

**The Jellyvision Lab, Inc.**

**Electronic License Terms and Conditions**

These Electronic License Terms and Conditions (the "ELTC" or "PELTC"), effective as of the date of acceptance pursuant to Section 2.1 hereof (the "Effective Date"), are by and between The Jellyvision Lab, Inc., a Delaware corporation ("Provider"), and the customer ("Customer") identified on the Subscription ELTC or Subscription Order Form into which this ELTC is incorporated by reference ("Order Form").

WHEREAS, Customer desires to procure certain software services from Provider, and Provider desires to provide Customer access to such software services; and

WHEREAS, Customer and Provider acknowledge and agree that the Authorized Users' use of Provider's software services is governed by a separate Terms of Use and Privacy Policy by and between Provider and the Authorized User.

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 intend to be legally bound hereby and agree as follows:

1. Definitions.

"Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this ELTC and (ii) for whom access to the Services has been purchased hereunder.

"Authorized User Data" means, other than Customer Data, information, data and other content, in any form or medium that is collected, downloaded or otherwise received by Provider, directly or indirectly from an Authorized User by or through the Services.

"Customer Data" means, other than Authorized User Data, information, data and other content, in any form or medium that is collected, downloaded or otherwise received, directly or indirectly from Customer by or through the Services.

"Harmful Code" means any software, hardware or other technology, device or means, including any virus, worm, malware 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 as intended by this ELTC.

"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 applicable 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, liabilities, 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.

"Personal Information" means "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, and "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.

"Process" means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or

improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. "Processing" and "Processed" have correlative meanings.

"Provider Offerings" means the Services, Specifications, 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 deliverables, technical or functional descriptions, requirements, plans or reports, that are provided by Provider or any Provider Personnel in connection with the Services. For the avoidance of doubt, Provider Offerings include Resultant Data and any information, data or other content derived from Provider's monitoring 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.

"Recommendations" means the recommendations and estimated out-of-pocket costs that are derived from the Resultant Data and made available to Authorized Users and Customer as part of the Services.

"Representatives" means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, service providers, and legal advisors.

"Resultant Data" means information, data and other content that is derived by or through the Services from Processing Authorized User Data including, but not limited to, all metadata, but excluding Recommendations.

"Services" means access to the hosted web services delivering the Jellyvision DX functionality. The Services provide Authorized Users plan recommendations amongst health plans available to an Authorized User. Using demographic, drug, historical medical service utilization and/or historical claims data (where available), and Authorized User preference data, Provider's proprietary algorithms deliver personalized plan scores and projected costs, for available plans

"Specifications" means the specifications for the Services set forth herein and/or in the Order Form.

"Territory" means the United States.

"Third-Party Materials" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

2. Services.

2.1 Acceptance. Customer is accepting the terms and conditions of this ELTC, by any of executing the Order Form, clicking accept or agree, or using and/or continuing to use the Services. By accepting this ELTC, Customer acknowledges and agrees that it has read and understands this ELTC. If any Person is entering into this ELTC on behalf

of Customer, such Person hereby represents that he or she has the authority to bind Customer to this ELTC.

2.2 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this ELTC, Provider hereby grants Customer a non-exclusive, non-transferable (except as expressly set forth in Section 13.7) right to access and use the Provider Offerings during the Term in the Territory solely for the benefit of Customer and its Authorized Users.

2.3 Use Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Provider Offerings except as expressly permitted by this ELTC. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, and shall not permit any other Person to: (a) copy, modify or create derivative works or improvements of the Provider Offerings; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Provider Offerings 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 Provider Offerings, in whole or in part; (d) input, upload, transmit or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (f) remove, delete, alter or obscure any trademarks, Specifications, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Provider Offerings, including any copy thereof; (g) access or use the Provider Offerings in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights 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; (h) access or use the Provider Offerings for purposes of competitive analysis of the Provider Offerings, 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 (i) otherwise access or use the Provider Offerings beyond the scope of the authorization granted under this Section 2.3.

2.4 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Provider Offerings that it deems necessary or useful.

2.5 Service and System Control. Except as otherwise expressly provided in this ELTC, as between the parties, Provider has and will retain sole control over the operation, provision, maintenance and management of the Provider Offerings.

2.6 Suspension or Termination of Services. Provider may, directly or indirectly, and by any 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 Provider Offerings, 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; (b) Provider believes, in its good faith and reasonable discretion, that: (i) such Person has failed to comply with, any material term of this ELTC; or (ii) such Person is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (c) this ELTC expires or is terminated in accordance with its terms. This Section 2.6 does not limit any of Provider's other rights or remedies, whether at law, in equity or under this ELTC.

3. Customer Obligations.

3.1 Cooperation: Failure or delay. Customer shall, at all times during the Term, 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 ELTC. 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 ELTC, directly or indirectly.

3.2 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by this ELTC, Customer shall immediately: (a) take all reasonable and lawful measures within its 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 Provider Offerings and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) immediately notify Provider in writing of any such actual or threatened activity.

