Software as a Service Terms of Use

This *Software as a Service Terms of Use* (this "**Agreement**") is a legally binding agreement between between Track Compliance LLC, an Arizona company with offices located at 2 N. Central Avenue, Suite 1800, Phoenix, AZ 85004 ("**Provider**"), and the organization on whose behalf you are registering to use Provider's services (the "**Customer**"). The effective date of the Agreement (the "**Effective Date**") is the date on which you register to use the Services on behalf of the Customer. Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

BEFORE REGISTERING TO USE THE TRACK™ PLATFORM AND SERVICES, PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD NOT REGISTER TO USE THE PLATFORM AND SERVICES. BY REGISTERING TO USE THE PLATFORM AND SERVICES, YOU ARE MANIFESTING YOUR INTENT TO BE LEGALLY BOUND BY THE FOLLOWING TERMS AND CONDITIONS.

WHEREAS, Provider has developed and provides its customers with access to the Services (as defined below) for the purpose of implementing, and monitoring, communicating, record-keeping, and legal and regulatory compliance relating to, a enterprise COVID-19 safety platform; and

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. <u>Definitions</u>.

    (a) "**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(b)   "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

(c)   "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(d)   "**Documentation**" means any product literature, user manuals, handbooks, and guides, whether digital or in hard copy, relating to the Services that Provider may (but is not obligated hereunder to) prepare or make available.

(e)   "**Provider IP**" means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

(f)   "**Services**" means the software-as-a-service offering described in the Saas Order Form through which Customer registers to use the Services (the "**Order**"), including all technology, software, and algorithms underlying that offering.

(g)   "**Third-Party Products**" means any third-party products provided with or incorporated into the Services, as described in the Order.

2.   <u>Access and Use</u>.

(a)   <u>Provision of Access</u>. Subject to, and conditioned on Customer's payment of Fees and compliance with all of the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(g)) right and license to access and to use the Services during the Term, solely for use by Authorized Users and solely in accordance with the terms and conditions herein. Such use is limited to Customer's internal, enterprise workforce use. Customer may not in any any way resell or make available the Services to any third party, nor otherwise put the Services to any commercial use. Provider shall

provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. The total number of Authorized Users shall not exceed the number agreed in writing between Provider and Customer and paid for by Provider, with appropriate adjustments to the Fees payable hereunder occurring and documented on a monthly basis. Customer shall disclose all Affiliates to whom it intends to give access to the Services; absent Customer's disclosure to and discussion with Provider concerning payment for use by Affiliates, no use by Affiliates is permitted hereunder. "**Affiliate**" means, with respect to Customer, all present or future entities or operational facilities (i) systematically connected with, controlling, controlled by or under common control with Customer, (ii) participating in any joint venture to which Customer or an entity referred to in the preceding clause (i) is a party, or (iii) to or with whom Customer provides or shares personnel.

(b)   Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g)) license to use the Documentation,if any, during the Term solely for Customer's internal business purposes, and solely to support its use of the Services. However, absent a written modification signed by an authorized representative of each of Provider and Customer, nothing herein obligates Provider to prepare or make available any Documentation.

(c)   Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. For example, Customer shall not at any time, and shall not permit any Authorized Users,whether directly or indirectly, to do any of the following: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other legal right of any person, or that violates any applicable law.

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(d)   Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e)   Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider 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. Provider 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. Provider 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.

(f)   Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by

Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider 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; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

3.   Customer Responsibilities.

(a)   General. Customer is responsible and liable for all uses of the Services and Documentation 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 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 shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

(b)   Third-Party Products. Provider may from time to time make Third-Party Products available to Customer, either directly or via integration with the Services. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions referred to in the Order. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

(c)   Customer Not a Covered Entity. Customer hereby represents, warrants, and covenants that Customer is not a "Covered Entity" within the meaning of HIPAA and its implementing and related rules and regulations and, as a result, no Business Associate Agreement is required in order to lawfully provide and receive the Services.

(d)   Authorized Representative. Customer hereby represents and warrants that the individual signing below or otherwise entering into this Agreement on behalf of Customer is fully authorized to do so, that Customer has obtained all internal approvals needed to enter into this Agreement and

form a legally binding contract with Provider, and that this Agreement shall be legally enforceable against Customer in accordance with its terms.

4. <u>Service Levels and Support</u>.

(a) <u>Service Levels</u>. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service level set out in our Service Level and Support Commitment (the "**SLSC**").

<u>Support</u>. The access rights granted hereunder entitle Customer, while and to the extent Customer remains in compliance with its material obligations under this Agreement, to the support services described in the SLSC following the Effective Date under this Agreement.

5. <u>Fees and Payment</u>.

(a) <u>Fees</u>. Customer shall pay Provider the fees ("**Fees**") as set forth in the Order without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in the Order. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

(b) <u>Taxes</u>. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

6. <u>Confidential Information</u>. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/ in written or electronic form or media, that is marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential**

Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7.   Intellectual Property Ownership; Feedback.

