

User Agreement for TrakER

THE INDIVIDUAL OR ENTITY EXECUTING OR INDICATING ACCEPTANCE OF AN ORDER ("Customer") THAT INCORPORATES THIS USER AGREEMENT ("Agreement") AGREES THAT THE FOLLOWING TERMS AND CONDITIONS, UNLESS OTHERWISE STATED HEREIN, SHALL GOVERN THE PROVISION OF THE SOFTWARE FROM UTILITY SERVICES, INC. and WIZNUCLEUS, INC. ("Vendor") TO Customer. Customer SHALL NOT ACCESS OR USE THE SERVICES WITHOUT PRIOR WRITTEN CONSENT OF Vendor IF Customer IS OR BECOMES A DIRECT COMPETITOR TO Vendor OR ITS AFFILIATES. THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF THE EXECUTION OR ACCEPTANCE OF AN ORDER ("Effective Date").

1. Subscription Service.

1.1 Right to Access and Use. Subject to the terms and conditions of this Agreement, and in consideration of the fees specified in any Order, Vendor hereby grants Customer a worldwide, non-exclusive, non-transferable right to access and use the Subscription Service of TrakER application during the Term for Customer's own business purposes and authorizes Customer to grant such limited access and use rights to Customer Users.

1.2 Account Creation and Administration. The personal information used to create Customer User account profiles will be provided by Customer or Customer Users. Each set of login credentials for the Subscription Service can be used only by a single, individual Customer User.

2. Responsibilities and Restrictions.

2.1 Customer Responsibilities. Customer will access and use the Services only in accordance with this Agreement, Orders and SOWs, the Documentation, and applicable laws and regulations. Customer will promptly notify Vendor of any unauthorized access or use which Customer becomes aware. Customer will be responsible for the transfer or disclosure of Customer Content caused by Customer or Customer Users via the functionality of the Services and for all access to and use of the Services that occurs under Customer Users' login credentials.

2.2 Use Restrictions. Customer's use of the Services is subject to the limits, including Customer User quantities, set forth in each subscription order,

3. Security and Processing.

3.1 Security: Vendor has implemented and will maintain commercially reasonable information security policies and safeguards as described in Schedule 1 (*Security Practices*) to this Agreement, which include physical, organizational, and technical measures designed to preserve the security, integrity, and confidentiality of Customer Content and to protect against information security threats. Vendor may update such security policies and safeguards from time to time provided that any such update does not materially reduce the overall level of security or commitments provided to Customer as described in Schedule 1.

3.2 Processing. Customer and Customer Users represents and warrants that it has all rights, permissions, and consents necessary to: (a) submit all Customer Content to the Services; and (b) grant Vendor the

limited rights to process Customer content for the provision of the Services. Customer hereby grants Vendor a worldwide, non-exclusive, non-transferable, right to use and otherwise process Customer Content under this Agreement only: (x) as required by applicable law; (y) as requested by Customer in writing or as allowed by Customer via a Service's access controls; and (z) as necessary to provide the Services and prevent or address technical problems with the Services or violations of this Agreement. Vendor's limited right to process Customer content hereunder will not excuse any obligation of Vendor relating to Customer content under this Agreement.

3.3 Service Providers. Vendor may engage service providers to act on Vendor's behalf in connection with Vendor's provision of the Services, including processing Customer content, provided that: (a) such service providers are subject to confidentiality and data security obligations that are substantially as protective of Customer content as those set forth in this Agreement; and (b) Vendor is responsible for such service providers' acts and omissions in relation to Vendor's obligations under this Agreement.

4. Intellectual Property and Proprietary Rights.

4.1 TrakER. As between the parties, all right, title, and interest in and to Vendor Properties is owned by Vendor notwithstanding any other provision in this Agreement. Except as expressly set forth in this Agreement, Vendor does not convey any rights to Customer or any Customer User.

4.2 Customer. As between the parties, Customer retains all its right, title, and interest in and to Customer content and Customer Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth in this Agreement, Vendor acquires no right, title, or interest from Customer under this Agreement in or to Customer content.

4.3 Feedback. Customer grants Vendor a worldwide, irrevocable, perpetual, transferable, non-exclusive license to use and incorporate into Vendor's products and services any feedback or suggestions for enhancement that Customer or a Customer User provides for TrakER, without any obligation of compensation.

