



## LTSE Software as a Service “SaaS” Terms and Conditions

Last updated: May 25, 2023

These terms and conditions, together with all agreements expressly incorporated by reference (collectively, these “**Terms**” or the “**Agreement**”), govern your access to and use of the LTSE Software-as-a-Service platform described on the Plan Selection Form (the “**Services**”) that is offered by LTSE Services, Inc, a Delaware corporation with offices located at 300 Montgomery St., Suite 790, San Francisco, California (referred to as “**LTSE**,” “**us**,” “**we**” or “**our**”).

The terms “**Customer**,” “**you**,” “**your**” or “**end user**” as used in these terms means any person or entity who accesses or uses the Services, and any person who creates an LTSE account and accepts these Terms. “**LTSE Parties**” collectively means LTSE and its affiliates, and its and their respective officers, members, directors, employees, services, agents, licensors, suppliers, successors and assigns.

In order to receive the Services, you must fill out the Plan Selection Form where you subscribe and make payment within our software, for example, in the Company Subscription & Payment view on [equity.ltse.com](https://equity.ltse.com). The Plan Selection Form is part of these Terms. In case of a conflict between the Plan Selection Form and these Terms, these Terms will govern.

THIS IS A LEGAL AGREEMENT. BY CLICKING THE “ACCEPT” OR SIMILAR BUTTON OR CHECK BOX, BY ACCESSING OR USING THE LTSE PLATFORM, OR BY PLACING AN ORDER FOR ACCESS TO THE LTSE PLATFORM, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND BY THESE TERMS, INCLUDING, WITHOUT LIMITATION, OUR PRIVACY POLICY, AND TERMS OF SERVICE, ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT.

THESE TERMS REQUIRE THE USE OF BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE ALL DISPUTES ARISING UNDER THEM, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK THE “ACCEPT” OR SIMILAR BUTTON OR TICK BOX, SIGN UP FOR AN ACCOUNT, ACCESS OR USE THE LTSE SYSTEM, PLACE ANY ORDER FOR ACCESS TO THE LTSE PLATFORM.

These Terms give you specific legal rights, and you may also have additional legal rights, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under these Terms will not apply to the extent prohibited by applicable law.

### 1. **Definitions.**

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning set forth in the preamble.

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

“**Availability Requirement**” has the meaning set forth in Section 5.1.

“**Available**” has the meaning set forth in Section 5.1.

“**Backup Policy**” has the meaning set forth in Section 6.

“**Confidential Information**” has the meaning set forth in Section 11.

“**Customer**” has the meaning set forth in the preamble.

“**Customer Data**” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.

“**Customer Failure**” has the meaning set forth in Section 4.1.

“**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.

“**Disclosing Party**” has the meaning set forth in Section 11.

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

“**Effective Date**” has the meaning set forth in the preamble. “**Fees**” has the meaning set forth in Section 8.1.

“**Force Majeure Event**” has the meaning set forth in. Section 17.8.

“**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 (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed

thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or LTSE Systems as intended by this Agreement. Harmful Code does not include any LTSE Disabling Device.

“**Indemnatee**” has the meaning set forth in Section 14.3.

“**Indemnitor**” has the meaning set forth in Section 14.3.

“**Initial Term**” has the meaning set forth in Section 16.1.

“**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, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, deficiencies, claims, actions, 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 hereunder and the cost of pursuing any insurance s.

“**LTSE**” has the meaning set forth in the preamble.

“**LTSE Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by LTSE or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of LTSE or its designee.

“**LTSE Indemnatee**” has the meaning set forth in Section 14.3.

“**LTSE Materials**” means the Services, Documentation, and LTSE Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any Tools, deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by LTSE or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or LTSE Systems. For the avoidance of doubt, LTSE Materials include Resultant Data and any information, data, or other content derived from LTSE's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

“**LTSE Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of LTSE or any Subcontractor.

“**LTSE Systems**” means the information technology infrastructure used by or on behalf of LTSE in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by LTSE or through the use of third-party services.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Plan Selection Form**” is the form used by Customer to select Services and make payments within LTSE Software, for example, in the Company Subscription & Payment view on <https://equity.ltse.com/>.

“**Privacy and Security Policy**” has the meaning set forth in Section 7.1.

“**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.

“**Processing**” and Processed have correlative meanings.

