

## ***CARASOFT RIDER***

### **Please review and approve the Carahsoft Rider (“Rider”).**

The Carahsoft Rider contains mandatory terms for all public sector contracts (i.e. GSA, SEWP, NASPO, Open Market orders, etc.). By signing this document, you agree to the incorporation of only those terms that are mandatory terms for small business commercial item contracts into all purchase orders placed by Carahsoft on behalf of Public Sector Entities who buy through Carahsoft and/or Carahsoft’s prime contractors.

These terms will take precedence over any conflicting terms in your Commercial Supplier Agreement (i.e. End User License Agreement, EULA, Master Service Agreement, or similar document) with Public Sector Entities. These terms will also take precedence over any conflicting terms contained within the Manufacturer Agreement (i.e. Channel Agreement, Distributor Agreement, Aggregator Agreement, Reseller Agreement, VAD Agreement, VAR agreement, or similar document) you may have in place with Carahsoft Technology Corp., if applicable. Lastly, these terms will take precedence over any conflicting terms in any Statement of Work (or similar document) you may have in place with Carahsoft Technology Corp.

A Public Sector Entity (“Licensee”) is defined as one of the following:

- A member of the U.S. government’s legislative, judicial or executive branches. This includes the department of defense, civilian agencies, intelligence agencies, independent agencies, special inspector general offices, and quasi-official agencies (i.e. National Gallery of Art, National Park Foundation, etc.).
- U.S. state or local government entity. This includes all applicable state agencies, counties, cities, municipalities, and similar entities within a state, the District of Columbia, or one of the territories of the United States.
- An Academic Institution is defined as an accredited institution, and must be organized and operated for educational purposes. The institution must receive funding (partial or full) from a federal, state, or local agency, and must meet one of the following criteria:
  - Public or private elementary, secondary, vocational school, correspondence school, junior college, university, post-graduate school such as a medical college, law school, or business school, management school board, school for disabled, scientific, research, or technical institutions accredited by U.S. Department of Education and State Board of Education, or, by associations recognized by U.S. Department of Education, including the district, regional, and State Administrative offices.
  - Administrative Offices or Board of Education for academic institutions as defined as:
    - A district, regional or state administrative office of public educational institution
    - Administrative entities organized and operated exclusively for private academic institutions
    - Other state or local government entities whose activities consist of administrative support or services for the advancement of public academic institutions.
  - Full-time or part-time faculty, staff, or, matriculated students in good academic standing at an accredited academic institution. Libraries associated with an accredited academic institution
  - Hospitals and teaching hospitals that are wholly owned and operated by an academic institution.
  - Higher Education Research laboratories that are associated with an academic institution, recognized by the U.S. Department of Education, and teach students as part of their research mission.

Manufacturer Name: JumpSeat llc.

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Signature: 

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Print Name: Nicholas DeBenedetto

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Title: CEO

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Date: 8/13/2020

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*By signing above, I have read and agreed with all info regarding the RIDER.*

## Carahsoft Rider for Public Sector Agencies

- 1. Applicability.** The terms and conditions in the Manufacturer Agreement and Commercial Supplier Agreement are hereby incorporated by reference to the extent that they are consistent with applicable public sector law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreements or Commercial Supplier Agreement are inconsistent with applicable public sector law (i.e. See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders or contracts with Carahsoft.
- 2. Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Commercial Supplier Agreement must be signed by a duly warranted contracting officer, in writing. The same requirement applies to Commercial Supplier Agreement modifications affecting the rights of the parties. All terms and conditions intended to bind the Public Sector Entity must be included within the contract signed by the Public Sector Entity
- 3. Termination.** If a Public Sector Entity cancels or terminates its corresponding order with Carahsoft, Carahsoft's reseller partner or a higher tier prime or subcontractor, as applicable, then Carahsoft will have the right to cancel the related order with Manufacturer in the same manner as the cancellation or termination is presented by the Public Sector Entity. In such a cancellation event, Carahsoft will notify Manufacturer as soon as reasonably possible on the specific details of the order cancellation.

  - Carahsoft may request cancellation or termination of the Commercial Supplier Agreement and applicable Public Sector Entity purchase order on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions (or applicable dispute resolutions process) or if such remedy is otherwise ordered by applicable jurisdictional court.
- 4. Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109), Federal Tort Claims Act (28 U.S.C. §1346(b)), or applicable dispute resolution process.
- 5. Dispute Resolution and Venue.** Any disputes relating to the Commercial Supplier Agreement shall be resolved in accordance with the FAR, the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, or applicable dispute resolutions process.
- 6. Customer Indemnities.** All Commercial Supplier Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
- 7. Contractor Indemnities.** All Commercial Supplier Agreement clauses that (1) violate applicable judicial department's right (i.e. 28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- 8. Renewals.** All Manufacturer Agreement and Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban (or similar/applicable ban) on automatic renewal are hereby deemed to be deleted.

**9. Future Fees or Penalties.** All Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

**10. Travel and Expenses.** Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) must be submitted for payment no more than sixty (60) days after completion of Services or such payment may be denied. Manufacturer shall ensure that travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Manufacturer will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Carahsoft.

