



This Master SaaS Agreement ("Agreement") is entered into as of the date of last signature below ("Effective Date") between Watermelon Express, Inc. dba BenchPrep ("BenchPrep"), a Delaware corporation with its principal place of business at 111 S. Wacker Drive, Suite 1200, Chicago, IL 60606, and Company Name ("Customer"), a Place and Type of Incorporation with its principal place of business at Address.

For and in consideration of the representations and promises of the parties set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Agreement. This Agreement consists of this Signature Page, the following Schedules, and any Orders executed during the term of this Agreement:

- ☒ Schedule A Definitions
- ☒ Schedule B General Terms and Conditions
- ☒ Schedule C Service Levels
- ☒ Schedule D Information Security Schedule
- ☒ Schedule E Data Processing Schedule

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meaning set forth in Schedule A entitled "Definitions". This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof, superseding all prior or contemporaneous agreements, representations, promises and understandings, whether written, electronic, oral or otherwise. Each party acknowledges and agrees that by executing the terms and conditions specified in this Agreement, (i) it is not relying upon any other statements, representations, warranties, promises, assurances, or the like, (ii) no remedies are or will be available to a party with respect to the foregoing, and (iii) such remedies are unconditionally and irrevocably waived; provided, the foregoing shall not apply to any acts of fraud by a party. For the avoidance of doubt, in the event of any prior agreement(s) between the parties or its predecessor(s), where such agreement(s) covered the same subject matter as this Agreement, those prior agreements are hereby terminated, and any products subscribed to thereunder or services yet to be performed shall now be subject to the terms and conditions of this Agreement. By placing an Order with BenchPrep, Customer agrees that the terms and conditions of this Agreement shall apply to and govern that Order. Except with respect to product, services and pricing applicable to an Order, additional or conflicting terms in any Order shall have no force or effect on either party, unless that Order is signed in hardcopy form by each party, and then those terms shall apply to the parties solely for that Order. Except as otherwise specified herein, any additional or conflicting terms contained in any other document (including, without limitation, any preprinted, additional or conflicting terms on any Customer purchase order, or acknowledgement from either party) shall be null, void and of no effect on either party. This Agreement may be amended by an authorized representative of each party in a duly executed writing signed in hardcopy form referencing this Agreement and expressing the intent to amend these terms and conditions.

IN WITNESS WHEREOF, Customer and BenchPrep have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

WATERMELON EXPRESS, INC. DBA BENCHPREP

NAME SIGNED

NAME & TITLE PRINTED

DATE

COMPANY NAME
CUSTOMER

NAME SIGNED

NAME & TITLE PRINTED

DATE

SCHEDULE A

DEFINITIONS

This Schedule A is made a part of the Agreement signed by the parties on the Signature Page to which this Schedule A is attached. All capitalized terms shall have the meaning ascribed to them, including the following:

1. **Access Term.** The term, as further described in Section 2 of Schedule B, for which BenchPrep has contractually agreed to provide Customer with access to the SaaS Services in accordance with an Order.
2. **Affiliate.** Any entity which controls, is controlled by, or is under common control with the signatory to this Agreement, with "control" defined as the ownership, directly or indirectly, of a majority of an entity's equity or some other interest entitling or otherwise allowing the owner to direct the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise. With respect to Customer, an Affiliate may not be a competitor of BenchPrep.
3. **Application(s).** The Hosted Environment as integrated by BenchPrep with Customer Content and that has been rebranded, or 'white labeled,' as that of Customer (except as otherwise provided in the Order(s)) so that Customer may offer it to its Users through mobile apps or online website applications or to its Authorized Resellers to market, pursuant to the terms set forth in an Order.
4. **Authorized Reseller(s).** One or more third parties which Customer has authorized in writing to market to Users subscriptions to the Application(s) as set forth in the Order(s).
5. **Billing Period.** The billing period for which the SaaS Access Fees shall be calculated and invoiced to Customer in advance as follows: (i) annual billing period(s) for an Access Term for a SaaS Service, and (ii) for any add-on Order(s) for that SaaS Service, a proportionate period for the initial billing cycle to enable annual co-billing thereafter.
6. **Confidential Information.** Any non-public information, technical data, or know-how, including, without limitation, that which relates to: (i) research, product plans, products, pricing, services, customers, personnel, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, which is designated in writing to be confidential or proprietary at the time of disclosure if provided in tangible form, or if provided in non-tangible form, shall be identified by the disclosing party at the time of disclosure as confidential or proprietary, (ii) with respect to BenchPrep, information concerning the SaaS Services, Hosted Environment, Documentation and any Software provided hereunder and/or materials resulting from Professional Services, any derivatives thereto, the terms and conditions of this Agreement, and (iii) with respect to Customer, any Customer Data. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how that is: (a) in the public domain or becomes available to the public and not as a result of the act or omission of the receiving party; (b) without restriction on disclosure, rightfully obtained by the receiving party from a third party or lawfully in the possession of the receiving party at the time of disclosure; or (c) approved for release by written authorization of the disclosing party.
7. **BenchPrep Content.** Any learning content made available by BenchPrep or its licensees under this Agreement.
8. **BenchPrep Intellectual Property.** All Intellectual Property Rights in the SaaS Services, BenchPrep Content, Software, Documentation, Hosted Environment and all other Confidential Information provided by BenchPrep hereunder.
9. **Customer Content.** Customer's proprietary digital curriculum and all other materials provided by Customer to BenchPrep for incorporation in the SaaS Services, including but not limited to any of Customer's copyrighted works, trademarks, logos and any text, images, graphics or video related to the SaaS Services.
10. **Customer Data.** All data either provided by Customer or entered on its behalf through use of the SaaS Services, or collected or generated by the SaaS Services on behalf of Customer, including Customer Content and any Personal Data.
11. **Customer Environment.** The computing environment separately procured, prepared and maintained by Customer for the access and use of the SaaS Services, as further specified in Section 4.2 of Schedule B.
12. **Customer Property.** Customer Content, Customer Data and Customer's Confidential Information.
13. **Data Subject.** A natural person who uses the SaaS Service through a Subscription and/or about which information is collected or generated as a part of the SaaS Service.
14. **Designated Employees.** A reasonable number of Customer Personnel (including Customer's system administrator), who have been identified as "Designated Employees" by Customer and who have received training from BenchPrep. Designated Employees may be changed by written notice to BenchPrep.
15. **Documentation.** BenchPrep's documentation (in any format) relating to or describing the specifications and use of the SaaS Services and any Software provided as updated from time to time.
16. **Error.** A problem that BenchPrep can replicate or Customer can duplicate where (i) the problem adversely interferes with access to or use of any material portion of the Services other than those caused by Customer's wrongful conduct or use of the Services in a manner not permitted by the Agreement; (ii) any Services execution is either materially incorrect or is other than expected based on the Documentation; and/or (iii) the problem could reasonably be expected to compromise the security or integrity of the Personal Data.
17. **Fees.** The Professional Service Fees, SaaS Access Fees and/or other fees as specified in this Agreement or in an Order.
18. **Hosted Environment.** BenchPrep or its third party's technical environment required to operate and provide access to the relevant SaaS Services, as further specified in Section 4.2 of Schedule B.
19. **Intellectual Property Rights.** Any and all tangible and intangible rights, title and interest in and to: (i) works of authorship, including but not limited to registered and unregistered copyrights, neighboring rights, moral rights, and mask works, and all other literary and author's rights or moral rights, (ii) registered and unregistered trademarks, trade names, service marks, domain names, and all associated goodwill, (iii) Confidential Information, trade secrets and know-how, show-how, concepts, ideas, methods, processes, discoveries, improvements, and inventions, whether patentable or un-patentable, (iv) patents, designs, algorithms and other industrial property, (v) all other intellectual and industrial property rights whether arising by operation of law, contract, license, or otherwise, (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force, and (vii) all derivative works of the foregoing.
20. **Order.** The details of a Customer order on an order form or schedule provided by BenchPrep and signed by Customer, which specifies any SaaS Services or Professional Services to be provided to Customer.
21. **Organization(s).** Institutions, organizations or businesses, which purchase from Customer or an Authorized Reseller multiple Subscriptions to the SaaS Service for further distribution to or grant of access to Data Subjects consisting of, e.g., students, administrators or instructors, as explained in further detail in the applicable Order. Rights granted to Organizations hereunder shall

be deemed to include the rights granted to Organizations to provide Subscriptions to their personnel.

22. Overage. Measured on a monthly basis, any actual usage of the SaaS Service which exceeds the SaaS Access Rights subscribed to by Customer under an Order or Orders applicable to the SaaS Service.

23. Personal Data. In respect of each Data Subject means any information that is also Customer Data and Privacy Laws identify as being personal information, which may include information relating to an identified or identifiable natural person or household; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person which shall include information collected by the use of web-site cookies and IP addresses.

24. Personnel. With respect to Customer and Customer's Affiliate (not a competitor of BenchPrep), and each of their employees or independent contractors under obligations (a) of confidentiality and nondisclosure, and (b) to protect BenchPrep Intellectual Property, and any other individuals with access to components of the SaaS Service, which Customer authorizes to use the SaaS Services purchased and/or the SaaS Access Rights procured hereunder; with respect to BenchPrep, each BenchPrep employee or subcontractor under obligations of confidentiality and nondisclosure which performs on behalf of BenchPrep hereunder. For the avoidance of doubt, each party shall be responsible for its Personnel's compliance with this Agreement.

25. Privacy Laws. United States federal and state laws and regulations applicable to Personal Data concerning the regulation of the collection, retention, processing, data security, disclosure, trans-border data flows, use of web-site cookies, email communications, use of IP addressed and meta-data collection.

26. Professional Services. Configuration, consulting, training and/or other professional services specified in an Order.

27. Professional Service Fees. In US Dollars, the fees identified on each Order on a fixed fee or time and material basis for Professional Services to be performed.

28. SaaS Access Fees. In US dollars, the fees due to BenchPrep, as further specified in the Order, for use of the SaaS Services to the extent of the SaaS Access Rights, and fees for any Overage calculated at a monthly pro rata amount plus a twenty-five percent (25%) uplift.

29. SaaS Access Rights. The type and quantity of SaaS access rights granted to Customer on an Order(s) for use during the applicable Access Term, including any access rights that Customer may grant to Users instead of listing Users, Organizations or Data Subjects to access the SaaS Services through Subscriptions.

30. SaaS Services. The online services offered by BenchPrep as more fully described in the Documentation, and all SaaS Access Rights, each as specified on an Order.

31. Service Levels. The service level commitments from BenchPrep with respect to the maintenance and support of the Hosted Environment and SaaS Services.

32. Signature Page. The cover page of this Agreement specifying the Schedules expressly incorporated into the Agreement, the general terms of the Agreement, and containing the signature of each party's authorized representative manifesting assent to the terms and conditions of this Agreement.

33. Subscription. The contractual right of an Organization to grant access and use to an Application or the contractual right of a Data Subject to access and

use an Application, together with related SaaS Services, for a limited period of time using a unique access code or login, as provided for in an Order.

34. Subscription Term. The time period that an Organization or Data Subject has subscribed to access an Application.

35. Third Party Service Provider. The third party that provides or makes available the Third Party Service(s) and is identified to Customer as a Third Party Service Provider.

36. Third Party Service(s). Service(s) that is/are provided by a Third Party Service Provider that is/are integrated with the SaaS Services or that is/are accessible through the SaaS Services, which Customer chooses to use through or in conjunction with the SaaS Services and is identified to Customer as a Third Party Service.

37. Unauthorized Access. Access to or use of Customer Data that is residing on the Hosted Environment other than (a) through the use of a Customer's or any Users' generated password that, consistent with the settings and permissions in the respective Services, has rights to access such Customer Data, or (b) by BenchPrep personnel or its subcontractors whose access to or use of such Customer Data is for the purpose of performance of the SaaS Service or any Professional Services as permitted under the terms of this Agreement, an Order, or applicable law.

