

**LAVORO GROUP CORP.**  
**NEW YORK STATE SEXUAL HARASSMENT PREVENTION TRAINING**  
**TERMS OF SERVICE**

THE INDIVIDUAL OR ENTITY EXECUTING THE AGREEMENT ("**SUBSCRIBER**") THAT INCORPORATES THESE TERMS OF SERVICE (COLLECTIVELY WITH THESE TERMS OF SERVICE, THIS "**AGREEMENT**") AGREES THAT THIS AGREEMENT GOVERNS THE PROVISION OF THE SERVICES BY LAVORO GROUP CORP. ("**PROVIDER**") TO SUBSCRIBER. THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF EXECUTION ("**EFFECTIVE DATE**"). CAPITALIZED TERMS USED HEREIN AND NOT OTHERWISE DEFINED HAVE THE MEANING SET FORTH IN SECTION 13 (DEFINITIONS).

**1. Subscription Service.**

- 1.1 Right to Access and Use. Subject to the terms and conditions of this Agreement, and in consideration of the fees specified in this Agreement, Provider hereby grants Subscriber a non-exclusive, non-transferable right to access and use the Subscription Service during the Term for Subscriber's own business purposes and authorizes Subscriber to grant such limited access and use rights to Subscriber Users.
- 1.2 Account Creation and Administration. The personal information used to create Subscriber User account profiles will be provided by Subscriber or Subscriber Users. Each set of login credentials for the Subscription Service can be used only by a single, individual Subscriber User. Each Subscriber User must have a unique User ID and Password. No group with a single/shared User ID or Password can access the Services.
- 1.3 Broker of Record. Unless otherwise determined by Provider, in order to subscribe for and access the Services, Provider must be Broker of Record for at least three lines of Subscriber's insurance coverage (Group Medical plus two others, such as Dental, Vision, Group Life, Disability).
- 1.4 Employee Navigator. In order to subscribe for and use the Services, Subscriber must use Provider's Employee Navigator product for all employee enrollment and onboarding, and all Subscriber Users must have access to Employee Navigator, not only benefit eligible employees.

**2. Responsibilities and Restrictions.**

- 2.1 Subscriber Responsibilities. Subscriber will access and use the Services only in accordance with this Agreement, the Documentation, and all applicable laws and regulations. Subscriber will promptly notify Provider of any unauthorized access

or use which Subscriber becomes aware. Subscriber will be responsible for the transfer or disclosure of Subscriber Content caused by Subscriber or Subscriber Users via the functionality of the Services and for all access to and use of the Services that occurs under Subscriber Users' login credentials.

- 2.2 Use Restrictions. Subscriber's use of the Services is subject to the limits, including Subscriber User quantities, set forth in this Agreement. The applicable use limits set forth in this Agreement on the Effective Date will apply throughout such Term. Subscriber will not, and will not permit Subscriber Users to, commercially sell, resell, license, sublicense, distribute, or frame the Services to a third party, or use the Services other than in compliance with this Agreement.

### **3. Security and Processing.**

- 3.1 Security. Provider has implemented and will maintain commercially reasonable information security policies and safeguards, which include physical, organizational, and technical measures designed to preserve the security, integrity, and confidentiality of Subscriber Content and to protect against information security threats. Provider may update such security policies and safeguards from time to time.
- 3.2 Processing. Subscriber represents and warrants that it has all rights, permissions, and consents necessary to: (a) submit all Subscriber Content to the Services; and (b) grant Provider the right to process Subscriber Content for the provision of the Services. Subscriber hereby grants Provider a non-exclusive, non-transferable, right to use and otherwise process Subscriber Content under this Agreement only: (x) as required by applicable law; (y) as requested by Subscriber in writing or as allowed by Subscriber via a Service's access controls; and (z) as necessary to provide the Services and prevent or address technical problems with the Services or violations of this Agreement.
- 3.3 Service Providers. Provider may engage service providers to act on Provider's behalf in connection with Provider's provision of the Services, including processing Subscriber Content, provided that: (a) such service providers are subject to confidentiality and data security obligations that are substantially as protective of Subscriber Content as those set forth in this Agreement; and (b) Provider is responsible for such service providers' acts and omissions in relation to Provider's obligations under this Agreement.

### **4. Intellectual Property and Proprietary Rights.**

- 4.1 Provider. As between the parties, all right, title, and interest in and to Provider Properties is owned by Provider notwithstanding any other provision in this

Agreement. Except as expressly set forth in this Agreement, Provider does not convey any rights to Subscriber or any Subscriber User.

