

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (“**Agreement**”) is made between Cypher Learning, Inc. or a Cypher Learning, Inc. entity identified on the applicable Order Form (“**Cypher Learning**”), and the customer identified on the applicable Order Form (“**Customer**”) (each, a “**Party**” and collectively, the “**Parties**”). The provisions of this Agreement will apply to the Services and the Platform provided to Customer under this Agreement and shall govern all Order Forms entered into between Cypher Learning and the Customer.

This Agreement is effective between Customer and Cypher Learning as of the date the Customer accepts this Agreement by: (1) clicking a box indicating acceptance, (2) executing an Order Form that references this Agreement, or (3) using the Services. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such company or entity to this Agreement, in which case Customer shall refer to such entity.

RECITALS

WHEREAS, Cypher Learning is the owner and developer of the Platform (as defined below); and

WHEREAS, Customer wishes to acquire, and Cypher Learning wishes to supply to Customer, certain services on the Platform, to facilitate the Customer’s development and offering of certain educational courses and content to its end users, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration of the mutual covenants and promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS.

1.1 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity, or the right to direct the affairs of a subject entity.

1.2 “AI Tools” has the meaning given in Section 2.5, *AI Tools*.

1.3 “Applicable Data Protection Laws” means the data protection, data security and privacy laws and regulations of any jurisdiction directly applicable to Cypher Learning’s Processing of Customer’s Personal Data under the Agreement, including, where, applicable, GDPR, APPs and CCPA (as such capitalized terms are defined in the Data Processing Addendum).

1.4 “Authorized User” means the employees, agents and independent contractors engaged by the Customer and Customer’s Affiliates who are authorized to access the Platform pursuant to Customer’s rights under this Agreement, and to whom Customer (or Cypher Learning at Customer’s request) have supplied a username and password.

1.5 “Customer Content” means any content, data and information provided or submitted by, or on behalf of, Customer or its Authorized Users, in connection with the Services, including any content and information in lessons, assignments, or syllabi and Personal Data.

1.6 “Customer Marks” means Customer’s trademarks, tradenames, service marks, and logos.

1.7 “Documentation” means all specifications, user manuals, and other technical materials relating to the Platform as provided or made available to Customer, and as may be modified by Cypher Learning from time to time.

1.8 “Cypher Learning Technology” means the Platform, the Services, the Documentation and any applicable software, data, or technical information contained within the foregoing.

1.9 “Fees” has the meaning given in Section 4.1, *Fees*.

1.10 “Initial Term” has the meaning given in Section 5.2, *Order Form Term and Autorenewal*.

1.11 “Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

1.12 “License Administrator(s)” means the Authorized User(s) Customer designate who are authorized to purchase licenses by executing Order Form(s) and to create Authorized User accounts and otherwise administer Customer’s use of the Platform.

1.13 “Order Form(s)” means Cypher Learning’s standard order form referencing this Agreement which specifies the Services and applicable Fees, as executed by both Parties. Except as specifically provided herein, in the event of a conflict between the terms and conditions of this Agreement and the terms of an Order Form, the terms of the Order Form will prevail. Orders entered into by Customer with a Reseller are subject to Section 4.8, *Reseller Orders*.

1.14 “Output” has the meaning given in Section 2.5, *AI Tools*.

1.15 “Personal Data” means any information provided to Cypher Learning by Customer and Customer end users through the Platform that is protected as “personal data,” “personal information,” “personally identifiable information” or similar term defined in Applicable Data Protection Laws, except that Personal Data does not include the contact information pertaining to Customer’s personnel or representatives who are business contacts of Customer (where Cypher Learning acts as a controller of such information).

1.16 “Platform” means Cypher Learning’s online learning management system products (as may be updated and improved by Cypher Learning) reflected on an Order Form accessed at a web site designated by Cypher Learning to which Customer is being granted access under this Agreement.

1.17 “Prompts” has the meaning given in Section 2.5, *AI Tools*.

1.18 “Renewal Term” has the meaning given in Section 5.2, *Order Form Term and Autorenewal*.

1.19 “Reseller” means a rebiller, reseller or other Cypher Learning partner authorized by Cypher Learning to offer the Platform and Services governed by this Agreement under an order between Customer and the Reseller.

1.20 “Services” means the products and services provided through, or with respect to, the Platform and described on an Order Form or as set forth in a Statement of Work.

1.21 “Term” has the meaning given in Section 5.1, *Term*.

1.22 “Third Party AI Services” has the meaning given in Section 2.5, *AI Tools*.

1.23 “Third Party Application” means applications, integrations, implementations or other consulting services, procured by Customer and provided by a party other than Cypher Learning, that can be used in connection with the Platform.

1.24 “**Training Services**” has the meaning given in Section 3.2, *Training Services*.

2. ACCESS TO AND USE OF THE PLATFORM; RESTRICTIONS.

2.1 Access. Subject to the terms and conditions of this Agreement, Cypher Learning hereby grants to Customer, and the Authorized Users on Customer’s behalf, a limited, non-exclusive, non-transferable (except as permitted under Section 12.4, *Assignment*), non-sublicensable right during the Term to: (a) use and access the Platform and the Services, including to make Customer Content available to Customer end users through the Platform, in accordance with the Documentation and the terms of this Agreement; and (b) use and make reasonable copies of the Documentation, in each case solely for Customer’s internal business purposes. Customer acknowledges and agrees that Cypher Learning may update the Services and the Platform from time to time with or without notifying Customer. Customer Affiliates may use the Platform to the same extent Customer may use the Platform; provided however that Customer will be responsible for the compliance of all such Affiliates with the terms and conditions of this Agreement as if such Affiliates were parties hereto. All rights granted to an Affiliate hereunder will automatically cease upon that Affiliate ceasing to be Customer’s Affiliate.

