Daniel T. White
District Superintendent

Lisa N. Ryan
Assistant Superintendent for Finance & Operations

TO: Members of the Board of Education
          Mr. Daniel White

FROM: Lisa N. Ryan

SUBJECT: Contract Approvals

DATE: December 28, 2022

The purpose of this memo is to request that at our January 5, 2023, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- Brightly - Regional Information Center - per attached

Should you have any questions please contact me prior to our January 5 meeting.   Thank you.

Brightly

COOPERATIVE AGREEMENT

This Cooperative Agreement ("Agreement") is entered into as of the date of signature below (the "**Effective Date**") by and between Brightly Software, Inc. (together with its affiliates, successors and assigns, "COMPANY"), a Delaware corporation with its principal address at 11000 Regency Parkway, Suite 400, Cary, NC 27518, and Monroe One Board of Cooperative Educational Services ("BOCES"), a New York Educational Corporation with its principal address at 41 O'Connor Road, Fairport, New York, 14450, (collectively the "**Parties**"), in consideration of the mutual promises made herein, as follows:

WHEREAS, COMPANY is a software-as-a-service ("SaaS") company that offers a suite of SaaS applications, products and services, as updated, enhanced or otherwise modified from time-to-time;

WHEREAS, BOCES responds to program requests and initiatives from its participating school districts and the New York State Education Department and determines educational needs that would be most efficiently and cost effectively met on a regional, cooperative basis;

WHEREAS, BOCES participating school districts and other government agencies may elect to purchase software subscriptions and associated professional services from COMPANY under the terms and conditions set forth herein;

WHEREAS, the purpose of this Agreement is to define Parties' responsibilities to each other when offers are made to prospective end users and clients (collectively "**Client**") of Parties' applications, products, implementation, support and related services;

NOW THEREFORE, it is agreed as follows:

1. **Services, Responsibilities:**

1.1   General. BOCES shall be permitted to offer the services of COMPANY to Clients, and such services shall be set forth in Exhibit A. Each Party agrees to use their best efforts, cooperate and provide fee quotes based on the scope of service to be provided to potential Clients.

1.2   Services. COMPANY shall provide the SaaS services directly to Client pursuant to the terms of its Master Subscription Agreement ("MSA") at the time of purchase (a copy of the MSA as of the Effective Date of this Agreement is attached hereto); provided, however, that any dispute between COMPANY and Client arising out of or in connection with the SaaS services purchased under this Agreement shall be governed by and construed under the laws of the State of New York, without regard to the principles of conflict of laws. All subscription rights and obligations, excluding payment obligations, are intended for end users and shall be held by Client(s). COMPANY may agree to amend its MSA with Client in its sole discretion.

BOCES shall timely provide payment for the implementation, support and other services selected by Client. BOCES may not commit to contracts, promises or representations of COMPANY, or control, direct, or otherwise supervise COMPANY's employees in the performance of those services without the prior written agreement of COMPANY.

1.3   Limited License. To the extent that COMPANY makes any of its proprietary materials available to BOCES in connection with this Agreement, COMPANY hereby grants to BOCES a limited, non-transferable license during the Term (as defined in Section 4) to use such COMPANY materials solely in connection with the performance of its obligations pursuant to this Agreement. BOCES shall have no right to use such COMPANY materials for any purpose other than the performance of its obligations and the services hereunder.

1.4   Fees and Compensation. The annual subscription fees and associated professional service fees ("Fees") shall be set forth in the BOCES Pricing attached hereto as Exhibit B. Unless otherwise agreed by prior written approval, COMPANY shall invoice BOCES for all Fees. BOCES shall collect all compensation directly from Clients. The Fees shall be due and payable within thirty days of COMPANY's receipt of a signed voucher issued by BOCES on behalf of the Client. Should BOCES request COMPANY's assistance with implementation and support services, BOCES and COMPANY shall negotiate in good faith for COMPANY's services in accordance with then-current market rates.

1.5   Compliance with Laws. Parties will conduct the services related to this Agreement in compliance with all Federal, State, local laws and regulations.

1.6   Non-Appropriation. BOCES is organized under the Education Law of the State of New York. BOCES agreements are subject to the provision of funding by the New York State Education Department and by various school districts. BOCES is limited to act in cooperative School District ventures by request for services from its component districts. Contracts entered into by BOCES are subject to the annual appropriation of funds and are subject to approval by the State Education Department. In the event of failure by a school district(s) to appropriate funds for this Agreement or the disapproval of the New York State Education Department, this Agreement may be cancelled and terminated in whole or in part without penalty to BOCES.

2.   **Confidentiality and PR:**

2.1.   Definition of Confidential Information. As used herein, "Confidential Information" means any non-public information and/or materials disclosed in writing or orally by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party"), which (i) is designated in writing as confidential at the time of disclosure, or (ii) with respect to non-public information disclosed orally, the Disclosing Party sends the Receiving Party a written notice to Receiving Party within 15 days after oral disclosure identifying the non-public information that was disclosed as its confidential information, including when, where, how and to whom such non-public information was disclosed. For avoidance of doubt, COMPANY's Confidential Information shall include, without limitation, the "COMPANY System" which means the entirety of all COMPANY websites, intranet systems and computer systems (hardware, software and data), source code, data structure, algorithms and logic of the Applications and services, price lists, the terms of the Agreement, and any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity. COMPANY acknowledges that Contact Information entered or obtained by use of the service is confidential. Notwithstanding the foregoing, Confidential Information 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, (iii) is received from a Third Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

2.2.   Protection of Confidential Information. Receiving Party shall not disclose the Disclosing Party's Confidential Information to any Third Party except as permitted by this Agreement. Receiving Party shall only use Disclosing Party's Confidential Information to fulfill its obligations under this Agreement. Receiving Party shall use the same degree of care that it uses to protect its own confidential and proprietary information (but in no event less than reasonable care) from disclosure or misuse. Neither Party shall disclose the terms of this Agreement or any Order Form to any Third Party without the other's written consent.

2.3.   Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or governmental authority 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.

2.4   Remedies. Receiving Party acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

2.5   Publicity. Each Party agrees that it will not use the other Party's name, logo or trademarks or issue public announcements or press releases, make any statements, or confirm or comment on any information, public or otherwise, concerning the other Party, its business, or its officers, directors, managers, employees, or equityholders, or the existence or subject matter of this Agreement, in each case without the other Party's prior written consent.

4.   **Term and Termination:**

4.1   Term. This Agreement commences on the Effective Date and continues until June 30, 2023 2022 unless earlier terminated pursuant to Section 4.2 ("Term"). Thereafter, the Agreement may be renewed for successive one (1) year periods (each a "Renewal Term") with signed consent from each Party of an intent to renew not less than thirty (30) days prior to the expiration of the then-current Term.

4.2   Termination for Breach. Either Party may terminate this Agreement upon at least thirty (30) days' written notice if the other Party is in material breach of any provision of this Agreement ("Cause") and such breach is not cured within thirty (30) days after receiving written notice thereof from the non-breaching Party.

4.3   Survival. Upon termination or expiration of Agreement, the provisions of Sections 2 (Confidentiality), 3 (Nonsolicitation), Section 4.3 (Survival), Section 6 (Representations, Disclaimers), Section 7 (Indemnification), Section 8 (Limitation of Liability), and Section 9 (General) shall survive the expiration or termination of this Agreement for any reason.