“**Receiving Party**” has the meaning set forth in Section 11.

“**Renewal Term**” has the meaning set forth in Section 16.2.

“**Resultant Data**” means data and information related to Customer's use of the Services that is used by LTSE in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“**Scheduled Downtime**” has the meaning set forth in Section 5.2.

“**Service Period**” has the meaning set forth in Section 6.1.

“**Services**” means the software-as-a-service offering described in the Plan Selection Form used to purchase the Services.

“**Subcontractor**” has the meaning set forth in Section 2.7.

“**Support Exhibit**” has the meaning set forth in Section 5.3.

“**Support Services**” has the meaning set forth in Section 5.3.

“**Term**” has the meaning set forth in Section 16.2.

“**Territory**” means the United States of America.

“**Third-Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to LTSE.

“**Tools**” means software tools provided by LTSE as part of the LTSE System, including for software programming.

## 2. **Services.**

2.1. **Access and Use.** Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, LTSE hereby grants Customer a non-exclusive, nontransferable (except in compliance with Section 17.7) right to

access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use.

**2.2. Documentation License.** LTSE hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 17.7) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

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

(a) LTSE has and will retain sole control over the operation, provision, maintenance, and management of the LTSE 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 LTSE Materials by any Person 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 LTSE; (ii) results obtained from any use of the Services or LTSE Materials; and (iii) conclusions, decisions, or actions based on such use.

**2.4. Reservation of Rights.** Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, LTSE Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the LTSE Materials, and the Third-Party Materials are and will remain with LTSE and the respective rights holders in the Third-Party Materials.

**2.5. Service Management.** Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

**2.6. Changes.** LTSE reserves the right, in its sole discretion, to make any changes to the Services and LTSE Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of LTSE's services to its customers; (ii) the competitive strength of or market for LTSE's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law.

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

**2.8. Suspension or Termination of Services.** LTSE may, directly or indirectly, and by use of a LTSE Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or LTSE Materials, without incurring any resulting obligation or liability, if: (a) LTSE receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires LTSE to do so; or (b) LTSE believes, in its good faith 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 material instruction; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities in connection with any of the Services or (iii) this Agreement expires or is terminated. This Section 2.8 does not limit any of LTSE's other rights or remedies, whether at law, in equity, or under this Agreement.

**2.9. Use of the Services Void Where Prohibited.** LTSE makes no representations that the Services are appropriate or available for use in locations outside of the United States. Any Customer that accesses or uses the Services outside of the United States does so at its own risk. Those who access or use the Services from other jurisdictions are solely responsible for their compliance with local law.

### **3. Use Restrictions; Service Usage and Data Storage.**

**3.1. Use Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Services or LTSE Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For example, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify, or create derivative works or improvements of the Services or LTSE Materials;

- (b) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or LTSE Materials, in whole or in part;

- (c) bypass or breach any security device or protection used by the Services or LTSE Materials or access or use the Services or LTSE Materials other than by an Authorized User;

- (d) input, upload, transmit, or otherwise provide to or through the Services or LTSE Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; or

- (e) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, LTSE Systems, or LTSE's provision of services to any third party, in whole or in part.

### **4. Customer Obligations.**

4.1. **Effect of Customer Failure or Delay.** LTSE 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**").

4.2. **Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by Section 3.1, Customer shall, and shall cause its Authorized Users to, promptly: (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 LTSE Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify LTSE of any such actual or threatened activity.

## 5. **Service Levels.**

5.1. **Service Levels.** Subject to the terms and conditions of this Agreement, LTSE will use commercially reasonable efforts to make the Services Available at least ninety-nine and one half percent (99.5%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer and its Authorized Users over the Internet. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) Customer Failure; (b) Customer's or its Authorized User's Internet connectivity; (c) Force Majeure Event; (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by LTSE pursuant to this Agreement; (e) Scheduled Downtime; or (f) disabling, suspension, or termination of the Services pursuant to Section 2.8.

5.2. **Scheduled Downtime.** LTSE will: (a) schedule downtime for routine maintenance of the Services between the hours of 8 p.m. and 6 a.m., Pacific Time; and (b) give Customer at least 24 hours prior notice of all scheduled outages of the Services that are expected to last more than 5 minutes ("**Scheduled Downtime**").

