

## JDXPERT™ STANDARD SUBSCRIPTION AND SERVICES AGREEMENT

Version 1.0

Subject to the terms and conditions of this agreement (this “**Agreement**”), we at HRTMS Incorporated, a North Carolina corporation d/b/a JDXpert (“**we**” or the “**Company**”), provide subscriptions to:

- (1) our JDXpert™ web-based job information and description management software (“**JDXpert**”);
- (2) a website (the “**Site**,” and, together with JDXpert, the “**Software**”) through which you may access and use JDXpert; and
- (3) the Services described in further detail below.

1. Acceptance. By executing an Order with us, you also accept the terms of this Agreement and agree you are legally bound by its terms. The individual registering to use JDXpert on your behalf represents and warrants to us that such individual is fully and duly authorized to agree to be bound by this Agreement on your behalf. If you do not agree to this Agreement, do not register to use JDXpert or otherwise access or use any Software.

2. Right to Access and Restrictions.

a. JDXpert Authorization. Provided that you, your Affiliates and your Authorized Users comply with this Agreement, we authorize you and your Affiliates, during the Term, and on a non-exclusive and non-transferable (except as described in Section 13.e) basis, to access and use JDXpert through the Site, including any JDXCSP Data we make available to you through JDXpert, in each case provided that such access and use is (i) by and through your Authorized Users only, (ii) solely as (and in the form) in which we have provided JDXpert, (iii) solely for the Permitted Use, and (iv) strictly in accordance with this Agreement and the Documentation. This authorization also permits you and your Affiliates to access and use the Documentation during the Term in support of your permitted uses of JDXpert and the Site.

b. Limitations and Restrictions. You must use commercially reasonable efforts to prevent unauthorized access to or use of the Software, Documentation and JDXCSP Data we make available to you through JDXpert (collectively, the “**JDXpert Materials**”). You must not, and you must not permit any other person or entity to, access or use the JDXpert Materials except as we’ve specifically allowed in this Agreement and, in the case of any Third-Party Materials (as defined below) we provide with or as part of the JDXpert Materials, as allowed in the applicable third-party license agreement. Without limiting the generality of the preceding sentence, except as we’ve specifically allowed in this Agreement, you, your Affiliates and your Authorized Users must not do any of the following:

i. copy, modify, adapt, translate or create derivative works or improvements of the JDXpert Materials or any portion thereof;

ii. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the JDXpert Materials or any features or functionality of the JDXpert Materials to any other person or entity for any reason, including by making the JDXpert Materials available through any time-sharing, service bureau or software as a service arrangement;

iii. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive, gain access to or discover the source code of the Software or the underlying structure, ideas, know-how, algorithms or methodology relevant to the Software;

iv. input, upload, transmit or otherwise provide to or through the Software any information or materials that are unlawful or that contain, transmit or activate any Harmful Code;

v. bypass, breach or disable any security device, copy control, digital rights management tool or other protection used by the JDXpert Materials;

vi. remove any proprietary notices from the JDXpert Materials;

vii. share an Authorized User's access credentials with any person or permit use of an Authorized User's access credentials by any person, other than the Authorized User with whom the access credentials are associated;

viii. attempt to gain unauthorized access to, damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner (A) the JDXpert Materials, (B) the server on which the JDXpert Materials are stored, (C) any server, computer or database connected to the Software, or (D) our ability to provide services to any other person or entity;

ix. access or use the JDXpert Materials in any way that infringes, misappropriates or otherwise violates any intellectual property right, privacy right or other right of any third party, or that violates any applicable law or regulation;

x. access or use the JDXpert Materials for purposes of (A) developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the JDXpert Materials, or (B) disclosing to our competitors, for any purpose, otherwise non-public information about the JDXpert Materials; or

xi. knowingly aid or assist any Affiliate, Authorized User or other person or entity in taking any of the actions prohibited by this Section 2.b.

c. Responsibility for Affiliates and Authorized Users. You will ensure your Affiliates' and Authorized Users' compliance with this Agreement and be responsible and liable to us for any act or omission of an Affiliate or Authorized User (or any other employee, contractor or agent under your control or direction or acting on your behalf) that would be a breach or violation of this Agreement had you performed the act or omission yourself.

