

## PROACTOnDemand® Subscription Agreement

By accepting this Subscription agreement (the **“Agreement”**), such as by clicking a box indicating acceptance or otherwise manifesting acceptance, you (the **“Subscriber”**) agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, the term "Subscriber" or shall refer to such entity, and you represent and covenant that you have the authority to bind such entity and its Corporate Affiliates to these terms and conditions. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Services.

Subscriber may not use or access the Services if it is a direct competitor of Reliability, except with Reliability’s prior written consent.

This Agreement was last updated in February 2016. It is effective between Subscriber and Reliability as of the date of Subscriber accepting this Agreement.

1. **Definitions.** All defined terms apply to this Agreement except where expressly stated otherwise. For ease of reference, some terms are defined elsewhere in this Agreement.
  - A. **“Claims”** or **“Claim”** means, collectively, lawsuits, actions, complaints, claims, assertions of liability (whether oral or written), losses, damages, liabilities, awards, costs and expenses.
  - B. **“Competitor of Reliability”** means any person or entity that offers services to third parties in the field of reliability engineering consulting, including, but not limited to, root-cause analysis.
  - C. **“Confidential Information”** is defined in section 14.B of this Agreement.
  - D. **“Corporate Affiliate”** is another corporate entity that is controlled by, under the control of, or under common control with, another corporate entity, with control being at least 51% ownership of voting stock or membership.
  - E. **“Days”** means calendar days, not business days, unless expressly stated otherwise.
  - F. **“Intellectual Property”** means all intellectual property rights and includes patentable

inventions, copyrights, trade secrets, trademarks, service marks, certification marks, domain name rights and moral rights. Intellectual Property also includes all patents and patent applications, and the reissues, divisions, continuations, renewals, extensions, continuations-in-part, and improvements thereof.

- G. **“Methodology”** is defined in section 4 of this Agreement.
- H. **“Named Users”** means specific, named individuals who are authorized by Subscriber to use the Services, for whom Seats to use the Services have been purchased from Reliability, and who have been supplied user identifications and passwords for the Services. Named Users may be Subscriber’s employees or contractors, subject to the terms of this Agreement, including its confidentiality and trade secret provisions.
  - I. **“Party”** means one of the parties to the Agreement. **“Parties”** means both parties to the Agreement: Subscriber and Reliability.
  - J. **“Seat”** means licensed use of the Services by an individual Named User of the Services. A Subscriber may subscribe to one or more Seats for usage of the Services. A Seat is a “named-user” permission to use the Services, meaning that only one person associated with the Subscriber may use that Seat to utilize the Services, as opposed to a “concurrent user” model where multiple people may use the same Seat but not concurrently.
  - K. **“Services”** means the online usage of the Software that Reliability makes available to Subscriber pursuant to this Agreement. All references to the Services include the Software accessed by means of the Services.
  - L. **“Software”** means Reliability’s PROACT® software, which includes the Templates.
  - M. **“Subscriber”** means the person or corporate entity entering into this Agreement with Reliability. If a person is entering into this Agreement for his or her sole use of the Services as a single Seat, he or she is the Subscriber. If that person is entering into this Agreement on behalf of a company or other

legal entity, that company or other legal entity is the Subscriber; in that case, the person entering into this Agreement represents and covenants that he or she has the authority to bind such entity and its Corporate Affiliates to this Agreement.

- N. **“Subscriber Data”** means all electronic data or information submitted by Subscriber into the Services as a part of Subscriber’s use of the Services.
- O. **“Subscription”** means the license, purchased by the Subscriber, to use the Services for use of one or more Seats.
- P. **“Subscription Term”** means the time-length of the term of the Subscription purchased by Subscriber. Unless expressly indicated otherwise by Reliability in writing, a Subscription is for one year measured from the date of the purchase of the Subscription by Subscriber.
- Q. **“Templates”** mean the individual root-cause analysis templates contained in the Services.

## 2. Services.

- A. **Provision of Services.** Reliability shall make use of the Services available to Subscriber pursuant to this Agreement for the duration of the Subscription Term unless this Agreement is terminated earlier during the Subscription Term. (As explained in greater detail later, a Subscription Term is for one year from the date of the purchase of the Subscription and automatically renews unless terminated.) Subscriber agrees that its entering into this Agreement is not contingent on the inclusion of any future functionality or features into the Services and is not done in reliance on any promise or representation by Reliability or its agents concerning any future functionality or features of the Services.
- B. **Seat Subscriptions – Named Users.** Services are purchased as Seat Subscriptions. When a Subscriber purchases a Subscription to the Services online, it will choose the number of Seats it purchases. The Subscriber will list by name the individual Named User for each Seat (e.g., “Jane Doe,” “John Smith.”). That will cause the system to generate a username and password for each Seat (and, thus, for each Named User). **Seats are for use only by such Named Users, meaning it is a breach of this Agreement for more than one person to**

**access a Seat by using the username and password assigned to that Seat; the sharing of usernames and passwords between individuals is prohibited by this Agreement.**

Subscriber can change the Named User for a Seat at any time on the user interface, meaning that a Seat can be reassigned from one person associated with the Subscriber to another person (such as when one of Subscriber’s employees leaves the company).

