



**Reliability Center, Inc.**  
**501 Westover Ave.**  
**Hopewell, VA. 23806**  
**804 458-0645 ~ Info@Reliability.com**

## **MASTER SUBSCRIPTION AGREEMENT**

The parties may agree to amend or replace this agreement at any time in the future, including at any renewal of customer's subscription to this service if the customer is a subscriber rather than a one-time user. 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) in response to such electronically presented terms (this is "Clicking Assent"). Regardless of the foregoing, customer is bound by Clicking Assent even if the person doing so is not authorized by customer to enter into contracts, and even if that person is not an employee of customer (e.g., even if that person is a contractor or agent of customer). Also, regardless of the foregoing, customer will be bound by Clicking Assent even if no one affiliated with customer reads the electronically presented terms and even if Clicking Assent occurs due to an automated process used by customer. If customer later wishes to review the terms to which it assented, Reliability Center, Inc. ("Reliability") will provide a copy upon request. Regardless of the foregoing, any contractual amendment or replacement proposed by customer 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 Master Subscription Agreement ("Agreement") governs your purchase and ongoing use of the Services.

By accepting this Agreement, either by clicking a box indicating your acceptance or by executing an order form ("Order Form") that references this Agreement, You agree to the terms of this Agreement. If You are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "You" or "Your" shall refer to such entity and its affiliates. 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.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on August 18, 2010. It is effective between You and Us as of the date of You accepting this Agreement.

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## 1. DEFINITIONS.

**"Administrator"** means individuals who purchase Seats for Users in Your company console. The Administrator initializes all administrative duties of procurement, renewal, User installations, management of Users and account communication with Us.

**"Claims" or "Claim"** means, collectively, lawsuits, actions, complaints, claims, assertions of liability (whether oral or written), losses, damages, liabilities, awards, costs and expenses.

**"Malicious Code"** means software written intentionally to cause undesired harm, such as a virus, worm, time bomb, or Trojan Horse.

**"Purchased Services"** means Services that You or Your Affiliates purchase under an Order Form.

**"Seat"** means purchased connections by Administrator for a User. Each Seat is a single license to use Purchased Services. All Seats are operable.

**"Services"** means the online, Web-based applications and platform provided by Us via <http://www.proactondemand.com> and/or other designated websites as described in the User Guide, that are ordered by You under an Order Form, including associated offline components but excluding Third-Party Applications. References in this Agreement to the Services include the Templates and Templates Manual if the Purchased Services include those things.

**"Templates"** mean the individual root-cause analysis templates, which may be contained in the Services depending on the type of Services to which You subscribe (i.e., depending on whether they are part of the Purchased Services). The Templates may carry the name "PROACT® Logic Tree Knowledge Management Templates™."

**"Templates Manual"** means the manual for the Templates. You will receive from Us a hard copy of the Templates Manual if the Purchased Services include the Templates. The Templates Manual addresses the content of the Templates.

**"Third-Party Applications"** means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications, including but not limited to those listed on the Service Help Pages.

**"User Guide"** means the online user guide for the Services, accessible via <http://www.proactondemand.com>, as updated from time to time. It will contain the documentation for the Services and may address, among other things, the Service's functions, features, and directions for use.

**"Users"** means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents.

**"We," "Us" or "Our"** means Reliability Center, Inc., described in Section 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

**"Your Data"** means all electronic data or information submitted by You to the Purchased Services.

## 2. PURCHASED SERVICES

- 2.1. Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.
- 2.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