38. Updates. Periodic improvements or additions to the SaaS Services, including Error corrections and other changes to the SaaS Services, that may be provided hereunder, but excluding any new feature or substantial additional functionality available for the SaaS Service, which, in BenchPrep's sole discretion, is subject to additional fees.

39. Users. Authorized Resellers, Organizations and/or Data Subjects, collectively.

SCHEDULE B
GENERAL TERMS AND CONDITIONS

This **Schedule B** is made a part of the Agreement signed by the parties on the **Signature Page** to which this **Schedule B** is attached. The following general terms and conditions shall apply to this Agreement:

1. ACCESS RIGHTS/LICENSES.

1.1 Access Use Rights. During the Access Term, and solely for Customer's internal business use (which may include external use of Applications and designated components by Customer's Users), BenchPrep grants to Customer a non-exclusive, non-transferable, non-assignable, personal right to use the SaaS Services specified in an Order through Internet access, up to the extent of the SaaS Access Rights specified in that Order, plus any Overage. With respect to the Documentation applicable to the SaaS Services, Customer may make a reasonable number of copies of the Documentation solely as needed for Customer's internal business purposes in conjunction with its use of the SaaS Services.

1.2 License to BenchPrep Content. During the Access Term, and solely for Customer's internal business use (which may include external use), BenchPrep grants to Customer a non-exclusive, non-transferable, non-assignable, personal right to use the BenchPrep Content to the extent specified in an Order. Third party content is licensed through BenchPrep and BenchPrep does not own said content, does not represent or warrant that the licensor of the third party content owns the content or has a right to license it, and does not represent or warrant that the content is accurate or suitable for its intended use or objective.

1.3 Restrictions. Customer acknowledges and agrees that the use rights provided hereunder do not grant any rights not explicitly expressed. All other such rights and interests in BenchPrep Intellectual Property (including any derivatives thereto) are expressly reserved, owned by and remain vested in BenchPrep and its third party vendor(s), and except for the limited use rights granted hereunder, Customer shall not assert any right, title, or interest in or to any BenchPrep Intellectual Property, or portion thereof. Without limiting the foregoing, Customer acknowledges and agrees that no rights or any other interests are provided to Customer with respect to: (i) rights in or to the Hosted Environment, or SaaS Services, beyond those rights specified herein, (ii) rights to provide access or use of the Hosted Environment, or SaaS Services, to any other party, including, without limitation, any uses in the nature of a service bureau or application services provider, (iii) rights to obtain possession of copies of any component of the Hosted Environment or any software used to provide or perform the SaaS Service, or (iv) representations, warranties or other third party beneficiary rights from any BenchPrep vendor.

1.4 License to BenchPrep. Subject to the terms and conditions of this Agreement and an applicable Order, Customer hereby grants to BenchPrep, during the Access Term, a non-exclusive, non-transferrable, limited license to use the Customer Property pursuant to the terms of this Agreement and for the sole purpose of BenchPrep's performance of its obligations under this Agreement, which includes any Order.

2. AGREEMENT TERM; ACCESS TERM. This Agreement shall commence on the Effective Date and shall continue unless earlier terminated as provided in Section 13. Unless otherwise specified on the Order, an Access Term shall commence upon the effective date of the applicable Order and shall continue for twelve (12) months thereafter. In the event Customer places additional Orders for the same SaaS Service, BenchPrep may adjust the duration of the additional Access Terms to co-terminate with the Access Terms for that SaaS Service. Each Access Term is non-cancelable, and upon expiration shall automatically renew for additional annual terms at BenchPrep's then current rates, unless either party provides the other with no less than sixty (60) days prior written notice of its intent to not renew.

3. ORDERS.

3.1 Order Submittal. Customer and its Affiliate(s) may submit Orders to BenchPrep, which may be sent via mail, telefax, email attachment, electronic procurement systems, and other means as the parties may decide from time to time. Each Order provided by Customer to BenchPrep must reference the name

and Effective Date of this Agreement, and contain information required by BenchPrep, including, without limitation, as applicable: (i) the BenchPrep quote number, (ii) the SaaS Services and quantity and types of SaaS Access Rights, (iii) any Professional Services to be provided, (iv) the billing address, (v) Customer contact names and phone numbers, and (vi) all applicable Fees. Customer and an Affiliate who submits an Order shall both be bound by this Agreement in relation to that Order and shall be jointly and severally liable to BenchPrep for any breach of this Agreement by an Affiliate. Customer shall provide any Affiliate who submits an Order hereunder with a copy of this Agreement (although failure to provide such copy shall not limit or in any way affect Customer's or its Affiliate's obligations or liability hereunder).

3.2 Order Acceptance. All Orders are subject to BenchPrep's acceptance, and to the terms and conditions of this Agreement. For each Order in accordance with this Section, BenchPrep shall acknowledge acceptance of the Order by issuing an invoice in accordance with Section 8. Notwithstanding the foregoing, BenchPrep shall have no obligation to deliver any SaaS Services, SaaS Access Rights, and shall otherwise have the right to withhold performance under this Agreement, if Customer is in arrears on any payments rightfully due to BenchPrep or is otherwise in breach of this Agreement.

4. BENCHPREP RESPONSIBILITIES.

4.1 Procedures and Technical Protocols. BenchPrep will specify to Customer procedures according to which Customer may establish and obtain access to and use the features and functions of the SaaS Services, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures.

4.2 SaaS Services. BenchPrep will bear responsibility, at its own cost and expense, for the procurement, preparation, hosting, operation and maintenance of the Hosted Environment, including all facilities, hardware, software, telecommunication services, and all other technical requirements necessary to provide access to and use of the SaaS Services; provided Customer will be responsible for procuring and/or operating the Customer Environment, including computer systems, software and telecommunications services meeting such minimum technical requirements and, the installation and configuration of any other required on-premise components in that Customer Environment, each as BenchPrep may specify in the Documentation.

4.3 Support and Updates. As part of the SaaS Services, BenchPrep shall, either directly, or through its applicable third party vendor(s), provide support for the Hosted Environment and SaaS Services. In addition to establishing and maintaining the Hosted Environment, BenchPrep shall maintain the components of the Hosted Environment with all current Updates that BenchPrep deems necessary for the SaaS Services. BenchPrep shall use commercially reasonable efforts to implement any required Error corrections in accordance with the Service Levels specified in Schedule C, and Customer shall have access to support services in accordance with and to the extent provided in the terms of Schedule C.

4.4 Security. BenchPrep shall, either directly, or through its third party service provider, implement and maintain the information security and data protection requirements described in Schedule D, to guard against Unauthorized Access to the Customer Data that is retained within the Hosted Environment. BenchPrep reviews its security precautions on a regular basis and modifies them as required by legal, regulatory, and other requirements.

5. CUSTOMER DATA.

5.1 Ownership, Use and Disclosure.

BenchPrep acknowledges it receives no ownership or, except to the extent specified herein, other rights in any Customer Data, and all rights, title and interest in such Customer Data remain with Customer. BenchPrep shall not, and

shall not permit its Personnel to use the Customer Data, unless authorized by the Customer or if BenchPrep is required to do so by law or court order. Customer agrees that BenchPrep may: (a) use and disclose in aggregate, anonymous and de-identified form, Customer Data where the resulting information does not in any way identify or allow the identification of Customer or any Personal Data, and/or (b) use Customer Data for BenchPrep's internal business purposes, including without limitation, improving and/or creating enhancements to or new offerings related to the SaaS Services, and for purposes of planning, support, administration and invoicing related to Customer's use of the SaaS Services. Additionally, Customer understands and acknowledges that in connection with the processing of Customer Data pursuant to this Agreement, BenchPrep may share Customer Data with its Affiliates and Third-Party Service Providers.

5.2 Customer Obligations. Customer agrees that Customer is solely responsible for: (i) obtaining any Customer Data and other information Customer provides while using the SaaS Services, (ii) making all disclosures and obtaining all rights and consents necessary to collect, retain, use and/or disclose the Customer Data, (iii) ensuring the collection, retention and processing of Personal Data in connection with the use and delivery of the SaaS Services, including without limitation, Third Party Services, does not violate the rights of Data Subjects or the Privacy Laws, (iv) the accuracy, completeness, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data. By providing any Customer Data or other information, Customer represents and warrants that such information does not (x) violate any intellectual property rights, publicity rights, confidentiality or trade secret rights, or any other legal or equitable rights; (y) violate any law, rule, order, judgment or regulation to which Customer or the Customer Data may be subject; and (z) violate in any way Customer's obligations in Section 6.2 below. Customer acknowledges and agrees that BenchPrep is not responsible or liable for any Customer Data that is unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information, or content, or information or content that infringes or may infringe any copyright, patent, moral right, trade secret, confidential information, trademark right or any other right of a third party. BenchPrep may, although it is not obligated to do so, remove any violating content posted on the SaaS Services or transmitted through the SaaS Services, without notice to Customer.

5.3 Privacy Laws. Customer hereby consents that BenchPrep and its Personnel may process Personal Data in relation to its Personnel and contacting the same for legitimate purposes, including without limitation, the administrative functions connected with Orders and invoices, its contractual rights and obligations under this Agreement, the provision of the SaaS Services, support and/or Services. In the case of the Customer, Customer shall comply with the obligations to provide notice to and obtain consent when appropriate from persons whose Personal Data is provided to BenchPrep or otherwise shall ensure such collection and processing of personal data provided to BenchPrep is lawful according to Privacy Laws.

6. CUSTOMER RESPONSIBILITIES.

6.1 Passwords. All access codes and passwords are personal to the individual to which it is issued. Customer and its Personnel are responsible for maintaining the confidentiality and security of all access codes and passwords issued, and ensuring that each access code and password is only used by the individual authorized. To the extent BenchPrep assigned Customer with administrative rights to create access codes and passwords for its Personnel, Customer shall be responsible for issuing such passwords.

6.2 Use of SaaS Services. Customer shall be solely responsible for the actions of its Personnel and its Users while using the SaaS Services and the contents of its and their transmissions through the SaaS Services (including, without limitation, Customer Data), and any resulting charges. Customer, on behalf of itself and its Users, agrees to: (i) abide by all local, state, national, and international laws and regulations applicable to Customer's use of the SaaS Services, including without limitation all laws and administrative regulations (including, all U.S. and applicable foreign) relating to the control of exports of commodities and technical and/or personal data, and shall not allow any of its Personnel or Users to access or use the SaaS Service in violation of any export embargo, prohibition or restriction, including but not limited to any party on a U.S. government restricted party list; (ii) provide any required notifications to Data Subjects, and obtain all rights and requisite consents from Data Subjects in accordance with all applicable Privacy Laws and other laws in relation to the

collection, use, disclosure, creation and processing of Personal Data in connection with this Agreement and the use and delivery of the SaaS Services; (iii) not use the SaaS Services for illegal purposes; (iv) not knowingly upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Hosted Environment, SaaS Services or another's computer; (v) not knowingly interfere with another customer's use and enjoyment of the SaaS Services or another entity's use and enjoyment of similar services; (vi) not knowingly engage in contests, chain letters or post or transmit "junk mail," "spam," "chain letters," or unsolicited mass distribution of email through or in any way using the SaaS Services; (vii) not interfere or disrupt networks connected to the Hosted Environment or SaaS Services; (viii) not post, promote or transmit through the SaaS Services any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information or content of any kind or nature; (ix) not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; and (x) not use any Third Party Service in a manner that would be in violation of this Agreement if said Third Party Service is provided by BenchPrep.

6.3 SaaS Services Restrictions. Except as otherwise specified in this Agreement, expressly permitted in writing by BenchPrep, or otherwise cannot be precluded under mandatory applicable law, Customer shall not, and shall not permit any other party to:

- a. Disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for, any part of the SaaS Services; adapt, modify, or prepare derivative works based on any of the BenchPrep Intellectual Property; or use any of the BenchPrep Intellectual Property to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the SaaS Service;
- b. Alter, remove, or suppress any copyright, confidentiality, or other proprietary notices, marks or any legends placed on, embedded or otherwise appearing in or on any BenchPrep Intellectual Property; or fail to ensure that all such notices and legends appear on all full or partial copies of BenchPrep Intellectual Property or any related material;
- c. Sell, sublicense, lease, assign, delegate, transfer, distribute, encumber or otherwise transform any BenchPrep Intellectual Property or any of the rights or obligations granted to or imposed on Customer hereunder.