4.4   Continuity of Services. In the event this Agreement is terminated or expires, COMPANY may contact Client and offer to continue services at COMPANY's list pricing established at that time to avoid disruption of the Client's service.

5.   Relationship of Parties; No Limitations

5.1.   The Parties are independent contractors. This Agreement does not create a partnership, joint venture, employer-employee, franchisor-franchisee, or other similar legal relationship between the Parties. Nothing in this Agreement shall be construed to create the relationship of a principal and agent between COMPANY and BOCES. BOCES shall not act or attempt to act as an agent of COMPANY or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of COMPANY or its affiliates.

5.2.   Nothing in this agreement shall be construed to in any way limit a Party's right to partner, develop, market, license, sell or take any other actions whatsoever with respect to Third Parties or any other products or services.

6.   Representations, Disclaimers:

6.1   Authority. Each Party represents and warrants that: (a) it has all entity power and authority necessary to enter into this Agreement and to grant the rights and licenses contained herein, free and clear of any restrictions or encumbrances except as provided herein; and (b) it is not subject to any legal, contractual or other restrictions, limitations or conditions that conflict with its rights and obligations under this Agreement or that could reasonably be expected to affect adversely its ability to perform hereunder.

6.2   Representations. Parties represents that they shall not engage in any deceptive, misleading, unfair or unethical trade practices. Each party represents that it is not named on any U.S. government denied-party list. Parties shall not permit any Client to access or use any COMPANY service or content in a U.S,-embargoed country or in violation of any U.S. export law or regulation.

6.3   Disclaimer.   EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT NEITHER COMPANY NOR BOCES MAKES ANY WARRANTIES OF ANY KIND TO THE OTHER PARTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, SUITABILITY, TITLE, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT.

6.4   Anti-Corruption. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction. If BOCES learns of any violation of this restriction, BOCES shall immediately notify COMPANY.

7.   Indemnification:

7.1 Indemnification. Each Party will defend, indemnify and hold harmless the other Party and its affiliates, and its and their respective officers, directors, managers, employees, sublicensees, contractors, customers and agents from any and all claims, losses, liabilities, damages, expenses, penalties, taxes and costs (including attorneys' fees and court costs) brought by a Third Party against such claiming Party ("Claim") arising out of or related to any actual or alleged breach of any representation, warranty or other provision of this Agreement by the other Party. The indemnifying Party will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but the indemnified Party will have sole control over the defense and settlement of the Claim. In no event will the indemnified Party settle any Claim without the indemnifying Party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

7.2 Procedure. The indemnified Party shall give the indemnifying Party prompt written notice of any such suit or proceeding for which indemnity is or may be sought, and the authority, information and reasonable assistance (at the indemnifying Party's

expense) necessary to defend such claims. Notwithstanding the foregoing, the failure to so notify, provide assistance or information and grant authority will not relieve the indemnifying Party of its obligations under this Section, except to the extent that the indemnifying Party is prejudiced thereby.

8. **Limitation of Liability**:   EXCEPT FOR EITHER PARTY'S OBLIGATION PURSUANT TO INDEMNIFICATION OR BREACH OF CONFIDENTIALITY, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, OR ANY LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF GOODWILL AND LOSS OR CORRUPTION OF DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS; AND (B) IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CLIENT TO PARTIES FOR THE PRODUCTS OR SERVICES THAT CAUSED THE OCCURRENCE. IN ADDITION, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL NOT APPLY TO DAMAGES RESULTING FROM FRAUD, GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF EITHER PARTY.

9. **General**:

   9.1   Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within Monroe County, State of New York, or federal court located in the Monroe County, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court. Each of COMPANY and BOCES 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.

   9.2   Waiver. No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.

   9.3 Assignment. Parties shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void.

   9.4   Force Majeure. Subject to the limitations set forth below, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such Party (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall not excuse the performance by a Party unless that Party promptly notifies the other Party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

   9.5 Notices. Notices shall be sent to the signatory of this Agreement at the address set forth at the end of this Agreement or such other address as either Party may specify in writing. Any notices required hereunder shall be given in writing signed by the Party giving notice and may be sent by facsimile transmission or electronic mail, provided that an original is sent by (a) personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); or (c) by certified or registered mail, return receipt requested (upon verification of receipt). All notices to Brightly Software, Inc. shall be addressed to notice@brightlysoftware.com or Brightly Software, Inc. Attn: Legal Department, 11000 Regency Parkway, Suite 400, Cary, NC 27518.

   9.6   Feedback. BOCES may, but is not required to, provide suggestions, comments, ideas, or know-how, in any form, to COMPANY related to COMPANY applications, products or services ("Feedback"). Any such Feedback shall not be considered

BOCES Confidential Information and may be used for any purpose by COMPANY without restriction or limitation and there shall be no obligation to provide compensation for use of Feedback.

9.7 <u>Waiver of Presumption Against Drafter</u>. The rule of construction that any ambiguity in this Agreement shall be construed against the drafting party shall not apply.

9.8 <u>Interpretation of Agreement</u>. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.9 <u>Severability</u>. The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.10 <u>Entire Agreement</u>. This Agreement is the entire agreement between BOCES and COMPANY regarding cooperative purchasing 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 signed by the Party against whom the modification, amendment or waiver is to be asserted. Parties agree that any term or condition stated in any purchase order or in any other order documentation is void.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year last written below.

Brightly Software, Inc.

DocuSigned by:

By: _Georgia Ferretti_
[signature]

Name: Georgia Ferretti
[printed or typed]

Title: Director of Strategic Partnerships

Date: 12/16/2022 | 4:23:31 PM EST

DocuSigned by:

By: _Melissa Buchanan_
[signature]

Name: Melissa Buchanan
[printed or typed]

Title: Legal Operations Manager

Date: 12/16/2022 | 3:44:55 PM EST

Monroe One Board of Cooperative Educational Services

By: _Daniel T. White_
[signature]

Name: Daniel T. White
[printed or typed]

Title: District Superntendent

Date: January 5, 2023

Send notices to BOCES at:

Address: 41 O'Connor Road, Fairport, NY 14450

Address: _____

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this "Agreement") shall govern Subscriber's (as defined below) access and use of the Services (as defined below) provided by Brightly Software ("Company"). BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY RESELLER PURCHASE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY OTHERWISE ACCESSING AND USING THE SERVICES, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "ACCOUNT" OR "SUBSCRIBER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Section 1.0   Ordering and Use of the Service

1.1   Company Cloud Service; Subscriber-Hosted Software.
(a)   *Company Cloud Service*. Unless otherwise specified on an applicable Order Form, Company Service shall be provided as Company-hosted, cloud Service. Company grants Subscriber a non-exclusive and non-transferable right to access and use the Service for the Term.
(b)   *Subscriber-Hosted Software*. Where an applicable Order Form sets forth Subscriber-Hosted Software, subject to the provisions of this Agreement, Company grants Subscriber a non-exclusive and non-transferable license (with no right to sublicense) to install and use the software for the Term.   In respect of such Subscriber-Hosted Software:

> (i)   Subscriber is responsible for installing and implementing the Subscriber-Hosted Software and any updates, enhancements or modifications, except for any Professional Services set forth on an applicable Order Form (i.e., implementation).
> (ii)   Subscriber may create copies of the Subscriber-Hosted Software to the extent strictly necessary to install and operate the Subscriber-Hosted Software for use in accordance with this Agreement, and to create backup and archival copies to the extent reasonably required in the normal operation of Subscriber systems. All such copies must include a reproduction of all copyright, trademarks or other proprietary notices contained in the original copy of the Subscriber-Hosted Software.
> (iii)   Subscriber is responsible for providing the Environment and ensuring the Environment functions properly, and for implementing appropriate data backup and security measures. "Environment" means the systems, networks, servers, equipment, hardware, software and other material specified in Documentation or an Order Form on which, or in connection with which, the Subscriber–Hosted Service will be used.