### 3. Our Services.

a. Services – Generally. Provided that you, your Affiliates and your Authorized Users comply with this Agreement, we will provide to you the following services (the “**Services**”) during the Term: (i) the hosting, management and back-end operation of JDXpert to make the same available for remote electronic access and use by you, your Affiliates and your Authorized Users through the Site in accordance with the authorizations granted above; (ii) the Support Services described in Section 4.a below; and (iii) any other Services we expressly agree to provide in your Order.

b. Changes to the Software. We may make any changes to the Software (including, without limitation, the design, look and feel, functionality, content, material, information and/or services provided via the Software) that we deem necessary or useful to improve the Software or for any other reason, from time to time in our discretion. Such changes may include upgrades, bug fixes, patches, error corrections, modifications, enhancements, improvements and/or new features (collectively, “**Updates**”). All Updates shall be deemed a part of the Software governed by all the provisions of this Agreement pertaining thereto.

c. Subcontractors. You understand and agree that we may, in our discretion, engage subcontractors to aid us in providing the Software and performing our Services under this Agreement, but we will remain liable to you for any act or omission by such subcontractors that would be a breach or violation of this Agreement. For example, we may use IBM Cloud, Amazon Web Services, Microsoft Azure, Google Cloud Platform and/or such other reputable hosting provider that implements and maintains commercially reasonable security programs, policies, procedures, controls and technologies (the “**Hosting Services Provider**”) for cloud-based infrastructure and hosting and storage services for JDXpert, and such Hosting Services Provider will host and store certain portions of Your Data that is processed through JDXpert. You hereby specifically approve and consent to our use of a Hosting Services Provider in the manner described. Notwithstanding anything to the contrary in this Agreement, you further agree that we cannot guarantee or ensure the performance of any Hosting Services Provider to the terms of this Agreement, and remediation of a breach by a Hosting Services Provider is limited to the remedies specified the Hosting Services Provider’s standard service agreement.

d. Suspension of Software Access. We may suspend or deny access to or use of all or any part of the Software to one or more of your Authorized Users, without any liability to you or others, if (i) we’re required to do so by law or court order; or (ii) you have, your Affiliate has or your Authorized User (or any other employee, contractor or agent under your control or direction or acting on your behalf) has (A) accessed or used our Services or the JDXpert Materials in violation of this Agreement, (B) been involved in any fraudulent or unlawful activities relating to or in connection with our Services or the Software, or (C) otherwise failed to comply with this Agreement. Our remedies in this Section are in addition to, and not in lieu of, our termination rights in Section 9.b or any other rights or remedies under this Agreement, at law or in equity.

#### 4. Support Services and Uptime.

a. Support Services. Provided that you, your Affiliates and your Authorized Users comply with this Agreement, during the Term we will provide customer support services to you

and your Authorized Users via e-mail and telephone during our standard support hours (8:00 a.m. to 6:00 p.m., Eastern time, Monday through Friday, but excluding federal holidays) (“**Support Services**”). Support Services include the following:

- i. access to knowledge-base content, FAQs, training videos and community forums hosted and made available generally to customers by us from time to time through the JDXpert learning management system;
- ii. technical and operational assistance for the use of the Software, including responses to general, short-duration questions about the documented features and functionality of the Software and usage thereof, management of user accounts for Authorized Users, assistance with interpretation and use of the Documentation, and assistance with interpretation of error or warning messages appearing in dashboards or alerts, in each case to the extent such inquiries and requests cannot be resolved by the User Contact as described in Section 4.b below;
- iii. attempts to respond and resolve any availability failure or other reproducible failure of the Software to perform in accordance with the Documentation (each, an “**Error**”); and
- iv. periodically providing to you all Updates to the Software that we make generally available to all of our customers free of additional charge.

