

MASTER SERVICES AGREEMENT

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MASTER TERMS & CONDITIONS

These Master Terms & Conditions ("**Master Terms**") together with your effective Delphia Delivery Orders, SOW(s), and the applicable effective Online Additional Terms are collectively referenced as this "**Master Services Agreement**" or "**Agreement**", and are entered into between Delphia Consulting, LLC ("**we**", "**us**" or "**our**") and the Customer listed on the signature page of each Delivery Order and/or SOW ("**you**" or "**your**"). By signing any Delivery Order or SOW, an individual is committing and confirming that such individual is authorized by you to access, purchase or license (as applicable) the Delphia Offerings or Delphia Partner Offerings stated on such Ordering Document. This Master Services Agreement is effective on the date on which your Initial Ordering Document is executed by both you and us ("**Effective Date**").

1. Ordering Documents, Parties, and Customer's Accounts.

Ordering Documents. Ordering Documents become effective only when executed by both you and us. To change your current Services (including cancellations of one or more Delphia Offerings or Delphia Partner Offerings, upgrades or downgrades, and add-on Users, Services, Cloud-Based Solutions or Equipment) or Professional Services, we must enter into a Supplemental Ordering Document with you.

2. Customer's Account.

After receipt of your payment of our invoice for any one-time Fees identified on the related Ordering Document, we will provision an account for you through which you will access each of the applicable Subscriptions ("**Account(s)**"). You agree to designate to us a single point of contact for each Subscription who will establish and manage the related Account, including the designation of Users authorized to create usernames and passwords for the related Account. You are solely responsible for assigning your Users. You agree to safeguard all usernames, passwords, or access codes in your possession or under your control and to require your Users to safeguard the same. You will notify us immediately in writing if you have knowledge that any usernames and/or passwords have been compromised and need to be changed. You are responsible for all activities that occur under the Accounts and, except to the extent caused by our breach of these Master Terms, we are not responsible for unauthorized access to the Accounts. Use by your Affiliates is permitted, unless otherwise stated in an Ordering Document or restricted by Law. You are responsible under this Agreement for all acts and omissions of your Affiliates and Users with regard to their use of any Delphia Offering or Delphia Partner Offering, including their compliance with the [Terms of Use for Cloud-Based Solutions](#).

3. Fees and Payment.

- A. Fees. Fees are billed in accordance with your applicable Ordering Document. You will timely pay all Fees specified in an invoice and due under this Agreement. Except as expressly provided otherwise in an Ordering Document or this Agreement: (i) your payment obligations are non-cancelable, (ii) Fees paid to us are nonrefundable, (iii) the number of Users specific to a Delphia Offering or Delphia Partner Offering may be increased or decreased and invoiced based on actual Users or minimum PEPM Fees, as applicable, or as stated in a Supplemental Delivery Order and (iv) we may change Fees for a Delphia Offering or Delphia Partner Offering by providing you with the new Fees at least thirty (30) days prior to your receipt of a renewal invoice or as otherwise stated in your Ordering Documents, and your payment of a renewal invoice for such Delphia Offering or Delphia Partner Offering will be deemed as your consent to such Fee change effective as of the period covered by the invoice being paid, unless you terminate your Ordering Document or enter into a Supplemental Delivery Order.
- B. Invoices. Unless otherwise stated in an Ordering Document or the applicable Online Additional Terms, we will invoice you upon execution of the Ordering Document for applicable one-time Fees and for any Delphia Offerings and/or Delphia Partner Offerings delivered as annual Subscriptions pursuant to a Delivery Order (if applicable) which shall be due and payable immediately. Upon GoLive, we will invoice you monthly for: (i) the comprehensive PEPM Fee for your TimeStar service, (ii) applicable recurring Fees for any other Delphia Offerings and/or Delphia Partner Offerings delivered as monthly Subscriptions pursuant to a Delivery Order, and (iii) time and materials or other Professional Services Fees or expenses incurred under any Ordering Document that are not required as onetime upfront fees, unless otherwise stated in the applicable Ordering Document. You are responsible for providing accurate billing and contact information to us and notifying us of any changes to such information. Unless otherwise stated in the Ordering Document, payment in full for monthly invoices is due thirty (30) days from each invoice date. Invoices may be provided electronically. Payment of Fees due pursuant to an invoice must be made in U.S. dollars and will be due to Delphia Consulting, LLC unless another Company is indicated as the applicable payee in an invoice. If you are required to make additional payments for an increased number of Users, Services that are not explicitly stated as included in your Ordering Documents, or other applicable metrics for a Delphia Offering or Delphia Partner Offering, your right of use of that Delphia Offering or Delphia Partner Offering is conditioned upon timely payment of such additional amounts. You also agree to cooperate with our efforts to review your requests for additional Services or ascertain the correct metrics applicable to your use and to provide verification as we may require in our discretion.

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- C. Credit Card Payment. If we agree that you will pay Fees by payment card (credit card or debit card), then you will maintain valid and updated payment card information with us and any applicable Delphia Company at all times. If you provide payment card information to us, you authorize us to charge such payment card for all one-time and recurring Fees.
- D. Sales and Similar Taxes. Fees shown on an Ordering Document are not inclusive of any taxes, levies, duties or governmental assessments of any nature, including value-added, sales, or use taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with your invoice for Cloud-Based Solutions and Services delivered pursuant to a Delivery Order. If we have the legal obligation to pay or collect Taxes for which you are responsible, then we may invoice you the amount of those Taxes unless you provide us with a valid tax exemption certificate from the appropriate taxing authority. For clarity, we are solely responsible for our own taxes based on our income, property and employees.
- E. Suspension of Service. If you are fifteen (15) days or more overdue on any amount owed for a Delphia Offering or Delphia Partner Offering, we may, without limiting our other rights and without affecting your obligation to pay such amounts, suspend your and your Users' access to such Delphia Offerings or Delphia Partner Offerings until all due amounts are paid in full. We or our Delphia Partner may also suspend Services immediately and disable access if, in our sole discretion, any use of the Delphia Offerings or Delphia Partner Offerings violates this Agreement.
- F. Overdue Amounts. Any Fees for which we have not received payment by the due date will accrue interest at the rate of eighteen percent (18%) of the outstanding balance per year (1.5% monthly) or, if lower, the maximum rate permitted by Law, from the due date until the date paid. We reserve the right, in our discretion, in light of any payment shortfalls or delays: (i) to change credit terms or require payment in advance, and (ii) to change payment terms.

4. Customer Data and Data Protection.

- A. Customer Data and Use of Cloud-Based Solutions. You grant us a license to process, transmit, use and store Customer Data as reasonably required to provide the Services and Cloud-Based Solutions. Subject to the limited rights granted by you hereunder, we acquire no right, title or interest from you under this Agreement to Customer Data, including any Intellectual Property Rights therein. We will, however, have the permanent right to aggregate and use, for any lawful purpose, the data generated by your use of the Delphia Offerings or Delphia Partner Offerings, so long as such data to be aggregated or used does not identify you or any User. Notwithstanding anything to the contrary in this Agreement, you agree and acknowledge that neither you nor your Users will store any Personally Identifiable Information into any Cloud-Based Solution (other than our Sage HRMS Private Cloud Solutions), and that any Personally Identifiable Information input into the Cloud-Based Solutions (except as provided above) by you or your Users is done solely and exclusively at your risk. You agree and acknowledge that all private non-personally identifiable information and Personally Identifiable Information provided by you or your Users is governed by our or our Delphia Partner privacy policies (as applicable) made available to you and your Users through Links.
- B. Protection of Customer Data. We will maintain commercially reasonable administrative, physical, and technical safeguards in accordance with applicable Laws for protection of the security, confidentiality and integrity of Customer Data received and stored by us in accordance with this Agreement.
- C. Access and Disclosure of Customer Data. We will not disclose Customer Data to a third party unless required by Law, requested by a governmental authority, or authorized in writing by you, except to share with a Delphia Company or Delphia Partner, or in connection with providing Services or Support and Maintenance to you. We will require our employees, contractors and agents, and any Delphia Company having access to such Customer Data to act in accordance with our obligations in this Section. All Personally Identifiable Information provided by Users is governed exclusively by the privacy policy posted on our applicable Delphia Links for Delphia Offerings and the applicable Delphia Partner Link for Delphia Partner Offerings (as such Cloud-Based Solutions are third party and not controlled by us). We will take commercially reasonable efforts to protect against unauthorized access to or use of such Personally Identifiable Information collected and stored by us and Delphia Company employees. You acknowledge and agree that (i) you and your Users are solely responsible for the form, content and accuracy of any Customer Data, (ii) we are not responsible for monitoring Customer Data stored in any CloudBased Solutions, (iii) we are not responsible for your detrimental reliance on any Customer Data manipulated by any third party, (iv) we do not guarantee the accuracy or completeness of any Customer Data, and (v) we make no warranty of any kind with regards to the integrity or reliability of any Customer Data. In the event of any loss or damage to your Customer Data by us, your sole remedy will be for us to use commercially reasonable efforts to replace or restore the lost or damaged Customer Data from the latest back-up of such Customer Data. Further, if you or your Users provide Personally Identifiable Information to us from data subjects in Canada or the European Union ("**EU**"), then you (i) acknowledge and agree that in connection with any Delphia Offering, we may transfer, access, store, and process such Personally Identifiable Information outside of the EU and Canada in the United States pursuant to United States Laws (the "**Customer Data Transfer**"); (ii) consent to such Customer Data Transfer, and (iii) will ensure that you comply with all

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applicable EU and Canadian laws that apply to you as the data controller of such Personally Identifiable Information in connection with the Customer Data transfer.