7. PROFESSIONAL SERVICES.

7.1 Services. Any Professional Services provided hereunder are subject to Customer's performance of its obligations herein, and in accordance with a mutually agreeable implementation plan. Any development (other than Updates) will only be by written agreement. BenchPrep and its licensors shall at all times own all Intellectual Property Rights in and to any such development, and such development shall become part of the SaaS Services for the purposes of this Agreement. All Professional Services provided on a time and material basis are per person unless otherwise specified, and charged hourly or daily as indicated for each person.

7.2 Scheduling Services. Customer shall request scheduling for Professional Services ordered hereunder with reasonable notice. BenchPrep shall use reasonable efforts to meet the requested time schedule; provided, all scheduling is dependent upon the allocation and availability of resources.

8. FEES AND PAYMENTS.

8.1 Fees and Expenses. Unless otherwise set forth in an Order, upon BenchPrep's receipt and acceptance of an Order, BenchPrep shall invoice Customer one hundred percent (100%) of the Fees for the initial Billing Period, and any fixed fee Professional Service Fees applicable to such Order. BenchPrep may invoice Customer in advance for each subsequent Billing Period, including with respect to any renewal Access Terms, Overages in arrears on a quarterly basis, and for all other fees, assessments and expenses provided for under this Agreement as performed and/or incurred. Customer shall pay all Fees and other amounts due to BenchPrep hereunder within thirty (30) days after the date of BenchPrep's invoice and without deductions, except with respect to any amount disputed in good faith where prior written notice is provided to BenchPrep

detailing the amount and reason for the dispute. The parties will immediately negotiate in good faith to resolve any dispute.

8.2 Late Payment; Non-Payment; Collections. Time is of the essence in all payment terms. Any amounts not paid to BenchPrep when due shall bear interest at the rate of eighteen percent (18%) per annum, or the maximum legal rate if less, commencing with the payment due date. Customer shall reimburse BenchPrep for all costs of collection, including reasonable attorneys' fees. This Section is without prejudice to any other rights and remedies available to BenchPrep under this Agreement or at law.

8.3 Taxes, Assessments and Other Charges. All amounts due to BenchPrep hereunder are net amounts, exclusive of, and Customer is responsible for paying, all duties, sales, use or value added taxes, customs duties, GST, tariffs, or other similar taxes, assessments, or excises, however designated or levied, (except for taxes on BenchPrep's net income), whether payable directly by or indirectly through BenchPrep in compliance with applicable law, and except as specified in Section 8.1, no reduction, deduction or off-set may be made by Customer for any reason whatsoever.

9. WARRANTIES; DISCLAIMER.

9.1 Limited Performance Warranty. BenchPrep warrants to Customer that during any Access Term, the SaaS Services will perform substantially in accordance with the applicable Order. Customer's exclusive remedy under this Section shall be for BenchPrep to use commercially reasonable efforts to correct any Errors; provided, in the event BenchPrep is unable to correct that nonconformity, Customer shall have the right to terminate the remaining Access Term and receive a pro rata refund of any remaining prepaid SaaS Access Fees applicable to those SaaS Services.

9.2 Disclaimer of Warranties. The limited warranty and exclusive remedy set forth in Section 9.1 are made for the benefit of Customer only, and are expressly subject to Customer's payment obligations to BenchPrep and Customer's obligations to maintain its Customer Environment. BenchPrep makes no and disclaims all other warranties, representations, or conditions, written or oral, or express, implied, or statutory, including any implied warranties of merchantability, title, interoperability, data accuracy, or fitness for a particular purpose with respect to any product, services, support, or any components thereof. Without limiting the foregoing, BenchPrep does not warrant that all Errors can be corrected, or that operation of the SaaS Service shall be uninterrupted or Error-free.

9.3 Third Party Integrations.

BenchPrep may make available and Customer may choose to use various Third Party Services through or in conjunction with the SaaS Services. Customer is responsible for all fees associated with the use of Third Party Services. Any such sales or licenses for Third Party Services are sold or licensed directly by the Third Party Service Provider to Customer, or offered and provided by BenchPrep through the Third Party Service Provider. BenchPrep may provide for or allow the integration of Third Party Services with the SaaS Services as a courtesy, but is not obligated to do so and in its sole discretion, may terminate any integrations of the Third Party Services with the SaaS Services. All Third Party Services through or otherwise made available to Customer and its Users through the SaaS Services are made available expressly pursuant to and subject to the terms and privacy policies of the third party service provider providing the applicable Third Party Service, which Customer agrees to fully comply with, and the terms of this Agreement, including without limitation, the disclaimers in this Section 9.3. BenchPrep does not warrant or make any representations related to any Third Party Services and specifically disclaims all warranties related to the provision of those Third Party Services. BenchPrep further disclaims all liability that may result related to: (i) any wrongdoing by the applicable Third Party Service Provider; (ii) any claim that may arise related to the use of any Third Party Services; (iii) any claim that may arise related to the integration of any Third Party Services offered by or through BenchPrep or in conjunction with the use of the SaaS Services, including any failures of the SaaS Services related to the integration or use of the Third Party Services; (iv) claims related to Unauthorized Access that arise due to any integration of said Third Party Services with the SaaS Services, including without limitation, any other integration issues; (v) title to or rights related to the Third Party Services; and (vi) any issues related to the wrongful use of Customer Data by Third Party Service Providers. Customer understands and accepts all responsibility with regard to its use of any Third Party

Services in conjunction with or through the SaaS Services, and will pursue any claims it or its users may have, including without limitation, any enforcement actions, directly with the applicable Third Party Service Provider, and not BenchPrep.

10. LIMITATION OF LIABILITY.

10.1 GENERAL LIABILITY CAP. EACH PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE IN THE AGGREGATE AND LIMITED TO AS FOLLOWS: (I) FOR BENCHPREP, ITS AGGREGATE LIABILITY SHALL BE LIMITED TO CUSTOMER'S DIRECT ACTUAL DAMAGES NOT TO EXCEED THE ACTUAL FEES PAID TO BENCHPREP UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM OR SERIES OF CLAIMS AROSE, REDUCED BY ANY AMOUNT DUE BENCHPREP; AND (II) FOR CUSTOMER, EXCLUDING ITS OBLIGATION TO PAY FEES, ITS AGGREGATE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES NOT TO EXCEED THE ACTUAL FEES PAID AND OWED TO BENCHPREP UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM OR SERIES OF CLAIMS AROSE.

10.2 WAIVER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY, ANY PARENT, SUBSIDIARY, AFFILIATE OR LICENSOR, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, OR REPRESENTATIVES, BE LIABLE (I) TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND OR NATURE OR IN ANY MANNER WHATSOEVER, OR (II) TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES OR LOST PROFITS, TIME, SAVINGS, PROPERTY, DATA OR GOODWILL) REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE USE, MISUSE, OR INABILITY TO USE THE SaaS SERVICE, OR ANY OTHER PRODUCTS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL BENCHPREP BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES. THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF ESSENTIAL PURPOSE, CONSIDERATION, OR OF AN EXCLUSIVE REMEDY.

10.3 Damages Exception. The foregoing limitations of liability do not apply to damages arising out of or relating to either party's indemnification obligations (Section 12).

11. CONFIDENTIALITY. The unauthorized disclosure or use of Confidential Information of a disclosing party or of a disclosing party's third party licensors, and all information and services related thereto, would cause great injury and harm to the owner thereof. Therefore, each party agrees to take all appropriate action to ensure the confidentiality and security of the other party's Confidential Information, but in any event no less than the same standard of care it uses to protect its own Confidential Information of like kind and value. Without limiting the generality of the foregoing, Customer and BenchPrep each agree that it: (i) shall maintain the other's Confidential Information in the strictest confidence, including compliance with reasonable remote access security requirements; (ii) shall not disclose, display, publish, transmit, or otherwise make available such Confidential Information or take the benefit thereof, in whole or in part, except in confidence to its own Personnel on a need-to-know basis; and (iii) except as expressly permitted hereunder, shall not copy, duplicate, replicate, transform, or reproduce such Confidential Information. Notwithstanding anything to the contrary in this Section, neither party shall be liable to the other for damages resulting from disclosure of any Confidential Information required by law, regulation or valid court order; provided, to the extent legally permitted, prior written notice is provided to the other party sufficiently in advance of such required disclosure to allow the other party to respond and take reasonable and lawful action to avoid and/or minimize the degree of such disclosure or seek appropriate protective orders.

12. INDEMNIFICATION.

12.1 BenchPrep Indemnity. BenchPrep, at its sole expense, shall defend, indemnify, and hold harmless Customer from any action based upon a claim that the SaaS Service used as permitted infringes any valid third-party U.S. patent, copyright, trade secret, or other proprietary right, and shall reimburse Customer for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Customer pursuant to any such actions. If the SaaS Service becomes, or in BenchPrep's opinion is likely to become, subject of such a claim of infringement, BenchPrep shall be entitled, at BenchPrep's sole option, to either procure the right for Customer to continue to use the SaaS Service, or

replace or modify it so that it becomes non-infringing. If neither of the foregoing is commercially and reasonably available to BenchPrep, BenchPrep may terminate the SaaS Service and refund to Customer a pro rata refund of any remaining prepaid SaaS Access Fees applicable to those SaaS Services. BenchPrep shall have no obligation or liability hereunder for any claim resulting from: (i) modification of the SaaS Service (a) by any party other than BenchPrep, or (b) by BenchPrep in accordance with Customer's designs, specifications, or instructions; (ii) use of the SaaS Service other than as granted in this Agreement; or (iii) use of the SaaS Service in conjunction with other products or services not provided by BenchPrep or necessary for the operation of the SaaS Service, where such infringement would not have occurred but for such use; or (iv) use of a version of the SaaS Service other than the then-current version where Customer has requested the prior version remain in use.

12.2 Customer Indemnity. Customer, at its sole expense, shall defend, indemnify, and hold harmless BenchPrep from any action based upon a claim resulting from breach of Sections 5.2, 6.2 or 9.3 by Customer, its Affiliates, Personnel or Users of either, and shall reimburse BenchPrep for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against BenchPrep pursuant to any such actions.

12.3 Conditions. Each party's indemnification obligations hereunder are contingent upon the indemnified party providing the indemnifying party with (i) prompt written notice of the claim, (ii) an opportunity for complete control of the defense of and the right to settle such claim (provided the settlement does not result in any admission of wrongdoing by the indemnified party), and (iii) all available information, assistance, authority, and cooperation to enable the defense or settlement of such claim. This Section sets forth the exclusive remedy of the indemnified party against the indemnifying party, and the complete liability of the indemnifying party with respect to any action or claim indemnified hereunder.

13. TERMINATION.

13.1 Service Suspension. In the event Customer (i) fails to pay BenchPrep any undisputed amounts past due, or (ii) is in breach of Section 6.2, BenchPrep shall have the right to immediately suspend without notice any or all related SaaS Services provided to Customer hereunder.