5.3. **Service Support.** The Services include LTSE's standard customer support services ("**Support Services**") in accordance with the LTSE service support schedule then in effect, (the "**Support Exhibit**"). LTSE may amend the Support Exhibit from time to time in its sole discretion. Customer may purchase enhanced support services separately at LTSE's then current rates.

6. **Data Backup.** The LTSE Systems are programmed to perform routine data backups as set out in LTSE's backup policy in effect from time to time, (the "**Backup Policy**"). LTSE will deliver to Customer its then most current back-ups of Customer Data as and when set forth in the Backup Policy. In the event of any loss, destruction, damage, or corruption of Customer Data caused by the LTSE Systems or Services, LTSE will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from



LTSE's then most current backup of such Customer Data in accordance with the then current Backup Policy.

## 7. **Security.**

7.1. **LTSE Systems and Security Obligations.** LTSE will employ security measures in accordance with LTSE's data privacy and security policy as amended from time to time, as available on LTSE's website at <https://ltse.com/tools/privacy> or a successor website address ("**Privacy and Security Policy**").

7.2. **Data Breach Procedures.** LTSE maintains a data breach plan in accordance with the criteria set forth in LTSE's Privacy and Security Policy and shall implement the procedures required under such data breach plan on the occurrence of a "**Data Breach**" (as defined in such plan).

7.3. **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**"); and (d) all access to and use of the Services and LTSE Materials directly or indirectly by or through the Customer Systems, 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.

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

## 8. **Fees and Payment.**

8.1. **Fees.** Customer shall pay LTSE Fees in accordance with their choice on the Plan Selection Form.

8.2. **Payment Terms.** Customer, at their option, will be invoiced on a monthly or annual basis, unless otherwise notified pursuant to Section 10 below.

8.3. **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, 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 LTSE's income.

8.4. **Payment.** Customer shall pay all Fees within 14 days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars by credit card, wire or ACH. Customer shall make payments to account as specified by the LTSE.



8.5. **Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available and if such failure continues for 30 days following written notice thereof, LTSE may suspend performance of the Services until all past due amounts have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension. Additionally, if the failure to pay continues for more than sixty (60) days, LTSE may charge Customer, and Customer must pay LTSE, a reinstatement fee of twenty-five percent (25%) of the total Fees for the current Term before Customer's access to and use of the Services is reinstated.

8.6. **No Deductions or Setoffs.** All amounts payable to LTSE under this Agreement shall be paid by Customer to LTSE in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

## 9. **Prices and Payment Terms.**

9.1. All descriptions of the Services are within our sole discretion and subject to change at any time without notice. LTSE can withdraw products LTSE Site at any time and for any reason. The price charged for access and use of the Services and payment terms will be the price and payment terms in effect at the time the order is placed and will be set out in your order confirmation e-mail. Price increases will only apply to orders placed after such changes. Prices listed through the LTSE Site are stated in U.S. dollars, and do not include taxes or shipping and handling charges. All such taxes and charges will be added to your merchandise total and will be itemized in your shopping cart and in your order confirmation e-mail. We are not responsible for pricing, typographical or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors.

9.2. Payments for the Services are processed through one of our third-party payment service s (each, a "**Payment Service LTSE**"). Payment must be received by our Payment Service LTSE(s) before our acceptance of an order. Each of our Payment Service LTSEs accepts the Payment Methods listed on the LTSE Website. LTSE does not view or store your full credit card information. For all purchases, our Payment Service LTSEs will collect your payment method details and charge your payment method in connection with an order.

9.3. You represent and warrant that (a) the account, order, and payment method information you supply to us or our Payment Service LTSEs, as applicable, is true, correct and complete, (b) you are duly authorized to use such payment method for the purchase, (c) charges incurred by you will be honored by your payment method company, (e) you will pay all charges incurred by you at the posted prices, including all applicable taxes, if any, and (d) you will report to us any unauthorized or prohibited access or use of the Services.

9.4. If any of your account, order, or payment method information changes, you agree to promptly update this information, so that we or our Payment Service LTSEs may complete your transactions and contact you as needed. We are not liable for any unauthorized use of your credit card, debit card, or other payment method by a third party in connection with your use of the LTSE Site or the Services.