- C. **Adding Seat to a Subscription.** A Subscriber can add Seat subscriptions to the Services at any time via the user interface. As noted elsewhere, a Subscriber’s Subscription to the Services is for one year and automatically renews unless terminated. When Seats are added to a Subscription, the system will automatically cause those Seats to have the same Subscription anniversary date as the initial Subscription, and the Subscription fee charged for the added Seats will automatically be prorated to reflect that that Subscription covers less than a full year. Thus, for example, if the initial Subscription was purchased on April 1, all Seats added in the future to that Subscription will also have an April 1 anniversary/renewal date.
- D. Reliability has the Services hosted by a third party (the **“Services Hosting Provider”**), which also hosts the Subscriber Data. Reliability bears responsibility for the Services Hosting Provider as if Reliability was hosting the Services, including the Subscriber Data. All references in this Agreement to Reliability regarding the Services and Subscriber Data implicitly include its Services Hosting Provider in all permissions granted to Reliability. For example, Reliability’s use of a Services Hosting Provider shall not be a breach of any confidentiality obligation imposed on Reliability. Reliability may change the Services Hosting Provider at any time in Reliability’s sole discretion, and it may take some or all of the functions of the Services Hosting Provider in-house at Reliability at Reliability’s sole discretion.
- E. **Subscription License Grant.** For as long as Subscriber does not breach any terms of this Agreement and fail to cure such breach in the time provided by this Agreement (if a time for cure is expressly allowed by this Agreement), Reliability grants to Subscriber a nontransferable (except as provided expressly herein) license, subject to all of the Terms of this Agreement, for the Subscription Term, (i)

to use the Services up to and including the number of Seats licensed, and (ii) to modify the Templates. Under no circumstances shall Subscriber be entitled to receive the object or source code to the Software, even if Reliability breaches the Agreement. This license grant is limited to the express terms of this Agreement; no other uses of the Services or Software are impliedly licensed. This Agreement sometimes refers to the license to use the Services as the “Subscription.”

F. Use of Subscription by Corporate Affiliates.

Subscriber may name as Named Users individuals who are employed by Corporate Affiliates of the Subscriber. In that case, Subscriber agrees that all such Corporate Affiliates are bound by the terms of this Agreement. Remember that this Agreement prohibits use of or access to the Services by a Competitor of Reliability, so no individual (or contractor) of a Competitor of Reliability may use or access the Services.

G. Limitations on License Grant.

- (1) Subscriber may not sublicense or rent the Services to others.
- (2) Subscriber may use the Services for its internal business purposes only.
- (3) Subscriber may not use the Services to act as a service bureau to others.
- (4) Subscriber may not timeshare the Services with another entity.
- (5) Subscriber may not use the Services to provide consulting services to third parties in the fields of reliability engineering, operational reliability, and/or root cause analysis.
- (6) Subscriber may not reverse engineer or decompile the Services.
- (7) Subscriber may not modify the Services or make derivative works from it.
- (8) Subscriber may not use the Services or the Methodology to create similar software or services.
- (9) Subscriber shall not use the Methodology to create a methodology for operational reliability analysis

and/or root cause analysis that Subscriber licenses to others or to perform consulting services for others.

(10) Subscriber shall treat the Services as Confidential Information.

(11) The Parties agree conclusively that the Agreement constitutes a license, not a sale, of the Services. Any attempt by Subscriber to transfer the license to the Services, except as expressly permitted by the Agreement or permitted in writing by Reliability, shall cause immediate termination of the Subscription.

(12) **Subscriber shall treat the Templates as Reliability’s trade secret property and as Confidential Information. Subscriber shall not disclose or grant access to the Templates to any third party except as expressly permitted by this Agreement.**

H. Exceeding the License Grant. Should Subscriber exceed the license grant for the Services (e.g., violate any prohibition contained in section 2.G of this Agreement) and not cure that violation (if this Agreement permits cure) within the time provided in this Agreement for cure of a contractual breach, and should Reliability deem it necessary to undertake litigation against Subscriber to protect Reliability’s interests, in such litigation, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs.