13.2 Agreement Termination. This Agreement may be terminated as follows:

13.2.1 By BenchPrep immediately if Customer breaches Sections 6.2, 6.3 or 11; or

13.2.2 By either party for material breach hereof which has not been cured within thirty (30) days after written notice of such breach; or

13.2.3 By either party at any time if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy or insolvency.

13.3 Effects of Termination.

13.3.1 Termination of Agreement. Upon termination of this Agreement, and except to the extent specified herein, (i) all fees due to BenchPrep for the current Access Term and any other amounts due BenchPrep shall be immediately paid, (ii) all Customer rights to access and use any of the SaaS Services shall immediately terminate without right of refund, and Customer shall delete, or if requested by BenchPrep, return all BenchPrep Intellectual Property in its possession, and (iii) all BenchPrep rights to access and use any Customer Property shall immediately terminate, and BenchPrep shall delete, or if requested by Customer, return all Customer Property in its possession; except as necessary to fulfil its obligations under this Agreement. If Customer requires BenchPrep to perform any services related to the exporting and delivery of any Customer Property, BenchPrep's services will be provided pursuant to a separate Order for Professional Services, which will specify the Professional Service Fees at BenchPrep's then current rates.

13.3.2 Customer Data. Upon termination of this Agreement and subject to Customer's compliance with Section 13.3.1(i), Customer may request that BenchPrep export and provide to Customer available Customer Data by placing an Order with BenchPrep for the applicable Professional Services. BenchPrep agrees to provide such Professional Services at its then current rates, provided

that in the event this Agreement is terminated for Customer's breach, BenchPrep shall have the right to require that Customer prepay for such Professional Services. Notwithstanding the foregoing, after thirty (30) days from termination, BenchPrep may delete and destroy all Customer Data without notice or liability to Customer.

13.3.3 Survival. Provisions herein which by their context and content are intended to survive termination or expiration hereof shall so survive, including the Signature Page, Schedule A, and Sections 1.2, 5, 6, 8, 9.2, 9.3, 10, 11, 12, 13.3, 14, and 15 of Schedule B.

14. GOVERNING LAW.

14.1 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware, without regard to its conflicts of law principles, and shall be subject to the exclusive jurisdiction of the courts of Delaware. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties.

14.2 Remedies. Customer acknowledges that each provision providing for ownership and/or protection of BenchPrep Intellectual Property is material to this Agreement, and that any threatened or actual breach thereof shall constitute immediate, irreparable harm to BenchPrep. If Customer breaches or threatens to breach any such provision, in addition to any other remedies BenchPrep may have, BenchPrep shall be entitled to seek injunctive, equitable, or other equivalent relief against such breach directly from any court of competent jurisdiction without the requirement to post bond or other security. Customer agrees to cooperate with BenchPrep, and to obtain all required consents, in the event a third party seeks to compel BenchPrep to disclose Customer Data through any legal process. To the extent legally permitted, BenchPrep shall provide Customer with advance notice to allow Customer to take reasonable and lawful action to minimize the degree of such disclosure or to seek appropriate protective orders.

15. GENERAL PROVISIONS.

15.1 Consent. Wherever in this Agreement consensus, approval, acceptance, or other consent is required, such consent shall not be unreasonably withheld, conditioned, or delayed; however, it shall not be considered unreasonable for BenchPrep to withhold its consent if such consent could jeopardize the confidentiality of or BenchPrep's property interests in and to BenchPrep Intellectual Property or other business interests of BenchPrep.

15.2 Counterparts, Fax Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed for all purposes to constitute one and the same instrument. The parties hereby agree that hardcopy signatures transmitted and received via facsimile or other electronic means shall be treated as original signatures for all purposes of this Agreement. Notwithstanding the foregoing, electronic mail without attachment evidencing the sending party's authorized signature in hardcopy form shall not constitute a writing for the purpose of binding that party or amending this Agreement.

15.3 Force Majeure. Except for obligations of confidentiality, payment, and compliance with laws, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond the reasonable control of the party, including force of nature, war, riot, civil action, terrorism, labor dispute, malicious acts or denial of service by a third party, or failure of telecommunication systems or utilities. Performance shall be deferred until such cause of delay is removed, provided that the delayed party promptly notified the other party after having actual knowledge of any such occurrence.

15.4 Publicity. BenchPrep may use Customer's name and logo (so long as in accordance with any mark guidelines provided by Customer to BenchPrep) in BenchPrep's promotional materials, including, without limitation, press releases, customer lists, presentations to third parties and on its website.

15.5 Notices. All notices or other communications required hereunder shall be made in writing and shall be deemed to be effectively given: (i) if made available to Customer's Personnel by BenchPrep posting such notice to the SaaS Service, and if emailed, the first business day after sending the notice (provided email shall not be sufficient for notices of termination, alleged breach or an indemnifiable claim); or (ii) if hand delivered, when received, and if mailed for

overnight delivery, when delivery by the overnight carrier is made, in each instance at the applicable address set forth on the Signature Page. Such addresses may be updated by a party from time to time by providing notice to the other party in accordance with the terms of this Section. Each party may change its notices address by giving notice in the manner set forth herein.

15.6 Severability; Waiver. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the parties agree to negotiate in good faith an amendment to replace such invalid or unenforceable provision to cause them to be valid and enforceable; provided, if the parties are unable to agree on such amending terms, a court of competent jurisdiction or arbitrator (as applicable) shall so amend and restate such provision in light of the parties' apparent original intent. The invalidity or unenforceability of any provision shall not constitute a failure of consideration hereunder. Any failure or delay in exercising any right or remedy by either party shall not be deemed a waiver of any further, prior, or future right or remedy hereunder.

15.7 Miscellaneous. The official language of this Agreement is, and all attachments or amendments to this Agreement, contract interpretations, notices and dispute resolutions shall be in English. Translations of this Agreement shall not be construed as official or original versions. Headings are for convenience only and do not define, interpret or limit the scope of any provision hereof. In all cases, the use of "includes/ing" shall mean "includes/ing without limitation". References to a particular section within a schedule or other document expressly attached to the Signature Page shall serve to reference the applicable section within that schedule or document, unless otherwise specified therein. Nothing in this Agreement shall make either party the agent of the other for any purposes whatsoever. No exclusive rights are granted by BenchPrep under this Agreement. All rights or licenses not expressly granted to Customer herein are reserved to BenchPrep, including the right to license the use of the SaaS Services and any Software to other parties. Any reference to a law or statute in this Agreement shall be deemed to include any amendment, replacement, re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions (together with any conditions attaching to any of the foregoing) made in respect thereof.

SCHEDULE C
SERVICE LEVELS

This **Schedule C** is made a part of the Agreement signed by the parties on the **Signature Page** to which this **Schedule C** is attached.

1. DEFINITIONS. In addition to the capitalized terms in **Schedule A**, all capitalized terms shall have the meaning ascribed to them herein this **Schedule**, and for the purposes of this **Schedule**, shall govern and control in the event of any conflict, including the following:

1.1 Availability.

The SaaS Services are readily available to Customer and operating without material Error, excluding any Outages.

1.2 Emergency Maintenance

The downtime required by BenchPrep for upgrading or maintaining the SaaS Services that is not Scheduled Downtime, Regular Release or Release Maintenance. BenchPrep will use commercially reasonable efforts to provide twenty-four hours prior written notice of such emergency downtime and provided that Emergency Maintenance does not occur more than three (3) times per year.

1.3 Failure.

Any failure of BenchPrep to meet a Service Level; but excludes those failures attributable to an Outage Exception.

1.4 Monthly Availability Percentage.

The amount equal to the total number of minutes (multiply the number of calendar days in any given month by the product of 24 times 60) in the applicable calendar month, minus the total Outage time for that month, then divided by the total number of minutes in that month minus Scheduled Downtime/Scheduled Maintenance (not to exceed 4 hours per month), Emergency Maintenance Time (which will not exceed 5 hour per month), Release Maintenance (not to exceed 1 hour per month), periods of unavailability affecting virtualization hypervisor hardware or IBM/Amazon hardware/network failures, periods of unavailability attributable to Customer's negligent acts or omissions, Customer's failure to timely respond to BenchPrep in connection with the resolution of any problem and periods of unavailability due to any other Outage Exception (defined below). The amount of "Scheduled Downtime" and/or "Emergency Maintenance" time that exceeds their defined amounts will not be subtracted.

1.5 Outage.

The period (measured in minutes) that the SaaS Services are not readily available to Customer and/or are operating with material Error; but shall not include: (i) Scheduled Downtime (which will not exceed three (3) hours in aggregate per Outage event); (ii) Emergency Maintenance activities; (iii) periods of unavailability attributable to Customer's negligent acts or omissions; (iv) Customer's failure to timely respond to BenchPrep in connection with the resolution of any Problem; (v) Release Maintenance (which will not exceed one (1) hour in aggregate per month; (vi) Regular Release (which shall be no more than two regular releases per week and downtime will not exceed fifteen (15) minutes for each release); (v) periods of unavailability attributable to Release Maintenance; (vi) periods of unavailability attributable to Third Party Services or Third Party software; or (vii) periods of unavailability due to any other force

majeure event (the foregoing exceptions shall generically and collectively be referred to as "**Outage Exception(s)**").

1.6 Regular Release.

Weekly releases of minor product updates for upgrading or maintaining the Services; provided that there shall be no more than two regular releases per week and downtime for these weekly releases does not exceed fifteen (15) minutes for each release.

1.7 Release Maintenance.

The downtime required by BenchPrep for the regular release for minor service updates provided it will not exceed fifteen (15) minutes for each release and one (1) hour per month per aggregate.

1.8 Scheduled Downtime.

The downtime required by BenchPrep for upgrading or maintaining the Services; provided, that (i) such downtime occurs between the hours of 22:00 CT USA and 5:00 CT USA (or such other hours that Customer has previously and specifically approved in writing); and (ii) BenchPrep has provided 5 business days prior written notice of such downtime. This may also be referred to as "Scheduled Maintenance".

2. AVAILABILITY

In performing the Services for Customer, BenchPrep's level of performance shall be at least equal to or exceed the Availability Service Level set forth in Section 2.1 of this Schedule C (the "SLA") at all times during the Term.

2.1 Monthly Availability Percentage.

BenchPrep shall maintain Availability of the hosting Services in accordance with at least the following Monthly Availability Percentage:

Monthly Availability Percentage	Service Credit
<99.8%	3% of monthly SaaS Access Fee

3. ERROR CORRECTIONS.

3.1 Ongoing Errors.

In addition to Maintenance and Support Services, BenchPrep will provide Error corrections such that if at any point during the Term of the Agreement, Customer notifies BenchPrep in writing of Errors with the Services, BenchPrep shall, at its own cost and expense, correct each such Error consistent with the resolution standards set forth below.