However, Support Services do not include (1) support for software or hardware that is not part of the Software (including support for any part of your equipment, products or technology infrastructure), (2) on-site dispatch of our personnel, (3) formal, comprehensive training of Authorized Users on use of the Software, (4) on-site or remote support to configure or customize the Software for you, or (5) performance of any other professional, implementation, configuration, consulting or advisory services (provided that items (3) through (5) may be separately provided Services to the extent expressly agreed to in your Order). You must provide all information and assistance that we reasonably request in connection with providing such Support Services. We reserve the right to charge you at an hourly rate (on a time-and-materials basis) for support services provided (x) outside of our normal support hours, or (y) in connection with a request we reasonably determine is outside the scope of the Support Services described above.

b. User Contact for First-Tier Support. You will identify a system administrator or other employee (the “**User Contact**”) trained in use of the Software who will provide first level technical support to your Authorized Users. First level technical support involves assisting Authorized Users with help concerning Software usage, understanding Software functionality, and verifying Software Errors reported by Authorization Users.

## 5. Confidentiality.

a. General. In connection with receiving or providing the JDXpert Materials and Services during the Term, each party (each, a “**Discloser**”) may disclose to the other party (the “**Recipient**”) the Discloser’s proprietary or confidential information (collectively, “**Confidential Information**”). During the Term and thereafter the Recipient will not without the Discloser’s

written consent disclose Discloser's Confidential Information to any third party (other than our subcontractors as permitted in Section 3.c above) nor use the Discloser's Confidential Information for any purpose except for carrying out its obligations or exercising its rights under this Agreement. All non-public information related to our Software and the features, functionality and performance thereof are all our Confidential Information, Your Data is your Confidential Information, and the terms of this Agreement and your Order are the Confidential Information of both of us.

b. Exceptions. These restrictions will not restrict the use or disclosure of information disclosed by one party to the other that (i) is or becomes publicly known other than as a result of any act or omission by the Recipient or its employees or agents, (ii) is lawfully received by the Recipient from a third party not in a confidential relationship with the Discloser, or (iii) was already rightfully known by the Recipient prior to receipt thereof from the Discloser. Additionally, Recipient may disclose Discloser's Confidential Information to the extent it is legally compelled to do so pursuant to applicable law or the valid order of a court or governmental agency, provided that Recipient must first give the Discloser reasonable prior written notice to permit the Discloser to challenge or limit such required disclosure.

## 6. Data Security and Privacy.

a. Security Program. We will implement, maintain and adhere to a written data security program (including policies, procedures and risk assessments appropriate to the nature of Your Data processed by us) with administrative, technical, and physical measures designed to protect against Security Incidents. We will review and, as appropriate, revise our data security program at least annually.

b. Hosting Network and Security. The hosting network for the Software, on cloud server capacity leased from the Hosting Services Provider, is certified to ISO 27001, and SSAE 16/18, and follows the NIST 800-53 security standards and procedures. Our office/development network is isolated from the hosting network and follows industry standard security practices, including multi-factor authentication for user accounts. Updates to JDXpert and the Site are uploaded to the hosting network via secure file transfer protocol (SFTP) and/or HTTPS, and administration of the hosting network is conducted through temporary secure and encrypted connections.

c. Return or Destruction of Your Data. At any time during the Term, at your written request, we will destroy or return all of Your Data in our possession and we will direct our subcontractors to do the same. Additionally, upon expiration or termination of this Agreement, upon your written request made within thirty (30) days of such expiration or termination, we will provide you with an electronic copy of the backed up version of Your Data in such machine readable format as is mutually agreed upon by you and us. Notwithstanding the foregoing, (i) we may retain one copy of Your Data as may be necessary or advisable in order to comply with any applicable, laws, regulations, or for purposes of defending or maintaining any legal or arbitral proceeding relating to this Agreement, and (ii) we will not be required to delete (A) Your Data subject to a "litigation hold" during the hold period or (B) Your Data in back-up, archival or electronic storage that is maintained in accordance with our security, back-up or data retention

policies; provided that any retained copies of Your Data will continue to be protected and maintained in accordance with our obligations under this Agreement.