**11. Limitation of Liability: Subject to the following:**

- Public Sector Entity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Public Sector Entity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the Public Sector Entity's right to recover for fraud or crimes under applicable fraud statute, such as the False Claims Act, 31 U.S.C. §§ 3729-3733.

**12. Public Access to Information.** Manufacturer agrees that the Commercial Supplier Agreement contains no confidential or proprietary information and acknowledges the Commercial Supplier Agreement will be available to the public.

**13. Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

JumpSeat

Subscription Agreement

## **SUBSCRIPTION AGREEMENT**

This Subscription Agreement ("**Agreement**") is made between the LeapPoint, LLC ("**LeapPoint**") and the Subscriber entity ("**Subscriber**") on the Order Form and becomes effective on the last signature date of the Order Form issued by LeapPoint ("**Effective Date**").

The Agreement is deemed to include the General Terms and Conditions below and any other terms expressly referenced herein, all of which are expressly incorporated in the Agreement and attached hereto.

Pursuant to a separate transaction between the Subscriber entity ("**Subscriber**") and LeapPoint, Subscriber has purchased from LeapPoint certain services to be delivered by a LeapPoint entity ("**LeapPoint**"). This Agreement specifies the terms and conditions under which those services will be provided by LeapPoint, apart from price, payment and other terms specified in the separate Order Form between Subscriber and LeapPoint.



## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

1.1 “**Affiliates**” means any person or entity directly or indirectly Controlling, Controlled by, or under common Control with a party, where “**Control**” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.

1.2 “**Ancillary Software**” means software licensed by LeapPoint to Subscriber that is deployed on machines operated by or for Subscriber to facilitate operation of the Subscription Service or interoperation of the Subscription Service with other software, hardware, or services. Ancillary Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Ancillary Software.

1.3 “**Business Hours**” means 8 AM – 6 PM (Eastern Standard Time) Monday through Friday, excluding federal holidays.

1.4 “**Claim**” means any third-party suit, claim, action, or demand.

1.5 “**Confidential Information**” means: **(a)** LeapPoint Core Technology (which is Confidential Information of LeapPoint); **(b)** Subscriber Data and Subscriber Technology (which is Confidential Information of Subscriber); and, **(c)** any information of a party that is disclosed in writing or orally and is designated as *Confidential* or *Proprietary* at time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party would understand it to be disclosing party’s confidential information; and **(d)** the specific terms of this Agreement, any Order Form, any SOW, and any amendment or attachment to any of these, between the parties (which will be deemed Confidential Information of both parties). Confidential Information excludes any information that: **(i)** is or becomes generally known to the public through no fault or breach by receiving party; **(ii)** was already rightfully in receiving party’s possession, without restriction on use or disclosure, when receiving party received it; **(iii)** is independently developed by receiving party without use of disclosing party’s Confidential Information; or **(iv)** was or is rightfully obtained by receiving party, without restriction on use or disclosure, from a third party not under a duty of confidentiality to disclosing party.

1.6 “**Subscriber Data**” means electronic data uploaded by or for Subscriber or Subscriber’s agents, employees, or contractors, and processed in the Subscription Service, excluding LeapPoint Core Technology.

1.7 “**Subscriber Technology**” means software, methodologies, templates, business processes, documentation, or other material originally authored, invented,



## SUBSCRIPTION AGREEMENT

or otherwise created by Subscriber (or on Subscriber's behalf, other than by LeapPoint or at LeapPoint's direction) for use with the Subscription Service, excluding LeapPoint Core Technology.

1.8 "**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 Processing of Personal Data. For purposes of this Agreement, Data Controller is Subscriber and, where applicable, its Affiliates either permitted by Subscriber to submit Personal Data to the Subscription Service or whose Personal Data is Processed in the Subscription Service.

1.9 "**Data Processor**" means the natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Data Controller. For purposes of this Agreement, Data Processor is the Subscriber entity that is performing Data Processing.

1.10 "**Data Protection Laws**" means all applicable laws and regulations regarding the Processing of Personal Data and includes GDPR.

1.11 "**Data Subject**" means an identified or identifiable natural person.

1.12 "**Deliverable**" means anything that is created by or on behalf of LeapPoint for Subscriber in the performance of Professional Services.

1.13 "**Documentation**" means the then-current LeapPoint product documentation relating to the operation and use of the Subscription Service or Ancillary Software published by LeapPoint. Documentation includes technical program or interface documentation, user manuals, operating instructions, and release notes.

1.14 "**Error**" means a material failure of the Platform to function in accordance with its Documentation.

1.15 "**GDPR**" means the European Union's General Data Protection Regulation (2016/679).

1.16 "**Instructions**" means Data Controller's documented data Processing instructions issued to Data Processor in compliance with this Agreement.

1.17 "**Intellectual Property Rights**" means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights.

1.18 "**Law**" means any applicable law, rule, statute, decree, decision, order, regulation, judgment, code, and requirement of any government authority (federal, state, local, or international) having jurisdiction.



## SUBSCRIPTION AGREEMENT

1.19 **“LeapPoint Core Technology”** means: **(a)** the Subscription Service, Ancillary Software, Documentation, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, LeapPoint; and **(b)** updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals.

1.20 **“LeapPoint Products”** means, collectively, the Subscription Service, Ancillary Software, Documentation, and Deliverables.