5. Other Products and Services.

5.2 Online Training. If Vendor makes training content available to Customer via an online portal ("Training Resources"), Vendor hereby grants Customer a worldwide, non-exclusive, non-transferable right to access and use the Training Resources during the Term for Customer's own business purposes. Training Resources are not part of the Subscription Service and the content of Training Resources is subject to change at Vendor's sole discretion.

5.3 Vendor API. Vendor may make an application programming interface or other similar development tool available within an internet-delivered Service which establishes an interface with such Service ("Vendor API"). Unless Customer has entered into Vendor's separate developer agreement and Vendor has provided Customer with an application ID for authentication purposes, Customer shall not use or enable a third party to use any VendorAPI: (a) in a manner that causes Customer to exceed the limits of its authorized use of the applicable Service as set forth in this Agreement or an applicable Order; or (b) to access data, applications, services, or a Vendor account belonging to a third party.

5.4 Free and Beta Services. Vendor may make a Service available to Customer free of charge by: (a) specifying the Service as free of charge on an Order; or (b) providing a clear and conspicuous written

notice that the Service is free of charge (collectively (a) and (b), "Free Services"). Vendor may make a Service available to Customer: (x) labeled "Beta Service" on an Order; or (y) accompanied by a clear and conspicuous written notice that the Service is to be used at Customer's own risk or provided as is (collectively (x) and (y), "Beta Service"). Notwithstanding any other provision of this Agreement, Customer acknowledges and agrees that: (i) Free Services and Beta Services are made available to Customer without any warranty, commitment to availability, security or accuracy, or other related obligation of any kind under this Agreement, unless otherwise required by applicable law; (ii) Free Services are made available to Customer without any support, maintenance, indemnification, or other related obligation of any kind under this Agreement, unless otherwise required by applicable law; (iii) Free Services may not include or allow access to all features and functionality available to paying customers; (iv) Vendor may terminate Customer's access to or use of a Free Service at any time, unless otherwise specified in writing, and Vendor will not be liable for such termination; and (v) Customer Content submitted to a Free Service may be permanently lost, and Vendor will not be liable for such loss.

6. Fees and Payment.

6.1 Fees. Customer will pay Service fees specified in each Order or SOW. All Service fees are nonrefundable once paid except as otherwise expressly provided in this Agreement or the applicable Order or SOW. Vendor may increase the unit price specified in an Order for any Renewal Term upon written notice to Customer (including via email) at least forty-five (45) days prior to the start of the Renewal Term. Unless otherwise agreed in a SOW, Customer will reimburse Vendor for reasonable, out-of-pocket expenses incurred by Vendor in the course of providing Professional Services in accordance with Vendor's *Travel and Expense Policy*.

6.2 Payment. Unless otherwise provided in the applicable Order or SOW, **Vendor will invoice Customer for Subscription Services fees annually in advance, any professional services fees contracted will be invoiced separately**. All amounts due under this Agreement are payable in United States dollars net thirty (30) days from the date of the invoice.

6.3 Taxes. Customer will bear all taxes, duties, VAT, and all other governmental charges (collectively, "Taxes") resulting from this Agreement. If Customer is exempt from any applicable Taxes, Customer will provide evidence reasonably satisfactory to Vendor of Customer's tax-exempt status and, after receipt of such evidence, Vendor will not charge Customer any Taxes from which it is exempt. If it is determined that payments due under this Agreement are subject to withholding Taxes, Customer shall notify Vendor prior to deducting any such Taxes. Customer shall: (a) only withhold amounts required under law; (b) make timely payment to the proper taxing authority of such withheld amount; and (c) provide Vendor with proof of such payment within thirty (30) days following that payment.

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7. Term and Termination.

7.1 Agreement Term; Renewal of Orders. This Agreement will remain in effect until terminated as set forth herein or by the parties' mutual written agreement. Orders will remain in effect for the Term of the Services specified therein ("Initial Term"). After the Initial Term, ORDERS WILL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR RENEWAL TERMS (each a "Renewal Term") UNLESS EITHER PARTY PROVIDES THE OTHER PARTY WRITTEN NOTICE OF NON-RENEWAL AT LEAST THIRTY (30) DAYS PRIOR TO

THE END OF THE THEN-CURRENT TERM. Notwithstanding the foregoing, any purchases of non-recurring or one-time Services made via an Order will not automatically renew.

7.2 Term of SOW. Each SOW remains in effect for the period specified therein. If no period is specified, the SOW will terminate once the Professional Services set forth in the SOW have been completed.

