

# APPIAN CLOUD SUBSCRIBER AGREEMENT

This Subscriber Agreement is entered into as of the date (i) the last Party signs this Agreement or (ii) otherwise accepts the terms of this Agreement (“**Effective Date**”) between Licensor and Subscriber (“**Agreement**”). By signing or otherwise accepting this Agreement, you represent you have the capacity to represent the entity identified herein as the Subscriber. Licensor and Subscriber are each a “**Party**” and collectively the “**Parties**” to this Agreement.

## 1. DEFINITIONS

- 1.1 “**Appian**” means Appian Corporation, located at 7950 Jones Branch Drive, McLean, VA 22102, and its subsidiaries.
- 1.2 “**Appian Process Mining Software**” means the Appian Process Mining software as described at docs.appian.com.
- 1.3 “**Authorized Servers**” means, collectively, the servers owned (or leased) by End User or the servers of End User’s third-party infrastructure as a service providers.
- 1.4 “**Data**” means the data, material and other information provided by the End User to the Service.
- 1.5 “**Documentation**” means the contents provided under the Appian Community website, <https://docs.appian.com>, or other URL as notified to the Subscriber in writing from time to time.
- 1.6 “**End User**” and “**Subscriber**” means the party receiving a license to use the Service under this Agreement.
- 1.7 “**Licensor**” and “**Business Partner**” means Macedon Consulting, LLC, a Delaware Limited Liability Corporation doing business as Macedon Technologies.
- 1.8 “**Portals Code**” means the Appian Portals functionality described at docs.appian.com.
- 1.9 “**Portals Site**” means a website through which End User makes the Portals Code accessible.
- 1.10 “**Service**” and “**Deliverable**” means, collectively, (a) Appian’s business process management software platform and any solutions developed by Appian on the same, (b) Appian’s robotic process automation software, which contains the following four components: (i) the Appian RPA Console, a cloud-based application used to deploy new robotic processes, manage resources, review data and metrics, and configure platform settings; (ii) the Appian RPA Server, a cloud-based service which executes robotic processes and deploys RPA code; (iii) the Appian RPA integrated developer environment, locally installed software which allows for the development of Appian RPA robots; and (iv) Appian RPA Agents, locally installed software robots that perform assigned tasks, and, if applicable, the Appian Process Mining Software and/or Portals Code, and for all of the foregoing all updates and enhancements to the same.
- 1.11 “**Service Provider**” means Licensor and its service providers responsible for providing the Service to the End User.
- 1.12 “**Subscriber Material**” means the data and information provided by Subscriber to Licensor under this Agreement.
- 1.13 “**Terms and Conditions**” means the terms and conditions set forth in this Agreement.

## 2. LICENSE

- 2.1 **General.** Licensor grants End User a non-transferable, non-sublicenseable, nonexclusive license to: (a) to access the cloud-based elements of the Service (Appian’s business process automation software platform and the cloud-based elements of the RPA Software (the Appian RPA Console and the Appian RPA Server)) via a password over the Internet; and (b) a license to install on Authorized Servers and to use the locally installed elements of the Service (the Appian RPA integrated developer environment and Appian RPA Agents). The Service may be used only by the number and type of users for which End User has received corresponding licenses from Licensor.
- 2.2 **User Accounts.** Licenses in the Service may be reassigned from time to time to new users of the Service who are replacing former users of the Service who have terminated employment or otherwise change job status or function and no longer use the Service. Only the identified individual associated with a particular account in the Service can access the Service using that account. User accounts may not be shared among individuals or used to provide access to the Service to individuals who are not the individual associated with the corresponding user account. End User may not activate and de-activate user accounts in the Service on a daily or other regular basis in order to circumvent license restrictions. To the extent that End User configures the Service to be accessed or used through a separate system or interface (e.g. “headless”), users of the Service through such separate system or interface must be licensed from Licensor, regardless of whether such person has an user account in the Service or authenticates into the Service.