1.21 **“Newly Created IP”** means Intellectual Property Rights in the inventions or works of authorship that are made by LeapPoint specifically for Subscriber in the course of performing Professional Services for Subscriber that are expressly identified as “Newly Created IP” in an SOW, excluding LeapPoint Core Technology.

1.22 **“Order Form”** means a written document entered into between LeapPoint and Subscriber specifying the LeapPoint subscriptions and/or services that Subscriber has purchased, along with the applicable fees, term and scope of the authorized use thereof, subject to this LeapPoint Agreement. Each Order Form is incorporated into, and therefore is a part of this Agreement.

1.23 **“Personal Data”** means any information relating to a Data Subject uploaded by or for Subscriber or Subscriber’s agents, employees, or contractors to the Subscription Service as Subscriber Data.

1.24 **“Platform”** means the LeapPoint internet-based software (and accompanying Documentation, if any); and any Updates or Upgrades.

1.25 **“Process”** or **“Processing”** means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.26 **“Product Overview”** means LeapPoint’s published description of its products and their functionalities, solely to the extent attached to or expressly referenced in the Documentation.

1.27 **“Professional Services”** means any consulting, development, implementation or educational services provided by or on behalf of LeapPoint pursuant to an agreed SOW or Service Description.

1.28 **“Service Description”** means the written description for a packaged Professional Service, attached to or referenced in a Order Form.

1.29 **“SOW”** means a statement of work that describes scoped Professional Services.



1.30 “**Subscription Service**” means the LeapPoint software-as-a-service offering ordered by Subscriber under an Order Form.

1.31 “**Sub-Processor**” means any legal person or entity engaged in the Processing of Personal Data by Data Processor. For the avoidance of doubt, LeapPoint’s colocation datacenter facilities are not Sub-Processors under this Agreement.

1.32 “**Subscription Term**” means the period of authorized access to and use of the Subscription Service, as set forth in a Order Form.

1.33 “**Upgrades**” are new releases applied by LeapPoint to Subscriber’s instances of the Subscription Service at no additional fee during the Subscription Term. “**Updates**” are LeapPoint’s releases (including patches and hotfixes) of the Subscription Service applied by LeapPoint to Subscriber’s instances of the Subscription Service at no additional fee during the Subscription Term that provide problem fixes or other changes, but do not generally include new functionality. LeapPoint has the discretion to provide new functionality either: **(a)** as an Upgrade, or **(b)** as different software or service for a separate fee. LeapPoint determines whether and when to develop, release, and apply any Upgrade or Update to Subscriber’s instances of the Subscription Service.

## **2. ACCESS AND USE RIGHTS; RESTRICTIONS; PROVISION OF PROFESSIONAL SERVICES**

2.1 ACCESS AND USE RIGHTS. For each Subscription Term, LeapPoint grants the access and use rights set forth in this Section 2 for the LeapPoint Core Technology described in the Order Form.

2.1.1. SUBSCRIPTION SERVICE. Subject to the terms of this Agreement, LeapPoint authorizes Subscriber to access, execute, display, perform and otherwise use the Platform and Subscription Service during the Subscription Term stated in the applicable Order Form, solely for Subscriber’s internal business purposes in accordance with the Documentation. Subscriber will not otherwise access or use the Subscription Service in a manner that exceeds Subscriber’s authorized access and use rights as set forth in this Agreement and the applicable Order Form.

2.1.2. ANCILLARY SOFTWARE. LeapPoint grants Subscriber a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 16.1 (Assignment)), non-exclusive, royalty-free license during the Subscription Term to install and execute Ancillary Software on machines operated by or for Subscriber, solely to facilitate Subscriber’s authorized access to and use of the Subscription Service.



## SUBSCRIPTION AGREEMENT

2.1.3. RESTRICTIONS. With respect to the LeapPoint Core Technology, Subscriber will not (and will not permit others to): **(a)** use it in excess of contractual usage limits (as set forth in the Order Form), or in a manner that circumvents usage limits or technological access control measures; **(b)** license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated in the Order Form; **(c)** access it for the purpose of developing or operating products or services for third-parties in competition with the LeapPoint Core Technology; **(d)** disassemble, reverse engineer, or decompile it; **(e)** copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in this Agreement; **(f)** remove or modify a copyright or other proprietary rights notice in it; **(g)** use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; **(h)** use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; **(i)** access or disable any LeapPoint or third-party data, software, or network (other than Subscriber's instance of the Subscription Service under this Agreement); or **(j)** use Platform to store, process or display Personal Data, Personally Identifiable Information or similar information subject to GDPR or Data Protection Laws. Before Subscriber engages in any of the foregoing acts that it believes it may be entitled to, it will provide LeapPoint with 30-days' prior notice, and reasonably requested information to allow LeapPoint to assess Subscriber's claim. LeapPoint may, in its discretion, provide alternatives that reduce adverse impacts on LeapPoint's Intellectual Property Rights or other rights.

2.2 PROVISION OF PROFESSIONAL SERVICES. Subscriber and LeapPoint may enter into one or more SOWs in an Order Form which may incorporate one or more Service Descriptions for the provision of Professional Services by LeapPoint. LeapPoint will perform the Professional Services, subject to the fulfillment of any Subscriber responsibilities and payments due, as stated in the Order Form.