1.2   Ordering.
(a)   *Ordering*. For the Company Services purchased, Company shall grant Subscriber Account Users access or use of the Service(s) and Professional Service(s) during their associated Term, including access and use of all of the Content contained in or made available through the Service(s), Subscriber agrees that its purchase is not contingent on the delivery of any future functionality or features, or dependent upon any oral or written public comments regarding future functionality or features. Subscriber agrees that it shall use the Service(s) solely for internal business purposes, and access and use of the Service(s) shall be limited to Account Users. Affiliates of either party may conduct business under this Agreement by executing an Order Form or other document that references this Agreement's terms.
(b)   *Account Setup*. To subscribe to the Service, Subscriber must establish its Account, which may only be accessed and used by its Account Users. To setup an Account User, Subscriber agrees to provide true and accurate information for such Account Users. Each Account User must establish and maintain personal, non-transferable Access Credentials, which shall not be shared with, or used by, any other individual. Subscriber must not create Account User(s) in a manner that intends to or has the effect of avoiding Fees, circumvents thresholds with the Account, or intends to violate the Agreement.
(c)   *Subscriber Responsibilities*. With full responsibility for its Account Users, Subscriber shall: (i) take appropriate action to ensure that non-Account Users do not access or use the Service; (ii) ensure that all Account Users comply with all of the terms and conditions of this Agreement; (iii) be solely responsible for the accuracy, and appropriateness of all Subscriber Data created by Account Users using the Service; (iv) access and use the Service solely in compliance with the Documentation and all applicable laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (v) allow e-mail notifications generated by the Service on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) promptly notify Company if Subscriber becomes aware of any unauthorized use of its Account.
(d)   *Usage Restrictions*. Subscriber agrees that it shall not, and shall not permit any Third Party to, directly or indirectly: (i) modify, copy, create derivative works or attempt to derive the source code of the Service; (ii) assign, sublicense, distribute or otherwise make available the Service, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Access Credentials or otherwise allow access or use the Service to provide any service bureau services or any services on a similar basis; (iv) use the Service in a way not authorized in writing by Company or for any unlawful purpose; (v) use the Service 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; (vi) attempt to tamper with, alter, disable, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Service; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Service; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Service; (ix) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (x) access or use the Service in order to replicate applications, products or services offered by Company and/or otherwise build a competitive product or service, copy any features, functions or graphics of the Service or monitor the availability and/or functionality of the Service for any benchmarking or competitive purposes; (xi) under any circumstances, through a Third Party application, a Subscriber Application or otherwise, repackage or resell

the Service, or any Company data; (xii) store, manipulate, analyze, reformat, print, and display the Content for personal use; and (xiii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Service. Notwithstanding the foregoing restrictions, in the event Subscriber has purchased a Subscription for Commercial Use (as such term is defined below), Subscriber shall be permitted to use the Service to provide Third Party services in cases where such Third Parties access the Subscriber provided applications or services, but where such Third Parties do not have the ability to install, configure, manage or have direct access to the Services. Company hereby agrees, subject to payment of the applicable fees, to permit such use and the terms of this Agreement, including references to "internal use" and/or "internal business operations" shall be deemed to include and permit such use (hereafter referred to as "Commercial Use").

(e)   *Additional Guidelines.* Company reserves the right to establish or modify its Service offerings, general practices and limits concerning use of the Service, and if applicable provide alternative Service offerings and practices, with approximately thirty (30) days' prior notice. Company also reserves the right to block IP addresses originating a Denial of Service (DoS) attack. Company shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Service and the block may be removed once Company is satisfied corrective action has taken place to resolve the issue.

(f)   *Links to Third Party Websites.* To the extent that the Service links to any Third Party website, application or service, the terms and conditions thereof shall govern Subscriber's rights with respect to such website, application or service, unless otherwise expressly provided Company. Company shall have no obligations or liability arising from Subscriber's access and use of such linked Third Party websites, applications and services.

(g)   *Beta Service.* From time to time, Company may make Beta Service available to Subscribers at no charge. Subscriber may choose to try such Beta Service or not in its sole discretion. Use of Beta Service is at Subscriber's sole risk and may contain bugs or errors. Subscriber may discontinue use of the Beta Service at any time, in its sole discretion. Further, Company may discontinue any and all Beta Service availability at any time in its sole discretion without notice. NOTWITHSTANDING THE REPRESENTATIONS, WARRANTIES AND DISCLAIMERS IN SECTION 6, BETA SERVICE AND DOCUMENTATION, ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. COMPANY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS AND NO LIABILITY OF ANY TYPE WITH RESPECT TO THE BETA SERVICE UNLESS SUCH EXCLUSION IS UNENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE COMPANY'S LIABILITY WITH RESPECT TO THE BETA SERVICE PROVIDED SHALL NOT EXCEED $500.00.

1.3   Proprietary Rights.

(a)   Subscriber acknowledges and agrees that Company retains all ownership right, title, and interest in and to the Service, the Documentation and the Content, including without limitation all corrections, enhancements, improvements to, or derivative works thereof (collectively, "Derivative Works"), and in all Intellectual Property Rights therein or thereto. To the extent any Derivative Work is developed by Company based upon ideas or suggestions submitted by Subscriber to Company, Subscriber hereby irrevocably assigns all rights to use and incorporate Subscriber's feedback, including but not limited to suggestions, enhancement requests, recommendations and corrections (the "Feedback") relating to the Service, together with all Intellectual Property Rights related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Subscriber (or to any party claiming through Subscriber) any Intellectual Property Rights in or to the Service, the Documentation and the Content, other than the rights expressly set forth in this Agreement

(b)   Company acknowledges and agrees that Subscriber retains all ownership right, title, and interest in and to the Subscriber Data, including all Intellectual Property Rights therein or thereto. Notwithstanding the foregoing, Subscriber hereby grants Company and its Affiliates a non-exclusive, royalty-free license to: (i) access, display, copy, distribute, transmit, publish, disclose and otherwise use all or any portion of the Subscriber Data to fulfill its obligations under this Agreement. In addition, Subscriber hereby grants Company a non-exclusive, royalty-free right to use aggregated and de-identified data generated and/or derived by Company from the Subscriber Data (the "De-Identified Data") in order to improve the Service and Company's performance hereunder, including without limitation, submitting and sublicensing such De-Identified Data to Third Parties for analytical purposes, provided that Company shall take commercially reasonable efforts to conduct such de-identification in a manner that ensures that such De-Identification cannot be traced back to Subscriber or natural persons.

(c)   Subscriber acknowledges the Services may utilize, embed or incorporate Third Party software and/or tools (each, a "Third-Party Tool") under a license granted to Company by one or more applicable Third Parties (each, a "Third-Party Licensor"), which licenses Company the right to sublicense the use of the Third-Party Tool solely as part of the Services. Each such sublicense is nonexclusive and solely for Subscriber's internal use and Subscriber shall not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. Subscriber further acknowledges that each Third-Party Licensor retains all right, title, and interest to its applicable Third-Party Tool and all documentation related to such Third-Party Tool. All confidential or proprietary information of each Third-Party Licensor is Confidential Information of Company under the terms of this Agreement and shall be protected in accordance with the terms of Section 7.