2.2 Restrictions. Customer shall not, and shall procure that its Authorized Users shall not: (a) allow any third party to access the Cypher Learning Technology except as expressly allowed herein; (b) modify, adapt, alter or translate the Cypher Learning Technology; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Cypher Learning Technology for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Platform, except as permitted by law; (e) interfere in any manner with the operation of the Platform, the Services or the hardware and network used to operate the same, or attempt to probe, scan or test the vulnerability of the Platform without prior authorization of Cypher Learning; (f) modify, copy or make derivative works based on any part of the Cypher Learning Technology; (g) access or use the Cypher Learning Technology to build a similar or competitive product or service or otherwise engage in competitive analysis or benchmarking; (h) attempt to access the Platform through any unapproved interface; (i) remove, alter, or obscure any proprietary notices (including copyright and trademark notices) of Cypher Learning or its licensors on the Cypher Learning Technology or any copies thereof; or (j) otherwise use the Cypher Learning Technology in any manner that exceeds the scope of use permitted under Section 2.1 above or in a manner inconsistent with applicable law, the Documentation, the Order Form or this Agreement. Cypher Learning reserves the right to suspend Customer’s access to the Platform and the Services for any failure, or suspected failure, to comply with the foregoing conditions.

2.3 Usernames and Passwords. Each Authorized User will use his or her unique username and password to access the Platform pursuant to this Agreement. Customer acknowledges and agrees that: (a) only Authorized Users are entitled to access the Platform with their unique usernames and passwords; (b) it will provide to Cypher Learning information and other assistance as necessary to enable Cypher Learning to establish access to the Platform for the Authorized Users, and will verify all Authorized User requests for access to the Platform; (c) it will ensure that each unique username and password issued to an Authorized User will be used only by that Authorized User when accessing the Platform; (d) it is responsible for maintaining the confidentiality of all Authorized Users’ unique usernames and passwords, and is solely responsible for all activities that occur under these Authorized User accounts; and (e) it will use commercially reasonable efforts to prevent unauthorized access to or use of the Platform, and immediately notify Cypher Learning of any actual or suspected unauthorized access to the Platform or unauthorized use of any account, username, or passwords, or any other breach or suspected breach of this Agreement. Cypher Learning reserves the right to suspend, disable or terminate any Authorized User’s access to the Platform that Cypher Learning reasonably determines may have been used by an unauthorized third party. The unique usernames and passwords cannot be shared or used by more than one individual Authorized User to access the Platform.

2.4 Customer Content. Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Content. Customer shall provide all notices, and will obtain all third party licenses, consents and permissions, required for Cypher Learning to use, copy, store and process the Customer Content to provide the Services. Without limiting the foregoing, Customer will be solely responsible for obtaining from third parties (including all Authorized Users) all necessary consents and rights for Cypher Learning to use the Customer Content submitted by or on behalf of Customer or Authorized Users for the purposes set forth in this Agreement, including all notices and consents required under Applicable Data Protection Laws. Customer acknowledges and agrees that Cypher Learning is neither responsible for knowing what type of information may be created, stored, used or managed by Customer in connection with the Platform, nor for knowing or investigating which laws may or may not apply to such information. Customer shall not (and agrees to ensure that its Authorized Users do not) provide, disclose, transfer, submit, or otherwise make available to Cypher Learning any Personal Data that includes or contains any (a) “protected health information,” as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended by the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act, and their implementing regulations (“HIPAA”) or that is subject or regulated by HIPAA; (b) any other information regarding an individuals’ medical history, mental or physical condition, or mental treatment or diagnosis by a health care professional; (c) health insurance information; (d) Social Security numbers or other government-issued identification numbers; (e) biometric information; (f) passwords to any online accounts or credentials to any financial accounts; (g) tax return data; (h) any payment card information subject to the Payment Card Industry Data Security Standard; or (i) any other information that falls within any special categories of personal data (as defined in GDPR or any other Applicable Data Protection Laws,) and/or data relating to criminal convictions and offences or related security measures.

2.5 AI Tools. Cypher Learning may make available to Customer certain artificial intelligence tools in connection with Customer’s use of the Platform, which includes Cypher Learning’s Copilot product under an applicable Order Form (collectively, the “**AI Tools**”). The AI Tools leverage third party large language models and artificial intelligence algorithms and platforms (“**Third Party AI Services**”) to generate certain Services (collectively, the “**Output**”) in response to Customer’s prompts (“**Prompts**”). Cypher Learning does not make any representations with respect to Third Party AI Services or any Output provided in connection therewith. Such Third Party AI Services are not under the control of Cypher Learning and do not form part of the Platform. Cypher Learning is not responsible for any Third Party AI Services or Output generated thereby and Customer uses such Third Party AI Services and Output at its own risk. Customer is solely responsible for the Prompts, its use of the Output, and for reviewing any Output prior to its use and exercising its own business and legal judgement as to its suitability for use. Customer shall not use any Prompts or Output that: (a) infringes or misappropriates any third party’s intellectual property rights or other proprietary rights; (b) is deceptive, discriminatory, biased, unethical, defamatory, obscene, pornographic or illegal; (c) contains any personal information, such as financial, medical or other sensitive personal information such as government IDs, passport numbers or social security numbers; or (d) violates the in the terms and conditions or policies governing the Third Party AI Services. Cypher Learning reserves the right to suspend or terminate Customer’s access to its AI Tools for any failure by Customer or an Authorized User to comply with this Section. Customer acknowledges and agrees that, notwithstanding the automated suggestions provided by the AI Tools, it remains solely responsible for the Output.

2.6 Necessary Equipment. Customer must provide all equipment and software necessary to connect to the Platform, including applicable application program interfaces that have sufficient bandwidth to facilitate the Services. Customer is solely responsible for any fees, including internet connection fees, that Customer incurs when accessing the Platform and the Services.