### 3. ORDERING

3.1 ORDERS. Subscriber shall order and purchase the Subscription Service and Professional Services pursuant to an agreement specifying price, payment and other commercial terms reflected in an Order Form.. For each order, Subsequent or additional orders for LeapPoint products or services may be placed by Subscriber through LeapPoint.

3.2 USE VERIFICATION. LeapPoint may remotely review Subscriber's use of the Subscription Service, and on LeapPoint written request, Subscriber will provide



## SUBSCRIPTION AGREEMENT

reasonable assistance to verify Subscriber's compliance with the Agreement, and access to and use of the Subscription Service. If LeapPoint determines that Subscriber has exceeded its permitted access and use rights to the Subscription Service, LeapPoint will notify Subscriber and within 30 days thereafter Subscriber shall either: **(a)** disable any unpermitted use, or **(b)** purchase additional subscription rights commensurate with Subscriber's actual use.

### 4. INTELLECTUAL PROPERTY

4.1 LEAPPOINT OWNERSHIP. As between the parties, LeapPoint and its licensors exclusively own all right, title, and interest in and to all Intellectual Property Rights in the LeapPoint Core Technology, notwithstanding anything in the Order Form purportedly to the contrary. Except for the access and use rights, and licenses expressly granted in Section 2 (Access and Use Rights; Restrictions; Provision of Professional Services) of this Agreement, LeapPoint, on behalf of itself and its licensors, reserves all rights in the LeapPoint Core Technology and does not grant Subscriber any rights (express, implied, by estoppel, through exhaustion, or otherwise). Any LeapPoint Core Technology delivered to Subscriber or to which Subscriber is given access shall not be deemed to have been sold, even if, for convenience, LeapPoint makes reference to words such as "sale" or "purchase" in the applicable Order Form or other documents.

4.2 SUBSCRIBER OWNERSHIP. As between the parties, Subscriber and its licensors will retain all right, title, and interest in and to all Intellectual Property Rights in Subscriber Data and Subscriber Technology. Subscriber hereby grants to LeapPoint a royalty-free, fully-paid, non-exclusive, non-transferrable (except as set forth in Section 16.1 (Assignment)), worldwide, right to use Subscriber Data and Subscriber Technology solely to provide and support the LeapPoint Products.

4.3 FEEDBACK. LeapPoint encourages Subscriber to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the LeapPoint Products (collectively, "**Feedback**"). If Subscriber provides such Feedback, Subscriber grants to LeapPoint a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 16.1 (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into LeapPoint Core Technology) without restriction.

4.4 PROFESSIONAL SERVICES. Subject to this Section 4.4, LeapPoint assigns (and in the future is deemed to have assigned) to Subscriber any Newly Created IP upon receipt of payment in full by LeapPoint for the Professional Service under which the Newly Created IP was created. If any LeapPoint Core Technology is incorporated into a Deliverable, LeapPoint grants to Subscriber a non-exclusive, royalty-free, non-



transferable (except as set forth in Section 16.1 (Assignment)), non-sublicensable worldwide license to use the LeapPoint Core Technology incorporated into the Deliverable in connection with the Subscription Service as contemplated under this Agreement during the applicable Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit LeapPoint's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

**5. UPGRADES** LeapPoint shall use reasonable efforts to give Subscriber 30 days' prior notice of any Upgrade to the Subscription Service. LeapPoint shall use reasonable efforts to give Subscriber 10 days' prior notice of any Update. Notwithstanding the foregoing, LeapPoint may provide Subscriber with a shorter or no notice period of an Upgrade or Update if, in the reasonable judgment of LeapPoint it is necessary to: **(i)** maintain the availability, security, or performance of the Subscription Service; **(ii)** comply with Law; or **(iii)** avoid infringement or misappropriation of any third-party Intellectual Property Right. LeapPoint is not responsible for defects on any instance of the Subscription Service not in conformance with this Agreement.

## **6. DATA SECURITY, CERTIFICATIONS, AUDITS**

6.1 LeapPoint will implement and maintain commercially reasonable security procedures and practices appropriate to information technology service providers designed to protect Subscriber Data from unauthorized access, destruction, use, modification, or disclosure.

6.2 CERTIFICATIONS AND ATTESTATIONS. LeapPoint shall establish and maintain sufficient controls to meet the objectives stated in SOC 2 Type 2 (or equivalent standards) (collectively, the "**Standards**") for the information security management system supporting the Subscription Service. At least once per calendar year, LeapPoint shall obtain an assessment against such Standards by an independent third-party auditor.

6.3 SUBSCRIBER MONITORING RIGHTS.

6.3.1. REMOTE SELF ASSESSMENTS. LeapPoint shall enable remote self-serve assessments of its Security Program by granting Subscriber, at all times and at no additional costs, access to any LeapPoint self-access documentation portal. The information available will include documentation evidencing LeapPoint's



## SUBSCRIPTION AGREEMENT

policies, procedures and security measures, as well as copies of the certifications and attestations listed in Section 6.3.2 (Audit) below.

