



SUBSCRIPTION SERVICE AGREEMENT

This Subscription Service Agreement (including the End User Support Policy and the Proven Optics, LLC Upgrade Policy) (“*Agreement*”) between Proven Optics, LLC (“*Proven Optics, LLC*”) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order (“*End User*”) is made as of the effective date set forth below (“*Effective Date*”).

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means this Subscription Service Agreement and any exhibits, schedules and addenda hereto.

“**Confidential Information**” means: (a) Proven Optics, LLC Technology (which is Confidential Information of Proven Optics, LLC); (b) End User Data and End User Technology (which are Confidential Information of End User); (c) any other information of a party that is disclosed in writing or orally and is designated as Confidential or Proprietary at the time of disclosure (and, in the case of oral disclosures, summarized in writing within thirty (30) days of the initial disclosure and delivered to the receiving party), or that due to the nature of the information the receiving party would clearly understand it to be confidential information of the disclosing party; and (d) reserved. Confidential Information shall not include any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party’s possession at the time of disclosure without restriction on use or disclosure; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) was or is rightfully obtained by the receiving party from a third party not under a duty of confidentiality and without restriction on use or disclosure.

“**Documentation**” means written materials (including materials published on a website or otherwise online) that are generally made available by Proven Optics, LLC to instruct or assist End User in the access and use of the Subscription Service (including applicable functional and technical specifications) and will be updated as applicable.

“**End User Data**” means any electronic data uploaded by or for End User and End User’s agents, employees and contractors that is processed in the Subscription Service, excluding the Proven Optics, LLC Technology. For avoidance of doubt, End User is the data controller and all End User data is hosted by ServiceNow in the ServiceNow Platform.

“End User Technology” means software, methodologies, templates, business processes, documentation or other material authored, invented or otherwise created or licensed (other than by or from Proven Optics, LLC) by End User using or for use with the Subscription Service, excluding the Proven Optics, LLC Technology. **“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-Proven Optics, LLC Applications” means (a) online applications, services or software products that are provided by entities or individuals other than Proven Optics, LLC, and that may interoperate with the Subscription Service and (b) the ServiceNow Platform.

“Proven Optics, LLC Technology” means (a) Proven Optics, LLC technology and methodologies (including, without limitation, any Subscription Service as provided under an Order Form, applications, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and Documentation) existing as of the Effective Date or otherwise arising outside of the Subscription Service; (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user Documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.

“Order Form” means a written ordering document specifying the Subscription Service to be provided hereunder that is entered into between End User and the reseller.

“ServiceNow Platform” means the hosted platform and/or software-as-a-service made available by ServiceNow under the “ServiceNow” brand.

“Subscription Service” means the Proven Optics, LLC software-as-a-service application(s) that are ordered by End User under an Order Form and/or any Proven Optics, LLC application purchased through the ServiceNow App Store and made available by Proven Optics, LLC. “Subscription Service” excludes Non-Proven Optics, LLC Applications and other application programming interfaces (API’s). For the avoidance of doubt, Non-Proven Optics, LLC Applications and API’s, must be purchased directly from the applicable software provider.

“Subscription Term” means the term of authorized use of the Subscription Service as set forth in the Order Form.

“Services” means any professional services provided by Proven Optics, LLC pursuant to an agreed Statement of Work.

“Statement of Work” or **“SOW”** means a statement of work for Services.

“User” means an individual who is authorized by End User to use the Subscription Service, for whom End User has ordered the Service, and to whom End User (or Proven Optics, LLC at End User’s request) has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of End User, and third parties with which End User transacts business.

2. PROVEN OPTICS, LLC RESPONSIBILITIES

2.1. Provision of Subscription Service. Subject to the terms of this Agreement, Proven Optics, LLC authorizes End User to access and use the purchased Subscription Service during the Subscription Term as set forth in an applicable Order Form for its internal business purposes in accordance with the Documentation.

2.2. End User Support. During the Subscription Term, Proven Optics, LLC will provide End User support for the Subscription Service to End User at no additional charge in accordance with the Proven Optics, LLC End User Support Policy, attached hereto.

2.3. Protection of End User Data.

2.3.1. Proven Optics, LLC will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of End User Data in its possession. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of End User Data by Proven Optics, LLC personnel except (a) to provide the Subscription Service; (b) to prevent service or technical problems; (c) to provide End User support; (d) to provide professional services in accordance with a SOW as applicable; (e) as compelled by law in accordance with the Section 7 (Confidentiality), or (f) as expressly permitted in writing by End User.

