



PREDICTIVE SAFETY SOFTWARE AS A SERVICE AGREEMENT

This Predictive Safety Software as a Service Agreement (this “Agreement”) is entered into this ____ day of _____, 2021 (the “Effective Date”) by and between Predictive Safety SRP, Inc. (“PS”), a Colorado corporation, having its principal place of business at 951 20th Street, #13467, Denver, CO 80201, and _____, a _____ having its principal place of business at _____ (“Company”). PS and Company may be collectively referred to herein as the “Parties” and each individually as a “Party”.

RECITALS

A. WHEREAS, PS has developed and provides to its customers access and use of its proprietary impairment assessment software, known as AlertMeter®, and its real time worker fatigue management software, known as PRISM, on a Software as a Service basis, which collectively enables companies to assess their workforce for signs of impairment and to predict and manage worker fatigue to assist in the reduction of accidents on the job site (the “Platform”);

B. WHEREAS, PS also provides additional services to its customers with respect to the implementation and management of the Platform, as well as the preparation of reports and the development, monitoring, and deployment of health and safety initiatives in connection with the use of the Platform, as may be more specifically agreed upon from time to time (collectively, the “Services” and each a “Service”);

C. WHEREAS, Company desires to access and use portions of the Platform, as specified in a Service Order, and certain of the Services, as may specified in a Service Order from time to time, in connection with its ongoing health and safety initiatives, and PS is willing to provide such Platform and Services in connection therewith, on the terms and conditions set forth in this Agreement and in an applicable Service Order.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. DEFINITIONS. When used in this Agreement, the following capitalized terms shall have the meanings indicated below:

1.1 “**Account**” means Company’s account through which Company’s Designated Users can access and use the Platform.

1.2 “**Aggregated Data**” has the meaning set forth in Section 4.5(c).

1.3 “**Company Content**” means content or materials provided by Company, including content and materials made available to PS by Company for use in connection with the provision of the Platform and/or the performance of the Services, as well as any Intellectual Property Rights therein, excluding any portion of the Platform, the Services, and/or the Platform Content.

1.4 “**Company Data**” means any data supplied by Company to PS, as well as any data obtained by PS in connection with the provision of the Platform and/or the performance of the Services by PS on behalf of the Company that is related to Company, as applicable, including End User Data.

1.5 “**Confidential Information**” means any and all information disclosed by one Party to the other Party, directly or indirectly, in writing, orally, electronically, or in any other form, that is designated, at or before the time of disclosure, as confidential or proprietary, or that is provided under circumstances reasonably indicating that the information is confidential or proprietary, including, without limitation, trade secrets, business plans, technical data, product ideas, personnel, contract and financial information, and the terms of this Agreement and each Service Order, as well as, specifically in the case of PS, the Platform, Services and Technology and any Documentation or other proprietary materials describing the foregoing. Notwithstanding the foregoing, Confidential Information does

not include information that: (a) is or becomes generally available to the public through no breach of this Agreement or any other agreement by the recipient of the information; (b) is or was known by the recipient of the information at or before the time such information was received from the discloser, as evidenced by the recipient's tangible (including written or electronic) records; (c) is received from a third-party that is not under an obligation of confidentiality to the knowledge of the receiving Party with respect to such information; (d) is independently developed by the recipient of the information without any breach of this Agreement, as evidenced by the recipient's contemporaneous tangible (including written or electronic) records; or (e) is approved for release in advance in writing by the disclosing Party, as applicable. If Company is a government agency or instrumentality, PS's Confidential Information is "Confidential Commercial Information" for purposes of 5 U.S.C. § 552(b)(4) or any comparable state or local law.

1.6 **"Designated Users"** means the individual Company End Users designated by Company to access the administrative features of the Account, each of which will be assigned a unique user login and password.

1.7 **"Documentation"** means all operating manuals, user manuals, training materials, guides, product descriptions, product specifications, technical manuals, supporting materials, and other information relating to the Platform and/or Services available at www.predictivesafety.com/documentation.

1.8 **"End User"** means the individual employees, contractors, and agents of Company that have been provided with access to use the Platform by a Designated User (for clarity, a Designated User may also be an End User).

1.9 **"End User Data"** means the personally identifiable and non-personally identifiable information about an End User made available to PS and/or learned of by PS in connection with the performance of this Agreement, including the provision of the Platform and/or the Services.

1.10 **"Intellectual Property Rights"** means any copyright, trademark, service mark, trade name, patent, patent application, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right arising under the laws of any jurisdiction, whether registered or unregistered.

1.11 **"Platform"** has the meaning specified in Recital A hereof, as well as all Technology related thereto.

1.12 **"Platform Content"** means all audio and visual information, materials, Software, Technology, and other information made available by PS to the Company and/or its Designated Users in connection with the provision of the Platform, but specifically excludes any Company Content.

1.13 **"Policies"** means such criteria or specifications, including data use limitations, technical specifications, privacy policies, and user experience policies, as may be specified by a Party in a Service Order, or as otherwise provided by PS upon written notice to Company, from time to time.

1.14 **"Service(s)"** has the meaning specified in Recital B hereof, as may be more particularly identified in a Service Order.

1.15 **"Service Data"** means query logs, and any data (other than Company Data) relating to the usage of the Platform and Services by Company and its Designated Users and End User and/or the operation, support, and performance of the Platform and/or Services.

1.16 **"Service Order"** means a service order that incorporates this Agreement by reference and is signed by both Company and PS, pursuant to which PS agrees to provide all or a portion of the Platform and/or one or more Services.

1.17 **"Site"** means any location from which the Company and/or any of its End Users and/or Designated Users accesses and/or uses the Platform, as may be more particularly described in an applicable Service Order.

1.18 **"SLA"** means the Service Level Agreement attached hereto as Exhibit A.

1.19 “**Software**” means all software code comprising all or a portion of the Platform, made available by PS for use by Company, including any modified versions, updates or upgrades of the Software that may be provided to Company by PS, but does not include source code for the Software.

1.20 “**Support Services**” means those Services comprises of maintenance, support, and training services provided to Company by PS.

1.21 “**Technology**” means any Software or technology incorporated in or made available through the Platform and/or Services by PS to Company.

1.22 “**Update**” means a bug fix, patch, improved feature or functionality, or other revision to or modification of the Platform provided by PS to Company, including those it makes generally available to its other customers, but specifically excluding Upgrades.

1.23 “**Upgrade**” means a new module or add on component for the Platform, as determined by PS in its sole discretion, which shall only be available to Company upon signing a Service Order with respect thereto.

2. PLATFORM AND SERVICES

2.1 Use of Platform and Services.

(a) Subject to the terms and conditions of this Agreement and the execution of a Service Order between the Parties which sets forth the applicable portions of the Platform that Company shall have access to and the commercial terms with respect thereto (e.g., number of End Users and fee structure), PS hereby grants Company the right to access and use those portions of the Platform specified in the Service Order during the term set forth therein through Company’s Account for itself, its Designated Users, and its End Users for the purpose of assessing its workforce for signs of impairment and/or to predict and manage worker fatigue to assist in the reduction of accidents and incidents on Site.