        (a)   Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP; and, with respect to any Third-Party Products offered by Provider or incorporated into the Services by Provider, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b)   Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider (i) a non-exclusive, royalty-free, 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 for Provider to provide the Services to Customer, and (ii) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c)   Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, 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 Provider is not required to use any Feedback.

8.   Limited Warranty and Warranty Disclaimer.

(a)   Provider warrants that the Services will conform in all material respects to the service levels set forth in the SLSC when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in the SLSC. The remedies set forth in the SLSC are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 8(a). THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(b)   EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE PROVIDER IP IS PROVIDED "AS IS" AND

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PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. 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. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, 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.

9.   Indemnification.

(a)   Provider Indemnification.

(i)   Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (collectively, **"Losses"**) incurred by Customer resulting from any third-party claim, suit, action, or proceeding (**"Third-Party Claim"**) that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(ii)   If such a claim is made or appears likely, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii)   This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b)   Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, privacy rights (including rights arising under any law relating to privacy in health or medical information and data), and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c)   Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED TWO TIMES (2X) THE TOTAL FEES PAID TO PROVIDER DURING THE PRECEDING TWELVE (12) MONTHS FOR ACCESS TO THE SERVICES.

10.   Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a)

CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED TWO TIMES (2X) THE TOTAL FEES PAID TO PROVIDER UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11.   Term and Termination.

(a)   Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1) year from such date (the "**Initial Term**"). This Agreement will automatically renew for up to one (1) additional successive one-year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(i)   If Customer terminates this Agreement in accordance with this Section 11(a), it shall, in its notice of non-renewal, select one of the following termination options:

(A)   Continued, Read Only Access to Services. If Customer selects this option, Provider shall reconfigure Customer's access to the Services at the conclusion of the Term such that Customer's ability to collect new data via the Services shall be terminated and Customer's ability to view ("read

only") data collected or entered prior to the effective date of termination, and to run reports concerning the same, shall be limited to two (2) employees or independent contractors, who shall be named in the notice of termination and whom Customer may update from time to time with reasonable advance written notice. If Customer selects this option, the fees shall be as described in the Order.

(B)   Limited API Access. . If Customer selects this option, Provider shall reconfigure Customer's access to the Services at the conclusion of the Term such that Customer's ability to collect, view and run reports on data collected or entered via the Services shall be terminated, and Provider shall afford Customer, for a period of sixty (60) days following the date on which termination becomes effective, limited access to the Services via an API enabling Customer to export all data collected or entered via the Services prior to such date on which termination becomes effective. If Customer selects this option, the fees shall be as described in the Order.

(ii)   If Customer terminates this Agreement in accordance with this Section 11(a), it shall, at the conclusion of the Term, deliver to Customer, in a HIPPA-compliant manner, and at no additional cost to Customer, all data collected or entered via the Services prior to such date on which termination becomes effective.

(b)   Termination. In addition to any other express termination right set forth in this Agreement:

(i)   Provider may terminate this Agreement, effective on written notice to Customer, if Customer (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

(ii)   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-

breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Services and the Provider IP (except for such Services as remain available under the terms of Section 11(a) above) and, without limiting Customer's obligations under Section 6, Customer shall, upon Provider's reasonable request, delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement. For clarity, following termination, Provider shall have no obligations arising out of or relating to Customer's limited use of the Services (for example, under Section 11(a)) or, acts or omissions relating to the same, except as expressly set forth in Section 9(a)(1) above.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and attachments (including the Order and all amendments thereto), 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, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by email (with confirmation of transmission). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c)   Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for Customer's obligations to make payments to Provider), if and to the extent such failure or delay is caused by any circumstances beyond reasonable control, including but not limited to acts of God, pandemics, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. For clarity, this provision does not apply to Customer's obligation to make payments to Provider under this Agreement.

(d)   Amendment and Modification; 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

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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.

(e)   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. Upon such determination that any term or other provision is 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.

(f)   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Arizona. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted only in the federal courts of the United States or the courts of the State of Arizona in each case located in the city of Phoenix, Maricopa County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g)   Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h)   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 Services or any Customer Data outside the US.

(i)   US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(j)   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), 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.

SERVICE LEVEL AND SUPPORT COMMITMENT

SERVICE LEVEL

We will use commercially reasonable efforts to (a) make the Services available for use 99% of the time, not including scheduled downtimes for system maintenance, updates, and the like ("**Scheduled Downtime**"), and (b) notify you, via the contact information you provide to us when you register to use the Services, at least twenty-four (24) hours in advance of any Scheduled Downtime. If we fail to meet the foregoing commitments, we will provide an equitable adjustment to your fees for the month(s) in which your ability to use the Services was adversely impacted.

SUPPORT

We are a small company that is growing rapidly in the wake of the COVID-19 vaccine mandate and related initiatives. We have designed our TRACK™ platform to be as intuive and user-friendly as possible; however, we understand that questions may arise.

We endeavor to respond within twenty-four (24) hours to all requests for support delivered via our service request email address: hello@track.com. To request service, please include in an email to that address all of the following information:

- Your organization's name
- The specific question or issues you are having
- Your preferred contact information (email and/or phone number(s)). If you do not provide additional contact information, we will respond to you via the email address you used to contact us.