

BY CLICKING A BOX INDICATING ACCEPTANCE OF, BY SIGNING AN ORDER REFERENCING, OR BY OTHERWISE MANIFESTING AGREEMENT TO THIS END USER ACCESS AGREEMENT (INCLUDING ALL REFERENCED DOCUMENTS OR LINKS HEREIN, THE "**END USER ACCESS AGREEMENT**") AND ALONG WITH ALL ORDERS, THE "**AGREEMENT**") ON BEHALF OF THE COMPANY INDICATED BY YOU AT THE TIME OF ACCEPTANCE ("**GOVERNMENT**") YOU ARE HEREBY AGREEING TO THIS END USER ACCESS AGREEMENT ON BEHALF OF GOVERNMENT. IN DOING SO THE YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND GOVERNMENT TO THESE END CLIENT TERMS AND CONDITIONS AND THE AGREEMENT. THE AGREEMENT IS BY AND BETWEEN GOVERNMENT AND WORKIVA ("**PROVIDER**").

**1.0 Services.** Provider agrees to provide the Subscription Services and Professional Services (collectively referred to herein as, the "**Services**") as set forth in this End User Access Agreement and the applicable ordering document (an "**Order**") entered into by Provider and Government.

**1.1 Subscription Services.**

(a) Beginning on the start date set forth in the applicable Order (the "**Start Date**"), Provider agrees to provide Government with access to the Software set forth in the applicable Order ("**Subscription Services**"), and accordingly Provider hereby grants to Government and its employees or third party representatives ("**Representatives**"), a non-exclusive, non-transferable, worldwide right to access, use, and display the Software in connection with the Subscription Services. Users will be determined on a named user basis rather than on a concurrent user or shared user basis; provided that Government may reassign different individuals on a reasonable basis (e.g., an employee changes positions or leaves Government's employ). Government is responsible for each of its Representative's acts and omissions and remains liable to Provider for any Representative's (including an authorized third party acting as a User on Government's behalf) error, omission, or breach of the Agreement.

(b) "**Documentation**" means the manuals, specifications, and other materials describing the functionality, features, and operating characteristics of the Software, available at <https://success.wdesk.com/help>, including any updates thereto. "**Third Party Software**" means software and services authored by a third party, including, the Google App Engine and Amazon Web Services.

(c) Government may add Representatives, or additional Software features ("**Add-Ons**") to Government's Software account via the administrative tools; provided that, to the extent Government has exceeded the scope of the applicable Order Government may be responsible for associated Fees to Provider for such Add-Ons. Such Fees will be calculated based upon the previously agreed upon pricing set forth in the applicable Order and the remainder of months in the Subscription Term beginning on the first day of the calendar month in which such Add-On is added. If Government's Order renews for additional periods, Government will remain responsible for associated Fees for future Subscription Terms until such Add-Ons are removed by Government.

(d) Over the course of the Agreement Term Provider may introduce new features, functionality, software, or user types, that are only available under a different pricing model or on a version of Software other than the version Government currently accesses ("**New Features**"). In the event Government desires to access and use New Features Provider reserves the right, in its sole discretion, to update Government's Software account, version, or pricing model to facilitate Provider's provision of such New Features. Provider otherwise reserves the right to update Government's Software so that it remains current with the then current version available to Provider's customers generally.

**1.2 Professional Services.** As set forth in the applicable Order, Provider will provide professional services such as setups, trainings, and other professional services ("**Professional Services**"). To the extent any such Professional Services are performed at Government's facilities ("**Onsite Services**") the following terms shall apply:

(a) The Onsite Services will be scheduled following Provider's receipt of a fully executed Order. To the extent Government requires a purchase order, Government shall insert any associated reference number in the Billing Contact Section of the Order. Upon receipt of a fully executed Order and purchase order, the parties will determine and finalize scheduling for the Onsite Services. Scheduling will be based upon the Government's schedule, preferences, requirements, and the availability of Provider's resources; provided, however, that the onsite services will be conducted onsite at a Government facility during normal business hours, Monday through Friday, between 8:30 a.m. and 5:30 p.m. local Government time, and remotely via telephone and internet.