(b) PS shall also provide Company with such additional Services as may be set forth in a Service Order from time to time in furtherance of Company’s use of the Platform. The Services may be modified upon the mutual written agreement of Company and PS by amendment of such Service Order, executed by both Parties. Each Service Order shall set forth the specific Services to be provided, the commercial terms related thereto, and such other terms or conditions applicable to such Services to the extent not set forth herein, including, as appropriate, deliverables, milestones, specifications, functionality, acceptance procedures and criteria, and other relevant terms.

(c) PS will provide Company with that number of user logins and passwords set forth on a Service Order for its Designated Users to access the Company’s Account and for its End Users to use the Platform, which numbers may be increased from time to time, subject to the payment of any additional fees with respect to additional Designated Users and/or End Users as may be set forth in the applicable Service Order. Company may replace a Designated User upon written notice to PS. Company and its Designated Users shall not share the user logins and passwords with, or otherwise allow access to the Platform, Services and Account by, any other individuals other than the Designated Users. Company shall provide to PS all required information, which must be correct, current and complete, in order to create the Account. Company is responsible for maintaining the confidentiality of the user logins and passwords Company is given to access the Account, and Company is fully responsible for all activities that occur under the Account, including activities of its Designated Users. Company shall maintain all reasonable security measures to ensure that access to the Platform and Services is adequately protected, including without limitation as to confidentiality, authenticity and integrity and shall comply with all PS’s reasonable Policies with respect to same. Company shall notify PS immediately of any unauthorized use of Company’s user logins and passwords.

(d) Subject to the terms and conditions of this Agreement, PS shall also provide Company with support services with respect to the Platform, including, except to the extent already addressed by the Documentation, (i) email support as specified in the SLA or an applicable Service Order or, outside of the foregoing, as reasonably requested by Company in writing (email sufficing) at PS’s then current rate card, (ii) training to Designated Users

with respect to the use of the Platform sufficient to enable such Designated Users with reasonable requisite skills to use and train other Designated Users and End Users to use the Platform as contemplated herein, and (iii) Updates, as and when made available by PS to its customers generally. Updates shall be made available to Company with reasonable notice. Updates shall be deemed a part of the Platform upon installation.

(e) PS reserves the right to update and modify the functionality of the Platform, including via Updates, and the scope of Services from time to time in its sole discretion, without notice to Company, provided that no Upgrade or other modifications will result in a material reduction in the functionality of the Platform or scope of Services. Notwithstanding the foregoing, if, as a result of a force majeure event and/or change in applicable laws, rules, and/or regulations, PS is required to materially modify the functionality of the Platform and/or scope of Services in a manner that represents a material reduction and/or deterioration of such functionality, PS shall provide Company with at least thirty (30) days prior written notice of such change, the reasons therefore, and the Parties shall work together in good faith to negotiate any Service Order amendments, including as to Fees (as defined below) that may be required in connection with such changes. If Company is unable or unwilling to agree to an amendment to accommodate the material reduction and/or deterioration of Platform functionality and/or Service scope, Company may instead terminate the applicable Service Order upon thirty (30) days prior written notice (email sufficing) to PS.

2.2 Company Obligations.

(a) Company shall provide PS with all reasonable cooperation and technical support necessary and/or appropriate to fully implement the Platform and/or Services, as applicable. Specifically, Company shall ensure that all Updates provided to it by PS have been integrated within thirty (30) days of PS making them available to Company.

(b) As of part of its use of the Platform, Company, its Designated User, and its End Users will submit, upload, publish or otherwise make available Company Data to PS, which shall include Company Data passively or actively collected by the Platform in connection with the use thereof. Company grants all rights and permissions in or relating to Company Data: (a) to PS, its personnel and subcontractors as are necessary or useful to perform its obligations and/or exercise its rights under this Agreement and/or under an applicable Service Order. Subject to PS's rights with respect to Service Data and Aggregated Data as set forth in this Agreement, PS will not disclose or share the Company Data with third parties without Company's express consent or otherwise as permitted by applicable law and will treat such Company Data as Confidential Information.

(c) Exclusive of any Technology comprising a part of the Platform and Services, Company shall be solely responsible, at its sole cost and expense, for (i) providing and maintaining all hardware, software, electrical and other physical requirements necessary for Company's use of the Platform and Services, including, without limitation, telecommunications and Internet access connections and links, web browsers, bandwidth, or other equipment, software and services required to access and use the Platform and Services, (ii) ensuring that all of the foregoing are compatible with the Platform and Services, and (iii) complying with all system requirements provided by PS, including without limitation, as set forth in the Documentation. Company's failure to abide by the foregoing may result in disruptions to the Platform and/or Services and PS shall not be liable for any such failure notwithstanding anything to the contrary set forth herein.

(d) Company will promptly disable the credentials of any Designated User and/or End User that is terminated from employment with Company. If Company is unable to disable such credentials for any reason, Company shall notify PS within five (5) business days of such determination. Company understands and agrees that any Designated User and/or End User accounts, whether active or disabled, will be treated as licensed End Users for purposes of this Agreement and each Service Order. Company understands and agrees that it may also delete any End User, but that by deleting the End User all Company Data associated with that End User account will be deleted permanently and without further opportunity to retrieve same.

(e) Company shall: (a) avoid deceptive, misleading, or unethical practices that may be detrimental to PS or the Platform; (b) not make any representations, warranties or guarantees to any third party or entity on behalf of PS, concerning the Platform or its operation, usefulness or performance; (c) assume all costs, expenses, liabilities and responsibilities for the information and data, including Company Data, input to the Platform; (d) assume all costs, expenses, liabilities and responsibilities in connection with any use, analysis, reliance, accuracy

or guarantee of the Platform; and (e) comply with all applicable federal, state and local country laws, internet laws and regulations and international treaties and pacts with respect to the subject matter of this Agreement.

2.3 **Permitted Use; Limited License.** Subject to Company's compliance with all the terms and conditions of this Agreement and any additional usage requirements, restrictions, documentation and Policies as may be agreed by the Parties in a Service Order and/or that PS may provide to Company from time to time upon written notice to Company, PS hereby grants to Company a limited, revocable, non-transferable, non-sublicensable, non-assignable, non-exclusive license and right to access and use the Platform (as limited by each applicable Service Order) along with any subsequent Updates thereto, during the Service Order Term, solely for the purpose of assessing its workforce for signs of impairment and/or to predict and manage worker fatigue.

2.4 **Restrictions.** Company agrees that Company will not, nor will Company allow or facilitate a third party to, directly or indirectly (a) reproduce or modify the Platform and/or Services, (b) use any device, software or routine or take any action to interfere with or circumvent the proper working of the Platform and/or Services, (c) unless otherwise approved by PS in writing, use any automated means, including, without limitation, agents, robots, scripts or spiders, to access, monitor or copy the Platform and/or Services, except as may be set forth in a Service Order, (d) use the Platform and/or Services in any manner other than as permitted by this Agreement, and/or (e) use the Platform and/or Services for any illegal or unlawful purpose, including without limitation to discriminate against any third party, including without limitation, any End User. Without limiting the foregoing, Company further agrees that it will not take any action that imposes an unreasonable or disproportionately large load on the Platform infrastructure, as reasonably determined by PS. PS reserves all rights not expressly granted under this Agreement.