Problems Resolution Standards. With respect to failure to meet the availability requirements or upon notification of any Error addressed under this SLA (each, a “Problem”), BenchPrep will address Problems as follows:	Response Time Service Level	Resolution Time Service Level
<p>A Priority 1 Problem means a Problem that has:</p> <p>Except for those that problems that are caused by a Data Subject’s specific device configuration, local network disruption, local firewall setting, any other reasons that cannot be reasonable replicated by BenchPrep or a Customer, or any force majeure event, a Priority 1 Problem occurs when (i) there is a material impact on multiple Data Subjects (“material impact” includes, without limitation, multiple Data Subjects not being able to access the Services, system response is severely degraded due to peak usage, or system is required to be down for major security or privacy incidents); or (ii) there is or, if the Problem is not promptly remedied, likely to be a significant impact to Customer’s business pertinent to the SaaS Services.</p>	<p>BenchPrep and its Personnel will respond to and commence efforts to fix Priority 1 Problems within 15 minutes after initial notification. BenchPrep will provide Status Updates to Customer every 30 minutes or on a mutually agreed upon schedule for the incident.</p>	<p>BenchPrep will use best and continuous efforts, twenty-four (24) hours per day, seven (7) days per week, including holidays, to resolve or provide with an acceptable work-around for the Priority 1 Problem within 24 hours after initial notification.</p>
<p>Priority 2 Problem means a Problem that has: (i) Material impact on some Data Subjects; and (ii) access to the Services is seriously degraded but can continue its operation via a workaround or incremental resource for a short period of time before business stops (this includes a Problem that impacts the immediate ongoing use of the Service by a Data Subject); and (iii) there is some impact to Customer’s business pertinent to the Services, except for those problems that are caused by a Data Subject’s specific device configuration, local network disruption, local firewall setting, any other reasons that cannot be reasonable replicated by BenchPrep or a Customer, or any force majeure event.</p> <p>Data Correction – BenchPrep will take all reasonable measures to correct data in the database to resolve the issue.</p> <p>Workaround Technique – BenchPrep will provide the Data Subject with a materially equivalent alternate method to perform or accomplish the same task, until the issue is resolved in the next update to the Services.</p> <p>Software Correction – If Data Correction and Workaround Techniques prove successful, in Customer’s sole discretion, BenchPrep will nevertheless resolve the Priority 2 Problem in the next update to the Services.</p> <p>Emergency Escalation – If Data Correction and Workaround Techniques prove unsuccessful in Customer’s sole discretion, BenchPrep will perform emergency maintenance to resolve the Priority 2 Problem within forty-eight (48) hours of Customer’s request for emergency escalation.</p>	<p>BenchPrep and its Personnel will respond to and commence efforts to fix Priority 2 Problems no later than 1 hour after initial notification. BenchPrep shall provide Status Updates every 3 hours or on a mutually agreed upon schedule for the incident.</p>	<p>BenchPrep will use reasonable and continuous efforts, during normal business hours, to resolve or provide Customer with an acceptable work-around for the Priority 2 Problem within 2 calendar days after initial notification.</p>

<p>Priority 3 Problem means a Problem that has: (i) low impact to Data Subjects; and (ii) a small number of Data Subjects cannot access the Services, affecting non-critical business functionality; and (iii) problems or incidents where a Workaround Technique exists or can be developed with a small amount of incremental resources, except for those problems that are caused by a Data Subject's specific device configuration, local network disruption, local firewall setting, any other reasons that cannot be reasonably replicated by BenchPrep or a Customer, or any force majeure event.</p> <p>Workaround Technique – BenchPrep will provide the Data Subject with a materially equivalent alternate method to perform or accomplish the same task, until the issue is resolved in the next update to the Services.</p> <p>Software Correction Scheduling – BenchPrep will resolve the Priority 3 Problem in the next update to the Services. An estimated time of delivery will be provided to the Customer within ten (10) business days of initial report of each Priority 3 Problem.</p>	<p>BenchPrep and its Personnel will respond to Priority 3 Problems no later than 24 hours after initial notification, during Customer's normal business hours (or on the next business day, if the problem is reported outside of Customer's normal business hours). BenchPrep will provide Status Updates daily or on a mutually agreed upon schedule for the Incident.</p>	<p>BenchPrep will resolve or provide Customer with an acceptable work-around for the Priority 3 Problem within 7 calendar days after initial notification.</p>
<p>Priority 4: A request by Customer for a change in the Services to resolve a Problem or some clarification to resolve a Problem.</p>	<p>Within 5 business days after initial notification, BenchPrep will provide Status Updates weekly or on a mutually agreed upon schedule for the Problem.</p>	<p>Depending on the commercial terms and technical feasibility, BenchPrep will provide a resolution within 60 days after initial notification.</p>

3.2 Problem Priority

BenchPrep will provide Customer with status updates for each Problem (each a "Status Update"), in accordance with the timeframes set forth in the table above. Each Status Update will include the following information: (i) start time of Problem; (ii) current status of repair/resolution; (iii) description of the aspect(s) of the Services(s) that is/are unavailable; and (iv) the estimated time to repair/resolve.

3.3 Service Credits.

The time of the date/time stamp on the logged report through BenchPrep's support site reporting any Outage will be used as the commencement time for the calculation of Availability and to determine if any Service Credits are due. BenchPrep will post on its support site a date/time stamp verifying the end time of the Outage.

If Outages reported by Customer during any month during the Term result in a Monthly Availability Percentage of less than 99.8% during a full calendar month ("**Service Credit Threshold**"), BenchPrep shall provide "Service Credits" as set forth above. To receive a Service Credit, Customer must submit a request within ten (10) days after the end of the calendar month that Monthly Availability Percentage for Customer fell below the Service Credit Threshold. If BenchPrep determines that the Outage is eligible for Service Credits, the applicable Service Credits will be applied against the next billing cycle following Customer's request for Service Credits. Service Credits will be applied to future amounts payable by Customer in connection with the applicable Services. No refunds or cash value

will be given. Customer's sole and exclusive remedy with respect to an Outage shall be the right to receive Service Credits as set forth in this Schedule C.

4. MAINTENANCE AND SUPPORT.

4.1 Maintenance and Support Services.

The Maintenance and Support Services, if provided, will be specified in the applicable Order. BenchPrep provides telephone, email, and internet-based support only. Telephone, email, and internet based support is for the purpose of providing advice and assistance to Customer on use of BenchPrep Services, and will include basic information and instructions, including assistance with the general use of the BenchPrep Services, optimization of the available functions, research problems reported to BenchPrep by Customer. The applicable Order will specify which types of Maintenance and Support are available. If BenchPrep is providing Tier 1 Support for basic functionality or responding to questions from Users, it must be specified in the applicable Order, otherwise Customer will be responsible for such support.

4.2 Hours of Operation.

Software Maintenance and Support Services via telephone, if purchased, are available during BenchPrep business hours, Monday through Friday, 9:00 am CT through 5:00 pm CT, except on holidays. Maintenance and Support Services by telephone can be accessed by calling BenchPrep's Technical Support Helpdesk at 1-855-236-2477. Maintenance and Support Services by email can be accessed at support@benchprep.com. Services provided by BenchPrep shall be provided in the English language and any other languages mutually agreed to between BenchPrep and Customer.

SCHEDULE D

INFORMATION SECURITY SCHEDULE

This Schedule D is made a part of the Agreement signed by the parties on the Signature Page to which this Schedule D is attached.

1. DEFINITIONS. In addition to the capitalized terms in Schedule A, all capitalized terms shall have the meaning ascribed to them herein this Schedule, and for the purposes of this Schedule, shall govern and control in the event of any conflict, including the following:

1.1 Encryption Standards. Encryption algorithms that are publicly or commercially available, with key lengths sufficient to prevent commercially reasonable attempts to decrypt through brute force the encrypted information.

1.2 Hosted Subscription Services. Any SaaS or hosting services subscribed to by Customer from BenchPrep.

1.3 Industry Standards. Generally accepted standards applicable to the performance obligations of a party with respect to a product or service. Industry Standards can include in part or in whole frameworks published by the National Institutes for Standards and Technology (NIST), International Organization for Standardization, ISACA, Payment Card Industry Security Standards Council and other internationally recognized standards organizations.

1.4 Process(ing)(ed). Any operation or set of operations that is performed on Personal Data, including, without limitation, collection, recording, retention, alteration, use, disclosure, access, transfer or destruction.

1.5 Security Incident. An actual unauthorized theft or exfiltration of Customer Data. Security Incidents do not include unsuccessful access attempts or attacks that do not compromise the confidentiality or integrity of Customer Data, including, without limitation, unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or network systems.

2. GENERAL SECURITY TERMS. BenchPrep is committed to helping protect the security of Customer Data, and has implemented, and will maintain and follow appropriate technical and organizational measures that conform to Industry Standards intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. BenchPrep may modify any of its policies, process or procedures at any time and without obligation to notify or update this Schedule, provided such modifications provide substantially similar or greater protections than those provided for herein.

2.1 Access Controls. BenchPrep implements Industry Standard access control methodologies, which rely on policy, process, and logical controls to help prevent unauthorized access to systems and data under BenchPrep's control. These access controls include no less than the following:

- a. BenchPrep uses the "Principle of Least Privilege" model for restricting access to systems and data, and regularly reviews access rights granted to BenchPrep Personnel.
- b. BenchPrep Personnel each have a unique user ID and personal secret password for accessing internal networks, equipment and data. BenchPrep shall maintain policies concerning the maintenance of password secrecy. BenchPrep Personnel access rights must be suspended within twenty-four (24) hours of employment termination and modified within forty-eight (48) hours when BenchPrep Personnel roles and/or responsibilities are changed.
- c. BenchPrep maintains a password policy which, at a minimum, complies with the following standards: (i) passwords must not employ any structure or characteristic that results in a password that is predictable or easily guessed; (ii) passwords must include at least three (3) of the following character sets, in accordance with password policy settings: (a) an English uppercase character (A – Z); (b) an English lowercase character (a – z); (c) a westernized Arabic numeral; and (d) a non-alphanumeric special character from the following character set: !, \$, #, %; (iii) passwords must be changed at least every one hundred and eighty (180) days; and (iv) account lockout

must occur after a maximum of five (5) failed password entry attempts. Re-enabling of locked accounts must require extended time based delay, or interaction with a security administrator or help desk function. All password changes must be accomplished through secure procedures.

- d. Multi-factor authentication processes must be utilized for any access to systems containing Customer Data. All passwords must be stored and transmitted using Encryption Standards.
- e. User sessions must expire and require the re-entry of a password if idle by more than (i) twenty (20) minutes for administrator consoles, and (ii) sixty (60) minutes for all other systems and session types.
- f. For any facilities hosting Customer Data, such facilities shall have implemented electronic access controls to enter such facilities, and further access controls for entering specific areas where such Customer Data is physically resident. BenchPrep shall maintain processes to validate the identity of individuals prior to issuing identification and access badges, and shall maintain processes for issuing visitor badges, logging such issuance, and escort requirements for such visitors. Such logs shall be maintained by BenchPrep for no less than six (6) months from issuance.
- g. Customer shall have access to Customer Data maintained within their applicable production instance. Customer shall be responsible for maintaining user access and security controls for users accessing the Hosted Subscription Services. BenchPrep shall be responsible for restricting all other access to Customer Data residing within the production instance. For the avoidance of doubt, BenchPrep has no obligation to verify that any user using Customer's account and password has Customer's authorization. BenchPrep shall provide access on a need to know basis and shall review access rights of BenchPrep Personnel at least annually. BenchPrep's access controls shall include no less than the following:
- h. BenchPrep shall enforce complex passwords using built in system settings of at least 8 characters. BenchPrep shall require password changes at least every ninety (90) days. BenchPrep administrators shall use multi-factor authentication for access to the production environment(s).
- i. Access to BenchPrep's production environment(s) is controlled at four distinct hierarchical levels: the hosting partner level, the SaaS operations team level, the BenchPrep network security level, and the application level. Access control is required for each of these levels to provide the optimal level of security for the solution.
- j. A BenchPrep hosting partner's role is to design, deploy, secure, make available, and support the systems upon which BenchPrep's SaaS solutions are installed and delivered to BenchPrep's customers (end users). The hosting partners have primary control over the data centers, systems, and networks upon which BenchPrep's SaaS solutions operate. The hosting partner provides BenchPrep's SaaS operations team with the initial credentials required to access the hosted systems and support portals.

2.1.2 Data Controls. In its performance obligations, BenchPrep does not require access to Customer systems or data, and Customer shall take commercially reasonable efforts to prevent BenchPrep from accessing Customer systems and data. Where Customer provides Customer Data to BenchPrep for professional services or support purposes, Customer shall take commercially reasonable efforts to redact or remove Personal Data prior to providing that Customer Data to BenchPrep. Where possible, such services shall be delivered via screen share or telephone with no data transferred to BenchPrep. If it is necessary to transfer Customer Data to BenchPrep, the following shall apply:

- a. Customer shall only use BenchPrep approved communication channels for providing Customer Data to BenchPrep. With respect to the storage of such Customer Data by BenchPrep and any further transmission of that Customer Data by BenchPrep, BenchPrep shall ensure such Customer Data is protected using Encryption Standards.
- b. In the event BenchPrep makes backups of such Customer Data, all backups of Customer Data shall be encrypted on backup media using Encryption Standards.
- c. Customer Data may only be stored on portable media, including laptops, DVD, CD, magnetic tape media, removable hard drives, USB drives or similar portable storage, if Encryption Standards are used on that portable media.
- d. Except as specified otherwise in the Agreement, or applicable Order or SOW, Customer Data may be transferred by BenchPrep to, and stored and Processed in, the United States or any other country in which BenchPrep or subcontractors maintain facilities. Customer appoints BenchPrep to perform any such transfer of Customer Data to any such country and to store and Process Customer Data in order to provide services to Customer.
- e. BenchPrep shall: (1) process such Customer Data only in accordance with the reasonable instructions of Customer, (2) treat such Customer Data as the Confidential Information of Customer, (3) promptly notify Customer of any unauthorized or unlawful Processing of that Customer Data of which it becomes aware, (4) except as otherwise agreed, promptly delete, or at Customer's option, return such Customer Data when no longer needed for the provision of those services, and (5) not knowingly place Customer in breach of any Privacy Laws.

