



MASTER AGREEMENT
VERSION 7.2019



This Master Agreement (“Agreement”) governs the provision of services under the applicable Order Form or Statement of Work between you, the customer (“Customer”), and the Covetrus, Inc. entity set forth therein (“Provider”). Provider and Customer agree as follows:

1. Definitions.

“Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, “control” means the ownership of (i) greater than fifty percent (50%) of the voting power to elect directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company.

“Aggregated Statistics” means data and information related to Customer’s use of the Subscription Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Subscription Services.

“Customer Data” means all electronic data that is submitted, posted, stored or otherwise transmitted by or on behalf of Customer in the Subscription Services. Customer Data does not include Excluded Information or Aggregated Statistics.

“Documentation” means Provider’s standard installation materials, training materials, specifications and other hard copy and/or online help documents normally made available by Provider in connection with the Subscription Services or Software, as modified from time to time by Provider.

“Equipment” means hardware, mainframes, personal computers, servers, client/server stations, network equipment, routers, semi-conductor chips, embedded software, and other equipment that may be purchased hereunder by Customer.

“Order Form” means each ordering document executed by the parties from time to time for the purchase of Subscription Services, Software, Equipment and certain related Professional Services. All Order Forms are incorporated by reference into this Agreement.

“Professional Services” means the implementation services, training, technical support, maintenance, or consulting services performed by Provider or its authorized representatives for Customer in connection with this Agreement.

“Excluded Information” means credit or debit card numbers, social security numbers, protected health information as defined in HIPAA (45 C.F.R. § 160.103), and information relating to a customer or consumer of a financial institution under GLBA (15 U.S.C. §§ 6801–6809).

“Statement of Work” or “SOW” means each ordering document executed by the parties from time to time for Professional Services. All SOWs are incorporated by reference into this Agreement.

“Software” means the software applications of Provider identified on an applicable Order Form that are licensed to Customer pursuant to Section 2(b) below.

“Subscription Services” means the Provider application(s) that are made available to Customer on a Software-as-a-Service (SaaS) subscription basis.

2. Subscription Services, Professional Services, Software and Equipment.

a) Provision of Services. Provider, or a Provider Affiliate, will provide Customer with access to the Subscription Services and with Professional Services as specified in an Order Form or SOW, all subject to this Agreement. For purposes of any Order Form or SOW executed

by an Affiliate of Provider, the term “Provider” as used throughout this Agreement shall mean the Provider Affiliate that has executed such Order Form or SOW. Similarly, for the purposes of any Order Form or SOW executed by an Affiliate of Customer, the term “Customer” as used throughout this Agreement shall mean the Customer Affiliate that has executed such Order Form or SOW. Provider may modify the Subscription Services and Software periodically. Provider may contract with third parties to support the Subscription Services and Professional Services, including data center hosting, remote backup and specialty data services, so long as they are subject to obligations of confidentiality to Provider at least as strict as Provider’s to Customer. Provider shall remain responsible for the performance of its contractors.

b) Licensed Software. If Provider licenses Software to Customer, the terms and conditions of the license and any applicable support are specified in the applicable Order Form.

c) Limitations on Use. Customer may use the Subscription Services and Software solely to process and store information related to Customer’s veterinary medical practice for its own internal business purposes, subject to and in compliance with applicable law, and for no other purposes. Customer is responsible and liable for all uses of the Subscription Services, Software and Documentation resulting from access provided by or through Customer. In using the Subscription Services and Software, Customer will not: (i) modify, reproduce, adapt or translate any portion of the Subscription Services or Software, or create derivative works based upon Subscription Services or Software; (ii) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from any Subscription Services or Software or otherwise reduce the Subscription Services or Software to human-readable form; (iii) access any Subscription Service or Software (including, without limitation, any databases or data thereof) by any means other than through an interface that is provided by Provider for such access (if any); or (iv) access or use any Subscription Services or Software to build a competitive product, software or service. Provider reserves all rights not expressly granted to Customer in this Agreement.

d) Ownership. Provider retains all rights in the Subscription Services and (subject to the license granted to Customer) Software, the Aggregated Statistics, all work product from related Professional Services, which Customer may use only in connection with the Subscription Services or Software. Provider may use and incorporate into the Subscription Services and Software any changes suggested by Customer personnel, without payment.

e) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer’s and any Authorized End User’s access to any portion or all of the Subscription Services and/or Software if: (i) Provider reasonably determines that (A) there is a threat, attack, or security risk on or to any of the Subscription Services and/or Software; (B) Customer, or user, is using the Subscription Services and/or Software contrary to the terms of this Agreement; or (ii) in accordance with Section 3. Provider shall use commercially reasonable efforts to provide written notice of any such suspension to Customer. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

- f) **Equipment.** In consideration of the complete payment by Customer to Provider of the applicable fees for any Equipment as may be specified in an applicable Order Form to be purchased from Provider (if any), Provider hereby grants, transfers, conveys, assigns and sets over to Customer all of its right, title, interest, claim and demand in and to all such Equipment. Title to in Equipment to be purchased from Provider will pass to Customer on payment to Provider. All payment for Equipment purchased from Provider shall be non-refundable. Customer acknowledges that the Subscription Services and Software are designed to best operate using the equipment and specifications detailed by Provider and that Customer uses equipment and specifications other than those detailed by Provider at Customer's own risk.

3. Fees and Payment Terms.

- a) **Fees.** Customer shall pay the fees as specified in each Order Form and SOW. Unless otherwise specified in the Order Form, all amounts are in US Dollars (USD).
- b) **Invoicing & Payment.** All payments are due within 30 days of the date of the invoice and are non-cancellable and non-refundable except as provided in this Agreement. If Customer does not pay any amount (not disputed in good faith) when due, Provider may charge interest on the unpaid amount at the rate of 1.5% per month (or if less, the maximum rate allowed by law). Provider may, 20 days after written notice of such non-payment, suspend the Subscription Services and Professional Services until such payment is received, but Customer will remain obligated to make all payments due under this Agreement. Customer agrees to pay Provider's expenses, including reasonable attorneys and collection fees, incurred in collecting amounts not subject to a good faith dispute.
- c) **Excess Usage of Subscription Services and Software.** The Subscription Services have usage limitations based on the number of users or other metrics as set forth on the Order Form ("Quantity"). Customer shall maintain accurate records regarding Customer's actual use based on the number of its users or other applicable metric ("Actual Use") and shall make such information promptly available to Provider upon request. Customer agrees to certify the Actual Use in writing upon Provider's written request, not more than two (2) times each year. Provider may also monitor Customer's Actual Use of the Subscription Services. When Customer's Actual Use exceeds the applicable Quantity, Customer shall, upon receipt of Provider's invoice, pay additional fees on a proportionate basis for the excess use in minimum blocks of 10% of the applicable Quantity, for prior excess use and for the remainder of the term.
- d) **Taxes.** All fees are exclusive of all taxes, including federal, state and local use, sales, property, value-added, ad valorem and similar taxes related to this transaction, however designated (except taxes based on Provider's net income). Customer agrees to pay any and all such taxes that it is obligated by law to pay. Customer will pay Provider's invoices for such taxes whenever Provider is required to collect such taxes from Customer.

4. **Confidentiality.** From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media], [that is/and whether or not] marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include Excluded Information, and information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving

Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

5. **Customer Data.** Customer retains all rights to its Customer Data. Customer is the owner and data controller for its Customer Data. Customer is responsible for the accuracy and integrity of its Customer Data, for obtaining all legally-required consents for, and complying with all data protection laws applicable to, the use of Customer Data in the Subscription Services, for examining and confirming results before using them, and for adopting procedures for identifying and preventing errors in the Customer Data. Each party will use diligence in the protection of Customer Data and in preventing any unauthorized person or entity from gaining access thereto. Provider shall have the right to use and display the Customer Data: (i) in order to provide and improve the Subscription Services and/or Software; (ii) to comply with legal, regulatory and manufacturer requirements; and (iii) as otherwise may be permitted by Provider's privacy policy, located at: www.covetrus.com. Where Customer's use of the Subscription Services includes the processing of personal data (as described in the EU Data Protection Directive 95/46/EC and the EU General Data Protection Regulation 2016/679) within the European Economic Area (EEA), the terms of the standard Covetrus data processing addendum shall apply to such processing, and are hereby incorporated by reference. For the purposes of the standard contractual clauses in the data processing addendum, Customer is the data exporter, and each party's signature of this Agreement shall be treated as its signature of the standard contractual clauses and appendices.
6. **Third Parties.** The Subscription Services may include functionality provided by third-party specialty data processors on a Software as a Service (SaaS) basis from their own data centers. Customer consents to Provider's use of these third parties and to their processing Customer Data. Provider may from time to time make third-party products available to Customer. For purposes of this Agreement, such third-party products are subject to their own terms and conditions and the applicable flow through provisions referred to in the applicable Order Form or SOW. If Customer does not agree to abide by the applicable terms for any such third-party products, then Customer shall not install or use such third-party products.
7. **Security.** Without limiting Customer's responsibilities under section 5 or section 9, Provider will maintain and enforce commercially reasonable physical and logical security methods and procedures designed to protect Customer Data on the Subscription Services and

