

Computable Publishing LLC

Apollo Accelerator Program Membership Order Form

Customer Contact Information	
Customer Name: XXX	Date:
Contact Name:	Subscription/Membership Start Date:
E-mail:	Subscription/Membership End Date: December 31, 20__
Phone:	Date of Customer's Application Form:

Software Subscription	# Months ¹	Total ²
Foundation for Organizing Re-usable Communication of Evidence (FORCE) Toolkit software, offered as an online, remotely-accessed service for data entry, data transformation, data management, and data access (search, display, export) for standards-based computable evidence and computable recommendations	_____	\$ _____

¹Use 3, 6, 9 or 12 for initial calendar year, then increments of 12 for subsequent years

²Annual subscription fees are based on the following current rates:

Customer's Annual Revenue	For-Profit Annual Fees	Nonprofit Annual Fees	Maximum number of voting individuals
>\$10 Billion	\$2,300,000	\$999,000	11
\$1-10 Billion	\$1,500,000	\$400,000	10
\$100-999 Million	\$900,000	\$110,000	9
\$50-99 Million	\$450,000	\$55,000	8
\$20-49 Million	\$200,000	\$25,000	7
\$10-19 Million	\$125,000	\$15,000	6
\$5-10 Million	\$100,000	\$12,000	5
\$1-5 Million	\$75,000	\$8,000	4
< \$1 Million	\$50,000 (or 10% of revenue)	\$5,000	3

Please attach or provide a photo-quality or electronic copy of Customer's logo for inclusion in the listing of Apollo Members.

This Order Form is subject to the attached Terms and Conditions, which (including any additional attachments) are incorporated herein by reference. The parties agree to the terms of this Order Form and the attached Terms and Conditions, as of the later date written below.

Computable Publishing LLC

CUSTOMER

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

TERMS AND CONDITIONS

These **TERMS AND CONDITIONS** (these “Terms and Conditions”), together with the Apollo Accelerator Program Membership Order Form executed and attached hereto (the “Order Form”), and any additional Statements of Work and any other exhibits, schedules and addenda attached to or incorporated into the Order Form constitute the software subscription and services agreement (the “Agreement”) made and executed by and between Computable Publishing LLC, a Massachusetts limited liability company (“CP”), and the Customer identified on the Order Form (“Customer” or “Member”). By executing the signature page to the Order Form, and in consideration of the mutual promises, and upon the terms and conditions set forth below and in the Order Form and intending to be legally bound, CP and Customer hereby agree as follows:

1. Definitions.

1.1. This “Agreement” means the combination of the Order Form with these Terms and Conditions, any additional Statements of Work and any other exhibits, schedules and addenda attached to or incorporated into the Order Form.

1.2. “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer entity signing this Agreement. “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.

1.3. “Application Form” means Customer’s application to join the Apollo Accelerator Program, which Customer prepared and submitted to CP prior to the date of this Agreement (on the date set forth on the first page of the Order Form), in order to be evaluated for participation in the Apollo Accelerator Program.

1.4. “Apollo Accelerator Program” means the group of CP customers (including Customer) that purchase subscription rights to the Base Software and CP’s product and services offerings to this group designed to accelerate the development, implementation and use of standards for electronic data exchange of expressions of scientific evidence and clinical guidance (i.e., accelerate the use of computable evidence and computable recommendations).

1.5. “Base Software” means CP’s Foundation for Organizing Re-usable Communication of Evidence (FORCE) Toolkit software, offered as an online, remotely-accessed service for data entry, data transformation, data management, and data access (search, display, export) for standards-based computable evidence and computable recommendations.

1.6. “Cloud Service” means (a) Base Software, and/or (b) any other remotely-accessed software-based products and services purchased by Customer and provided by CP, as specified on an Order Form and as described in the Documentation. “Cloud Service” excludes Professional Services, Custom Software Services, Free Trial Service, and Non-CP Applications, even if these other services are offered as online, remotely-accessed services.

1.7. “Custom Software Services” means Professional Services to design, develop and implement customized, proprietary extensions and derivative works based on the Base Software.

1.8. “Customer Clients” means external users, clients, and third parties providing revenue to the Customer or any Affiliates that enter into an Order Form.