2.5 **Third Party Integrators.** Unless otherwise provided as part of the Services, Company shall be solely responsible for all actions of and agreements with third parties engaged by Company to provide any integrations of the Platform and/or Services with Company's infrastructure.

3. FEES AND PAYMENT TERMS.

3.1 **Fees.** Company shall pay PS the fees for access and use of the Platform (the "Platform Fee") as are set forth in a Service Order. Additionally, Company shall pay PS the Service fees set forth in a Service Order with respect to the Services to be provided pursuant thereto (the "Service Fees" and together with the Platform Fee, collectively the "Fees"). Unless otherwise stated in a Service Order, all Fees will be due and payable in full within thirty (30) days of the date of PS's invoice to Company. PS reserves the right to charge a late fee of 1.5% of the invoice's value per month, or the highest rate allowed by applicable law, whichever is lower, if payment in full is not received by the due date, except that if the Company is a part of the U.S. Government, interest shall be calculated in accordance with the Prompt Payment Act and its implementing regulations. In addition, PS reserves the right to terminate and/or suspend the provision of Platform and/or Services hereunder upon ten (10) days prior written notice to Company of a failure to timely pay an invoice. Company shall be liable for all costs of collection, including attorneys' fees and costs. All payments under this Agreement or an applicable Service Order shall be in U.S. Dollars.

3.2 **Dispute Resolution.** In the event Company disputes any Fees owed to PS pursuant to this Agreement or an applicable Service Order, it must provide written notice of such dispute within thirty (30) days of the date a disputed amount was otherwise due and owing to PS. Upon timely submission of a notice of dispute pursuant to this Section 3.2, the Parties will work in good faith to resolve this dispute for a period of thirty (30) days and if, at the end of such thirty (30) day period, no resolution has been reached, the applicable Platform and/or Services may be immediately terminated by PS and the Parties may pursue their respective rights under applicable law. In the event a notice of dispute is not timely received, Company shall be deemed to have conclusively accepted the accuracy of PS's calculation of Fees under the applicable invoices and waives any further rights to challenge or dispute such compensation calculation.

3.3 **Expenses.** Company agrees to pay the reasonable and necessary actual out-of-pocket expenses as reasonably incurred by PS in furtherance of its performance of any Services, provided such expenses are identified in a Service Order. Upon request, PS will provide copies of supporting documentation as may be reasonably appropriate for Company or its accountants to confirm the nature and amount of any such expenses. PS shall invoice the Company for all expenses in the same manner as with fees for the Platform and/or Services and such invoices

shall be subject to the same terms as invoices for fees set forth in Section 3.1 above. All expenditures by PS in a calendar month during the Term shall require the prior written consent of Company (email sufficing).

3.4 **Taxes.** Company shall be responsible for paying all federal, state, local, foreign or other taxes, duties, tariffs or other charges, however designated, arising from or based upon this Agreement and any Service Order, or the transactions contemplated by either of them, except for taxes based on PS's income, provided all such taxes, duties, tariffs and other charges are clearly set forth in the invoice issued by PS.

4. INTELLECTUAL PROPERTY

4.1 **Proprietary Rights.** As between PS and Company, PS owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Platform, including all Updates and Upgrades thereto, and the Services. Use of the Platform and the Services for any purpose not set forth in this Agreement or an applicable Service Order is prohibited. Company acknowledges such ownership and will not take any action to jeopardize, limit or interfere in any manner with PS's rights with respect to the Platform and Services and shall execute such documents as are reasonably necessary to vest in PS any of ownership rights that Company may acquire by operation of law or otherwise. The Platform and Software are protected by copyright and other intellectual property laws and by international treaties. As between PS and Company, Company owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Company Content and, subject to Section 4.5 hereof, the Company Data. PS acknowledges such ownership and will not take any action to jeopardize, limit or interfere in any manner with Company's rights with respect to the Company Content and the Company Data. Company agrees and acknowledges that unless specifically agreed to in writing by PS, all works created by PS, including, but not limited to, modules and additional features, even if created for Company and/or paid to be created by Company will be owned in full by PS.

4.2 **No Reverse Engineering.** Except as provided in Section 2.3 above, Company has no rights or licenses with respect to the Platform and/or Services. Without limiting the generality of the foregoing, except as expressly provided in this Agreement, Company may not (a) sell, resell, copy, distribute, rent, lease, lend, sublicense, transfer, assign or make the Platform and/or Services available to any third party or use the Platform and/or Services on a service bureau, (b) modify, decompile, reverse engineer, or disassemble the Platform and/or Services or otherwise attempt to derive any of PS's Intellectual Property Rights in the Platform and/or Services, except as permitted by applicable law, (c) create derivative works based on the Platform and/or Services; (d) modify, alter, delete, remove, or obscure any copyright, trademark, patent or other proprietary notices or legends that appear on or are affixed to the Platform and/or Services during the use and operation thereof; or (e) copy any of the Documentation. As between Company and PS, any changes to, modifications to, or derivative works of the Platform, Technology, and/or Services shall become the exclusive property of PS.

4.3 **No License.** Nothing in this Agreement shall be deemed to grant Company any license to use the Platform and/or Services other than as expressly stated herein or in an applicable Service Order.

4.4 **Feedback.** Company may, but is not obligated to, provide or submit any suggestions, feedback, comments, ideas, or other information relating to the Platform and/or Services or modifications or enhancements thereto (the "Company Input"). Any Company Input is provided on a non-confidential basis regardless of any suggestion to the contrary in any Company communication, and Company hereby grants PS a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable, transferable right and license to exploit such Company Input (directly or through third parties) in any manner without compensation or liability to Company for any purpose whatsoever, including, but not limited to, developing, manufacturing, enhancing, improving, promoting, and marketing PS's products and services, including the Platform and Services.

4.5 **Data Use.**

(a) **Company Data.** In connection with its use of the Platform and Services, Company and its End Users will submit, upload, publish or otherwise make available Company Data. Company hereby grants all rights and permissions in or relating to Company Data to PS, its personnel and subcontractors as are necessary or useful to (i) provide the Platform and perform the Services and/or as necessary to prevent or address service or technical

problems with respect to the Platform and/or Services; and (b) exercise its rights and perform its obligations hereunder. Subject to PS's rights with respect to Service Data and Aggregated Data as set forth herein, PS will not disclose or share the Company Data with third parties without Company's prior written consent or otherwise as permitted by applicable law and will treat such Company Data as Confidential Information.

(b) **Service Data.** Notwithstanding anything to the contrary in this Agreement, PS has the right to collect and use Service Data to develop, improve, support, and operate its products and services during and after the Term of this Agreement, including the Platform and the Services. Company hereby unconditionally and irrevocably assigns to PS all right, title and interest in and to the Service Data, including all Intellectual Property Rights therein. Notwithstanding the foregoing, nothing set forth herein shall be deemed to give PS the right to identify Company as the source of any Service Data without the prior written consent of the Company.