- to secure and defend the Subscription Services against “hackers” and others who may seek to access the Subscription Services without authorization. Provider will test its systems for potential security vulnerabilities at least annually. Provider will use commercially reasonable efforts to remedy any breach of security or unauthorized access. Provider reserves the right to suspend access to the Provider system in the event of a suspected or actual security breach. Notwithstanding any other provision, this section sets forth Provider’s entire obligation to protect Customer Data on the Subscription Services. Customer will maintain and enforce commercially reasonable security methods and procedures to prevent misuse of the log-in information of its users. Provider shall not be liable for any damages incurred by Customer or any third party in connection with any unauthorized access resulting from the actions of Customer or its representatives.
- 8. Aggregated Statistics.** Provider monitors use of the Subscription Services by all customers and uses de-identified data about such use, in aggregated and anonymous form, including to compile and analyze statistical and performance information about the Subscription Services and their use, and such information is not Customer Data. Provider may publish such aggregated and anonymous information so long as it does not contain any Customer Data or identify Customer or any individual.
- 9. Excluded Information.** Customer’s use of the Subscription Services and Software does not require the entry or collection of Excluded Information. Customer agrees not to use the Subscription Services or Software to collect or manage Excluded Information. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PROVIDER DISCLAIMS ANY AND ALL LIABILITY THAT MAY ARISE FROM CUSTOMER’S USE OF THE SUBSCRIPTION SERVICES OR SOFTWARE TO COLLECT OR MANAGE EXCLUDED INFORMATION.
- 10. Warranties.**
- a) Authority. Each party warrants and represents that it has all requisite legal authority to enter into this Agreement and that it shall comply with all laws applicable to its performance hereunder including all applicable laws pertaining to the collection and use of personal data.
- b) Industry Standards and Documentation. Provider warrants and represents that it will perform the Professional Services in a professional manner in accordance with prevailing industry standards and that the Subscription Services and Software will materially conform to the specifications as set forth in the applicable Documentation. At no additional cost to Customer, and as Customer’s sole and exclusive remedy for nonconformity of the Subscription Services, Software or Professional Services with this limited warranty, Provider will use commercially reasonable efforts to correct any such nonconformity, provided Customer promptly notifies Provider in writing outlining the specific details upon discovery. This limited warranty shall be void if the failure of the Subscription Services or Software to conform is caused by (i) the use or operation of the Subscription Services or Software with an application or in an environment other than as set forth in the Documentation, or (ii) modifications to the Subscription Services or Software that were not made by Provider or Provider’s authorized representatives.
- c) Neither party will introduce any virus or other harmful or malicious code designed to disrupt the use of the Subscription Services or Software.
- d) Customer will not use any Subscription Services or Software in a manner that could reasonably be expected to interfere with or disrupt the integrity, security or performance of any Subscription Services or Software, including, without limitation, the integrity or security of any data contained therein.
- e) Third Party Warranties. Provider may procure from time to time from third parties certain Equipment, hardware, software or third party support contracts. Customer acknowledges that Provider is not the manufacturer of such items. To the fullest extent permitted by law, Provider makes no warranties in relation to such items other than those manufacturers’ or licensors’ warranties (if any) which Provider is able to pass through for Customer’s benefit.
- f) DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SUBSCRIPTION SERVICES AND SOFTWARE ARE PROVIDED “AS IS” AND NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. EXCEPT AS STATED IN THIS SECTION, PROVIDER DOES NOT REPRESENT THAT CUSTOMER’S USE OF THE SUBSCRIPTION SERVICES OR SOFTWARE WILL BE SECURE, UNINTERRUPTED OR ERROR FREE. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PROVIDER IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.
- 11. Indemnification by Provider.** Provider shall indemnify, defend and hold Customer harmless from and against all losses (including reasonable attorney fees) arising out of any third party suit or claim alleging that Customer’s authorized use of the Subscription Services or Software infringes any valid U.S. or European Union patent or trademark, trade secret or other proprietary right of such third party (“Intellectual Property Right”). Customer shall: (i) give Provider prompt written notice of such suit or claim, (ii) grant Provider sole control of the defense or settlement of such suit or claim and (iii) reasonably cooperate with Provider, at Provider’s expense, in its defense or settlement of the suit or claim. To the extent that Provider is prejudiced by Customer’s failure to comply with the foregoing requirements, Provider shall not be liable hereunder. Provider may, at its option and expense, (i) replace the Subscription Services or Software with compatible non-infringing Subscription Services or Software, (ii) modify the Subscription Services or Software so that they are non-infringing, (iii) procure the right for Customer to continue using the Subscription Services or Software, or (iv) if the foregoing options are not reasonably available, terminate the applicable Order Form or SOW and refund Customer all prepaid fees for Subscription Services, Software or Professional Services applicable to the remainder of the term of such Order Form or SOW. Any pre-paid license fees for Software will be amortized over the shorter of the license term or three (3) years. Provider shall have no obligation to Customer with respect to any infringement claim against Customer if such claim existed prior to the effective date of the relevant Order Form or such claim is based upon (w) Customer’s use of the Subscription Services or Software in a manner not expressly authorized by this Agreement, (x) the combination, operation, or use of the Subscription Services or Software with third party material that was not provided by Provider, if Customer’s liability would have been avoided in the absence of such combination, use, or operation, or (y) modifications to the Subscription Services or Software other than as authorized in writing by Provider; or (z) Customer Data. THIS SECTION SETS FORTH PROVIDER’S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM SUBJECT TO INDEMNIFICATION UNDER THIS SECTION.
- 12. Indemnification by Customer.** Customer shall indemnify, defend and hold Provider harmless from and against all losses (including reasonable attorney fees) arising out of any third party suit or claim alleging that (i) Customer’s use of the Subscription Services or Software hereunder has harmed such third party claimant, or (ii) Customer Data infringes any Intellectual Property Right. Provider shall: (i) give Customer prompt written notice of such suit or claim, (ii) grant Customer sole control of the defense or settlement of such suit or claim and (iii) reasonably cooperate with Customer, at Customer’s