3. Intellectual Property Ownership; Trade Secret Property. The Software and Services are and shall remain the exclusive Intellectual Property of Reliability. The Templates are Reliability’s sole copyright and trade secret property. Subscriber does not acquire any ownership stake in the Software or Services because of this Agreement. Subscriber conclusively acknowledges, shall not challenge, and shall not voluntarily aide any third party in challenging Reliability’s Intellectual Property ownership of the Software and Services.

4. Methodology. The Software and Services contain a methodology for creating operational reliability analysis and root cause analysis (“**Methodology**”). Like the Software and Services, the Methodology is and shall remain exclusively the Intellectual

Property of Reliability. Subscriber's right to use the Methodology is limited to the express license to the Services granted herein. Subscriber shall not use the Methodology aside from using the Services as expressly licensed in the Agreement. Except where indicated otherwise expressly, all references to the Software or Services in this Agreement include the Methodology.

5. Subscriber Modifications to Templates. While section 2.E above allows Subscriber to modify the Templates, nevertheless all of the limitations stated in this Agreement apply to the modified version of the Templates, including the limitations in sections 2 and 3 above, and the confidentiality obligations stated in section 14.B. Subscriber may not seek copyright registration of modified Templates.
6. Services Use by Subscriber's Contractors. Subscriber's contractors may exercise on Subscriber's behalf Subscriber's entire license rights to the Services, provided that (i) the entire use of the Services by Subscriber's employees and contractors remains within the parameters stated in the Agreement, (ii) those contractors agree to not further disclose, transfer or allow access to the Services to third parties, (iii) such contractor usage is solely for Subscriber's internal business purposes, (iv) the contractors abide by the limitations in section 14.B of this Agreement ("Confidentiality"), (v) Subscriber does not exceed the number of Seats licensed (if Subscriber allows a contractor person to use the Service, that person's usage will count as a Seat used). Subscriber shall be liable for any breach of this Agreement by its contractors. This permission for use by contractors does not expand the number of Seats licensed to Subscriber or alter the rules stated in this Agreement regarding whether and when a Seat may be used by more than one person.
7. Subscriber Responsibilities.
  - A. Subscriber's Computer Environment. Subscriber is solely responsible for providing a proper environment and proper utilities for the computer system on which it will access the Services.
  - B. Internet Browser Compatibility. Reliability will endeavor to make the Services compatible with recent versions of the most popular Internet browsers, but Reliability has no responsibility to make the Services compatible with all Internet browsers or older versions of popular Internet browsers.
  - C. File Conversion. Except as agreed otherwise in writing, Reliability is not responsible for converting Subscriber's data files for use with the Services.
  - D. Data. Subscriber is solely responsible for the accuracy, completeness and integrity of all data that it submits to or derives from the Services. Subscriber shall indemnify and defend Reliability against any Claim made against Reliability by a third party asserting that the Services did not function properly or that it did not produce an accurate, complete or proper output. Sections 7 and 9 are the sole rights and sole remedies Subscriber has for any Claim by Subscriber concerning the function of the Services, even if Subscriber's Claim is based upon a Claim made against Subscriber by a third party.
  - E. IMPORTANT – Subscriber Must Exercise Judgment in Use. The Templates are only suggestions for possible paths of analysis for certain hypothetical situations that may need root cause analysis. The Templates may not identify all possible causes of failure in a particular situation. The Templates have not been customized to Subscriber's needs or purposes. None of the Templates may be appropriate for a Subscriber's particular needs or purposes. Subscriber is solely responsible for deciding whether and when it is appropriate to utilize any Template for root cause analysis. Subscriber is solely responsible for deciding whether and when a Template must be modified to conduct an appropriate root cause analysis. Subscriber is solely responsible for deciding which of its personnel may use the Templates. Subscriber shall indemnify and defend Reliability against any Claim made against Reliability by a third party based upon the content of the Templates or Subscriber's use of the Templates; this sentence does not include any claim asserting that the Templates constitute an intellectual property infringement (which is addressed in Section 12.B).
8. Template Substance Questions and Consultation. Reliability will be happy to answer questions regarding the content of the Templates, or to otherwise consult regarding the Templates' content and subject matter, on an hourly fee basis. Reliability may decline to provide such services if it determines it would not be able to provide substantial value in response to the Subscriber's request or if Reliability otherwise determines that it would be inappropriate for Reliability to do so.

Any such services will be performed at Reliability's then-current hourly fees, plus reimbursement of Reliability's travel expenses if Reliability will be performing these services at Subscriber's site. Reliability may require advance payment of services fees and anticipated travel expenses.

9. Reliability's Warranties and Covenants, Remedies and Disclaimer.

A. Uptime Warranty. During the Term, Reliability warrants and covenants that the Services will remain available and functional online, with exceptions for commercially reasonable downtime in line with other commercial software services for non-critical business functions, including such commercially reasonable downtime for maintenance and for repairing occasional technical difficulties (this is the "**Uptime Warranty**").