2.7 Customer End Users. Customer acknowledges and agrees that it has sole responsibility with respect to the Customer Content it makes available to its end users on the Platform, including ensuring that it provides such Customer Content in accordance with all applicable law. Customer is responsible for entering into agreements with its end users with respect to the access of such Customer Content, including any

commercial or access terms, and providing all applicable notices and disclosure required by applicable law. Cypher Learning is not obligated to provide any support directly to any end user.

2.8 Use of the Platform. Customer will: (a) be responsible for all activity occurring under Customer's Authorized User accounts; (b) use the Platform only in accordance with the Documentation and applicable laws and government regulations; and (d) provide Cypher Learning with all reasonably available information if Customer report a non-conformance in the Platform so that Cypher Learning may diagnose and remedy such non-conformance. Cypher Learning reserves the right to verify that Customer's use of the Platform has not exceeded the cumulative number of licenses specified on all Order Forms. If Cypher Learning determines that Customer's use of the Platform has exceeded the cumulative number of licenses specified on all Order Forms, Cypher Learning will so notify Customer, and the Parties will execute an Order Form for a sufficient number of licenses to establish compliance with the terms of the Agreement within thirty (30) days after notice.

2.9 Backup. Customer acknowledge that any failure to regularly backup Customer's computer systems may significantly decrease Customer's ability to mitigate any harm or damage arising from any problem or error in the Platform or the provision of Services under this Agreement.

2.10 Third Party Applications. Customer may choose to use or procure Third Party Applications in connection with Customer's use of the Platform. Customer's use or procurement of such Third Party Applications is subject solely to an agreement between Customer and the relevant third party provider and it is Customer's sole responsibility to review any agreement provided by the applicable third party provider governing Customer's use or procurement of any Third Party Application. Cypher Learning is not responsible for any aspect of such Third Party Applications that Customer uses to connect to the Platform, or any interoperation, descriptions, promises or other information related to the foregoing. If Customer installs or enables Third Party Applications for use with the Platform, Customer agrees that Cypher Learning may enable such third party providers to access and use Customer Content for the interoperation of such Third Party Applications with the Platform, which may include transmitting, transferring, modifying or deleting Customer Content, or storing Customer Content on systems belonging to the third party provider(s) or other third parties. Any exchange of data or other interaction between Customer and a third party provider is subject to the terms and conditions of Customer's agreement with such third party provider (including those terms and conditions related to security and privacy) and Cypher Learning shall not be responsible for any access to or use of Customer Content by Third Party Applications or third party providers. CYPHER LEARNING DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY THIRD PARTY APPLICATION (WHETHER RELATED TO SUPPORT, AVAILABILITY, SECURITY, PRIVACY OR OTHERWISE) AND FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY PROVIDERS. CYPHER LEARNING DOES NOT WARRANT ANY SUCH THIRD PARTY APPLICATIONS.

3. CYPHER LEARNING'S RESPONSIBILITIES.

3.1 Provision of Platform. Subject to the terms of the Agreement, Cypher Learning will (at no additional charge) exercise commercially reasonable efforts to: (a) provide support for the use of the Platform to Customer in accordance with Exhibit A; and (b) keep the Platform and Services operational and available to Customer, in each case in accordance with this Agreement and Cypher Learning's standard policies and procedures. Cypher Learning reserves the right to modify its standard support in its reasonable discretion with prior notice to Customer.

3.2 Training Services. Cypher Learning shall provide to Customer the number of training hours specified on the Order Form ("**Training Services**"). Within three (3) months of the effective date of the applicable Order Form, any unused Training Services hours shall automatically expire. Thereafter, if Customer requests any additional Training Services, Cypher Learning may in its discretion provide such training services at its then-current hourly rates.

3.3 Cypher Learning Personnel. Cypher Learning will be responsible for the performance of its employees and contractors and their compliance with the obligations set forth in this Agreement.

4. FEES, PAYMENT, AND TAXES.

4.1 Fees. The fees for access to the Platform and for the Services are set forth on the Order Form (“Fees”). Unless otherwise expressly specified in the applicable Order Form, the Fees are payable annually in advance. The Fees are fixed for the Initial Term of each Order Form. Upon each renewal, the Fees for such upcoming Renewal Term shall be revised to reflect Cypher Learning’s then-current fees, or a seven percent (7%) increase over the highest level of annual Fees charged during the previous Term, whichever is lower, for the applicable Services.

4.2 Invoicing and Payment. All Fees are quoted in the currency specified in the Order Form and, except as expressly set forth otherwise in this Agreement, are non-cancellable and Fees paid are non-refundable. Customer is responsible for paying for all Fees as set forth in an applicable Order Form, whether or not applicable licenses are actively used. Cypher Learning will invoice Customer annually for the Fees, unless otherwise expressly specified in the applicable Order Form. Fees are payable thirty (30) days from the date of invoice (unless specified otherwise on the Order Form) and will be deemed overdue if they remain unpaid thereafter. Customer agrees to provide Cypher Learning with complete and accurate billing and contact information including Customer’s legal company name, street address, e-mail, and name and telephone number of an authorized billing contact and License Administrator(s). Customer agrees to update this information within thirty (30) days of any change to it.

4.3 Adding Licenses. Customer’s designated License Administrator may add licenses by executing an additional Order Form online or in hardcopy form. Added licenses will be subject to the following: (i) added licenses will be coterminous with the then-current Term; and (ii) unless set forth in an applicable Order Form, the license fee for the added licenses will be the same as the fee applicable to Customer’s then-existing Authorized Users, prorated for the remainder of the current billing period.