2.1.3 In its performance obligations with respect to Hosted Subscription Services, BenchPrep does require access to Customer Data, and the following additional terms and conditions shall apply:

- a. BenchPrep's security procedures shall require that any Customer Data stored by BenchPrep only be stored using secure data encryption algorithms and key strengths of 128-bit symmetric and 1024-bit asymmetric or greater. BenchPrep shall monitor Industry Standards and implement an action plan if key lengths in use can be compromised through commercially reasonable means.
- b. BenchPrep will maintain a key management process that includes appropriate controls to limit access to private keys and a key revocation process. Private keys, and passwords shall not be stored on the same media as the data they protect.
- c. BenchPrep agrees that any and all electronic transmission or exchange of Customer Data shall be protected by a secure and encrypted means (e.g. HTTPS, PGP, S/MIME, SSH, SMTP encryption using TLS on gateway while sending emails).
- d. Customer Data stored as a part of the Hosted Subscription Services shall reside only on BenchPrep production systems housed in BenchPrep hosting partner data centers, unless noted in a SOW or required with respect to professional service engagements or performance of support services. Any storage of Customer Data on BenchPrep premises is temporary and is used strictly for support and services engagements. Once Customer Data on BenchPrep premise has served its purpose, it shall be promptly destroyed in accordance with BenchPrep's confidential data destruction procedures.
- e. Upon instruction of Customer or within thirty (30) days of termination of the Hosted Subscription Services, BenchPrep shall destroy Customer Data in a manner that prevents commercially reasonable attempts to restore that Customer Data. BenchPrep shall use NIST 800-88 as guidance for performing data destruction.

2.1.4 Operational Controls. BenchPrep shall maintain operational controls sufficient to enable BenchPrep's satisfaction of its performance obligations in this Section 2, including, without limitation, the following:

- a. Maintain a dedicated information security function to design, maintain and operate security in line with Industry Standards. This function shall focus on system integrity, risk acceptance, risk analysis and assessment, risk evaluation, and risk management.
- b. Maintain a written information security policy that is approved by the BenchPrep management team and published and communicated to all BenchPrep Personnel and relevant third parties.
- c. Provide security awareness training at least annually to its employees, and maintain records of training attendance for no less than one (1) year.
- d. Conduct vulnerability assessments and/or penetration tests of networks, systems, applications and databases where Customer Data is located at rest, in transit and in use. BenchPrep shall triage identified vulnerabilities and remediate or mitigate vulnerabilities in accordance with Industry Standards.
- e. Maintain appropriate authentication system(s) to authenticate and restrict access to BenchPrep systems and networks to valid users.
- f. Install and maintain antivirus software on all servers and computing devices involved with Processing activities, and use other malware detection techniques where reasonably required. Such antivirus software shall be updated on a daily basis, or as otherwise provided by the antivirus software manufacturer.
- g. Maintain physical security measures with respect to BenchPrep facilities to help prevent and detect physical compromise, including, without limitation, use of identification badges, smart card or other electronic or physical identity verification systems, alarms on external doors, and CCTV on all entrances / exits to such facilities. BenchPrep shall periodically review access records and CCTV video to ensure access controls are being enforced effectively, with any discrepancies or unauthorized access investigated immediately.
- h. With respect to BenchPrep internal networks, ensure perimeter networks are physically or logically separated from internal networks containing Customer Data, establish and configure firewalls in accordance with Industry Standards, use network intrusion detection systems as a part of network security, and restrict and control remote network access.
- i. Complete diligent review of any BenchPrep subcontractors that will have access to Customer Data, and require such subcontractors contractually commit to substantially similar terms and conditions as those specified in this Schedule, or terms and conditions that BenchPrep reasonably determines as providing substantially similar protection. With respect to any performance subcontracted by BenchPrep, BenchPrep remains responsible for its subcontractors' compliance with BenchPrep's performance obligations in the Agreement.

2.1.5 In its performance of Hosted Subscription Services, BenchPrep shall maintain operational controls sufficient to enable BenchPrep's satisfaction of its performance obligations in this Section 2, including, without limitation, the following:

- a. BenchPrep will utilize up-to-date and comprehensive virus and malware protection capabilities, and commercially reasonable practices, including detection, scanning and removal of known viruses, worms and other malware on the BenchPrep's hosting systems. These virus protection capabilities will be in force on all computers and/or devices utilized in connection with the technology services, as well as on all data files or other transfers that have access or are connected to BenchPrep's hosting system.
- b. If a virus, worm or other malware causes a loss of operational efficiency or loss of data, BenchPrep will mitigate losses and restore data from the last virus free backup to the extent practicable.
- c. BenchPrep shall obligate its hosting partners to provide a multiple layered security approach. This shall include perimeter firewalls, DMZ, one or more internal network segments, and network intrusion

detection monitors for attempted intrusion to the production environment. Network vulnerability scans shall be conducted regularly and issues addressed according to Industry Standard change control processes.

- d. BenchPrep shall mitigate security vulnerabilities through the use of perimeter and host countermeasures such as intrusion prevention, web application firewall, IP address shunning, and other measures designed to prevent successful exploitation of vulnerabilities.
- e. BenchPrep and its hosting partners shall proactively address security risks by applying released security patches, including, as example, Windows security patching and updates to patch known vulnerabilities in an applicable operating system. Patches shall be deployed to production via BenchPrep's change management process. BenchPrep shall test all patches in its test environment prior to release to production. If a patch degrades or disables the production environment, BenchPrep shall continue to mitigate vulnerabilities until a patch is provided by the software or operating system manufacturer that does not degrade or disable production. Such mitigation efforts may include intrusion prevention, web application firewall, and other measures chosen by BenchPrep to reduce likelihood or prevent successful access to Customer Data by an unauthorized party.
- f. Each month, BenchPrep and its hosting partners shall schedule maintenance windows to perform data center, system, and application maintenance activities. BenchPrep shall notify Customer in advance of any scheduled maintenance activity that is expected to disrupt the Hosted Subscription Services functionality.
- g. BenchPrep shall retain security logs for a minimum of thirty (30) days online and ninety (90) days archived. BenchPrep may retain logs for a longer period at its sole discretion.

2.2 Availability Controls.

- a. BenchPrep will maintain contingency planning policies and procedures defining roles and responsibilities on proper handling of contingency events. This shall include a business continuity and disaster recovery plan intended to facilitate the restoration of critical operations and processes which would allow for BenchPrep's continued performance of its obligations hereunder and shall include data center failover configurations.
- b. Such plan shall be periodically reviewed, updated and tested by BenchPrep. BenchPrep shall maintain a backup of all Customer Data that BenchPrep is required to retain as a part of the Hosted Subscription Services. In the event the Customer Data becomes corrupt, BenchPrep shall use commercially reasonable efforts to remediate and recover such corrupt data.

2.3 Application Controls. BenchPrep shall implement and conform its software development practices to applicable Industry Standards relative to the functionality to be performed by the specific BenchPrep product offering.

BenchPrep shall maintain software development practices which satisfy the following:

- a. Use commercially reasonable measures to detect product vulnerabilities prior to release. These measures may include manual test scripts, test automation, dynamic code analysis, static code analysis, penetration testing, or other measures chosen by BenchPrep. BenchPrep shall update procedures and processes from time to time to improve detection of vulnerabilities within its products.
- b. BenchPrep's developers shall not intentionally write, generate, compile, copy, collect, propagate, execute or attempt to introduce any computer code designed to self-replicate, damage or otherwise hinder the performance of any systems or network.
- c. BenchPrep's developers shall receive regular training on coding and design with respect to application security.

2.4 Incident Management. If BenchPrep discovers or is notified of any accidental or intentional breaches of the security of Customer Data, or any unlawful or unauthorized uses or disclosures of Customer Data, BenchPrep shall: (i) without undue delay, notify Customer, but in no event later than seventy-two (72) hours, or earlier if required by law, after actual knowledge of the security breach for the Customer Data, (ii) immediately, to the extent possible, secure the affected systems to prevent further or continuing breaches, (iii) promptly investigate such breach, perform a root cause analysis, and (iv) remediate the cause of such security breach on Customer Data and provide Customer with reasonable assurances that such breach will not recur. Notwithstanding the foregoing, Customer shall have sole responsibility for informing third parties, where warranted, of potential impact of such security breach with respect to the Customer Data.

2.5 Audit.

Except as otherwise required under local laws or regulations applicable to the Hosted Subscription Services, the following terms and conditions shall apply. With respect to BenchPrep operations applicable to Hosted Subscription Services, BenchPrep conducts internal and external 3rd party audits on a regularly scheduled basis. BenchPrep shall correct any material deficiencies noted in an audit report within a commercially reasonable timeframe and shall request auditor to provide an updated report reflecting successful corrective actions. Customer may request executive summaries of these audit reports no more than annually. BenchPrep reserves the right to redact Confidential Information from the reports prior to sharing.

3. ATTESTATIONS OF COMPLIANCE. Upon Customer's reasonable request, (1) BenchPrep shall provide attestation of compliance to the terms in this Schedule and/or (ii) BenchPrep shall provide its Industry Standard security assessment questionnaire responses applicable to the services provided to Customer. Requests shall be made in writing through the Enterprise Account Executive assigned to Customer. BenchPrep shall respond to such attestation requests within thirty (30) business days of receipt.

SCHEDULE E

DATA PROCESSING SCHEDULE ("DPA")

This Schedule E is made a part of the Agreement signed by the parties on the Signature Page to which this Schedule E is attached.

1. DEFINITIONS.

In addition to the capitalized terms in Schedule A, all capitalized terms shall have the meaning ascribed to them herein this Schedule, and for the purposes of this Schedule, shall govern and control in the event of any conflict, including the following:

1.1 In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 Adequacy Decision means, for a jurisdiction with Privacy Laws that have data transfer restrictions, a country that the Supervisory Authority or other body in such jurisdiction recognizes as providing an adequate level of data protection as required by such jurisdiction's Privacy Laws such that transfer to that country shall be permitted without additional requirements;

1.1.2 Affiliate means any entity which now or in the future controls, is controlled by, or is under common control with the signatory to this DPA, with "control" defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise;

1.1.3 Data Controller means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data, and in the context of this DPA shall mean the Customer;

1.1.4 Data Processing Instructions means the Processing instructions set out in Annex 1 of this Schedule E;

1.1.5 Data Processor means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Data Controller, and in the context of this DPA shall mean BenchPrep;

1.1.6 Information Security Schedule means the information security, technical and organizational measures specified in the Information Security Schedule attached as Schedule D to this Agreement, as may be updated from time to time;

1.1.7 Personal Data shall have the meaning set out in, and will be interpreted in accordance with Privacy Laws, and in the context of this DPA, shall mean the personal data in Customer Data, Processed by BenchPrep in accordance with the Services as outlined in the Data Processing Instructions, which relates to a Data Subject;

1.1.8 Personal Data Breach means Unauthorized Access leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

1.1.9 Process or Processing means any operation or set of operations that is performed upon Personal Data in connection with the Services, whether or not by automatic means, such as access, collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, return or destruction, as described in the Data Processing Instructions;

1.1.10 Restricted Transfer means:

1.1.10.1 a transfer of Personal Data from Customer to BenchPrep; or

1.1.10.2 an onward transfer of Personal Data from BenchPrep to a Subprocessor,

in each case, where such transfer outside of jurisdiction of Customer would be prohibited by Privacy Laws in the absence of an approved method of transfer, including through (a) an Adequacy Decision, (b) Standard Contractual Clauses, or (c) by the terms of other recognised forms of data transfer agreements or processes;

1.1.11 Services means the services and other activities to be supplied to or carried out by or on behalf of BenchPrep for Customer pursuant to the Agreement;

1.1.12 Standard Contractual Clauses means the contractual clauses approved by a Supervisory Authority pursuant to Privacy Laws, as may be updated from time to time, which provides for multi-jurisdictional transfer of Personal Data from one jurisdiction to another where such transfer would otherwise be a Restricted Transfer;

1.1.13 Subprocessor means any third party (including any third party and any BenchPrep Affiliate) appointed by or on behalf of BenchPrep to undertake Processing in connection with the Services, which are listed in Annex 1 of this Schedule E; and

1.1.14 Supervisory Authority means an independent public authority which is established in a jurisdiction under Privacy Laws with competence in matters pertaining to data protection.

