



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/9/2026

File ID: TMP-7019

Department: Human Resources

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Agreement between the City of Huntsville and ThisGen, Inc for a trial subscription to their cloud-based solution for pre-hiring assessment of Fire and Police Communication Dispatchers.

Resolution No.

Finance Information:

Account Number: NA

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below) NA

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments: NA

RESOLUTION NO. 26- _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville, a municipal corporation in the State of Alabama, and ThisGen, Inc. for a trial subscription to their cloud-based solution for pre-hiring assessment of Fire and Police Communications Dispatchers for Huntsville Fire and Rescue and Huntsville Police which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as “Agreement between the City of Huntsville and ThisGen, Inc.” consisting of a three (3) page order form plus twenty (20) additional pages consisting of the Master Service Agreement (MSA) and the date of July 9, 2026, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 9th day of July, 2026.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 9th day of July, 2026.

Mayor of the City of Huntsville,
Alabama



Order Form

Quote ref. 20260501-003817626
Issue date Jun 18, 2026
Expires Jul 29, 2026

Seller

ThisGen, Inc.
908 S Bryan St.
Elmhurst, IL 60126
United States

Contact

John Edwards (john@thisgen.ai)
+15045541030

Buyer

City of Huntsville Alabama
305 Fountain Circle Southwest
Huntsville, Alabama 35801
United States

Contacts

Tenya Green
(tenya.green@huntsvilleal.gov)

Effective date

On agreement

Total contract value

\$0.00

Line items

Item	Quantity	Unit price	Net price	Term total
ThisGen PreHire Starts on effective date Pre-hire assessment is free for life	1	\$0.00	\$0.00	\$0.00

Terms

This Order Form adds the Services specified herein to Customer's subscription and is governed by the ThisGen Master Services Agreement v1.1 (the "v1.1 MSA"), attached and incorporated by reference. Customer's signature below constitutes acceptance of the v1.1 MSA.

Order of Precedence. If there is a conflict, the following order controls: (1) this Order Form, including any addendum or SOW signed by both parties and attached hereto; (2) the v1.1 MSA; and (3) the ThisGen Terms of Service. Any conflicting terms in a purchase order or similar document are void; a PO is accepted solely for administrative/invoicing purposes.

Government Customer Indemnity Limitation. Notwithstanding anything to the contrary in the v1.1 MSA, including Section 11.4, Customer's indemnification obligations, if any, are limited to the extent permitted by applicable law, only for claims arising from Customer's own negligent acts or omissions, and only subject to applicable statutory immunities, appropriations, and liability caps.

Subscription Term; Auto-Renewal. The Subscription Term for each Service ordered under this Order Form is set forth in the pricing section above (the "Initial Term"). THE SUBSCRIPTION TERM WILL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE-YEAR PERIODS AT THISGEN'S THEN-CURRENT RATES UNLESS EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL AT LEAST SIXTY (60) DAYS BEFORE THE END OF THE THEN-CURRENT TERM. ThisGen will provide Customer with notice of any rate increase at least ninety (90) days before the renewal date; if the increase exceeds 10%, Customer may elect not to renew by providing written notice within thirty (30) days after receiving such notice.

The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.

 ThisGen Master Services Agreement (MSA) v1.1

Payments

Customer agrees to the following payment terms: net 30

Acceptance

This section is designated for the authorized representatives from both parties involved in this agreement. Customer may accept by (a) e-signature, (b) PO referencing this Order Form, or (c) payment. By signing below, the signatories confirm their acceptance of the terms and conditions outlined in this document.

On behalf of the buyer,

[sig|req|signer1]

By:

Tommy Battle
Its: Mayor

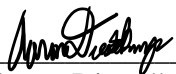
Attest:

Shaundrika Edwards
Its: City Clerk

On behalf of the seller,

 [sig|signer2]
Zak Randall
zak@thisgen.ai

Attest:

_____
Aaron Diestelkamp
Its: Chief Technology Officer



Master Services Agreement (MSA) v1.1

Effective Date: 2026-07-09

This Master Services Agreement ("**MSA**") is entered into by and between **ThisGen, Inc.** ("**ThisGen**") and the customer identified on the applicable Order Form ("**Customer**"). This MSA governs Customer's access to and use of ThisGen's interactive, cloud-based training, evaluation, and assessment platform commonly known as the "ThisGen 911 Platform" (the "**Platform**") and related services, content, and documentation that includes call simulation, automated AI-driven feedback, analytics, supervisor tools and interactive learning models (collectively, the "**Services**").

1) Order Forms; Structure; Precedence

1.1 Order Forms. Customer may purchase subscriptions to the Services via one or more order forms, quotes, statements of work, or similar ordering documents that reference this MSA (each, an "**Order Form**"). Each Order Form is incorporated into this MSA by reference.