2.3.2. Notwithstanding anything to the contrary in this Agreement, Proven Optics, LLC's obligations extend only to those systems, networks, network devices, facilities and components over which Proven Optics, LLC exercises control. This Section 2.3 does not apply to: (i) Any ServiceNow third party datacenter or any infrastructure within the sole control of ServiceNow, including the ServiceNow Platform (ii) End User Data hosted in End User's existing ServiceNow production instance(s); (iii) End User Data in End User's virtual private network (VPN) or a third party network; or (iv) any End User Data processed by End User or its users in violation of the Agreement.

2.3.3. End User acknowledges that any Protected Health Information (PHI) or Personally Identifiable Information (PII) disclosed to Proven Optics, LLC as part of End User Data is incidental to the Subscription Service under this Agreement and that Proven Optics, LLC does not review or analyze the content of End User Data in the ordinary course of operating the Subscription Service. End User agrees that it shall be solely responsible for complying with any obligations under any government regulation that requires any review or analysis of such content. Notwithstanding the foregoing, End User is the data controller with respect to any End User Data that is submitted to the Subscription Service. For the avoidance of doubt, Proven Optics, LLC does not have access to any End User Data on End User's ServiceNow production instance.

2.4. **Proven Optics, LLC Personnel.** Proven Optics, LLC will be responsible for the performance of its personnel (including its employees and subcontractors) and their compliance with Proven Optics, LLC's obligations under this Agreement, except as otherwise specified herein.

3. USE OF SUBSCRIPTION SERVICE

3.1. **Usage Limits.** The Subscription Service is subject to usage limits, including quantities and/or functionality restrictions referenced in an Order Form. Unless otherwise specified, (a) a quantity in an Order Form refers to Users within an Entitled Department, and the Subscription Service may not be accessed by Departments not explicitly named on order form, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Subscription Service. End User will reasonably cooperate with any Proven Optics, LLC audit of End User's use of the Subscription Service. If Proven Optics, LLC determines that End User has exceeded its permitted use of the Subscription Service then Proven Optics, LLC will notify End User and within thirty (30) days thereafter End User shall either: (i) disable any unpermitted use or (ii) purchase additional subscriptions commensurate with End User's actual use.

3.2. **End User Responsibilities.** End User will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of End User Data and the means by which End User acquired End User Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Subscription Service, and notify Proven Optics, LLC promptly of any such unauthorized access or use, (d) use Subscription Service only in accordance with the Documentation and applicable laws and government regulations; and (e) use ServiceNow's column-level encryption feature on all End User-created fields for all End User Data containing PHI or PII.

3.3. **Usage Restrictions.** End User will not (and shall not permit others to) do the following with respect to the Proven Optics, LLC Technology: (i) use the Subscription Service with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any of it available for access by third parties except as otherwise expressly provided in an Order Form; (iii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Service; (iv) disassemble, reverse engineer or decompile it; (v) copy, create derivative works based on or otherwise modify it except as permitted in this Agreement; (vi) remove or modify a copyright or other proprietary rights notice in it; (vii) use it to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (viii) use it to create, use, send, store or run Malicious Code or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or

operation; or (ix) access or disable any Proven Optics, LLC or third party data, software or network.

4. SERVICENOW PLATFORM

4.1. **General.** The Subscription Service is developed and operates exclusively on the ServiceNow Platform and is hosted by ServiceNow. End User must be an existing ServiceNow End User or is required to purchase ServiceNow in order to use and access Proven Optics, LLC's Subscription Service either directly from ServiceNow, or through a ServiceNow approved reseller, as applicable. End User must be operating on a current ServiceNow subscription release in accordance with the ServiceNow's Upgrade Policy in ServiceNow's Subscription Service Guide as published (<https://www.servicenow.com/schedules.html>). End User acknowledges that if ServiceNow is inoperable and/or terminates services to End User due to a party's breach of the agreement between End User and ServiceNow, any Subscription Service installed in the affected ServiceNow instance will be inaccessible and Proven Optics, LLC will not thereby be deemed to be in breach of this Agreement.