6.3.2. AUDIT. No more than once per year and upon written request by Subscriber, Subscriber shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality directly with LeapPoint), to access all reasonable and industry recognized documentation evidencing LeapPoint's policies and procedures governing the security of Subscriber Data ("**Audit**"). Such Audit shall include a written summary report of any assessment performed by an independent third-party of LeapPoint's information security management system supporting the Subscription Service against the objectives stated in SOC 2 Type 1 (or equivalent or successor attestations). LeapPoint reserves the right to refuse to provide Subscriber (or its representatives) with any information which would pose a security risk to LeapPoint or its Subscribers, or which LeapPoint is prohibited to provide or disclose under Law or contractual obligation.

## **7. WARRANTIES; DISCLAIMER OF WARRANTIES**

7.1 LIMITED SUBSCRIPTION SERVICE WARRANTY. LeapPoint warrants that, during the Subscription Term, Subscriber's production instance of the Subscription Service will materially conform to the Product Overview. To submit a warranty claim under this Section 7.1, Subscriber will submit a support request to resolve the non-conformity. During Business Hours, LeapPoint will respond to Error reports submitted by authorized Administrators via our Error request queue. When reporting an Error, Subscriber will describe the Error in reasonable detail, indicate the severity of the Error (e.g., the Platform is unusable by all users, the Platform is usable but critical features are inoperative, the Platform is usable with a work-around for critical features, or non-critical features are inoperative), and specify any error message(s) observed. LeapPoint will use commercially reasonable efforts to respond to Subscriber's Error reports. LeapPoint will use commercially reasonable efforts to correct, within a commercially reasonable period of time, any substantiated Error in the unaltered Platform reported by Subscriber as specified above. LeapPoint will determine the form of any Error correction, which may include, by way of example and not limitation, an individual patch, a work around, a maintenance release provided in the normal course of LeapPoint's maintenance release schedule, or a correction to erroneous documentation. If the Error persists without relief more than 30 days after notice of a warranty claim provided to LeapPoint under this Section 7.1, then Subscriber may terminate the affected Subscription Service, and submit to a claim for refund to Subscriber for any prepaid subscription fees covering that part of the applicable Subscription Term for the affected Subscription Service remaining



after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any Error due to a modification of or defect in the Subscription Service that is made or caused by any person other than LeapPoint or a person acting at LeapPoint's direction. **This Section 7.1 sets forth Subscriber's exclusive rights and remedies (and LeapPoint's sole liability) in connection with this warranty.**

7.2 LIMITED PROFESSIONAL SERVICES WARRANTY. LeapPoint warrants that the Professional Services will be performed in a competent and workmanlike manner, in accordance with accepted industry standards and practices and all material requirements set forth in the SOW. Subscriber will notify LeapPoint of any breach within 30 days after performance of any non-conforming Professional Services performed by LeapPoint. On receipt of such notice, in the event of a deficiency in the Professional Services performed by LeapPoint, LeapPoint, at its option, will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services, whereupon Subscriber may submit a claim for a refund of any amounts paid for the nonconforming Professional Services. **This Section 7.2 sets forth Subscriber's exclusive rights and remedies (and LeapPoint's sole liability) in connection with this warranty.**

7.3 DISCLAIMER OF WARRANTIES. **Except for the warranties expressly stated in this Section 7, to the maximum extent allowed by Law, LeapPoint disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the foregoing, LeapPoint specifically does not warrant that the LeapPoint Products will meet the requirements of Subscriber or others or will be accurate or operate without interruption or error or that the Platform or the Server(s) that make the Platform available are free of viruses or other harmful components. Subscriber acknowledges that it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement with respect to LeapPoint Products or LeapPoint Professional Services. The LeapPoint Products are provided to Subscriber strictly on an "AS IS" and "AS AVAILABLE" basis.**

## **8. FEES; PAYMENT**

8.1 FEES. In consideration for the access rights granted by LeapPoint to Subscriber in Section 2 (Access Rights and Restrictions), Subscriber shall pay to LeapPoint a Monthly or Annual Fee, as set forth in the Order Form.



## SUBSCRIPTION AGREEMENT

8.2 SUSPENSION FOR NON PAYMENT. The Subscriber acknowledges that the non-payment of any Fees due and owing will, at LeapPoint's discretion, result in the suspension of access to the Platform for the Subscriber. However, if the Subscriber remedies the non-payment by making a payment in full of all fees due and owing, then LeapPoint, absent termination, may reinstate access for the remainder of the Term.

8.3 PAYMENT. Subscriber agrees to pay all Fees and other charges for the Platform and Services it obtains on the schedule set forth in the Order Form. LeapPoint may charge a late fee of 1.5% per month or the maximum amount allowed by law, whichever is greater, on any balance remaining unpaid for more than thirty (30) days. Prices are exclusive of all applicable taxes. Subscriber agrees to pay all taxes (including, but not limited to sales, use, excise and value-added taxes), tariffs, duties, customs fees or similar charges imposed or levied upon the Platform and Services it acquires pursuant to this Agreement and any associated Order Form, with the exception of taxes on LeapPoint's net income and employment related taxes incurred by LeapPoint.