4.4 Payment Disputes. If Customer believes its bill is incorrect or wishes to dispute any charges contained therein, Customer must notify Cypher Learning in writing within sixty (60) days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

4.5 Late Payments. Payments by Customer that are past due may, in Cypher Learning’s discretion, be subject to interest at the rate of one and one-half percent (1½%) per month (or, if less, the maximum allowed by applicable law) on that overdue balance. Customer will be responsible for any costs resulting from collection by Cypher Learning of any such overdue balance, including, without limitation, reasonable attorneys’ fees and court costs. Cypher Learning reserves the right (in addition to any other rights or remedies Cypher Learning may have) to suspend Customer and all Authorized Users’ access to the Platform and the Services if any Fees are more than sixty (60) days overdue until such amounts are paid in full or to terminate the Agreement under Section 5.3, *Termination for Breach*.

4.6 Taxes. The Fees do not include taxes, duties or charges of any kind. If Cypher Learning is required to pay or collect any local, value added, goods and services taxes or any other similar taxes or duties arising out of or related to this Agreement (not including taxes based on Cypher Learning’s income), then such taxes and/or duties shall be billed to and paid by Customer.

4.7 Withholding Payments. If any applicable law requires Customer to withhold amounts from any payments to Cypher Learning hereunder, then Customer will perform such obligations consistent with the provisions of this Section. Customer will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Cypher Learning with tax receipts evidencing the payments of such amounts. The sum payable by Customer upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Cypher Learning receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Cypher Learning would have received and retained in the absence of such required deduction or withholding.

4.8 Reseller Orders. If Customer makes any purchases through a Reseller: (a) instead of paying Cypher Learning, Customer will pay the applicable amounts to the Reseller, as agreed between Customer and

the Reseller in Customer's order with the Reseller; (b) Customer's order details (e.g., the Services, support, the number of Authorized Users, the Initial Term, etc.) will be as stated in the Order Form placed with Cypher Learning by the Reseller on Customer's behalf, and Reseller is responsible for the accuracy of any such Order Form as communicated to Cypher Learning; (c) if Customer is entitled to a refund under this Agreement, then unless Cypher Learning otherwise specifies, Cypher Learning will refund any applicable fees to the Reseller, and the Reseller will be solely responsible for refunding the appropriate amounts to Customer; (d) Resellers are not authorized to modify this Agreement or make any promises or commitments on behalf of Cypher Learning, and Cypher Learning is not bound by any obligations to Customer other than as set forth in this Agreement; (e) the amount paid or payable by the Reseller to Cypher Learning for Customer's use of the applicable Services under this Agreement will be deemed the amount actually paid or payable by Customer to Cypher Learning under this Agreement for purposes of calculating the limits of liability under this Agreement.

5. TERM AND TERMINATION.

5.1 Term. This Agreement will begin on the effective date of the first Order Form between the Parties and will continue in full force and effect for as long as any Order Form remains in effect, unless earlier terminated in accordance with the Agreement (the "Term").

5.2 Order Form Term and Autorenewal. Each Order Form shall have an initial term specified on the Order Form ("Initial Term"). **Thereafter, the Order Form will automatically renew for additional terms as set forth in the Order Form ("Renewal Term") unless either Party gives written notice of non-renewal to the other Party at least ninety (90) days prior to the expiration of the then-current term.**

5.3 Termination for Breach; Termination for Insolvency. Either Party may terminate this Agreement immediately upon written notice to the other Party if: (a) the other Party materially breaches this Agreement and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach; or (b) the other Party: (i) becomes insolvent; (ii) files a petition in bankruptcy that is not dismissed within sixty (60) days of commencement; or (iii) makes an assignment for the benefit of its creditors. If Customer terminates this Agreement pursuant to this Section, Cypher Learning will issue Customer a prorated refund for payment previously received by Cypher Learning corresponding to any period after the effective date of such termination. If Cypher Learning terminates this Agreement pursuant to this Section, Customer will pay any unpaid fees covering the remainder of the then-current Term. In no event will any termination relieve Customer of the obligation to pay any fees payable for the period prior to the effective date of termination.

5.4 Effect of Termination. Upon the earlier of expiration or termination of this Agreement: (a) each Party shall immediately return or, if requested by a Party, destroy all (including any copies of) Confidential Information (as defined below) of the other Party and, upon request, each Party shall provide written certification that the foregoing obligations have been completed; (b) the rights and licenses granted to Customer hereunder will immediately terminate, Customer will cease use of the Platform, the Services and Documentation, and Customer will return or destroy all copies of the Documentation in its possession/control; (c) the Parties' rights and obligations under Sections 2.2 (*Restrictions*), 4 (*Fees, Payment, and Taxes*), 5.4 (*Effect of Termination*), 6 (*Confidentiality*), 8 (*Intellectual Property Rights*), 9.6 (*Disclaimers*), 10 (*Indemnification*), 11 (*Limitation of Liability*) and 12 (*General Provisions*) will survive termination of this Agreement and/or any Order Form; and (d) termination of this Agreement will not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor will termination relieve Customer of its obligation to pay all Fees that accrued prior to such termination.

6. CONFIDENTIALITY.

6.1 Confidential Information. Each Party ("Receiving Party") acknowledges that it may receive from the other Party ("Disclosing Party") confidential information relating to the Disclosing Party and such confidential information includes, but is not limited to, technical, business, marketing and financial information, and any other information that could reasonably be considered confidential or proprietary

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("**Confidential Information**"). Without limiting the foregoing, the terms of any Order Form, the Cypher Learning Technology, and all technical information relating thereto shall be considered Confidential Information of Cypher Learning.

6.2 Exclusions. Confidential Information does not include information that: (a) is or becomes generally available to the public, other than through an act or failure to act of the Receiving Party; (b) is or becomes available to the Receiving Party on a non-confidential basis from a source that is entitled to disclose it to the Receiving Party; or (c) is independently developed by the Receiving Party, its employees or third party contractors without access to or use of the Disclosing Party's Confidential Information.