Section 2.0   Company Responsibilities

2.1   Professional Services. To the extent Professional Services are included in the applicable Order Form and/or described in one or more statements of work, Subscriber agrees to abide by Company's Professional Services Addendum. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect to the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that will be developed pursuant to such statement of work, and (iii) if applicable, sets forth each party's respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work.

2.2   Service Levels.

(a)   Company shall use commercially reasonable efforts to make the Service available 99.9% of the time for each full calendar month during the Term, determined on a twenty-four (24) hours a day, seven (7) days a week basis (the "Service Standard"). Service availability for access and use by Subscriber(s) excludes unavailability when due to: (a) any access to or use of the Service by Subscriber or any Account User that does not strictly comply with the terms of the Agreement or the Documentation; (b) any failure of performance caused in whole or in part by Subscriber's delay in

performing, or failure to perform, any of its obligations under the Agreement; (c) Subscriber's or its Account User's Internet connectivity; (d) any Force Majeure Event; (e) any failure, interruption, outage, or other problem with Internet service or Non-Company Service; (f) Scheduled Downtime; or (g) any disabling, suspension, or termination of the Service by Company pursuant to the terms of the Agreement. "Scheduled Downtime" means, with respect to any applicable Service, the total amount of time (measured in minutes) during an applicable calendar month when such Service is unavailable for the majority of Subscribers' Account Users due to planned Service maintenance. To the extent reasonably practicable, Company shall use reasonable efforts to provide eight (8) hours prior electronic notice of Service maintenance events and schedule such Service maintenance events outside the applicable business hours.

2.3 **Protection of Subscriber Data.** Company shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, unauthorized access or disclosure of Subscriber Data. All data and information provided by Subscriber through its use of the Service is subject to Company's Privacy Policy, which can be viewed by clicking the "Privacy" hypertext link located within the Service. By using the Service, Subscriber accepts and agrees to be bound and abide by such Privacy Policy. At all times during the Subscription term and upon written request of Subscriber within thirty (30) days after the effective date of termination or expiration of this Agreement, Subscriber data shall be available for Subscriber's export and download. Following the thirty (30) days after termination or expiration, Company shall not be obligated to maintain Subscriber Data and may delete or destroy what remains in its possession or control unless prohibited by law.

(a)   If applicable in the United States, if Subscriber is a "Covered Entity" under the Health Insurance Portability and Accountability Act of 1996 (as amended from time to time, "HIPAA"), and if Subscriber must reasonably provide protected health information as defined by HIPAA in order to use the Services, Company shall be Subscriber's "Business Associate" under HIPAA, and Company and Subscriber shall enter into a Business Associate Agreement (the form of which shall be reasonably satisfactory to Company).

(b)   If applicable in the United Kingdom, Switzerland or European Economic Area (EEA), both parties will comply with the applicable requirements of Data Protection Legislation. "Data Protection Legislation" means (i) the United Kingdom's Data Protection Act 2018, and (ii) the General Data Protection Regulation ("GDPR") and any national implementing laws, regulations or secondary legislation. Company and Subscriber agree that Company will not be processing any personal data on behalf of the Subscriber as "Data Controller" (defined in accordance with the Data Protection Legislation). Company will collect, use, disclose, transfer and store personal information when needed to administer this Agreement and for its operational and business purposes, in accordance with Data Protection Legislation. To the extent personal data from the UK, Switzerland or the EEA are processed by Company, the terms of a data processing addendum ("DPA") must be signed by the parties. To the extent Company processes personal data, its binding corporate rules and the standard contract clauses shall apply, as set forth in the DPA. For standard contract clauses, Subscriber and Company agree that Subscriber is the data exporter and Subscriber's acceptance of this Agreement or applicable Order Form shall be treated as its execution of the standard contract clauses.

Section 3.0   Third Party Interactions

3.1   **Relationship to Third Parties.** In connection with Subscriber's use of the Service, at Subscriber's discretion, Subscriber may: (i) participate in Third Party promotions through the Service; (ii) purchase Third Party goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Service, its application programming interface ("API") and a Third Party provider; (iv) receive additional functionality within the user interface of the Service through use of the API; and/or (v) receive content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such Third Party activity, shall be solely between Subscriber and the applicable Third Party. Company shall have no liability, obligation or responsibility for any such Third Party correspondence, purchase, promotion, data exchange, integration or interaction. Company does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by Company as "certified," "validated," "premier" and/or any other designation. Company does not endorse any sites on the Internet that are linked through the Service.

3.2   **Ownership.** Subscriber is the owner of all Third Party content and data loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. Company shall not comment, edit or advise Subscriber with respect to such Third Party content and data in any manner.

Section 4.0   Fees and Payment.

4.1   **Fees.** Subscriber shall pay to Company all fees specified in Order Forms. Except as otherwise stated on the Order Form: (i) Subscription Fees are based on Services and subscriptions purchased, (ii) all Subscription Fee payment obligations are non-refundable and non-cancelable, and (iii) quantities purchased cannot be decreased during the relevant Services Term. The Subscription Fee for such Service subscription shall be invoiced upon commencement of the Services Term. Thereafter, Company shall make reasonable efforts to invoice Subscriber for each applicable Subscription Fee sixty (60) days prior to its commencement. Unless Subscriber provides written notice of termination in accordance with Section 5.1, Subscriber agrees to pay all fees no later than thirty (30) days after the receipt of Company's applicable invoice. Subscriber is responsible for providing complete and accurate billing and contact information to Company and notifying Company promptly of any changes to such information.

4.2   **Automatic Payments.** If Subscriber is paying by credit card or Automated Clearing House ("ACH"), Subscriber shall establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the "Automatic Payment Method"). Upon establishment of such Automatic Payment Method, Company is hereby authorized to charge any applicable Subscription Fee using such Automatic Payment Method.

4.3   **Overdue Charges.** If any invoiced amount is not received by Company by the due date, without limiting Company's rights or remedies, those overdue charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum amount permitted by law, whichever is lower. Company reserves the right to condition an overdue Account's future subscription renewals and Order Forms on shorter payment terms than those stated herein.

4.4   **Taxes.** Company's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Subscriber is responsible for paying all

Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 4.5, Company shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. Subscriber agrees to indemnify and hold Company harmless from any encumbrance, fine, penalty or other expense which Company may incur as a result of Subscriber's failure to pay any Taxes required hereunder. For clarity, Company is solely responsible for taxes assessable against Company based on its income, property and employees.

4.5   Purchases through Resellers. In the event Subscriber purchases the Services (including any renewals thereof) through an authorized reseller of Company, the terms and conditions of this Agreement shall apply and supersede any other agreement except for any terms and conditions related to fees, payment or Taxes. Such terms and conditions shall be negotiated solely by and between Subscriber and such authorized reseller. In the event Subscriber ceases to pay the reseller, or terminates its agreement with the reseller, Company shall have the right to terminate Subscriber's access to the Service at any time upon thirty (30) days' prior written notice to Subscriber unless Subscriber and Company have agreed otherwise in writing.