- 2.3 **Accounts and Cooperation.** End User must use the Service in accordance with all applicable laws. End User is responsible for the password security of user accounts in the Service and the level of access granted to an individual user by End User's administrators, as well as any other security configurations set by End User. End User is responsible for any violation of these Terms and Conditions by its users. End User shall promptly report to Licensor any copying or distribution of the Service in violation of these Terms and Conditions that is known or suspected by End User and provide Licensor with reasonable assistance to stop such violation.
- 2.4 **Ownership and Opposition.** The Service and all intellectual property rights therein, is licensed to the End User, not sold. All rights in the Service not provided to the End User under these Terms and Conditions are expressly retained by Licensor and its licensors.
- 2.5 **Copies.** End User may make a reasonable number of copies of the locally installed elements of the RPA Software (Appian RPA integrated development environment and RPA Agents) as necessary for End User to use the licenses purchased from Licensor. End User may not to remove any copyright or proprietary notice from the locally installed elements of the RPA Software and agrees to include such notices in any reproductions of the locally installed elements of the RPA Software. All copies of the RPA Software shall remain the property of Licensor and its licensors and are subject to these Terms and Conditions. All proprietary and restricted rights notices shall be reproduced on such copies, and all copies are subject to these Terms and Conditions.
- 2.6 **Portals Code.** End User's access to and use of the Portals Code is subject to the terms of these Terms and Conditions that apply to the Service, plus the following additional terms and conditions:
- a. Portals Site. In the Portal's Site, the End User must:
    - i. maintain a link to an e-mail address through which users of the Portals Site may report abuse or intellectual property infringement associated with the Portals Site, and
    - ii. provide terms of use to visitors of the Portals Site that:
      - I. disclaim Licensors and Appian's responsibility or liability for information uploaded by the visitors to the Portals Site,
      - II. reserves the right to remove any content posted to the Portals Site;
      - III. requires that any user of the Portals Site protects the Portals Site and all content thereon from unauthorized use and disclosure using at least a reasonable degree of care, and
      - IV. prohibits reverse engineering of the Portals Site or otherwise violating Appian's intellectual property rights in the Portals Site.
    - iii. not expose the Appian Designer features or functionality of the Service to the public.
- 2.7 **Appian Process Mining Software.** End User's access to and use of the Appian Process Mining Software is subject to the same terms of these Terms and Restrictions that apply to the Service, but subject to the following additional terms and conditions:
- Notwithstanding anything else in these Terms and Conditions to the contrary: the Appian Process Mining Software will be supported in the same manner as the Appian's baseline business process automation software platform, except that some support features are available with respect to Appian's baseline business process automation software platform only, as described at docs.appian.com.
- 2.8 **Third-Party Licensors.** The Service contains software licensed to Licensor from certain party licensors ("Third Party Licensors"). Any warranty provided in connection with the Service, if any, is from Licensor, not the Third Party Licensors, and the Third Party Licensors make no warranty to the End User in connection with the Service. The Third Party Licensors expressly disclaim any express, implied or statutory warranties in connection with the Service, including the implied warranties of merchantability or fitness for a particular purpose. The Third Party Licensors are not liable for any damages of any kind resulting from the End User's use of the Service, including without limitation, indirect, consequential, incidental, and special damages. The Third Party Licensors are intended third party beneficiaries of those provisions of these Terms and Conditions relating to the Third Party Licensor's software incorporated into the Service.
- 2.9 **General Payment Terms.** Unless otherwise stated in order form, fees and charges are due and payable within thirty (30) calendar days of Licensor's invoice date. Payments must be in United States Dollars (USD) and made by check, Automated Clearing House (ACH), or wire. Amounts not timely paid shall incur interest at the lower of 1.5% per month, or the highest amount permitted under applicable law. All fees and charges are

exclusive of all taxes, levies, or duties imposed by taxing authorities (“Taxes”). Subscriber is responsible for paying all such Taxes, excluding only Taxes based solely on Licensor’s income, at point of sale. Any exemption to such Taxes is dependent upon Licensor’s receipt of legally required documentation of such exemption. All payments due under this Agreement shall be made without any withholding, unless required by law. If Subscriber is required to withhold, Subscriber will provide Licensor with documentation evidencing payment. If, and to the extent, that Licensor is unable to claim an income tax credit for the full amount withheld, Subscriber shall pay the unrecouped amount to Licensor. Except as expressly set forth in this Agreement, all orders for licenses and services are non-cancelable and all payments are non-refundable. In the event Subscriber disputes a portion of an invoice, Subscriber agrees to fully pay the undisputed portion and Licensor’s acceptance of such partial payment shall not waive any of its rights as to the remaining balances nor in any way constitute accord and satisfaction. Licensor and Subscriber shall promptly work to resolve any disputed amounts in a reasonable timeframe. If Subscriber fails to remit full payment within thirty (30) days after the payment due date, Licensor may terminate the applicable order and this Agreement by written notice. Any unpaid fees as of the date of termination or expiration of this Agreement will be immediately due and payable.

