONCERNING THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH MATERIALS, AND PROVIDER FURNISHES ALL SUCH THIRD-PARTY MATERIALS AS-IS, WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED.

CUSTOMER ACKNOWLEDGES AND AGREES THAT PROVIDER AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET, AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER’S DATA, SYSTEMS, OR NETWORKS. PROVIDER SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES OR FOR ANY RESULTING LOSS OR DAMAGE.

12. Indemnification.

12.1 Provider Intellectual Property Infringement Indemnification.

(a) Indemnification Obligation. Subject to the limitations set forth in this Section 12 and Section 13, Provider shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Action by a third party (other than an Affiliate of Customer) that Customer’s use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the Documentation) infringes or misappropriates such third party’s Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (i) Third-Party Materials or Customer Data;
- (ii) access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Customer’s use in the Documentation;
- (iii) modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider’s written approval in accordance with Provider’s written specification;
- (iv) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider; or
- (v) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer

or any Authorized User.

(b) Remedies for Infringement. If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- (i) obtain the right for Customer to continue to use the Services and Provider Materials materially as contemplated by this Agreement;
- (ii) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or
- (iii) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the Services and Provider Materials or any specified part or feature thereof.

(c) Sole Remedy. THIS SECTION 12.1 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PROVIDER'S ENTIRE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES OR PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12.2 General Indemnification. Customer shall indemnify, defend, and hold harmless Provider and its Subcontractors, Affiliates, and each of their respective officers, directors, employees, agents, successors, and assigns from and against any and all Losses arising out of or resulting from any Action by a third party (other than an Affiliate of Provider) that is based on or results from:

- (a) Customer Data, including any processing of Customer Data by or on behalf of Provider in accordance with this Agreement, or any claim that Customer Data infringes, misappropriates, or violates any Intellectual Property Rights, privacy rights, or other rights of a third party;
- (b) any allegation of facts that, if true, would constitute a breach by Customer of any of its representations, warranties, or obligations under this Agreement, including under Section 3 (Use Restrictions) and Section 11.1 (Customer Warranties);
- (c) negligence, gross negligence, recklessness, or willful misconduct by Customer or any Authorized User in connection with this Agreement or the use of the Services;
- (d) personal injury or tangible property damage to the extent caused by the negligence or willful misconduct of Customer or its Authorized Users; or;
- (e) violation of applicable Law by Customer or any Authorized User in connection with this Agreement or the use of the Services.

12.3 Indemnification Procedure. The party seeking indemnification hereunder (the "**Indemnitee**") shall promptly notify the indemnifying party (the "**Indemnitor**") in writing of any Action for which it

seeks indemnification and cooperate with the Indemnitor at the Indemnitor's sole cost and expense. The Indemnitor shall, upon its written acknowledgment that the Action is subject to its indemnification obligations hereunder, assume sole control of the defense and settlement of the Action with counsel of its choosing. The Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnatee's prior written consent (which shall not be unreasonably withheld, conditioned, or delayed) unless the settlement unconditionally releases the Indemnatee from all liability and does not impose any obligations or admissions of fault on the Indemnatee. The Indemnatee's failure to perform any obligations under this Section 12.4 shall not relieve the Indemnitor of its obligations hereunder except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

13. Limitations of Liability.

13.1 MUTUAL DISCLAIMER OF INDIRECT DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) COST OF REPLACEMENT GOODS OR SERVICES; (c) LOSS OF GOODWILL OR REPUTATION; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 AGGREGATE LIABILITY CAP. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PTG AND ITS AFFILIATES, LICENSORS, AND SUPPLIERS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO PTG UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION IS CUMULATIVE AND NOT PER INCIDENT, AND APPLIES REGARDLESS OF THE NATURE OF THE CLAIM OR THE LEGAL OR EQUITABLE THEORY ASSERTED, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, BREACH OF CONFIDENTIALITY UNDER SECTION 9, OR ANY OBLIGATION TO INDEMNIFY UNDER SECTION 12. THIS SECTION 13.2 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PTG'S ENTIRE LIABILITY FOR ANY AND ALL CLAIMS UNDER THIS AGREEMENT.