Section 5.0   Services Term and Termination

5.1   Services Term. This Agreement will commence on the Effective Date set forth on the Order Form and continues until all Service subscriptions hereunder have expired or have been terminated (the "Services Term").   Thereafter, except as stated on an applicable Order Form, the Services Term shall automatically renew for additional periods equal to the expiring subscription term or one year, whichever is longer, unless either party has provided written notice of its intent to terminate the Service subscription not less than forty-five (45) days prior to the expiration of the then-current Services Term applicable to the Service subscription.

5.2   Termination for Cause. Either party may terminate this Agreement (in whole or with respect to an Order Form or purchased from a reseller) by notice to the other party if (i) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days (except in the case of a breach of Section 7 in which case no cure period will apply) or (ii) the other party becomes the subject of a petition in bankruptcy or other similar proceeding. Company may, at its option, and without limiting its other remedies, suspend (rather than terminate) any Services if Subscriber breaches the Agreement (including with respect to payment of Fees) until the breach is remedied.

5.3   Effect of Termination. Termination or suspension of an individual Order Form or reseller purchase, will not terminate or suspend any other Order Form, reseller purchase or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order Form(s) and reseller purchases will terminate. If this Agreement, any Order Form or reseller purchase is terminated, Subscriber agrees to pay all Fees owed up to the effective date of termination.

5.4   Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 1, 2.3, 5.3, 6, 7 and 8.

Section 6.0   Representations, Warranties and Disclaimers

6.1   Representations. Each party represents that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against it in accordance with its terms.

6.2   Warranties.

(a)   Company represents and warrants that during the applicable Subscription Term that Service will perform materially in accordance with the applicable Documentation. For any breach of this warranty in Section 6.2(a), Subscriber's exclusive remedy and Company's entire liability shall be as described in Section 5.2.

(b)   Company represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 6.2(b), Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

(c)   SERVICE, CONTENT, DOCUMENTATION, STORED DATA AND BETA SERVICE ARE PROVIDED "AS-IS" AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY. EXCEPT AS EXPRESSLY STATED IN SECTION 6.2(a) and (b), THE PARTIES MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR ANY CONTENT, DOCUMENTATION, STORED DATA OR BETA SERVICES. PARTIES SPECIFICALLY DISCLAIM ALL REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(d)   Company's Services have not been tested in all situations under which they may be used. Subscriber is solely responsible for determining the appropriate uses for the Services and the results of such use; Company will not be liable for the results obtained through Subscriber's use of the Services. Company's Services are not specifically designed or intended for use in (i) storage of sensitive, personal information, (ii) direct life support systems, (iii) nuclear facility operations, or (iv) any other similar hazardous environment.

6.3   Indemnification.

(a)   *Indemnity by Company*. Company shall defend and indemnify Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Service as expressly permitted hereunder infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber (x) promptly gives Company written notice of the Claim; (y) gives Company sole control of the defense and settlement of the Claim; and (z) provides to Company all reasonable assistance, at Company's expense. If Company receives information about an infringement or misappropriation claim related to the Service, Company may in its sole discretion and at no cost to Subscriber: (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the Service, or (iii) terminate this Agreement (including Subscriber's Service subscriptions and Account) upon prior written notice and refund to Subscriber any prepaid Subscription Fee covering the remainder of the Term of the terminated Service subscriptions. Notwithstanding the foregoing, Company shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Service in combination with any software or hardware not expressly authorized by Company, (B) any modifications or configurations made to the Service by Subscriber without the prior written consent of Company, and/or (C) any action taken by

Subscriber relating to use of the Service that is not permitted under the terms of this Agreement. This Section 6.3(a) states Subscriber's exclusive remedy against Company for any Claim of infringement or misappropriation of a Third Party's Intellectual Property Rights related to or arising from Subscriber's use of the Service.

(b)   To the extent permitted by law, Subscriber shall defend and indemnify Company from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Company, in connection with any Claim alleging that the Subscriber Data, or Subscriber's use of the Service in breach of this Agreement, infringes upon any patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; unless applicable laws prohibit public entities from such indemnification and <u>provided</u> that Company (x) promptly gives Subscriber written notice of the Claim; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber all reasonable assistance, at Subscriber's expense. This Section 6.3(b) states Company's exclusive remedy against Subscriber for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from the Subscriber Data or Subscriber's use of the Service.

6.4   Limitation of Liability. IN NO EVENT SHALL COMPANY, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER TO COMPANY PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE FIRST ACT OR OMISSION GIVING RISE TO THE LIABILITY. UNDER NO CIRCUMSTANCES SHALL COMPANY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR PRODUCTS LIABILITY. NOTHING IN THIS SECTION SHALL LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 4.

Section 7.0   Confidentiality

7.1   Definition of Confidential Information. "Confidential Information" means any non-public information and/or materials maintained in confidence and disclosed in any form or medium by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party"), that is identified as confidential, proprietary or that a reasonable person should have known, was the Confidential Information of the other party given the nature of the circumstances or disclosure, or as otherwise defined as Confidential Information, trade secrets, and proprietary business information as provided under applicable state law and exempted from disclosure by the applicable statute. Confidential Information may include without limitation: information about clients, services, products, software, data, technologies, formulas, processes, know-how, plans, operations, research, personnel, suppliers, finances, pricing, marketing, strategies, opportunities and all other aspects of business operations and any copies or derivatives thereof. Confidential Information includes information belonging to a Third Party that may be disclosed only under obligations of confidentiality. Notwithstanding the foregoing, Confidential Information shall not include information that Receiving Party can demonstrate: (a) is or becomes generally known to the public without breach of any obligation by Receiving Party; (b) is received from a Third Party without breach of any obligation owed to Disclosing Party; or (c) is or has been independently developed by Receiving Party without the benefit of Confidential Information.

7.2   Protection of Confidential Information. The Receiving Party agrees that it shall: (i) use the Confidential Information solely for a purpose permitted by this Agreement, (ii) use the same degree of care as Receiving Party uses with its own Confidential Information, but no less than reasonable care, to protect Confidential Information and to prevent any unauthorized access, reproduction, disclosure, or use of any of Confidential Information; and (iii) restrict access to the 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 are prohibited from disclosing the information by a contractual, legal or fiduciary obligation no less restrictive than this Agreement. Receiving Party shall not use, reproduce, or directly or indirectly allow access to the Confidential Information except as herein provided or export Confidential Information to any country prohibited from obtaining such information under any applicable laws or regulations.

7.3   Compelled Disclosure. If Receiving Party is required to disclose any Confidential Information to comply with law, to the extent legally permitted, Receiving Party shall: (a) give the Disclosing Party reasonable prior written notice to permit Disclosing Party to challenge or limit any such legally required disclosure; (b) disclose only that portion of the Confidential Information as legally required to disclose; and (c) reasonably cooperate with Disclosing Party, at Disclosing Party's request and expense, to prevent or limit such disclosure.

7.4   Records Requests. To the extent permitted by law, Subscriber shall treat as exempt from treatment as a public record, and shall not unlawfully disclose in response to a request made pursuant to any applicable public records law, any of Company's Confidential Information. Upon receiving a request to produce records under any applicable public records or similar law, Subscriber shall immediately notify Company and provide such reasonable cooperation as requested by Company and permitted by law to oppose production or release of such Company Confidential Information.