1.2 Precedence. If there is a conflict, the following order controls: (1) the applicable Order Form (including any signed addendum to that Order Form), (2) this MSA, then (3) the Terms of Service. Any terms in a purchase order or similar document that conflict with this MSA or an Order Form are void; a PO may be used only for administrative purposes (e.g., supplier registration, invoice routing).

1.3 Acceptance. Customer accepts this MSA by signing an Order Form, issuing a PO that references an Order Form, or paying an invoice under an Order Form.

2) Definitions

"Authorized Users" means Customer's employees, contractors, agents, candidates, applicants and students/participants (if applicable) authorized to access and use the Services solely for Customer's internal business purposes, including training, evaluation, educational, and assessment purposes, as applicable under the relevant Order Form.

"Content" means the proprietary training materials, videos, tutorials, templates, evaluations, assessments, scores, summaries, analytics, benchmarks, reports, and other materials or resources made available through the Platform.

"Assessment Features" means any candidate, applicant, employee, trainee, or participant assessment, evaluation, scoring, benchmarking, transcript, summary, analytics, reporting, or similar



feature or output made available through the Services.

"No-Fee Assessment Tool" means any Assessment Features or related Services provided by ThisGen to Customer at no additional charge, on a trial, beta, evaluation, promotional, or no-fee basis, as identified in an applicable Order Form or otherwise designated by ThisGen in writing.

"Customer-Provided Content" means any documents, call-handling protocols ("Protocols"), GIS files, or other materials that Customer uploads or otherwise provides to the Platform before or outside a live simulation.

"Conversation Data" means (i) AI-generated caller audio, text, and metadata, (ii) dispatcher's spoken/typed responses, transcriptions, scores, and other data captured by the Platform during a simulation, and (iii) other synthetic or derived data the Platform creates.

"Aggregated Statistics" means data and information related to Customer's use of the Services that is used by ThisGen in an aggregate and anonymized manner to compile statistical or performance information about the provision and operation of the Services.

"Customer Data" means Customer-Provided Content and any other information or content, in any form or medium, submitted, posted, uploaded, created or otherwise received directly or indirectly from Customer or an Authorized User, including Personal Information, to the Services or that is derived from the Processing of such data, information or content through the Services. Customer Data does **not** include Aggregated Statistics or Conversation Data or any other information reflecting the access or use of the Services by or on behalf of the Customer or any Authorized User. Customer Data also includes any documents, Protocols, GIS files or other materials that Customer uploads or otherwise provides to the Platform before or outside of a live simulation.

"Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

"Documentation" means any manuals, instructions, specifications, or other documents or materials that the ThisGen provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.



"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, including without limitation the Family Educational Rights and Privacy Act ("FERPA").

"Personal Information" means information that Customer or an Authorized User provides or for which Customer or an Authorized User provides access to ThisGen, or information which ThisGen creates or obtains on behalf of Customer, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers).

"Process" means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. "Processing" and "Processed" have correlative meanings.

"Provider Materials" means the Services, Documentation, information technology infrastructure and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. Provider Materials include Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, including without limitation Conversation Data, but do not include Customer Data.

"Third-Party Materials" means any third-party products, materials, services and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to ThisGen that are provided with, incorporated into or used with the Services.

"Subscription Term" means the subscription term set forth in the applicable Order Form.

"Student Users" means Authorized Users who are enrolled students, trainees, or participants of Customer's educational program.

"Student Data" means Customer Data that relates to a Student User, including identifiers, account info,



submissions, scores, and training performance. Student Data is Customer Data.

"Education Laws" means applicable education privacy and child privacy laws, including (where applicable) the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA").

3) Provision of Services; License

3.1 Access Grant. Subject to Customer's payment of Fees and compliance with this MSA and the applicable Order Form, ThisGen grants Customer a non-exclusive, non-transferable right during the Subscription Term to access and use the Services solely for Customer's internal business purposes, including training, evaluation, and assessment purposes, and solely by Authorized Users.

3.2 Documentation License. ThisGen grants Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation (if any) made available by ThisGen solely for Customer's internal use in connection with the Services.

3.3 Reservation of Rights. ThisGen reserves all rights not expressly granted to Customer in this MSA. Except for the limited rights expressly granted to Customer in this Agreement, ThisGen and its licensors retain all rights, title, and interest in and to the Services, Platform, Content, Documentation, and all related intellectual property. For clarity, ThisGen retains all ownership and Intellectual Property Rights or other right, title or interest in the Services and all related Content, Provider Materials and Third-Party Materials.