### 3. USE OF THE SERVICES

- 3.1. Our Responsibilities.** We shall: (i) provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately; (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 3:00 a.m. Eastern time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays; and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations. We shall provide Templates that only suggest possible paths of analysis for certain hypothetical situations. The Templates may not identify all possible causes of failure in a particular situation. The Templates have not been customized to Your needs or purposes. None of the Templates may be appropriate for Your particular needs or purposes.
- 3.2. Your Responsibilities.** You shall: (i) be responsible for Users' compliance with this Agreement; (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use; and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users; (b) sell, resell, rent or lease the Services; (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Services to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or (f) attempt to gain unauthorized access to the Services or their related systems or networks.
- 3.3. IMPORTANT – You 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 Your needs or purposes. None of the Templates may be appropriate for Your particular needs or purposes. You are solely responsible for deciding whether and when it is appropriate to utilize any Template for root cause analysis. You are solely responsible for deciding whether and when a Template must be modified to conduct an appropriate root cause analysis. You shall indemnify and defend Us against any Claim made against Us by a third party based upon Your use of the Services; this sentence does not include any Claim asserting that the Services, Templates, and/or Templates Manual constitutes an intellectual property infringement.
- 3.4. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, or on the number of calls You are permitted to make against Our application programming interface.

- 3.5. **Template Substance Questions and Consultation.** We 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. We may decline to provide such services if We determine We would not be able to provide substantial value in response to the Your request or if We otherwise determine that it would be inappropriate for Us to do so. Any such services will be performed at Our then-current hourly fees, plus reimbursement of Our travel expenses if We will be performing these services at Your site. We may require advance payment of services fees and anticipated travel expenses.

#### 4. **THIRD-PARTY PROVIDERS**

- 4.1 **Acquisition of Third-Party Products and Services.** We may offer Third-Party Applications for sale under Order Forms. Any other acquisition by You of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. No purchase of third-party products or services is required to use the Services.
- 4.2. **Third-Party Applications and Your Data.** Should Third-Party applications become available during the course of your subscription to Service, You agree that if You install or enable Third-Party Applications for use with Services, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

#### 5. **FEES AND PAYMENT FOR PURCHASED SERVICES**

- 5.1 **User Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars, (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on annual periods that begin on the subscription start date and each annual anniversary thereof; therefore, fees for User subscriptions added in the middle of an annual period will be charged for that full annual period.
- 5.2 **Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Services.
- 5.3 **Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (i) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (ii) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).
- 5.4 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days

overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.

- 5.5 Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 5.6 Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

## **6. PROPRIETARY RIGHTS AND RESTRICTIONS**

- 6.1** You may not sublicense or rent the Services (including the Templates and Templates Manual) to others.
- 6.2** You may use the Services (including the Templates and Templates Manual) for Your internal business purposes only.
- 6.3** **YOU MAY NOT COPY THE TEMPLATES MANUAL OR ANY PART OF IT** (this prohibition includes copying for Your internal business purposes). If You lose or destroy Your copy of the Templates Manual, We will provide a new one for a small charge (to cover production) plus the cost of shipping provided You are not in breach of this Agreement, including its confidentiality requirements.
- 6.4** You may not use the Services (including the Templates and Templates Manual) to act as a service bureau to others.
- 6.5** **THE SERVICES (INCLUDING THE TEMPLATES AND TEMPLATES MANUAL) ARE OUR TRADE SECRET PROPERTY AND OUR CONFIDENTIAL INFORMATION, AND YOU SHALL TREAT THEM AS SUCH. YOU SHALL NOT DISCLOSE OR GRANT ACCESS TO THE SERVICES, TEMPLATES OR TEMPLATES MANUAL TO ANY THIRD PARTY EXCEPT AS EXPRESSLY PERMITTED BY THIS AGREEMENT OR IN AN ORDER FORM.**
- 6.6 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services (including the Templates and Templates Manual), including all intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 6.7 Restrictions.** You shall not (i) create derivative works based on the Services, (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iii) reverse engineer the Services, or (iv) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 6.8 Ownership of Your Data.** As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.
- 6.9 Suggestions.** You hereby grant to Us a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services (including the Templates and Templates Manual) any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the content and operation of the Services (including the Templates and Templates Manual).

## 7. CONFIDENTIALITY

- 7.1 Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services. Confidential Information of each party shall include business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, or (iii) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 7.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 7.3. Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (i) modify Your Data, (ii) disclose Your Data except as compelled by law in accordance with Section 7.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (iii) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. Nevertheless, despite the foregoing, should there occur a breach in the security of Your Data (a "Data Security Breach"), such as but not limited to Our disclosure of Your Data to an unauthorized third party or Our permitting an unauthorized third party to have access to Your Data, then Our sole notice obligation shall be to give notice to You of that Data Security Breach; it will be Your sole responsibility (and not Our responsibility) to give notice of the Data Security Breach to any other person or party as required by applicable law or as may be prudent for legal or business reasons.
- 7.4. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 8. WARRANTIES AND DISCLAIMERS

- 8.1 Our Warranties.** We warrant that the Services shall perform materially in accordance with the User Guide. For any breach of either such warranty, Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause) and Section 11.4 (Refund or Payment upon Termination) below.
- 8.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code. Also, each person signing this Master 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.