10. **Changes to These Terms of Service and Sale.** LTSE will update these Terms from time to time. When we do, we will revise the "last updated" date at the top of this page. For changes to these Terms that we deem to be material, we will notify you by placing a prominent notice on

home page of the LTSE Website. LTSE is not responsible for notifying you of changes to these Terms. Please check these Terms, including our Privacy Policy and the Terms of Service, along with all other documents incorporated by reference, for updates periodically, and prior to placing any orders for access to the Services. If at any time you do not agree to these Terms, please do not access or use the Services, or place any orders for Services. If you are placing an order for access to the Services, your continued placement of an order or use of the Services after a posted change in these Terms will constitute your acceptance of and agreement to such changes.

11. **Confidentiality. Confidential Information.** In connection with this Agreement each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party, which may include Subcontractor(s) as defined herein (as the “**Receiving Party**”). “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, provided to the Receiving Party by the Disclosing Party in connection with this Agreement. Nothing in this Agreement limits the Receiving Party’s use of any information (a) previously known to the Receiving Party without restriction before receipt from the Disclosing Party; (b) independently developed by the Receiving Party without use of the Confidential Information; (c) acquired by the Receiving Party from a third party which was not, to the Receiving Party’s knowledge, under an obligation not to disclose such information; (d) publicly available through no breach of this Agreement; or (e) approved in writing by the Disclosing Party for disclosure. A party may disclose Confidential Information to the extent it is compelled to do so by law and shall provide reasonable prior notice to the other party of such disclosure to the extent legally permitted.

## 12. **Intellectual Property Rights.**

12.1. **LTSE Materials.** All right, title, and interest in and to the LTSE Materials, including all Intellectual Property Rights therein, are and will remain with LTSE and, with respect to Third-Party Materials, the applicable third-party’s 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 LTSE Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the LTSE Materials are expressly reserved by LTSE. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to LTSE an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

12.2. **Customer Data.** As between Customer and LTSE, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 12.3.

12.3. **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 LTSE, its Subcontractors, and the LTSE Personnel to enforce this Agreement and exercise LTSE’s, its Subcontractors’, and the LTSE Personnel’s rights and perform LTSE’s, its Subcontractors’, and the LTSE Personnel’s obligations hereunder.

## 13. **Representations and Warranties.**

13.1. **Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

**13.2. Additional LTSE Representations, Warranties, and Covenants.** LTSE represents, warrants, and covenants to Customer that LTSE will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

**13.3. Additional Customer Representations, Warranties, and Covenants.** Customer represents, warrants, and covenants to LTSE that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by LTSE and Processed in accordance with this Agreement, they do 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.

**13.4. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 13.1 AND SECTION 13.2, ALL SERVICES AND LTSE MATERIALS ARE PROVIDED “AS IS.” LTSE 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, LTSE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR LTSE 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.

#### **14. Indemnification.**

**14.1. LTSE Indemnification.** LTSE shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Action

by a third party (other than an Affiliate of Customer) that Customer's or an Authorized User's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement infringes or misappropriates such third party's US Intellectual Property Rights in the Territory. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Customer Data;
- (b) access to or use of the LTSE Materials in combination with any hardware, system, software, network, or other materials or service not provided by LTSE or specified for Customer's use in the Documentation, unless otherwise expressly permitted by LTSE in writing;
- (c) modification of the LTSE Materials other than: (i) by or on behalf of LTSE; or (ii) with LTSE's written approval in accordance with LTSE's written specification; or
- (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of LTSE.

14.2. **Customer Indemnification.** Customer shall indemnify, defend, and hold harmless the LTSE Parties from and against any and all Losses incurred by such LTSE Party resulting from any Action by a third party (other than an Affiliate of a LTSE Indemnitee) to the extent that such Losses are caused by, or are alleged to be caused by Customer Data, including any Processing of Customer Data by or on behalf of LTSE in accordance with this Agreement;

14.3. **Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 14.1 or Section 14.2, as the case may be. The party seeking indemnification (the “**Indemnitee**” and also for LTSE, “**LTSE Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent. The Indemnitee's failure to perform any obligations under this Section 14.3 will not relieve the Indemnitor of its obligations under this Section 14 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

14.4. **Mitigation.** If any of the Services or LTSE Materials are, or in LTSE's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or LTSE Materials is enjoined or threatened to be enjoined, LTSE may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Services and LTSE Materials materially as contemplated by this Agreement;
- (b) modify or replace the Services and LTSE Materials, in whole or in part, to seek to make the Services and LTSE Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications

or replacements will constitute Services and LTSE Materials, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and LTSE Materials, and require Customer to immediately cease any use of the Services and LTSE Materials or any specified part or feature thereof.