d. Security Incident Notification. We will notify you in writing of any Security Incident without undue delay after becoming aware of the Security Incident. The notice will summarize in reasonable detail (to the extent known) the nature and scope of the Security Incident (including a description of any Personal Information affected) and the corrective action already taken or to be taken by us. The notice will be timely supplemented to the extent possible as reasonably requested by you.

e. Data Privacy. We will store, use and otherwise process any of Your Data that constitutes “personal information,” “personal data” or “personally identifiable information” as defined in applicable laws (collectively “**Personal Information**”) in all material respects in accordance with all applicable laws relating to the privacy and protection of Personal Information (“**Data Privacy Laws**”). We will not access, use, handle, maintain, process, dispose of, or disclose Personal Information other than as permitted or required under this Agreement or Data Privacy Laws. Based on the data that you will process using the Software or otherwise provide to us, if and to the extent Data Privacy Laws require additional clauses to be executed by us beyond those set forth in this Agreement, then you must notify us in writing of such requirement and we will in good faith review, negotiate and consider adding such clauses as an addendum to this Agreement. In the absence of such notice you represent and warrant that no additional clauses are required.

f. No Sensitive Data. You understand and accept that the Software and our other systems and networks are not designed or intended for the storage, processing or protection of Sensitive Data and may not provide adequate or legally-required security or other protections for Sensitive Data. Therefore, notwithstanding anything to the contrary in this Agreement, we will have no responsibility or liability for any Sensitive Data that you, your Affiliate, your Authorized Users or any other employee, contractor or agent under your control or direction or acting on your behalf may voluntarily choose to input into the Software or otherwise provide to us in connection with the Services or our performance under this Agreement. For the purposes of this Agreement, “**Sensitive Data**” means the following: “protected health information” within the meaning of the Health Insurance Portability and Accountability Act; credit card, debit card or other payment card information; financial account information of any kind; identity numbers issued by any government agency such as driver’s license number, Social Security number or passport number; the results of background checks; passwords or other access credentials that would or could be used to access any personal accounts (other than passwords and/or access credentials used by Authorized Users to log in to and access the Software which shall not be excluded as a result of this provision); biometric information or genetic data.

## 7. Fees and Payment.

a. Fees. You will pay to us the fees and charges described in your Order (the “**Fees**”) in accordance with the Order and this Section 7. In addition, unless otherwise specified in your Order, in each renewal term all Software subscription Fees may, in our discretion, be increased for the renewal term (i) by up to seven percent (7%) above the Fees prevailing in the immediately prior initial term or renewal term (in addition to any increases in pricing corresponding to any

changes in usage or other pricing parameters) without additional notice to you, or (ii) by a greater amount if we notify you of the pending Fee increase at least 60 days prior to the commencement of the upcoming renewal. All purchases are final, all payment obligations are non-cancelable and (except as otherwise expressly provided in this Agreement or in your Order) all Fees once paid are non-refundable.

b. Taxes. Our Fees do not include taxes and similar assessments. We will pass along to you the cost of any sales and excise (and other similar) taxes, duties and charges of any kind imposed by a governmental authority on amounts payable under this Agreement, other than taxes imposed on our income. If any such amounts are owed to a governmental authority, we will calculate the amount of the obligation and include this on your bill or invoice, and we will remit those amounts to the applicable authority. If you are exempt from such taxes, you must provide us with a true, up-to-date and complete copy of your direct pay permit or exemption certificate.

c. Payment. You will make all payments in US dollars. Invoiced amounts are due 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information and notifying us of any changes to that information.