7.3 Termination for Cause. Either party may terminate a Service or this Agreement immediately upon written notice if the other party breaches any material provision of an Order, SOW, or this Agreement, and fails to cure the breach within sixty (60) days of such written notice from the non-breaching party.

7.4 Effect of Termination. Upon termination of this Agreement for any reason: (a) all Orders and SOWs under this Agreement will terminate; and (b) all rights and obligations of the parties hereunder will cease (except as set forth in Section 7.7 (Survival) below). If Customer terminates a Service or this Agreement for Vendor's uncured breach pursuant to Section 7.3 (Termination for Cause), Vendor shall issue a refund of prepaid fees covering the terminated portion of each Services' respective Term and, if applicable, Training Resources and Partner Apps. If Vendor terminates a Service or this Agreement for Customer's uncured breach pursuant to Section 7.3, Customer shall pay all outstanding payable amounts (if any) under this Agreement for the Term applicable to any terminated Service and, if applicable, Training Resources and Partner Apps, regardless of the due dates specified in the Order or SOW. Customer will remain obligated to pay for Professional Services rendered through, or payable as of, the effective date such Professional Services are terminated.

7.5

7.6 Suspension. Vendor may suspend Customer's access to any Service immediately if: (a) Customer fails to make a payment for more than fifteen (15) days following its due date; or (b) Customer has, or Vendor reasonably suspects based on documented evidence that Customer has, breached Section 2.2 (Use Restrictions) or misappropriated or infringed Vendor's intellectual property or proprietary rights.

7.7 Survival. The following Sections will survive termination or expiration of this Agreement: 3.2 (Processing); 4 (Intellectual Property and Proprietary Rights); 5.4 (Free and Beta Services); 5.5 (Third Party Products); 6.1 (Fees); 6.2 (Payment); 7.7 (Survival); 8 (Confidentiality); 10 (Limitations of Liability); 11 (Indemnification); and, to the extent necessary to effectuate the foregoing, 12 (General).

8. Confidentiality.

8.1 Confidential Information. "Confidential Information" means all non-public, proprietary, business, technical, legal, or financial information disclosed or learned in connection with this Agreement that the Disclosing Party has identified as confidential at the time of disclosure or that, based on the nature of the information or circumstances surrounding its disclosure, the Receiving Party would clearly understand it as confidential. With regard to Vendor, Confidential Information includes Vendor Properties. With regard to Customer, Confidential Information includes Customer Content. Confidential Information does not include: (a) information that was generally known to the public at the time disclosed to the Receiving Party; (b) information that becomes generally known to the public (other than through a breach of Section 8 (Confidentiality) by the Receiving Party) after disclosure to the Receiving Party; (c) information that was in the Receiving Party's possession free of any obligation of confidentiality prior to disclosure by the Disclosing Party; (d) information that is rightfully received by the Receiving Party from a third party without any restriction on disclosure; or (e) information that was independently developed by the

Receiving Party without reference to or use of Disclosing Party's Confidential Information. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION.

8.2 Use and Disclosure of Confidential Information. The Receiving Party: (a) will not use the Disclosing Party's Confidential Information for any purpose except as permitted under this Agreement; (b) will not disclose, give access to, or distribute any of the Disclosing Party's Confidential Information to any third party, except to the extent expressly authorized in this Agreement or a separate written agreement signed by the Disclosing Party; and (c) will take reasonable security precautions (which will be at least as protective as the precautions it takes to preserve its own Confidential Information of a similar nature) to safeguard the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees, directors, Affiliates, advisors, agents, contractors, and other representatives ("Representatives") who need to know such information in order to exercise their respective rights and obligations hereunder, provided that each such Representative is bound to protect the Confidential Information by confidentiality obligations substantially as protective as those set forth in this Agreement. The Receiving Party will be responsible for its Representatives' disclosure or use of the Disclosing Party's Confidential Information in violation of Section 8 (Confidentiality). The Receiving Party will promptly notify in writing the Disclosing Party upon discovery of any unauthorized disclosure or use of the Disclosing Party's Confidential Information, or any other breach of Section 8, by it or its Representatives. The Receiving Party's obligations set forth in Section 8 will remain in effect during the Term and three (3) years after termination of this Agreement. The disclosure of Confidential Information to the Receiving Party does not grant or convey any right of ownership of such Confidential Information.