5. NON-PROVEN OPTICS, LLC PROVIDERS

- 5.1. **Acquisition of Non-Proven Optics, LLC Products and Services.** Proven Optics, LLC or third parties may make available third-party products or services, including, for example, Non-Proven Optics, LLC Applications and implementation and other consulting services. Except as expressly provided herein, any acquisition by End User of such non-Proven Optics, LLC products or services, and any exchange of data between End User and any non-Proven Optics, LLC provider, is solely between End User and the applicable non-Proven Optics, LLC provider. Proven Optics, LLC does not warrant or support Non-Proven Optics, LLC Applications or other non-Proven Optics, LLC products or services, whether or not they are designated by Proven Optics, LLC as "certified" or otherwise.
- 5.2. **Non-Proven Optics, LLC Applications and End User Data.** If End User installs or enables a Non-Proven Optics, LLC Application for use with the Subscription Service, End User acknowledges that Proven Optics, LLC is not responsible for any disclosure, modification or deletion of End User Data resulting from any access by a Non-Proven Optics, LLC Application. Any exchange of End User Data between End User and any non-Proven Optics, LLC Application is solely between End User and the applicable non-Proven Optics, LLC provider.
- 5.3. **Integration with Non-Proven Optics, LLC Applications.** The Subscription Service may contain features designed to interoperate with Non-Proven Optics, LLC Applications. If the provider of a Non-Proven Optics, LLC Application ceases to make the Non-Proven Optics, LLC Application available for interoperation with the corresponding Subscription Service, Proven Optics, LLC may cease providing those Subscription Service features.

6. INTELLECTUAL PROPERTY AND LICENSES

- 6.1. **Proven Optics, LLC Ownership.** As between Proven Optics, LLC and End User, all rights, title, and interest in and to all intellectual property rights in the Proven Optics, LLC Technology are owned exclusively by Proven Optics, LLC notwithstanding any other provision in this Agreement. Except as expressly provided in this Agreement, Proven Optics, LLC reserves all rights in the Proven Optics, LLC Technology and does not grant End User any rights, express or implied or by estoppel.
- 6.2. **End User Ownership.** As between End User and Proven Optics, LLC, End User shall retain all rights, title, and interest in and to its intellectual property rights in End User Data and End User Technology.
- 6.3. **License by End User for End User Data.** End User grants Proven Optics, LLC and its hosting providers a worldwide, limited-term license to copy, transmit and display End User Data, and any Non-Proven Optics, LLC Applications and program code created by or for End User, only as necessary for Proven Optics, LLC to provide the Subscription Service in accordance with this Agreement. Subject to the limited licenses granted herein, Proven Optics, LLC acquires no right, title or interest from End User or its licensors under this Agreement in or to any End User Data or Non-Proven Optics, LLC Application.
- 6.4. **License by End User to Use Feedback.** End User grants to Proven Optics, LLC a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Subscription Service any suggestion, enhancement request, recommendation, correction or other feedback provided by End User or Users relating to the operation of the Subscription Service. For the avoidance of doubt, Proven Optics, LLC's exposure to End User Data or End User Technology, without more, does not constitute feedback.
- 6.5. **Federal Government End Use Provisions.** Proven Optics, LLC provides the Subscription Service, 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 Subscription Service include only those rights customarily provided to the public as defined in this 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). If a government agency has a need for rights not granted under these terms, it must negotiate with Proven Optics, LLC to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

7. CONFIDENTIALITY

- 7.1. **Obligations.** Each party (“receiving party”) may from time to time, directly or indirectly, have access to or receive information which the other party (“disclosing party”) may

deem to be confidential or proprietary (“Confidential Information”). The receiving party shall: (i) at all times protect the Confidential Information from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use the Confidential Information except to the extent necessary to exercise rights or fulfill obligations under this Agreement. The receiving party shall limit the disclosure of the disclosing party’s Confidential Information to those of its employees and contractors with a need to access such Confidential Information only for the receiving party’s exercise of its rights and obligations under this Agreement, provided that all such employees and contractors are subject to binding disclosure and use restrictions at least as protective as those set forth herein. Each party’s obligations set forth in this Section 7 shall remain in effect during the term and three (3) years after termination of this Agreement. The receiving party shall, at the disclosing party’s request or upon termination of this Agreement, return all originals, copies, reproductions and summaries of Confidential Information and other tangible materials and devices provided to the receiving party as Confidential Information, or at the disclosing party’s option, certify destruction of the same. Provisions for the return of End User Data are set forth in Section 11.4 (End User Data Portability and Deletion).