B. Subscriber Data Security Warranty. Reliability shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Data. Reliability shall not (i) modify Subscriber Data, (ii) disclose Subscriber Data except as compelled by law in accordance with Section 14.B(9) ("**Compelled Disclosure**") or as expressly permitted in writing by Subscriber or by this Agreement, or (iii) access Subscriber Data except to provide the Services or prevent or address service or technical problems, or at Subscriber's request. (This is the "**Subscriber Data Security Warranty.**") Nevertheless, despite the foregoing, should there occur a breach in the security of Subscriber Data (a "**Subscriber Data Security Breach**"), such as but not limited to disclosure by Reliability of Subscriber Data to an unauthorized third party or Reliability permitting an unauthorized third party to have access to Subscriber Data, then Reliability's sole notice obligation shall be to give notice to Subscriber of that Data Security Breach. It shall be Subscriber's sole responsibility (and not Reliability's responsibility) to give notice of the Subscriber Data Security Breach to any other person or party as required by applicable law or as may be prudent for legal or business reasons. Reliability shall have no responsibility for or liability for a Subscriber Data Security Breach other than as stated expressly in this Agreement.

C. Exclusive Remedy for Breach – Repair. Should Reliability breach the Uptime Warranty or the Subscriber Data Security Warranty, Subscriber's sole remedy shall be for Reliability to repair the Services by restoring them to the standard of the applicable warranty.

D. Exclusive Remedy for Breach – Refund. Should Reliability be unable to repair or replace the Services within such 30 Days after Notice of failure to meet the Uptime Warranty or the Subscriber Data Security Warranty, or any longer time permitted by Subscriber, then Subscriber may elect to terminate its Subscription to the Services (which includes the Templates) and, in that case, Reliability shall pay to Subscriber a pro-rata refund from Reliability for the Subscription fee it paid for the Services (which includes the Templates). That refund shall be prorated to cover the period of the Subscription Term from the date of delivery to Reliability of the Notice of termination to the end of the Subscription Term. Reliability shall pay any refund within 30 Days of the later of the effective date of a termination or the certification to Reliability of destruction of the Templates. In the case of Subscription termination, Subscriber's access to the Services will terminate immediately. **In the case of notice of termination, Subscriber shall cease all usage of the Templates, destroy all copies of them no later than the effective date of termination, and certify in writing to Reliability that it has done so.** Subscriber agrees that, if the Subscriber continues to keep and/or use the Templates after the date of certification of deletion and ended usage, it shall owe to Reliability twice the amount of the refund paid by Reliability as liquidated damages.

E. Warranty Disclaimer. Reliability provides only the covenants and warranties stated expressly in this Agreement. RELIABILITY MAKES NO OTHER COVENANTS OR WARRANTIES AS TO THE SERVICES, AND IT DISCLAIMS EACH OF THE FOLLOWING WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY LAW: (i) IMPLIED WARRANTY OF MERCHANTABILITY; (ii) IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, EVEN IF RELIABILITY HAS BEEN ADVISED OF SUCH PURPOSE; (iii) IMPLIED WARRANTY OF NON-INFRINGEMENT,

NON-MISAPPROPRIATION, AND NON-INTERFERENCE; (iv) IMPLIED WARRANTY OF ACCURACY OF THE WORK PRODUCT; AND (v) IMPLIED WARRANTY OF SYSTEM INTEGRATION. Subscriber agrees conclusively that no representations, warranties or covenants have been made to it regarding the Services other than those stated expressly in the Agreement.

10. Audit. Reliability may audit the business records and computer systems of Subscriber to ascertain whether Subscriber's use of the Services (which includes the Templates) has been and is within the scope of the Subscription granted to Subscriber, including but not limited to (i) the limitation of usage of Seats to specific Named Users and (ii) the confidentiality, trade secret, and handling rules for the Templates. Reliability shall provide Subscriber at least 30 Days' notice prior to the audit. Reliability may use contracted professionals to assist in the audit or to conduct it on behalf of Reliability, such as accountants and computer technicians. Reliability shall be responsible to Subscriber for ensuring that any such contracted professionals maintain the confidentiality of Subscriber's Confidential Information. Subscriber shall cooperate in any such audit by making relevant business records and computer systems available to Reliability and organized for review. Subscriber shall not destroy evidence of the extent of its use of the Services between the time of receipt of notice of an audit and the completion of the conduct of the audit; doing so shall create a presumption that Subscriber was willfully using the Services in excess of its license rights. Reliability may not audit more than once per calendar year unless a past audit by Reliability has demonstrated that the Subscriber was using the Services in excess of its license rights. If Reliability's audit does not uncover any exceeding of license rights, each Party shall bear all of its costs associated with the audit. If Reliability's audit reveals usage of the Services in excess of Subscriber's license rights, the Subscriber shall pay to Reliability its out-of-pocket costs associated with the audit plus Reliability's then-current list price for the unlicensed usage of the Services – the price Reliability charges to a Subscriber who does not presently have a Subscription to the Services and who is not entitled to any discounts. Subscriber shall pay such sums within 30 Days of written notice of the audit results from Reliability, and Subscriber shall pay interest at a rate of 1.5% per month on any sum not paid within such 30 Days. Should Reliability deem it necessary to utilize legal services to collect the sum due from Subscriber, Reliability shall be entitled to collect its reasonable