8.3 Required Disclosures. The Receiving Party may disclose Confidential Information to the extent required by law or legal process. In such cases, however, the Receiving Party will (except to the extent prohibited by law or legal process): (a) give the Disclosing Party prior written notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (b) use diligent efforts to limit disclosure to that which is legally required; and (c) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts to obtain a protective order or other legally available means of protection.

8.4 Payment Processor or Reseller Disclosures. If Customer elects to utilize a Payment Processor or Reseller to pay for or procure Services, Vendor is permitted to disclose Confidential Information (including this Agreement and any Orders and SOWs) to such Payment Processor or Reseller that is necessary to effectuate such transaction.

8.5 Return of Materials. Upon written request by the Disclosing Party, the Receiving Party will, without undue delay: (a) either return or destroy all tangible documents and media in its possession or control that contain the Disclosing Party's Confidential Information; (b) render unrecoverable electronically stored Confidential Information of the Disclosing Party in its possession or control; and (c) certify its compliance with this Section 8.5 in writing. Notwithstanding the foregoing: (x) the Receiving Party will not be obligated to render unrecoverable Confidential Information of the Disclosing Party that is contained in an archived computer system backup made in accordance with the Receiving Party's legal and financial compliance obligations or security and disaster recovery procedure; and (y) Vendor shall return or render

unrecoverable Customer Content as set forth in Section 7.5 (Return of Customer Content). Any such retained Confidential Information will remain subject to Section 8 (Confidentiality).

8.6 Remedies. The Receiving Party acknowledges that any actual or threatened breach of Section 8 (Confidentiality) may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Disclosing Party is entitled to (but not required to) seek injunctive relief to prevent or mitigate any breaches of Section 8 with respect to the Disclosing Party's Confidential Information or any damages that may otherwise result from those breaches.

9. Representations and Warranties; Disclaimer.

9.1 Authority and Compliance Warranty. Vendor represents and warrants that it has the necessary authority to enter into this Agreement and that Vendor shall comply with any United States laws, statutes, and regulations to the extent such laws, statutes and regulations apply to Vendor's provision of the Services under this Agreement. For the avoidance of doubt, Vendor shall not be responsible for Customer's compliance with any laws, statutes and regulations applicable to Customer and its industry.

9.2 Limited Warranty for Subscription Service. Vendor represents and warrants that the Subscription Service will operate during the applicable Term substantially as described in the applicable plan feature overview and release notes made available by Vendor on the Site. Upon receipt of Customer's written notice of any alleged failure to comply with this warranty, Vendor will use commercially reasonable efforts to cure or correct the failure. If Vendor has not cured or corrected the failure within thirty (30) days following its receipt of such notice, then Customer may terminate the applicable Order and Vendor shall issue a refund of prepaid fees covering the terminated portion of the Subscription Services. Notwithstanding the foregoing, this warranty will not apply to any failure due to a defect in or modification of the Subscription Service that is caused or made by Customer, any Customer User, or a person acting at Customer's direction. This Section 9.2 sets forth Customer's exclusive rights and remedies and Vendor's sole liability in connection with this warranty.

9.3 Limited Warranty for Professional Services. Vendor represents and warrants that the Professional Services will be provided in a competent and workmanlike manner in accordance with the Order or SOW, as applicable. Customer must notify Vendor writing of any alleged failure to comply with this warranty within thirty (30) days following delivery of the Professional Services. Upon receipt of such notice, Vendor will either: (a) use commercially reasonable efforts to cure or correct the failure; or (b) terminate the Professional Services and issue a refund of prepaid fees covering the terminated portion of the Professional Services. This Section 9.3 sets forth Customer's exclusive rights and remedies and Vendor's sole liability in connection with this warranty.

9.4 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, VENDOR MAKES NO REPRESENTATIONS AND DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VENDORSPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY, AND VENDOR DOES NOT WARRANT THAT THE SERVICES OR THIRD-PARTY APPLICATIONS AND SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

10. Limitations of Liability.

10.1 Exclusion of Damages; Liability Cap.

TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, GOODWILL, OR REVENUES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE, WHETHER IN CONTRACT, TORT, OR UNDER ANY THEORY OF LIABILITY, ARISING UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO VENDOR UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

THE FOREGOING EXCLUSIONS AND LIABILITY LIMITS IN THIS SECTION 10.1 SHALL NOT APPLY TO DAMAGES OR LIABILITY RESULTING FROM CLAIMS OR OBLIGATIONS ARISING UNDER SECTIONS 2.2 (USE RESTRICTIONS), 6.1 (FEES), 6.2 (PAYMENT), OR 11 (INDEMNIFICATION), OR INFRINGEMENT OR MISAPPROPRIATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10.2 General. The parties acknowledge and agree that the limitations of liability, disclaimer of warranties, and any exclusion of damages included in this Agreement represent an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose and cause consequential loss) which is reflected by the fees paid.