3.4 Changes to Services. ThisGen may modify the Services from time to time to maintain or improve security, availability, compliance, functionality, or performance. ThisGen may also make changes required by applicable law or by changes to third-party services used in connection with the Services. ThisGen will not materially reduce the core functionality of the Services during the applicable Subscription Term unless such reduction is required by law, security concerns, or the unavailability of third-party technology outside ThisGen's reasonable control. If ThisGen materially reduces core functionality of the Services during a Subscription Term and such reduction materially adversely affects Customer's authorized use of the Services, Customer may terminate the affected Order Form upon written notice within thirty (30) days after the reduction, and ThisGen will refund any prepaid fees for the terminated portion of the applicable Subscription Term on a pro rata basis.

Notwithstanding the foregoing, any No-Fee Assessment Tool may be added, modified, suspended, or discontinued at any time, with or without notice, and without liability, unless otherwise expressly stated in the applicable Order Form.



3.5 Subcontractors. ThisGen may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

3.6 Suspension or Termination of Services. ThisGen may, directly or indirectly, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other individual or entity's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) ThisGen receives an administrative, judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires ThisGen to do so; or (b) ThisGen believes, in its discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the specifications; ii) any Protocols or other Customer-Provided Content has been uploaded or provided to ThisGen or the Platform without the necessary consents or permissions of the owner of such Protocols or other Customer-Provided Content, (iii) Customer or any Authorized User is or has been involved in any fraudulent, misleading, or unlawful activities; (iv) any vendor of ThisGen has suspended or terminated ThisGen's access to or use of Third-party Materials required to enable Customer or Authorized Users to access the Services, (v) Customer has violated its payment obligations to ThisGen, or (vi) this Agreement expires or is terminated (any such suspension described in subclauses (i) through (vi), a "Service Suspension"). This Section 3.6 does not limit any of ThisGen's other rights or remedies, whether at law, in equity, or under this Agreement. ThisGen shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. ThisGen shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. ThisGen will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

3.7 Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, ThisGen may monitor Customer's and its Authorized User's use of the Services and collect and compile Aggregated Statistics. As between ThisGen and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by ThisGen. Customer acknowledges that ThisGen may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that ThisGen may (i) make Aggregated Statistics publicly available in compliance with applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable Law.

3.8 Use of Customer Data. Customer hereby grants ThisGen the right to (a) use any Customer Data or any data obtained by ThisGen relating to the use of the Services by Customer or its Authorized Users in connection with any lawsuits brought against Customer or ThisGen and to (b) disclose any Customer Data as required by applicable Law; provided however that ThisGen will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in Customer's effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense. ThisGen will not disclose Customer-Provided Content to third parties or use it to train models without Customer's written permission.



1.1 **3.9 Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:

(a) ThisGen has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any individual or entity by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or ThisGen; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

3.10 Support; Maintenance. During the applicable Subscription Term, ThisGen will provide Customer with reasonable technical support for the Services (e.g., issue troubleshooting and how-to assistance) via ThisGen's standard support channels. ThisGen may update, modify, or enhance the Services from time to time and may perform scheduled maintenance. ThisGen will use commercially reasonable efforts to provide advance notice of scheduled maintenance that is expected to materially impact availability, except where maintenance is required on an emergency basis or to address security, legal compliance, or operational stability. Any service levels, guaranteed response times, or uptime commitments will apply only if expressly set forth in an Order Form or written service level addendum signed by both parties. Notwithstanding the foregoing, any No-Fee Assessment Tool is provided on an as-is and as-available basis, and ThisGen will have no obligation to provide support, maintenance, service levels, guaranteed response times, uptime commitments, or continued availability for any No-Fee Assessment Tool unless expressly stated in the applicable Order Form.

4) Use Restrictions; Customer Responsibilities

4.1 **General Restrictions.** Customer shall not, and shall not permit any Authorized Users or any other individual or entity to, access or use the Provider Materials except as expressly permitted by this Agreement and, in the case of Third-party Materials, the applicable third-party license agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users or any other individual or entity to:

(i) copy, modify, or create derivative works of the Provider Materials, in whole or in part;

(ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Provider Materials;



- (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Provider Materials, in whole or in part;
- (iv) remove, alter or obscure any proprietary notices, trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other Intellectual Property Rights notices from any Provider Materials, including any copy thereof from the Services or Documentation;
- (v) access or use the Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (vi) access or use Provider Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or any high-risk or safety-critical applications, or any other use or application where the failure of the Provider Materials could result in death, to personal injury or severe physical, property or environmental damage;
- (vii) use Conversation Data to develop or train competing products or services or
- (viii) otherwise access or use the Provider Materials beyond the scope of the authorization granted under this Section 4.

4.2 High-Risk Use Disclaimer. The Services are intended to support Customer's internal training, evaluation, and assessment activities, as applicable under the relevant Order Form. Customer acknowledges that all platform feedback, Assessment Features, and other outputs (including AI-generated outputs) are advisory, informational only, and non-determinative, and must be reviewed by qualified Customer personnel before being used in evaluations, training outcomes, operational changes, screening, interviewing, hiring, promotion, retention, compensation, discipline, or other employment-related actions.