(c) **Aggregated and De-Identified Data.** Notwithstanding anything to the contrary, PS shall have the right to collect, compile, and analyze data and other information relating to the provision, use and performance of various aspects of the Platform and Services (including, without limitation, information concerning Company Data and data derived therefrom, provided that such data (i) relates to a group or category of individuals from which individual identities have been removed, and that is not linked or reasonably linkable to any individual; or (ii) cannot reasonably identify, relate to, describe, be associated with, or be linked to a particular individual, and that PS has implemented technical safeguards and business processes to prohibit re-identification of Company Data) (collectively, "Aggregated Data"). Company hereby grants PS a royalty-free, fully-paid, transferable license to create and use Anonymous Data as described herein. Company agrees that, once created, Anonymous Data is not Company Data. Company also hereby grants PS a perpetual, worldwide, irrevocable, royalty-free, fully-paid, transferable license, with the right to grant sublicenses, and PS will be free (during and after the term of the Agreement), to (i) use such Aggregated Data to improve and enhance the Platform, the Services, and other PS products and services and for other development, diagnostic and corrective purposes in connection with the Platform, the Services and other PS offerings, and (ii) use, disclose and distribute Aggregated Data solely in connection with its business, including, without limitation, for training, marketing and promotional efforts (collectively, "PS Analytics"). No compensation will be paid by PS with respect to its use of the PS Analytics.

5. CONFIDENTIALITY

5.1 **Restrictions on Use and Disclosure.** Each Party agrees: (a) to protect and safeguard the other Party's Confidential Information against unauthorized use, publication or disclosure with the same degree of care that it uses to protect the confidentiality of its own Confidential Information and, in any event, not less than reasonable care; (b) to restrict access to the other Party's Confidential Information to those of its officers, directors, employees, agents, attorneys, accountants, investment advisors, and contractors who have confidentiality obligations that afford the Confidential Information a substantially similar level of protection as is afforded by this Agreement; and (c) not to use, or permit others to use, the other Party's Confidential Information except as is reasonably necessary to perform its obligations or exercise its rights under this Agreement. Each Party shall return or destroy all Confidential Information of the other Party upon the termination or expiration of this Agreement or upon the request of the other Party; provided, however, neither Party shall be required to return or destroy information or materials that it must retain during or after termination or expiration of this Agreement in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement or in order to remain compliant with a valid law, regulation, or court or administrative order.

5.2 **Exceptions.** Notwithstanding any other provision of this Agreement, each Party may disclose Confidential Information of the other Party if such disclosure is required by an order of a court or other governmental authority, law or regulation, but only to the extent that any such disclosure is necessary and after notice to the other Party if practicable and lawfully permitted to do so. In such case, the Party required to make the disclosure shall, at the other Party's expense, assist the other Party in obtaining an order protecting the Confidential Information from public disclosure, or in otherwise minimizing and limiting the breadth and scope of such disclosure.

5.3 **Confidentiality of Agreement.** Each Party agrees that the terms and conditions, but not the existence and general nature, of this Agreement and each Service Order shall be treated as Confidential Information, provided, however, that each Party may disclose the terms and conditions of this Agreement and a Service Order: (a) as required by any court or other governmental body, subject to the provisions of Section 5.2; (b) in connection with

an initial public offering or other securities filing; (c) to legal counsel of the Parties; (d) in confidence, to accountants, banks, and financing sources and their advisors; (e) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement or a Service Order; or (f) in confidence, in connection with an actual or prospective merger, acquisition or similar transaction, provided that the Party seeking to so disclose pursuant to (a), (b), or (f) above must provide advance written notice to the non-disclosing Party of any proposed disclosure, to the fullest extent lawfully allowed, and provide the non-disclosing Party with an opportunity to request appropriate protections of its Confidential Information (e.g., protective order or confidential treatment) and shall assist in such efforts using its reasonable best efforts.

5.4 **Remedies.** Each Party understands and acknowledges that any disclosure or misappropriation of any of the disclosing Party's Confidential Information in violation of this Agreement may cause the disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the disclosing Party shall deem appropriate. Such right of the disclosing Party shall be in addition to the remedies otherwise available to the disclosing Party at law or in equity.

6. TERM AND TERMINATION

6.1 **Term.** Unless terminated earlier by either Party in accordance with Section 6.2, this Agreement shall commence on the Effective Date and remain in effect for a period of one (1) year or until all Service Orders entered into hereunder have expired or been terminated in accordance with their terms, whichever is longer (the "**Initial Term**"). Notwithstanding the foregoing, this Agreement shall be automatically renewed for additional, successive terms of twelve (12) months (each, a "**Renewal Term**") unless, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, either Party provides the other Party with written notice of its desire not to renew this Agreement. Such right of non-renewal may be exercised by either Party, with or without cause. Each Service Order shall have the applicable term and any renewal term set forth therein (collectively, the "**Service Order Term**").

6.2 **Termination/Suspension.** This Agreement and the provision of the Platform and/or Services may be terminated immediately upon written notice:

(a) by either Party if the other Party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach; or

(b) by PS immediately in the event of a breach by Company of Sections 2.3, 2.4 and/or 4.2 hereof; or

(c) by either Party (i) if the other Party becomes insolvent, (ii) makes an assignment for the benefit of creditors, (iii) files or has filed against it a petition in bankruptcy or seeking reorganization, (iv) has a receiver appointed, or (v) institutes any proceedings for the liquidation or winding up; provided, however, that, in the case any of the foregoing is involuntary, such Party shall only be in breach if such petition or proceeding has not been dismissed within ninety (90) days.

6.3 **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement: (i) PS shall deauthorize Company's End User and Designated User logins and passwords and terminate Company's access to the Platform and/or Services, and Company shall immediately cease all use of the Platform and Services. Additionally, (a) both Parties will destroy or return, as requested by the disclosing Party, all Confidential Information of the disclosing Party and copies thereof, and (b) Company will promptly (not to exceed fifteen (15) business days) pay any Fees owed or incurred to PS prior to such termination or expiration. This Section 6.3 is not intended to limit any remedies that may be available to a Party for an improper termination or breach of this Agreement or any applicable Service Order by the other Party. In the event of a termination of this Agreement and/or a Service Order as a result of Company's breach of this Agreement or the applicable Service Order, Company acknowledges and agrees it shall be required to pay all Fees through the end of then-current Service Order Term.

6.4 **Survival of Provisions.** Sections 1, 2.4, 3, 4, 5, 6.3, 6.4, 7.4, 7.5, 7.6, 8, 9 and 10, as well as any other terms hereof that by their intent or meaning would reasonably be deemed as intended to so survive, shall survive any termination or expiration of this Agreement. No termination hereunder shall constitute a waiver of any rights or causes of action that either Party may have based upon events occurring prior to the termination date.

