

SUBSCRIPTION AGREEMENT**VERSION DATED: 13 FEBRUARY 2023**

This Subscription Agreement (“**Agreement**”) is made between (a) if Customer is located in Australia, Cypher Learning Pty Ltd; (b) if Customer is located in Qatar, Cypher Learning QTSP LLC; or (c) if Customer is located in any other jurisdiction, Cypher Learning, Inc. (collectively, “**Cypher Learning**”), and the customer identified on the 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

(A) **WHEREAS**, Cypher Learning is the owner and developer of the learning management system platform and as may be updated or improved by Cypher Learning from time to time (the “**Platform**”); and

(B) **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 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. Capitalized terms have the meaning set forth below or as defined within this Agreement.

1.1 “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).

1.2 “Authorized User” means the employees, agents and independent contractors engaged by the Customer who are authorized to access the Platform pursuant to Customer’s rights under this Agreement.

1.3 “**Customer Content**” means any content and information provided or submitted by, or on behalf of, Customer or its Authorized Users, in connection with the Services, including but not limited to any content and information in lessons, assignments, or syllabi and Personal Data.

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

1.5 “**Documentation**” means all specifications, user manuals, the DPA 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.

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

1.7 “**Fees**” has the meaning given in Section 3.1.

1.8 “**Initial Term**” has the meaning given in Section 4.2.

1.9 “**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.

1.10 “**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.

1.11 “**Personal Data**” means any information provided to Cypher Learning by Customer 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).

1.12 “**Platform**” has the meaning given in the Recitals.

1.13 “**Renewal Term**” has the meaning given in Section 4.2.

1.14 “**Services**” means the products and services provided through, or with respect to, the Platform and described on an Order Form.

1.15 “**Term**” has the meaning given in Section 4.1.

1.16 “**Training Services**” has the meaning given in Section 2.7.

2. ACCESS TO THE PLATFORM; RESTRICTIONS; SERVICES.

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 11.4), non-sublicensable right during the Term to: (a) use and access the Platform and the Services, including to make Customer Content available to 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.

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) use the Platform in connection with any of Customer's time-critical or mission-critical functions; (j) 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 (k) otherwise use the Cypher Learning Technology in any manner that exceeds the scope of use permitted under Section 2.1 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 immediately notify Cypher Learning of any actual or suspected 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 Company 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.

2.5 Necessary Equipment. Customer must provide all equipment and software necessary to connect to the Platform, including but not limited to, 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.

2.6 Support Services. Subject to the terms and conditions of this Agreement, Cypher Learning will exercise commercially reasonable efforts to: (a) provide support for the use of the Platform and Services 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 its standard policies and procedures. The support services described in this Section do not include Training Services.

2.7 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.

2.8 End Users. Customer acknowledges and agrees that it has sole responsibility with respect to the Customer Content it makes available to 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 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. Customer acknowledges that, as a condition of using the Platform, all end users accessing the Platform shall be required to agree to Cypher Learning’s standard terms of service, as may be updated from time to time.

3. FEES, PAYMENT, AND TAXES.

3.1 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.

3.2 Invoicing and Payment. All Fees are quoted in the currency specified in the Order Form and, except as set forth otherwise in this Agreement, are non-refundable. 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.

3.3 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.

3.4 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.

3.5 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. TERM AND TERMINATION.

4.1 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**”).

4.2 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 of one (1) year (“Renewal Term”) unless either Party gives written notice of non-renewal to the other Party at least thirty (30) days prior to the expiration of the then-current term.**

4.3 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.

4.4 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, 3, 4.4, 5, 7, 8.3, 9, 10 and 11 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.

5. CONFIDENTIALITY.

5.1 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 (“**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.

5.2 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.

5.3 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.

5.4 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.

6. DATA SECURITY; PRIVACY.

6.1 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.

6.2 Education Records. Without limiting the foregoing or the obligations of each Party under the DPA, 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.

6.3 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 Australian and Qatari privacy laws in connection with its provision of the Platform and Services, (a) Cypher Learning agrees to limit its use of such Personal Information 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.

7. INTELLECTUAL PROPERTY RIGHTS.

7.1 Cypher Learning Technology. This Agreement does not grant to Customer any ownership interest in the Cypher Learning Technology. The Cypher Learning Technology 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.