## 9. CONFIDENTIAL INFORMATION

9.1 CONFIDENTIALITY OBLIGATIONS. The recipient of Confidential Information will: **(a)** at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event use less than reasonable care; and **(b)** not use it except to the extent necessary to exercise rights or fulfill obligations under the Order Form. Each party will limit the disclosure of the other party's Confidential Information to those of its employees and contractors and the employees and contractors of its Affiliates with a need to access such Confidential Information for a party's exercise of its rights and obligations under the Order Form, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in this Agreement. Each party's obligations under this Section 9 will remain in effect during, and for three years after termination of, the Subscription Term. Receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certify destruction of the same. Provisions for return of Subscriber Data are set forth in Section 15.2 (Return of Subscriber Data).

9.2 THIRD PARTY REQUESTS. This Agreement will not be construed to prevent receiving party from disclosing the disclosing party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or regulation, provided that the receiving party: **(a)** gives prompt notice



## SUBSCRIPTION AGREEMENT

(or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; **(b)** provides reasonable assistance to disclosing party in any lawful efforts by disclosing party to resist or limit the disclosure of such Confidential Information; and **(c)** discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed. In addition, receiving party will cooperate and assist disclosing party, at disclosing party's cost, in relation to any such request and any response to any such communication.

### 10. INDEMNIFICATION

#### 10.1 BY LEAPPOINT.

10.1.1. LEAPPOINT OBLIGATION. Subject to the limitations in this Section 10, LeapPoint will: **(a)** defend Subscriber, and its and their officers, directors, and employees against any Claim: **(i)** to the extent alleging that any LeapPoint Core Technology accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; or **(ii)** to the extent alleging that LeapPoint's personnel when onsite at Subscriber's premises caused death, bodily harm, or damage to tangible personal property due to their negligence or willful misconduct; and **(b)** pay any settlement amount or any court-ordered award of damages, under the forgoing subsections (a)(i) and (ii) to the extent arising from such Claim.

10.1.2. MITIGATION. To the extent any Claim alleges any part of the LeapPoint Core Technology infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, LeapPoint may: **(a)** contest the Claim; **(b)** obtain permission from the claimant for Subscriber's continued use of its instance of the Subscription Service or any applicable LeapPoint Core Technology; **(c)** avoid such Claim by replacing or modifying Subscriber's access to and use of its instance of the Subscription Service or any applicable LeapPoint Core Technology as long as LeapPoint provides a substantially similar Subscription Service; or, if LeapPoint determines the foregoing (a), (b), and (c) are not commercially practicable, then **(d)** terminate Subscriber's access to and use of the affected Subscription Service on 60-days' prior notice, whereupon Subscriber may submit a claim for a refund of any prepaid subscription fees covering any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Service remaining after the effective date of termination.

10.1.3. LIMITATIONS. Notwithstanding the above, LeapPoint will have no obligation or liability for any Claim under Section 10.1.1(a)(i) to the extent arising in whole or in part from: **(a)** any access to or use of any LeapPoint Core Technology not expressly authorized under this Agreement, to the extent the Claim would have been avoided without such unauthorized access or use; **(b)** Subscriber Data or



## SUBSCRIPTION AGREEMENT

Subscriber Technology; or **(c)** access to or use of the LeapPoint Core Technology: **(i)** in violation of Law; **(ii)** after termination under Section 10.1.2(d); **(iii)** as modified to Subscriber's specifications or by anyone other than LeapPoint or its contractors, if the Claim would have been avoided but for such modifications; or **(iv)** combined with anything not provided by LeapPoint, if the Claim would have been avoided but for such combination.

10.2 DISCLAIMER. LeapPoint and LeapPoint Affiliates, and its and their officers, directors, and employees shall not be responsible for any Claim alleging that Subscriber Data, Subscriber Technology, or a modification to any LeapPoint Core Technology made to Subscriber's specifications or otherwise made by or on behalf of Subscriber, by any person other than LeapPoint or a person acting at LeapPoint's direction, LeapPoint infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third-party privacy rights.

10.3 PROCESS. The obligations of LeapPoint under this Section 10 are conditioned on Subscriber **(a)** notifying LeapPoint promptly in writing of any actual or threatened Claim, **(b)** Subscriber cooperating and, at LeapPoint's reasonable request and expense, assisting in such defense. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. LeapPoint will not publicize any settlement without the Subscriber's prior, written consent. **To the extent the parties perform as required, this Section 10 states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.**

### 10.4 BY SUBSCRIBER.

10.4.1. Subscriber will **(a)** defend LeapPoint, and its and their officers, directors, and employees against any Claim: **(i)** to the extent alleging that any Subscriber Technology or Subscriber Data accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; **(ii)** for any breach of Subscriber's obligations under 2.1.3 (Restrictions).

## **11. LIMITED LIABILITY**

To the extent permitted by Law, LeapPoint's total, cumulative liability arising out of or related to this Agreement and the products and services provided under it, whether based on contract, tort (including negligence), or any other legal or equitable theory, will be limited to the amounts paid by Subscriber for use of the LeapPoint Products or provision of the LeapPoint Professional Services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. The existence of more than one claim will not enlarge this limit.