**8.3. Disclaimer.** We provide only the covenants and warranties stated expressly in this Agreement. WE MAKE NO OTHER COVENANTS OR WARRANTIES AS TO THE TEMPLATES, SERVICES AND/OR TEMPLATES MANUAL, AND WE DISCLAIM 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 WE HAVE 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. You agree conclusively that no representations, warranties or covenants have been made to You regarding the Services other than those stated expressly in this Agreement. You shall agree that you are in compliance with the requirements specified to successfully use these Services. Specifically, you shall have the required internet browser, Internet Explorer, Version 7 or higher and Adobe ® Acrobat Reader. Failure to meet these agreed requirements will not be considered a breach of warranty by Us and cannot be considered a Termination for Cause (Section 11.3). If you fail to be in compliance with these requirements, a REFUND WILL NOT BE PROVIDED. Your exclusive remedy shall be as provided under Section 11.4 (Refund or Payment upon Termination).

## 9. MUTUAL INDEMNIFICATION

- 9.1. Indemnification by Us.** We shall defend You against any Claim made or brought against You by a third party alleging that the Services infringe or misappropriate the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against You in connection with any such Claim, provided that You (i) promptly give Us written notice of the Claim, (ii) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability), and (iii) provide to Us all reasonable assistance, at Our expense.
- 9.2. Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Services in a manner that is outside of the scope of use permitted by this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against Us in connection with any such Claim, provided that We (i) promptly give You written notice of the Claim, (ii) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases Us of all liability), and (iii) provide to You all reasonable assistance, at Our expense.
- 9.3. Exclusive Remedy.** This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 10. LIMITATION OF LIABILITY

- 10.1.** 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. OUR ENTIRE LIABILITY TO YOU 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 YOU TO US UNDER THIS AGREEMENT WITHIN THE YEAR (i.e., 365 DAYS EXCEPT FOR LEAP YEARS) PRIOR TO THE DATE WHEN YOUR CLAIM ACCRUES.
- 10.2.** 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.
- 10.3.** 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.

## 11. TERM AND TERMINATION

- 11.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.
- 11.2. Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Thereafter We will give You opportunities to renew your subscription provided We do not terminate this Agreement for cause. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall apply. Any such pricing increase shall not exceed 7% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.
- 11.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.4. Refund or Payment upon Termination.** If you terminate this Agreement because of a material breach of contract by Us, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. If we terminate this Agreement because of a material breach of contract by You, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 11.6. Surviving Provisions.** Sections 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights and Restrictions), 7 (Confidentiality), 8 (Warranties and Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (Return of Your Data), 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction), and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

## 12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

- 12.1. General.** You are contracting with Reliability Center, Inc., P.O. Box 1421, Hopewell, VA, 23860, USA. You should direct notices under this Agreement to this address. 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 in either the City of Hopewell, Virginia, or the federal courts in the U.S. District Court for the Eastern District of Virginia (Richmond Division).
- 12.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable Claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.



- 12.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts-of-law rules, and to the exclusive jurisdiction of the applicable courts above.
- 12.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

### **13. GENERAL PROVISIONS**

- 13.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 13.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 13.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 13.6. Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment).
- 13.7. Assignment.** Either party may assign this Agreement to a corporate affiliate, successor to its business or purchaser of substantially all of its assets. Nevertheless, You may not assign this Agreement to any of Our competitors; this prohibition includes assignment to any of Your corporate affiliates that are Our competitors. You will not be relieved from liability under this Agreement by virtue of a permitted assignment unless We approve the assignment and transfer of liability in writing. We will not withhold such approval unreasonably.
- 13.8. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.