7.2 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, 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.

7.3 Feedback. Customer hereby grants Cypher Learning a perpetual, irrevocable, royalty-free and fully paid right to use and otherwise exploit in any manner any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer related to the Cypher Learning Technology, including for the purpose of improving and enhancing the Platform and the Services; provided that Customer is not referenced in such use.

8. WARRANTIES; DISCLAIMERS.

8.1 Limited Warranty. Cypher Learning represents and warrants that: (a) the Services will be performed consistent with generally accepted industry practices; and (b) 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.

8.2 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 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 the representations and warranties of Customer in this Section 8.2 constitutes unauthorized and improper use of the Cypher Learning Technology.

8.3 DISCLAIMERS.

(a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLATFORM AND THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND CYPHER LEARNING AND ITS LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, ORAL, STATUTORY, EXPRESS, IMPLIED, BY COURSE OF COMMUNICATION OR DEALING, OR OTHERWISE. EXCEPT AS SPECIFIED IN SECTION 8.1, CYPHER LEARNING AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, INCLUDING 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.

(b) 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 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.

9. INDEMNIFICATION

9.1 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.

9.2 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; or (b) Customer’s breach or alleged breach of Sections 2.8, 6 (including the DPA referenced therein) and 8.2. 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.

9.3 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; (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.

10. LIMITATION OF LIABILITY.

10.1 Types of Damages. 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. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO: (A) A BREACH BY A PARTY OF SECTIONS 2 OR 5; (B) CUSTOMER'S OBLIGATIONS UNDER SECTION 8.2; OR (C) ANY DEATH OR PERSONAL INJURY CAUSED BY EITHER PARTY'S NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

10.2 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.

10.3 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.

11. GENERAL PROVISIONS.

11.1 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.

11.2 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 or 5 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 immediate injunctive relief without the requirement of posting bond.

11.3 Export and Import Laws. Customer agrees not to use, export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Cypher Learning, or any products utilizing such data, in violation of the United States export laws or regulations. Further, each Party agrees to comply with all relevant export laws and regulations of the United States and the country or territory in which the Services are provided ("**Export Laws**") to assure that neither any deliverable, if any, nor any direct product thereof is (a) exported, directly or indirectly, in violation of Export Laws or (b) intended to be used for any purposes prohibited by the Export Laws, including without limitation nuclear, chemical, or biological weapons proliferation. Customer further represents that (i) Customer 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 and (ii) Customer is not listed on any U.S. Government list of prohibited or restricted

parties. Customer acknowledges and agrees that products, services or technology provided by Cypher Learning may be subject to the export control laws and regulations of the United States, and if applicable, agrees to comply with these laws and regulations, and agrees that it shall not, without prior U.S. government authorization, export, re-export, or transfer Cypher Learning products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

11.4 Anti-Bribery Laws. Neither the Customer nor any of its Authorized Users, directors, affiliates or officers or any other person acting on their behalf has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or any other anti-bribery or anti-corruption Law (collectively, the “**Anti-Bribery Laws**”). The Customer is not, and has not been, the subject of any investigation or inquiry by any governmental body with respect to potential violations of Anti-Bribery Laws. Customer shall immediately notify Cypher Learning of any breach, suspected breach of, or any investigation into the suspected breach of, the Anti-Bribery Laws by it or any of the aforementioned persons and, upon such notice, Cypher Learning may, in its discretion, immediately terminate this Agreement.

11.5 Education Laws. 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.

11.6 Assignment. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, and any assignment or transfer in derogation of the foregoing shall be null and void, provided, however that either Party shall have the right to assign the Agreement, without the prior written consent of the other Party, to the successor entity in the event of merger, corporate reorganization or a sale of all or substantially all of such Party’s assets. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

11.7 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.

11.8 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.

11.9 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 10 will remain in effect notwithstanding the unenforceability of any provision in Sections 8 and 9.

11.10 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.”

11.11 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.

11.12 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 in which 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).

11.13 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.

11.14 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 “Availability” or “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.

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 its discretion, will be conducted during non-business hours (based on San Francisco 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 11.11 of the Agreement.

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 24/5 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.