7.5   Remedies. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information and agrees to reasonably cooperate with Disclosing Party in its efforts to mitigate any resulting harm. Receiving Party acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

Section 8.0   Miscellaneous

8.1   Compliance with Laws. Each party will comply with all laws and applicable government rules and regulations insofar as they apply to such party in its performance of this Agreement's rights and obligations.

8.2   Publicity. Company is permitted to: (i) include Subscriber's name and logo in accordance with Subscriber's trademark guidelines; and (ii) list the Services selected by Subscriber, in public statements and client lists. Subscriber agrees to participate in press releases, case studies and other collateral using quotes or requiring active participation, the specific details of which shall be subject to mutual consent.

8.3 **Relationship of the Parties.** Company is performing pursuant to this Agreement only as an independent contractor. Company has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Company and Subscriber. Company shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

8.4 **Waiver.** No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

8.5 **Assignment.** Subscriber shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void. Company shall have the full ability to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement.

8.6 **Force Majeure.** Subject to the limitations set forth below and except for fees due for Service rendered, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

8.7 **Entity, Governing Law, Notices and Venue.** All notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); (c) by business mail (upon written verification of receipt); or (d) except for notice of indemnification claims, via electronic mail to Subscriber at the e-mail address maintained on Subscriber's Account and to Company at notice@brightlysoftware.com. The Company entity entering into this Agreement, the address to which notices shall be directed under this Agreement and the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement shall depend upon where Subscriber is domiciled:

(a) In the United States and all other domiciles not otherwise mentioned, the Company entity is Brightly Software, Inc., a Delaware corporation, notices shall be addressed to 11000 Regency Parkway, Suite 400, Cary, NC 27518, Attn: General Counsel, governing law shall be Delaware and the courts with exclusive jurisdiction shall be Delaware without regard to the principles of conflicts of laws, unless Subscriber is a public entity in which case this Agreement shall be governed by the state law where it is domiciled.

(b) In Canada, the Company entity is Brightly Software Canada, Inc., an Ontario corporation, notices shall be addressed to Bay Adelaide Centre, 333 Bay Street, Suite 2400, PO Box 20, Toronto, ON, M5H 2T6 Attn: Brightly Software General Counsel, governing law shall be Ontario and the courts with exclusive jurisdiction shall be Toronto, Ontario, Canada without regard to the principles of conflicts of laws.

(c) In the United Kingdom or a country in Europe, the Company entity is Brightly Software Limited, a limited company in England, notices shall be addressed to Central House Unit C Compass Centre North, Chatham Maritime, Chatham, England, ME4 4YG, Attn: General Counsel, governing law shall be England and the courts with exclusive jurisdiction shall be London, England without regard to the principles of conflicts of laws.

(d) In Australia, New Zealand, a country in Asia or the Pacific region, the Company entity is Brightly Software Australia Pty Ltd, a proprietary limited company in Australia, notices shall be addressed to Level 9, 257 Collins Street, Melbourne, VIC 3000 Australia, Attn: General Counsel, governing law shall be Australia and the courts with exclusive jurisdiction shall be New South Wales, Australia without regard to the principles of conflicts of laws.

8.8 **Interpretation of Agreement.** The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

8.9 **No Third Party Beneficiaries.** No person or entity not a party to the Agreement shall be deemed to be a Third Party beneficiary of this Agreement or any provision hereof.

8.10 **Severability.** The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

8.11 **Entire Agreement.** This Agreement, including any applicable Order Form, is the entire agreement between Subscriber and Company regarding Subscriber's use of the Service 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 signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in any purchase order or in any other order documentation is void. In the event of any conflict or inconsistency between the documents, the order of precedence shall be (1) the applicable Order Form, (2) any schedule or addendum to this Agreement, and (3) the content of this Agreement.

8.12 **Export Compliance.** The Service, Professional Service, Content or other technology Company may make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Subscriber shall not permit any Account User to access or use any Service, Content or other Company technology in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.

8.13 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Subscriber learns of any violation of the above restriction, Subscriber shall immediately notify Company.

8.14   **Cooperative Use**. With Subscriber's approval, the market research conducted by Subscriber during its selection process for the Services may be extended for use by other jurisdictions, municipalities, and government agencies of Subscriber's state. Any such usage by other entities must be in accordance with ordinance, charter, and/or procurement rules and regulations of the respective political entity.

8.15   **Modifications**. Company may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, Company shall notify Subscriber.

8.16   **Exclusions/Suspensions**. Company confirms that it has not been excluded, debarred or suspended from participation in any governmental program, including but not limited to Medicare, Medicaid, or Medi-Cal payor programs, and is not the subject of any investigation regarding participation in such programs, and has not been convicted of any crime relating to any governmental program. Company agrees to notify Subscriber immediately if Company becomes aware of any adverse action related to Company's eligibility to participate in a governmental program.

8.17   **USA Government Subscribers**. The Service and its Documentation and Content are "Commercial Items," "Commercial computer software" and "Computer software documentation" as defined in the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS 227.7202, as revised, the U.S. Government acquires the Service and its Documentation and Content subject to the terms of this Agreement.

Section 9.0   Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

9.1 "Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Service.

9.2 "Account" means Subscriber's specific account where Subscriber subscribes to access and use Service(s).

9.3 "Account User" means each employee, consultant and contractor of Subscriber that has been granted Access Credentials.

9.4 "Affiliate" means, with respect to any legal entity, any other legal entity that (i) controls, (ii) is controlled by or (iii) is under common control of such legal entity. A legal entity shall be deemed to "control" another legal entity if it has the power to direct or cause the direction of the management or policies of such legal entity, whether through the ownership of voting securities, by contract, or otherwise.

9.5 "Beta Service" means Company Service or functionality that may be made available to Subscriber to try at its option at no additional charge that is clearly designated as beta, pilot, limited release, early adoption, non-production, sandbox, evaluation or a similar description.

9.6 "Content" means all of the Company audio and visual information, documents, content, materials, products and/or software contained in, or made available through, the Service.

9.7 "Documentation" means the user documentation relating to the Service provided to Subscriber by Company, including but not limited to descriptions of the functional, operational and design characteristics of the Service.

9.8 "Brightly Software" or "Company" means Brightly Software, Inc., Brightly Software Canada, Inc., Assetic Australia Pty Ltd, Confirm Solutions Limited, Facility Health, Inc. and Energy Profiles Limited together with their affiliates, successors and assigns.

9.9 "Company Data" means all data, information, Documentation and other Content provided by or on behalf of Company to any of the Company Services.

9.10 "Intellectual Property Rights" means all ideas, concepts, designs, drawings, packages, works of authorship, processes, methodologies, information, developments, materials, inventions, improvements, software, and all intellectual property rights worldwide arising under statutory or common law, including without limitation, all (i) patents and patent applications owned or licensable by a party hereto; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; (iii) rights related to protection of trade secrets and Confidential Information; (iv) trademarks, trade names, service marks and logos; (v) any right analogous to those set forth in clauses (i) through (iv); and (vi) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

9.11 "Order Form" means Company's ordering document or online purchasing form used to order Company Services. By entering into an Order Form, Affiliate(s) agree to be bound by the terms of this Agreement as if an original party.
Company

9.12 "Professional Service" means the professional, technical, consulting and/or other services, excluding support services, to be performed by Company that are ordered by Subscriber on an Order Form or provided without charge (if applicable).