- D. Incident Response and Remedial Action. In the event that we determine that a security breach (as defined under applicable state law) involving the unauthorized disclosure of properly stored Personally Identifiable Information comprising Customer Data has occurred, we agree to promptly: (i) give you notice as legally required as soon as practicable after our determination that such a security breach occurred; (ii) investigate such breach; and (iii) use commercially reasonable efforts to remedy the cause of such breach. If a security breach requires you, under applicable federal or state Law, to make a disclosure to a third party, you will be solely responsible for making such disclosure, including determining the content, methods, and means of such disclosure except that you will not name us in any such disclosure without our prior written consent, unless required to do so by applicable Law. We (and our applicable Affiliates or subcontractors) will reasonably cooperate with you in formulating the disclosure. We (and any applicable Affiliates or subcontractors) will not make any such disclosure on our own initiative that names you without your prior written consent, unless required to do so by applicable Law.
- E. Customer Data Accessibility. For as long as you are in compliance with this Agreement, you may access Customer Data and extract Customer Data stored within any of our Cloud-Based Solutions for as long as you maintain an effective Ordering Document in good standing for the applicable Cloud-Based Solution. If requested in writing by you within one hundred eighty (180) days after termination of any Cloud-Based Solution, we will use commercially reasonable efforts to provide you (at our then prevailing rates for time and materials) with a repository of electronic files containing your Customer Data stored from your use of any terminated Cloud-Based Solution that remains in our possession at the time of such request. Customer understands and agrees, however, that our obligations and Customer's rights under this Section 4.E, at all times shall be subject to application of all applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally.

5. Confidentiality.

- A. In General. We may disclose your Confidential Information to our employees, Delphia Companies, subsidiaries, Affiliates, agents, and contractors to: (i) perform or offer a Delphia Offering or Delphia Partner Offering, (ii) offer our additional products or services, (iii) perform analysis to determine your qualification to receive future services or meet contractual obligations, and (iv) directly or indirectly collect amounts due. We may also disclose your Confidential Information to our attorneys, collection agencies, accountants and auditors as needed. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of the obligations under this Section 5, (ii) becomes known to the Receiving Party without a breach by the Receiving Party of its obligations under this Section 5 or (iii) was independently developed by the Receiving Party without reference to the Confidential Information.
- B. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information (but not less than reasonable care).
- C. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is required by Law or requested by a governmental authority to do so, provided the Receiving Party gives the Disclosing Party prior written notice of the planned disclosure (to the extent practicable and legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is required by Law to disclose the Disclosing Party's Confidential Information as part of a proceeding to which the Disclosing Party is a party, and the Disclosing Party does not contest the disclosure, or if the Disclosing Party's objections are overruled, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing the required access to such Confidential Information.
- D. Remedies. Each Party acknowledges and agrees that monetary damages may not be a sufficient remedy for any breach or threatened breach of this Section 5 by a Receiving Party. Therefore, in addition to all other remedies available at Law (which neither Party waives by the exercise of any rights hereunder), the Disclosing Party is entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

6. Representations and Warranties.

- A. Mutual. Each Party represents and warrants to the other that it has validly entered into this Agreement and has the legal power to do so.
- B. Delphia. We represent and warrant to you that (i) upon delivery, our Cloud-Based Solutions will perform materially in accordance with the applicable User documentation, and (ii) upon delivery, we will use commercially reasonable efforts to ensure that the Delphia Offerings or Delphia Partner Offerings provided to you contain no computer virus, Trojan horse, worm or other similar malicious code, although we do not warranty that our Cloud-Based Solutions are free from all bugs,

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errors or omissions. The warranties stated are for your sole benefit and may not be extended to any other person or entity. For any breach of the warranties stated above, we will, at our expense, use commercially reasonable efforts to repair or replace the applicable Cloud-Based Solution, so that it performs substantially in accordance with the applicable User documentation. To the extent that we cannot repair or replace the applicable Cloud-Based Solution, your exclusive remedy will be as provided in Section 10.C. (Termination for Cause).

- C. Customer. You represent and warrant to us that you will verify the accuracy of Customer Data as necessary for us to provide the Delphia Offerings or Delphia Partner Offerings and that you have the unencumbered right to possess and use all Customer Data entered into the Delphia Offerings and Delphia Partner Offerings by you (or your Users), and that no third party other than your Affiliates, Users, and their representatives have any rights in such Customer Data.

7. DISCLAIMERS AND EXCLUSIONS.

- A. DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SUBJECT TO OUR EXPRESS WRITTEN WARRANTIES SET FORTH IN THIS AGREEMENT, THE DELPHIA OFFERINGS AND DELPHIA PARTNER OFFERINGS ARE PROVIDED "AS IS". THERE IS NO WARRANTY THAT ANY DELPHIA OFFERING WILL BE UNINTERRUPTED OR ERROR FREE, THAT ANY DEFECTS WITHIN A DELPHIA OFFERING WILL BE CORRECTED, THAT ANY DELPHIA OFFERING WILL MEET YOUR NEEDS OR REQUIREMENTS, OR THAT ANY THIRD PARTY CONTENT OR COMPONENTS SHALL MEET ANY FORM, CONTENT OR ACCURACY STANDARD. YOU DISCLAIM ANY AND ALL WARRANTIES, LIABILITIES OR CLAIMS AGAINST US AND IRREVOCABLY RELEASE US FROM ANY AND ALL DAMAGES ARISING FROM ANY DELPHIA OFFERING PROVIDED TO YOU, INCLUDING THOSE DELPHIA OFFERINGS FOR WHICH WE ACT SOLELY AS BILLING AGENT, EXCEPT TO THE EXTENT ANY SUCH LIABILITIES ARE THE RESULT OF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- B. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION WILL NOT, HOWEVER, LIMIT YOUR PAYMENT OBLIGATIONS FOR FEES AND OTHER PAYMENT AMOUNTS DUE UNDER THIS AGREEMENT. THIS SECTION WILL NOT APPLY TO OR LIMIT RECOVERY FOR YOUR UNLICENSED USE OF THE DELPHIA OFFERINGS OR DELPHIA PARTNER OFFERINGS.
- C. LIMITATION OF LIABILITY. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER WILL EXCEED THE FEES PAID OR PAYABLE BY YOU PURSUANT TO AN ORDERING DOCUMENT IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT WITH RESPECT TO THE SPECIFIC SUBSCRIPTION(S), CLOUD-BASED SOLUTION(S), EQUIPMENT, OR PROFESSIONAL SERVICES SOW GIVING RISE TO SUCH CLAIM, REGARDLESS OF THE FORM OF ACTION, AND IN ADDITION, NEITHER PARTY'S AGGREGATE LIABILITY WILL EXCEED THE CUMULATIVE AMOUNT OF FEES PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT. THIS SECTION, HOWEVER, DOES NOT LIMIT (I) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, (II) YOUR PAYMENT OBLIGATIONS FOR FEES OR OTHER AMOUNTS DUE UNDER THIS AGREEMENT AND (III) YOUR LIABILITY FOR YOUR UNLICENSED USE OF THE DELPHIA OFFERINGS OR DELPHIA PARTNER OFFERINGS. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY EXPRESSLY PROVIDED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. EACH PARTY FURTHER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU THE RIGHTS TO ACCESS AND USE THE SUBSCRIPTION(S) AND PROFESSIONAL SERVICES PROVIDED FOR IN THIS AGREEMENT AT THE FEES AGREED TO BY THE PARTIES. THE DISCLAIMER AND REMEDY LIMITATION IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- D. APPLICATION TO DELPHIA PARTNERS. ALL DISCLAIMERS, LIMITATIONS AND EXCLUSIONS DESCRIBED ABOVE FOR THE DELPHIA OFFERINGS ARE EQUALLY APPLICABLE TO OUR DELPHIA PARTNERS FOR THE DELPHIA PARTNER OFFERINGS, INCLUDING THOSE DELPHIA PARTNER OFFERINGS FOR WHICH WE ACT SOLELY AS BILLING AGENT; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT LIMIT, CONTROL, OR OTHERWISE RESTRICT THE SEPARATE AGREEMENTS BETWEEN YOU AND ANY DELPHIA PARTNER OR ITS AFFILIATES.

8. Indemnification.

- A. Indemnification by Delphia. We will defend and indemnify you and your Affiliates, and your and their respective officers, directors, stockholders, employees and agents (each a "Customer Indemnified Party") against any claim, demand, suit, or

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proceeding made or brought against any Customer Indemnified Party by a third party alleging that the use of any Delphia Offering as permitted hereunder infringes or misappropriates the U.S. Intellectual Property Rights of a third party, except where such claim, demand, suit or proceeding arises from your use of the Delphia Offerings other than as permitted in this Agreement, or the combination of a Delphia Offering with products or services not delivered by us, infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable Law (a “**Claim Against Customer**”). We will indemnify the Customer Indemnified Parties for any damages, attorney fees and costs, and for amounts paid by the Customer Indemnified Parties under a Delphia-approved settlement of, a Claim against Customer. To be entitled to indemnification, you must (i) give us prompt written notice of the Claim Against Customer in accordance with clause (i) or (ii) of Section 12.A (Notices); (ii) give us sole control of the defense and settlement of the Claim Against Customer (provided that we may not settle any Claim Against Customer without your consent if the settlement does not release the Indemnified Parties of all liability asserted in the claim); and (iii) provide to us all reasonable assistance, at our expense. In the event of a Claim Against Customer, or if we reasonably believe there is a risk that the Delphia Offerings may infringe or misappropriate the Intellectual Property Rights of a third party, we may, in our discretion and at no cost to you, (i) modify the Delphia Offerings so that they no longer infringe or misappropriate, (ii) obtain a license for your continued use of the Delphia Offerings substantially in accordance with this Agreement, or (iii) terminate the portion of your Ordering Document applicable to the affected Delphia Offerings and refund to you any unused prepaid Fees covering the remainder of terminated Delphia Offering.

- B. **Indemnification by Customer.** You will defend and indemnify us, the Delphia Companies and our Affiliates, and our and their respective officers, directors, stockholders, employees and agents (each an “**Delphia Indemnified Party**”) against any claim, demand, suit or proceeding made or brought against any Delphia Indemnified Party by a third party alleging that Customer Data, or your use of the Delphia Offerings other than as permitted in this Agreement, or the combination of a Delphia Offering with products or services not delivered by us, infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable Law (a “**Claim Against Delphia**”). You will indemnify the Delphia Indemnified Parties for any damages, attorney fees and costs, or for any amounts paid by a Delphia Indemnified Party under a Customer-approved settlement of, a Claim Against Delphia. To be entitled to indemnification, we must (i) promptly give you written notice of the Claim Against Delphia in accordance with clause (i) or (ii) of Section 12.A; (ii) give you sole control of the defense and settlement of the Claim Against Delphia (provided that you may not settle any Claim Against Delphia if the settlement does not release the Delphia Indemnified Parties of all liability asserted in the claim); and (iii) provide to you all reasonable assistance, at your expense.
- C. **Exclusive Remedy.** This Section 8 sets forth each indemnifying Party’s sole liability to, and the indemnified Party’s exclusive remedy against, the other Party for any intellectual property infringement, violation, claim or allegation.