1.2 The word "include" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

1.3 The terms used in this DPA shall have the meanings set forth in this DPA provided that capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement. Except as modified below, the terms of the Agreement shall remain unchanged and in full force and effect.

2. PROCESSING OF PERSONAL DATA

2.1 BenchPrep will not:

2.1.1 Process Personal Data other than on Customer's documented instructions (set out in this DPA and in the Agreement) unless Processing is required by a Supervisory Authority; or

2.1.2 sell Personal Data received from Customer or obtained in connection with the provision of the Services to Customer.

2.2 Customer on behalf of itself and each Customer Affiliate:

2.2.1 instructs BenchPrep:

2.2.1.1 to Process Personal Data; and

2.2.1.2 in particular, transfer Personal Data to any country or territory;

in each case as reasonably necessary for the provision of the Services and consistent with this DPA.

2.3 The Data Processing Instructions sets out the subject matter and other details regarding the Processing of the Personal Data contemplated as part of the Services, including Data Subjects, categories of Personal Data, special categories of Personal Data, Subprocessors and description of Processing.

3. BENCHPREP PERSONNEL

BenchPrep shall ensure that persons authorized to undertake Processing of the Personal Data have:

3.1 committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality in respect of the Personal Data; and

3.2 undertaken appropriate training in relation to protection of Personal Data.

4. SECURITY

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, BenchPrep shall in relation to the Personal Data implement appropriate technical and organizational measures designed to provide a level

of security appropriate to that risk in the provision of the Services and for the purposes of this DPA BenchPrep's technical and organizational measures are set out in the Information Security Schedule.

4.2 In assessing the appropriate level of security, BenchPrep shall take account in particular of the risks that are presented by Processing.

5. SUBPROCESSING.

5.1 BenchPrep shall only appoint Subprocessors which enable BenchPrep to comply with Privacy Laws. Customer authorises BenchPrep to appoint Subprocessors in accordance with this Section 5 subject to any restrictions or conditions expressly set out in the Agreement. Subprocessors appointed as at the effective date of this DPA are listed in the Data Processing Instructions. BenchPrep shall remain liable to Customer for the performance of that Subprocessor's obligations subject to the Agreement.

5.2 Notwithstanding any notice requirements in the Agreement, before BenchPrep engages any new Subprocessor, BenchPrep shall give Customer notice of such appointment, including details of the Processing to be undertaken by the proposed Subprocessor. In addition to any other notifications, BenchPrep may provide such notice by updating the list of Subprocessors in the Data Processing Instructions. Customer may notify BenchPrep of any objections (on reasonable grounds related to Privacy Laws) to the proposed Subprocessor or Data Processing Instructions ("Objection"), then BenchPrep and Customer shall negotiate in good faith to agree to further measures including contractual or operational adjustments relevant to the appointment of the proposed Subprocessor or operation of the Services to address Customer's Objection. Where such further measures cannot be agreed between the parties within forty-five (45) days from BenchPrep's receipt of the Objection (or such greater period agreed by Customer in writing), Customer may by written notice to BenchPrep with immediate effect terminate that part of the Services which require the use of the proposed Subprocessor.

6. DATA SUBJECT RIGHTS.

6.1 BenchPrep shall:

6.1.1 upon becoming aware, promptly notify Customer if BenchPrep receives a request from a Data Subject relating to an actionable Data Subject right under any Privacy Law in respect of Personal Data;

6.1.2 not respond to that request except on the documented instructions of Customer or as required by a Supervisory Authority; and

6.1.3 upon request from Customer where required by Privacy Laws and in the context of the Services, reasonably assist Customer in dealing with an actionable Data Subject rights request to the extent Customer cannot fulfil this request without BenchPrep's assistance. BenchPrep may fulfil this request by making available functionality that enables Customer to address such Data Subject rights request without additional Processing by BenchPrep. To the extent such functionality is not available, in order for BenchPrep to provide such reasonable assistance, Customer must communicate such request in writing to BenchPrep providing sufficient information to enable BenchPrep to pinpoint and subsequently amend, export or delete the applicable record.

7. PERSONAL DATA BREACH.

7.1 BenchPrep shall notify Customer without undue delay upon BenchPrep or any Subprocessor confirming a Personal Data Breach, providing Customer with sufficient information to allow Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Privacy Laws. Subject to Section 7.3 below, such notification shall as a minimum:

7.1.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

7.1.2 communicate the name and contact details of BenchPrep's data protection officer or other relevant contact from whom more information may be obtained;

7.1.3 describe the likely consequences of the Personal Data Breach in so far as BenchPrep is able to ascertain having regard to the nature of the Services and the Personal Data Breach; and

7.1.4 describe the measures taken or proposed to be taken to address the Personal Data Breach.

7.2 BenchPrep shall co-operate with Customer and take such reasonable commercial steps as are necessary to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

7.3 Where and in so far as, it is not possible to provide the information or BenchPrep is prohibited by law or law enforcement from providing the information referred to in Section 7.1 at the same time, the information may be provided in phases without undue further delay.

8. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION.

8.1 To the extent necessary, BenchPrep shall provide reasonable assistance to Customer with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required by Privacy Laws, in each case solely in relation to Processing of Personal Data by, and taking into account the nature of the Processing and information available to, BenchPrep. To the extent that such impact assessment and/or prior consultation requires assistance beyond BenchPrep providing the applicable BenchPrep processing record(s) and Documentation, BenchPrep shall reserve the right to charge Customer such engagement at BenchPrep's then current daily rates.

9. DELETION OR RETURN OF PERSONAL DATA.

9.1 Within thirty (30) days from termination or expiry of the Agreement (the "Return Period"), and subject to Section 9.2 below, at Customer's request, BenchPrep will either delete or return available Personal Data. At the expiry of the Return Period, if Customer has not elected either of the foregoing BenchPrep may delete and destroy all Personal Data without notice or liability to Customer. Where Customer requests BenchPrep return available Personal Data, BenchPrep may fulfil this request by making available functionality that enables Customer to retrieve the Personal Data without additional Processing by BenchPrep. If Customer declines to use this functionality, Customer may, within the Return Period, request that BenchPrep return the available Personal Data under an Order for the applicable professional services. In the event the Agreement is terminated for Customer's breach, BenchPrep shall have the right to require that Customer prepay for such professional services. BenchPrep shall provide written confirmation to Customer that it has fully complied with this Section 9 within thirty (30) days of Customer's request for such confirmation.

9.2 BenchPrep may retain Personal Data to the extent required by Privacy Laws or any other statutory requirement to which BenchPrep is subject and only to the extent and for such period as required by Privacy Laws or any other statutory requirement to which BenchPrep is subject and always provided that (a) during such retention period the provisions of this DPA will continue to apply, (b) that BenchPrep shall ensure the confidentiality of all such Personal Data, and (c) BenchPrep shall ensure that such Personal Data is only Processed as necessary for the purpose(s) specified in the Privacy Laws requiring its storage or any other statutory requirement to which BenchPrep is subject and for no other purpose.

10. REVIEW, AUDIT AND INSPECTION RIGHTS.

10.1 Upon Customer's reasonable request, BenchPrep shall provide all relevant and necessary material, documentation and information in relation to BenchPrep's technical and organizational security measures used to protect the Personal Data in relation to the Services provided in order to demonstrate compliance with Privacy Laws.

10.2 BenchPrep shall ensure a security audit of its technical and organizational security measures is carried out at least annually in compliance with Privacy Laws. The results of such security audit will be documented in a summary report. BenchPrep shall promptly provide Customer upon request with (i) a confidential summary of such report; and (ii) evidence of appropriate remediation of any critical issues within four (4) weeks from date of issuance of the audit report.

10.3 If, following the completion of the steps set out in Sections 10.1 and 10.2, Customer reasonably believes that BenchPrep is non-compliant with Privacy Laws, Customer may request that BenchPrep make available, either by webinar or in a face-to-face review, extracts of all relevant information necessary to further demonstrate compliance with Privacy Laws. Customer undertaking such review shall give BenchPrep reasonable notice, by contacting BenchPrep's Information Security Director at privacy@BenchPrep.com, and any review will be conducted under this Section 10.3.

10.4 In the event that Customer reasonably believes that its findings following the steps set out in Section 10.3 do not enable Customer to comply materially with Customer's obligations mandated under the Privacy Laws in relation to its appointment of BenchPrep, then Customer may give BenchPrep not less than thirty (30) days prior written notice of its intention, undertake an audit which may include inspections of BenchPrep to be conducted by Customer or an auditor mandated by Customer (not being a competitor of BenchPrep). Such audit and/or inspection shall (i) be subject to confidentiality obligations agreed between Customer (or its mandated auditor) and BenchPrep, (ii) be undertaken solely to the extent mandated by, and may not be further restricted under applicable Privacy Laws, (iii) not require BenchPrep to compromise the confidentiality of security aspects of its systems and/or data processing facilities (including that of its Subprocessors), and (iv) not be undertaken where it would place BenchPrep in breach of BenchPrep's confidentiality obligations to other BenchPrep customers vendors and/or partners generally or otherwise cause BenchPrep to breach laws applicable to BenchPrep. Customer (or auditor mandated by Customer) undertaking such audit or inspection shall avoid causing any damage, injury or disruption to BenchPrep's premises, equipment, personnel and business in the course of such a review. To the extent that such audit performed in accordance with this Section 10.4 exceeds one (1) business day, BenchPrep shall reserve the right to charge Customer for each additional day at its then current daily rates.

10.5 If following such an audit or inspection under Section 10.4, Customer, acting reasonably, determines that BenchPrep is non-compliant with Privacy Laws then Customer will provide details thereof to BenchPrep upon receipt of which BenchPrep shall provide its response and to the extent required, a draft remediation plan for the mutual agreement of the parties (such agreement not to be unreasonably withheld or delayed; the mutually agreed plan being the "Remediation Plan"). Where the parties are unable to reach agreement on the Remediation Plan, or in the event of agreement, BenchPrep materially fails to implement the Remediation Plan by the agreed dates which in either case is not cured within forty-five (45) days following Customer's notice or another period as mutually agreed between the Parties, Customer may terminate the Services in part or in whole which relates to the non-compliant Processing and the remaining Services shall otherwise continue unaffected by such termination.

10.6 The rights of Customer under this Section 10 shall only be exercised once per calendar year unless Customer reasonably believes BenchPrep to be in material breach of its obligations under either this DPA or Privacy Laws.

11. RESTRICTED TRANSFERS.

11.1 Customer (as "data exporter") and BenchPrep, as appropriate, (as "data importer") hereby agree that the Standard Contractual Clauses shall apply in respect of any Restricted Transfer from Customer to BenchPrep to the extent required by Privacy Laws. The parties agree that signature to this Agreement constitutes all necessary signatures to the Standard Contractual Clauses attached hereto as Annex 2, such that the provisions of the Standard Contractual Clauses shall apply.