## **12. EXCLUDED DAMAGES**

To the extent permitted by Law, neither LeapPoint nor Subscriber will be liable to the other or any third party for lost profits (direct or indirect) or loss of use or data or for any incidental, other consequential, punitive, special, or exemplary damages (including damage to business, reputation, or goodwill), or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable. The foregoing exclusions shall not apply to: (a) payments to a third party arising from a party's obligations under Section 10 (Indemnification); and (b) infringement by a party of the other party's Intellectual Property Rights.

## **13. GROSS NEGLIGENCE; WILLFUL MISCONDUCT**

As provided by Law, nothing herein shall be intended to limit a party's liability in an action in tort, separate and distinct from a cause of action for breach of this Agreement, for the party's gross negligence or willful misconduct.

## **14. RELIANCE ON LIMITATIONS**

THE PARTIES ACKNOWLEDGE THAT LEAPPOINT HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND EXCLUDED DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION OF LIABILITY, EXCLUSION OF DAMAGES AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## **15. TERM AND TERMINATION**

15.1 TERMINATION. The Subscription Term for the Subscription Service shall begin on the Effective Date stated in the Order Form and continue until the expiration date indicated in the Order Form. Either party may terminate a Order Form or SOW on notice if the other party materially breaches this Agreement or the applicable Order Form or SOW for the affected service and does not cure the breach within 30 days after receiving notice of the breach from the non-breaching party. In the event Subscriber or LeapPoint has reason to believe the other is in breach of any right or obligation under these Terms of Service, the non-breaching party shall immediately notify the breaching party, and provide the breaching party 30 days to cure the breach prior to termination. Professional Services are separately ordered from the Subscription Service and are not required for use of the Subscription Service. A breach by a party of its obligations with respect to Professional Services



## SUBSCRIPTION AGREEMENT

shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Order Form.

15.1.1. EFFECT OF TERMINATION OF SUBSCRIPTION SERVICE. On termination or expiration of the Subscription Service, Subscriber will stop accessing and using, and LeapPoint will stop providing, the Subscription Service and all related rights granted to Subscriber in this Agreement will terminate immediately, automatically, and without notice. Subscriber, within 30 days after the effective date of termination by Subscriber for LeapPoint's breach, submit a claim for refund for any prepaid fees paid covering that part of the Subscription Term for the affected Subscription Service, if any, remaining after the effective date of termination. Within 30 days after the effective date of termination by LeapPoint for Subscriber's breach, Subscriber shall pay all remaining amounts, if any, for the Subscription Term applicable to the Subscription Service covering the remainder of the Subscription Term regardless of the due dates specified in an applicable Order Form between LeapPoint and Subscriber.

15.2 RETURN OF SUBSCRIBER DATA. After termination or expiration of the Subscription Service, upon Subscriber's written request, LeapPoint will provide any Subscriber Data in the Subscription Service to Subscriber in LeapPoint's standard database export format at no additional charge. Subscriber must submit such request to LeapPoint within 45 days after termination or expiration of the Subscription Service. LeapPoint is not obligated to maintain or provide any Subscriber Data after such 45-day period and will, unless legally prohibited, delete all Subscriber Data in its systems or otherwise in its possession or under its control, and delete Subscriber's instances of the Subscription Service.

15.3 SURVIVAL. Sections 2.1.23 (Restrictions), 4 (Intellectual Property), 7 (Warranties; Disclaimer of Warranties) (solely in accordance with its terms), 9 (Confidential Information) through 14 (Reliance on Limitations), 15 (Term and Termination) (solely in accordance with its terms), and 16 (General Provisions), together with any other terms required for their construction or enforcement, will survive termination or expiration.

## 16. GENERAL PROVISIONS

16.1 ASSIGNMENT. Neither party may assign or novate its rights or obligations under this Agreement, by operation of law or otherwise (any of the foregoing, "**Assign**"), without the other party's prior written consent. Notwithstanding the foregoing, on notice and without the other's consent: **(a)** either party may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, Assign this Agreement in its entirety to such party's



## SUBSCRIPTION AGREEMENT

successor; and **(b)** LeapPoint may Assign this Agreement in its entirety to any LeapPoint Affiliate. Any attempted or purported Assignment in violation of this Section 16.1 will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

16.2 COMPLIANCE WITH LAWS. LeapPoint will comply with all Laws generally applicable to its provision of the LeapPoint Products and LeapPoint Professional Services, including those applicable to privacy and security of personal information, when applicable, (including mandatory trans-border data transfers and mandatory data breach notification requirements), but excluding Laws specifically applicable to Subscriber and its industry not generally applicable to information technology service providers regardless of industry. Subscriber will comply with all Laws applicable to its use of the LeapPoint Products, including those applicable to collection and processing of Subscriber Data, to include, as applicable, GDPR, in LeapPoint systems through the Subscription Service. Subscriber agrees to provide any required disclosures to and obtain any required consents for the transfer of Subscriber Data to LeapPoint.

16.3 EXPORT COMPLIANCE. Each party will comply with local and foreign export control Laws, including U.S. export control Laws. Subscriber acknowledges that the LeapPoint Products are subject to U.S. Export Administration Regulations ("**EAR**"). Without limiting the foregoing: **(a)** Subscriber shall not be located in, and will not use any LeapPoint Products from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); **(b)** Subscriber shall not use the LeapPoint Products in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and **(c)** Subscriber shall not be prohibited from participating in U.S. export transactions by any federal agency of the U.S. Government. In addition, Subscriber is responsible for complying with any local Laws that may impact Subscriber's right to import, export, or use LeapPoint Products.