(b) Subject to the parties' mutually agreed upon start date for Onsite Services Provider has the sole discretion to set the travel schedule of its personnel, on a reasonable basis (e.g., avoiding weekend or after hours travel). Portions of the Onsite Services may be performed remotely. Provider shall not be liable for delays that arise out of Government's negligent acts or omissions, or by Government's breach of the Agreement.

(c) Government agrees to reasonably cooperate with Provider until the Onsite Services are successfully completed. Government provides Provider with a single point of contact who will receive all communications regarding the Onsite Services; failure to provide a single point of contact may result in an increase or change to the onsite services scope, quote, and/or length. The contact must have the authority to act for Government in all aspects of the onsite services, including but not limited to bringing issues to the attention of the appropriate persons within Government's organization and resolving conflicting requirements. Additionally, the contact will (a) ensure that any communications between Provider and Government, including scope related questions or requests, are made through the appropriate Provider personnel, (b) provide timely access to technical and business points of contact, and required data/information for matters related to the scope of the onsite services; ensure attendance by key Government contacts at Government meetings and presentations, (c) obtain and provide project requirements, information, data, decisions, and approvals

within one (1) working day of Provider's request, unless both parties agree to a different response time, and (d) ensure that Provider personnel have reasonable and safe access to the Onsite Services site, internet connectivity, a safe working environment, adequate office space, and appropriate conference room facilities (including projector and whiteboard access) for meetings. Government must inform Provider of all access issues, required security measures, and provide access to all necessary facilities. Government will back up its files and Data prior to Provider's commencement of the Onsite Services.

(d) Government will be invoiced for the Onsite Services as set forth in the Order. Fees, expenses and taxes associated with the Onsite Services shall be paid as set forth in the Order and in accordance with the terms and conditions of the Agreement. For the avoidance of doubt, any expenses related to the Onsite Services are included in the relevant Hourly Rate.

(e) The parties acknowledge that each party retains sole ownership in its intellectual property, and that any deliverables or transfer of ownership in intellectual property shall be specifically addressed in the relevant Order.

(f) The "Change Control Process" is the process that governs changes to the scope of the Onsite Services. A written Change Order will be the vehicle for communicating any desired changes to the Onsite Services. The "Change Order" will describe any proposed changes to the Onsite Services' scope, pricing, resources, and tasks; the reason for the change(s); related assumptions and Government responsibilities; and the schedule and price impacts of the change. Provider will draft the Change Order based on discussions with Government. Only changes included in a Change Order signed by both Government and Provider referencing the Agreement and the applicable Order will be implemented. In some cases, a Change Order will authorize Provider to study the impacts that a proposed change will have in terms of required changes to the Onsite Services' scope, schedule, and price. If, upon completion of the study, Government agrees to proceed with an identified scope change, Provider will draft a separate Change Order to detail the specifics associated with that change.

## **2.0 Support; Security; Data.**

**2.1 Support.** As a part of the Subscription Services, Provider shall provide Government with support as set forth in the applicable Order.

**2.2 Security.** As a part of the Subscription Services, Provider shall maintain appropriate administrative, physical, and technical safeguards for the security, confidentiality and integrity of any data or information inputted, edited, authored, generated, managed, or otherwise submitted by Government or its Representatives into Government's subscription account (the "Data"). In the event Provider learns that there has been unauthorized access to or unauthorized acquisition or misuse of the Data on Provider's systems or premises (a "Security Event"), Provider will promptly give notice to Government, unless prohibited by law. Upon the occurrence of a Security Event, Provider shall (a) promptly take such steps it reasonably deems appropriate to contain and control the Security Event to prevent further unauthorized access to or misuse of the Data, as applicable, and (b) unless prohibited by law, continue to provide periodic updates relating to the investigation and resolution of the Security Event to Government until it has been resolved. Unless prohibited by law and subject to the other provisions herein, Provider will, upon reasonable request, cooperate with Government in investigating each Security Event, including providing reasonably requested information regarding the nature, investigation, or resolution thereof.