9. **Ownership; Intellectual Property; Feedback.**

- A. **Reservation of Rights in Services.** We and our respective suppliers and licensors, reserve all rights, including all related Intellectual Property Rights, with regard to all Delphia Offerings and Delphia Partner Offerings. No rights are granted to you hereunder other than as expressly set forth in this Agreement.
- B. **Trademarks and Brands.** Each Party retains all rights regarding its own branding and trademarks. Neither Party will use the other Party’s branding or trademarks without the other Party’s prior written permission. Each Party agrees to use the other party’s branding or trademarks only as approved and in accordance with the other party’s reasonable policies regarding advertising and trademark usage. The Parties agree that neither you nor we will issue a press release or any other public announcement concerning the other Party without the prior written consent of the other Party. You agree and acknowledge that we, a Delphia Company, or a Delphia Partner may refer to you or use your branding in sales presentations, marketing forums, trade shows, on our product websites, or as a part of our customer lists to reflect your use of such Delphia Offerings and/or Delphia Partner Offerings, unless you notify us otherwise. You also agree and acknowledge that we, a Delphia Company, or a Delphia Partner may use your branding or trademarks to customize the Cloud-Based Solution websites and other materials accessible by your Users.
- C. **Feedback.** You agree that if you or your Affiliates provide us with any comments, suggestions, or feedback with respect to our Cloud-Based Solutions or Services (collectively, “**Feedback**”), the Feedback will become our property and we will have all present and future existing rights to the Feedback. We will not be liable for any similarities to provided ideas that may appear in our future Cloud-Based Solutions or Services. We will be entitled to use Feedback for any commercial or other purpose, without compensation to you or any other person.

10. **Term and Termination.**

- A. **Term of Agreement.** This Agreement commences on the Effective Date of your Delivery Order. This Agreement continues until all Ordering Documents have expired, or until this Agreement is terminated in accordance with its terms (the “**Term**”). Your failure to use, commence or complete installation, configuration, or set up of any Service, Cloud-Based Solution, or

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Equipment does not suspend or release you from any of your obligations under this Agreement, unless otherwise agreed in writing by Delphia.

- B. Delivery Order Term and Renewals. Except as otherwise specified in the Delivery Order, all Services and/or Cloud-Based Solutions stated in your Initial Delivery Order will be considered delivered as of the Go-Live date and will continue to be delivered pursuant to such Delivery Order until you enter into any Supplemental Delivery Order for the modification of your Services and/or Cloud-Based Solutions or until either Party gives the other written notice of termination at least thirty (30) days before the next scheduled monthly invoice date. Cloud-Based Solutions include Support and Maintenance, which becomes available at the time of delivery of your applicable Cloud-Based Solutions and remains available for as long as you maintain access to the applicable Cloud-Based Solutions. Equipment does not include Support and Maintenance. You may purchase a separate Equipment Support and Maintenance plan in your Delivery Order and the terms of such plan are as provided in the Equipment Support and Maintenance plan.
- C. Termination for Cause. A Party may terminate this Agreement or any portion thereof or any Ordering Document for cause: (i) if a material breach of any term, warranty or obligation of this Agreement by the other Party remains uncured following thirty (30) days' written notice to the other Party of the material breach, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, we may terminate this Agreement or any Ordering Document immediately following an acceleration of your Fee obligations.
- D. Refund or Payment upon Termination for Cause. If you terminate this Agreement for cause, then we will refund to you any unused prepaid Fees at the effective date of termination. If we terminate this Agreement for cause, then you will pay any unpaid Fees covering the remainder of all terminated Ordering Documents. Termination does not relieve you of your obligations to pay any Fees payable to us for the period prior to the effective date of termination or for any applicable Minimum Threshold requirements stated in your Delivery Order.
- E. Effect of Termination; Surviving Provisions. Except as otherwise stated in this Agreement, licenses and permissions granted to you by this Agreement terminate upon termination of this Agreement. Upon termination, you will immediately cease using all Delphia Offerings or Delphia Partner Offerings and promptly uninstall and permanently delete or destroy all copies of any Confidential Information received from us. Further, you will provide us with a written certification by an officer attesting to such deletion or destruction. The following Sections of this Agreement will survive termination of this Agreement for any reason: Sections 3-9, 10.D-E, and 11-13. Additionally, any provision of the Online Additional Terms which contemplates performance or observance subsequent to any termination or expiration of a Delphia Offering or Delphia Partner Offering will survive any termination of this Agreement and will continue in full force and effect. We may delete or erase any or all Customer Data for the Delphia Offerings at any time following thirty (30) days after termination of this Agreement, unless otherwise agreed in writing. You may request Customer Data extraction from us for the Delphia Offerings within thirty (30) days after termination of this Agreement at our then-current hourly Professional Services rates. All provisions of this Agreement will survive termination to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

11. Governing Law and Jurisdiction; Arbitration.

- A. Governing Law. Except as otherwise stated in this Agreement, this Agreement is subject to the laws of the state of Ohio and applicable federal laws of the United States of America, without regard to conflicts of laws doctrines of any state and without regard to the United Nations Convention on Contracts for the International Sale of Goods.
- B. Jurisdiction and Venue. Except for matters subject to arbitration, both Parties hereby submit to the jurisdiction of the state and federal courts located in Franklin County, Ohio, which have the sole and exclusive jurisdiction over any and all disputes and causes of action that arise out of or relate to this Agreement or its subject matter. In addition, we may apply to a court of any other jurisdiction for injunctive or other equitable relief in respect of your breach or anticipated breach of this Agreement. Nothing in this Agreement prevents us from enforcing or protecting our Intellectual Property Rights in any court of competent jurisdiction.
- C. Waiver of Jury Trial. Each Party waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement or its subject matter.
- D. Binding Arbitration and Class Action Waiver. Except for claims: (i) for breach or threatened breach of the confidentiality provisions; (ii) arising out of the indemnity obligations; or (iii) arising out of your failure to satisfy your payment obligations under this Agreement, including any Ordering Document, any dispute, claim or controversy arising out of or related to this Agreement or the performance, enforcement, breach, termination, validity or interpretation thereof, including the determination of the scope or applicability of this Agreement to arbitrate, that cannot be resolved by you and us through good faith informal negotiation between the parties within a reasonable period of time (not to exceed 30 days after written notice of a claim or dispute), will be settled by binding arbitration conducted before one neutral arbitrator, and governed

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by the Federal Arbitration Act, 9 U.S.C. §§ 10 and 11 ("FAA"). Notice of the demand for arbitration will be filed in writing by either Party with the other Party to this Agreement and with the American Arbitration Association (the "AAA"). The demand for arbitration will be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The arbitrator's decision will be final except for any applicable right of appeal or review under the FAA. Any court or jurisdiction over the parties may enforce the arbitrator's award. Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor we will seek to have any dispute heard as a class action, private attorney general action, or in any other proceeding in which either Party acts or proposes to act in a representative capacity. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings. Any arbitration will be conducted by the AAA under its Commercial Arbitration Rules. Unless otherwise agreed to by the Parties, the arbitration will be held in the home jurisdiction of the Party against whom arbitration is initiated, unless home jurisdiction is outside the U.S. mainland, in which case arbitration will be held in Franklin County, Columbus, Ohio. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in its discretion, award costs and fees to the prevailing Party.

- E. **WAIVER OF UCITA. THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT OR ANY VERSION THEREOF, ADOPTED BY ANY STATE OR OTHER GOVERNING AUTHORITY IN ANY FORM ("UCITA"), WILL NOT APPLY TO THESE MASTER TERMS OR THE ONLINE ADDITIONAL TERMS AND, TO THE EXTENT THAT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT-OUT OF ITS APPLICABILITY PURSUANT TO ITS PROVISIONS.**

12. General Provisions.

- A. Notices. Except as otherwise specified in this Agreement, notices and approvals must be in writing and will be deemed to have been given upon: (i) personal delivery against signed receipt, (ii) receipt, if sent by a nationally recognized overnight courier service with signature confirmation, (iii) email, if sent to the designated company email address provided for these purposes and verified by electronic logs as not having bounced back or having received an error message for transmittal. All written notices will be sent to you at the contact information listed in the most recent Delivery Order, unless you provide us alternative contact information in a written notice pursuant to this provision. Billing-related notices to you will be addressed to the relevant billing contact that you designate in applicable Ordering Documents. All other notices required to be provided to you under this Agreement that are not designated as "written notices" will be provided within the Cloud-Based Solution or provided electronically to the relevant system administrator that you designate to us in accordance with our standard procedures for the applicable Cloud-Based Solution. Any written notices that you send to us pursuant to subsections (i) and (ii) above must be sent to Delphia Consulting, Attn: Legal Department, 1550 Old Henderson Road, Ste 227, Columbus, OH 43220, and if sent pursuant to subsection (iii) above must be sent to accounting@delphiaconsulting.com, or to such other address as we may designate in accordance with this section.
- B. Force Majeure. Except with respect to your payment obligations, neither Party will be responsible for interruptions in performance or delays due to matters beyond its reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, strikes or other labor problems, failures, unavailability or delays of hosting providers or Internet service suppliers, computer malfunctions, telecommunications failures, or online attacks.
- C. Sunset of Offerings. We reserve the right to discontinue providing any Delphia Offering or Delphia Partner Offering at any time. Our obligation to provide any Delphia Partner Offering will terminate automatically, simultaneously in whole or in part, as applicable, upon termination of any third party agreement or license necessary to our provision of the Delphia Partner Offerings, unless we agree otherwise. In either case, we will refund to you any unused prepaid Fees related to the discontinued Delphia Offering or Delphia Partner Offering as of the effective date of termination unless an alternative agreement has been made in writing.
- D. Relationship of the Parties. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, or agency relationship between the Parties. Our authorized signor executes on behalf of all applicable Delphia Companies providing Services, and such execution does not intend nor will it result in any Delphia Company being jointly and/or severally liable for any of the other Delphia Companies. Each Delphia Company will be responsible only for its own liability.
- E. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, except with regarding to rights granted to Delphia Companies.
- F. Waiver. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.
- G. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to Law, the provision will be interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by Law, and the remaining provisions of this Agreement will remain in effect.