16.4 NOTICE. Except as otherwise provided in this Agreement, all notices will be in writing and deemed given on: **(a)** personal delivery; **(b)** when received by the addressee if sent by a recognized overnight courier (receipt requested); **(c)** the third business day after mailing; or **(d)** the first business day after sending by email with confirmation of receipt, except that email will not be sufficient for notices regarding a Claim or alleged breach. Notices will be sent as set forth on the first page of this Agreement or as subsequently updated in writing.

16.5 FORCE MAJEURE. LeapPoint is not, and may not be construed to be, in breach of this Agreement for any failure or delay in fulfilling or performing the



## SUBSCRIPTION AGREEMENT

Subscription Service or any Professional Services, when and to the extent such failure or delay is caused by or results from acts beyond LeapPoint's reasonable control, including: strikes, lock-outs, or other industrial disputes; trespass, sabotage, theft or other criminal acts export bans, sanctions, war, terrorism, riot, civil unrest, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of LeapPoint's local network; breakdown of plant or machinery; nuclear, chemical, or biological contamination; fire, flood, natural disaster, extreme adverse weather, or other acts of God (each a "**Force Majeure Event**"). LeapPoint will use reasonable efforts to mitigate the effects of such Force Majeure Event.

16.6 EXECUTION. This Agreement may be executed in counterparts, by electronic means to accurately send images, such as via email, or by electronic signature service. Neither party will contest the Agreement's validity solely because a signature was faxed or sent through other permitted electronic means. Each party will deliver to the other an original executed copy of the Agreement promptly after execution.

16.7 WAIVER AND AMENDMENT. Failure by LeapPoint to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party. Any amendment or modification to this Agreement must be in writing and signed by authorized representatives of both parties.

16.8 SEVERABILITY. If any term of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, such term will be enforced to the maximum extent permissible, such holding will not affect the remaining terms, and the invalid, unenforceable, or void term will be deemed amended or replaced by a valid, legal, and enforceable term that matches the intent of the original language as closely as possible.

16.9 RELATIONSHIP. The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. No third-party is a third-party beneficiary of, or liable under, this Agreement, and no third-party is responsible for any obligations or liability arising out of Subscriber's use of the LeapPoint.

16.10 GOVERNING LAW; JURISDICTION AND VENUE. This Agreement will be governed by the Laws of the Commonwealth of Virginia, without regard to its conflict of laws principles, and the parties irrevocably consent to the exclusive



## SUBSCRIPTION AGREEMENT

jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Fairfax County, Virginia, for the purposes of adjudicating any dispute arising out of or related to this Agreement. Each party expressly consents to service of process by registered mail. To the extent permitted by Law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's Intellectual Property Rights.

16.11 EQUITABLE REMEDIES. The receiving party's disclosure of Confidential Information except as provided in this Agreement, or a party's infringement or misappropriation of the other party's Intellectual Property Rights may result in irreparable injury for which a remedy in money damages may be inadequate. In the event of such actual or threatened disclosure, infringement or misappropriation, disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to disclosing party at law or in equity.

16.12 CONSTRUCTION. LeapPoint is obligated to provide LeapPoint Products only in the English language, unless otherwise agreed in writing. The parties have expressly requested that this Agreement and all related documents be drafted in English. Section headings are for convenience only and are not to be used in interpreting this Agreement. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Lists of examples following "including", "e.g.", "such as", or "for example" are interpreted to include "without limitation", unless qualified by words such as "only" or "solely." Unless stated or context requires otherwise: **(a)** all internal references are to this Agreement, its parties, and its Exhibits; **(b)** "days" means calendar days; **(c)** "may" means that the applicable party has a right, but not a concomitant duty; **(d)** all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; **(e)** "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; **(f)** the word "or" will be deemed to be an inclusive "or"; **(g)** URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at such URLs; **(h)** a writing is "signed" when it has been hand-signed (i.e., with a pen) or electronically signed using an electronic signature service by duly authorized representatives of both parties; **(i)** a party's choices, elections, and determinations under this Agreement are in its sole discretion; **(j)** the singular includes the plural and vice versa; **(k)** a reference to a document includes any



SUBSCRIPTION AGREEMENT

amendment, replacement, or novation of it; and **(m)** a reference to a thing includes a part of that thing (i.e., is interpreted to include “in whole or in part”).

16.13 ENTIRETY. This Agreement (together with the Order Forms, Product Overviews, SOWs, and Service Descriptions, all of which are also deemed incorporated by this reference) is the parties’ entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to such subjects. The terms of this Agreement apply to the exclusion of any other terms Subscriber seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing. Subscriber acknowledges it has not relied on any statement, promise, or representation made or given by or on behalf of LeapPoint that is not expressly stated in this Agreement. Subscriber’s orders are not contingent, and Subscriber has not relied, on the delivery of any future functionality regardless of any verbal or written communication about LeapPoint’s possible future plans.

LeapPoint, LLC

SUBSCRIBER:

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