1.9. “Customer Data” means all electronic data that is (a) submitted by or on behalf of Customer to the Cloud Service or (b) collected by Customer using the Cloud Service from publications, public sources or other third-party sources other than CP.

1.10. “Documentation” means CP’s user guides and other end user documentation for the applicable Service available on the online help feature of the Cloud Service, as may be updated by CP from time to time,

including without limitation the materials available at www.computablepublishing.com.

1.11. “Effective Date” means the Subscription/Membership Start Date set forth on the first page of the Order Form.

1.12. “Extended Access Cloud Services” means Cloud Services that permit use by Users (for internal business purposes) and Customer Clients (for external business purposes).

1.13. “Free Trial Service” means any CP service or functionality that may be made available by CP to Customer to try at Customer’s option, at no additional charge, and which is clearly designated as “beta,” “trial,” “non-GA,” “pilot,” “developer preview,” “non-production,” “free trial,” “evaluation,” “early access,” or by a similar designation.

1.14. “Non-CP Application” means a web-based, offline, mobile, or other software application functionality that is provided by Customer or a third party and interoperates with a Service.

1.15. “Order Form” means a written ordering document (including documents transmitted by electronic mail) that specifies the Cloud Service, Training Services, Support Services, and/or Professional Services purchased by Customer under this Agreement that is entered into by Customer (or any Affiliate) and CP (or any Affiliate). Order Forms shall be subject solely to and incorporate by reference these Terms and Conditions. By entering into an Order Form hereunder, an Affiliate agrees to be bound by these Terms and Conditions.

1.16. “Professional Services” means implementation and configuration services provided by CP in connection with the Cloud Service, as described more fully in a Statement of Work. Professional Services shall not include the Cloud Service. Professional Services may also include development, implementation and configuration services provide by CP not connected with the Cloud Service, as described in a Statement of Work. Professional Services may also include Custom Software Services that are not provided to all Apollo Accelerator Program members as part of the Base Software.

1.17. “Standard” means a specification of formal technical standards as approved by a standards developing organization.

1.18. “Statement of Work” means a document that describes certain Professional Services purchased by Customer under this Agreement. Each Statement of Work shall incorporate this Agreement by reference.

1.19. “Support Services” means the support services provided by CP in accordance with CP’s then-current support policy and as identified in an Order Form.

1.20. “Training Services” means the education and training services provided by CP as described more fully in an applicable Order Form.

1.21. “Term” has the meaning set forth in Section 12.1.

1.22. “Users” means individuals who are authorized by Customer to use the Cloud Service, for whom a subscription to the Cloud Service has

been procured. Users may include, for example, Customer's employees, consultants, contractors, and agents and, if an Affiliate enters into a separate Order Form, the Affiliate's employees, consultants, contractors, and agents.

2. Free Trials, Service, Professional Services, and Training Services.

2.1. Free Trials. If Customer and CP agree in an Order Form for Customer to acquire a Free Trial Service, CP will make such Free Trial Service available to Customer on a trial basis, free of charge, until the end of the free trial period set forth in the Order Form. Notwithstanding anything to the contrary in this Agreement, during the free trial, the Free Trial Service is provided "as-is" without any representation or warranty.

2.2. CP's Obligations. If Customer and CP agree in an Order Form for Customer to acquire use of the Cloud Service, CP shall make the Cloud Service available to Customer pursuant to this Agreement and all Order Forms during the Term, and grants to Customer a limited, non-licensable, non-exclusive, non-transferable right during the Term to allow its Users to access and use the Cloud Service in accordance with the Documentation, solely for Customer's own internal business purposes. During the Term, the overall functionality of the Cloud Service will not materially decrease. Customer agrees that its purchase of the Cloud Service or the Professional Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by CP with respect to future functionality or features.