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- H. Attorney Fees. You will pay, on written request, our reasonable attorney fees and other out-of-pocket costs incurred by us to collect any Fees or other amounts due to us under this Agreement following your breach of payment obligations.
- I. Assignment. Except as provided below, you may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without our prior written consent. Notwithstanding the foregoing, upon written notice to the non-assigning Party, either Party may assign this Agreement in its entirety (including all Ordering Documents), without consent of the other Party, to an Affiliate or to an entity acquiring all or substantially all of such Party's business or assets in connection with a sale provided that if you are the assigning Party, then you agree: (i) that such Affiliate or acquiring entity is not a competitor of the other Party at the time of assignment, and (ii) that you will remain obligated for all Fees and other amounts due hereunder and guarantee the full performance of this Agreement after assignment. In addition, we may assign a portion of any Ordering Document in connection with a sale of the Delphia Company or Delphia Partner business or assets that includes the acquired Delphia Offering or Delphia Partner Offering. The assignment will be effective upon receipt of later of: (i) the receipt of such notice by the non-assigning Party, or (ii) the effective date of the assignment as set forth in such notice. Any assignment in contravention of this Section will be null and void ab initio. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- J. Professional Advice. You acknowledge that we are not providing any legal, tax, accounting or benefits advice and that use of the Delphia Offerings or any Professional Services does not ensure compliance with any Laws. You acknowledge that all information is provided only as general information and may not conform to the laws in your state or jurisdiction or reflect the most current legal developments in any geographic or substantive area. You acknowledge and agree that we may rely on any information that you provide and treat it as if it is truthful, accurate and complete. If you require legal, tax, accounting or benefits advice or assistance, you should obtain the services of a competent professional expert knowledgeable in the applicable area of expertise.
- K. Amendments/Modifications/Consent. No modification or amendment of this Agreement, including, any Ordering Document, will be effective unless in writing and either signed or accepted electronically by the Party against whom the modification or amendment is to be asserted, except as provided below. You understand and agree that by receiving access to the Delphia Offerings and Delphia Partner Offerings, you ratify these Master Terms and the Online Additional Terms. By executing a Supplemental Ordering Document, your subsequent use of any Delphia Offering (including those previously purchased) will be governed by these Master Terms and any applicable amendment hereto. We may amend these Master Terms or any Online Additional Terms from time to time by posting the amended Master Terms (including any Online Additional Terms) to the applicable Link. Such amendments will become effective upon commencement of your applicable renewal term for the affected Delphia Offerings or Delphia Partner Offerings. If we amend the Master Terms or applicable Online Additional Terms in a way that materially and adversely affects you and you do not wish to accept the applicable amended Master Terms, then you may terminate your subscription to the affected Service by giving us written notice at any time within the 30 day period following the date of the posted Amendment and will be entitled to receive a refund of any prepaid Fees applicable to the cancelled renewal term. You agree to visit the Link containing the Master Terms and Online Additional Terms on a regular basis to check revision dates and review any amendments. You further agree to be bound by any additional electronic acknowledgement, agreement or consent that you transmit while using any of our websites or applications to access Delphia Offerings, including any consent you give us to receive communications solely through electronic transmission.
- L. Entire Agreement. These Master Terms, including all exhibits and addenda hereto, all Ordering Documents, and Online Additional Terms related to the Delphia Offerings and Delphia Partner Offerings, and any other attachments, amendments, supplements or addenda hereto or thereto hereby incorporated by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral on the part of any of our salespersons or other agents, concerning its subject matter. In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of the Ordering Document, Master Terms, Online Additional Terms, and any applicable amendment or addenda thereto, such documents will be interpreted in the following order of precedence: (i) the terms of any amendment or addenda, (ii) the terms of the applicable Ordering Document, (iii) the Online Additional Terms, and (iv) the Master Terms. In the event of an inconsistency, ambiguity, contradiction or conflict between the [Professional Services/Consulting Terms](#), the Master Terms, any Ordering Document, and any applicable amendments or addenda thereto, such documents will be interpreted in the following order of precedence: (i) the terms of any amendments or addenda, (ii) the Delphia Professional Services/Consulting Terms & Conditions, unless an Ordering Document expressly states that it overrides a specific provision of such terms and conditions, (iii) the Master Terms, and (iv) the Ordering Document. You will execute any additional documents as may be required to comply with the intent of this Agreement or as required by an applicable governing authority to comply with any applicable statute, regulation or rule. Any headings and any table of contents or indexes provided as a part of this Agreement are solely for convenience or reference and do not affect the meaning, construction or effect of this Agreement. As used in this Agreement, unless otherwise explicitly provided to the contrary, all references to days will be deemed references to calendar days. Whenever the words "include," "includes" or

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“including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The provisions of this Section 12 are applicable to all Online Additional Terms. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

13. Definitions. Capitalized terms not otherwise defined in the Ordering Document, these Master Terms, or the Online Additional Terms, have the following meanings (whether used in the singular or in the plural):

- M. “Active Employees”** means any of your or your Affiliates’ employees eligible for payroll or other payments processed by us using our Payroll Cloud-Based Solution, including Users.
- N. “Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. **“Control,”** means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- O. “Bundled Service Package”** means the individual Delphia Offerings and Delphia Partner Offerings integrated or bundled together in one Service package as stated on your Delivery Order.
- P. “Cloud-Based Solutions”** means the Delphia Offerings (including business performance solutions) and/or Delphia Partner Offerings that are delivered as monthly or annual “cloud-based” subscriptions as stated on your Delivery Order and provided in accordance with our [Service Level Agreement and Support and Maintenance for Cloud-Based Solutions](#). No source code is or will be disclosed or provided to you as part of the ordered Cloud-Based Solutions.
- Q. “Confidential Information”** means all proprietary or confidential business or technical information disclosed by a Party, its Affiliates, or licensors (**“Disclosing Party”**) to the other Party (**“Receiving Party”**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Our Confidential Information includes any non-public information regarding Delphia Offerings, and the Confidential Information of each Party includes the non-public terms and conditions of this Agreement, business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. Your employee information is your Confidential Information.
- R. “Customer”** means the entity (other than us) accepting this Agreement as the responsible party for its and its Affiliates’ Users’ compliance with the entity’s obligations under this Agreement, for any breach of those obligations by such Users, for use or misuse of the Services and Cloud-Based Solutions by such Users, and for payment for Services and Cloud-Based Solutions on behalf of such Users.
- S. “Customer Data”** means all data or information submitted by you, electronically or otherwise, to us or a Delphia Partner in connection with a Delphia Offering or Delphia Partner Offering.
- T. “Delivery Order”** means a document, in a format provided by us that lists the Services, Cloud-Based Solutions, and Equipment provided under these Master Terms collectively with any subsequent amended Delivery Order executed by you after the effective date of your initial Delivery Order, to add, remove, or otherwise supplement Services, Cloud-Based Solutions, Equipment, or Equipment Support and Maintenance Plans (**“Supplemental Delivery Order(s)”**).
- U. “Equipment”** means equipment or hardware purchased from us as stated in your Delivery Order (e.g., time clocks) and subject to our Delphia Timeclocks [Equipment Support and Maintenance Plan](#).
- V. “Fee”** means any fee, charge or other amounts due under this Agreement for Services, Cloud-Based Solutions, Equipment, or Professional Services. For purposes of this Agreement, Fees are not inclusive of amounts collected or processed as wage or payroll tax payments for our Payroll Cloud-Based Solution.
- W. “Go-Live”** means the start date for which a Cloud-Based Solution can be used in production mode by one or more of your Users or the start date of any standalone Professional Services projects.
- X. “HR”** means human resources.
- M. “Delphia Company”** means our Affiliate that has agreed to supply a Delphia Offering to you under these Master Terms and applicable Online Additional Terms. For clarity, Delphia Offerings may be delivered by Delphia Consulting, LLC.
- N. “Delphia Offering”** means the Services, Cloud-Based Solutions, Equipment, and other items provided by us pursuant to a Delivery Order.
- O. “Delphia Partner”** means the entities and licensors other than Delphia Consulting, LLC that provide the Delphia Partner Offerings that are integrated into our Bundled Service Packages.
- P. “Delphia Partner Offering”** means the Services, Cloud-Based Solutions, Equipment, or hosted platforms provided by third party entities other than us and resold, sublicensed, or made accessible to you by us pursuant to a Delivery Order and that interoperate with or supplement the Delphia Offerings.