### 3. RESTRICTIONS

- 3.1 **General.** Except as authorized in these Terms and Conditions or in the Documentation, End User may not: (a) modify, reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Service (except as and only to the extent any of the foregoing restrictions may be permitted by the licensing terms governing use of any open sourced components included with the Service), (b) copy, or reproduce the Service in any way, in whole or in part, (iii) create any derivative work based on the Service, (c) operate the Service on a service bureau basis, or (d) allow, assist or permit any third party to do any of the foregoing. If End User is located in a jurisdiction that permits limited reverse engineering as a matter of law, and despite accepting contract terms to the contrary, End User may perform limited reverse engineering, provided End User first notifies Licensor of End User’s intent to reverse engineer the Service, and provided the reverse engineering is limited to the extent permitted by applicable law.
- 3.2 **Security and Security Testing.** Appian will maintain an annual Service Organization Control (SOC) Report (or other similar or replacement report as the industry adopts) in connection with the cloud-based elements of the Service (“SOC Report”). The SOC Report is considered confidential and subject to the terms of Section 6 of these Terms and Conditions. Subject to agreed upon usage terms, Appian will provide End User with Appian’s then current SOC Report. Appian will maintain such security measures identified in the then current SOC Report or, if Appian determines that more effective measures should be implemented, apply such replacement security measures. End User may perform security testing with respect to the cloud-based elements of the Service, but only with Appian’s prior written consent, not to be unreasonably withheld.
- 3.3 **Permitted Usage.** End User agrees to use the Service solely in connection with its internal business purposes, subject to the other terms and conditions of these Terms and Conditions. End User acknowledges that the Service is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service or the failure of the Service, could lead to death, personal injury, or severe physical or environmental damage, and End User agrees not to use the Service for any such purpose.

### 4. DATA

End User hereby grants the Service Providers with a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable right during the period during which the Service is provided to End User to use the Data as necessary to provide the Service to End User. End User is responsible for responding to any notices sent to End User (or any user of the Service authorized by the End User) by any third party claiming that the Data violates such party’s rights.

### 5. MAINTENANCE SERVICES

Appian shall provide the following services (“Maintenance Services”) directly to the End User.