11. Indemnification.

11.1 By Vendor. Vendor will defend Customer and its respective officers, directors, and employees ("Customer Indemnified Parties") from and against any claims, demands, proceedings, investigations, or suits, brought by a third party alleging that Customer's use of the Services or Customizations in accordance with this Agreement infringes any third party intellectual property rights (each, a "Claim Against Customer"). Vendor will indemnify Customer Indemnified Parties for any finally awarded damages or settlement amount approved by Vendor in writing to the extent arising from a Claim Against Customer, and any reasonable attorneys' fees of Customer associated with initially responding to a Claim Against Customer. Notwithstanding the foregoing, Vendor will have no obligation under this Section 11.1 to the extent any Claim Against Customer arises from: (a) Customer's use of the Services or Customizations in combination with technology or services not provided by Vendor, if the Services or Customizations or use thereof would not infringe without such combination; (b) Customer Content; (c) Vendor's compliance with designs, specifications, or instructions provided in writing by Customer if such infringement would not have occurred but for such designs, specifications, or instructions; or (d) use of the Services or Customizations by Customer after notice by Vendor to discontinue use. If Customer is enjoined or otherwise prohibited from using any of the Services or Customizations or a portion thereof based on a Claim Against Customer, then Vendor will, at Vendor's sole expense and option, either: (x) obtain for Customer the right to use the allegedly infringing portions of the Service or Customizations; (y) modify the allegedly infringing portion of the Service or Customizations so as to render it non-infringing without substantially diminishing or impairing its functionality; or (z) replace the allegedly infringing portions of the Service or Customizations with non-infringing items of substantially similar functionality. If Vendor determines that the foregoing remedies are not commercially reasonable or possible, then Vendor will

terminate the applicable Order or SOW and issue a refund of prepaid fees covering the terminated portion of the applicable Service.

11.2 By Customer. To the extent permitted by applicable law, Customer will defend Vendor and Vendor's Affiliates providing the Services, and their respective officers, directors, and employees ("Vendor Indemnified Parties") from and against any claims, demands, proceedings, investigations, or suits, brought by a third party arising out of Customer Content or Customer's use of the Services or Customizations in violation of applicable law (each, a "Claim Against Vendor"). Customer will indemnify Vendor Indemnified Parties for any finally awarded damages or settlement amount approved by Customer in writing to the extent arising from a Claim Against Vendor, and any reasonable attorneys' fees of Vendor associated with initially responding to a Claim Against Vendor.

11.3 Conditions. The indemnifying party's obligations under Section 11 (Indemnification) are contingent on the indemnified party: (a) promptly providing written notice of the claim to the indemnifying party (provided that indemnifying party shall not be excused from its indemnity obligations for indemnified party's failure to provide prompt notice except and then solely to the extent that the indemnifying party is materially prejudiced thereby); (b) giving the indemnifying party sole control of the defense and settlement of the claim (provided that any settlement unconditionally releases the indemnified party of all liability and does not make any admissions on behalf of the indemnified party or include payment of any amounts by the indemnified party); and (c) providing the indemnifying party, at the indemnifying party's expense, all reasonable assistance in connection with such claim. The indemnified party may participate in the defense of the claim at its sole cost and expense. Section 11 sets forth the indemnifying party's sole liability to, and the indemnified party's exclusive remedy for, any type of claim or action described in Section 11.

12. General.

12.1

12.2 Publicity.

12.4 Export Compliance. Each party shall comply with United States export control laws and regulations. Without limiting the foregoing: (a) Customer acknowledges that the Services, Documentation, and Customizations may be subject to the United States Export Administration Regulations; (b) Customer will not permit Customer Users to access or use any Service, Documentation, or Customization in a United States embargoed country; and (c) Customer is responsible for complying with any local laws and regulations which may impact Customer's right to import, export, access, or use the Services, Documentation, and Customizations.