7.2. **Required Disclosures.** The receiving party may disclose the disclosing party’s Confidential Information to a court or governmental body pursuant to a valid court order, law, subpoena or regulation, provided that the receiving party: (a) promptly notifies the disclosing party of such requirement as far in advance as possible to the extent advanced notice is lawful; and (b) provides reasonable assistance to the disclosing party in any lawful efforts by the disclosing party to resist or limit the disclosure of such Confidential Information. Proven Optics, LLC recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

7.3. Reserved..

8. REPRESENTATION, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

8.1. **Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2. **Proven Optics, LLC General Warranties.** Proven Optics, LLC warrants that (a) subject to the “Integration with Non-Proven Optics, LLC Applications” section above, Proven Optics, LLC will not materially decrease the functionality of the Subscription Service during a Subscription Term, and (b) Proven Optics, LLC will not materially decrease the overall security of the Subscription Service during a Subscription Term. For any breach of an above warranty, End User’s exclusive remedies are those described in Section 11 (Term and Termination) below.

8.3. Proven Optics, LLC Subscription Service Warranty. Proven Optics, LLC warrants that during the Subscription Term, the Subscription Service shall materially conform to the release notes as specified in the Documentation. To submit a warranty claim under this Section 8.3, End User shall (1) reference this Section 8.3; and (2) submit a support request to resolve the non-conformity as provided in the End User Support Policy. If the non-conformity persists without relief more than thirty (30) days after written notice of a warranty claim provided to Proven Optics, LLC under this Section 8.3, then End User may terminate the affected Subscription Service. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to a modification of or defect in the Subscription Service that is made or caused by End User or a person acting at End User's direction. THIS SECTION 8.3 SETS FORTH END USER'S EXCLUSIVE RIGHTS AND REMEDIES (AND PROVEN OPTICS, LLC'S SOLE LIABILITY) IN CONNECTION WITH THIS WARRANTY.

8.4. Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROVEN OPTICS, LLC DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVEN OPTICS, LLC SPECIFICALLY DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICE OR DOCUMENTATION WILL MEET THE REQUIREMENTS OF END USER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. END USER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.

9. INDEMNIFICATION

9.1. Indemnification by PROVEN OPTICS, LLC. Subject to the exclusions set forth below, Proven Optics, LLC shall: (i) have the right to intervene to defend End User, its officers, directors and employees against any third party suit, claim, action or demand (each a "*Claim*"), excluding in all cases the use or provision of ServiceNow Platform, to the extent alleging that (A) the Subscription Service used in accordance with this Agreement infringes any third party patent, copyright or trademark, or misappropriates any third party trade secret; or (B) Proven Optics, LLC's personnel when onsite at End User's premises caused death, bodily harm or damage to tangible personal property due to their negligence or willful misconduct, and (ii) pay any court-ordered award of damages or settlement amount to the extent arising from any such Claims. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's

right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If any portion of the Subscription Service becomes the subject of a Claim under Section 9.1(i), Proven Optics, LLC may: (a) contest the Claim; (b) obtain permission from the claimant for End

User's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms as mutually agreed by the parties, then (d) terminate End User's use of the affected Subscription Service upon sixty (60) days' written notice. Notwithstanding the above, Proven Optics, LLC shall have no obligation or liability for any Claim under Section 9.1(i) arising in whole or in part from: (1) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement or not in accordance with the Documentation; (2) End User Data or End User Technology; (3) use of the Subscription Service by End User in violation of applicable law; (4) use of the affected Subscription Service after termination in accordance with clause (d) of this Section 9.1; (5) modifications to the Subscription Service made to End User's specifications or otherwise made by any person other than Proven Optics, LLC or a person acting at Proven Optics, LLC's direction if the Claim would have been avoided by use of the unmodified Subscription Service; or (6) use of the Subscription Service in combination with any hardware, software, application or service that was not provided by Proven Optics, LLC, including but not limited to Non-Proven Optics, LLC Applications, if the Claim would have been avoided by the non-combined or independent use of the Subscription Service.

9.2. Reserved.

9.3. **Process.** Indemnified party agrees to notify the indemnifying party promptly in writing of any actual or threatened Claim. The indemnified party agrees to give the indemnifying party sole control of the defense of any Claim thereof and any related settlement negotiations, provided that any such settlement releases the indemnified party from liability, omits statements suggesting wrongdoing or liability on the indemnified party's behalf; and omits an equitable order, judgment, or term that affects, restrains, or interferes with the indemnified party's business. The indemnified party agrees to cooperate and, at the indemnifying party's request and expense, assist in such defense.