- 5.1 **Updates.** Appian will install the upgrades and patches to the Service that are cloud-based as they become available. Appian shall promptly provide End User with any upgrades and patches to the Services that are locally installed at they become generally available.
- 5.2 **Technical Support.** Appian shall provide Technical Support to allow the End User's Maintenance Services contacts to report problems and to seek assistance regarding the End User's use of the Service. The End User shall designate End User employees to coordinate the End User's requests for Maintenance Services ("Maintenance Services contacts"). The End User shall email support@appian.com with the End User's Maintenance Services contacts promptly on or after it receives license to use the Services from Licensor. The End User may change its Maintenance Services contacts using Appian's case management system. The End User's Maintenance Services contacts may report problems using Appian's online technical support case management system (<https://community.appian.com/support/> or other URL as notified to the End User in writing from time to time), by telephone using Appian's authorized technical support phone line, or using any other means that Appian may authorize from time-to-time. Appian shall return support requests within a commercially reasonable time after receipt. The End User's Maintenance Services contacts may track Technical Support requests using Appian's case management system. The End User's Maintenance Services contacts must be reasonably familiar with the Service to facilitate discussions with Appian's Maintenance Services staff. Technical Support is provided only in connection with the then current version of the Service, provided that in connection with the locally installed elements of the Service (Appian RPA integrated development environment and RPA Agents) Appian shall continue supporting the immediately preceding release for a reasonable period sufficient to allow End User to implement the newest release.
- 5.3 **Remote Maintenance Only.** Maintenance Services do not include on-site or in-person assistance or consultation, or training that would normally be provided in formal training classes.
- 5.4 **Scheduled Maintenance.** Appian may specify up to a contiguous four (4) hour period during off peak hours when the cloud-based elements of the Service will not be available and during which Appian can provide any needed maintenance. Appian will use reasonable efforts to provide one-week prior notice of all scheduled maintenance periods, provided that Appian may without prior notice suspend the cloud-based elements of the Service to install emergency patches or other urgent corrective measures.
- 5.5 **End User Obligations.** The End User shall cooperate with Appian's reasonable requests in connection with providing the Maintenance Services, including, without limitation, by providing Appian with timely access to data, information and personnel of the End User. The End User is responsible for the accuracy and completeness of all data and information provided to Appian in connection with the Maintenance Services.
- 5.6 **Excluded Items.** Maintenance Services do not include on-site or in-person assistance or consultation, nor extensive training that would normally be provided in formal training classes. In addition, Maintenance Services shall not include Technical Support or Defect Correction to the extent required as a result of the following:
- a. Malfunction of the computer system and communications network on which the End User has installed and is using the Service;
  - b. Use of the Service contrary to the terms of the then current Documentation;
  - c. Modifications, enhancements or customizations of the Service;
  - d. Any use of the Service in disregard of any known adverse consequences, including without limitation the End User's failure to make appropriate backups or to follow warning messages and other written instructions; or
  - e. Any other cause not attributable to Appian.

## 6. CONFIDENTIAL INFORMATION

- 6.1 **General.** The End User acknowledges and agrees that the Service contains proprietary and sensitive information of the Service Providers. End User will protect the Service from unauthorized use and disclosure using the same means it uses to protect its own information and data of like importance, but in no event using less than a reasonable degree of care. The End User may only disclose the Service to its authorized users of the Service: (a) who have a need to know in order for the End User to use the Service in accordance with these Terms and Conditions, and (b) who are subject to binding confidentiality obligations with the End User regarding limitations on use and disclosure that are at least as restrictive as those in this Section 6.

6.2 **Exceptions.** The foregoing restrictions will not apply to the extent the Service (a) is properly known by the End User at the time of disclosure by the Licensor, without restriction, (b) has become publicly known through no wrongful act of the End User, (c) has been rightfully received from a third party authorized to make such communication without restriction, (d) has been independently developed by the End User as evidenced by written records, or (e) is required by law to be disclosed; provided that if the End User is required to disclose the Service pursuant to an order under law, the End User must, to the extent not prohibited by applicable law, give the Licensor and Appian sufficient notice of such disclosure to allow a reasonable opportunity to object to and to take necessary legal action to prevent such disclosure.

## 7. TERMINATION AND SUSPENSION

7.1 **Termination.** Licensor may terminate the End User's license to use the Service at any time upon written notice to End User if End User breaches any material provision hereof and fails to cure such breach within 30 calendar days after receiving written notice of such breach from Licensor.

7.2 **Suspension.** Licensor may immediately suspend the End User's privilege to use the cloud-based elements of the Service, which suspension shall be without any liability to Licensor, if Licensor has reason to believe:

- a. The End User is using the Service in any manner to (i) interfere or attempt to interfere with the functionality or proper working of the Service, including but not limited to participating in any flooding or denial or service activities of any kind, or (ii) to engage in, promote or facilitate illegal activities;
- b. The Data (i) infringes, violates or misappropriates any rights of the Licensor or any third party; (ii) constitutes defamation, invasion of privacy or publicity, or otherwise violates any applicable law or regulation, or (iii) contains malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code."

## 8. WARRANTIES

8.1 **Warranties Made by Subscriber in Connection with Subscriber's use of the Service.** Subscriber represents and warrants that Subscriber will not use the Service:

- a. in a manner that infringes, violates or misappropriates any rights of the Service Providers or any third party;
- b. to engage in, promote or facilitate illegal activities;
- c. to engage in spamming or other impermissible advertising, marketing or other activities, including, without limitation, any deceptive practices such as posing as another service for the purposes of phishing or pharming, altering or obscuring any mail headers, creating forged or non-standard protocol headers, such as altering source addresses, etc., assuming the identity of any user of the Service without that user's permission; or
- d. in any manner to interfere or attempt to interfere with the functionality or proper working of the Service, including but not limited to participating in any flooding or denial or service activities of any kind.