3.3 Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA OR AUTHORIZED USER DATA.

4. Security.

4.1 Provider Security Obligations. Provider will employ security measures in accordance with Provider's data privacy and security policy as amended from time to time ("Privacy Statement and Information Security Policy").

4.2 Prohibited Data. Customer acknowledges that the Services are not designed with security and access management for use or Processing of the following categories of information: (a) Personal Information; (b) credit card numbers, financial account numbers, or other similarly sensitive data (each of (a) and (b), "Prohibited Data"). Customer shall not, and shall not permit any Representative of Customer to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services. Customer is responsible for ensuring that its use of the Services is in compliance with all Laws, and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with Laws.

4.3 Customer Control and Responsibility. Customer has sole responsibility for: (a) all Customer Data; (b) all information, instructions and materials provided by or on behalf of Customer; and (c) Customer's information technology infrastructure, whether operated directly by Customer or through the use of third-party services.

5. Fees: Payment Terms.

5.1 Fees. Customer shall pay Provider the fees as set forth in the Order Form ("Fees"), without offset or deduction, and in accordance with this Section 5.

5.2 Taxes. All Fees and other amounts payable by Customer under this ELTC are exclusive of taxes and similar assessments. 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, whether or not invoiced to Customer by Provider, other than any taxes imposed on Provider's income.

5.3 Payment. Customer shall pay all Fees either as specified in the Order Form, or if not specified, within 30 days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars.

5.4 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 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; and (c) if such failure continues for thirty (30) days following written notice thereof, Provider may suspend performance of the Services until all past due amounts have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

6. Intellectual Property Rights.

6.1 Provider Offerings. All right, title and interest in and to the Provider Offerings, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-party Materials. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title and interest in and to the Resultant Data, including all Authorized User Data (other than Authorized User Data that is Prohibited Data), including all Intellectual Property Rights relating thereto. Each Party acknowledges the other Party's need for continuing use of Recommendations in their respective businesses. Accordingly, Provider agrees that Customer shall have a perpetual, irrevocable, royalty-free, fully paid-up license and right to use, process, aggregate, distribute, copy, modify, and create derivative works of the Recommendations for its business purposes; provided that such usage and other rights do not otherwise violate this ELTC.

6.2 Consent to Use Customer Data. Customer represents, warrants and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and permissions in and relating to the Authorized User Data so that Provider's receipt and Processing in accordance with this ELTC does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Law. Customer hereby irrevocably grants all rights and permissions in or relating to Customer Data: (a) to Provider and the Provider Personnel as are necessary or useful to perform the Services; (b) to Provider as are necessary or useful to enforce this ELTC and exercise its rights and perform its obligations hereunder.

## 7. Confidentiality.

7.1 Confidential Information. In connection with this ELTC, each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 8.2, "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, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: (a) all Provider Offerings and the terms of this ELTC are the Confidential Information of Provider, and (b) all Customer Data is the Confidential Information of Customer.

7.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (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 ELTC; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this ELTC; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3 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 ELTC;

(b) except as may be permitted by and subject to its compliance with Section 8.4, 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 ELTC; (ii) have been informed of the confidential

nature of the Confidential Information and the Receiving Party's obligations under this Section 8.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8.3;

(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 8.

7.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by Law to disclose any Confidential Information then, to the extent permitted by 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 8.3; and (b) provide reasonable assistance to the Disclosing Party 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 8.4, 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, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## 8. Term and Termination.

8.1 Initial Term. The initial term of this ELTC commences as of the Effective Date and, unless terminated earlier pursuant to any of the ELTC's express provisions, will continue in effect until the third anniversary of the Effective Date unless otherwise specified in the Order Form (the "Initial Term").

8.2 Renewal. This ELTC will automatically renew for successive one (1) year terms unless earlier terminated pursuant to this ELTC's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

8.3 Termination. In addition to any other express termination right set forth elsewhere in this ELTC:

(a) Provider may terminate this ELTC, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due, and such failure continues more than 60 days after Provider's written notice thereof; or (ii) breaches any of its obligations under Section 2.3 (Use Limitations and Restrictions), Section 4.2 (Prohibited Data) or Section 7 (Confidentiality);

(b) either party may terminate this ELTC, effective on written notice to the other party, if the other party materially breaches this ELTC, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 60 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this ELTC, effective on written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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.

8.4 Effect of Expiration or Termination. Upon any expiration or termination of this ELTC, (a) Provider may disable all Customer and Authorized User access to the Provider Offerings and (b) Customer shall, and shall cause its Authorized Users to, immediately discontinue use of the Provider Offerings and, without limiting Customer's obligations under Section 7 (Confidentiality), Customer shall delete, destroy, or return all copies of the Provider Offerings and Provider Confidential Information and certify in writing to the Provider that such information 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 for pre-paid Fees or otherwise.