12.5 Notices. Except where this Agreement permits notice via email, all notices provided under this Agreement must be in writing and sent via internationally recognized delivery service or certified United States mail. Notices sent via email will be deemed given one (1) business day after being sent; and notices sent via any other authorized delivery method will be deemed given five (5) business days after being sent. Notices must be addressed as follows: if to _____

12.6 Assignment. Neither party may assign this Agreement or any Orders or SOWs to a third party without the advance written consent of the other party. Subject to the foregoing and notwithstanding any prohibitions on transferability under this Agreement, the assigning party shall notice the non-

assigning party of any permitted assignment and this Agreement and any Orders or SOWs will bind and inure to the benefit of the parties, their successors, and their permitted assigns.

12.7 Force Majeure. Neither party is liable for delay or default under this Agreement if caused by conditions beyond its reasonable control. The party suffering from any such conditions shall use reasonable efforts to mitigate against the effects of such conditions.

12.8 Amendment; Waiver. Unless otherwise expressly stated herein, this Agreement and any Orders or SOWs may be modified only by a written amendment or agreement executed by an authorized representative of each party. The waiver of any breach of any provision of this Agreement or of any Order or SOW will be effective only if in writing, and no such waiver will operate or be construed as a waiver of any subsequent breach.

12.9 Enforceability. If any provision of this Agreement or any Order or SOW is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not permitted by law), and the rest of this Agreement or the relevant Order or SOW is to remain in effect as written. Notwithstanding the foregoing, if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement or any Order or SOW, the entire Agreement or the relevant Order or SOW will be considered null and void.

12.10 Governing Law. This Agreement and any Orders and SOWs are governed by the laws of the State of Washington, without regard to its conflicts of law rules, and each party hereby consents to exclusive jurisdiction and venue in the state and federal courts located in Seattle, Washington for any dispute arising out of this Agreement or any Orders or Sows

12.11 Entire Agreement; Conflict. This Agreement, together with the Policies, attached hereto, and, if applicable, the DPA, and any Orders and SOWs represent the entire agreement between Vendor and Customer with respect to the Services. Downloadable Vendor applications or products expressly governed by a separate end-user license agreement presented at the time of download or use are not governed by this Agreement. During the electronic provisioning of the Subscription Service or Training Resources, Customer Users will be required to individually acknowledge that certain information collected about them is used as described in Vendor's *Privacy Notice*, which is available on the Site. In the event of any conflict between this Agreement and any Order or SOW, this Agreement will govern and control unless the Order or SOW expressly and specifically overrides terms or conditions of this Agreement. With respect to any Services, terms and conditions included in the following items, whether submitted or executed before or after the Term start date, are null and void: (a) a Customer purchase order or similar document; (b) a Customer Vendor registration form or online portal; and (c) any other contemporaneous or prior agreements or commitments regarding the Services or the other subject matter of this Agreement.

12.12 Revisions. Vendor reserves the right to revise this Agreement by posting a revised version on the Site, which will be effective five (5) days after posting. Continued use of the Services after the effective date of revision will constitute Customer's acceptance of the revised Agreement. If Customer objects to the revisions, Customer may terminate any Orders governed by this Agreement by providing written notice to Vendor prior to the effective date of revision, provided that Customer will remain obligated to pay amounts due to Vendor under such Orders and will not receive a refund of prepaid fees. Customer's

termination will be effective upon Vendor's written acknowledgement of such termination, and in no event later than thirty (30) days from Vendor's receipt of Customer's termination notice.

13. Definitions. Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

"Affiliate" means any person or entity that owns or controls, is owned or controlled by, or is under common control or ownership with, a party to this Agreement, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise.

"Customer Content" means any data, file attachments, text, images, reports, personal information, or other content that is uploaded or submitted to the internet-delivered Services by Customer or Customer Users and is processed by Vendor on behalf of Customer. For the avoidance of doubt, Customer Content does not include usage, statistical, or technical information that does not reveal the actual contents of Customer Content.

"Customer User" means any individual authorized or invited by Customer or a Customer User to access and use the Services received by Customer from Vendor under the terms of this Agreement.

"Customizations" means all software, code, materials, ideas, deliverables, and items that are conceived, made, discovered, written, or created by Vendor's personnel in connection with providing Professional Services.

"Disclosing Party" means the party disclosing Confidential Information to the Receiving Party.

"Documentation" means documentation provided by Vendor on the Site that is uniformly available and applicable to all Vendor customers and relates to the operation and use of the Services, including user manuals, operating instructions, and release notes, each as updated by Vendor from time to time.