4.2 Subscriber. As between the parties, Subscriber retains all its right, title, and interest in and to Subscriber Content and Subscriber Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth in this Agreement, Provider acquires no right, title, or interest from Subscriber under this Agreement in or to Subscriber Content.

4.3 Feedback. Subscriber grants Provider an irrevocable, perpetual, sublicensable, transferable, non-exclusive license to use and incorporate into Provider's products and services any feedback or suggestions for enhancement that Subscriber or a Subscriber User provides to Provider, without any obligation of compensation.

## 5. **Other Products and Services.**

5.1 Professional Services. If Provider provides Professional Services to Subscriber, Provider hereby grants Subscriber a non-exclusive, non-transferable right to access and use Customizations resulting from Professional Services during the Term for Subscriber's own business purposes pursuant to the terms and conditions of this Agreement and in consideration of the fees and scope specified herein. Subject to the terms and conditions of this Agreement, including any obligations of confidentiality, Provider may perform (or assign any employees or subcontractors to perform) professional services similar to those performed for Subscriber for any third party or use any information incidentally retained in the unaided memories of Provider personnel to perform such other professional services.

## 6. **Fees and Payment.**

6.1 Fees. Subscriber will pay Service fees specified in this Agreement. All Service fees are nonrefundable once paid except as otherwise expressly provided in this Agreement. Provider may increase the unit price for any Renewal Term upon written notice to Subscriber (including via email) at least thirty (30) days prior to the start of the Renewal Term. Unless Subscriber will reimburse Provider for reasonable, out-of-pocket expenses incurred by Provider in the course of providing Professional Services.

6.2 Payments. Payments pursuant to this Agreement may not be discounted or rebated. The Services are not a rebate or inducement to purchase or interdependent with any insurance policy.

## 7. **Term and Termination.**

7.1 Agreement Term; Automatic Renewal. This Agreement will remain in effect for the Term of the Services specified herein ("**Initial Term**"). After the Initial Term,

THIS AGREEMENT WILL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR RENEWAL TERMS (each a “**Renewal Term**”) UNLESS EITHER PARTY PROVIDES THE OTHER PARTY WRITTEN NOTICE OF NON-RENEWAL AT LEAST SIXTY (60) DAYS PRIOR TO THE END OF THE THEN-CURRENT TERM.

- 7.2 Termination for Cause. Either party may terminate a Service or this Agreement immediately upon written notice if the other party breaches any material provision of this Agreement, and fails to cure the breach within thirty (30) days of such written notice from the non-breaching party.
- 7.3 Effect of Termination. Upon termination of this Agreement for any reason: (a) all rights and obligations of the parties hereunder will cease (except as set forth in Section 7.6 (Survival) below). If Subscriber terminates a Service or this Agreement for Provider’s uncured breach pursuant to Section 7.2 (Termination for Cause), Provider shall issue a refund of prepaid fees covering the terminated portion of each Services’ respective Term. If Provider terminates a Service or this Agreement for Subscriber’s uncured breach pursuant to Section 7.2, Subscriber shall pay all outstanding payable amounts (if any) under this Agreement for the Term applicable to any terminated Service. Subscriber will remain obligated to pay for Professional Services rendered through, or payable as of, the effective date such Professional Services are terminated.
- 7.4 Return of Subscriber Content. Upon Subscriber’s written request prior to or contemporaneous with termination or expiration of any Term and at no additional cost to Subscriber, Provider will allow a Subscriber’s SysAdmin access to the Subscription Service for the sole purpose of retrieving Subscriber Content for thirty (30) days following such date of termination or expiration. Thereafter, Provider has no obligation to retain Subscriber content.
- 7.5 Suspension. Provider may suspend Subscriber’s access to any Service immediately if: (a) Subscriber fails to make a payment for more than ten (10) days following its due date; or (b) Subscriber has breached Section 2.2 (Use Restrictions) or misappropriated or infringed Provider’s intellectual property or proprietary rights.
- 7.6 Survival. The following Sections will survive termination or expiration of this Agreement: 3.2 (Processing); 4 (Intellectual Property and Proprietary Rights); 6.1 (Fees); 6.2 (Payment); 7.4 (Return of Subscriber Content); 7.6 (Survival); 8 (Confidentiality); 10 (Limitations of Liability); 11 (Indemnification); and, to the extent necessary to effectuate the foregoing, 12 (General) and 13 (Definitions).