**2.3 Other Responsibilities.** Provider shall not modify, disclose (except as compelled by law in accordance with Section 5.4, to perform Services or as expressly permitted in writing by Government), or access (except to provide or improve the Software or Subscription Services and prevent or address service or technical problems, or at Government's request in connection with Support) the Data. Provider and its service providers may not otherwise collect, use, disclose, or utilize the Data. Provider shall provide the Subscription Services in accordance with applicable laws and government regulations. Except as otherwise agreed in writing, Government is responsible for the accuracy, truthfulness, consistency, completeness, and any output from the Software, and consents to use of all Data in accordance with the Agreement, and Provider will neither have the responsibility to review, nor any liability as to the accuracy of, any information or content posted by Government or its Representatives. Government's and its Representatives' use of the Software will comply with applicable local, state, federal and international law, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation of technical or personal data. Government represents and warrants to Provider that Government has sufficient rights in the Data to authorize Provider to process, distribute and display the Data as contemplated by the Agreement, and that the Data and its use hereunder will not violate or infringe the rights of any third party.

**2.4 Web Analytics.** Google Inc., Amazon Web Services, Inc., and Workiva Inc. ("Cloud Hosting Providers") are included in the provision of the Subscription Services. Provider and its Cloud Hosting Providers may record and collect information related to Government's subscription account activity (e.g., typical web analytics, which includes latency, packet size, hops, and source destination) in the course of providing the Subscription Services, but may only use such information to improve the Subscription Services and/or fulfill its rights and obligations under the Agreement. Collection of such information by Cloud Hosting Providers is not individually linked to Government or its Representatives, is de-identified, and is aggregated across all of Provider's customers. Any use of such information is subject to the terms of Section 5.

**3.0 Fees; Payment.** Government shall pay Provider the fees associated with the Services ("Fees") as set forth below.

**3.1 Invoicing.** Government shall (subject to anything contrary in the applicable Order) pay all Fees for Subscription Services prior to each upcoming renewal therefore and no later than thirty (30) days from receipt of invoice. In the event Provider is providing Professional or Onsite Services, Government shall make payment as set forth in the applicable Order or statement of work. If Government has not paid an invoice for Services in full within forty-five (45) days from receipt thereof, Provider has the right to suspend provision of such Services until full payment is made.

**3.2 Taxes.** Fees stated in the Orders do not include applicable taxes. Government agrees to bear and be responsible for the payment of all taxes, except for taxes based upon Provider's income, including all sales, use harmonized, rental receipt, personal property, customs duties or levies, federal, provincial or foreign taxes or other taxes, which may be levied or assessed in connection with the Agreement. Government shall pay such tax when due or reimburse Provider as Provider may request. If any tax is required to be paid by Provider, the full amount of such tax will be billed to Government separately, whether or not the Agreement is then in effect and promptly paid by Government.

**3.3 Fee Increases.** Unless otherwise specified in an Order, Provider may increase Fees for Subscription Services not more than once in each twelve (12) month period upon thirty (30) days prior written notice to Government. Government will only be responsible for increased Subscription Service Fees for those Subscription Terms subsequent to the Subscription Term in which Government received such price increase notice. Once the parties have entered into an Order for Professional Services, Provider may not increase such underlying Fees (unless otherwise expressly agreed), provided that, after completion of the agreed upon Professional Services Provider may increase the Fees associated with such offerings in its sole discretion.

#### **4.0 Term; Termination.**

**4.1 Agreement & Subscription Term; Effect of Termination.** The Agreement begins on the date Government enters into this End User Access Agreement as set forth in the preamble above, or the date on the first Order between the parties hereto, whichever is earlier, and shall continue until all Orders and associated with the Agreement have expired or have otherwise been terminated (the "**Agreement Term**"), subject to Section 11.8. Unless otherwise specified in an Order, Subscription Services will begin on the Start Date in the applicable Order and remain in effect for the period specified therein (the "**Subscription Term**"). Upon any expiration or termination of the Agreement, Provider will cease providing Subscription Services and Government and its Representatives shall cease any and all use of the Software.