"Order" means an executed ordering document or online order issued or otherwise approved in writing by Vendor that sets forth the commercial details of Services made available to Customer and incorporates this Agreement by reference.

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"Policies" means the *Limits Policy*, *Acceptable Use Policy*, and *Travel and Expense Policy*, each as found on the Site at www.Vendor.com/legal and updated by Vendor from time to time.

"Professional Services" means implementation, configuration, integration, training, advisory, and any other services related to the Services that are specified in an Order or SOW.

"Receiving Party" means the party receiving or accessing Confidential Information of the Disclosing Party.

"Services" means Professional Services, the Subscription Service, and any other internet-delivered service or application provided or controlled by Vendor.

"Site" means Vendor's website at www.Vendor.com and any website linked from such website that is owned or controlled by Vendor.

“Vendor Properties” means Service, Documentation and Customizations, and all Vendor technology, software, data, methodologies, improvements, and documentation, used to provide or made available in connection with Services, Documentation, and Customizations, and all intellectual property and proprietary rights in and to the foregoing.

“SOW” means a statement of work or similar document that describes and scopes Professional Services, establishes the fees for the Professional Services, and incorporates this Agreement by reference.

"Subscription Service" means Vendor’s subscription internet-delivered work collaboration services and application that are purchased by Customer.

“Sysadmin” means a Customer User with certain administrative control rights over Customer’s Subscription Service.

“Term” means the period of authorized access and use of a Service as set forth in an Order.

Click in the below box to indicate acceptance of this license agreement.



Accepted

SCHEDULE 1

SECURITY PRACTICES

1. Security Protocols.

1.1 Information Security Program. Vendor shall maintain a comprehensive written information security program, including policies, standards, procedures, and related documents that establish criteria, means, methods, and measures governing the processing and security of Customer Content and the Vendor systems or networks used to process or secure Customer Content in connection with providing the Subscription Service (“Vendor Information Systems”).

1.2 Security Controls. In accordance with its information security program, Vendor shall implement appropriate physical, organizational, and technical controls designed to: (a) ensure the security, integrity, and confidentiality of Customer Content accessed, collected, used, stored, or transmitted to or by Vendor; and (b) protect Customer Content from known or reasonably anticipated threats or hazards to its security, integrity, accidental loss, alteration, disclosure, and other unlawful forms of processing. Without limitation, Vendor will, as appropriate, utilize the following controls:

1.2.1 Firewalls. Vendor will install and maintain firewall(s) to protect data accessible via the Internet.

1.2.2 Updates. Vendor will maintain programs and routines to keep the Vendor Information Systems up-to-date with the latest upgrades, updates, bug fixes, new versions, and other modifications.

1.2.3 Anti-malware. Vendor will deploy and use anti-malware software and will keep the anti-malware software up to date. Vendor will use such software to mitigate threats from all viruses, spyware, and other malicious code that are or should reasonably be detected.

1.2.4 Testing. Vendor will regularly test its security systems, processes, and controls to ensure they meet the requirements of these Security Practices.

1.2.5 Access Controls. Vendor will secure data in production Vendor Information Systems by complying with the following:

a. Vendor will assign a unique ID to everyone with access to systems processing Customer Content.

b. Vendor will restrict access to systems with Customer Content to only those individuals necessary to perform a specified obligation as permitted by this Agreement.

c.

d. Vendor will not use manufacturer supplied defaults for system passwords, on any operating systems, software, or other systems and will mandate the use of system-enforced “strong passwords” in accordance with or exceeding the best practices (described below) on all systems processing Customer Content and will require that all passwords and access credentials are kept confidential and not shared among Vendor personnel.

e. At a minimum, Vendor production passwords will: (i) contain at least 8 characters; (ii) not match previous passwords, the user’s login, or common name; (iii) be changed whenever an account compromise is suspected or assumed; and (iv) be regularly replaced.

f. Vendor will enforce account lockout by disabling accounts with access to Customer Content when an account exceeds a designated number of incorrect password attempts in a certain period.

g. Vendor will maintain log data for all use of accounts or credentials used by Vendor personnel for access to systems processing Customer Content, and will regularly review access logs for signs of malicious behavior or unauthorized access.

1.2.6 Policies. Vendor will maintain and enforce appropriate information security, confidentiality, and acceptable use policies for employees, subcontractors, agents, and suppliers that meet the standards set forth in these Security Practices, including methods to detect and log policy violations.