## **8. Confidentiality.**

8.1 Confidential Information. “**Confidential Information**” means all non-public, proprietary, business, technical, legal, or financial information disclosed or learned in connection with this Agreement that the Disclosing Party has identified as confidential at the time of disclosure or that, based on the nature of the information or circumstances surrounding its disclosure, the Receiving Party would clearly understand it as confidential. With regard to Provider, Confidential Information includes Provider Properties. With regard to Subscriber, Confidential Information includes Subscriber Content. Confidential Information does not include: (a) information that was generally known to the public at the time disclosed to the Receiving Party; (b) information that becomes generally known to the public (other than through a breach of Section 8 (Confidentiality) by the Receiving Party) after disclosure to the Receiving Party; (c) information that was in the Receiving Party’s possession free of any obligation of confidentiality prior to disclosure by the Disclosing Party; or (d) information that is rightfully received by the Receiving Party from a third party without any restriction on disclosure. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION.

8.2 Use and Disclosure of Confidential Information. The Receiving Party: (a) will not use the Disclosing Party’s Confidential Information for any purpose except as permitted under this Agreement; (b) will not disclose, give access to, or distribute any of the Disclosing Party’s Confidential Information to any third party, except to the extent expressly authorized in this Agreement or a separate written agreement signed by the Disclosing Party; and (c) will take reasonable security precautions (which will be at least as protective as the precautions it takes to preserve its own Confidential Information of a similar nature) to safeguard the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees, directors, Affiliates, advisors, agents, contractors, and other representatives (“**Representatives**”) who need to know such information in order to exercise their respective rights and obligations hereunder, provided that each such Representative is bound to protect the Confidential Information by confidentiality obligations substantially as protective as those set forth in this Agreement. The Receiving Party will be responsible for its Representatives’ disclosure or use of the Disclosing Party’s

Confidential Information in violation of Section 8 (Confidentiality). The Receiving Party will promptly notify in writing the Disclosing Party upon discovery of any unauthorized disclosure or use of the Disclosing Party's Confidential Information, or any other breach of Section 8, by it or its Representatives. The Receiving Party's obligations set forth in Section 8 will remain in effect during the Term and three (3) years after termination of this Agreement. The disclosure of Confidential Information to the Receiving Party does not grant or convey any right of ownership of such Confidential Information.

- 8.3 Required Disclosures. The Receiving Party may disclose Confidential Information to the extent required by law or legal process. In such cases, however, the Receiving Party will (except to the extent prohibited by law or legal process): (a) give the Disclosing Party prior written notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (b) use diligent efforts to limit disclosure to that which is legally required; and (c) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts to obtain a protective order or other legally available means of protection.
- 8.4 Return of Materials. Upon written request by the Disclosing Party, the Receiving Party will, without undue delay: (a) either return or destroy all tangible documents and media in its possession or control that contain the Disclosing Party's Confidential Information; (b) render unrecoverable electronically stored Confidential Information of the Disclosing Party in its possession or control; and (c) certify its compliance with this Section 8.4 in writing. Notwithstanding the foregoing: (x) the Receiving Party will not be obligated to render unrecoverable Confidential Information of the Disclosing Party that is contained in an archived computer system backup made in accordance with the Receiving Party's legal and financial compliance obligations or security and disaster recovery procedure; and (y) Provider shall return or render unrecoverable Subscriber Content as set forth in Section 7.5 (Return of Subscriber Content). Any such retained Confidential Information will remain subject to Section 8 (Confidentiality).
- 8.5 Remedies. The Receiving Party acknowledges that any actual or threatened breach of Section 8 (Confidentiality) may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Disclosing Party is entitled to (but not required to) seek injunctive relief to prevent or mitigate any breaches of Section 8 with respect to the Disclosing Party's

Confidential Information or any damages that may otherwise result from those breaches.