2.3. Customer's Obligations. Customer is responsible for all activities conducted under its and its Users' logins on the Cloud Service. Customer shall use the Cloud Service in compliance with this Agreement, the applicable Order Forms, Documentation, and applicable law and shall not: (i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Cloud Service, or any part thereof, or make it available to anyone other than its Users, or to use the Cloud Service for the benefit of third-parties (including Affiliates that have not entered into a separate Order Form), such as a "service bureau" or "business process outsourcer"; (ii) send or store in the Cloud Service any personal health data, credit card data, personal financial data or other such sensitive data which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards; (iii) send or store infringing or unlawful material in connection with the Cloud Service; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs to the Cloud Service; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Cloud Service or the data contained therein; (vi) modify, copy or create derivative works based on the Cloud Service, or any portion thereof without CP's written consent under a separate agreement; (vii) access the Cloud Service for the purpose of building a competitive product or service or copying its features, without CP's written consent under a separate agreement; or (viii) delete, alter, add to or fail to reproduce in and on the Cloud Service the name of CP and any copyright or other notices appearing in or on the Cloud Service or which may be required by CP at any time, without CP's written consent under a separate agreement.

Any use of the Cloud Service in breach of this Agreement, Documentation or Order Forms, by Customer or Users that in CP's judgment threatens the security, integrity or availability of the Cloud Service, may result in CP's immediate suspension of the Cloud Service; however, CP will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

2.4. Professional Services; Training Services. Customer and CP may

enter into Statements of Work that describe the specific Professional Services (including Custom Software Services) to be performed by CP. CP shall provide any Training Services in accordance with CP's then-current Training Services terms. If applicable, while on Customer premises for Professional Services or Training Services, CP personnel shall comply with reasonable Customer rules and regulations regarding safety, security, and conduct made known to CP, and will at Customer's request promptly remove from the project any CP personnel not following such rules and regulations.

2.5. Customer Affiliates. Customer Affiliates may purchase and use Service subscription and Professional Services subject to these Terms and Conditions by executing Order Forms or Statements of Work hereunder that incorporate by reference these Terms and Conditions, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Form(s) or Statement(s) of Work. Whenever the fees for Cloud Services are calculated based on the size of the Customer (whether in terms of annual revenues, market capitalization, number of employees, etc.), when an Affiliate enters into an additional Order Form, the total fees of Customer and all Affiliates shall be calculated based on their aggregate pricing factors, and the fees for an additional Order Form shall be apportioned accordingly.

For illustration, if Cloud Services are priced at \$75,000 annually for entities with annual revenues of \$1-5 million and \$100,000 annually for entities with annual revenues of \$5-10 million, then when Company X-1 with \$4 million in annual revenues orders Cloud Services, its annual fee would be \$75,000; and if Company X-2, with \$5 million in annual revenues and related to Company X-1 by common ownership, also orders Cloud Services pursuant to this Agreement, the aggregate fees between them would be based on \$9 million in aggregate annual revenues, resulting in a total annual fee of \$100,000, of which the incremental \$25,000 would be apportioned to Company X-2.

3. Security and Support.

3.1. Security. CP shall: (i) maintain appropriate administrative, physical, and technical safeguards to protect the security and integrity of the Cloud Service and the Customer Data as described in the Documentation; (ii) protect the confidentiality of the Customer Data (provided that any Customer Data extracted by Customer from public sources shall only be confidential to the extent Customer has compiled or aggregated them, and only the compilation or aggregation shall be confidential); and (iii) access and use the Customer Data solely to perform its obligations in accordance with these Terms and Conditions, and as otherwise expressly permitted in this Agreement ("Security Program"). In no event during the Term shall CP materially diminish the protections. Except with respect to a Free Trial Service, to the extent that CP processes any Personal Data (as defined in the DPA) contained in Customer Data, on Customer's behalf, in the provision of the Cloud Service, the terms of the data processing addendum attached hereto (the "DPA") as may be updated by CP if required by applicable law, which are hereby incorporated by reference, shall apply and the parties agree to comply with such terms. For the purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, Customer and its applicable Affiliates are each the data exporter, and Customer's signing of this Agreement, and an applicable Affiliate's signing of an Order Form, shall be treated as signing of the Standard Contractual Clauses and their Appendices. If Customer does not execute a DPA, then the Customer is liable for any Personal Data provided or exposed by the Customer.

3.2. Support Services. During the Term, CP shall provide Support Services to Customer in accordance with CP's then-current CP support policy, and as identified in an Order Form. In the event that the level of

support is not identified in the Order Form, Customer shall receive a “basic” level of support that is included in the Cloud Service at no additional cost.