expense, in its defense or settlement of the suit or claim. To the extent that Customer is prejudiced by Provider's failure to comply with the foregoing requirements, Customer shall not be liable hereunder.

13. LIMITATION OF LIABILITIES. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS AND CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF A PARTY, ITS SERVICE PROVIDERS, LICENSORS, CONTRACTORS OR SUPPLIERS ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO PROVIDER FOR THE RELEVANT SUBSCRIPTION SERVICES, SOFTWARE OR PROFESSIONAL SERVICES WITHIN THE PRECEDING TWELVE (12) MONTHS. IN NO EVENT SHALL EITHER PARTY OR THEIR SERVICE PROVIDERS, LICENSORS CONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES FOR COVER OR LOSS OF USE, DATA, REVENUE OR PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

14. Term. This Agreement will continue in effect for the Term of all Order Forms and SOW's hereunder. Each Order Form or SOW will commence upon its effective date as set forth in the applicable Order Form or SOW and continue for the term set forth therein. Provider may increase pricing once each year during the Term by at least ninety (90) days written notice.

15. Termination

- a) Termination Rights. In addition to any other express termination right set forth in this Agreement:
 - i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 20 days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2 or Section 4;
 - ii) 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: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or
 - iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) 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; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or
 - iv) upon the expiration of any Initial Term (as may be defined in an Order Form or SOW) either Party may terminate this Agreement, or any Order Form or SOW, effective ninety (90) days after written notice to the other Party, for convenience.
- b) Termination Effects. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the

Subscription Services and/or Software and, without limiting Customer's obligations under Section 4, Customer shall delete, destroy, or return all copies of the Subscription Services and/or Software and certify in writing to the Provider that the Subscription Services and/or Software has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all fees that may have become due before such expiration or termination, or entitle Customer to any refund..