13.3 Insurance. During the Term of this Agreement, PTG shall use commercially reasonable efforts to maintain the following insurance coverages with reputable insurers. Upon Customer's reasonable written request, PTG shall provide a certificate of insurance evidencing such coverages.

(a) Technology Errors & Omissions and Cyber Liability: Coverage of at least two million dollars (\$2,000,000) in the annual aggregate, covering claims arising from errors or omissions in the performance of the Services, data breaches, network security failures, and privacy violations.

(b) Commercial General Liability: Coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the annual aggregate, for bodily injury, property damage, and personal and advertising injury.

Additional Provisions. The maintenance of insurance coverage as specified herein shall not limit or expand PTG's liability, which is capped as set forth in Section 13.2 of this Agreement. If requested by Customer and agreed to by PTG as commercially reasonable, Customer may be named as an additional insured on the Commercial General Liability policy, provided that any associated costs or administrative burdens shall be borne by the Customer. PTG shall provide Customer with reasonable written notice of any material reduction or cancellation of the coverages described herein.

14. **Term and Termination.**

14.1 **Initial Term.** The initial term of this Agreement commences on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the end of the period set forth in **Exhibit A** (the "**Initial Term**").

14.2 **Renewal Term.** Following the Initial Term, this Agreement will automatically renew for successive one-year terms (each, a "**Renewal Term**" and, collectively with the Initial Term, the "**Term**"), unless either party provides written notice of its intent not to renew at least one hundred eighty (180) days prior to the end of the then-current Term.

14.3 **Termination.**

(a) **Provider's Right to Terminate.** Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than fifteen (15) days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under [Section 3](#), [Section 7](#), or [Section 9](#).

(b) **Mutual Right to Terminate for Material Breach.** Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

(c) **Termination for Insolvency.** Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; or (iii) makes or seeks to make a general assignment for the benefit of its creditors.

14.4 **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement:

(a) **Termination of Rights.** All rights and licenses granted by either party to the other hereunder will immediately terminate.

(b) **Data Handling and Deletion.** For the avoidance of doubt, as Resultant Data is the property of PTG pursuant to Section 10.1, nothing in this Agreement shall be construed to require PTG to delete, return, or cease its use of Resultant Data upon the termination or expiration of this Agreement. With respect to Customer Data, PTG shall have no obligation to maintain or provide any Customer Data and shall, unless legally prohibited, delete all Customer Data from its live production systems within sixty (60) days following the effective date of termination or expiration. PTG may retain Customer Data in its backup or archival systems until such data is deleted in the ordinary course of PTG's data retention policies.

(c) Customer Obligations. Customer shall immediately cease all use of the Services and Provider Materials and, within ten (10) days, return to Provider or, at Provider's written request, destroy all Provider Materials and Provider's Confidential Information and certify such destruction in writing.

(d) Payment Upon Termination. If this Agreement is terminated by Provider pursuant to Section 14.3(a) or Section 14.3(b), or by Customer for any reason other than a material, uncured breach by Provider, all Fees that would have become payable had the Agreement remained in effect for the remainder of the then-current Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but unpaid Fees, upon receipt of Provider's invoice.

(e) Data Portability. Provided that Customer has paid all outstanding Fees and any other amounts due to Provider in full, Provider shall, upon Customer's written request received within thirty (30) days of termination or expiration, make available to Customer a file of the Customer Data in a format chosen and supported by Provider. Provider shall have no other obligation to provide Customer Data and may charge Customer on a time and materials basis for all services provided in connection with such data transfer.

14.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: [Section 3](#), [Section 8](#), [Section 9](#), [Section 10](#), [Section 11](#), [Section 12](#), [Section 13](#), [Section 14.4](#), this [Section 14.5](#), and [Section 15](#).