**9. Representations and Warranties; Disclaimer.**

- 9.1 Authority and Compliance Warranty. Provider represents and warrants that it has the necessary authority to enter into this Agreement and that Provider shall comply with any United States laws, statutes, and regulations to the extent such laws, statutes and regulations apply to Provider's provision of the Services under this Agreement. For the avoidance of doubt, Provider shall not be responsible for Subscriber's compliance with any laws, statutes and regulations applicable to Subscriber and its industry.
- 9.2 Limited Warranty for Subscription Service. Provider represents and warrants that the Subscription Service complies with the minimum requirements established by the New York State Department of Labor for sexual harassment prevention training and that Provider will review the Subscription Service at least annually to ensure that it maintains such compliance. Provider further represents and warrants that the Subscription Service will operate during the applicable Term substantially as described in the summary description made available by Provider on the Site. Upon receipt of Subscriber's written notice of any alleged failure to comply with the limited warranty in this Section 9.2, Provider will use commercially reasonable efforts to cure or correct the failure. If Provider has not cured or corrected the failure within thirty (30) days following its receipt of such notice, then Subscriber may terminate this Agreement Provider shall issue a refund of prepaid fees covering the terminated portion of the Subscription Services. Notwithstanding the foregoing, this warranty will not apply to any failure due to a defect in or modification of the Subscription Service that is caused or made by Subscriber, any Subscriber User, or a person acting at Subscriber's direction. This Section 9.2 sets forth Subscriber's exclusive rights and remedies and Provider's sole liability in connection with this warranty.
- 9.3 Limited Warranty for Professional Services. Provider represents and warrants that the Professional Services will be provided in a competent and workmanlike manner. Subscriber must notify Provider in writing of any alleged failure to comply with this warranty within thirty (30) days following delivery of the Professional Services. Upon receipt of such notice, Provider will either: (a) use commercially reasonable efforts to cure or correct the failure; or (b) terminate the Professional Services and issue a refund of prepaid fees covering the terminated portion of the

Professional Services. This Section 9.3 sets forth Subscriber's exclusive rights and remedies and Provider's sole liability in connection with this warranty.

9.4 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS AND DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY, AND PROVIDER DOES NOT WARRANT THAT THE SERVICES OR THIRD-PARTY APPLICATIONS AND SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. THE SERVICES ARE NOT INTENDED AS AND DO NOT CONSTITUTE LEGAL ADVICE. THE SERVICES HAVE NOT BEEN ENDORSED OR APPROVED BY THE STATE OF NEW YORK OR ANY AGENCY THEREOF.

## **10. Limitations of Liability.**

### 10.1 Exclusion of Damages; Liability Cap.

NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, GOODWILL, OPPORTUNITIES, USE, DATA OR REVENUES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE, WHETHER IN CONTRACT, TORT, OR UNDER ANY THEORY OF LIABILITY, ARISING UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES.

EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO PROVIDER UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

THE FOREGOING EXCLUSIONS AND LIABILITY LIMITS IN THIS SECTION 10.1 SHALL NOT APPLY TO DAMAGES OR LIABILITY RESULTING FROM CLAIMS OR OBLIGATIONS ARISING UNDER SECTIONS 2.2 (USE RESTRICTIONS), 6.1 (FEES), OR 11 (INDEMNIFICATION), OR INFRINGEMENT OR MISAPPROPRIATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10.2 General. The parties acknowledge and agree that the limitations of liability, disclaimer of warranties, and any exclusion of damages included in this Agreement represent an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose and cause consequential loss) which is reflected by the fees paid.

## 11. **Indemnification.**

11.1 By Provider. Provider will defend Subscriber and its respective officers, directors, and employees (“**Subscriber Indemnified Parties**”) from and against any claims, demands, proceedings, investigations, or suits, brought by a third party alleging that Subscriber’s use of the Services or Customizations in accordance with this Agreement infringes any third party intellectual property rights (each, a “**Claim Against Subscriber**”). Provider will indemnify Subscriber Indemnified Parties for any finally awarded damages or settlement amount approved by Provider in writing to the extent arising from a Claim Against Subscriber, and any reasonable attorneys’ fees of Subscriber associated with initially responding to a Claim Against Subscriber. Notwithstanding the foregoing, Provider will have no obligation under this Section 11.1 to the extent any Claim Against Subscriber arises from: (a) Subscriber’s use of the Services or Customizations in combination with technology or services not provided by Provider, if the Services or Customizations or use thereof would not infringe without such combination; (b) Subscriber Content; (c) Provider’s compliance with designs, specifications, or instructions provided in writing by Subscriber if such infringement would not have occurred but for such designs, specifications, or instructions; or (d) use of the Services or Customizations by Subscriber after notice by Provider to discontinue use. If Subscriber is enjoined or otherwise prohibited from using any of the Services or Customizations or a portion thereof based on a Claim Against Subscriber, then Provider will, at Provider’s sole expense and option, either: (x) obtain for Subscriber the right to use the allegedly infringing portions of the Service or Customizations; (y) modify the allegedly infringing portion of the Service or Customizations so as to render it non-infringing without substantially diminishing or impairing its functionality; or (z) replace the allegedly infringing portions of the Service or Customizations with non-infringing items of substantially similar functionality. If Provider determines that the foregoing remedies are not commercially reasonable or possible, then Provider may terminate this Agreement and issue a refund of prepaid fees covering the terminated portion of the applicable Service.