6.5 **Access to Company Data.** Company, at Company's expense, shall be entitled to obtain its Company Data at any time during the Term of this Agreement and for ninety (90) days after termination (the "Transition Period") by submitting a written request to PS. Depending on the volume of the Company Data, PS will, within 30 days of the request, either post a link allowing Company to download the Company Data or work with Company to deliver the data on other digital media or by an automated data feed in a format mutually agreed upon by the Parties. PS shall have no other obligation to save Company Data or to send Company Data to Company. In the event Company fails to pay undisputed invoices, PS shall not be obligated to retrieve Company Data. Company agrees and acknowledges that, while PS is entitled to continue to use Company Data as outlined in this Agreement, PS has no obligation to retain Company Data and that such Company Data may be irretrievably deleted (or otherwise disabled) after the Transition Period. If PS is requested to retain the Company Data for longer than ninety (90) days, Company agrees and acknowledges that Company will be responsible for payment for such services.

7. Warranties.

7.1 **Mutual Warranties.** Each Party hereby represents, warrants, and covenants to the other that: (a) it has the power to enter into and perform this Agreement; (b) the execution of this Agreement and each Service Order has been duly authorized by all necessary corporate action of the Party; (c) this Agreement and each Service Order constitutes a valid and binding obligation on the Party, enforceable in accordance with its terms; (d) no consent or approval of any other person or governmental authority is necessary for this Agreement to be effective; (e) neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated by it or an applicable Service Order would constitute a default or violation of the Party's charter documents and/or other agreements; and (f) it will comply with all applicable laws in the performance of its obligations under this Agreement.

7.2 **PS Warranties.** PS hereby represents and warrants that the Platform does not and will not violate or infringe upon the Intellectual Property Right of any third party. PS further represents and warrants that (a) no portion of the Platform will knowingly contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines, and (b) it will only use Company Data in connection with the provision of the Platform and/or the performance of the Services on behalf of Company, or as otherwise provided in this Agreement. PS shall: (a) implement reasonable and appropriate technical and organizational measures designed to protect Company Data from and against any accidental or unlawful destruction or any accidental loss, alteration, unauthorized disclosure, use or access; and (b) process Company Data in accordance with Company's instructions, except as otherwise permitted in this Agreement. PS will provide commercially reasonable levels of security for all Services provided by PS hereunder and networks being utilized by PS in connection with the provision of the Platform and/or Services hereunder. PS further represents and warrants that the Platform shall at all times perform in accordance with the SLA, provided that (i) PS's sole liability and Company's sole recourse for any breach of the SLA is as set forth in the SLA, notwithstanding anything to the contrary set forth in this Agreement, and (ii) no remedy set forth in the SLA shall be available if Company (a) fails to assert a claim pursuant to the SLA within thirty (30) days of the date that Company first identified the SLA issue, and/or (b) the SLA breach was caused as a result of Company's breach of this Agreement and/or an applicable Service Order.

7.3 **Company Warranties.** Company hereby represents and warrants that (a) it shall comply with the undertakings set forth in Section 2.2 hereof; (b) the Company Data provided to PS has been collected, stored and processed by Company and has been supplied to PS in accordance with all applicable laws and the applicable Privacy Policy of the Company; (c) the Company Data and Company Content does not and will not violate or infringe upon the Intellectual Property Right of any third party; (d) none of the Company Data and/or Company Content will contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines; and (e) the Company Content does not (i) discriminate against any person on the basis of race, sex, religion, nationality, disability, sexual orientation or age, or (ii) violate state or federal laws, including privacy or publicity, consumer protection and data protection laws.

7.4 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE PLATFORM AND SERVICES PROVIDED BY PS PURSUANT TO THIS AGREEMENT AND ANY SERVICE ORDER ARE BEING PROVIDED TO COMPANY, "AS IS, WITH ALL FAULTS." EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PS DOES NOT WARRANT THAT THE PLATFORM AND/OR SERVICES WILL (I) BE UNINTERRUPTED; (II) BE FREE FROM INACCURACIES, ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS; (III) MEET COMPANY'S REQUIREMENTS; OR (IV) OPERATE IN THE CONFIGURATION OR WITH THE HARDWARE OR SOFTWARE COMPANY USES. COMPANY'S USE OF THE PLATFORM AND SERVICES IS SOLELY AT COMPANY'S RISK. WITHOUT LIMITING THE FOREGOING, COMPANY ACKNOWLEDGES AND AGREES THAT THE PLATFORM AND SERVICES AND THE USE THEREOF MAY CONTAIN OR REFLECT DATA FROM THIRD PARTIES, AND PS MAKES NO GUARANTEE AS TO THE TIMELINESS, ACCURACY, RELIABILITY, AVAILABILITY, LOCATION, FREQUENCY OF UPDATES, OR ANY OTHER ASPECT REGARDING THE CHARACTERISTICS OR USE OF THE INFORMATION PRESENTED. COMPANY ACCEPTS SOLE RESPONSIBILITY AND RISK ASSOCIATED WITH THE USE OF THE THIRD PARTY DATA PROVIDED. THE PROVISION OF THE PLATFORM BY PS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PS SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THE COMPANY ASSUMES ALL LIABILITIES, RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO ANY RELIANCE ON THE SYSTEM, REPORTS OR COMPANY DATA; AND ACKNOWLEDGES THAT THE SYSTEM, REPORTS, AND CONTENTS THEREOF, ARE ONLY FOR REFERENCE PURPOSES AND ARE SIMPLY A SINGLE TOOL TO BE USED IN AN ANALYSIS OF ANY PREDICTABILITY IN CONNECTION WITH ISSUES REGARDING EMPLOYEE IMPAIRMENT; AND ARE NOT TO BE RELIED UPON, SOLELY, WITH RESPECT TO ANY BUSINESS DECISIONS OR SAFETY ACTIONS OR ACTIVITY. ANY COMPANY DATA INPUT IS THE SOLE RESPONSIBILITY OF THE COMPANY, AND THE COMPANY ASSUMES THE ENTIRE LIABILITY FOR THE ACCURACY AND RELIABILITY OF ANY COMPANY DATA OR REPORT GENERATED THEREFROM, AND PS MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE FOREGOING. COMPANY'S EXCLUSIVE REMEDY (AND PS'S SOLE OBLIGATION) FOR VIOLATION OF ITS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE FOR PS TO PROMPTLY REPLACE THE DEFECTIVE PORTIONS OF THE PLATFORM; PROVIDED THAT IF PS IS UNABLE TO REPLACE THE SAME WITHIN 90 DAYS OF NOTIFICATION BY COMPANY OF A BREACH, COMPANY'S SOLE REMEDY IS TO TERMINATE THIS AGREEMENT, AT WHICH TIME PS WILL REFUND AN EQUITABLE PORTION OF ANY FEES PAID IN ADVANCE BY COMPANY PURSUANT TO THIS AGREEMENT.