15. Miscellaneous.

15.1 Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Public Announcements. Customer grants PTG the right to use Customer's name and logo in PTG's customer lists, website, and other marketing materials. Furthermore, PTG may issue one or more public announcements or press releases announcing the business relationship established by this Agreement. Prior to any such release, PTG shall provide Customer with a draft of the proposed announcement for Customer's review. If Customer does not provide a written objection to the announcement within five (5) business days of receipt, Customer's approval shall be deemed to have been granted. Any objection by Customer must be made in good faith and on reasonable grounds (for example, factual inaccuracy or the inclusion of Customer's Confidential Information not approved for release). Except as provided above, neither party shall issue any other announcement, statement, or press release relating to this Agreement without the prior written approval of the other party.

15.4 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with

this Section 15.4):

If to Provider: Pension Technology Group LLC
PO Box 421
Billerica, MA 01821
Attention: Chris Lodge; Brandon Johnson
Email: legal@ptg-usa.com

If to Customer:

Attention:

Notices sent in accordance with this Section will be deemed effectively given: (a) when delivered by hand (with written confirmation of receipt); (b) on the date shown on the courier's delivery record if sent by a nationally recognized overnight courier; (c) on the date sent by email, if sent during the addressee's normal business hours (and on the next business day if sent after normal business hours); or (d) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.5 Entire Agreement. This Agreement, including all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral. In the event of any conflict or inconsistency between the terms of the main body of this Agreement and any Exhibit, the terms of the main body of this Agreement shall govern and control. Each party hereby rejects any additional or conflicting terms on any invoice, purchase order, or other business form issued by the other party.

15.6 Force Majeure.

(a) No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, viruses/pandemics, government shutdowns, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) consecutive days or more.

(b) Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.7 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. In particular, only a signatory to this Agreement may enforce its terms.

15.8 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.9 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.10 Reserved.

15.11 Governing Law & Jurisdiction.

- (a) Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the state of Delaware, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of such state.
- (b) Jurisdiction. Each party agrees that any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware or, if such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware . Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection which it may now or hereafter have to the laying of venue of any such suit, action, or proceeding, and irrevocably waives any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- (c) WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- (d) Attorneys' Fees. In the event that any action, suit, or other legal proceeding is instituted or commenced by either party against the other arising out of this Agreement, the prevailing party

is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

15.12 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PENSION TECHNOLOGY GROUP LLC

By: _____

Name: _____

Title: _____

[CUSTOMER]

By: _____

Name: _____

Title: _____

EXHIBIT A SERVICES AND FEES

Subject to payment in full of the fees in this Exhibit, Provider will provide the Services, subject to any usage metrics, as specified below and furnish Support Services, as further defined in Exhibit B, through the Initial Term.

1. **Services:** The Services are the PensionPro+ cloud-based software-as-a-service platform and associated infrastructure, provided for use by Customer solely in connection with the processing and management of retirement system data as described in the Documentation. The Services are subject to the usage metrics, limitations, and restrictions set forth in this Exhibit A and the Agreement, including but not limited to Section 3 (Use Restrictions). Provider reserves the right to modify or update the Services in accordance with Section 2.7 (Changes), and Provider shall not be liable for any unavailability or performance issues resulting from Customer's failure to comply with the Agreement or from events outside Provider's reasonable control, as detailed in Section 5.1 (Exceptions).
2. **Usage Metrics:** [** TBD. **]
3. **Initial Term:** [** TBD **]
4. **Fees:** [** TBD. **]

EXHIBIT B SUPPORT SERVICES

This Exhibit describes the Support Services provided by PTG to Customer. Capitalized terms not otherwise defined in these terms will have meanings assigned to them in the Agreement.

1. Definitions.

“Error” means a repeatable, reproduceable failure of the Services to perform in substantial accordance with the Documentation.

“Error Correction” means the use of reasonable commercial efforts to correct Errors.

“Exclusions” means the exceptions to PTG’s obligations under these Terms, including the Service Levels, as defined in Section 6 (Exclusions).

“Priority 1 Error” means an Error that renders the Services completely inaccessible or entirely inoperative to all Authorized Users, with no viable workaround.

“Priority 2 Error” means an Error that substantially causes a core feature of the Services to be significantly degraded or inoperable, impacting significant business operations for Authorized Users, but a workaround exists.