- 11.2 By Subscriber. To the extent permitted by applicable law, Subscriber will defend Provider and Provider's Affiliates providing the Services, and their respective officers, directors, and employees ("**Provider Indemnified Parties**") from and against any claims, demands, proceedings, investigations, or suits, brought by a third party arising out of Subscriber Content or Subscriber's use of the Services or Customizations in violation of applicable law (each, a "**Claim Against Provider**"). Subscriber will indemnify Provider Indemnified Parties for any finally awarded damages or settlement amount approved by Subscriber in writing to the extent arising from a Claim Against Provider, and any reasonable attorneys' fees of Provider associated with initially responding to a Claim Against Provider.
- 11.3 Conditions. The indemnifying party's obligations under Section 11 (Indemnification) are contingent on the indemnified party: (a) promptly providing written notice of the claim to the indemnifying party (provided that indemnifying party shall not be excused from its indemnity obligations for indemnified party's failure to provide prompt notice except and then solely to the extent that the indemnifying party is materially prejudiced thereby); (b) giving the indemnifying party sole control of the defense and settlement of the claim (provided that any settlement unconditionally releases the indemnified party of all liability and does not make any admissions on behalf of the indemnified party or include payment of any amounts by the indemnified party); and (c) providing the indemnifying party, at the indemnifying party's expense, all reasonable assistance in connection with such claim. The indemnified party may participate in the defense of the claim at its sole cost and expense. Section 11 sets forth the indemnifying party's sole liability to, and the indemnified party's exclusive remedy for, any type of claim or action described in Section 11.

## 12. **General.**

- 12.1 Publicity. Unless Subscriber has specifically notified Provider to the contrary in writing (including via email), Provider may disclose Subscriber as a customer of Provider, and may use Subscriber's name and logo on the Site and in Provider's promotional materials. Provider will request Subscriber's prior written consent for any other uses.
- 12.2 United States Government End-Users. The Services provided by Provider are "commercial items" consisting in part of "commercial computer software" and "computer software documentation," as such terms are used in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). In accordance with FAR 12.211 (Technical data) and FAR

12.212 (Computer software), and DFARS 227.7102 (Commercial items, components, or processes) and DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the rights of the United States government to use, modify, reproduce, release, perform, display, or disclose computer software, computer software documentation, and technical data furnished in connection with the Services will be pursuant to the terms of this Agreement. This United States government rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software, computer software documentation, or technical data.

- 12.3 Export Compliance. Each party shall comply with United States export control laws and regulations. Without limiting the foregoing: (a) Subscriber acknowledges that the Services, Documentation, and Customizations may be subject to the United States Export Administration Regulations; (b) Subscriber will not permit Subscriber Users to access or use any Service, Documentation, or Customization in a United States embargoed country; and (c) Subscriber is responsible for complying with any local laws and regulations which may impact Subscriber's right to import, export, access, or use the Services, Documentation, and Customizations.
- 12.4 Notices. Except where this Agreement permits notice via email, all notices provided under this Agreement must be in writing and sent via internationally recognized delivery service or certified United States mail. Notices sent via email will be deemed given one (1) business day after being sent; and notices sent via any other authorized delivery method will be deemed given three (3) business days after being sent. Notices must be sent to the address set forth in this Agreement. A party may request a change of address by notice sent in accordance with this Section.
- 12.5 Assignment. Subscriber may assign this Agreement in connection with a merger or similar transaction or to a company acquiring substantially all of its assets, equity, or business, without any requirement to obtain permission for such assignment; otherwise, Subscriber may not assign this Agreement to a third party without the advance written consent of Provider. Subject to the foregoing and notwithstanding any prohibitions on transferability under this Agreement, Subscriber shall notify Provider of any permitted assignment. This Agreement will bind and inure to the benefit of the parties, their successors, and their permitted assigns.
- 12.6 Force Majeure. Neither party is liable for delay or default under this Agreement if caused by conditions beyond its reasonable control. The party suffering from any

such conditions shall use reasonable efforts to mitigate against the effects of such conditions.