**4.2 Survival.** Neither expiration nor termination of the Agreement will terminate those obligations and rights of the parties pursuant to provisions of the Agreement which by their express terms are intended to survive and such provisions will survive the expiration or termination of the Agreement. Without limiting the foregoing, Sections 4.2, 5, 6, 8, 10, and 11 shall survive any expiration or termination of the Agreement.

#### **5.0 Confidentiality.**

**5.1 Confidential Information.** In connection with the Agreement, each of the parties may disclose to the other party information that relates to the disclosing party's or disclosing party's Governments' business operations, financial condition, Governments, products, services, or technical knowledge ("**Confidential Information**"). Except as otherwise specifically agreed in writing, each party agrees that: (a) all information communicated to it by the other in connection with the Agreement and identified as confidential, (b) any information exchanged between the parties in connection with Government's purchase of Services, and (c) all information communicated to it that reasonably should have been understood by the receiving party, because of confidentiality, descriptions or similar legends, the circumstances of disclosure or the nature of the information itself, to be confidential to the disclosing party, will be Confidential Information and will be deemed to have been received in confidence and will be used only for purposes of the Agreement. Provider Confidential Information includes the Software, Services, Fees, the terms of the Agreement, development plans, and any security specifications, reports or assessments related to the Software, Provider or its Cloud Hosting Providers. Government Confidential Information includes the Data.

**5.2 Standard of Care; Third Parties.** Each party will use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information of a similar nature, and in any event, no less than reasonable care. Each party may disclose relevant aspects of the other party's Confidential Information to its employees to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under the Agreement; provided, however, that such party will use reasonable efforts to ensure that all such persons comply with these confidentiality provisions. Each party may disclose the other party's Confidential Information to third parties provided that such third parties are subject to written confidentiality obligations at least as restrictive as those set forth in this End User Access Agreement. Third parties are restricted to using the Confidential Information for the sole purpose of providing the contracted services to the party. Each party will be responsible for any improper disclosure of Confidential Information by such party's employees, agents, or contractors.

**5.3 Preclusions on Use.** Neither party will use, or make any copies of, the Confidential Information of the other party except to fulfill its rights and obligations under the Agreement. Neither party may withhold the Confidential Information of the other party or refuse for any reason (including due to the other party's actual or alleged breach of the Agreement) to promptly return or destroy, as the other party may direct, to the other party its Confidential Information (including copies thereof) if requested to do so. Subject to the foregoing confidentiality obligations, either party may retain copies of the Confidential Information of the other party to the extent required to document its performance or for compliance with applicable laws or regulations.

**5.4 Exclusions; Permitted Use.** This Section 5 will not apply to any particular information that either party can demonstrate (a) was, at the time of disclosure to it, in the public domain, (b) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party, (c) was in the possession of the receiving party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation, (d) was received after disclosure to it from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it, or (e) was independently developed by or for the receiving party without use of the Confidential Information of the disclosing party. In addition, a party will not be considered to have breached its obligations under this Section 5 for disclosing Confidential Information of the other party to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request, and to the extent it is legally permissible, such party advises the other party prior to making such disclosure and provides a reasonable opportunity to the other party to object to such disclosure, take action to ensure

confidential treatment of the Confidential Information, or (subject to applicable law) take such other action as it considers appropriate to protect the Confidential Information.