16. General.

- a) Independent Contractors. The parties are independent contractors and not agents or partners of, or joint venturers with, the other party for any purpose. Neither party shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.
- b) Notices. All notices required under this Agreement shall be in writing and shall be delivered personally against receipt, or by registered or certified mail, return receipt requested, postage prepaid, or sent by nationally-recognized overnight courier service, and addressed to the party to be notified at their address set forth below. In the case of Provider, a copy of all notices shall be sent to the following: 7 Custom House Street, Portland, Maine, 04101, Attention: General Counsel. All notices and other communications required or permitted under this Agreement shall be deemed given when delivered personally, or one (1) day after being deposited with such overnight courier service, or five (5) days after being deposited in the United States mail, postage prepaid to the address set forth below the signature lines of this Agreement, or to such other address as each party may designate in writing.
- c) Force Majeure. Except for payment obligations hereunder, either party shall be excused from performance of non-monetary obligations under this Agreement for such period of time as such party is prevented from performing such obligations, in whole or in part, due to causes beyond its reasonable control, including but not limited to, delays caused by the other party, acts of God, war, terrorism, criminal activity, civil disturbance, court order or other government action, third party performance or non-performance, strikes or work stoppages, provided that such party gives prompt written notice to the other party of such event.
- d) Amendment; Entire Agreement; Precedence. No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and executed by authorized representatives of Provider and Customer. This Agreement, including all Order Forms, SOWs, and documents attached hereto or incorporated herein by reference, constitutes the complete and exclusive statement of the parties' agreement as to the subject matter hereof and supersedes all proposals, requirements documents, discussions, presentations, responses to questions, or prior agreements, commitments or promises, oral, electronic or written, between the parties or provided by one party to another, relating to the subject matter hereof. Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on and shall have no remedy or right of action with respect to any statement, undertaking, promise, assurance, warranty, understanding or any representation or misrepresentation (whether contractual or non-contractual and whether negligently or innocently made) relating to the subject matter of this agreement and other than as expressly set out in this agreement as a warranty, in writing or not and made by or to any person. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud. Each Order Form and SOW is governed by the terms of this Agreement and in the event of a conflict or discrepancy between the terms of an Order Form or SOW and the terms of this Agreement, this Agreement shall govern except as to the specific Subscription Services or Professional Services ordered, and the fees, currency and payment terms for such orders, for which the

Order Form or SOW shall govern, as applicable. If an Order Form or SOW explicitly states that it is intended to amend or modify a term of this Agreement, such Order Form or SOW shall govern over this Agreement solely as to the amendment or modification. Provider objects to and rejects any additional or different terms proposed by Customer, including those contained in Customer's purchase order, acceptance, vendor portal or website. Neither Provider's acceptance of Customer's purchase order nor its failure to object elsewhere to any provisions of any subsequent document, website, communication, or act of Customer shall be deemed acceptance thereof or a waiver of any of the terms hereof. The party's obligations hereunder are neither contingent on the delivery of any future functionality or features of the Subscription Services or Software nor dependent on any oral or written public comments made by Provider regarding future functionality or features of the Subscription Services or Software. No right or cause of action for any third party is created by this Agreement or any transaction under it.

- e) **Non-Waiver; Invalidity.** No waiver or modification of the provisions of this Agreement shall be effective unless in writing and signed by the party against whom it is to be enforced. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. A waiver of any provision, breach or default by either party or a party's delay exercising its rights shall not constitute a waiver of any other provision, breach or default.
- f) **Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other, which shall not be unreasonably withheld. However, either party may assign this Agreement to any Affiliate, or to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business or assets to which this Agreement pertains, by purchase of stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement, provided that Customer shall not assign this Agreement to a direct competitor of Provider. Any assignment or attempted assignment in breach of this Section shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.
- g) **Governing Law and Venue.** This Agreement will be interpreted and construed in accordance with the laws of the State of Delaware without regard to conflict of law principles, and both parties hereby consent to the exclusive jurisdiction and venue of courts in Wilmington, Delaware in all disputes arising out of or relating to this Agreement.
- h) **Survival.** Provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement shall so survive.
- i) **Headings and Language; Severability.** The headings of sections included in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will 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 shall negotiate in good faith to modify this Agreement so as to effect

their original intent 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.

- j) **Export Regulation.** The Subscription Services and Software utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Subscription Services and Software or the underlying software or technology to, or make the Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the underlying software or technology available outside the US.
- k) **US Government Rights.** Each of the Documentation and the software components that constitute the Subscription Services and Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Subscription Services and Software and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- l) **Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- m) **Contract for Services.** The parties intend this Agreement to be a contract for the provision of services and not a contract for the sale of goods. To the fullest extent permitted by law, the provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), the United Nations Convention on Contracts for the International Sale of Goods, and any substantially similar legislation as may be enacted, shall not apply to this Agreement.
- n) **Actions Permitted.** Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than one year after the cause of action has accrued.