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- Q. “Intellectual Property Rights”** means all forms of intellectual property rights and protections in any country or other jurisdiction of the world including, without limitation, all right, title and interest in all associated: (i) issued patents and all filed or pending applications for patents, including any continuations, continuations in part, reissues, reexaminations, substitutions, and extensions thereof, in any country or other jurisdiction in the world; (ii) trade secrets and all trade secret rights, rights in Confidential Information, and any similar rights arising under the laws of any country or other jurisdiction; (iii) copyrights, mask works, and other literary property or author's rights, whether or not protected by copyright or as a mask work; and (iv) trademarks, trade names, symbols, brand names, and logos.
- R. “Payroll Cloud-Based Solution”** means the Delphia Partner hosted human capital management platform powering the Cloud-Based Solution applicable to our Payroll Services.
- S. “Laws”** means federal, state, and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any U.S. government agency, or any authority, department or agency thereof, as applicable to the Parties with respect to their use or provision of the Delphia Offerings or Delphia Partner Offerings. You remain responsible for compliance with all applicable Laws with respect to all aspects of your employees and your business while utilizing any Delphia Offering.
- T. “Links”** means any URL stated herein or any replacement URL specified by us or a Delphia Partner to access the Master Terms, Online Additional Terms, privacy policies applicable to the Delphia Offerings, and terms and policies applicable to the Delphia Partner Offerings.
- U. “Online Additional Terms”** means the online binding terms and conditions that supplement the [Master Terms](#) and apply to your use of the Delphia Offerings and Delphia Partner Offerings included on your Delivery Order(s). You can access the Online Additional Terms at <https://www.delphiaconsulting.com/eula/> (or at a replacement Link as we may specify) before using the applicable Delphia Offerings.
- V. “Ordering Document”** means any Delivery Order, SOW, Supplemental Delivery Order or other signed amendment or documentation provided by you to us for the provision of our Services, Professional Services, Cloud-Based Solutions or Equipment.
- W. “Party”** means either you or us and the applicable Delphia Companies providing Services; together, they are the **“Parties.”**
- X. “PEPM”** means per employee per month.
- Y. “Personally Identifiable Information”** with respect to the United States, means (a) the combination of an individual's first name and last name or first initial and last name in with any one or more of the following data elements that relate to such person: (i) Social Security (or similar) number; (ii) driver's license number or federal or state-issued identification card number; (iii) PHI; or (iv) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account, or (b) any information that, if compromised, would be sufficient to perform or attempt to perform identity theft against the individual whose information was compromised. Personally Identifiable information does not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.
- Z. “PHI”** means protected health information covered by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) or similar laws.
- AA. “Professional Services”** means consulting, implementation, Cloud-Based Solutions training, or other professional services delivered pursuant to an Ordering Document and subject to our [Professional Services/Consulting Terms](#).
- BB. “Services”** means the payroll, payroll-related, and HR services (including training, strategic and/or managed HR services), and Support and Maintenance for Cloud-Based Solutions or Equipment ordered in a Delivery Order that are made available by or through us or a Delphia Partner and invoiced by us on our own behalf or as billing agent for our Delphia Partners.
- CC. “SLA”** means the service level agreement and performance metrics provided by us in the Online Additional Terms as applicable to our Support and Maintenance delivered pursuant to a Delivery Order, as amended from time to time.
- DD. “SOW”** means the effective statements of work entered into between you and us and subject to our [Professional Services/Consulting Terms](#).
- EE. “Subscription”** means the Services, Cloud-Based Solutions, Equipment or Equipment Support and Maintenance Plans collectively applicable to your Account and billable as stated in your Delivery Order.
- FF. “Support and Maintenance”** means the level of support and/or maintenance for a Delphia Offering or Delphia Partner Offering as stated in the Delivery Order and/or the Online Additional Terms regarding our [Service Level Agreement and](#)

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[Support and Maintenance for Cloud-Based Solutions](#), and the [Equipment Support and Maintenance Plan](#) (for ordered Equipment).

GG. “Users” means individuals or Active Employees who you or your Affiliates authorize to use a Delphia Offering or Delphia Partner Offering (including use for Cloud-Based Solution evaluation), for whom subscriptions have been ordered on a Delivery Order, and who have been provided access codes and/or user identifications by you or at your request.

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SERVICE LEVEL AGREEMENT AND SUPPORT AND MAINTENANCE FOR CLOUD-BASED SOLUTIONS

These Online Additional Terms address our Service Level Agreement (“SLA”) and Support and Maintenance for our Cloud-Based Solutions. In the event that our Targeted Uptime (as defined below) is not met, we will provide a service level credit against your next monthly invoice with respect to the applicable Cloud-Based Solutions as described below. These credits are your sole and exclusive remedy for errors, delays, downtime, failures, or non-conformities with regard to the relevant Cloud-Based Solutions or their accessibility, activities, inactivity, performance or failures.

1. Service Levels.

- A. Uptime. We will use commercially reasonable efforts to achieve at least 99.5% Uptime for all Cloud-Based Solutions in any calendar-month period. We refer to this threshold as the “**Targeted Uptime**”.

“**Uptime**” is calculated by dividing the total number of minutes that the applicable Cloud-Based Solution was available in the specified month by the total number of minutes in the specified month and multiplying the result by one hundred percent (100%) to receive the percentage of minutes during the specified calendar month in which the applicable Cloud-Based Solution for which you have subscribed is unavailable for reasons other than a force majeure event or scheduled downtime. A Cloud-Based Solution is deemed “unavailable” during the time when a Severity 1 Error (defined below) has occurred and has not been cured. By way of example only, if January has 31 days totaling 44,640 minutes (number of days x 24 hours x 60 minutes) and a Severity 1 Error results in downtime for 52 minutes, the Cloud-Based Solution affected would be calculated to have had Uptime for 44,588 calendar minutes (total minutes minus downtime minutes) which equates to 99.88% Uptime ($44,588 / 44,640 = 0.9988 \times 100$ percent) which would be rounded up to 99.9% in accordance with standard accounting principles and would be considered to have met our Targeted Uptime for such calendar month, resulting in no applicable credit allowance.

- B. Service Level Credits. In the event that the Uptime for a Cloud-Based Solution falls below the applicable Targeted Uptime, you may obtain a credit in the amount shown in the table below by requesting the credit from us in writing within thirty (30) days of the end of the month in which the event giving rise to your right to the credit occurred. The request must include a summary of the incidents/outages, including the date, time and duration. We will contact you by email within ten (10) business days of receipt of your request to explain the status of the request.

<u>Uptime</u>	<u>Credit Percentages*</u>
99.5% or greater	N/A
98.5% to 99.49%	10%
97.5% to 98.49%	20%
Below 97.5%	30%

* Credit is calculated as a percentage of the PEPM Fees invoiced for the affected Cloud-Based Solution or components of a Bundled Service Package for the month in which the Targeted Uptime was not achieved.

Upon substantiating your claim, we will issue a credit against your next monthly invoice after a credit is allowed. We will only issue a credit if you are in compliance with the Agreement. Credits for a month may not exceed one (1) month's PEPM Fees for the affected Cloud-Based Solution, as measured by the month in which the incident or incidents occurred.

- C. Maintenance Downtime. We endeavor to provide you with at least two (2) business days’ notice of any scheduled downtime for Cloud-Based Solutions outside of the following routine maintenance scheduled downtime window: 6 pm Saturday to 6 pm Sunday, Columbus, Ohio time.

In addition, urgent maintenance may be required on occasion. Urgent maintenance may include security-related issues and/or technical problems that could impact the availability of the relevant Cloud-Based Solution. In those cases, we will attempt to notify you prior to scheduling such downtime if time reasonably permits; however, we will not be required to provide that notice before performing urgent maintenance. We will send out notification after commencement of urgent maintenance if we were not reasonably able to notify you in advance and if the urgent maintenance unreasonably interfered with the CloudBased Solution, as determined by us. In such a case, the CloudBased Solution will be deemed unavailable during such period.

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2. Support and Maintenance Plan.

- A. Support Generally. With respect to each Cloud-Based Solution, our Support and Maintenance is included. All support is provided in English. Cloud-Based Solution setup, installation and training are excluded from the Support and Maintenance.
- B. Updates and Upgrades. Updates and upgrades to Cloud-Based Solutions are included within the monthly PEPM Fee and will be provided to you during the Term of the Agreement. It is your responsibility to confirm the compatibility of any updates or upgrades with your systems.
- C. Support Hours. The business days and hours stated below will only be counted as times falling within our “**Support Hours**,” that is, the times when support is available for the Cloud-Based Solutions. All of our Cloud-Based Solutions offer Support Monday – Friday 9:00 a.m. – 5:30 p.m. Eastern Time. All Support Hours exclude our recognized holidays.
- D. Response Times. We seek to respond in a timely manner to errors identified by you in the applicable Cloud-Based Solution that impair functionality (“**Errors**”) that you report through our [help desk](#) for the affected Cloud-Based Solution. Only those persons who both have been trained on the applicable Cloud-Based Solution and designated in an applicable Delivery Order or other written communication as a “designated administrator” may contact us for support. For purposes of this SLA, “**respond**” or “**response**” means to acknowledge the error and assign a staff member to review and commence a plan to address such error.

We endeavor to respond to errors reported as follows:

Error Type:	Response Time
Severity 1 Error	1 hour
Severity 2 Error	2 hours
Severity 3 Error	24 hours

With respect to Severity 1 Errors, we endeavor to resolve such errors within 1 business day and will escalate those matters to senior support staff to assist with timely resolution. We will provide status updates for Severity 1 Errors every business day and for Severity 2 Errors every two business days until resolved.

3. Error Types; Limitations.

- A. For the purposes of the above response time schedules, the following definitions will apply:
 - i. “**Severity 1 Error**” means a condition where the Cloud-Based Solution is not operable and cannot be accessed by you via normal Internet communications.
 - ii. “**Severity 2 Error**” means a condition where you are able to access and use the Cloud-Based Solution but the functionality of such Cloud-Based Solution that is required for you to submit a payroll for timely processing is substantially [or critically] restricted by the problem existing within such Cloud-Based Solution or applicable integrated Cloud-Based Solution, as reasonably determined by us.
 - iii. “**Severity 3 Error**” means a condition where you are able to access and use the Cloud-Based Solution with some restrictions on the available functions, but business operations of any kind are not substantially restricted by the problem, as reasonably determined by us.

Support staff may need you to provide additional information to assist in attempts at resolution of reported Errors including screenshots, steps to reproduce Error, browser version/settings, operating system version/settings, and users impacted by the Error.

- B. The following occurrences are not considered Errors and will not be counted with regard to Uptime or response time determinations, and are not covered by our Support and Maintenance:
 - i. failure of your power sources or other resources,
 - ii. equipment, content, or software delivered by you, including the integration of any services with software that we did not provide,

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- iii. acts or omissions by you, your employees, agents, contractors or vendors, or anyone gaining access to the Cloud-Based Solution by or through you, other than the licensed use of the Cloud-Based Solution,
- iv. any third-party unauthorized access or malicious misconduct,
- v. Issues or errors with networks or equipment not owned or controlled by us, including the internet, public wireless networks and connections to internet networks not controlled by us,
- vi. onsite support, or
- vii. scheduled maintenance, including network or Internet service upgrades.