4. Confidentiality. Each party (“Recipient”) may, during the course of its provision and use of the Cloud Service or provision of Professional Services hereunder, receive, have access to, and acquire knowledge from discussions with the other party (“Discloser”) which may not be accessible or known to the general public, such as technical and business information concerning hardware, software, designs, specifications, techniques, processes, procedures, research, development, projects, products or services, business plans or opportunities, business strategies, finances, costs, vendors, penetration test results and other security information; defect and support information and metrics; and first and third party audit reports and attestations (“Confidential Information”). Confidential Information shall be either (i) marked as confidential or proprietary or (ii) identified in writing as confidential or proprietary within thirty (30) days of disclosure. Confidential Information shall not include, and shall cease to include, as applicable, information or materials that (a) were generally known to the public on the Effective Date; (b) become generally known to the public after the Effective Date, other than as a result of the act or omission of the Recipient; (c) were rightfully known to the Recipient prior to its receipt thereof from the Discloser; (d) are extracted by Customer from public sources, except to the extent Customer has compiled or aggregated them, and only the compilation or aggregation itself shall be Confidential Information; (e) the Recipient lawfully received from a third party without that third party’s breach of agreement or obligation of trust; or (f) are independently developed by the Recipient as shown by documents and other competent evidence in the Recipient’s possession. The Recipient shall not: (i) use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser’s prior written permission, or (ii) disclose or make the Discloser’s Confidential Information available to any party, except those of its employees, contractors, and agents that have signed an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a “need to know” in order to carry out the purpose of this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. If the Recipient is compelled by law to disclose Confidential Information of the Discloser, it shall provide the Discloser with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party’s cost, if the other party wishes to contest the disclosure. The obligations set forth in Section 3.1 and not this Section 4 apply to Customer Data.

5. Ownership, Feedback, and Aggregated Data.

5.1. Customer Data. As between CP and Customer, Customer owns its Customer Data (provided that any Customer Data extracted by Customer from public sources shall only be owned by Customer to the extent Customer has compiled or aggregated them). Customer grants to CP, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data, as reasonably necessary for CP to provide the Cloud Service in accordance with this Agreement. Subject to the limited licenses granted herein, CP acquires no right, title or interest from Customer or Customer’s licensors under this Agreement in or to any Customer Data. Customer shall be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data.

5.2. CP Ownership of the Cloud Service. Except for the rights expressly granted under this Agreement, CP and its licensors retain all right, title, and interest in and to the Cloud Service, Documentation, the

Professional Services, the Training Services materials, including all related intellectual property rights inherent therein. If Customer purchases Professional Services, CP grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable right to use the Professional Services solely for Customer’s use with the Cloud Service. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

5.3. Standard. Health Level 7 International (HL7®), an American National Standards Institute accredited Standards Development Organization) owns all right, title, and interest in and to the Fast Healthcare Interoperability Resources (FHIR®) standard. No other party in this Agreement can assume rights regarding the FHIR Standard other than rights governed by HL7.

5.4. Feedback. CP shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Cloud Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the features, functionality or operation of the Cloud Service, the Professional Services, or the Training Services (“Feedback”). CP shall have no obligation to use Feedback, and Customer shall have no obligation to provide Feedback.

5.5. Statistical Usage Data. CP owns the statistical usage data derived from the operation of the Cloud Service, including data regarding web applications utilized in connection with the Cloud Service, configurations, log data, and the performance results for the Cloud Service (“Usage Data”). Nothing herein shall be construed as prohibiting CP from utilizing the Usage Data to optimize and improve the Cloud Service or otherwise operate CP’s business; provided that if CP provides Usage Data to third parties, such Usage Data shall be de-identified and presented in the aggregate so that it will not disclose the identity of Customer or any User(s) to any third party.

5.6. Customer hereby grants CP permission to display Customer’s name and logo on the Apollo Accelerator Program’s website and other member lists, with appropriate acknowledgement of Customer’s trademarks as provided by the Customer.

6. Fees, Expenses, and Taxes.

6.1. Fees. Customer shall pay CP the fees set forth in the applicable Order Form (“Fees”) in accordance with this Agreement and the Order Form. If not otherwise specified on an Order Form, Fees will be due within thirty (30) days of date of invoice. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to CP hereunder are non-cancelable and non-refundable. If Customer fails to pay any amounts due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) CP reserves the right to suspend the Cloud Service until such amounts are paid in full, and (ii) CP will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Customer pays all amounts due; provided that CP will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the issue.