6.3 Obligations. During and after the Term of this Agreement, the Receiving Party shall: (a) not use (except for performance of this Agreement) or disclose Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party; and (b) take no less than the same measures that it takes with its own Confidential Information, and in any case no less than reasonable measures, to maintain the Confidential Information of the Disclosing Party in confidence. Either Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party gives the Disclosing Party reasonable advance notice of such required disclosure and cooperates with the Disclosing Party so that the Disclosing Party has the opportunity to obtain appropriate confidential treatment for such Confidential Information.

6.4 Ownership. All Confidential Information disclosed by Disclosing Party shall remain the property of the Disclosing Party. The Disclosing Party reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisaged by this Agreement shall (except for the limited use right above) operate to transfer or operate as a grant of any Intellectual Property Rights in the Confidential Information.

7. DATA SECURITY.

7.1 Data Processing Addendum. The Parties agree that each will comply with their respective obligations as required under the Data Processing Addendum provided at <https://www.cypherlearning.com/data-processing-addendum> ("**DPA**"), which is incorporated into and form part of this Agreement. To the extent that the Customer Content contains Personal Data, Cypher Learning shall treat such data in accordance with the DPA. Customer shall comply with its obligations under the DPA.

7.2 Education Records. Without limiting the foregoing or the obligations of each Party under the DPA, if applicable, each Party shall comply in all material respects with applicable laws and rules, including applicable requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99 (together, "**FERPA**"). If and to the extent Cypher Learning has access to "Education Records" and "Personally Identifiable Information" (as those terms are defined in 34 C.F.R. § 99.3) in connection with its provision of the Platform and Services: (a) Customer agrees that Cypher Learning has met the criteria for being a "School Official" with "Legitimate Educational Interests" (as those terms are used under FERPA) in such Education Records and Personally Identifiable Information; and (b) Cypher Learning agrees that such Education Records and Personally Identifiable Information will be used only for authorized purposes under this Agreement, and it will not redisclose such Education Records or Personally Identifiable Information except with authorization from the Customer and such redisclosure is otherwise permitted under FERPA.

7.3 Personal Information Collected from Children. Without limiting the foregoing or the obligations of each Party under the DPA, to the extent Cypher Learning Processes Personal Data (as such capitalized terms are defined in the DPA) of a child (including "children" as defined under the Children's Online Privacy Protection Act, 15 U.S.C. § 6501, *et seq.*, and its applicable implementing regulations, 16 C.F.R. Part 312) (together, "**COPPA**") and any similar terms under any other applicable privacy laws in connection with its provision of the Platform and Services, (a) Cypher Learning agrees to limit its use of such Personal Data to the purposes authorized under this Agreement, and (b) the Customer represents and warrants that it has provided

all required notices and obtained all required consents, including parental consents, necessary for Cypher Learning to provide the Services under this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS.

8.1 Cypher Learning Technology. This Agreement does not grant to Customer any ownership interest in the Cypher Learning Technology. The Cypher Learning Technology, Statistical Data, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the Platform is proprietary to Cypher Learning, and Cypher Learning and/or its licensors have and retain all right, title and interest, including all Intellectual Property Rights therein. Customer acknowledges that any trademarks, trade names, logos, service marks, or symbols adopted by Cypher Learning to identify the Platform and the Services belong to Cypher Learning and/or its licensors, and that Customer has no rights therein. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Cypher Learning Technology, including any right to obtain possession of any source code, data or other technical material relating to the Cypher Learning Technology. All rights not expressly granted to Customer are reserved to Cypher Learning.

8.2 Customer License; Ownership. The Customer Content, and Customer's Confidential Information, and all worldwide Intellectual Property Rights therein, are the exclusive property of Customer. All rights in and to the Customer Content and Customer's Confidential Information not expressly granted to Cypher Learning in this Agreement are reserved by Customer. Customer grants Cypher Learning a non-exclusive, worldwide, royalty-free and fully paid license during the Term to: (a) to download, store, test, process and use the Customer Content as necessary for purposes of providing and improving the Platform and the Services, (b) to use the Customer Marks as required to provide the Services; and (c) on a perpetual basis, to use usage and analytics data in an aggregated, deidentified or anonymized form to: (i) improve the Services, the Platform and Cypher Learning's related products and services (including through various machine learning exercises); (ii) provide analytics and benchmarking services; and (iii) generate and disclose statistics regarding use of the Platform and Services, provided, however, that no Customer-only statistics will be disclosed to third parties without Customer's consent.

9. WARRANTIES; DISCLAIMERS.

9.1 General. Each Party represents and warrants that: (a) it has the power to enter into and perform this Agreement; (b) this Agreement's execution has been duly authorized by all necessary corporate action of the Party; (c) this Agreement constitutes a valid and binding obligation on it, enforceable in accordance with its terms; and (d) neither it nor its employees or agents has offered or will offer any illegal bribe, kickback, payment, gift, or thing of value in connection with this Agreement.

9.2 Cypher Learning Limited Warranties. Cypher Learning represents and warrants that: (a) when used in accordance with the Documentation, the Platform will perform substantially in accordance with the Documentation; (b) the Services will be performed consistent with generally accepted industry practices; and (c) the Platform will perform in all material respects with the service levels set forth on Exhibit A. Customer must report any deficiencies in the performance of the above warranties to Cypher Learning in writing within thirty (30) days of the non-conformance. Provided the Customer has complied with the foregoing, for any breach of the above warranties, Customer's exclusive remedy, and Cypher Learning's entire liability, will be the re-performance of the Services and if Cypher Learning fails to re-perform the Services as warranted, Customer's sole and exclusive remedy shall be to terminate this Agreement and receive a refund of any pre-paid but unearned Fees prorated on a monthly basis for the remainder of the Term of the applicable Order Form.