9.13 "Service" or "Services" means Company's branded offerings of Software-as-a-Service (SaaS) applications, products and services made available by Company, as updated, enhanced or otherwise modified from time-to-time. Company

9.14 "Subscriber" means the legal entity identified on the Account, on behalf of itself and its Affiliates, employees and subcontractors.

9.15 "Subscriber Data" means all data, information and other content provided by or on behalf of Subscriber to the Service, including that which the Account Users input or upload to the Service.

9.16 "Subscriber-Hosted Software" means Company's suite of Software-as-a-Service (SaaS) software applications, as updated, enhanced or otherwise modified from time-to-time that are: (i) ordered by Subscriber on an Order Form or provided without charge (if applicable) and made available by Company, including mobile components, and (ii) granted a non-exclusive and non-transferable license (with no right to sublicense) to install and use software for the Term.

9.17 "Subscription Fee" means the fee invoiced to Subscriber by Company prior to the Services Term, which is required to be paid in order for Subscriber to be permitted to access and use the Service.

9.18 "Third Party" means a party other than Subscriber or Company.

PROFESSIONAL SERVICES ADDENDUM

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Master Subscription Agreement (the "Agreement") between Brightly Software ("Company") and Subscriber, as defined in the Agreement. This Addendum applies to the extent that Subscriber and Company execute an Order Form that includes a Statement of Work ("**SOW**") for the provision of Professional Services to be provided by Company for Subscriber.

 BY ACCEPTING THIS ADDENDUM, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY RESELLER PURCHASE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS ADDENDUM OR BY OTHERWISE ACCESSING AND USING THE PROFESSIONAL SERVICES, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

1. PROFESSIONAL SERVICES.
1.1 Scope. Company will provide such Professional Services and supply Deliverables to Subscriber in accordance with the terms of the Agreement and all applicable SOWs or Order Forms. Unless otherwise specified in an applicable SOW or Order Form: (i) Company will perform the Professional Services during workdays, Monday through Friday, up to 8 hours a day; (ii) any estimate of hours or costs are reasonable, good faith estimates only; and (iii) each task is performed as firm fixed price work or time and materials. Company is only obliged to supply Professional Services as expressly stated in the SOW and shall not be obliged to supply any Professional Services and/or Deliverables until both Parties have approved the applicable SOW.

1.2 Scheduling. Company requires at least 6 weeks advanced notice from the acceptance of an Order Form or reseller purchase to schedule Professional Services delivery dates when travel is required. Onsite Professional Services shall be delivered consecutively in a single onsite visit unless the applicable Order Form or reseller purchase includes the additional fees and incidental expenses associated with multiple visits.

1.3 Unused Professional Services. Unless otherwise specified in the applicable SOW, any unused order for Professional Services will expire 6 months from the date of order, and Subscriber will not be entitled to receive a refund for any fees prepaid for such expired Professional Services.

1.4 Relationship to Other Services. The Addendum is limited to Professional Services and does not convey any right to use any other Company Services. Subscriber agrees that Professional Services is not contingent on the delivery of any future Service functionality or features other than Deliverables,, or on any oral or written public comments by Company regarding future Service functionality or features.

1.5 Subscriber Cooperation. Subscriber will cooperate reasonably and in good faith with Company in its performance of Professional Services by: (i) providing access to Subscriber Data, (ii) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Company to perform its obligations under the SOW or Order Form, and (iii) actively participate in scheduled project meetings. Any delays in the performance of Professional Services or delivery of Deliverables caused by Subscriber may result in additional applicable charges for resource time.

1.6 Acceptance. Any Deliverables are stated in the SOW or Order Form. Unless otherwise specified in the applicable SOW, Deliverables will be considered accepted upon Subscriber's written notice thereof (e-mail is sufficient) or two (2) business days from delivery whichever is sooner, provided Subscriber's rejection is limited to failure to materially conform to the SOW's specifications. An effective notice of rejection must specifically disclose the material failure to conform to its specifications. In response to rejection, Company may revise and redeliver the Deliverable, and thereafter the procedures of this Section will repeat.

1.7 Change Order. Changes to Professional Service defined in an Order Form, SOW or reseller purchase, shall require a written Change Order signed by the parties prior to implementation of such change(s). Changes may include, for example, alterations to the Professional Service scope of work, Deliverables or changes to fees or schedule.

2. FEES & PAYMENT TERMS.
2.1 Payment. Subscriber will pay Company the fees specified in each SOW or Order Form contained therein. Unless the SOW or Order Form provides otherwise, Subscriber will pay Company within thirty (30) calendar days from the date of invoice. Where multiple onsite visits are scheduled, the Professional Services, fees and incidental expenses shall be invoiced upon the completion of each visit.

2.2 Incidental Expenses. Subscriber will reimburse Company for travel and related business expenses incurred in connection with Professional Services. If an estimate of incidental expenses is included in the applicable SOW or Order Form, Company will not exceed a 5% inflation such estimate without the written consent of Subscriber.

3. TERM AND TERMINATION.
3.1 Term. Each SOW term shall begin on the effective date specified in the applicable SOW or Order Form and end on the date that the Professional Services are completed. Unless earlier terminated as set forth below, the terms of this Addendum will continue until termination or expiration of the applicable SOW. Termination shall be in accordance with the Agreement.

3.2 Termination. Either party may terminate a SOW or this Addendum for the other's material breach of such SOW or this Addendum, as applicable, on thirty (30) days' written notice, provided that if the other party cures the breach before expiration of such notice period, the SOW will not terminate. Additionally, all SOWs will immediately terminate upon termination or expiration of the Agreement.

3.3 Effect of Termination. Upon termination of a SOW: (1) if such SOW provides for an hourly or per unit fee, Subscriber will pay Company such fee for the work performed up to the date of termination; and (2) if the SOW provides for a fixed fee, Subscriber will pay Company the reasonable value of the Professional Services rendered by Company up to the termination date. Termination of a SOW for any reason, including without limitation for cause, will not terminate any other SOW.

4. PROPRIETARY RIGHTS AND LICENSES.
4.1 Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information as set forth in the Agreement.

4.2 Subscriber Data. Subscriber does not grant to Company any rights in or to Subscriber's intellectual property except such licenses as are required for Company to perform its obligations under the Agreement.

4.3 License for Deliverables. Upon payment of fees due under an applicable SOW or Order Form, Company grants Subscriber a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for its internal business purposes associated with its use of Company's Services any Deliverables created by Company solely for Subscriber under this Agreement. Company and Subscriber each retain all right, title and interest in their respective Intellectual Property and Company retains all ownership rights in the Deliverables.

5. WARRANTY.

Company represents and warrants that all Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 5, Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

6. DISCLAIMER.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH SECTION 5 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, Company AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND RELATED TO THE DELIVERABLES OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Company DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE DELIVERABLES OR THE RESULTS SUBSCRIBER MAY OBTAIN BY USING THE DELIVERABLES. IN PARTICULAR, Company DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF THE DELIVERABLES, THAT THE DELIVERABLES WILL CONTINUE TO FUNCTION WITH ANY SUBSCRIPTION SERVICES AFTER THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, OR THAT Company WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

7. NON-EXCLUSIVITY OF PROFESSIONAL SERVICES.

Notwithstanding the Confidentiality obligations set forth in Section 8 of the Agreement and this Addendum, Subscriber acknowledges and agrees that (i) multiple Subscribers may require similar Professional Services or Deliverables and that Company may be developing similar Professional Services and Deliverables for other third parties, (ii) Company may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information of Subscriber, (iii) nothing will prohibit Company from developing or having developed for it customizations, configurations, feature, concepts, systems or techniques that are similar to the Deliverables, and (iv) nothing will prohibit Company from re-using with another Subscriber or making generally available as part of Subscription Services all or part of any customization, configuration, feature, concept, system or technique developed hereunder.