ThisGen does not make hiring, promotion, retention, compensation, disciplinary, or other employment recommendations or decisions on Customer's behalf, and the Services do not constitute legal advice. Customer is solely responsible for all such decisions, for whether and how it uses any outputs from the Services, and for compliance with all laws, regulations, and policies applicable to Customer's use of the Services and any resulting actions.

Without limiting the foregoing, Customer is solely responsible for compliance with applicable employment, labor, anti-discrimination, privacy, biometric, accessibility, consumer reporting,



background screening, and related laws, including providing any notices and obtaining any consents required for Customer's use of the Services or Assessment Features.

For clarity, the Services are not a live 911 system and must not be used to handle real emergency calls or real-world dispatch operations.

4.3 Account Security. Customer is responsible for maintaining the confidentiality of login credentials and for all activity occurring under Customer's accounts.

4.4 Authorized Users. Customer is responsible for Authorized Users' compliance with this MSA and the applicable Order Form.

4.5 4.5 Student Users; Minors; Consents. If Customer permits Student Users (including minors) to access the Services, Customer represents and warrants that it has provided all required notices and obtained all necessary consents and permissions from Student Users and/or their parents/guardians as required by Education Laws and Customer policies for ThisGen to provide the Services and process Student Data as described in this MSA. Customer is solely responsible for (a) supervising Student Users' use of the Services, (b) ensuring Student Users do not submit sensitive personal information unless Customer has authorized such submission and all required consents are in place, and (c) ensuring Customer's use of the Services complies with Education Laws and Customer's applicable district/school policies

4.6 Customer Responsibilities.

4.6.1 Customer Systems and Cooperation. Customer shall at all times during the Term set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used. Customer is responsible and liable for all uses of the Provider Materials resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible and liable for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer must (a) make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, (b) cause Authorized Users to comply with such provisions and obtain all necessary consents from Authorized Users regarding the disclosure to and use by ThisGen of Personal Information and (c) agree to be bound by, and shall cause each of its Authorized Users to agree to be bound by, the Company's Terms of Service located at <https://www.thisgen.ai/terms.pdf> ("Terms of Service"), which are hereby incorporated by this reference.

4.6.2 Third-Party Materials. The Services may incorporate or otherwise make available Third-Party Materials. ThisGen will identify material Third-Party Materials to Customer upon request. Third-Party Materials are subject to their own terms and conditions and applicable flow-through provisions, including without limitation the provisions contained in ThisGen's Terms of Service. If Customer does not agree to abide by the applicable terms for any such Third-Party Materials, Customer should not install or use those Third-Party Materials or the Services to the extent they incorporate those Third-Party Materials.

4.6.3 Effect of Customer Failure or Delay. ThisGen is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").

4.6.4 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 4, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify ThisGen of any such actual or threatened activity.

5) Data Rights & Model Improvement

5.1 Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with ThisGen and, with respect to Third-party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 4 or the applicable third-party license. All other rights in and to the Provider Materials are expressly reserved by ThisGen. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to ThisGen an assignment of all right, title, and interest in and to the Aggregated Statistics, including all Intellectual Property Rights relating thereto.

10.2 5.2 Customer Data. ThisGen acknowledges that, as between ThisGen and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data (except to the extent that Customer Data utilizes or incorporates Provider Materials). Customer hereby irrevocably grants to ThisGen a non-exclusive, royalty-free, sublicensable, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or useful for ThisGen and its Subcontractors to provide the Services to Customer, enforce this Agreement and exercise ThisGen's and its Subcontractors' rights and perform ThisGen's obligations hereunder, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display de-identified Customer Data incorporated within the Aggregated Statistics, provided that ThisGen does not attempt to re-identify such data and binds any recipients to the same restriction. Customer represents and warrants that it has all necessary rights and permissions including without



limitation under applicable Laws to provide to ThisGen any Customer Data and information uploaded to the Services which may contain Personal Information.

10.3 5.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to ThisGen and its Subcontractors to enforce this Agreement and exercise ThisGen's and its Subcontractors' rights and perform ThisGen's obligations hereunder.

5.4 Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to ThisGen by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider Materials, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like, and all Intellectual Property Rights therein ("Feedback"), ThisGen is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to ThisGen on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and ThisGen is free to use, assign, transfer and license without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although ThisGen is not required to use any Feedback. Feedback will not be considered Customer's Confidential Information.

5.5 Permitted Uses of Conversation Data. ThisGen may use Conversation Data:

- (a) to operate, maintain, train, and improve its models, services, and analytics; and
- (b) to create Aggregated Statistics, provided such statistics do not identify Customer or its personnel without prior written consent.

5.6 Customer Use of Conversation Data. Customer may download and use Conversation Data internally for training, quality assurance, or record-keeping, but may not commercialize or distribute it outside the organization without ThisGen's prior written consent.