## 8. Ownership and Intellectual Property Rights.

a. JDXpert Materials. You acknowledge and agree that we (or the respective rights holders in any Third-Party Materials) own all right, title and interest in and to the JDXpert Materials (for the avoidance of doubt excluding any of Your Data or Confidential Information), including all associated features, functionality, software, content, materials and services made available thereon by us, including all new versions, Updates, configurations, revisions, derivative works, improvements and modifications of the foregoing, the look and feel, ideas, algorithms, methods and concepts underlying or embedded in the foregoing and all related intellectual property rights (collectively, the “**JDXpert IP**”). We are not granting you any right, license or authorization with respect to the JDXpert IP except as we’ve specifically provided in Section 2 above. We and the respective rights holders in any Third-Party Materials reserve all other rights in and to the JDXpert IP.

b. Content Library and JDXCSP. As an authorized user of JDXpert, you will be provided with access to a content library of sample job descriptions (the “**Content Library**”) that you may use with JDXpert to develop individual job descriptions for your own internal use. You may not download or export information from the Content Library for any other purpose. A portion of the Content Library consists of crowd-sourced contributions of job description elements (“**JDXCSP Data**”) from you and other authorized users of JDXpert that participate in the JDXpert Content Sharing Program (“**JDXCSP**”). JDXCSP content is available pursuant to and subject to the terms and conditions of the JDXCSP Guidelines, available at <https://jdxpert.com/jdxcsp> and which form a part of and are incorporated into this Agreement by reference. However, you acknowledge and agree that, under this Agreement and at the pricing tier reflected in your Order, the section of the JDXCSP Guidelines titled “Restricted Job Descriptions” does not apply to you.

c. Your Data. As between you and us, you are and will remain the sole and exclusive owner of all right, title and interest in and to all of Your Data, including all intellectual property

rights relating to Your Data, subject to the rights you grant to us in this Section 8.c. You grant to us and our subcontractors all such rights and permissions in or relating to Your Data as are necessary to: (i) perform the Services and provide the Software during the Term; and (ii) enforce this Agreement and exercise our rights and perform our obligations under this Agreement.

d. Third-Party Materials. Notwithstanding any contrary term in this Agreement, the Software may contain or be provided with open source software components and/or other software owned by third parties (“**Third-Party Materials**”), each of which has its own copyright and its own applicable license terms and conditions. You and your Affiliates will have the right to directly license any such open source software from the owner thereof, and will be licensed the right hereunder to use any other third-party software, in each case under the terms and subject to the conditions of the applicable open source license or other license terms and conditions and/or copyright notices that can be found in the information provided by us in the Documentation or in any “Third-Party Licenses ReadMe” file or similar file located in the installation directory for the applicable software (rather than the terms of this Agreement).

## 9. Term and Termination.

a. Term; Renewal. The initial term of this Agreement commences on the first date you accept this Agreement in accordance with Section 1 above and, unless otherwise specified in your Order, continues for an initial period of one year (the “**Initial Term**”). Thereafter, unless otherwise specified in your Order, this Agreement will automatically renew for successive one-year periods (each, a “**Renewal Period**”), unless one party provides written notice to the other of its intent not to renew at least 30 days prior to the end of the then-current Initial Term or Renewal Period. The Initial Term and each Renewal Period (if any) are referred to in this Agreement collectively as the “**Term.**”

b. Termination. In addition to any other termination rights described in this Agreement, this Agreement may be terminated prior to the end of the Term at any time by either party, effective when that party provides written notice to the other, if the other party materially breaches this Agreement and such breach (i) remains uncured 30 days after the non-breaching party provides the breaching party with written notice regarding such breach, or (ii) is the second (or higher ordinal) breach of the limitations and restrictions in Section 2.b.

c. Effect of Termination. The exercise of any right of termination under this Agreement will not affect any rights of either party (including rights to payment) that have accrued prior to the effective date of termination and will be without prejudice to any other legal or equitable remedies to which a party may be entitled. If this Agreement is terminated or expires, then: (i) all rights, licenses and authorizations granted by one party to the other (other than rights to JDXCSP Data that survive termination of this Agreement in accordance with Section 8.b) will immediately terminate, (ii) we may disable your, your Affiliates’ and your Authorized Users’ access to the JDXpert Materials, and (iii) we each will cease all use of the other party’s Confidential Information and (at such other party’s request) promptly destroy or return all of the other party’s Confidential Information.



d. Surviving Terms. Sections 5 (Confidentiality), 6 (Data Security), 8 (Intellectual Property Rights), 9.c (Effect of Termination), 11 (Indemnification), 12 (Limitations of Liability), 13 (Miscellaneous), 14 (Definitions) and this Section 9.d will survive any expiration or termination of this Agreement.