We can provide onsite support for the above types of events at our then prevailing hourly professional services rates for support that falls outside of our Support and Maintenance. Any such requested professional services will be subject to our [Professional Services/Consulting Terms](#).

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EQUIPMENT SUPPORT AND MAINTENANCE PLAN (Delphia Time Clocks only)

1. **Support Generally.** With respect to Delphia time clocks and components ordered for use with our TimeStar® and Sage Time and Attendance Solutions (hereinafter referred to as “**Equipment**” for purposes of these Online Additional Terms), the description, Support and Maintenance purchased by you (if any), and applicable time period of your coverage will be reflected on the Delivery Order. This Equipment Support and Maintenance Plan (“**Equipment Plan**”) is not applicable to any other hardware or components delivered by us, or a Delphia Partner. The Equipment Plan protects Equipment delivered to you in good working order against hardware failures and defects occurring during the applicable support period. In the event you receive Equipment that is determined to be Dead on Arrival (“**DOA**”), we will credit your Account for shipping expenses incurred upon return of such DOA Equipment. The Equipment Plan does not provide for parts or labor necessary to initially install any Equipment or to re-install any replacement Equipment, or to perform customizations for any Equipment. Installation parts or labor will be invoiced by us as applicable at our prevailing rates. Equipment Support and Maintenance is available Monday – Friday 9:00 a.m. – 5:30 p.m. Eastern Time (“**Equipment Support Hours**”). All Equipment Support Hours exclude our Delphia recognized holidays.
2. **Manufacturer’s Warranty.** We will pass through any express warranty provided by the Equipment manufacturer and will work directly and solely with the manufacturer on any issues related to the passed through Equipment warranty upon your return to us of any defective Equipment for such purpose during the manufacturer warranty period. All new Equipment receives a 30-day manufacturer’s warranty effective from the date of shipment. If you purchased additional Equipment Support and Maintenance from us on your Delivery Order, your support coverage period continues for a period of one year from the Delivery Order Date with annual support plan renewal purchase allowances thereafter on each subsequent one year anniversary date, unless otherwise stated in the applicable Delivery Order. If support has lapsed for more than 90 days, it may be reinstated by paying a reinstatement fee plus the lapsed months’ support with the new support year beginning as of the support reinstatement date.
3. **Troubleshooting and Defective Equipment Returns.** Following our receipt of a Support and Maintenance request, we will confirm that the request includes information necessary for a timely and efficient response from our support personnel. If you experience an Equipment failure or defect, you may [request](#) Support and Maintenance during our Equipment Support Hours for us to take remote troubleshooting efforts to make the Equipment operational in accordance with its documentation. In the event remote assistance does not restore functionality to the Equipment, we will make the determination as to whether you require temporary replacement Equipment to be shipped to you while we further troubleshoot the defective Equipment onsite at our location upon your return of such defective Equipment to us. After you receive instruction and shipping information from us, Defective Equipment should be shipped F.O.B. Destination at your expense in appropriate packaging to avoid any further damage to the Equipment (“**Shipment Location**”). If remote troubleshooting is unsuccessful and the reported issue is not corrected, the determination to ship a replacement to you must be made prior to 3:00 pm Madison, Wisconsin time during Equipment Support Hours in order for your replacement Equipment to be shipped the same day that the determination is made; otherwise the replacement Equipment will be shipped on the next business day. We will ship temporary refurbished or new replacement Equipment while we service the returned defective Equipment, such action to be taken will be determined by us in our sole discretion. At your option, temporary replacement Equipment may become your permanent replacement for the defective Equipment. Any replacement Equipment provided to you will be protected by our Equipment Plan for the remainder of your applicable plan coverage period regardless of whether the replacement is temporary or permanent replacement Equipment. Our Equipment Plan does not cover parts or service required as a result of abuse or misuse, including, droppage, strikes or blows, lack of proper Equipment maintenance, floods, fires or other acts of nature. Damaged equipment is to be reviewed and evaluated for repair on a case by case basis. Under no circumstances should you tamper with, disassemble or modify Equipment, unless explicitly instructed as a part of the troubleshooting services by our support personnel. Such restricted actions will void your Equipment Plan with no entitlement to refund and may also void any manufacturer’s warranty. If no Equipment Plan is indicated on the Delivery Order, then these Support and Maintenance terms do not apply and any Equipment purchased by you is provided by us “AS IS” with no liability to us for any failure of such Equipment regardless of fault.
4. **Shipment of Replacement Equipment.** If we elect to ship a temporary replacement, Equipment will be shipped by overnight courier to customers located within the continental United States at your expense, and to international customers at the customer’s expense for international shipping charges. Upon our completion of the repair of defective Equipment, we will request that your temporary Equipment be returned to us at our Shipment Location within 14 business days of your receipt of the repaired Equipment returned to your designated shipping location (“**Shipping Period**”) or you will be invoiced at our discretion for a service charge calculated at \$50.00 per business day from the first business day occurring after the end of the Shipping Period through the date of receipt of the Equipment by us, but in no event will these service charges exceed the published retail value of the replacement Equipment.

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PROFESSIONAL SERVICES/CONSULTING TERMS

The following Online Additional Terms apply to any Professional Services (as defined herein). “Professional Services” means any technical, consultation, training, implementation, or other professional services that we agree to provide (directly or indirectly through subcontractors or a Delphia Company) to you pursuant to an Ordering Document. Each Ordering Document will specify and provide a description of the Professional Services to be provided to you.

1. **Project Staffing.** We will provide trained, knowledgeable and skilled personnel, that we reasonably believe are adequate to complete the Professional Services. To the extent that a Professional Service is solely advisory, no result is assured or guaranteed by us.
2. **Customer Obligations.** You will perform your responsibilities in a professional and workmanlike manner, and, in addition to your other responsibilities under this Agreement, you will cooperate with us with respect to the Professional Services to the extent reasonably requested or otherwise reasonably necessary for the provision to you of the Professional Services. In addition, you will assign, and upon our request, make available to us, sufficient numbers of your qualified employees and/or third-party contractors to coordinate and fulfill performance of your responsibilities hereunder and facilitate our performance of the Professional Services. Our obligations with respect to the Professional Services at all times will be subject to and conditioned upon you, in a timely manner, providing us with all accurate and complete data, records, facilities, workflow information, data formats, computer systems or secure VPN connections (as applicable), and all other reasonable information, materials, and access required to perform the Professional Services, and cooperation reasonably requested by us or otherwise reasonably necessary for the provision to you of the Professional Services. You will timely, fully and accurately complete and sign off on any preinstallation equipment surveys or installation requirements documentation that we will provide to you or request during project discovery phases. Unless you have timely, fully and accurately described any nonstandard requirements and we or our Delphia Partner, as applicable, have accepted such nonstandard requirements in writing, then neither we nor our Delphia Partners will have responsibility for assisting you to implement any Delphia Offering or Delphia Partner Offering in a manner that addresses those requirements or otherwise be responsible for the failure of a Delphia Offering or Delphia Partner Offering to meet those requirements.
3. **Implementation and Set-Up.** Any implementation or set-up services that we or a Delphia Company will provide as set forth on an Ordering Document are considered Professional Services for purposes of this Agreement.
4. **Rates for Professional Services.** Professional Services will be provided at the hourly rates or fixed fee set forth in an applicable Ordering Document or otherwise communicated in writing by us or, if such rates or fixed fee are not so set forth or communicated, at our prevailing published rates.
5. **Expenses.** Unless otherwise stated in an Ordering Document, expenses will be due thirty (30) days from the date of our invoice and will be limited to reasonable “out-of-pocket” expenses, including travel expenses necessarily and actually incurred by us in the performance of the Professional Services.
6. **Provision of Professional Services.** Unless otherwise set forth in an Ordering Document, none of the Professional Services will take place physically at any of your facilities, and all Professional Services will be conducted either at our facilities or via telephone, web conference, email or other form of electronic communication or connection that we determine. We may also use subcontractors to provide the Professional Services though we will remain responsible for their performance. The projected start date for Professional Services will be provided in the Ordering Document.
7. **Definition of an Onsite Day.** An onsite day is defined as an eight (8) hour workday where our assigned employee(s) reports to your site to work. Time billed for onsite time will be billed at a per diem rate of the currently agreed upon hourly rate multiplied by eight (8) hours unless otherwise indicated in an Ordering Document. If one of our employees works more than eight (8) hours in an onsite day, we will bill at the agreed upon hourly rate multiplied by a percentage of 150% unless otherwise indicated in an Ordering Document.
8. **Frustration of Performance.** In the event our staff reports to your site to work and is unable to work a full or a portion of an onsite day because of equipment failure, early closing, meetings that suspend work, your failure to make your employees available as necessary, your failure to satisfy previously identified prerequisites, or any other factor not under our control, we will bill for a full or the appropriate portion of a normal onsite day for each staff member so affected. Any such time billed will be considered by the parties to be outside the scope of the Ordering Document and an addition to the Professional Services fees.