8.2 **Warranties Made by Subscriber in Connection with Subscriber's Data.** In connection with the Data, Subscriber represents and warrants:

- a. that Subscriber has the necessary rights and licenses, consents, permissions, waivers and releases to use and display the Data on the Service; and
- b. that the Data does not:
  - i. violate, misappropriate or infringe any rights of the Service Providers or any third party,
  - ii. constitute defamation, invasion of privacy or publicity, or otherwise violate any rights of any third party, or
  - iii. that the Data does not contain malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

8.3 **Warranties Made by Licensor.** Licensors, and the Third-Party Licensors make no warranty to the Subscriber in connection with the Service. The Third-Party Licensors expressly disclaim any express, implied or statutory warranties in connection with the Service, including the implied warranties of merchantability or fitness for a particular purpose. The Third-Party Licensors are not liable for any damages of any kind resulting from the Subscriber's use of the Service, including without limitation, indirect, consequential, incidental, and special damages. The Third-Party Licensors are intended Third-Party

beneficiaries of those provisions of these Terms and Conditions relating to the Third-Party Licensor's software incorporated into the Service.

## 9. LIMITATION OF LIABILITY

EXCEPT FOR EITHER PARTY INTENTIONALLY MISAPPROPRIATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF USE, LOSS OF DATA, LOSS OF REVENUE, INTERRUPTION OF BUSINESS, LOST PROFITS, ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND UNDER ANY CAUSE OR ACTION (INCLUDING CONTRACT, TORT OR STRICT LIABILITY) ARISING FROM OR OUT OF THIS AGREEMENT. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, THE SUBSCRIBER'S OBLIGATION TO MAKE PAYMENTS AS DUE, OR EITHER PARTY INTENTIONALLY MISAPPROPRIATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER, EITHER PARTY'S TOTAL LIABILITY HEREUNDER, REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, TORT OR STRICT LIABILITY), WILL IN NO EVENT EXCEED:

- a) FOR ANY LOSS, DAMAGE, COST, EXPENSE OR LIABILITY ARISING IN RESPECT TO THE APPIAN SOFTWARE LICENSED TO THE SUBSCRIBER, THE LICENSE FEES PAID BY THE SUBSCRIBER TO LICENSOR DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY;
- b) FOR ANY LOSS, DAMAGE, COST, EXPENSE OR LIABILITY ARISING IN RESPECT TO THE MAINTENANCE SERVICES PROVIDED TO SUBSCRIBER, THE ANNUAL MAINTENANCE SERVICES FEE ACTUALLY PAID BY THE SUBSCRIBER TO LICENSOR UNDER WHICH THE LIABILITY ARISES DURING THE MAINTENANCE SERVICES TERM WHEN THE DEFECTIVE MAINTENANCE SERVICES ARE PROVIDED;
- c) FOR ANY LOSS, DAMAGE, COST, EXPENSE OR LIABILITY NOT COVERED BY SECTIONS (a), OR (b) ABOVE, THE AMOUNT PAID TO LICENSOR BY THE SUBSCRIBER IN CONNECTION WITH THE SERVICE OR APPIAN SOFTWARE GIVING RISE TO THE LIABILITY IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

THE LIMITATIONS SET FORTH IN THIS SECTION ARE INDEPENDENT OF ANY LIMITED REMEDY SET FORTH HEREIN, SHALL APPLY WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. INDEMNIFICATION