6.2. For the Apollo Accelerator Program, the initial Term is based on a calendar year (January 1 through December 31), with fees for partial years pro-rated as follows: If a subscription for the Base Software commences in the first calendar quarter, the fee for the first year will be 100% of the applicable fee set forth on the first page of the Order Form; if a subscription for the Base Software commences in the second calendar quarter, the fee for the first year will be 75% of the applicable fee set forth on the first page of the Order Form; if the a subscription for the Base Software commences in the third calendar quarter, the fee for the first year

will be 50% of the applicable fee set forth on the first page of the Order Form; and if a subscription for the Base Software commences in the fourth calendar quarter, the fee for the first year will be 25% of the applicable fee set forth on the first page of the Order Form.

6.3. Rates for annual fees may be adjusted at any time, and are likely to increase from time to time as the collective value of Base Software and cost of maintenance and development increases, but fees may not be increased for any period for which the Customer has paid in advance.

6.4. Customer may pay fees for the Base Software for up to five (5) years in advance.

6.5. Customer may extend the Term of its subscription of the Base Software at CP's currently posted fee rate at any time before new rates are announced. When new rates are announced, they will become the expected rates for any renewals (and new members).

6.6. If CP offers discounts to other CP customers during an announced fee grace period, CP will provide the same discount to Customer.

6.7. Expenses. Unless otherwise specified in the applicable Statement of Work, upon invoice from CP, Customer will reimburse CP for all pre-approved, reasonable expenses incurred by CP while performing the Professional Services, including without limitation, transportation services, lodging, and meal and out-of-pocket expenses related to the provision of the Professional Services. CP will include reasonably detailed documentation of all such expenses with each related invoice.

6.8. Taxes. Fees do not include any local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder (excluding taxes based on CP's net income or property) unless Customer provides CP with a valid tax exemption certificate authorized by the appropriate taxing authority. The limitations set forth in Section 9 shall not apply to Customer's payment obligations under this Section 6.

7. Governance of Apollo Membership Program

7.1. Customer's execution and CP's acceptance of the Order Form entitles Customer to the following privileges as a member of the Apollo Accelerator Program during the Term:

a) CP will seek the recommendations of members of the Apollo Accelerator Program on the prioritization of future features and functionality of the Base Software, based on member voting from time to time. Each member is entitled to the number of votes that corresponds to its fee level on the first page of the Order Form, and voting will be conducted during virtual live meetings with only attendees entitled to vote. The primary expectation for voting is the prioritization of feature development for Base Software, but CP may elect to raise other issues for voting from time to time.

b) One item that CP currently intends to bring to a membership vote is whether or not the Apollo Accelerator Program should seek to become an HL7 FHIR accelerator program.

c) Customer and other members of the Apollo Accelerator Program can post their usual and customary fees for any services (software licensing, software development, content processing services, consulting, etc.) and/or what discounts are available to other members.

7.2. Business management of the Apollo Accelerator Program is the responsibility of CP and always at the discretion of CP.

8. Warranties and Disclaimer.

8.1. Warranties.

a) Service. CP warrants that during the Term: (i) the Cloud Service shall perform materially in accordance with the applicable Documentation, (ii) CP shall make commercially reasonable efforts to make the Cloud Service available to Customer 24 hours a day, 7 days a week, every day of each year (except for any unavailability caused by a Force Majeure event); (iii) CP will employ then-current, industry-standard measures to test the Cloud Service to detect and remediate viruses, Trojan horses, worms, logic bombs, or other harmful code or programs designed to negatively impact the operation or performance of the Cloud Service, and (iv) it owns or otherwise has sufficient rights in the Cloud Service to grant to Customer the rights to use the Cloud Service granted herein. As Customer's exclusive remedy and CP's entire liability for a breach of the warranties set forth in this Section 8.1(a), CP shall use commercially reasonable efforts to correct the non-conforming Service at no additional charge to Customer, and in the event CP fails to successfully correct the Cloud Service within a reasonable time of receipt of written notice from Customer detailing the breach, then Customer shall be entitled to terminate the applicable Service and receive an immediate refund of any prepaid, unused Fees for the non-conforming Service. The remedies set forth in this subsection shall be Customer's sole remedy and CP's sole liability for breach of these warranties. The warranties set forth in this subsection shall apply only if the applicable Service has been utilized in accordance with the Documentation, this Agreement and applicable law.