7.5 **No Legal Advice.** PS EMPLOYEES, CONSULTANTS, REPRESENTATIVES OR CONTRIBUTORS ARE NOT AUTHORIZED TO GIVE ADVICE, INTERPRETATION, EXPLANATION OR ANALYSIS OF ANY REPORT GENERATED NOR MAY THE COMPANY RELY OR USE SUCH ADVICE IF SO GIVEN FOR ANY PURPOSE. IF COMPANY HAS ANY QUESTIONS OR SEEKS ANY ADVICE REGARDING THE DATA CONTAINED IN ANY REPORT, COMPANY SHOULD CONTACT ITS OWN LEGAL COUNSEL.

7.6 **Use of System Result.** Company agrees and acknowledges that the Platform only provides information about how an End User performs based on the tests available through the Platform. The Platform is not intended to provide complete information as to whether someone is unable to perform their assigned duties. Rather, the Platform is intended to be a first test that, if failed, such failure is reported to those individuals listed in End User's profile so face to face interaction can occur to determine End User's ability to perform further services. Company agrees and acknowledges that it should have additional policies and procedures in place to ensure that a safe working environment is provided to all employees and third parties.

8. LIMITATIONS ON LIABILITY AND INDEMNITY

8.1 **Exclusion of Damages.** PS WILL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES RELATING TO LOST PROFITS, LOST DATA OR LOSS OF GOODWILL) ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, REGARDLESS OF WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, AND EVEN IF PS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8.2 **Limitation on Liability.** NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, IN NO EVENT WILL PS'S LIABILITY UNDER THIS AGREEMENT OR AN APPLICABLE SERVICE ORDER EXCEED THE GREATER OF THE AMOUNT OF FEES PAID BY COMPANY TO PS IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION RELATING TO SUCH LIABILITY AROSE. EACH PARTY ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT RELYING ON THE LIMITATIONS OF LIABILITY STATED HEREIN AND THAT THOSE LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

8.3 **Savings Clause.** THE EXCLUSIONS OF DAMAGES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT HAVE BEEN EXPRESSLY BARGAINED FOR BY THE PARTIES AND REFLECT A KNOWING ALLOCATION OF THE RISKS INHERENT IN IT, AND THEY WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IF THE EXCLUSIONS OF DAMAGES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE HELD TO BE UNENFORCEABLE IN ANY RESPECT UNDER APPLICABLE LAW, PS'S AGGREGATE LIABILITY WITH RESPECT TO ALL CLAIMS WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

9. INDEMNIFICATION.

9.1 **Indemnification from Company.** Company shall indemnify and hold PS, and its employees, representatives, agents, directors, officers, and representatives (the "**PS Indemnified Parties**") harmless, and at PS's option defend the PS Indemnified Parties, from and against any damages, losses, costs, settlements, judgments, awards, fines, penalties, interest, liabilities, or expenses (including without limitation, reasonable attorneys' fees and disbursements and court costs) incurred in connection with any third-party claim, demand or action ("**Claim**") brought against any of the PS Indemnified Parties arising out of (a) Company's use of the Platform and Services other than in accordance with this Agreement, a Service Order, and applicable law, (b) any alleged breach by Company of any provision of this Agreement, including its representations and warranties set forth herein, (c) Company's use and/or reliance, in any manner, on the Platform in connection with any Company business activity; (d) Company's business arrangements with any third party in connection with this Agreement; (e) the Company Data, as input, edited or modified by Company, or its Designated Users and/or End Users; (f) Company Data manipulation or processing by Company that generates inaccurate, erroneous, corrupted or missing Company Data in any form; and/or (g) Company's bad faith, gross negligence or willful misconduct.

9.2 **Indemnification from PS.** PS shall indemnify and hold Company, and its employees, representatives, agents, directors, officers, and representatives (the "**Company Indemnified Parties**") harmless, and at PS's option defend the Company Indemnified Parties, from and against any damages, losses, costs, settlements, judgments, awards, fines, penalties, interest, liabilities, or expenses (including without limitation, reasonable attorneys' fees and disbursements and court costs) incurred in connection with any Claim brought against any of the Company Indemnified Parties arising out of any allegation that the Platform violate or infringe upon the United States Intellectual Property Rights of any third party. Company must promptly notify PS of such Claim. If any of the Platform becomes, or in PS's opinion is likely to become, the subject of an infringement Claim under this Agreement, PS may, at its sole option and expense, either (x) procure for Company the right to continue using the applicable Platform, (y) replace or modify the applicable Platform so that it becomes non-infringing, or (z) solely if clauses (x) and (y) are not commercially viable, terminate this Agreement. Notwithstanding the foregoing, PS will have no obligation with respect to any infringement claim based upon (i) any use of the Platform not in accordance with this Agreement, (ii) any use of the Platform in combination with other products, equipment, or software not supplied by PS, (iii) any modification of the Platform by (a) any person other than PS or its authorized agents or subcontractors or

(b) by PS or its authorized agents or subcontractors in compliance with the designs, specifications or instructions of Company; and (iv) continued allegedly infringing activity by Company after Company has been notified of the possible infringement and has been provided with an updated, non-infringing version of the Platform. **THIS SECTION SETS FORTH PS'S SOLE LIABILITY AND COMPANY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.**

9.3 **Indemnity Process.** Should any claim subject to indemnity be made against a Party hereto, the Party against whom the Claim is made agrees to provide the other Party with prompt written notice of the Claim. The indemnifying Party will control the defense and settlement of any Claim. The indemnified Party agrees to cooperate with the indemnifying Party and provide reasonable assistance in the defense and settlement of such Claim. The indemnifying Party is not responsible for any costs incurred or compromise made by the indemnified Party unless the indemnifying Party has given prior written consent to the cost or compromise. If a conflict of interest arises between the indemnitor and the indemnitee for the types of claims set forth herein, and the indemnitee under the appropriate section sends a written notice of such conflict of interest to the indemnitor, then the indemnitor under that section shall provide for the indemnification of the indemnitee for (a) the cost to hire and retain separate counsel and (b) the cost of investigation, litigation and/or settlement of such Claims.

10. GENERAL TERMS

10.1 **Independent Contractors.** The relationship of PS and Company established by this Agreement is that of independent contractors, and nothing contained in this Agreement will create or be construed to create any partnership, joint venture, agency, franchise, sales representative, employment, or fiduciary relationship between the Parties.

10.2 **Governing Law; Jurisdiction.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of Colorado, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Colorado to the rights and duties of the Parties. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be submitted to binding arbitration in Denver, Colorado. Notwithstanding the provisions of this Section regarding arbitration, PS or Company may proceed to any court of competent jurisdiction to obtain immediate injunctive relief with regard to protecting any Intellectual Property Rights or Confidential Information. For all claims submitted to binding arbitration, the Parties agree to have the claim(s) submitted before three arbitrators and conducted pursuant to the Rules of Commercial Arbitration of the American Arbitration Association ("AAA"). Each Party shall pick one arbitrator from the panel list supplied by the AAA, and the third arbitrator shall be chosen by the two appointed by the Parties. The Parties agree that the award of the Arbitrators shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the Arbitrators. The decision of the Arbitrators shall be final, binding, and incontestable and may be used as a basis for judgment, thereon in Colorado, or elsewhere as the situation dictates. Pending the submission to arbitration and thereafter, until the Arbitrators publish their decision, the parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with the arbitrator's award.