- 12.7 Amendment; Waiver. Unless otherwise expressly stated herein, this Agreement may be modified only by a written amendment or agreement executed by an authorized representative of each party. The waiver of any breach of any provision of this Agreement will be effective only if in writing, and no such waiver will operate or be construed as a waiver of any subsequent breach.
- 12.8 Enforceability. If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not permitted by law), and the rest of this Agreement is to remain in effect as written.
- 12.9 Governing Law. This Agreement is governed by and construed under the laws of the State of New York, without regard to any conflicts of law rules, and each party hereby consents to exclusive jurisdiction and venue in the state and federal courts located in Rochester, New York for any dispute arising out of this Agreement.
- 12.10 Entire Agreement; Conflict. This Agreement represents the entire agreement between Provider and Subscriber with respect to the Services. With respect to any Services, terms and conditions included in the following items, whether submitted or executed before or after the Term start date, are null and void: (a) a Subscriber purchase order or similar document; (b) a Subscriber vendor registration form or online portal; and (c) any other contemporaneous or prior agreements or commitments regarding the Services or the other subject matter of this Agreement.
- 12.11 Revisions. Provider reserves the right to revise this Agreement by posting a revised version on the Site, which will be effective seven (7) days after posting. Continued use of the Services after the effective date of revision will constitute Subscriber's acceptance of the revised Agreement. If Subscriber objects to the revisions, Subscriber may terminate this Agreement by providing written notice to Provider prior to the effective date of revision, provided that Subscriber will remain obligated to pay amounts due to Provider under this Agreement and will not receive a refund of prepaid fees. Subscriber's termination will be effective upon Provider's written acknowledgement of such termination, and in no event later than thirty (30) days from Provider's receipt of Subscriber's termination notice.
- 12.12 Counterparts; E-Signatures. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which shall constitute one and the same instrument. The exchange of copies of this Agreement, including executed signature pages, by electronic transmission (including pdf or

any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) will constitute effective execution and delivery of this Agreement for all purposes.

**13. Definitions.** Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

“**Affiliate**” means any person or entity that owns or controls, is owned or controlled by, or is under common control or ownership with, a party to this Agreement, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise.

“**Customizations**” means all software, code, materials, ideas, deliverables, and items that are conceived, made, discovered, written, or created by Provider’s personnel in connection with providing Professional Services.

“**Disclosing Party**” means the party disclosing Confidential Information to the Receiving Party.

“**Documentation**” means documentation provided by Provider on the Site that is uniformly available and applicable to all Provider customers and relates to the operation and use of the Services, including user manuals, operating instructions, and release notes, each as updated by Provider from time to time.

“**Professional Services**” means implementation, configuration, integration, training, advisory, and other professional services related to the Services that are specified in this Agreement.

“**Provider Properties**” means Service, Documentation and Customizations, and all Provider technology, software, data, methodologies, improvements, and documentation, used to provide or made available in connection with Services, Documentation, and Customizations, and all intellectual property and proprietary rights in and to the foregoing.

“**Receiving Party**” means the party receiving or accessing Confidential Information of the Disclosing Party.

“**Services**” means Professional Services, the Subscription Service, and any other internet-delivered service or application provided or controlled by Provider.

“**Site**” means Provider’s website at [www.](http://www.)\_\_\_\_\_ and any website linked from such website that is owned or controlled by Provider.

“**Subscriber Content**” means any data, file attachments, text, images, reports, personal information, or other content that is uploaded or submitted to the internet-delivered Services by Subscriber or Subscriber Users and is processed by Provider on behalf of Subscriber. For the avoidance of doubt, Subscriber Content does not include usage,

statistical, or technical information that does not reveal the actual contents of Subscriber Content.

“**Subscriber User**” means any individual authorized or invited by Subscriber or a Subscriber User to access and use the Services received by Subscriber from Provider under the terms of this Agreement.

“**Subscription Service**” means Provider's subscription internet-delivered New York State Sexual Harassment Prevention Training.

“**SysAdmin**” means a Subscriber User with certain administrative control rights over Subscriber’s Subscription Service.

“**Term**” means the period of authorized access and use of a Service as set forth in this Agreement.