11.2 For the purposes of Annex I or other relevant part of the Standard Contractual Clauses, the Data Processing Instructions sets out the Data Subjects, categories of Personal Data, special categories of Personal Data, Subprocessors and description of Processing (processing operations).

11.3 For the purposes of Annex II or other relevant part of the Standard Contractual Clauses, the Information Security Schedule sets out the description of the technical and organizational security measures implemented by BenchPrep (the data importer) in accordance with clause 8.6 of the Standard Contractual Clauses.

12. OTHER PRIVACY LAWS.

12.1 To the extent that Processing relates to Personal Data originating from a jurisdiction or in a jurisdiction which has any mandatory requirements in addition to those in this DPA, both Parties may agree to any additional measures required to ensure compliance with applicable Privacy Laws and any such additional measures agreed to by the Parties will be documented as an Annex to this DPA or in an Order to the Agreement. Due to the fact that BenchPrep has no control over the type, character, properties, content, and/or origin of Personal Data Processed hereunder, notwithstanding anything to the contrary herein, BenchPrep shall not be in breach of this DPA or the Agreement or liable to Customer to the extent Personal Data Subject to jurisdictional requirements mandating security, processing or other measures not set forth in, or contrary to the terms of, this DPA is provided by Customer without amending this DPA or entering into an Order addressing the same.

12.2 If any variation is required to this DPA as a result of a change in Privacy Laws, including any variation which is required to the Standard Contractual Clauses, then either party may provide written notice to the other party of that change in law. The parties will discuss and negotiate in good faith any necessary variations to this DPA, including the Standard Contractual Clauses, to address such changes.

13. GENERAL TERMS.

13.1 The parties to this DPA hereby submit to the applicable choice of governing law and jurisdiction stipulated in the Agreement.

13.2 This DPA and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement. The UN Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties, regardless of the applicable governing law and jurisdiction.

13.3 The applicable law provisions of this Agreement are without prejudice to clauses 7 (Mediation and Jurisdiction) and 10 (Governing Law) of the Standard Contractual Clauses where applicable to Restricted Transfers of Personal Data from the European Union (including the United Kingdom) to a third country.

14. ORDER OF PRECEDENCE.

14.1 Nothing in this DPA reduces BenchPrep's or any BenchPrep Affiliate's obligations under the Agreement in relation to the protection of Personal Data or permits BenchPrep or any BenchPrep Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement. In the event of inconsistencies between the provisions of this DPA and (i) the Information Security Schedule, or (ii) any other agreements between the parties, including the Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this DPA, the provisions of this DPA shall prevail.

15. SEVERANCE.

15.1 Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

ANNEX 1 TO SCHEDULE E
DATA PROCESSING INSTRUCTIONS

A. LIST OF PARTIES

If the Standard Contractual Clauses apply, the data exporter(s) and importer(s) are as follows:

Data Exporting Organisation	Name: Customer as identified in the Agreement. Signature and date: By entering into the Agreement, data exporter is deemed to have signed these Standard Contractual Clauses incorporated herein as of the effective date of the Agreement. Role (controller/processor): controller
Data Importing Organisation	Name: Watermelon Express Inc. dba BenchPrep Address: 111 S. Wacker Drive, Suite 1200, Chicago, IL 60606 Signature and date: By entering into the Agreement, data importer is deemed to have signed these Standard Contractual Clauses incorporated herein as of the effective date of the Agreement. Role (controller/processor): processor

B. DESCRIPTION OF TRANSFER

Processing Activity: Support	Support may be provided by BenchPrep in accordance with BenchPrep's Support Plan. When providing Support, BenchPrep may be required by Customer to Process Personal Data. BenchPrep may access and/or receive Personal Data when providing Support. Personal Data is not accessed and/or received in every Support case because some errors can be analyzed and rectified without such access if the background to the error is known. Depending on the issue, BenchPrep or third-party vendors may provide Support and therefore an international transfer of Personal Data may occur.
Processing Activity: Professional Services	If, as part of an Order, Customer requires BenchPrep to perform Professional Services to assist in deployment of the product during the term, then BenchPrep may be required by Customer to Process Personal Data as part of this engagement.
Processing Activity: Hosted Subscription Services	Customer will upload data to the Hosted Subscription Services in order to maximize the functionality of the product. Some of the data which may be uploaded to the Hosted Subscription Services may include Personal Data. BenchPrep will store (either directly or using a third party Subprocessor as noted below) all data uploaded into the Hosted Subscription Services on behalf of Customer in accordance with the terms and conditions of service under the Agreement as mutually agreed to by the Parties. Customer will determine how and why the product will be used to its benefit which may include the frequent or infrequent use of Personal Data. Customer acknowledges that in relation to these Processing operations, BenchPrep has no control over the submission of Data Subject's Personal Data and that the design of the data to be submitted to BenchPrep's Hosted Subscription Services is at all times under the control of Customer. Except for the storage of the data within the Hosted Subscription Services (and the provision of Support, if applicable, described above), BenchPrep is not involved in any Processing activities associated with this use of the product. If, as part of an Order, Customer requires BenchPrep to perform Professional Services to assist in deployment of the product or application managed services during the Term, then BenchPrep may be required by Customer to Process Personal Data for those purposes.
Categories of Personal Data	<ul style="list-style-type: none">▪ <u>Customer's employee categories</u>: name, title, department, ID number, system usage, email address, job title, login credentials and/or contact telephone number.▪ <u>Customer's end-user or consumer categories</u>: name, email address, contact telephone number, account number. Additional Categories of Personal Data may be provided by Customer either as part of a Support request or through Customer's use of Hosted Subscription Services.
Special Categories of Personal Data	Not applicable.
Data Subjects	Employees, clients, customers and suppliers of Customer. Employees or contractors of Customer who contact BenchPrep's technical support facilities.
Duration of Processing	<u>Support & Professional Services</u> : Personal Data is processed only for as long as is necessary to provide the particular Support and/or Professional Services. <u>SaaS</u> : Personal Data is stored for the duration of the Services and is deleted or returned to Customer as set out in the data processing agreement or as otherwise amended or deleted by Customer during the Access Term.

C. COMPETENT SUPERVISORY AUTHORITY

COMPETENT SUPERVISORY AUTHORITY	The Data Protection Commission (DPC) (https://www.dataprotection.ie/en)
--	--

D. THIRD PARTY SUBPROCESSORS

Subprocessor Name	Location	Services Provided
Amazon Web Services	USA	CDN and S3 Services
IBM	USA	Cloud Platform
Pendo.io	USA	User Guides
Google G-Suite	USA	Email, File Storage, etc.
DropBox	USA	File Storage
Slack	USA	Communication
Airbrake.io	USA	Exception Monitoring
HappyFox	USA	Ticket Support Tool
Zencoder	USA	Video Encoding
Mailgun	USA	Email Tool
Jira/Confluence	USA	Product/Project Management
Salesforce	USA	Customer Relationship Management
BigCommerce	USA	e-commerce solution
Domo	USA	Reporting & Data Visualization
Snowflake	USA	Data Warehouse
Sisense	USA	Reporting and Business Intelligence
Linksquares	USA	Contract Lifecycle Management Software
Fivetran	USA	Data Integration
NewRelic	USA	Application & Infrastructure Performance & Monitoring

ANNEX 2: STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

SECTION I

Clause 1 Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ⁽¹⁾ for the transfer of data to a third country.
- (b) The Parties:
 - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A¹ (hereinafter each 'data exporter'), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'Vendor')
have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2 Effect and invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3 Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or Vendor, with the following exceptions:
 - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
 - (ii) Clause 8.1(b), 8.9(a), (c), (d) and (e);
 - (iii) Clause 9(a), (c), (d) and (e);
 - (iv) Clause 12(a), (d) and (f);
 - (v) Clause 13;
 - (vi) Clause 15.1(c), (d) and (e);
 - (vii) Clause 16(e);
 - (viii) Clause 18(a) and (b).
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4 Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

¹ Annex 1 to Schedule E of the Master Services Agreement serves as Annex I to the Standard Contractual Clauses. Schedule D of the Master Services Agreement serves as Annex II to the Standard Contractual Clauses.

(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5 Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6 Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7 Docking clause

N/A

SECTION II – OBLIGATIONS OF THE PARTIES

Clause 8 Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the Vendor is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Instructions

- (a) The Vendor shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The Vendor shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 Purpose limitation

The Vendor shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 Accuracy

If the Vendor becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the Vendor shall cooperate with the data exporter to erase or rectify the data.

8.5 Duration of processing and erasure or return of data

Processing by the Vendor shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the Vendor shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the Vendor shall continue to ensure compliance with these Clauses. In case of local laws applicable to the Vendor that prohibit return or deletion of the personal data, the Vendor warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the Vendor under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

- (a) The Vendor and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the Vendor shall at least implement the technical and organisational measures specified in Annex II. The Vendor shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The Vendor shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the Vendor under these Clauses, the Vendor shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The Vendor shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The Vendor shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the Vendor.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the Vendor shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

8.8 Onward transfers

The Vendor shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the Vendor or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the Vendor with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

- (a) The Vendor shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the Vendor shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The Vendor shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the Vendor.
- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the Vendor and shall, where appropriate, be carried out with reasonable notice.

(e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

Clause 9 **Use of sub-processors**

(a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least thirty (30) days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

(b) Where the Vendor engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the Vendor under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the Vendor fulfils its obligations under Clause 8.8. The Vendor shall ensure that the sub-processor complies with the obligations to which the Vendor is subject pursuant to these Clauses.

(c) The Vendor shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the Vendor may redact the text of the agreement prior to sharing a copy.

(d) The Vendor shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the Vendor. The Vendor shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

(e) The Vendor shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the Vendor has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

Clause 10 **Data subject rights**

(a) The Vendor shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

(b) The Vendor shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the Vendor shall comply with the instructions from the data exporter.

Clause 11 **Redress**

(a) The Vendor shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the Vendor shall accept the decision of the data subject to:

(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;

(ii) refer the dispute to the competent courts within the meaning of Clause 18.

(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.

(e) The Vendor shall abide by a decision that is binding under the applicable EU or Member State law.

(f) The Vendor agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12 **Liability**

(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

- (b) The Vendor shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the Vendor or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the Vendor (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the Vendor (or its sub-processor), it shall be entitled to claim back from the Vendor that part of the compensation corresponding to the Vendor's responsibility for the damage.
- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The Vendor may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13

Supervision

- (a) The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behavior is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.
- (b) The Vendor agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the Vendor agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

Clause 14

Local laws and practices affecting compliance with the Clauses

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the Vendor, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the Vendor from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
 - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;
 - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The Vendor warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The Vendor agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).

(f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the Vendor can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or Vendor to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15

Obligations of the Vendor in case of access by public authorities

15.1 Notification

- (a) The Vendor agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
- (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the Vendor is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the Vendor agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The Vendor agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the Vendor agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The Vendor agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the Vendor pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The Vendor agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The Vendor shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the Vendor shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the Vendor under Clause 14(e).
- (b) The Vendor agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The Vendor agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

- (a) The Vendor shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the Vendor is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the Vendor until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

- (i) the data exporter has suspended the transfer of personal data to the Vendor pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
- (ii) the Vendor is in substantial or persistent breach of these Clauses; or
- (iii) the Vendor fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

(d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The Vendor shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the Vendor shall continue to ensure compliance with these Clauses. In case of local laws applicable to the Vendor that prohibit the return or deletion of the transferred personal data, the Vendor warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

(e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17 **Governing law**

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.

Clause 18 **Choice of forum and jurisdiction**

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
 - (b) The Parties agree that those shall be the courts of Ireland.
 - (c) A data subject may also bring legal proceedings against the data exporter and/or Vendor before the courts of the Member State in which he/she has his/her habitual residence.
 - (d) The Parties agree to submit themselves to the jurisdiction of such courts.
-