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9. **Cancellation of Scheduled Work.** In addition to the Termination for Cause provided in the Master Terms or any additional termination right stated in an Ordering Document, either party may terminate the Professional Services contemplated by an Ordering Document, without cause, by providing the other party with at least thirty (30) days written notice. In the event you cancel any scheduled Professional Services agreed to in an Ordering Document without cause on less than thirty (30) days prior written notice, we reserve the right to charge you, and you agree to pay us, the fee for such Professional Services as would have been provided during such thirty (30) day period. You further agree to pay all non-recoverable expenses incurred by us in anticipation of performing the cancelled Professional Services. You further agree that there is no refund of any amounts prepaid in anticipation of performing the cancelled Professional Services (except with respect to implementation or initial setup as otherwise stated in this Agreement), unless this Agreement is terminated by us without cause.
10. **Non-Solicitation of Personnel.** You agree that during the term of any Ordering Document and for a period of twelve (12) months thereafter, you will not, except with our prior written approval, directly or indirectly solicit, hire, or otherwise retain as an employee or independent contractor, a member of our staff or a Delphia Company's staff engaged in any efforts to provide Professional Services pursuant to the Ordering Document.
11. **Termination.** In addition to the termination rights stated in the Master Terms, upon your act of default, we will have the option, in our sole and absolute discretion, of terminating an Ordering Document, or portion thereof, for Professional Services. No refund will be given to you for termination of an Ordering Document, or portion thereof, for Professional Services due to your default. The following acts constitute your default and material breach of these Professional Services Terms and Conditions and may result in termination for cause in accordance with the Master Terms: (i) your failure to pay an invoice when due; (ii) your failure to promptly respond to our reasonable requests for information or allow our reasonable access to your records and executive personnel as needed to provide Professional Services stated in an Ordering Document; (iii) abusive, harassing or improper treatment of our personnel by your officers or employees; (iv) knowingly furnishing false or misleading information to us; or (v) your material breach of any term, warranty or obligation of these Professional Services Terms and Conditions.

If this Agreement is terminated, all Ordering Documents for Professional Services will immediately terminate. If all or a portion of any Ordering Document is terminated as permitted in these Professional Services/Consulting Terms, this Agreement will remain in full force and effect unless the written termination notice (i) specifically terminates this Agreement along with all Ordering Documents, or (ii) is by us for your default as defined above. Upon termination of this Agreement and all Ordering Documents for Professional Services, we will promptly invoice you for any outstanding fees due and owing under such Ordering Documents. In the event only certain Ordering Documents are terminated, then we will promptly invoice you for any outstanding fees due and owing that are applicable to those Ordering Documents that are so terminated. You will pay any such undisputed fees to us in accordance with the payment terms set forth in this Agreement or applicable Ordering Document.

12. **INDEMNIFICATION. IN ADDITION TO ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD THE DELPHIA INDEMNIFIED PARTIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, OR EXPENSE (INCLUDING COST OF INVESTIGATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES) AND CLAIMS FOR DAMAGE OF ANY NATURE WHATSOEVER INCLUDING CLAIMS CAUSED ALL OR IN PART BY YOUR OWN NEGLIGENCE, WHETHER KNOWN OR UNKNOWN AND WHETHER DIRECT OR INDIRECT, AS THOUGH EXPRESSLY SET FORTH AND DESCRIBED HEREIN, WHICH DELPHIA INDEMNIFIED PARTIES MAY INCUR, SUFFER, BECOME LIABLE FOR OR WHICH MAY BE ASSERTED OR CLAIMED AGAINST DELPHIA INDEMNIFIED PARTIES WITH RESPECT TO ANY ORDERING DOCUMENT FOR PROFESSIONAL SERVICES OR YOUR USE OF ANY REPORT OR OTHER INFORMATION PROVIDED BY US UNDER AN ORDERING DOCUMENT. THE PROVISIONS CONTAINED IN THIS SECTION WILL BE DEEMED TO BE CONTRACTUAL IN NATURE AND WILL SURVIVE TERMINATION OF THIS AGREEMENT. THE DAMAGE LIMITATIONS CONTAINED IN SECTION 7.C OF THE MASTER TERMS AND CONDITIONS WILL NOT APPLY TO THE INDEMNITY OBLIGATION CONTAINED IN THIS SECTION.**

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TERMS FOR THE TIMESIMPLICITY™ SCHEDULER (Delphia Partner Offering Add-On to TimeStar®)

The following Online Additional Terms apply to you if your Delivery Order includes TimeSimplicity™, which is provided by our Delphia Partner through us (together with all related documentation, modules, updates, modifications, enhancements, or new versions thereto as provided by our Delphia Partner, “TimeSimplicity”). TimeSimplicity is offered as a Cloud-Based Solution for the purposes of this Agreement. Accordingly, in addition to these Terms for the TimeSimplicity Scheduler, your use is governed by our [Terms of Use for Cloud-Based Solutions](#). In the event of any inconsistency between these Terms for the TimeSimplicity Scheduler and our Terms of Use for Cloud-Based Solutions, these Terms for the TimeSimplicity Scheduler shall take precedence.

1. **TimeSimplicity Solution Access.** Subject to the terms and conditions set forth herein, and in consideration of your payment to us of all amounts due, we grant you, for the TimeSimplicity CloudBased Solution described in your Delivery Order, a limited, nonexclusive, non-transferable, non-sublicensable right of access as provided by our applicable Delphia Partner to use the applicable TimeSimplicity Cloud-Based Solution solely for business purposes within the U.S. No title or ownership of TimeSimplicity or related documentation (or any copy thereof) is transferred to you by way of this Agreement. Ownership of TimeSimplicity and its related documentation remains exclusively with TimeSimplicity.
2. **TimeSimplicity Support.** Extended support covering a period of at least 12 months must be purchased with TimeSimplicity and is renewable annually thereafter. TimeSimplicity support representatives may be available to answer TimeSimplicity questions directly; however, training of new systems operators or retraining existing operators is not within the scope of the software support that may be provided by TimeSimplicity when you purchase your support package from us. You may separately order and purchase remote or onsite training through us, which will be conducted remotely from our office location or onsite at your office location by one of our installers or by a factory-trained TimeSimplicity installer (as applicable).
3. **TimeSimplicity Implementation & Training.** In order for TimeSimplicity to be successfully implemented, it is imperative that:
 - A. Your computer equipment, network, and operating system are compatible with TimeSimplicity.
 - B. You timely, fully and accurately complete the Preinstallation Equipment Survey and TimeSimplicity Site Survey that we will provide to you. Unless you have timely, fully and accurately described any nonstandard requirements and we or our Delphia Partner, as applicable, have accepted such nonstandard requirements in writing, then neither we nor our Delphia Partner will have responsibility for assisting you to implement TimeSimplicity in a manner that addresses those requirements or otherwise be responsible for the failure of TimeSimplicity to meet those requirements. An authorized installation representative approved by us must install TimeSimplicity and train your qualified systems operator(s) in its operation.
 - C. You must prepare the office location for installation, including having all computers and networking in place and operational in accordance with TimeSimplicity requirements prior to the installation. You must also provide qualified systems operator(s) available for uninterrupted training during the entire scheduled training session.
4. **TimeSimplicity Warranties.** TimeSimplicity is certified to operate in substantial conformance to the manner described in documentation and manuals for TimeSimplicity and in hosted operating environments approved by us or our Delphia Partner.

YOU UNDERSTAND THAT NEITHER WE NOR OUR DELPHIA PARTNER ASSUMES ANY RESPONSIBILITY FOR THE OPERATION OR PERFORMANCE OF ANY CLOUD-BASED SOLUTION IN A HOSTED OPERATING ENVIRONMENT OR CONFIGURATION OTHER THAN AS APPROVED BY US OR OUR DELPHIA PARTNER. YOU ALSO UNDERSTAND THAT THE PERFORMANCE OF TIMESIMPLICITY CANNOT BE GUARANTEED TO ACHIEVE ANY PARTICULAR SPECIFICATIONS BECAUSE SUCH PERFORMANCE IS NOT SOLELY A FUNCTION OF THE CLOUD-BASED SOLUTION BUT ALSO DEPENDS ON OTHER FACTORS NOT CONTROLLED BY US OR OUR DELPHIA PARTNER, INCLUDING THE SPEED AND QUALITY OF HOST COMPUTERS, NETWORKS, THE CONFIGURATION OF THE COMPONENTS COMPRISING YOUR OPERATING ENVIRONMENT, AVAILABILITY OF HOST SYSTEM RESOURCES, YOUR USE OF OTHER SOFTWARE APPLICATIONS AND THE SKILL LEVEL OF YOUR PERSONNEL USING TIMESIMPLICITY.
5. **DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY AND DAMAGES.** EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR IN THE MASTER TERMS, NEITHER WE NOR OUR DELPHIA PARTNER MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING TIMESIMPLICITY OR ANY OTHER MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE OF ANY CLOUD-BASED SOLUTION, AND WE AND OUR DELPHIA PARTNER HEREBY SPECIFICALLY

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DISCLAIMS THE SAME. YOU UNDERSTAND THAT YOU MAY NOT RELY ON ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES ON THE PART OF ANY SALESPERSON OR OTHER AGENT, BUSINESS PARTNER OR DISTRIBUTOR OF TIMESIMPLICITY AND THAT THE ONLY REPRESENTATIONS AND WARRANTIES APPLICABLE TO TIMESIMPLICITY ARE SET FORTH HEREIN. THE EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES SECTION OF THE MASTER TERMS WILL APPLY TO YOUR ORDER FOR TIMESIMPLICITY AND ALSO APPLIES WITH RESPECT TO LIMITING THE LIABILITY OF OUR DELPHIA PARTNER FOR TIMESIMPLICITY.

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TERMS OF USE FOR CLOUD-BASED SOLUTIONS

These Terms of Use for Cloud-Based Solutions ("Access Terms") apply to our provision of access rights to you for any Cloud-Based Solution, hereinafter referred to as the "Solution" (together with all documentation, modules, mobile applications, updates, modifications, enhancements or new versions thereto as provided by us or a Delphia Partner). If any Solution is provided by a Delphia Company, then this SLA applies to that Delphia Company with respect to that Solution. These Access Terms are subject to the Master Terms and may be updated from time to time. Your or your Users continued use of a Solution after any such updates constitutes your consent to the modified terms. Certain Solutions may include clickwrap terms of use that require acceptance upon initial access of the Solution or may display terms applicable to the Solution website on the login page or within the footer of the Solution website. In such instances the displayed terms of use will also govern your User access and in the event of any inconsistency between these Access Terms and such displayed terms of use, these Access Terms shall take precedence.