6) Confidentiality

6.1 Confidential Information. "Confidential Information" means non-public information disclosed by one party to the other that is marked confidential or would reasonably be understood to be confidential given the nature of the information and circumstances of disclosure. ThisGen's Services, Content, and non-public product details are ThisGen Confidential Information. Customer Data is Customer Confidential Information.

6.2 Protection. Each party will protect the other's Confidential Information with at least the same care it uses to protect its own similar confidential information, and not less than a reasonable standard of



care. Each party will use the other's Confidential Information only to perform or receive under this MSA.

6.3 Exclusions. Confidential Information does not include information that: (a) is or becomes public through no fault of the receiving party; (b) was known by the receiving party without breach of obligation; (c) is independently developed without use of the disclosing party's Confidential Information; or (d) is received from a third party without breach.

6.4 Compelled Disclosure; Public Records. If the receiving party is required by law, regulation, court order, subpoena, or other valid legal process to disclose any Confidential Information (including under public records, open records, or FOIA-type laws applicable to Customer), the receiving party may disclose such Confidential Information to the extent required, provided that (to the extent legally permitted) it: (a) gives the disclosing party prompt written notice of the request or requirement; (b) reasonably cooperates with the disclosing party (at the disclosing party's expense) in seeking a protective order or other appropriate remedy, or in requesting confidential treatment; and (c) discloses only the portion of Confidential Information that it is legally required to disclose.

For avoidance of doubt, if Customer is subject to public records/open records laws, Customer may disclose ThisGen Confidential Information as required by such laws, provided Customer uses commercially reasonable efforts (where legally permitted) to provide notice to ThisGen and to assert or request applicable exemptions, confidential treatment, and/or redactions.

6.5 Term. Confidentiality obligations last during the Subscription Term and for **five (5) years** thereafter; trade secrets remain protected as long as they qualify for trade secret protection.

7) Security; Privacy; PHI

7.1 Security. ThisGen will employ commercially reasonable administrative, technical, and physical safeguards designed to protect Customer Data against unauthorized access, disclosure, or alteration in connection with the Services.

7.2 Privacy. ThisGen will comply with its Privacy Policy, as it may be amended in ThisGen's sole discretion from time to time, a current copy of which is set forth at <https://www.thisgen.ai/privacy.pdf>.

7.3 HIPAA/PHI. The parties acknowledge the Services are not intended to require transmission, storage, or processing of Protected Health Information ("PHI") as defined under HIPAA; therefore, a Business Associate Agreement is not required. Customer agrees not to upload PHI to the Services unless the parties have executed a separate BAA.



7.4 Education Privacy (FERPA/COPPA). Where Education Laws apply, ThisGen will process Student Data only for the purpose of providing, maintaining, and improving the Services for Customer, consistent with this MSA and the applicable Order Form. ThisGen does not sell Student Data and will not use Student Data for targeted advertising to Student Users. Customer acknowledges and agrees that Customer is responsible for determining what Student Data is provided to the Services and for obtaining any required consents or permissions under Education Laws. If Customer requests, the parties will reasonably cooperate in good faith to execute a separate education data privacy addendum required by Customer's policies or applicable law.

7.5 Employment and Assessment Use. To the extent Customer uses the Services or any Assessment Features in connection with candidates, applicants, employees, contractors, or other personnel, Customer is solely responsible for determining the lawfulness and appropriateness of such use, including whether notices, disclosures, consents, authorizations, or impact assessments are required under applicable law or Customer policy.

7.6 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use and (f) compliance by Customer and its Authorized Users with all Laws.

10.4 **7.7 Access and Security.** Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content, access, security and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

8) Fees; Taxes; Payment

8.1 Fees. Fees and expenses ("Fees"), payment schedule, and any limits (e.g., user bands) are set forth in the applicable Order Form. All Fees are non-refundable.

8.2 Taxes. Fees are exclusive of taxes. Customer is responsible for applicable sales, use, VAT, or similar taxes, excluding taxes based on ThisGen's net income.

8.3 Late Payments. Unless prohibited by law for Customer, overdue undisputed amounts may accrue



interest at the lesser of 1.5% per month or the maximum allowed by law.

9) Term; Termination

9.1 **MSA Term.** This MSA remains in effect until terminated as provided herein; each Order Form has its own Subscription Term.

9.2 **Termination for Cause.** Either party may terminate an Order Form (and/or this MSA if no Order Forms remain) for material breach if the breach is not cured within **30 days** after written notice (or **15 days** if the breach is incapable of cure or involves misuse of the Services, security compromise, or nonpayment).