attorneys' fees and costs from Subscriber – both legal fees spent before and after the filing of suit. Reliability's rights and remedies stated in this section do not limit the other causes of action and remedies Reliability may have under the Agreement or applicable law.

11. Limitation on Liability.

A. FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR THE PAYMENT OF ANY CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST BUSINESS, LOST PROFITS, INTERRUPTED OPERATIONS, OR LOST OR DAMAGED DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RELIABILITY'S ENTIRE LIABILITY TO SUBSCRIBER FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER TO RELIABILITY UNDER THIS AGREEMENT.

B. Exception to Liability Limitations. The forgoing limitations of liability do not limit any of the obligations expressly stated in this Agreement for a Party to defend the other Party or to indemnify the other Party.

C. THE LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTIES, EXCLUSIVITY OF REMEDIES, AND OTHER LIMITATIONS IN THIS AGREEMENT ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES (WITHOUT WHICH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WOULD NOT OCCUR) AND WILL APPLY EVEN IF A REMEDY, WARRANTY, OR COVENANT FAILS IN ITS ESSENTIAL PURPOSE.

12. Intellectual Property.

A. Markings. Subscriber shall not remove or alter any Intellectual Property marking, confidentiality marking or legal notice on the Templates. Subscriber shall not permit others to do so. Subscriber shall not use or traffic in

any copy of the Templates in which such marking or notice has been removed or altered.

B. Intellectual Property Infringement by Reliability. Reliability shall defend and indemnify Subscriber against any third-party Claim based upon an allegation that the Services as provided to Subscriber by Reliability infringe upon or misappropriate any third party's U.S. copyright or trade secret or infringe a third party's U.S. patent. The foregoing obligations also will not cover any patent claim based upon a combination of the Software or Services (as applicable) with any other good, software or service. If an infringement or misappropriation Claim is asserted, or if Reliability believes one is likely, Reliability shall have the right, but not the obligation, (i) to procure a license from the person claiming or likely to claim infringement or misappropriation, and (ii) to modify or replace the Services to avoid the Claim of infringement or misappropriation. Modification or replacement of the Services for this purpose will not materially impair the Services operation or materially reduce its functionality or performance. THE FOREGOING STATES RELIABILITY'S ENTIRE LIABILITY AND CLIENT'S SOLE REMEDY IN CONNECTION WITH ANY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM ARISING OUT OF OR RELATED TO THE SERVICES (WHICH INCLUDES THE TEMPLATES).

13. Term and Termination; Renewal. The Agreement will remain in effect for the Subscription Term unless terminated earlier by a Party for a reason stated below.

A. Term. Unless expressly indicated otherwise by Reliability in writing, the Subscription Term is for one year measured from the date of the purchase of the Subscription by Subscriber.

B. Automatic Subscription Renewal. The Subscription (including the number of Seats licensed) shall automatically renew after each Subscription Term for an additional year unless the Subscriber notifies Reliability within 60 Days of the end of the Subscription Term that it chooses not to have the Subscription renew. Reliability will send a notice of planned automatic renewal, perhaps but not necessarily an automated one, to the Subscriber's account administrator for the Subscription. Reliability will send this notice 60 Days prior to the end of the then-current

Subscription Term. (This Subscriber account administrator is the person identified in that role by the Subscriber in Reliability's system.) A renewal starts a new, one-year Subscription Term. Reliability may charge the Subscriber's credit card on file with Reliability for the annual license fee for the Subscription renewal at Reliability's then-current annual Subscription rate. If this credit card charge fails, Reliability may immediately terminate the Services and notify Subscriber of such termination. Upon receipt of such notification, Subscriber may reinitiate the Services by providing a valid and working credit card sufficient to pay the renewal charge within 10 Days of such termination notice; such interruption in the Services shall not reset the anniversary date for renewal of the Subscription.