“Priority 3 Error” means an Error that causes a non-critical feature to be impaired or there is a minor performance degradation with limited business impact for Authorized Users of the Services.

“Response Time” means the target time for PTG to respond to a call by Customer or an Authorized User for Support Services, commencing when Customer has furnished PTG all information reasonably necessary to respond to the issue.

“Support Services” means the PTG Support Services, as described below.

2. Support Services.

- 2.1. In General. PTG will provide Customer with (i) reasonable Support Services via telephone, email, website trouble tickets (ii) Error Correction, and (iii) Service updates that PTG in its sole discretion makes generally available to its other similarly situated customers without additional charge. PTG’s telephone support is available Monday through Friday, 9 a.m. to 5 p.m. EST, except on PTG holidays (**“Support Hours”**). Support Services are limited to technical issues related to Errors in the Services and do not include general training, consulting, or support for Customer Systems or third-party software unless explicitly agreed in writing at PTG’s then-current rates. PTG shall not be liable for delays or failures in Support Services caused by Customer’s failure to comply with Section 3 (Customer’s Obligations) or any Exclusions listed in Section 6.
- 2.2. Priority Designation. PTG will determine the Error Priority to be assigned to a particular issue based on the definitions in Section 1, in its reasonable discretion. Customer may request a reclassification in writing with supporting evidence, and PTG will respond within one (1) business

day during Support Hours, but PTG's determination shall be final. PTG shall not be liable for delays in resolution caused by disputes over priority classification.

- 2.3. Support Coordination; Authorized User Support. PTG will be responsible for providing Support Services only with regard to technical issues relating to Errors in the Services. Customer is responsible for ensuring all Authorized Users are properly trained and familiar with the Documentation.
- 2.4. Onsite Support. Onsite support may be obtained from PTG at its then current time and materials rates, plus travel and living expenses.

3. Customer's Obligations. Customer will have the following maintenance and support obligations:

- 3.1. All requests for Support Services will be submitted by Customer to PTG by emailing support@ptg-usa.com or via PTG's online support ticketing software portal. Customer may change its designations on written notice to PTG.
- 3.2. Customer will reasonably and promptly cooperate with PTG in troubleshooting the Error.
- 3.3. Customer will ensure the appropriate Customer personnel have been trained in the use and operation of the Services, including familiarity with all relevant Documentation.

4. Service Levels. In furnishing the Support Services, PTG will use commercially reasonable efforts, subject to the Exclusions, to achieve the service levels set forth below (collectively, the "Service Levels").

Service Level	Response Time Description/Metric	Remedy
Priority 1	Target response within one (1) hour of inquiry during Support Hours	PTG will promptly commence the following procedures: (i) assign PTG support team and engineers to correct the Error; (ii) notify PTG management that such Error has been reported and of steps being taken to correct such Error; and (iii) provide Customer with periodic reports on the status of the corrections. PTG support team and engineers will work continuously to achieve Error Correction or furnish a work around.
Priority 2	Target response within twenty-four (24) hours of inquiry during Support Hours	PTG will exercise commercially reasonable efforts to correct the Error in the next regular update to the Services.
Priority 3	Target response within twenty-four (24) hours of inquiry during Support Hours.	Potential Error Correction in a later update to the Services.

5. Escalation. In the event of ongoing Service Level failures or in the event of excessive calls for Support Services for issues other than Errors, both parties will escalate the matter to appropriate senior executives to meet and confer in good faith regarding resolution. If no resolution is reached within ten (10) business days, PTG may, at its sole discretion, offer additional paid support at its then-current rates

or limit non-Error support requests beyond the threshold in Section 6.1 without liability. PTG shall not be liable for delays or unresolved issues resulting from Customer's failure to cooperate in the escalation process.