8.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this ELTC that, by its nature, should survive termination or expiration of this ELTC, will survive any expiration or termination of this ELTC: Section 1, Section 2.3, Section 5, Section 7, Section 8.4, this Section 8.5, Section 8.6, Section 9, Section 10 and Section 12.

8.6 DISCLAIMER OF WARRANTIES. ALL PROVIDER OFFERINGS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER OFFERINGS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

#### 9. Indemnification.

9.1 Provider Indemnification. Provider shall indemnify, defend and hold harmless Customer from and against any claim, suit, action or proceeding (each, an "Action") by a third party, that Customer's use of the Services (excluding Authorized User Data, Customer Data and Third-Party Materials) in compliance with this ELTC infringes a U.S. registered Intellectual Property Right.

9.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless Provider, Provider Personnel, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Provider Indemnitee") from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party, including, but not limited to an Authorized User, arising out of or relating to:

- (a) The Processing of Authorized User Data by or on behalf of Provider in accordance with this ELTC;
- (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer, including Provider's compliance with any specifications or directions provided by or on behalf of Customer;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this ELTC; or
- (d) gross negligence or willful misconduct by Customer, or any third party on behalf of Customer, in connection with this ELTC; or
- (e) use of the Services, including any results, conclusions, decisions and actions based on such use (or results) of the Services by any third party, including, but not limited to, any Authorized User.

9.3 Indemnification procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 9.1 or Section 9.2, as the case may be. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 9.3 will not relieve the Indemnitor of its obligations under this Section 9 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

9.4 Mitigation. If any of the Provider Offerings 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, or any other Authorized User's use of the Provider Offerings is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Provider Offerings materially as contemplated by this ELTC;
- (b) modify or replace the Provider Offerings, in whole or in part, to seek to make the Provider Offerings (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Provider Offerings under this ELTC; or
- (c) by written notice to Customer, terminate this ELTC with respect to all or part of the Provider Offerings, and require Customer to immediately cease any use of the Provider Offerings or any specified part or feature thereof, provided that subject to Customer's compliance with its post-termination obligations set forth in Section 8.4, Customer will be entitled to a refund of 50% of the license fees paid during the months prior to the termination.

THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS ELTC OR ANY SUBJECT MATTER HEREOF (INCLUDING THE PROVIDER OFFERINGS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

#### 10. Limitations of Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS ELTC (INCLUDING EXHIBIT A) OR THE SUBJECT MATTER HEREOF OR THEREOF UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR Loss, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO THE TERMS HEREOF (INCLUDING EXHIBIT A), (c) Loss, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE 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.

10.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY HEREUNDER OR IN CONNECTION WITH THIS ELTC (INCLUDING EXHIBIT A) OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT

LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID PURSUANT TO THIS ELTC DURING THE PREVIOUS TWELVE (12) MONTHS. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11. Force Majeure.

11.1 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 ELTC, for any failure or delay in fulfilling or performing any term of this ELTC (except for any payment obligation) when and to the extent such failure or delay is caused by any circumstances beyond such party's or its subcontractors, if applicable, 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 ELTC, national or regional emergency, 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 ELTC if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

11.2 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.

12. Miscellaneous.

12.1 Further Assurances. Upon 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, necessary to give full effect to this ELTC.

12.2 Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this ELTC or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Provider may, without Customer's consent, include Customer's name and/or other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

12.3 Notices. Except as otherwise expressly set forth in this ELTC, all notices, requests, consents, claims, demands, waivers and other communications under this ELTC have binding legal effect only if in writing and addressed to a party as indicated on the Order Form (or to such other address or such other person that such party may designate from time to time in accordance with this Section 12.3). Notices sent in accordance with this Section 12.3 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 7th day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

12.4 Entire ELTC. This ELTC and the Order Form, together with any other documents incorporated herein by reference, constitutes the sole and entire ELTC of the parties with respect to the subject matter of this ELTC and supersedes all prior and contemporaneous

understandings, ELTCs, representations and warranties, both written and oral, with respect to such subject matter.

12.5 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this ELTC, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent (not to be unreasonably withheld, conditioned or delayed). No delegation or other transfer will relieve Customer of any of its obligations or performance under this ELTC. This ELTC is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

12.6 No Third-Party Beneficiaries. This ELTC is for the sole benefit of the parties hereto (and the Indemnitees pursuant to Section 9) 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 ELTC.

12.7 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of this ELTC is effective unless it is in writing, and signed by an authorized representative of 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 ELTC, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this ELTC shall 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.

12.8 Severability. If any provision of this ELTC is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this ELTC 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 ELTC so as to affect 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.

12.9 Governing Law; Submission to Jurisdiction. This ELTC 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 the State of Delaware. Any legal suit, action or proceeding arising out of or related to this ELTC or the licenses granted hereunder shall be instituted exclusively in the courts of the State of Delaware and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding.

12.10 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 7 or, in the case of Customer, Section 3.2 or Section 4.2, 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.