10. Representations and Warranties.

a. By You Regarding Your Data. You represent and warrant that: (i) your, your Affiliates' and your Authorized Users' collection and use of all of Your Data (including your choice to upload and process Your Data to and through the Software as contemplated in this Agreement) and your Confidential Information is consistent with your own privacy policy and your license agreements and other agreements with third parties; (ii) you either own, or have all rights, permissions and consents that are necessary to store, use and process, and to permit us, our subcontractors and the Software to store, use and otherwise process as contemplated in this Agreement, all of Your Data and your Confidential Information; (iii) our and our subcontractors' access to and storage, use and other processing of Your Data and your Confidential Information (including all personal data included in Your Data and your Confidential Information) as contemplated by this Agreement does not and will not violate any applicable law, rule or regulation or infringe, misappropriate or otherwise violate any intellectual property right, privacy right or other right of any third party. You will defend us from and against any Claims brought by a third party, and you will indemnify and hold us harmless from any Losses associated with such third party Claims, in each case to the extent the same are based on allegations that you, your Affiliate, your Authorized Users or any other employee, contractor or agent under your control or direction or acting on your behalf have breached any representation or warranty in this Section a

b. By Us Regarding Our Software. We warrant that the Software will at all times during the Term substantially conform in all material respects to its Documentation and the written specifications expressly set forth by you and us in your Order. However, the warranty in this Section does not apply to any non-conformance resulting from: (x) use of the Software in a manner inconsistent with this Agreement or its Documentation, (y) the operation of or access to your, your Affiliate's or a third party's system or network, or (z) Your Data or any Third-Party Materials.

c. Remedy for Breach of Software Warranty. If we breach the warranty set forth in Section 10.b, we will, at our sole option and expense, take any of the following steps to remedy such breach: (i) modify, fix or correct the Software to remedy such non-conformity; (ii) replace the non-conforming portion of the Software, as applicable, with functionally equivalent software; or (iii) if the remedies in clauses (i) and (ii) are not feasible by commercially reasonable standards, terminate this Agreement and promptly refund to you on a *pro rata* basis the share of any Software subscription fees prepaid by you for the future portion of the applicable subscription term that would have remained but for such termination (a "**Refund of Fees**"). If we do not cure a warranty breach or terminate this Agreement as permitted by the immediately preceding sentence within 30 days after our receipt of written notice of such breach, you will have the right to terminate this Agreement in accordance with Section 9.b and we will promptly provide to you a Refund of Fees. YOU ACKNOWLEDGE AND AGREE THAT OUR OBLIGATIONS AND REMEDIES SET FORTH IN THIS SECTION 10.c ARE YOUR SOLE REMEDIES AND OUR ENTIRE AND

ONLY OBLIGATION AND LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 10.b.

d. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 10.b ABOVE, ALL SERVICES AND THE JDXPERT MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WE HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, NEITHER WE NOR ANYONE ASSOCIATED WITH US REPRESENTS OR WARRANTS THAT THE JDXPERT MATERIALS WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED OR THAT THE JDXPERT MATERIALS WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

11. Indemnification.

a. By Us. We will defend you from and against any Claims brought by a third party, and will indemnify and hold you harmless from any Losses associated with such third party Claims, in each case to the extent the same are based on allegations that the Software or your use thereof (excluding Your Data or Confidential Information) infringe any U.S. patent, copyright or trademark of such third party, or misappropriate the trade secret of such third party (each, an “**Infringement Claim**”).