C. This Agreement may be terminated as follows:

(1) by either Party, upon Notice, if the other Party is in material breach of any of its obligations and the breach is not capable of being cured;

(2) by either Party, upon 30 Days' prior Notice, if the other Party is in material breach of any of its obligations, which breach is capable of being cured, and the breach has not been cured within the 30-Day Notice period;

(3) by Reliability, for any reason, with 30 Days' prior notice; and

(4) regardless of subsections 13.A-13.C above, if Subscriber breaches section 2.G of this Agreement ("Limitations on License Grant"), then Reliability may terminate this Agreement immediately, by giving Notice to Subscriber, without any opportunity for cure by Subscriber.

D. Services Termination. Reliability may and will terminate usage of the Services immediately upon the effective date of termination.

E. Return of Subscriber Data. Upon written request by Subscriber made before termination of the Services or within 30 Days after the effective date of termination of the Services, Reliability shall provide to Subscriber for download a file of the Subscriber Data in comma separated value (.csv) format along

with attachments in their native format. (Please note that such provided data will not appear in the form of flow charts, diagrams or the like.) After such 30-Day period, Reliability shall have no obligation to maintain or provide any of the Subscriber Data. After such 30-Day period, unless prohibited by law, Reliability may permanently delete the Subscriber Data.

F. Return or Destruction of the Templates. If the Agreement is terminated, then Subscriber shall immediately cease use of the Templates and shall immediately return or destroy all copies of the Templates. Upon Reliability's request given by Notice, Subscriber shall certify in writing within five Days of delivery of Reliability's Notice that it has completed this return or destruction.

G. Termination of this Agreement shall not bar either Party from pursuing any cause of action or remedy it may have available against the other Party for breach of the Agreement.

14. General Terms.

A. Assignment. Either Party may assign the Agreement to a Corporate Affiliate, successor to its business or purchaser of substantially all of its assets. Nevertheless, Subscriber may not assign this Agreement to any Competitor of Reliability; this prohibition includes assignment to Corporate Affiliates of Subscriber. Subscriber will not be relieved from liability under this Agreement by virtue of a permitted assignment unless Reliability approves the assignment and transfer of liability in writing. Reliability will not withhold such approval unreasonably. For Subscriber, any assignment shall not expand the license rights specified in this Agreement.

B. Confidentiality.

(1) **"Confidential Information"** means, collectively: (a) the trade secrets of a Discloser; (b) information that Discloser has kept confidential; (c) information that Discloser is obligated to keep confidential to some extent by law; and (d) information that a third party has provided to Discloser under an obligation of confidentiality.

(2) Confidential Information and Trade Secret Property of Reliability. The

Templates are Reliability's trade secret property. The Templates also are the Confidential Information of Reliability and do not need to be marked as such to have such status.

(3) Confidential Information of Subscriber. The Subscriber Data is the Confidential Information of Subscriber.

(4) **"Recipient"** means the Party receiving Confidential Information.

(5) **"Discloser"** means the Party that discloses, transmits or allows access to Confidential Information to Recipient.

(6) Marking. The Services, the Methodology, the Templates, and the Subscriber Data are Confidential Information and do not need to be marked as such to have such status. For any other information to have Confidential Information status, Discloser must mark it conspicuously as "Confidential Information" or with other words that convey the same meaning, unless federal, state or local law makes that type of information confidential (e.g., "protected health information" under HIPAA).

(7) Exclusions from Confidential Information. Confidential Information shall not include information that (a) constitutes general skills and experience gained under this Agreement; (b) is already known by Recipient at the time of disclosure; (c) is publicly available at the time of disclosure or subsequently becomes publicly available through no fault of Recipient; (d) is required to be disclosed by governmental or judicial order; (e) is rightfully acquired by Recipient from a third party who is not in breach of an agreement to keep such information confidential; or (f) is developed by personnel of Recipient independently of, and without access or exposure to, the Confidential Information. These exclusions shall not apply when federal, state or local law makes confidentiality mandatory regardless of whether the information might fit



one of these exclusions (e.g., “protected health information” under HIPAA).

- (8) Confidentiality Obligation. Except as expressly stated otherwise herein, Recipient shall not disclose Confidential Information, allow access to it or transfer it to third parties, or use it for any reasons other than performing this Agreement or exercising the license rights granted to it under this Agreement. Recipient shall take reasonable efforts to protect the confidentiality of Confidential Information, and shall protect it at least as carefully as it protects its sensitive confidential information. If a Recipient believes that there has been an unauthorized disclosure, access, transfer or use of Confidential Information, it shall notify Discloser as soon as possible.
- (9) Compelled Disclosure. The Recipient may disclose Confidential Information of the Discloser if it is compelled by law to do so, provided the Recipient gives the Discloser prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Discloser's cost, if the Discloser wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Discloser's Confidential Information as part of a legal proceeding (civil or criminal) (except for litigation initiated by one Party against the other Party), the Discloser shall reimburse the Recipient for its attorneys' fees and costs incurred in relation to this order and for Recipient's reasonable cost (including a reasonable charge for Recipient's time) of compiling and providing secure access to such Confidential Information.
- (10) Contractors. Recipient may disclose Confidential Information to its contractors provided that such contractors adhere to rules stated in this section 14.B, and such contractors use the Confidential Information solely to perform Recipient's obligations under this Agreement. A Recipient who

discloses Confidential Information to a contractor shall be liable for the contractor's handling of the Confidential Information as if the contractor was an employee of Recipient. Under no circumstances may Recipient disclose Confidential Information to a competitor of Discloser.