6. Exclusions. PTG is not responsible for rendering Support Services or any failure to perform under this Exhibit, including the failure to achieve any Service Levels, to the extent caused by any of the following conditions (collectively, the "**Exclusions**"):

- 6.1. Contacts from Customer for issue resolution or questions (other than contacts for Error Correction) in excess of twenty (20) hours, in the aggregate, in any calendar year;
- 6.2. Modifications of the Services not made by PTG;
- 6.3. Customer's or an Authorized User's negligence, abuse or misapplication, or use of the Services other than as specified in the Documentation;
- 6.4. Customer's failure to fulfill its obligations in Section 3;
- 6.5. Calls for Support Services that are not based on an Error;
- 6.6. Customer or an Authorized User's environment issues affecting connectivity or interfering with the Services, including without limitation, Customer or Authorized User telecommunications connection or any other Customer or Authorized User software or equipment, Customer or Authorized User firewall software, hardware or security settings, including configuration of anti-virus software or anti-spyware or malware software, or operator error of Customer or an Authorized User;
- 6.7. any failure, interruption, or outage of third-party services, including but not limited to public cloud hosting providers and infrastructure-as-a-service (IaaS) or platform-as-a-service (PaaS) platforms (such as Amazon Web Services, Microsoft Azure, or Google Cloud Platform), or any third-party software, hardware, or telecommunication failures, including general Internet availability, slow-downs, or failures;
- 6.8. force majeure events, including, without limitation fire, flood, earthquake, elements of nature or acts of God; third party labor disruptions, acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other similar cause beyond the reasonable control of PTG;
- 6.9. issues related to third party domain name system (DNS) errors or failures;
- 6.10. scheduled maintenance of the Services, conducted on a regular basis, scheduled during non-peak hours of use of the Services (currently 9:00 p.m. to 5:00 a.m. Eastern Time);
- 6.11. Any feature, functionality, or Service that Provider makes available to Customer and identifies as "beta," "trial," "proof of concept," "pre-release," "early access," or by a similar designation, which are provided on an "as is" and "as available" basis without any warranties of any kind, express or implied; and
- 6.12. emergency maintenance of the Services.

7. No Third-Party Beneficiaries. The obligations and Service Levels provided in this exhibit are personal to Customer. There are no third-party beneficiaries to this Exhibit. In particular, no Authorized User will be considered a third-party beneficiary.

8. PensionPro+ Shared Responsibility Model.

8.1. **General Principle.** Security and compliance for the Services are a shared responsibility between PTG and the Customer. This model delineates the responsibilities of each party to ensure a secure and reliable service environment.

8.2. **PTG Responsibilities ("Security of the Cloud").** PTG is responsible for protecting the infrastructure that runs the Services. This responsibility includes:

(a) Application-Level Security: Securing the software code of the PensionPro+ application and related Provider Materials.

(b) Infrastructure Security: Managing and securing the underlying cloud infrastructure environment hosted by PTG's chosen public cloud provider (e.g., Microsoft Azure, Amazon Web Services), including the security of the compute, storage, database, and networking services controlled by PTG.

(c) Access Control for PTG Personnel: Implementing and managing access controls for all PTG Personnel and Subcontractors who have access to the Provider Systems.

(d) Vendor Management: Conducting due diligence and ongoing monitoring of its critical third-party vendors and Subcontractors.

8.3. **Customer Responsibilities ("Security in the Cloud").** Customer is responsible for securing its own data and access to the Services. This responsibility includes:

(a) Customer Data: The content, classification, and security of all Customer Data that it or its Authorized Users input into the Services.

(b) User Access Management: The management and protection of all Authorized User accounts and Access Credentials, including enforcing strong password policies and multi-factor authentication as required by this Agreement. Customer is solely responsible for any unauthorized access to the Services resulting from compromised Access Credentials.

(c) Customer Systems Security: The security of its own information technology infrastructure, including all networks, devices, and systems used to access the Services.

9. **Review and Updates.** PTG reserves the right to review and update the terms of this Exhibit B, including Service Levels and Support Services scope, no more than once annually, by providing Customer with at least sixty (60) days' written notice of material changes. Customer may provide feedback on proposed updates, but PTG's determination shall be final. PTG shall not be liable for any failure to meet outdated Service Levels prior to the effective date of updates, provided notice was given as required herein.