b. Exclusions from Infringement Claims. Notwithstanding the foregoing, we will have no liability or obligation with respect to any Infringement Claim to the extent based upon or arising out of: (i) access to or use of the Software in combination with any hardware, system, software, network or other materials or service not provided by us (or authorized in the Documentation or otherwise in writing by us); (ii) modifications or configurations made to the Software by anyone other than us or a party acting under our direction without our prior written consent; (iii) JDXCSP Data; (iv) Third-Party Materials; or (v) any action taken by you, your Affiliate or any Authorized User relating to use of the Software that violates this Agreement.

c. Mitigation for Infringement Claims. If the Software is, or in our opinion is likely to be, the subject of an Infringement Claim, or if your, your Affiliate’s or any Authorized User’s use of the Software is enjoined or threatened to be enjoined, we will, at our option and our sole cost and expense: (i) obtain the right for you to continue to use the allegedly infringing Software as contemplated by this Agreement, (ii) modify or replace the allegedly infringing Software to make such Software (as so modified or replaced) non-infringing, without causing a material loss of features or functionality, or (iii) if the remedies in clauses (i) and (ii) are not feasible within commercially reasonable standards, then we may terminate this Agreement upon written notice and without any liability to you and we will promptly provide a Refund of Fees.

d. Indemnification Procedures. If a party reasonably believes it is entitled to indemnification under this Agreement, such party (the “**Indemnified Party**”) promptly must give the other party (the “**Indemnifying Party**”) written notice of the claim of indemnification,

provided that an Indemnified Party's failure to notify the Indemnifying Party will not diminish the Indemnifying Party's indemnification obligations except to the extent the Indemnifying Party is materially prejudiced as a result of such failure. Any such notice shall set forth in reasonable details the facts, circumstances and basis of the applicable Claim. Upon receipt of notice of the assertion of a Claim, the Indemnifying Party will have the right to control the defense or settlement of the matter at its own expense and with counsel of its choice, provided that the Indemnifying Party shall not enter into any settlement of the relevant Claim without written consent of the Indemnified Party (not to be unreasonably withheld). The Indemnified Party must cooperate reasonably with the Indemnifying Party, at the Indemnifying Party's expense, to facilitate the defense, compromise or settlement of any Claims. The Indemnified Party may employ separate counsel and participate in any indemnified Claim, but the fees and expenses of such counsel will be at the expense of the Indemnified Party.

e. Sole Remedy. THIS SECTION 11 SETS FORTH YOUR SOLE REMEDIES AND OUR SOLE LIABILITY AND OBLIGATION TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE JDXPERT 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.

a. EXCLUSION OF DAMAGES. IN NO EVENT WILL THE COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE JDXPERT MATERIALS; (iii) LOSS OF GOODWILL OR REPUTATION; OR (iv) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE COMPANY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT PAID TO THE COMPANY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. Miscellaneous.

a. *Entire Agreement.* This Agreement and your Order together constitute the entire agreement between the parties on the subject matter hereof, and supersede all prior negotiations, understandings or agreements (oral or written) and all past dealing or industry custom.

b. *Amendment, Severability and Waiver.* No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. Any delay or failure of either party to enforce its rights, powers or privileges under this Agreement, at any time or for any period, will not be construed as a waiver of such rights, powers and privileges, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

c. *Governing Law and Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law provisions. The sole jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in the State of Delaware, and both parties consent to the exclusive jurisdiction of such courts with respect to any such action.

d. *Notices.* All notices under this Agreement must be in writing and may be delivered by electronic mail, certified or registered mail, overnight courier, or personal delivery, in each case to the address or e-mail address specified in your Order.

e. *Assignment.* Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party; provided that either party may assign this Agreement in its entirety without the other party's consent to its affiliates or to an entity that acquires all or substantially all of the business or assets of such party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise. This Agreement will be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties.