9.3 **Effect of Termination.** Upon termination/expiration of an Order Form:

- (a) Customer will stop using the Services under that Order Form;
- (b) ThisGen may disable access to the Services for that Order Form;
- (c) each party will return or destroy the other party's Confidential Information upon request, subject to permitted archival/backup retention;
- (d) Fees accrued before termination remain payable; and
- (e) if Customer terminates for ThisGen's uncured material breach, ThisGen will refund prepaid Fees for the unused portion of the terminated subscription period (if any), unless prohibited by law or the Order Form states otherwise.

10) Warranties; Disclaimers

10.1 **Mutual Authority.** Each party represents it has the authority to enter into this MSA.

10.2 Additional Customer Representations, Warranties, and Covenants.

Customer represents, warrants, and covenants to ThisGen that:

- (a) Customer owns or otherwise has and will have all necessary rights and consents in and relating to the Customer Data so that, as received by ThisGen and Processed in accordance with this Agreement, the Customer Data does not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party, or violate any applicable Law, including without limitation any disclosures prohibited by FERPA unless expressly authorized in writing;
- (b) In its use of the Services, Customer will comply with all applicable Laws, including without limitation any laws governing automated decision-making, artificial intelligence in employment, algorithmic accountability, employment, labor, anti-discrimination, privacy, biometric information, accessibility, consumer reporting, and background screening;



(c) Customer is solely responsible for ensuring that any feedback generated by the Services, including feedback generated by artificial intelligence, is reviewed by qualified Customer personnel before being used in evaluations, training outcomes, operational changes, screening, interviewing, hiring, promotion, retention, compensation, discipline, or other employment-related actions;

(d) Customer is solely responsible for ensuring that all consents obtained from its Authorized Users acknowledge the graphic and potentially traumatic nature of some of the materials that may be contained in the Provider Materials;

(e) With respect to any Customer Data (including Protocols) that Customer or its Authorized Users upload to the Platform or provide to ThisGen for use in connection with the Services:

(i) Customer owns or has obtained all necessary rights, licenses, consents, and permissions to upload such Customer Data and to authorize ThisGen to store, use, transmit, and process it for evaluation, quality assurance, assessment, and training purposes in connection with the Services;

(ii) If any Customer Data (including Protocols) is owned by a third party (for example, a vendor or publisher), Customer has obtained all necessary rights, licenses, consents, and permissions to submit such Customer Data and to authorize ThisGen's use of it as contemplated under this MSA, and such use will not infringe, misappropriate, or violate any Intellectual Property Rights, privacy rights, or other rights of any third party, and will comply with all applicable laws, rules, and regulations;

(iii) Customer has provided all required notices and obtained all necessary consents (including, where applicable, under data protection, privacy, education, and child privacy laws) to enable ThisGen to lawfully process such Customer Data in accordance with this MSA; and

(iv) Customer will not provide ThisGen any Customer Data (including Protocols) that Customer does not have the right to provide or that is subject to restrictions that would be violated by ThisGen's use of such Customer Data in accordance with this MSA.

(f) Customer acknowledges that (i) ThisGen has no obligation to independently review, verify, or confirm the legality, scope, or sufficiency of Customer's rights in any Customer Data (including Protocols); and (ii) Customer is solely responsible for all Customer Data (including Protocols) that Customer or its Authorized Users submit to the Services, including ensuring that Customer has all necessary rights and permissions and that such Customer Data complies with applicable Laws and third-party rights.

10.3 Disclaimer. ALL PROVIDER MATERIALS ARE PROVIDED "AS IS." PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE



OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. CUSTOMER ACKNOWLEDGES THAT ALL FEEDBACK PROVIDED BY THE SERVICES THAT IS GENERATED BY ARTIFICIAL INTELLIGENCE OR OTHERWISE IS ADVISORY AND NON-DETERMINATIVE. PROVIDER MAKES NO WARRANTY OR REPRESENTATION ABOUT ITS ACCURACY OR IF IT CONTAINS BIAS. PROVIDER DOES NOT PROVIDE ANY WARRANTIES THAT THE SERVICES OR ANY FEEDBACK OR ANY ARTIFICIAL INTELLIGENCE FEEDBACK PROVIDED TO CUSTOMER OR ITS AUTHORIZED USERS WILL LEAD TO CORRECT RESULTS. PROVIDER SHALL NOT BE LIABLE FOR ANY DECISIONS, ACTIONS OR OUTCOMES ARISING FROM USE OR RELIANCE OF FEEDBACK FROM THE SERVICES OR FROM USE OF THE SERVICES. CUSTOMER ACKNOWLEDGES THAT PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE TRAINING OR EDUCATION PROVIDED BY THE SERVICES IS SUFFICIENT FOR THE PERFORMANCE OF CUSTOMER'S EMPLOYEES, CONTRACTORS OR STUDENTS DUTIES AND CUSTOMER IS SOLELY LIABLE FOR ENSURING THAT CUSTOMER'S TRAINING PROGRAMS ARE SUITABLE FOR PERFORMANCE OF SUCH DUTIES.