9.3 Customer Warranty. Customer represents and warrants that: (a) it has procured all applicable consents required to provide the Customer Content to Cypher Learning for the performance of the Services, including in accordance with Section 2.4, *Customer Content*, and all Applicable Data Protection Laws; (b) the Customer Content will not: (i) infringe or misappropriate any third party's Intellectual Property Rights; (ii) be

deceptive, defamatory, obscene, pornographic or unlawful; (iii) contain any viruses, worms or other malicious computer programming codes or similar intended to damage Cypher Learning's Technology; and (iv) otherwise violate the rights of a third party (including under all Applicable Data Protection Laws); and (c) neither Customer, nor any of its Authorized Users, shall upload to the Platform any Customer Content that contains any sensitive personal information (such as financial, medical or other sensitive personal information such as government IDs, passport numbers or social security numbers) or any other information prohibited by the DPA. Customer agrees that any use of the Cypher Learning Technology contrary to or in violation of its representations and warranties in this Section constitutes unauthorized and improper use of the Cypher Learning Technology.

9.4 Compliance with Laws. Each Party is solely responsible for, and agrees to comply with, all applicable laws, statutes, ordinances, and other governmental authority, however designated, with respect to, as applicable, the use of and access to the Platform or the provision of the Platform, including without limitation United States government laws, regulations, orders or other restrictions regarding export from the United States and re-export from other jurisdictions of software, technical data and information or derivatives of such software, or technical data and information. Cypher Learning is not responsible for determining whether the Platform is sufficient for Customer's compliance with any applicable law. Each Party represents that it is not named on any U.S. government denied-party list. Customer will not permit Authorized Users to access or use the Platform in a U.S.-embargoed country or in violation of any U.S. export law or regulation. Customer further represents that it is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country.

9.5 DISCLAIMERS.

(a) THE EXPLICIT REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT ARE THE PARTIES' COMPLETE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES. EXCEPT AS SPECIFIED IN SECTION 9.3 ABOVE, CYPHER LEARNING AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION WITH RESPECT TO TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE CYPHER LEARNING TECHNOLOGY AND ANY OTHER PRODUCT OR SERVICES FURNISHED UNDER THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CYPHER LEARNING DOES NOT WARRANT THAT THE PLATFORM IS ERROR-FREE OR THAT THE PLATFORM OR THE SERVICES WILL OPERATE WITHOUT INTERRUPTION AND CYPHER LEARNING GRANTS NO WARRANTY REGARDING THE USE BY CUSTOMER OF THE PLATFORM OR SERVICES. THE CYPHER LEARNING TECHNOLOGY MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CYPHER LEARNING IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS, INCLUDING LOSS OF DATA.

(b) THE AI TOOLS ARE INTENDED AS AN OUTPUT GENERATION TOOL ONLY AND DOES NOT CONSTITUTE ANY WARRANTY OR GUARANTEE THAT THE OUTPUT WILL PROVIDE ACCURATE, TAILORED OR INFORMATIVE RESULTS OR BE FIT FOR THE PARTICULAR PURPOSE OR USE CASE. CYPHER LEARNING DOES NOT REPRESENT OR WARRANT THAT THE CUSTOMER IS THE LEGAL OWNER OF THE OUTPUT, OR THAT THE INPUT OR OUTPUT ARE PROTECTABLE BY ANY INTELLECTUAL PROPERTY RIGHTS, OR THAT THE OUTPUT DOES NOT INCORPORATE, INFRINGE OR MISAPPROPRIATE THE INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY. CUSTOMER ACKNOWLEDGES THAT THE AI TOOLS LEVERAGE THIRD PARTY AI SERVICES AND THAT CYPHER LEARNING IS NOT LIABLE, AND CUSTOMER AGREES NOT TO SEEK TO HOLD CYPHER LEARNING LIABLE, FOR THIRD PARTY AI SERVICES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTY SERVICES RESTS ENTIRELY WITH CUSTOMER. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR CUSTOMER'S USE OF THE AI TOOLS AND ANY OUTPUT RESULTING THEREFROM. CUSTOMER SHOULD EVALUATE THE FITNESS OF ANY OUTPUT AS APPROPRIATE FOR CUSTOMER'S SPECIFIC USE CASE.

(c) FROM TIME TO TIME, CYPHER LEARNING MAY OFFER NEW "BETA" FEATURES OR TOOLS WITH WHICH CUSTOMER MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL

PURPOSES, PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT CYPHER LEARNING'S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

10. INDEMNIFICATION

10.1 By Cypher Learning. Cypher Learning will defend at its expense any suit brought against Customer and will pay any settlement Cypher Learning makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Platform or the Services infringes such third party's patents, copyrights or trade secret rights under applicable laws. If any portion of the Platform or Services becomes, or in Cypher Learning's opinion is likely to become, the subject of a claim of infringement ("**Infringing Technology**"), Cypher Learning may, at Cypher Learning's option: (a) procure for Customer the right to continue using the Infringing Technology; (b) replace the Infringing Technology with non-infringing software or services which do not materially impair the functionality of the Platform or Services; (c) modify the Infringing Technology so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid Fees for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Cypher Learning Technology. Notwithstanding the foregoing, Cypher Learning will have no obligation under this Section or otherwise with respect to any infringement claim based upon: (i) any use of the Platform or Services not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Platform or Services in combination with other products, equipment, software or data not supplied by Cypher Learning; or (iii) any modification of the Platform or Services by any person other than Cypher Learning or its authorized agents. This Section states the sole and exclusive remedy of Customer and the entire liability of Cypher Learning, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

10.2 By Customer. Customer will defend at its expense any suit brought against Cypher Learning, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a third party claim arising out of or relating to: (a) any claim by an end user or customer of Customer as it pertains to the Services or the Platform; (b) Customer's use of the Prompts or the Output; or (c) Customer's breach or alleged breach of Sections 2.5 (*AI Tools*), 2.10 (*Third Party Applications*), 7 (*Data Security*) (including the DPA referenced therein), and 9.3 (*Customer Warranty*). This Section states the sole and exclusive remedy of Cypher Learning and the entire liability of Customer, or any of its officers, directors, employees, shareholders, contractors or representatives, for the claims and actions described herein.