**10.1 Indemnity.** Subject to the limitations and contingencies set forth below and to the extent the Subscriber is not in default under this Agreement, Licensor shall at its expense defend any claim brought against the Subscriber, and its agents, officers or employees, by a third party alleging that the Appian Software, Maintenance Releases, and any Maintenance Services infringe any United States patent, copyright, or trademark rights of any third party. As part of Licensor's defense obligations, Licensor will pay all associated and reasonable attorneys' fees and defense costs, and pay any corresponding judgment finally awarded by a court of competent jurisdiction or any settlement amount agreed to in a written settlement agreement approved, in writing, by an authorized Licensor representative. In the event a Deliverable is held by a court of competent jurisdiction to infringe the aforementioned intellectual property rights and Subscriber's use of the Deliverable is enjoined, or Licensor concludes that a Deliverable infringes the foregoing intellectual property rights of a third party, Licensor will, at its option and expense either: (a) procure for the Subscriber the right to continue using the Deliverable in accordance with this Agreement, (b) replace the infringing components of the Deliverable with other components with the same or similar functionality that are reasonably acceptable to the Subscriber, (c) modify the Deliverable so that it is non-infringing and reasonably acceptable to the Subscriber, or (d) if options (a), (b) and (c) are not commercially viable, terminate the Subscriber's license to use the infringing Deliverable and refund to the Subscriber the amounts described below. For infringing Deliverable, Licensor will refund to Subscriber the unamortized portion of the services fee, as applicable, that Subscriber actually paid Licensor for the infringing Deliverable based upon four (4) years straight line depreciation with depreciation commencing upon the effective date of the SOW under which the infringing Deliverable was purchased. To the extent the

infringing Deliverable is the Appian Software provided as part of a Hosted Installation, Licensor will refund to the Subscriber the amount of the then current license fee that was prepaid and unearned as of the date the license is terminated.

- 10.2 **Limitation.** Notwithstanding the provisions of Section 10.1 above, Licensor assumes no liability for
- a. infringement arising from combinations of a Deliverable with non-Appian software or hardware, including any of the Licensor's or Subscriber's software or code,
  - b. modifications to a Deliverable made by any party other than Licensor,
  - c. use of a prior version of a Deliverable to the extent such infringement would have been avoided by the use of the current version of the Deliverable, provided that Licensor has offered or provided such current version to the Subscriber at no additional cost, or
  - d. trademark infringements involving any marking or branding not applied by Licensor or involving any marking or branding applied at the Subscriber's request.
- 10.3 THIS SECTION 10 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF LICENSOR AND APPIAN AND THE EXCLUSIVE REMEDY OF THE SUBSCRIBER WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY A DELIVERABLE OR ANY PART THEREOF.
- 10.4 **Subscriber Material and Subscriber Pre-existing Material.** To the extent Licensor is not in default under this Agreement and subject to the limitations and contingencies set forth in Sections 10.1-10.3 above, mutatis mutandis, the Subscriber shall at its expense defend any claim brought against Licensor, and its agents, officers or employees, by a third party alleging that any Subscriber Material and Subscriber pre-existing material, infringe the rights of any third party. As part of the Subscriber's defense obligations, the Subscriber will pay all associated and reasonable attorneys' fees and defense costs, and pay any corresponding judgment finally awarded by a court of competent jurisdiction or any settlement amount agreed to in a written settlement agreement approved, in writing, by an authorized Subscriber representative.
- 10.5 **Personal Injury/Property Damage.** Subject to the limitations and contingencies set forth below, each Party agrees to indemnify, defend, and hold harmless the other Party, and its agents, officers, and employees from and against any and all losses, damages, actions, suits, costs, fines, liabilities, expenses (including reasonable attorney's fees) and claims arising out of or connected to any third party claims for bodily injury, death or damage to real or tangible personal property, to the extent caused by the negligence or willful misconduct of the indemnifying Party while engaged in the provision or receipt of services under this Agreement; provided, however, that if there also is fault on the part of indemnified Party, the foregoing indemnification shall be on a comparative fault basis. As part of the indemnifying Party's defense obligations, the indemnifying Party will pay all associated and reasonable attorneys' fees and defense costs, and pay any corresponding judgment finally awarded by a court of competent jurisdiction or any settlement amount agreed to in a written settlement agreement approved, in writing, by an authorized representative of the indemnifying Party.
- 10.6 **Contingencies** As a condition to the foregoing indemnity obligations, the indemnified Party shall provide the indemnifying Party with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying Party in connection with any such claim. The indemnifying Party shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; provided, however, that the indemnifying Party may not agree to any settlement other than the payment of money or release of any claim without the indemnified Party's written permission, which shall not be unreasonably withheld, conditioned or delayed.