**14.5. Sole Remedy.** THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE REMEDIES AND THE LTSE INDEMNITEES' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND LTSE MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. FOR THE AVOIDANCE OF DOUBT, NO REFUNDS OR CREDITS WILL BE PROVIDED IN THE EVENT OF THE TERMINATION OR EXPIRATION OF THE AGREEMENT FOR ANY REASON.

## **15. Limitations of Liability.**

**15.1. EXCLUSION OF DAMAGES.** IN NO EVENT WILL YOU OR THE LTSE PARTIES 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: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE 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.

**15.2. CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF YOU OR THE LTSE PARTIES 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 AMOUNTS PAID TO THE LTSE PARTIES UNDER THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**15.3.** Notwithstanding anything to the contrary above, the limitations of liability set forth in Section 15.1 and 15.2 do not apply to a party's: (i) indemnification obligations; or (ii) gross negligence or willful misconduct.

## **16. Term and Termination.**

**16.1. Initial Term.** The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions or

extended pursuant to Section 16.3 below, will continue in effect until 1 year from such date (the “**Initial Term**”).

16.2. **Renewal Term.** This Agreement will automatically renew for successive 1-year terms unless earlier terminated pursuant to the express provisions of this Agreement or extended pursuant to Section 16.3 below (each a “**Renewal Term**” and, collectively, together with the Initial Term, the “**Term**”).

16.3. **Tier Upgrade.** Upon any upgrade to a higher tier plan, the current Initial Term or Renewal Term, as applicable, will be automatically extended for a one (1)-year period beginning on the date that the tier upgrade takes effect.

16.4. **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

(a) LTSE may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than 30 days after LTSE's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1 or Section 11.

(b) 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: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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;

(d) Customer may terminate this Agreement at any time for its convenience upon at least thirty (30) days' prior written notice to LTSE, subject to Section 16.5(d).

16.5. **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) LTSE may retain Customer Data; (iii) Customer may retain LTSE Materials, in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law; (iv) LTSE may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described



in this Section 16.5 will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(c) LTSE may disable all Customer and Authorized User access to the LTSE Materials;

(d) if LTSE terminates this Agreement pursuant to Section 16.4(a), Section 16.4(b) or Section 16.4(c), or Customer terminates this Agreement pursuant to Section 16.4(d), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of LTSE's invoice therefor in accordance with the payment terms set forth in Section 8.

**16.6. Surviving Terms.** The provisions of this Agreement setting forth any right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

## **17. Miscellaneous.**

**17.1. Further Assurances.** On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

**17.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall 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 shall have authority to contract for or bind the other party in any manner whatsoever.

**17.3. Public Announcements.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**17.4. Notices.** Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 17.4):

To You: We may provide any notice to you under these Terms by: (i) sending a message to the e-mail address you provide or (ii) by posting to the LTSE Site. Notices sent by e-mail will be effective when we send the e-mail and notices we provide by posting will be effective upon posting. It is your responsibility to keep your e-mail address current.

If to LTSE: 150 Greenwich Street, New York, NY 10007  
Email: [legal@ltse.com](mailto:legal@ltse.com)  
Attention: Legal Department



Notices sent to LTSE in accordance with this Section 17.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the first day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

17.5. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17.6. **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, 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, representations, and warranties, both written and oral, with respect to such subject matter.

17.7. **Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without LTSE's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which LTSE's prior written consent is required.; provided, however, should such assignment not involve a change in control of Customer, Customer shall notify LTSE of such event but no prior written approval shall be required. No assignment, delegation, or transfer will relieve the Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 17.7 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

17.8. **Force Majeure.**

(a) **No Breach or Default.** In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

(b) **Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party

stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**17.9. 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 shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**17.10. 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 shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, 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; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**17.11. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall 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 hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties 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.

**17.12. Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of New York 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 New York. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York, borough of Manhattan, and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

**17.13. Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

**17.14. Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 11 or, in the case of Customer, Section 3.1, or Section 7.3, may cause the other party irreparable harm for which monetary damages may 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 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.

17.15. **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. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.