9.4. **Exclusive Remedy.** This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section.

10. LIMITATION OF LIABILITY

10.1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED

HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY END USER FOR THE SUBSCRIPTION SERVICE GIVING RISE TO THE CLAIM. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (1) A PARTY'S OBLIGATIONS IN SECTION 10 (MUTUAL INDEMNIFICATION); (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND (3) A PARTY'S CONFIDENTIALITY OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

10.2. **Exclusions.** TO THE EXTENT PERMITTED BY LAW, NEITHER PROVEN OPTICS, LLC NOR END USER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS, (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COVER, SUBSTITUTE GOODS OR SERVICES, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO: (1) PAYMENTS TO A THIRD PARTY ARISING FROM A PARTY'S OBLIGATIONS UNDER SECTION 10 (MUTUAL INDEMNIFICATION); AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10.3. **Gross Negligence; Willful Misconduct.** AS PROVIDED BY LAW, NOTHING HEREIN SHALL BE INTENDED TO LIMIT A PARTY'S LIABILITY IN AN ACTION IN TORT (SEPARATE AND DISTINCT FROM A CAUSE OF ACTION FOR BREACH OF THIS AGREEMENT) FOR THE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11. TERM AND TERMINATION

11.1. **Term of Agreement.** This Agreement commences on when End User downloads and installs any Proven Optics, LLC application from the ServiceNow Store and will remain in force as long as any Proven Optics, LLC application exists on any End User ServiceNow instance.

11.2. **End User Data Portability and Deletion.** End User must request any End User Data from ServiceNow as Proven Optics, LLC has no authorization to access or return such End User Data hereunder.

11.3. **Surviving Provisions.** The sections titled “Intellectual Property and Licenses”, “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Usage Restrictions”, “End User Data Portability and Deletion,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement.

12. GENERAL PROVISIONS

12.1. **Export Compliance.** The Subscription Service, other Proven Optics, LLC Technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Proven Optics, LLC and End User each represents that it is not named on any U.S. government denied-party list. End User represents and warrants that it is not located in and will not permit any User to access or use the Subscription Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) and is not in violation of any U.S. export law or regulation.

12.2. **Anti-Corruption.** End User has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a Proven Optics, LLC employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If End User learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Proven Optics, LLC.

12.3. **Force Majeure Event.** Excusable delays shall be governed by FAR 552.212-4(f).

12.4. **Usage of Aggregated Data; Monitoring Service.** End User agrees that Proven Optics, LLC may collect, use and disclose quantitative data derived from the use of the Subscription Service for industry analysis, benchmarking, analytics, marketing, and other business purposes in support of the provision of the Subscription Service. Proven Optics, LLC shall not share, sell, rent or trade such data with third parties for their promotional purposes. All data collected, used and disclosed will be in aggregate, anonymized form only and will not identify End User or Users and will not include or use End User Data.

12.5. **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Proven Optics, LLC and End User regarding End User’s use of Subscription Service and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the body of this Agreement, (2) Order Form and (3) the Documentation.

- 12.6. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 12.7. **No Third-Party Beneficiaries.** There are no other third-party beneficiaries under this Agreement.
- 12.8. **Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, (c) confirmed delivery by courier service, or (d), except for notices of termination or an indemnifiable claim (“**Legal Notices**”), the day of sending by email. Billing-related notices to End User will be addressed to the relevant billing contact designated by End User, and Legal Notices to End User will be addressed to End User and be clearly identifiable as Legal Notices. All other notices to End User will be addressed to the relevant Subscription Service system administrator designated by End User.
- 12.9. **Waiver.** No failure or delay by either party in exercising any right hereunder will constitute a waiver of that right.
- 12.10. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.11. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld). Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.12. Proven Optics, LLC may not use End User’s name or disclose the terms or existence of this Agreement to any third party, including on Proven Optics, LLC’s customer lists, press releases or otherwise, without End User’s express prior written consent in each and every instance. In addition, all such press releases or the use of End User’s name or any trademark of End User will require prior written approval by End User’s Department of Global Communications
- 12.13. **Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the Federal laws of the United States, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 12.14. **Counterparts.** This Agreement may be executed by facsimile or electronic signature and in counterparts.

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