10.4 Advisory Outputs. CUSTOMER ACKNOWLEDGES THAT ALL FEEDBACK, ASSESSMENT FEATURES, SCORES, SUMMARIES, ANALYTICS, BENCHMARKS, REPORTS, AND OTHER OUTPUTS (INCLUDING AI-GENERATED OUTPUTS) ARE ADVISORY AND INFORMATIONAL ONLY. CUSTOMER IS SOLELY RESPONSIBLE FOR REVIEWING, INTERPRETING, AND USING SUCH OUTPUTS, AND FOR ANY SCREENING, HIRING, PROMOTION, RETENTION, COMPENSATION, DISCIPLINARY, TRAINING, OPERATIONAL, OR OTHER BUSINESS DECISIONS MADE BY CUSTOMER.

11) Indemnification

11.1 ThisGen IP Indemnity. ThisGen will indemnify, defend, and hold harmless Customer from and against damages finally awarded arising out of a third-party claim ("IP Claim") alleging that the Services, or any use of the Services in accordance with this MSA infringes or misappropriates any third party's U.S. Intellectual Property Rights, provided Customer: (a) promptly notifies ThisGen in writing of an IP Claim, (b) provides reasonable cooperation to ThisGen, and (c) allows ThisGen sole authority to control the defense and settlement of such IP Claim. Notwithstanding the foregoing, ThisGen will have no indemnification obligation under this Section 11.1 with respect to any No-Fee Assessment Tool unless expressly stated in the applicable Order Form.

11.2 Mitigation. If an infringement claim occurs (or is likely), ThisGen may: (a) modify or replace the Services to make them non-infringing, (b) obtain the right for Customer to continue using them, or (c) terminate the affected Order Form and refund prepaid fees for the unused portion of the affected



subscription period. For any No-Fee Assessment Tool, ThisGen may instead suspend, modify, or discontinue the affected feature without liability or refund obligation.

11.3 Exclusions. ThisGen's indemnity obligations do not apply to IP Claims arising from or related to : (a) Customer Data or Customer-Provided Content (including without limitation Protocols); (b) use of the Services in combination with data, software, hardware, equipment, or technology not provided by ThisGen or authorized by ThisGen in writing; (c) modifications to the Services not made by ThisGen; (d) Third-Party Materials, (e) access to or use of the Services or the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by ThisGen or specified for Customer's use in the Documentation; (f) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of ThisGen; (g) failure to obtain the necessary consents from each Authorized User for ThisGen to use the Customer Data in accordance with this Agreement; or (h) an act or omission of Customer or an Authorized User; (i) Customer's use of the Services outside the scope of this MSA/Order Form; or (j) any No-Fee Assessment Tool or any beta, trial, evaluation, or promotional feature provided without charge.

11.4 Customer Indemnity. Customer shall indemnify, defend, and hold harmless ThisGen and its Subcontractors, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "ThisGen Indemnatee") from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees incurred by such ThisGen Indemnatee resulting from any action, claim or proceeding by a third party (other than an affiliate of a ThisGen Indemnatee) ("Action") that arise out of or result from, or are alleged to arise out of or result from: (a) Customer Data (including Protocols) and including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement and/or any data privacy or security issues, including any unauthorized access or disclosure of Customer Data; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including ThisGen's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by ThisGen; (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this MSA; (d) act or omission by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this MSA or the use of the Services; (e) use of the Services in combination with data, software, hardware, equipment, or technology not provided by ThisGen or authorized by ThisGen in writing; (f) modifications to the Services not made by ThisGen; (g) use of the Services to provide training to Customer's employees, contractors and students; (h) failure to timely implement any modifications, upgrades, replacements, or



enhancements made available to Customer by or on behalf of ThisGen; (i) Customer Data (including Protocols) infringing or misappropriating any third-party Intellectual Property or other rights; (j) Customer Data (including Protocols) being uploaded to the Services or Platform or used by the Services or Platform without necessary rights or permissions; (k) any claim that ThisGen's use of Customer Data (including Protocols) tortiously interfered with the rights of a third party or induced a breach of contract between Customer and the owner of any rights in the Customer Data (including Protocols); and (l) Customer's use of any Assessment Features in connection with screening, interviewing, hiring, promotion, retention, compensation, discipline, or other employment-related decisions, including claims alleging violation of applicable employment, labor, anti-discrimination, privacy, biometric, consumer reporting, background screening, accessibility, or similar laws.

11.5 Procedure. The indemnified party will promptly notify the indemnifying party and provide cooperation. The indemnifying party controls the defense and settlement, except it may not settle in a way that admits fault or imposes obligations on the indemnified party without consent.

11.6 Sole Remedy. THIS SECTION 11 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12) Limitation of Liability

12.1 No Consequential Damages. IN NO EVENT WILL THISGEN BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR FOR LOST PROFITS, REVENUE, DATA, OR USE, EVEN IF ADVISED OF THE POSSIBILITY.