1.2.7 Development. Development and testing environments for Vendor Information Systems will be separate from production environments.

1.2.8 Deletion. Vendor will utilize procedures that at a minimum are in accordance with National Institute of Standards and Technology (NIST) SP 800-88 Revision 1 recommendations (or a successor standard widely used in the industry) to render Customer Content unrecoverable prior to disposal of media.

1.2.9 Encryption. Vendor will utilize cryptographic standards mandating authorized algorithms, key length requirements, and key management processes that are consistent with or exceed then-current industry standards, including NIST recommendations, and utilize hardening and configuration

requirements consistent in approach with then-current industry standards, including SANS Institute, NIST, or Center for Internet Security (CIS) recommendations. Pursuant to such standards, Vendor will encrypt Customer Content at rest within the Subscription Service and shall only allow encrypted connections to the Subscription Service for the transfer of Customer Content.

1.2.10 Remote Access. Vendor will ensure that any access from outside of its protected corporate or production environments to systems processing Customer Content or to Vendor's corporate or development workstation networks will require appropriate connection controls, such as VPN or multi-factor authentication.

2. System Availability.

Vendor will maintain (or, with respect to systems controlled by its service providers, ensure that such service providers maintain) a disaster recovery ("DR") program designed to recover the Subscription Service availability following a disaster. At a minimum, such DR program will include the following elements: (a) routinely validated procedures to regularly and programmatically create retention copies of Customer Content for the purpose of recovering lost or corrupted data; (b) inventories, updated at minimum annually, that list all critical Vendor Information Systems; (c) annual review and update of the DR program; and (d) annual testing of the DR program designed to validate the DR procedures and recoverability of the service detailed therein.

3. Security Incidents.

3.1 Procedure. If Vendor becomes aware of confirmed unauthorized or unlawful access to any Customer Content processed by Vendor Information Systems (a "Security Incident"), Vendor will promptly: (a) notify Customer of the Security Incident; and (b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

3.2 Unsuccessful Attempts. An unsuccessful attack or intrusion is not a Security Incident subject to this Section 3. An "unsuccessful attack or intrusion" is one that does not result in unauthorized or unlawful access to Customer Content and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or TCP/UDP headers), or similar incidents.

3.3 Customer User Involvement. Unauthorized or unlawful access to Customer Content that results from the compromise of a Customer User's login credentials or from the intentional or inadvertent disclosure of Customer Content by a Customer User is not a Security Incident.

3.4 Notifications. Notification(s) of Security Incidents, if any, will be delivered to one or more of Customer's Sysadmin users by any reasonable means Vendor selects, including email. Customer is solely responsible for maintaining accurate contact information in the Subscription Service at all times.

3.5 Disclaimer. Vendor's obligation to report or respond to a Security Incident under this Section 3 is not an acknowledgement by Vendor of any fault or liability of Vendor with respect to the Security Incident.

4. Auditing and Reporting.

4.1 Monitoring. Vendor monitors the effectiveness of its information security program on an ongoing basis by conducting various audits, risk assessments, and other monitoring activities to ensure the effectiveness of its security measures and controls.

5. Post-Termination Practices.

5.1 Treatment of Customer Content. Subject to Section 5.2 below, Vendor will, within one hundred eighty (180) days following termination of the Agreement, render unrecoverable all Customer Content from Vendor Information Systems and, upon written request, certify such process in writing.

5.2 Retention of Customer Content. Customer acknowledges that Vendor may, pursuant to its standard retention copy creation procedures or as a requirement of certain laws or regulations to which Vendor is subject, maintain copies or backups of Customer Content (including as part of records, documents, or broader data sets) beyond the period described in Section 5.1. In such cases, notwithstanding the requirements of Section 5.1, Vendor may continue to retain such Customer Content in copies or backups beyond the period prescribed in Section 5.1 provided that: (a) Vendor notifies Customer on termination of its need to retain such copies and/or backups; and (b) Vendor will continue to comply with all the requirements of the Agreement in relation to any such retained Customer Content.

6. Service Providers.

Vendor will use diligent efforts to evaluate and select suppliers and subcontractors that provide (at a minimum) substantially similar levels of security as required by these Security Practices in connection with the Subscription Service.

7. Definitions.

Capitalized terms used but not defined in this Schedule have the meanings ascribed to them in the Agreement.