- (11) Term of Confidentiality. The confidentiality obligations under this Agreement shall last for five years from the termination or expiration of the Subscription. This time limitation shall not apply when federal, state or local law requires a longer confidentiality term or perpetual confidentiality (e.g., “protected health information” under HIPAA).
- (12) Special Confidential Information. It is possible that the Parties will need to exchange or allow access to Confidential Information that requires special handling or different rules, such as due to an obligation imposed by law (such as HIPAA). If so, the Parties will negotiate and execute a separate confidentiality agreement for such special information.

C. Taxes. Subscriber shall be solely liable for and pay the taxes resulting from this Agreement or any activities hereunder (exclusive of U.S. taxes (federal, state and/or local) on Reliability's gross and/or net income), even if Reliability does not collect the tax from the Subscriber. Among other things, this means that Reliability will not pay any taxes to any non-U.S. governmental entity arising from or related to this Agreement or the transactions it covers. Any taxes for which Subscriber is liable shall not reduce the amount due to Reliability under this Agreement. If either Party determines that a tax will be imposed for which Subscriber is responsible under this Agreement, Reliability may require Subscriber to prepay the tax to Reliability or the taxing authority, as appropriate, before Reliability continues with performing this Agreement. If Subscriber claims exemption from any taxes, at Reliability's request, Subscriber shall provide Reliability with documentation sufficient to support tax exemption. Subscriber shall indemnify, hold harmless and defend Reliability from any Claim asserted by a taxing authority arising from or related to

taxes owed (exclusive of taxes on Reliability's gross and/or net income) or purported tax exemptions, including all penalties and interest.

- D. Bribes Will Not Be Paid. Under no circumstances will Reliability pay, directly or indirectly, any bribe to any entity, including any non-U.S. governmental entity or non-U.S. governmental official. Any inability of Reliability to perform this Agreement due to a bribe request shall not be a breach of this Agreement by Reliability. Should any bribe request arise that impedes the performance of this Agreement, it is Subscriber's sole responsibility to defeat that request. The arising of any bribe request shall not excuse Subscriber from performing this Agreement, including Subscriber's payment obligations.
- E. Agreement Modification or Replacement. The Parties may agree to amend or replace this Agreement at any time in the future, including at any renewal (including automatic renewal as provided in section 13.B) of Subscriber's Subscription to the Services. Any such agreement must be in writing and assented to by an affirmative act by the party receiving the proposal for amendment or replacement. The written agreement may be in terms presented electronically, such as a computer screen presenting terms during the Subscription renewal process. Assent may occur by clicking a button labeled with the words "I Agree" (or with words of similar effect), or checking a box indicating assent to contractual terms, in response to such electronically presented terms (this is "Clicking Assent"). Regardless of the foregoing, Subscriber is bound by Clicking Assent even if the person doing so is not authorized by Subscriber to enter into contracts, and even if that person is not an employee of Subscriber (e.g., even if that person is a contractor or agent of Subscriber). Also, regardless of the foregoing, Subscriber will be bound by Clicking Assent even if no one affiliated with Subscriber reads the electronically presented terms and even if Clicking Assent occurs due to an automated process used by Subscriber. If Subscriber later wishes to review the terms to which it assented, Reliability will provide a copy upon request. Regardless of the foregoing, any contractual amendment or replacement proposed by Subscriber shall be binding upon Reliability only if the proposal is in writing and signed (by means of a handwritten signature, not an electronic signature) by an

officer of Reliability. This Agreement shall not be supplemented or modified by Subscriber's boilerplate contracting documents, including purchase orders, work orders, order acknowledgments and shipping documents. The boilerplate terms in such documents shall have no contractual effect unless Reliability agrees to them expressly and in writing.