f. *No Third Party Beneficiaries.* This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

g. *Relationship of the Parties.* The relationship between the parties is that of independent contracting parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

h. *Force Majeure.* Neither party will be liable for any delays or non-performance of its obligations arising out of actions or decrees of governmental authorities (including enactment or adoption of law or regulation) following the first date you accept this Agreement, criminal acts of third parties, telecommunication failures not caused by a party, problems with equipment or

software provided by other parties, earthquakes, flood, and other natural disasters, war, terrorism, acts of God, or fire, or other similar causes not within such party's reasonable control (each, a "**Force Majeure Event**").

i. *Equitable Remedies.* Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 2.b (Limitations and Restrictions) or Section 5 (Confidentiality) of this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to seek equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, 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.

j. *Conflict in Terms.* If there is a conflict between this Agreement and your Order, the terms of the Order shall govern the provision of the Software or the Services involved; provided, however, that nothing in your Order may modify or supersede anything in Sections 2.b (Limitations and Restrictions), 8 (Ownership and Intellectual Property Rights), 10 (Representations and Warranties), 11 (Indemnification), 12 (Limitation of Liability), or 13 (Miscellaneous) of this Agreement unless an express cross-reference is made to the relevant provision of this Agreement in the Order and the parties have expressly agreed in the Order to modify or alter the relevant provision of this Agreement.

k. *Counterparts.* The Order 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. A signed copy of the Order delivered by facsimile, e-mail or other electronic means is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

14. Other Definitions. Capitalized and other terms that are used in this Agreement have the meanings described below:

**"Affiliate"** means another entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with you and is expressly identified as a covered "Affiliate" in an Order. The term "control" (including the terms "controlled by" and "under common control with") means the power to direct or cause the direction of the management and policies of an entity through the ownership of more than fifty percent (50%) of the voting securities of the entity.

**"Authorized User"** means your employees or employees of your Affiliates who have registered to use JDxpert by and through your account and to whom we have provided access codes to log-in to JDxpert through the Site. Unless we have provided prior written consent, "Authorized Users" shall *not* include any third parties, including but not limited to third party independent contractors, consultants, agents, subcontractors, vendors or service providers.

**"Claim"** means any investigation by a governmental body, claim, suit, action or proceeding.

**“Documentation”** means the then-current online, electronic and written user documentation and guides we make available to you, your Affiliates and your Authorized Users which describe the functionality, components, features or requirements of the Software, as we may update from time to time in our discretion.

**“Harmful Code”** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (a) computer, software, firmware, hardware, system or network or (b) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby.

**“Loss”** means any and all losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification and the cost of pursuing any insurance providers.

**“Order”** means the Order executed by you and us that references this Agreement, and which forms a part of and is incorporated into this Agreement by reference for all purposes.

**“Permitted Use”** means your internal business purposes in the ordinary course of such business.

**“Security Incident”** means any accidental, unauthorized or unlawful access, disclosure, loss, destruction, alteration, acquisition or use of Your Data (including, for the avoidance of doubt, any of Your Data that consists of Personal Information of your employees or other personnel) that compromises the security, confidentiality or integrity of Your Data that is caused by our material breach of our obligations set forth in Section 5 (Confidentiality) or Section 6 (Data Security and Privacy) of this Agreement. “Security Incidents” exclude unsuccessful attempts or activities that do not compromise the security, confidentiality or integrity of Your Data, including but not limited to pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond headers), or similar incidents.

**“You”** and **“your”** as used throughout this Agreement refers to the party (other than us) entering into this Agreement to obtain a subscription to JDXpert and our Services.

**“Your Data”** means information, data, records or other materials that are uploaded directly by you, your Affiliate or an Authorized User either (i) by or through the Software for the purposes of being stored or otherwise processed within the Software, or (ii) to a File Transfer Protocol (FTP) site provided to you by us for purposes of facilitating our provision of Support Services or other Services to you. For purposes of this Agreement, Your Data does not include JDXCSP Data that you choose to contribute through JDXCSP; such data is governed by the JDXCSP Guidelines referenced in Section 8.b above.