10.3 **Assignment.** Neither this Agreement nor any applicable Service Order may be assigned, in whole or in part, by Company without the prior written consent of PS. PS shall have the right to assign or otherwise transfer this Agreement or any of its rights or obligations hereunder. Any purported assignment, sale, transfer, delegation, or other disposition by Company, except as permitted herein, shall be null and void. This Agreement and each applicable Service Order shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.4 **Recovery of Fees by Prevailing Party.** If any legal action, including, without limitation, an action for arbitration or equitable relief, is brought by one Party against the other Party relating to this Agreement or a Service Order or the breach or alleged breach hereof or thereof, the prevailing Party in any final judgment or arbitration award, or the non-dismissing Party in the event of a voluntary dismissal by the Party instituting the action, will be entitled to reimbursement from the other Party for the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys' fees paid or incurred in good faith.

10.5 **Severability.** If the application of any provision of this Agreement or any applicable Service Order to any particular facts or circumstances will be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity of other provisions of this Agreement or any applicable Service Order will not in any way be affected thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the Parties and reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

10.6 **Waiver.** A waiver of a Party's breach of any provision of this Agreement or an applicable Service Order will not operate as or be deemed to be a waiver of that Party's prior, concurrent, or subsequent breach of that or any other provision of this Agreement and/or Service Order.

10.7 **Force Majeure.** Neither Party will be deemed in default of this Agreement or a Service Order to the extent that performance of its obligations (other than payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of such Party.

10.8 **Notices.** Any notice or approval desired or required to be provided to a Party hereunder will be given to such Party in writing by overnight messenger (notice deemed effective the business day after such messenger's acceptance (which acceptance must occur before such messenger's required deadline) for next business day service), or e-mail (noticed deemed effective upon receipt of a return e-mail, other than an automatically generated return e-mail, indicating that the e-mail notice has been received), addressed to such Party at the address for such Party specified in the introductory paragraph of this Agreement. A Party may designate a substitute address by written notice to the other with the effectiveness of such notice governed by the terms of this Section. If the final day for giving notice is a Saturday, Sunday, or nationally recognized holiday then the time for giving such notice will be extended to the next business day.

10.9 **Counterparts.** This Agreement and any Service Order entered into hereunder may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Electronic, facsimile or scanned signatures shall have the same force as an original signature.

10.10 **Entire Agreement.** The provisions of this Agreement along with each applicable Service Order constitutes the entire agreement between the Parties with respect to the subject matter hereof, and this Agreement along with each applicable Service Order supersedes all prior agreements or representations, oral or written, regarding such subject matter. In the event of a conflict between the terms of this Agreement and the terms of any Service Order entered into hereunder, the terms of the Service Order shall control.

10.11 **Amendments.** This Agreement and each Service Order may be amended only by a writing signed by both Parties. Notwithstanding the foregoing, PS may upon thirty (30) days prior written notice to Company, submit a proposed amendment to the Agreement to the extent such amendment is required to comply with any applicable and subsequently promulgated laws, rules and regulations and/or to address changes in generally accepted industry standards. If Company cannot or will not sign such amendment, PS may terminate this Agreement and each Service Order entered into hereunder at the end of the thirty (30) day notice period. Company agrees to provide PS with all reasons it is unable to sign such an amendment and allow PS an opportunity to determine if it can accommodate changes to the amendment that satisfy Company's objections, while retaining compliance with applicable laws, rules, and regulations as well as generally accepted industry standards.

10.12 **Headings.** The headings to the sections of this Agreement are used for convenience only.

10.13 **Marketing.** Company hereby grants to PS a non-transferable, non-exclusive, non-sublicensable, royalty-free, right and license to use and display those trade names, trademarks, service marks, and logos (collectively, "Marks") of the Company in fulfillment of its obligations under this Agreement and in other promotional materials for PS's business and services for the purposes of promoting the existence of the relationship between the Parties as set forth in this Agreement. PS may issue a press release, subject to the prior review of the Company, relating to this Agreement or the relationship of the Parties without the prior written consent of Company.

10.14 **U.S. Government Subscribers and End Users.** The Platform is a “commercial item” as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," provided with RESTRICTED RIGHTS. For government agency purchases or acquisitions, other than DOD acquisitions subject to 5.3, under the authority of Federal Acquisition Regulation (“FAR”) Part 12, the rights of use, reproduction, and disclosure are only as stated in Sections 2, 4 and 5 of this Agreement. For government purchases or acquisitions by the Department of Defense, the rights of use, reproduction, and disclosure are only as stated in Sections 2, 4 and 5 of this Agreement, per DFARS 227.7202 (48 C.F.R. §227-7202). The Platform and Services are “commercial items” as defined at 48 C.F.R. 2.101, consisting of "commercial computer software," and "computer software documentation." For government purchases or acquisitions through a GSA Supply Schedule contract, the government Company and End User accept the standard, commercial PS warranty terms per ¶ 3.a of GSA’s “Terms and Conditions Applicable to . . . [SINs] 132-32 . . . , 132-33 . . . and 132-34.” For government purchases or acquisitions under the authority of Federal Acquisition Regulation (“FAR”) Part 12, the government Company and End User accept the standard, commercial PS warranty terms and FAR 52.212-4(p). For all government purchases or acquisitions that are not through a GSA Multiple Award or Federal Supply Schedule contract, the government Subscriber and end user accept the standard, commercial PS warranty per FAR 46.709.

10.15 **Capitalized Terms.** Capitalized terms used in any Service Order shall have the meanings ascribed to them in this Agreement unless otherwise noted in the applicable Service Order. Capitalized terms used in a Service Order shall not have the defined meanings from any other Service Order, unless explicitly stated otherwise in such Service Order.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date. Each Party represents and warrants that the person executing this Agreement on its behalf has all necessary and appropriate authority to bind that Party hereto.

Predictive Safety SRP, Inc.

[Company]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Service Order Example

This PS Service Order (this “Service Order”) is made and entered into by and between Predictive Safety SRP, Inc., and the Company, pursuant to that certain Predictive Safety Software as a Service Agreement entered into by the Parties (the “Agreement”), which is incorporated herein by reference and shall govern the terms of this Service Order, except in the event a conflict between the terms of the Agreement and this Service Order, in which case the terms of this Service Order shall control. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

1. Service Order Start Date

TBD 2021

Products and Features	Unit	I Price
AlertMeter		_____
PRISM		
Maximum Number of End Users		
Maximum Number of Designated Users		
Maximum Number of Sites (if applicable)		
	TOTAL PRICE:	_____
Additional Services if required during the Service Order Term (not anticipated)		
Hourly Rate		
Daily Rate		

2. Descriptions of Platform

AlertMeter: The real-time alertness measurement system, is provided on a Software-as-a-Service (SaaS) basis to Company by PS, and is delivered via a mobile app or browser-based access point. AlertMeter displays a cognitive alertness test and provides assessment of potential impairment with respect to End Users. AlertMeter includes, without limitation, (i) a database configured to store current and historical End User test data; (ii) administrator functionality to enable Company’s Designated Users to manage End Users and test data; and (iii) a dashboard for display of information related to End User scoring for tracking such information and generating reports.