## 11. GOVERNING LAW

This Agreement and all Order Forms shall be governed by and construed in accordance with the laws of Delaware, without regard to the conflict of laws provisions thereof.

## 12. ENTIRE AGREEMENT

Except as herein explicitly provided, this Agreement and any written exhibits attached hereto constitute the entire understanding between the Parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, understandings, and agreements.

## 13. MISCELLANEOUS

If one or more of the provisions of this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement

shall be construed as if no such invalid, illegal or unenforceable provision had ever been contained in this Agreement.

The captions and headings contained in this Agreement are for convenience only and shall in no way limit, modify, amplify, expand or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement.

Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other Party's prior express written consent, which will not be unreasonably withheld or delayed. Despite the previous sentence, either Party may assign this Agreement to the successor entity in connection with the sale of all or substantially all of the business or assets of the Party. Except to the extent forbidden in this paragraph, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and permitted assignees. Any attempted assignment in violation of this paragraph will be void.

#### **14. ATTORNEYS' FEES AND COSTS**

Licensor shall be entitled to an award of attorney's fees and costs expended in any litigation, arbitration or other proceeding commenced between the parties, relating directly or indirectly to this Agreement, if Licensor substantially prevails in such litigation or other proceeding.

#### **15. DISPUTE RESOLUTION**

EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR RELATED TO THIS AGREEMENT. EXCEPT FOR DISPUTES RELATING TO SECTIONS 2, 3, 6, AND 10 OF THIS AGREEMENT, ANY DISPUTE RELATED ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE SUBMITTED TO BINDING ARBITRATION AS PROVIDED BELOW.

Any such dispute, including but not limited to the issue of whether or not a dispute is arbitrable, shall be heard by a retired judge selected from JAMS or any similar organization mutually acceptable to the parties to the dispute. The parties to the dispute shall mutually agree on one arbitrator from the list provided by the arbitrating organization; provided that if the parties to the dispute cannot agree, then each party shall select one arbitrator from the list, and the arbitrators so selected shall agree upon one arbitrator chosen from the same list, and the arbitrator selected by the parties' arbitrators shall determine the dispute. The arbitration shall be conducted by one arbitrator, shall take place in New Castle County, Delaware and shall be conducted in accordance with the Federal Rules of Civil Procedure and Federal Rules of Evidence. The arbitrator shall apply Delaware substantive law to the proceeding (without regard to conflicts of law provisions). The arbitrator shall have the power to grant all legal and equitable remedies including provisional remedies and award compensatory damages provided by law; however, the arbitrator may not order relief in excess of what a court could order. The arbitrator shall prepare and provide the parties with a written award including factual findings and the legal reasoning upon which the award is based. Any Delaware court having jurisdiction may enter judgment on the award rendered by the arbitrator, or correct or vacate such award as provided by applicable law. The parties understand that by agreement to binding arbitration they are giving up the rights they may otherwise have to trial by a court or a jury and all rights of appeal. Pending resolution of any arbitration proceeding, either party may apply to any Delaware court of competent jurisdiction for any equitable remedy, including but not limited to a temporary restraining order or a preliminary injunction (excluding however, any dispute relating to discovery matters) and for enforcement of any such order. The application for or enforcement of any equitable remedy by a party shall not operate as a waiver of the within agreement to submit a dispute to binding arbitration. Initially, each party shall bear its own costs and legal fees associated with such arbitration and shall split the cost of the arbitrator. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach or alleged breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys' fees paid or incurred in good faith.

**16. SURVIVAL**

The provisions of Sections 6, 7, 9, 10, 11, 12, 13, 14, and 15 of this Agreement, any other provision of this Agreement that must survive to fulfill its essential purpose, shall survive the expiration or termination of this Agreement for any reason.

**17. AUTHORITY AND EXECUTION IN COUNTERPARTS**

Each person signing or otherwise accepting on behalf of the parties to the Agreement represents and warrants that he/she has full authority to execute or otherwise accept the Agreement on behalf of such party and that the Agreement will constitute a legal and binding obligation of such party. Each counterpart will be an original, but all such counterparts will constitute a single instrument. A signed copy of this Agreement or any Order Form delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.