b) Professional Services. CP warrants that the Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. As Customer's sole and exclusive remedy and CP's entire liability for any breach of the foregoing warranty, CP will, at its sole option and expense, promptly re-perform any Professional Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Professional Services.

c) Customer's Warranty. Customer represents and warrants that, to the best of its knowledge, the information provided in its Application Form to CP is accurate and complete. To the extent that Customer fails to disclose in the Application Form any patent or pending patent rights of Customer on the Effective Date that might relate to the Cloud Service, customer hereby waives any claims against CP based on such patent.

8.2. Disclaimer. EXCEPT FOR ANY EXPRESS WARRANTIES SET FORTH UNDER SECTION 7.1, CP AND ITS SUPPLIERS HEREBY DISCLAIM ALL (AND HAVE NOT AUTHORIZED ANYONE TO MAKE ANY) WARRANTIES RELATING TO THE SERVICE, PROFESSIONAL SERVICES OR OTHER SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, EXCEPT FOR THE WARRANTIES SET FORTH UNDER SECTION 7.1. CP MAKES NO WARRANTY REGARDING ANY NON-CP APPLICATION WITH WHICH THE SERVICE MAY INTEROPERATE.

9. Limitation of Liability.

9.1. IN NO EVENT WILL EITHER PARTY (OR CP'S THIRD

PARTY LICENSORS) BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, (B) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, RIGHTS, OR TECHNOLOGY, (C) FOR ANY LOST PROFITS OR REVENUES, OR (D) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9.2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICE GIVING RISE TO THE LIABILITY IN THE TWELVE-MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND CUSTOMER'S AFFILIATES' PAYMENT OBLIGATIONS UNDER THE 'FEES' SECTION ABOVE.

10. Indemnification.

10.1. CP Indemnification Obligation. Subject to Section 10.3, CP will defend Customer from any and all claims, demands, suits or proceedings brought against Customer by a third party alleging that the Cloud Service, as provided by CP to Customer under this Agreement infringe any patent, copyright, or trademark or misappropriate any trade secret of any third party (each, an "Infringement Claim"). CP will indemnify Customer for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction, or paid to a third party in accordance with a settlement agreement signed by CP, in connection with an Infringement Claim. In the event of any such Infringement Claim, CP may, at its option: (i) obtain the right to permit Customer to continue using the Cloud Service, (ii) modify or replace the relevant portion(s) of the Cloud Service with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate this Agreement as to the infringing Service and refund to Customer any prepaid, unused Fees for such infringing Service hereunder. Notwithstanding the foregoing, CP will have no liability for any Infringement Claim of any kind to the extent that it results from: (1) modifications to the Cloud Service made by a party other than CP, (2) the combination of the Cloud Service with other products, processes or technologies (where the infringement would have been avoided but for such combination), or (3) Customer's use of the Cloud Service other than in accordance with the Documentation and this Agreement. The indemnification obligations set forth in this Section 10.1 are CP's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind.

10.2. Customer Indemnification Obligation. Subject to Section 10.3, Customer will defend CP from any and all claims, demands, suits or proceedings brought against CP by a third party alleging a violation of a third party's rights arising from Customer's provision of the Customer Data. Customer will indemnify CP for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction, or paid to a third party in accordance with a settlement agreement signed by Customer.

10.3. Indemnity Requirements. The party seeking indemnity under this Section 10 ("Indemnitee") must give the other party ("Indemnitor")

the following: (a) prompt written notice of any claim for which the Indemnitee intends to seek indemnity, (b) all cooperation and assistance reasonably requested by the Indemnitor in the defense of the claim, at the Indemnitor's sole expense, and (c) sole control over the defense and settlement of the claim, provided that the Indemnitee may participate in the defense of the claim at its sole expense.

11. Customer Mention. CP may, upon Customer's prior written consent, use Customer's name to identify Customer as an CP customer of the Cloud Service, including on CP's public website. CP agrees that any such use shall be subject to CP complying with any written guidelines that Customer may deliver to CP regarding the use of its name and shall not be deemed Customer's endorsement of the Cloud Service.