10.3 Procedure. The indemnifying Party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified Party promptly notifying the indemnifying Party in writing of any threatened or actual claim or suit (provided that a Party may not settle or defend a claim unless it unconditionally releases the other Party of all liability to any third party); (b) the indemnifying Party having sole control of the defense or settlement of any claim or suit; and (c) the indemnified Party cooperating with the indemnifying Party to facilitate the settlement or defense of any claim or suit at the indemnifying Party's cost.

11. LIMITATION OF LIABILITY.

11.1 Types of Damages. FOR ANY LIABILITY ARISING UNDER THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY NOR TO ANY THIRD PARTIES FOR LOST PROFITS OR LOST DATA OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE LOSSES OR DAMAGES HOWSOEVER ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE CYPHER LEARNING TECHNOLOGY, WHETHER UNDER CONTRACT, TORT OR OTHERWISE, WHETHER FORESEEABLE OR NOT AND REGARDLESS WHETHER SUCH PARTY HAS BEEN

ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY ARISE, OCCUR OR RESULT. IN NO EVENT SHALL CYPHER LEARNING BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

11.2 Amount of Damages. NOTWITHSTANDING EITHER PARTY'S LIABILITY TO DATA SUBJECTS UNDER THE THIRD-PARTY BENEFICIARY PROVISIONS OF THE SCCs AS OUTLINED IN THE DPA, CYPHER LEARNING'S AGGREGATE CUMULATIVE LIABILITY FOR DAMAGES FOR SERVICES PERFORMED WILL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

11.3 Exclusions. THE LIMITATION IN SECTION 11.1 and 11.2 DO NOT APPLY TO: (A) A BREACH BY CUSTOMER OF SECTIONS 2.2-2.4 (*RESTRICTIONS, USERNAMES AND PASSWORDS, AND CUSTOMER CONTENT*); (B) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS AS SET FORTH IN SECTION 6 (*CONFIDENTIALITY*); (C) CUSTOMER'S OBLIGATIONS UNDER SECTION 9.3 (*CUSTOMER WARRANTY*); (D) A PARTY'S OBLIGATIONS IN SECTION 10 (*INDEMNIFICATION*); (E) DAMAGES CAUSED BY EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (F) CUSTOMER'S OBLIGATION TO PAY AMOUNTS DUE UNDER THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, AS IT PERTAINS TO CUSTOMER CONTENT, THE BREACH OF CONFIDENTIALITY EXCLUSION FROM THE LIMITATION OF LIABILITY SET FORTH ABOVE SHALL NOT APPLY TO INSTANCES WHERE CUSTOMER CONTENT IS DISCLOSED BY A THIRD PARTY NOT AUTHORIZED BY CYPHER LEARNING.

11.4 Basis of the Bargain. THESE LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN CYPHER LEARNING AND CUSTOMER. CYPHER LEARNING'S FEES FOR THE SERVICES REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

12. GENERAL PROVISIONS.

12.1 Relationship Between the Parties. Cypher Learning is an independent contractor; nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties. Customer will not have and will not represent to any third party that it has any authority to act on behalf of Cypher Learning. If Customer participates in the federal student aid programs pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1001, *et seq.*, Customer understands and agrees that this Agreement does not render Cypher Learning a Third Party Servicer as that term is defined at 34 C.F.R. §§ 668.2 and 668.25, and Cypher Learning will not undertake any work pursuant to this Agreement inconsistent with this Section. Customer further agrees that it will not report Cypher Learning as a Third Party Servicer to the U.S. Department of Education or any other governmental agency or accrediting body. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each Party will maintain appropriate worker's compensation insurance for its employees as well as general liability insurance.

12.2 Injunctive Relief. Customer acknowledges that the Platform and the Services contain valuable Intellectual Property Rights and proprietary information of Cypher Learning, that any actual or threatened breach of Sections 2 (*Access and Use; Restrictions*) or 6 (*Confidentiality*) will constitute immediate, irreparable harm to Cypher Learning for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If Customer continues to use the Platform or the Services after its right to do so has terminated or expired, Cypher Learning will be entitled to seek immediate injunctive relief without the requirement of posting bond.

12.3 Education Laws Applicable to Customer. Customer agrees to comply with applicable laws, regulations and requirements of the State or Federal governmental agencies and accrediting bodies of the

relevant jurisdictions that relate to Customer's offering and delivery of courses and content using products, services or technology provided by Cypher Learning

12.4 Assignment. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, and any assignment or transfer in derogation of the foregoing shall be null and void; provided, however, that unless involving a competitor of the other Party, either Party shall have the right to assign the Agreement without the prior written consent of the other Party to its (i) Affiliate, or (ii) the successor entity in the event of merger, corporate reorganization or a sale of all or substantially all of such Party's assets. In the event of an assignment as described in the preceding sentence, the assigning Party shall provide the other Party with written notice. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

12.5 Notices. All notices required or permitted under this Agreement must be delivered in writing, if to Cypher Learning, by emailing us through the Platform and, if to Customer, by emailing the Customer Point of Contact email address listed on the Order Form, provided, however, that with respect to any notices relating to breaches of this Agreement or termination, a copy of such notice will also be sent in writing to the other Party at the Party's address as listed on the Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each Party may change its email address and/or address for receipt of notice by giving written notice of such change to the other Party. Cypher Learning may provide notice regarding operational aspects of the Platform by means of a general notice on the Platform, electronic mail to Customer's e-mail address on record with Cypher Learning, or both.