F. Disputes.

(1) Resolving Disputes. This Agreement and the Parties' relationship shall be governed by and construed under the laws of the Commonwealth of Virginia and applicable federal law, and Virginia's choice of law rules shall not change this governing law. Any litigation between the Parties shall occur only in the state courts the City of Hopewell, Virginia, or the federal courts in the U.S. District Court for the Eastern District of Virginia (Richmond Division). **IN ANY LITIGATION, EACH PARTY WAIVES TRIAL BY JURY.** Subscriber consents to such personal jurisdiction and irrevocably stipulates that, by entering into this Agreement, such courts have personal jurisdiction over the Subscriber for all Claims arising from or related to this Agreement or its subject matter. In any state court litigation, depositions and interrogatory responses may be used in support or defense of motions for summary judgment. If Subscriber institutes litigation in any court other than those expressly permitted by this subsection, Subscriber shall pay all of Reliability's attorneys' fees, costs and expenses incurred in its attempting to enforce this subsection's mandatory personal jurisdiction provision.

(2) Limitation on Time to Assert a Claim. Each Party shall assert each Claim against the other Party arising from or related to the Services within two years of the later of the accrual of the Claim. A counterclaim is not barred if the Claim filed by the other Party is timely under this section. Otherwise, all Claims not made within the time provided by this section are waived and barred.

- G. Export Control. As of the date of the commencement of the Subscription,

Reliability does not have actual knowledge of any restriction upon using or exporting the Services to other countries or upon giving access to Services to foreign nationals. Nevertheless, Subscriber bears sole responsibility for compliance with all laws, regulations, rules and decrees concerning use, export or deemed export of the Services outside of the United States or to foreign nationals ("Export Control Laws"). Subscriber shall indemnify, hold harmless and defend Reliability from any Claim of violation of such Export Control Laws.

- H. Indemnity and Defense Obligations; Control of Defense. Wherever this Agreement states an obligation to defend, indemnify and/or hold harmless, the protection against third-party Claims extends not only to the benefited Party but also to that Party's officers, directors, Corporate Affiliates, managers, employees, agents, predecessors, successors and assigns. Whenever a Party performs its duties to indemnify and/or defend arising from this Agreement, provided that such Party performs all such duties, that Party shall exclusively control the defense and all related settlement negotiations, and the benefited Party shall cooperate fully with the acting Party. The benefited Party shall notify the defending Party as soon as possible of receiving notice of any Claim. The defending Party must obtain the benefited Party's prior approval, which the benefited Party shall not withhold unreasonably, to any settlement terms that will adversely affect the benefited Party, other than a money judgment against the benefited Party that the defending Party pays or an injunction against the benefited Party's use of computer programs. The benefited Party shall have the right, but no obligation, to participate in the defense of any Claim at its expense and through counsel of its choosing. Any obligation to indemnify contained in this Agreement includes the obligation to pay the reasonable attorneys' fees and costs of the indemnified Party in responding to the Claim incurred prior to the commencement of the defense or because of a failure to provide an adequate defense. No damages limitation in this Agreement shall limit an obligation in this Agreement to defend or indemnify or limit the damages for failing to defend or indemnify as expressly obligated to do so by this Agreement. If a Party fails to fulfill its obligation stated in this Agreement to defend or indemnify, the other Party may recover its reasonable attorneys' fees and costs in seeking

to enforce this obligation and/or to recover damages for its breach from the Party failing to indemnify and/or defend.

- I. Notices. Any Notice to Subscriber shall be provided at the address given in the online form created to initiate or renew the Subscription. Any notice to Reliability shall be directed to this contact and address:

Robert Latino, Chief Executive Officer, or Successor  
Reliability Center, Inc.  
501 Westover Avenue  
Suite 100  
Hopewell, Virginia 23860

Each Party may change its address by the means provided herein for giving Notice. Any Notices sent pursuant to this Agreement shall be in writing, and become effective when delivered by hand, or by FedEx or similar commercial carrier.

- J. Force Majeure. Reliability shall not be liable for any failure or delay caused by events beyond Reliability's reasonable control, including, without limitation, Subscriber's failure to perform its obligations in a timely fashion. Should Reliability be delayed from performing its obligations because of an event beyond its reasonable control, Reliability may and shall resume performance when the obstacle to performance is removed.
- K. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of the Agreement will remain in effect.
- L. Headings. The headings in this Agreement are only finding aids; they shall not be considered in interpreting this Agreement.
- M. Waiver. No waiver, by either Party, of any breach by the other Party of any of the terms of this Agreement shall be a waiver of any other breach of the same or other provisions; no such waiver shall be effective unless in a writing signed by the waiving Party.
- N. Drafter. This Agreement shall not be interpreted based upon any rule of construction against the drafter.
- O. Authorized Signer. Each person signing this Agreement represents and covenants that he or she has authority to do so on behalf of any

entity on whose behalf that person purports to be acting.

- P. Survival of Terms. Any terms of this Agreement that by their nature extend beyond the termination of this Agreement remain in effect post-termination. These surviving provisions include sections 1, 2.G, 2.H, 3-5, 7.D, 7.E, 9.C-9.E, 10-12, 13.D-13.G, and 14.