## **6.0 Ownership; Usage Restrictions.**

**6.1 Provider Ownership.** Provider retains all ownership of and title to, and all intellectual property rights in, the Software, Services, and all software, equipment, processes, facilities, and materials utilized by or on behalf of Provider to provide the same, including all patents, trademarks, copyrights, trade secrets, and other property or intellectual property rights. Government acknowledges and agrees that Provider shall own all right, title and interest in and to any modifications, derivative works, changes, expansions or improvements to the Software, or Services, without any other or subordinate right whatsoever being held by Government. Government shall acquire no rights therein other than those limited rights of use specifically conferred by the Agreement. Government may not create derivative works based upon the Software, or Services in whole or in part, or develop or request third parties to develop or modify any software based on ideas, processes, or materials incorporated therein. Government shall not delete, remove, modify, obscure, fail to reproduce, or in any way interfere with any proprietary, trade secret, or copyright notice appearing on or incorporated in the Software. All rights related to the Software, or Services that are not expressly granted to Government under the Agreement are reserved by Provider. In the event that Government provides Provider with any comments, suggestions, or other feedback with respect to the Software, or Services, Government hereby grants Provider a perpetual, irrevocable, worldwide license to use any such feedback, and Provider has the right, but not the obligation, to use such feedback in any way without restriction or obligation to Government. Provider will be the exclusive owner of, and will be free to use for any purpose, any ideas, concepts, know-how, or techniques that result from Government or Representatives' feedback, including, without limitation, any modifications or enhancements to the Software, or Services. Upon Provider's reasonable request, Government agrees to execute such additional documents as Provider deems necessary or convenient for perfecting or recording Provider's ownership interest, provided that preparation of such additional documents shall be at the expense of Provider.

**6.2 Government Ownership.** With the exception of a license granted to Provider to use the Data solely for the purpose of performing Services, Provider acquires no right, title, or interest from Government or its Representatives to the Data, including any intellectual property rights therein. Subject to the Agreement, Government, its Representatives and each of its Affiliates hereby grant Provider a limited, royalty-free, fully-paid up, non-exclusive and non-transferable license to process the Data in the United States (unless otherwise stated on an Order) solely as necessary to provide the Services for Government's and such Affiliates' benefit as provided in the Agreement (and as otherwise instructed by Government or a Representative) for so long as Government or any Representative uploads or stores such Data in the Software.

**6.3 Usage Restrictions.** Unless expressly agreed otherwise in the applicable Order, Government may access and use the Software for Government's business use only, and not for the benefit of, or to provide services to, any third party. The rights granted to Government under the Agreement may not be sold, resold, assigned (except as set forth in Section 11.3), leased, rented, sublicensed, or otherwise transferred or made available for use by third parties, in whole or in part, by Government without Provider's prior written consent. Government shall not gain or attempt to gain unauthorized access to any portion of the Software, or its related systems or networks, for use in a manner that would exceed the scope granted under the Agreement, or facilitate any such unauthorized access for any third party. If any unauthorized access occurs, Government shall promptly notify Provider of the incident and shall reasonably cooperate in resolving the issue. Government shall not reverse engineer, decompile, or disassemble any Software or otherwise attempt to discover the source code thereof or permit any third party to do so. Government shall not attempt to disable or circumvent any security measures in place. Government may not knowingly reproduce or copy the Software, in whole or in part. Government shall not modify, adapt, or create derivative works of the Software. Government shall not use the Software to store or transmit libelous or otherwise unlawful or tortious material or any material in violation of third party privacy rights. Government shall not knowingly interfere with or disrupt the integrity or performance of the Software or third party data contained therein.

## **7.0 Subcontracting.**

**7.1 Use of Subcontractors.** Provider may, at its discretion, use contractors, agents, service providers, third parties, or consultants ("**Subcontractor**"), who are not a party to the applicable Order as follows:

(a) Provider may subcontract various Professional Services to third parties to the extent the Government agrees upon such Subcontractor in the applicable Order for Services.

(b) Provider's use of the Cloud Hosting Providers for the purpose of providing the Subscription Services.

(c) Except as permitted in Section 7.1(a) or (b) Provider will not subcontract for performance of, or delegate any of its responsibilities under, this Agreement without first obtaining the prior written approval of Government. When seeking approval, Provider will give Government reasonable prior written notice specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the results of any due diligence carried out with regard to the proposed Subcontractor.

(d) Subcontractors must be identified on the applicable Order in which Provider intends to use that Subcontractor. With the exception of the Cloud Hosting Providers Government may approve or reject proposed Subcontractors in its sole discretion.