12.2 Liability Cap. EXCEPT FOR (A) A PARTY'S INDEMNIFICATION OBLIGATIONS, OR (B) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS MSA WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM(S) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. Notwithstanding the foregoing or anything else in this MSA, ThisGen's aggregate liability arising out of or relating to any No-Fee Assessment Tool will not exceed the greater of one hundred dollars (\$100) or the amount paid specifically for the No-Fee Assessment Tool.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.4 OR CUSTOMER'S BREACH OF ITS REPRESENTATIONS AND WARRANTIES IN SECTION 10.2 REGARDING CUSTOMER DATA (INCLUDING PROTOCOLS), AND CUSTOMER AGREES THAT CUSTOMER WILL BE



LIABLE FOR ANY DAMAGES, LOSSES, OR CLAIMS ARISING FROM CUSTOMER'S SUBMISSION OR USE OF CUSTOMER DATA (INCLUDING PROTOCOLS) FOR WHICH CUSTOMER DOES NOT HAVE SUFFICIENT RIGHTS.

13) Publicity

Unless prohibited by law or policy applicable to Customer, ThisGen may list Customer's name and logo as a customer in a factual manner (e.g., customer lists). Any case study, testimonial, press release, or more detailed use requires Customer's prior written approval.

14) Miscellaneous

14.1 **Force Majeure.** Neither party is liable for delays due to events beyond reasonable control.

14.2 **Independent Contractors.** The parties are independent contractors.

14.3 **Notices.** Notices must be in writing and delivered to the addresses in the applicable Order Form (or by email to notice addresses designated by the parties).

14.4 **Governing Law; Venue.** This MSA is governed by the laws of the State of **Delaware**, excluding conflicts rules. Venue will be state or federal courts located in Delaware **unless** Customer is a U.S. state or local governmental entity legally required to use its own jurisdiction's law/venue, in which case the parties will use Customer's jurisdiction.

14.5 Government Entity; Mandatory Legal Requirements. If Customer is a U.S. federal, state, or local governmental entity, or otherwise subject to public procurement or other mandatory laws/regulations ("Public Entity Requirements"), then: (a) this MSA and any Order Form will be interpreted and performed in a manner consistent with applicable Public Entity Requirements, and only to the extent permitted by such requirements; (b) nothing in this MSA or any Order Form will be construed to require Customer to take any action, make any payment, or grant any right that Customer is prohibited from taking, making, or granting under applicable law; (c) any provision that is prohibited or unenforceable under applicable Public Entity Requirements will be deemed modified to the minimum extent necessary to make it enforceable (or, if it cannot be so modified, severed), and the remainder will remain in effect; and (d) the parties will cooperate in good faith to execute a conforming amendment if reasonably requested by either party.

14.6 Non-Appropriation (Government Customers). If Customer is a governmental entity whose payment obligations are subject to the appropriation and availability of funds, Customer may terminate the applicable Order Form upon thirty (30) days' written notice to ThisGen if Customer's



governing body fails to appropriate or allocate funds for Customer's payment obligations for the then-current fiscal period. In such event, Customer will pay for Services actually provided through the effective date of termination and any other undisputed amounts accrued and payable through such date, and Customer will have no obligation to pay fees attributable to periods after the effective date of termination.

14.7 Entire Agreement. This MSA and the Order Forms constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and the related Order Forms the following order of precedence governs: (i) first, the Order Forms but only to the extent of such conflict and only for the Services set forth in such Order Form and (ii) second, this Agreement.

1.1 **14.8 Amendment/Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.9 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. If any term or other provision is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

1.1 **14.10 Assignment.** Neither party may assign this MSA without the other party's prior written consent, except that either party may assign this MSA to an affiliate or in connection with a merger, acquisition, reorganization, or sale of all or substantially all of its assets. Any attempted assignment in violation of this Section is void. This MSA is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

1.2 **14.11 Export Regulation.** Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or



other governmental approval), that prohibit or restrict the export or re-export of the Provider Materials or any Customer Data outside the US.

14.12 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 (Confidentiality) or, in the case of Customer, Sections 4 (Use Restrictions) or 10.2 (Customer Representations), would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

14.13 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

1.1 14.14 **Survival.** The following provisions survive expiration or termination of this MSA: Section 2 (Definitions), Section 5 (Data Rights & Model Improvement) to the extent rights accrued pre-termination, Section 6 (Confidentiality), Section 8 (Fees; Taxes; Payment) as to amounts accrued, Section 9.3 (Effect of Termination), Section 10.3 (Disclaimer), Section 11 (Indemnification), Section 12 (Limitation of Liability), Section 13 (Publicity), and Section 14 (Miscellaneous), together with any other provision that by its nature should survive.