PRISM: The workplace fatigue management system, is provided on a SaaS basis to Company by PS. PRISM is delivered via a browser-based access point, and alerts Company’s Designated Users as to impending fatigue risk. PRISM, unless specified, includes access to AlertMeter and includes alertness countermeasures in conjunction with the fatigue risk assessment, including (i) a database configured to store current and historical end user data; (ii) administrator functionality to enable Company’s Designated Users to manage End Users and test data; and (iii) a dashboard for display of information related to employee fatigue risk for tracking such information and generating reports.

Maximum Number of End Users: The maximum number of End Users allowed to use the Platform at any given time as calculated by the number of log-in credentials to the Platform.

Maximum Number of Designated Users: The maximum number of Designated Users allowed to use the Platform at any given time as calculated by the number of log-in credentials to the Platform.

Maximum Number of Sites: The maximum number of Company Sites as defined by physical or virtual address by PS.

Technical, Consulting, or Training Services. PS will assign a primary point of contact to Company who will assist Company during the Service Order Term, and will coordinate communication between

Company and internal teams at PS to provide technical, consulting or training Services. These Services will be provided to Company via email, telephone or web-based applications.

If requested, On-site Technical, Consulting, or Training Services. PS will perform the Services described above at a Company Site. These Fees do not include travel and expenses which PS will invoice for separately.

3. Support Level and Hours

a) Support Level

During the Access Period, PS will provide support to Company, as more fully described in Exhibit A (Service Level Agreement).

b) Normal Business Hours

PS will provide Services Monday through Friday from 8:00 a.m. to 5:00 p.m. MT, excluding Federal and State Holidays (“Normal Business Hours”).

4. Payment Summary and Terms

Item	Price

PS will invoice Company for all Fees upon Service Start Date and all invoices are due and payable to PS within 30 days of receipt of invoice.

If additional End Users, Designated Users, Sites, or Technical, Consultative, or Training Services are required during the term, PS will submit an additional SO which will include payment terms based on the rates defined above, unless negotiated separately and mutually agreed by both Parties.

5. Term

The Service Order Term shall commence on _____, 202__, and continue for an initial term of _____ () months (the “SO Initial Term”) and shall automatically renew for additional _____ () month terms (each a “SO Renewal Term” and together with the SO Initial Term, the “Service Order Term”), unless at least _____ () days prior to the end of the then-current Service Order Term, either Party hereto sends written notice of its desire to terminate the Service Order.

IN WITNESS WHEREOF, the Parties have caused this Service Order to be executed by its duly authorized representative.

PREDICTIVE SAFETY SRP, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

PREDICTIVE SAFETY SRP, INC.

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

Service Level Agreement

This Service Level Agreement (“SLA”) is a policy governing the use of the Platform as defined in and contemplated by that certain Predictive Safety Software as a Service Agreement (the “Agreement”) between PS (or “us” or “we”) and Company (“you”). Except as otherwise provided herein, this SLA is subject to the terms of the Agreement. Terms not otherwise defined herein will have the meaning given to them in the Agreement. We reserve the right to change the terms of this SLA in accordance with the Agreement.

SERVICE AVAILABILITY

“Service Availability” means that app.alertmeter.com and/or fatigue.predictivesafety.com may be accessed by you (as measured by PS).

TECHNICAL SUPPORT

When submitting a request for Technical Support via PS’s online “Get Support” button or via an email sent to support@predictivesafety.com or a phone call to your designated PS point of contact, you shall describe the issue and classify the issue (a “Deficiency”) in accordance with the severity level descriptions set forth below. Note that PS prioritizes Deficiencies affecting commercially launched experiences over Deficiencies that affect only experiences that are pre-launch, “pilot,” or otherwise in occur in the assessment period.

SEVERITY LEVEL DESCRIPTIONS	
Severity Level	Response Requirement
Critical Deficiency	<p>A commercially launched experience is severely impaired, including any Deficiency that causes app.alertmeter.com and/or fatigue.predictivesafety.com to be inoperative or any major security vulnerability.</p> <p>For example: No access to the AlertMeter test, dashboard or administrator pages in the browser or App.</p>
High Deficiency	<p>A commercially launched experience is impaired, including degradation of the performance of app.alertmeter.com and/or fatigue.predictivesafety.com to non-major security vulnerability.</p> <p>A pre-launch experience is severely impaired, including Deficiency that causes app.alertmeter.com and/or fatigue.predictivesafety.com to be inoperative or results in significant reduction in functionality or performance; or major security vulnerability.</p>
Standard Deficiency	<p>Experience of either a commercially launched or pre-launch experience is affected but not critical to overall use of app.alertmeter.com and/or fatigue.predictivesafety.com.</p>
Low Deficiency	<p>Minor impact on performance or functionality of app.alertmeter.com and/or fatigue.predictivesafety.com.</p>

RESPONSE TIME

PS will respond to you to via email or telephone, as PS’s sole discretion (i) to confirm the receipt of a Technical Support request, (ii) advise the Company that it has commenced work on resolving the Deficiency, as follows:

As used in the chart below, “Business Hours” means 9AM-6PM MT on Business Days. “Business Days” mean any day, excluding Saturdays, Sundays, and United States federal holidays.

RESPONSE TIMES	
Severity Level	Response Requirement
Critical Deficiency	Email response will occur within two (2) hours (24 x 7 x 365)
High Deficiency	Email response will occur within three (3) hours (24 x 7 x 365)
Standard Deficiency	Email response within five (5) Business Hours, which time period may extend into the next Business Day if the request was received less than five (5) hours prior to the end of Business Hours on the preceding Business Day.
Low Deficiency	Email response within ten (10) Business Hours, which time period may extend into the next Business Day if the request was received less than ten (10) hours prior to the end of Business Hours on the preceding Business Day.

UPTIME COMMITMENT

PS will make all reasonable efforts to have to have the app.alertmeter.com and/or fatigue.predictivesafety.com available at least ninety-nine and five tenths percent (99.5%) of the time each calendar month.

UPTIME MEASUREMENT

PS will measure uptime by checking the response of the PS HTTP application(s). Approximately every two (2) minutes, a third-party service (currently <http://www.freshping.com>) will attempt to access a specific end point on the PS application. If the service does not receive a successful HTTP response – that is, a HTTP response code of 2XX or 3XX – then that will count as two minutes of downtime. We reserve the right to make reasonable changes to this measurement procedure.

NETWORK PERFORMANCE LIMITATIONS

This SLA does not cover (without limitation): network performance to Company’s physical location or Internet access point (such as local providers and networks and/or cellular data providers).

EXCLUSIONS

The calculation of Service Availability excludes instances of: your acts or omissions, including your breach of the Agreement, force majeure events, scheduled downtime, hackers or virus attacks, unavailability of Microsoft Azure services, any other Cloud Application, or emergency and/or planned maintenance.