**7.2 Provider Responsibility.** Provider will require and cause its Subcontractors to comply with all relevant terms of this Agreement and will be responsible for any failure of its Subcontractors to so comply. Provider must monitor its Subcontractors' performance of any obligations under this Agreement or any Order and report to Government on such performance as Government may request. Provider will remain responsible for obligations performed by Subcontractors to the same extent as if such obligations were performed by Provider, and for all other acts and omissions of its Subcontractors. Provider will be Government's sole point of

contact regarding the Software, including with respect to payment. Nothing in this Agreement creates any contractual relationship between Government and any Subcontractor, or any obligation on the part of Government to pay or to ensure the payment of any money due any Subcontractor.

## **8.0 Warranties.**

**8.1 Provider Representations and Warranties.** Provider warrants (a) that the Software will perform materially in accordance with the Documentation and the Agreement, (b) to use best efforts to correct material defects that are reported by Government or its Representatives as further set forth in the Service Levels (if a malfunction is due to a problem with Government hardware or software, Provider will so inform Government and it will be Government's responsibility to obtain and pay for any repairs or modifications required for such Government hardware or software), (c) the Services will be performed in a timely, professional, and workmanlike manner with a level of care, skill, practice, and judgment consistent with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet Provider's obligations under the Agreement, (d) the Documentation will be reasonably updated so that it continues to describe the Software and Subscription Services in all material respects, and (e) to the best of its knowledge, the Software does not contain code whose purpose is to disrupt, damage, or interfere with Government systems, software, or the Data.

**8.2 Government Acknowledgements.** Government accepts responsibility for selection of the Services to achieve Government's intended results. Government is solely responsible for obtaining all necessary rights and consents to enter the Data into the Software and hereby warrants that providing the Data to Provider under the Agreement will not violate or infringe the rights of any third party.

**9.0 Indemnification by Provider.** Provider shall defend, indemnify and hold Government harmless from and against any damages arising out of third party claims alleging that the Software or Subscription when used as authorized under this Agreement infringes a patent, copyright, or trademark, including costs awarded or agreed in settlement by Provider (including reasonable attorneys' fees) resulting from such claim, provided that Provider shall have received from Government: (1) prompt written notice of such claim (but in any event notice in sufficient time for Provider to respond without prejudice); (2) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (3) all reasonably necessary cooperation from Government. If Government's Subscription is (or in Provider's opinion is likely to be) enjoined, if required by settlement or if Provider determines such actions are reasonably necessary to avoid liability, Provider may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (b) procure for Government the right to continue using the Software; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund Government any pre-paid and unearned Subscription fees. The foregoing obligations of Provider shall not apply: (i) if the Software is modified by any party other than Provider, but solely to the extent the alleged infringement is caused by such modification; (ii) if the Software is combined with products or processes not provided or authorized by Provider, but solely to the extent the alleged infringement is caused by such combination; (iii) to any unauthorized use of the Software; (iv) to any unsupported release of the Software; (v) to any third-party code contained within the Software; or (vi) if Government settles or makes any admissions with respect to a claim without Provider's prior written consent. THIS SECTION 9.2 SETS FORTH PROVIDER'S AND ITS LICENSORS' SOLE LIABILITY AND GOVERNMENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

## **10.0 Disclaimer; Limitation of Liability.**

**10.1** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE THIRD-PARTY SOFTWARE, AND ALL SUBSCRIPTIONS, AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS". NEITHER PROVIDER NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. GOVERNMENT MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE SUBJECT TO THE LIMITED WARRANTY PERIOD.

**10.2** BUT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, (I) NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR COSTS OF COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE, AND (II) EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED BY GOVERNMENT TO PROVIDER FOR SUBSCRIPTION SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

## **11.0 Miscellaneous.**

**11.1 Notice.** Any notice or demand which is required to be given under the Agreement will be deemed to have been sufficiently given and received for all purposes when delivered by hand, confirmed electronic transmission, or nationally recognized overnight courier, or five (5) days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested, to the address, facsimile number, or the e-mail address identified in the applicable Order, and to the attention of such other person(s) or officer(s) as either party may designate by written notice.

**11.2 Governing Law.** Without regard to its conflicts of laws principles, the laws of Delaware govern all matters arising under or relating to the Agreement.