12.6 Governing Law and Arbitration. The Agreement is governed by the laws of the State of California, without regard to its conflicts of laws or provisions and this Agreement shall not be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction. Any dispute or claim arising from or relating to this Agreement shall be finally settled by binding arbitration in San Francisco, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. Judgement on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, nothing shall prevent either Party from seeking relief in any court of competent jurisdiction for any misuse or misappropriating of such Party's Intellectual Property Rights or Confidential Information, which will be brought in a federal court in the County of San Francisco and each Party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

12.7 Resolution of Disputes. Except where a Party is seeking a remedy related to claims of misappropriation or ownership of Intellectual Property Rights, each Party agrees that before it brings any dispute, action, claim or cause of action, it shall provide written notice to the other Party of the specific issue(s) in dispute. Within seven (7) days after such notice knowledgeable executives of the Parties shall hold at least one meeting (in person or by video or teleconference) for the purpose of attempting in good faith to resolve such matter.

12.8 Waivers; Severability. Any waivers shall be effective only if made by writing signed by representatives authorized to bind the Parties. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Customer agrees that Section 11 (*Limitation of Liability*) will remain in effect notwithstanding the unenforceability of any provision in Sections 9 (*Warranties; Disclaimers*) and 10 (*Indemnification*).

12.9 Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

12.10 Force Majeure. Any delay in the performance of any duties or obligations of either Party (except for the obligation to pay Fees owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, war, fire, earthquake, typhoon, flood, natural disasters, governmental action, pandemic/epidemic, cloud-service provider outages any other event beyond the control of such Party, provided that such Party uses reasonable efforts, under the circumstances, to notify the other Party of the circumstances causing the delay and to resume performance as soon as possible.

12.11 Publicity. Cypher Learning may use Customer’s name and Customer Marks in its Customer list (including on Cypher Learning’s website, social media and in sales and marketing materials) in the same manner it uses the names of its other customers. Cypher Learning shall use Customer Marks in accordance with Customer’s applicable branding guidelines and Cypher Learning may not use Customer’s name in any other way without Customer’s prior written consent (with email consent deemed sufficient).

12.12 Entire Agreement; Amendment. This Agreement, the DPA and any applicable Order Form constitutes the complete agreement between the Parties and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. To the extent that a conflict arises between the terms and conditions of an Order Form and the terms of this Agreement, the terms and conditions of this Agreement will govern, except to the extent that the Order Form, as applicable, expressly states that it supersedes specific language in the Agreement. It is expressly agreed that the terms and conditions of this Agreement and any Order Form supersede the terms any of Customer’s purchase order. Cypher Learning may amend this Agreement at any time by providing notice to Customer, although such revised Agreement shall only take effect upon the next Renewal Term. Cypher Learning shall provide an update version of this Agreement on the Platform with an updated version date. Neither this Agreement nor an Order Form may be modified or amended except in writing signed by a duly authorized representative of each Party; no other act, document, usage, or custom will be deemed to amend or modify this Agreement or an Order Form.

12.13 U.S. Government Restricted Rights. This provision applies to Customer only if Customer is a government end user. The software contained within the Platform and the Services and provided in connection with this Agreement has been developed entirely at private expense, as defined in FAR section 2.101, DFARS section 252.227-7014(a)(1) and DFARS section 252.227- 7015 (or any equivalent or subsequent agency regulation thereof), and is provided as “commercial items,” “commercial computer software” and/or “commercial computer software documentation.” Consistent with DFARS section 227.7202 and FAR section 12.212, and to the extent required under U.S. federal law, the minimum restricted rights as set forth in FAR section 52.227-19 (or any equivalent or subsequent agency regulation thereof), any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

EXHIBIT A
SERVICE LEVEL AGREEMENT

1. DEFINITIONS. For the purposes of this Exhibit A, the following definitions shall apply:

1.1 “Available” means that the Platform is available for use and properly functioning for use in accordance with this Agreement.

1.2 “Downtime” means the total number of minutes in a given month that the Platform is not Available, and measured from the time Customer submits a written report.

1.3 “Scheduled Maintenance” means the total number of minutes in a given month for a planned, defined, and scheduled period of time during which Cypher Learning performs routine maintenance on the Platform. Cypher Learning will endeavor to give Customer at least two (2) business days prior written notice (email to suffice) of any such Scheduled Maintenance, including anticipated duration of the outage. Cypher Learning shall use commercial reasonable efforts to ensure that any planned outages, unless considered urgent by Cypher Learning in sole its discretion, will be conducted during non-business hours (based on Pacific Standard Time).

2. UPTIME REQUIREMENT. Cypher Learning will make commercially reasonable efforts to ensure that the Service will be Available at least 99.9% of the time (“**Uptime Requirement**”) as measured over each calendar month during the term of any Order Form. The following shall be excluded from any calculation to determine whether Cypher Learning has complied with the Uptime Requirement: (a) Scheduled Maintenance; (b) Downtime resulting from any acts or omissions by Customer or an Authorized User that are not in accordance with this Agreement, including without limitation, any negligence, willful misconduct or use of the Services or the Platform in breach of this Agreement; (c) delays or outages caused by any third-party services; (d) any restrictions imposed by any such third-party services; and (e) Downtime resulting from a force majeure, as set forth in Section 12.10 of the Agreement. Upon receiving a written report of Downtime, for each full hour of Downtime, Cypher Learning will credit Customer two percent (2%) of Customer’s monthly fee (prorated if an annual fee), up to fifty percent (50%) of Customer’s monthly fee for the affected Service. Customer agrees that the credit specified in this Exhibit A will be Customer’s sole and exclusive remedy for any Downtime.

3. SERVICE LEVEL DISRUPTION. Cypher Learning will inform Customer by email (or other prompt means of communication if email is unavailable) of any service disruption of a significant nature (i.e., greater than 1 hour). Cypher Learning will make commercially reasonable efforts to restore service as soon as practicable and inform Customer once service has been restored.

4. SUPPORT AVAILABILITY. Cypher Learning will provide 24/7 Central Time (US) full support and support for critical issues over the email primarily via forums and emails. Support instances submitted outside of the normal Cypher Learning’s support hours will be responded to as soon as possible and no later than the start of the next business day.