12. Term, Termination, and Effect of Termination.

12.1. Term. The term of this Agreement commences on the Effective Date and continues until the stated term in all Order Forms have expired or have otherwise been terminated. Subscriptions to the Cloud Service commence on the date, and are for a period, as set forth in the applicable Order Form ("Term"). Upon expiration of the Term, unless otherwise stated on an applicable Order Form, the Cloud Service will automatically renew for additional terms equal in duration to the initial Term (each a "Renewal Term"), unless and until either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Term or Renewal Term.

12.2. Termination. Either party may terminate this Agreement by written notice to the other party in the event that (i) such other party materially breaches this Agreement and does not cure such breach within thirty (30) days of such notice, or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer due to CP's uncured breach pursuant to this Section 12.2, CP will refund Customer a pro-rata portion of any prepaid Fees that cover the remainder of the applicable Order Form Term or Renewal Term after the effective date of termination and a pro-rata portion of any prepaid Professional Services Fees that cover Professional Services that have not been delivered as of the effective date of termination.

12.3. Retrieval of Customer Data. Upon request by Customer made prior to the effective date of termination of this Agreement, CP will make available to Customer, at no cost, for thirty (30) days following the end of the Term for download a file of Customer Data (other than personal confidential information such as, but not limited to, User passwords may not be included except in hash format) in comma separated value (.csv) format. After such 30-day period, CP shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, be entitled to delete all Customer Data by deletion of Customer's unique instance of the Cloud Service; provided, however, that CP will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted in the normal course of business; provided further that in all cases CP will continue to protect the Customer Data in accordance with this Agreement. Additionally, during the Term, Customer may extract Customer Data from the Cloud Service using CP's standard web services.

12.4. Effect of Termination. Upon termination of this Agreement for any reason, all rights and subscriptions granted to Customer including all Order Forms will immediately terminate and Customer will cease using the Cloud Service (except as otherwise permitted under Section 12.3 ("Retrieval of Customer Data") and CP Confidential Information. Termination for any reason other than termination for cause by Customer pursuant to Section 12.2(i) shall not relieve Customer of the obligation to

pay all future amounts due under all Order Forms. The sections titled "Definitions," "Confidentiality," "Ownership; Aggregated Data," "Fees, Expenses and Taxes," "Warranty Disclaimer," "Limitation of Liability," "Indemnification," "Term, Termination, and Effect of Termination," and "General" shall survive any termination or expiration of this Agreement.

13. General

13.1. Assignment. Neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer or CP without the other party's prior written consent which shall not be unreasonably withheld or delayed, and any such attempted assignment or transfer shall be void and without effect. Notwithstanding the foregoing, either party may freely assign this Agreement in its entirety (including all Order Forms), upon notice and without the consent of the other party, to its successor in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that all fees owed and due have been paid.

13.2. Controlling Law, Attorneys' Fees and Severability. This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. With respect to all disputes arising out of or related to this Agreement, the parties consent to exclusive jurisdiction and venue in the state and Federal courts located in Boston, Massachusetts. In any action to enforce this Agreement the prevailing party will be entitled to costs and attorneys' fees. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

13.3. Notices. All notices hereunder shall be in writing and given upon (i) personal delivery, in which case notice shall be deemed given on the day of such hand delivery, or (ii) by overnight courier, in which case notice shall be deemed given one (1) business day after deposit with a recognized courier for U.S. deliveries (or three (3) business days for international deliveries).

13.4. Force Majeure. If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or

restricted by reasons beyond the reasonable control of a party including but not limited to computer related attacks, hacking, or acts of terrorism (a "Force Majeure Event"), the party so affected shall be excused from such performance and liability to the extent of such prevention or restriction.

13.5. Equitable Relief. Due to the unique nature of the parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching party. Therefore, upon any such breach or threat thereof, the party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of posting a bond.

13.6. Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein shall constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose. There are no third-party beneficiaries under this Agreement.

13.7. Anti-Corruption. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of CP employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify CP.

13.8. Entire Agreement. This Agreement together with the Order Form(s) and any associated Statement(s) of Work constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the parties hereto, including any non-disclosure agreement(s), and related to the subject matter hereof are expressly canceled. The parties agree that any term or condition stated in Customer's purchase order or in any other of Customer's order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties hereto. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.