1. **Solution Evaluation Terms.** If the Solution is provided to you for evaluation purposes (whether in beta or full production format) as stated in the Delivery Order or electronic web store order page, we grant to you and your Users a nonexclusive, temporary, royalty-free, non-assignable right or license as applicable to use the Solution solely for your internal non-production evaluation and the Solution is provided "AS IS" and "WITHOUT WARRANTY" and is not subject to the indemnities, warranties or support and maintenance obligations set forth in this Agreement. The evaluation access or license as applicable will be effective for the period stated on your Delivery Order or otherwise provided to you in writing by Delphia upon provision of your access rights to the Solution ("Evaluation Period"). The evaluation access or license will terminate at the end of the Evaluation Period which is the earlier of: (i) the end date of the predetermined evaluation period if an evaluation period is predetermined or stated on a Delivery Order or electronic web store order page, or (ii) sixty (60) days from the date of your initial access to each Cloud-Based Solution, if no such Evaluation Period is predetermined and stated on a Delivery Order or on the electronic web store order page. Upon expiration of the Evaluation Period, unless we otherwise agree in writing, you and your Users will cease use of the Solution.
2. **Rights Granted.** With respect to all non-evaluation versions of the Solutions delivered pursuant to a Delivery Order, we grant you and your Users a nonexclusive, non-assignable and nontransferable (except as otherwise provided in this Agreement), revocable, limited right of access to the features and functions of the Solutions solely for your internal business use and not for the benefit of any third party (other than an Affiliate or other than as expressly stated in this Agreement). Each Solution ordered may be accessed and used by the number of Users set forth in the applicable Initial Delivery Order or Supplemental Delivery Order and the number of Active Employees for which you are billed in subsequent invoices generated in accordance with the applicable Delivery Order.
3. **Access Limitations.** In addition to the number of Users, some of our Solutions may place other limits on the functionality based on the access rights that you obtain, such as limiting the number of records that can be added, the number of boxes that can be charted, the number of authorized reports, or other features, as described on the applicable Delivery Order.
4. **Restrictions.** Any use of the Solutions not expressly permitted under this Agreement is expressly prohibited. You agree not to, nor to knowingly or negligently permit or cause any third party to, do any of the following:
 - A. Use the Solution as part of a timesharing, service provider, or service bureau arrangement;
 - B. Sublicense, license, sell, resell, rent, lease, grant access or otherwise transfer, assign or convey rights to any portion of the Solution, directly or indirectly (unless otherwise permitted by this Agreement or expressly agreed to in writing by us);
 - C. Reverse engineer, decompile, disassemble, modify, translate, or create, decrypt, or make any attempt to create enhancements or derivative works based on or incorporating the Solution or components thereof, create, build, or enhance competitive products or services from use of the Solution, or make any attempt to discover the source code of the Solution;
 - D. Take any action that would misuse, impair, circumvent, defeat or compromise the license management technology, security or functionality of the Solution or render the Solution inaccessible to others, or transmit worms, viruses or any code of a destructive nature (including sending or storing malicious code);
 - E. Use the Solution to design or create any software with similar or competing functionality (includes screens, reports, data arrangements, "look and feel");
 - F. Remove, obscure or alter in any manner our copyright notices or any other proprietary marking and legends or those of our suppliers, Delphia Partners or other licensors appearing on any screens, documents, reports, or other materials obtained through use of the Solution;
 - G. Use the Solution beyond termination of this Agreement (unless otherwise permitted by us in writing);
 - H. Share or allow Users to share any usernames or passwords for access to the Solution;
 - I. Allow use of the Solution by persons who are under age 13 or collect information from such persons or any person that has not attained the age of majority without permission of the appropriate legal guardian;

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- J. Use, copy, reproduce, alter, or otherwise exploit the Solution, Solution updates, any components or portions thereof (including features or user interfaces), alone or in combination with any other software or data processing system, in any manner or for any purpose not expressly authorized by this Agreement;
 - K. Directly or indirectly use our or our Delphia Partners' Confidential Information for any purpose other than as expressly permitted under this Agreement or as provided by separate written consent; or
 - L. Store or transmit infringing, defamatory or otherwise unlawful material in or through the Solution.
5. **DISCLAIMERS. YOU UNDERSTAND THAT NEITHER WE NOR OUR DELPHIA PARTNERS ASSUME ANY RESPONSIBILITY FOR THE OPERATION OR PERFORMANCE OF ANY SOLUTION IN A HOST OPERATING ENVIRONMENT OR CONFIGURATION OTHER THAN AS APPROVED BY US OR OUR LICENSOR. YOU ALSO UNDERSTAND THAT THE PERFORMANCE OF THE SOLUTION CANNOT BE GUARANTEED TO ACHIEVE ANY PARTICULAR SPECIFICATIONS BECAUSE SUCH PERFORMANCE IS NOT SOLELY A FUNCTION OF THE SOLUTION BUT ALSO DEPENDS ON OTHER FACTORS NOT CONTROLLED BY US OR OUR DELPHIA PARTNER, INCLUDING THE SPEED AND QUALITY OF HOST COMPUTERS, NETWORKS, THE CONFIGURATION OF THE COMPONENTS COMPRISING YOUR OPERATING ENVIRONMENT, THE UNPREDICTABILITY OF THE INTERNET TO TRANSMIT INFORMATION, AVAILABILITY OF HOST SYSTEM RESOURCES, YOUR USE OF OTHER SOFTWARE APPLICATIONS, AND THE SKILL LEVEL OF YOUR PERSONNEL USING THE SOLUTION. YOU ACKNOWLEDGE THAT CUSTOMER DATA IS ENTERED AT YOUR OWN RISK, SUBJECT TO THE TERMS OF THIS AGREEMENT.**
6. **Validation and Internet Access.** The Solutions may contain functionality designed to ascertain whether use is proper in accordance with your permitted use. During such a check, the Solution may send information about the Solution and computer or mobile device from which it is accessed. The Solution may also provide associated information to us concerning access to the internet, such as your Internet protocol address, your operating system, and (if applicable) the version of the Solution you are using. The Solution may have functionality for automatic updating; if so, the Solution will communicate with us for this purpose. We may use the information received by means of the Solution in accordance with our applicable privacy policy. By using the Solution, you consent to all of such functionality and such validation checks.
7. **Third-Party Software.** Additional copyright notices, access rights or license terms, privacy policies, and representations or warranties applicable to the Solution or portions thereof accessible through or provided by Delphia Partners or other third parties may apply. Any such terms can be found on such third party's website. By accepting these Access Terms, you also accept the third-party terms. No representations, warranties, or other commitments of any kind are made by us regarding such third party software unless such third party software is a Delphia Partner Offering and such representations, warranties or other commitments are explicitly stated in this Agreement.
8. **Ownership; License Only.** The Solutions are our property or that of our Delphia Partners or their licensors and are protected by copyright Law and are treated as Confidential Information of us or our Delphia Partners and are subject to the Confidentiality Section of the Master Terms. You and your Users are granted non-exclusive access rights (which do not convey any license, sublicense, expressly or by implication, estoppel or otherwise under any Intellectual Property Right owned or held by us or our applicable Delphia Partners), which take effect after your acceptance of these Access Terms. No right, title or interest in any Solution is granted or passed to you, your Affiliates, or Users, except as expressly stated in these Access Terms. You will ensure that each User complies with the User Agreement section of these Access Terms, and you hereby assume and accept all legal duties and responsibilities in connection with these Access Terms or the use or misuse of any Solution by each and every User. You agree to notify us immediately if you become aware that any other unauthorized individual has accessed a User's account or has obtained a User's name and password. The inclusion, exclusion, and continued support for, any feature, functionality, module in, or release of, any Solution is within our or our Delphia Partners' sole and absolute discretion, and you agree that both we and our Delphia Partners retain the absolute right to modify, discontinue, delete or restrict any aspect or feature of our Solutions without any liability or obligation to you. You agree and acknowledge that violation of the restrictions may subject you, your Affiliates or Users to prosecution and/or damages and we will be entitled to seek injunctive relief if applicable to enforce these Access Terms.
9. **Termination.** Either party may terminate this Agreement with respect to any Solution immediately should such Solution become, or in our opinion be likely to become, the subject of a claim of infringement of any Intellectual Property Right and it is determined that we cannot modify the Solution so that it is no longer infringing or misappropriated, or obtain a license for your continued use of the Solution substantially in accordance with the terms of this Agreement. In addition, we reserve the right to terminate your and your Users' access rights or to charge additional fees if we determine that usernames and/or passwords are being shared among multiple Users in violation of these Access Terms.
10. **Export Regulations.** All Solutions and technical data delivered under this Agreement are subject to U.S. export control Laws and may be subject to export or import regulations in other countries. You agree to comply with all applicable U.S. export control Laws that relate to our Solutions or their use. You agree that you, your Affiliates and Users will not access or use the Solutions in a U.S.-embargoed country.
11. **US. Government Restricted Rights.** If the Solution is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any Tier), then the U.S. Government's rights in the Solution and

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accompanying documentation will be only as set forth in this Agreement, in accordance with 48 CFR Sections 227.7201 through 227.7202-4 (for Department of Defense (DOD) acquisitions) and with Section 48 CFR 2.101 and 12.212 (for non-DOD acquisitions).

12. Usage Limitations. You acknowledge that the Solution is not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility or any other use that may affect individual health and safety. We further disclaim any express or implied warranty of fitness for such uses. You further acknowledge and agree that the inclusion, exclusion, and continued support for, any feature, functionality, module in, or release of, the Solution is within our sole and absolute discretion, and we retain the absolute right to modify, discontinue, delete or restrict any aspect or feature of the Solution without any liability or obligation to you.
13. Indemnity. In addition to your other indemnities under this Agreement, you will defend and indemnify each applicable Delphia Indemnified Party for any and all claims, losses, damages, and costs (including time and materials costs and reasonable attorneys' fees) arising from or relating to untruthfulness, fraud or misrepresentation (whether intentional or otherwise) with respect to your representation and warranty concerning rights to Customer Data.
14. Privacy. Provided that neither we nor our Delphia Partner violates our or its published privacy policy with respect to storage or processing of data entered into a Solution, you accept full and complete responsibility for compliance with all Laws and other requirements relating to privacy, in connection with, in any manner whatsoever, any Customer Data entered into such Solution. If you have an unresolved privacy or data use concern that we do not address satisfactorily, you may contact our U.S.-based third party privacy dispute resolution provider (free of charge) at <https://feedback-form.truste.com/watchdog/request>.