8. IP INDEMNITY.

8.1 Indemnification by Company. In addition to the indemnification obligations set forth in Section 6 of the Agreement and subject to this Addendum, Company will (i) defend, or at its option settle, any claim, demand, action or legal proceeding ("**Claim**") made or brought against Subscriber by a third party alleging that the use of the Deliverable(s) as contemplated hereunder directly infringes the intellectual property rights of such third party, and (ii) pay (a) any final judgment or award directly resulting from such Claim to the extent such judgment or award is based upon such alleged infringement or (b) those damages agreed to by Company in a monetary settlement of such Claim. Company's obligations to defend or indemnify will not apply to the extent that a Claim is based on (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverable(s) with non-Company products or services; or (III) any use of the Deliverable(s) not in compliance with this Addendum. In the event of a Claim, Company may, in its discretion and at no cost to Subscriber (A) modify the Deliverable(s) so that they are no longer the subject of an infringement claim, (B) obtain a license for Subscriber's continued use of the Deliverable(s) in accordance with this Addendum, or (C)suspend use of the Deliverable in question and refund to Subscriber a pro rata portion of the fees paid for every month during which Subscriber is prevented from using the infringing Deliverable as a result of such infringement, during the first three years after delivery of such Deliverable.

8.2 Indemnification by Subscriber. To the extent permitted by law and subject to this Addendum, Subscriber will (i) defend, or at its option settle, any Claim made or brought against Company by a third party alleging that (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverables with non-Company products or services; or (III) Subscriber's use of the Deliverables , other than as authorized in this Addendum, violates applicable law or regulations or infringes the intellectual property rights of, or has otherwise harmed, a third party; and (ii) pay (a) any final judgment or award directly resulting from such Claim, or (b) or those damages agreed to in a monetary settlement of such Claim.

THIS SECTION 8 STATES COMPANY'S SOLE OBLIGATION, AND SUBSCRIBER'S SOLE REMEDY, WITH REGARDS TO CLAIMS THAT THE DELIVERABLES INFRINGE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATION OF LIABILITY. IN ADDITION TO THE OBLIGATIONS UNDER THE AGREEMENT, IN NO EVENT SHALL COMPANY, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE TOTAL AMOUNT PAID BY SUBSCRIBER UNDER THE APPLICABLE SOW TO WHICH THE CLAIM RELATES. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. UNDER NO CIRCUMSTANCES SHALL COMPANY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR PRODUCTS LIABILITY.   NOTHING IN THIS SECTION SHALL LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 4 OF THE AGREEMENT.

10. MISCELLANEOUS

10.1 Order of Precedence. In the event of a conflict, the provisions of an authorized SOW will prevail over those of this Addendum. Neither party's acts nor omissions related to Professional Services, to a SOW, or to this Addendum, including without limitation breach of a SOW or of this Addendum, will give the other party any rights or remedies not directly related to the SOW in question.

10.2 Independent Contractor. The parties are independent contractors and nothing in this Agreement should be construed to create a partnership, agency, joint venture, fiduciary or employment relationship between the parties. Neither party is authorized to make any representation or commitment on behalf of the other party. Each party assumes full responsibility for the actions of its personnel while performing Services and such party will be solely responsible for the supervision, daily direction, control of its personnel and for the payment of all of their compensation.

10.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.4 Force Majeure. Neither party will be responsible for failure or delay of performance of a SOW if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either party may cancel unperformed Professional Services upon written notice.

10.5 Non-Solicitation. Except where prohibited by law, during the Term of this Addendum and for twelve (12) months thereafter, Subscriber will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of Company's employees or subcontractors without Company's prior written consent. For the purposes herein, "solicit" does not include broad-based recruiting efforts, including without limitation help wanted advertising and general posting open positions.

10.6 Subcontractors. Company may, in its reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. Company will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with Company's obligations under this Addendum, except as otherwise specified herein.

10.7 Severability. If any provision of this Addendum is held by a court of competent jurisdiction to be contrary to law, the provision will 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 Addendum will remain in effect.

11. DEFINITIONS.

11.1 "Change Order" means a Company change order that changes the Professional Services as set forth on a SOW, Order Form or defined in a reseller purchase. Change Orders executed by both parties shall be incorporated by reference into the applicable SOW, Order Form or reseller purchase. A Change Order cannot change Services, as defined in the Agreement to include SaaS applications.

11.2 "Deliverable" means a deliverable under an SOW or Order Form.

11.3 "SOW" means a statement of work describing Professional Services to be provided hereunder, that is entered into between Subscriber and Company or which is incorporated into an Order Form that is entered into between Subscriber and Company. A Company Affiliate that executed an SOW with Subscriber will be deemed to be Company as such term is used in this Agreement. SOWs or Order Forms are deemed incorporated herein by reference.

All other capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.

Daniel T. White
District Superintendent

Lisa N. Ryan
Assistant Superintendent for Finance & Operations

TO: Members of the Board of Education
Mr. Daniel White

FROM: Lisa N. Ryan

SUBJECT: Contract Approvals

DATE: August 29, 2023

The purpose of this memo is to request that at our September 6, 2023, Board of Education meeting the Board adopt a resolution to approve the following contracts:

- Hillside – Office of Student Programs and Services
- Jostens – District Office – per attached
- Systems Integration Project – District Office- per attached
- IMS – Business Office - per attached
- M&T Bank/ Subsidiary/ Affiliate Collateral Agreement - Business Office – per attached
- Toshiba– Regional Information Center – per attached
- Incident IQ– Regional Information Center – per attached
- Brightly– Regional Information Center – per attached
- CLPS Emergency Preparedness Solutions– Regional Information Center – per attached

Should you have any questions please contact me prior to our September 6 meeting. Thank you.

Amendment No. 1

WHEREAS, an Agreement was made between the Monroe One Board of Cooperative Educational Services ("BOCES") and Brightly Software, Inc. ("Brightly"), dated January 25, 2023; and

WHEREAS, the Agreement expires on June 30, 2023 unless renewed by signed consent from each Party;

WHEREAS, the parties desire to extend and amend the Agreement; and

WHEREAS, Section 4 of the Agreement entitled "Term and Termination" provides that the Agreement may be extended for renewal terms of one (1) year (each a "Renewal Term") by mutual written agreement by both parties; and

NOW, THEREFORE, the parties mutually agree in writing to the following:

1. The Agreement shall be extended for a Renewal Term of one (1) year commencing on July 1, 2023 and ending on June 30, 2024.

IT IS FURTHER AGREED, all other terms of the Agreement shall remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Amendment.

Brightly Software, Inc. ("Brightly")

DocuSigned by:

Georgia Ferretti

Signature

Georgia Ferretti

Print Name

Director of Strategic Partnerships

Title

01 August 2023

Date Signed

DocuSigned by:

Melissa Buchanan

Signature

Melissa Buchanan

Print Name

Legal Operations Manager

Title

01 August 2023

Date Signed

Board of Cooperative Educational Services,
████████████ ("BOCES")

Signature

Daniel T. White

Print Name

District Superintendent

Title

8/6/2023

Date Signed