**11.3 Assignment.** Neither party may assign the Agreement, or any of its interest herein, without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided, however, that no such prior approval shall be required for an assignment in connection with a sale of all or substantially all of a party's business related to the subject matter of the Agreement or any merger, sale of a controlling interest, or other change of control of such party. In the event of assignment as mentioned in the previous sentence, the assigning party shall provide written notice as soon as is reasonably practicable. The Agreement applies to and binds the permitted successors and assigns of the parties.

**11.4 Force Majeure.** Neither party will be in default or otherwise liable for any delay in or failure of its performance under the Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God or the common enemy or earthquakes, floods, fires, epidemics, riots, or failures or delays in transportation or communications (each, a "Force Majeure Event"). The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could be the cause of a delay in the performance of the Agreement.

**11.5 Injunctive Relief.** Each party acknowledges and agrees that a breach or threatened breach by either party of any of its obligations under Sections 5 or 6 will cause immediate and irreparable harm to the non-breaching party for which monetary damages may not constitute an adequate remedy. Accordingly, the breaching party acknowledges and agrees that the non-breaching party shall be entitled to injunctive relief for the breaching party's obligations herein, without the non-breaching party having to prove actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for the breaching party's breach of the Agreement, but shall be in addition to all other remedies available to the non-breaching party at law or in equity.

**11.6 Government End-Users.** Provider provides the Subscription Services and Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this End User Access Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data-Commercial Items) and DFAR 227.7202-03 (Rights in Commercial Computer Software or Computer Software Documentation). If any portion of the Software is deemed "non-commercial," the Services are licensed under the terms hereof and under the RESTRICTED RIGHTS set forth in the applicable FARs and DFARs (and the government's use, duplication and disclosure rights are restricted as set forth therein). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Provider to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**11.7 Third Party Beneficiaries.** Provider Inc., its affiliates and licensors may be third party beneficiaries of the Agreement. No other third party, including without limitation Government's addition of third parties as users, is intended to be a beneficiary of the Agreement entitled to enforce its terms directly.

**11.8 Third Party Terms. "Third Party Software"** means components of the Software which are licensed from third parties ("Third Party Providers"). "Third Party Terms" means those terms and conditions between Third Party Providers and Provider applicable to Third Party Software. In the event Third Party Terms are changed by Third Party Providers, as the case may be from time to time, Government may be required to accept additional terms upon login and access to the Software, or otherwise as Provider requires. If Government determines the Third Party Terms have an adverse impact, and as a result do not consent, Government SHOULD not access or use the Software.

**11.9 General.** The Agreement supersedes all previous discussions, negotiations, understandings, and agreements between the parties with respect to its subject matter. No oral statements or material not specifically incorporated herein will be of any force and effect. No changes in or additions to this End User Access Agreement will be recognized unless incorporated herein by amendment and signed by duly authorized representatives of both parties. The application of Government's general terms and conditions in any general vendor acknowledgement or Government's other general purchasing conditions are hereby expressly excluded and objected to by Provider. This End User Access Agreement shall apply and supersede the pre-printed terms and conditions of any form submitted, in electronic format or otherwise, by either party. The Agreement will not be construed against either party as the purported drafter. The waiver by either party of a breach or violation of any provision of the Agreement will not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof. In the event any provision of the Agreement is held to be unenforceable for any reason, the unenforceability thereof will not affect the remainder of the Agreement, which will remain in full force and effect and enforceable in accordance with its terms. With respect to any unenforceable provision, the applicable arbitrator or court shall deem the provision modified to the extent necessary, in such adjudicator's opinion, to render such term or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties set forth herein. Headings in this End User Access Agreement shall not be used to interpret or construe its provisions. The following order of precedence will be followed in resolving any inconsistencies between the terms of this End User Access Agreement and the terms of any Orders, exhibits, statements of work, or other documents: first, the Sections 1 - 11 in of this End User Access Agreement, including any referenced URLs (which may give priority to Orders for certain purposes); second, terms contained in an Order; and third, the terms of any other documents referenced in any of the foregoing.