

# LUX SCIENTIAE MASTER SERVICES AGREEMENT

Version 2021.11.29

This Master Services Agreement (the “Agreement” or “MSA”) between Lux Scientiae, (“Lux Scientiae” or “LuxSci”) and the customer which is a signatory (actual, electronic, or implied) hereto (“Customer”) (each a “Party” and collectively the “Parties”) is made effective as of the date indicated on the initial Service Order (“Order Form”) submitted by Customer and accepted by LuxSci.

The “Order Form” is either a service order form submitted to the Customer by Lux Scientiae and signed by Lux Scientiae and the Customer, or is the confirmation email that the Customer receives via email upon successful completion of an online order placement process (in which the Customer has agreed to these terms). In cases where there is a formal Order Form signed by each Party, the Order Form takes precedence over this Agreement in the case of any conflicting terms.

For Customers that must abide by the regulations of HIPAA, LuxSci has a Business Associate Agreement (“BAA”) addendum to this MSA that is automatically incorporated by reference when Customer agrees to the terms of the MSA and BAA as part of the account signup process. This is the BAA between LuxSci, the “Business Associate”, and Customer. The most recent version of this BAA addendum can be downloaded from <https://luxsci.com/baa>.

LuxSci also has a GDPR Data Privacy Addendum to this Agreement (“GDPR Addendum”). GDPR Addendum is automatically included in the MSA by reference in respect of the provision of the LuxSci Services to Customer if the Processing of User Personal Data is subject to the GDPR, only to the extent the Customer is a Controller (or Processor, as applicable) of User Personal Data and LuxSci is a Processor or sub-Processor of User Personal Data (as defined in GDPR Addendum). GDPR Addendum shall amend and supplement any provisions relating to the processing of User Personal Data contained in the Agreement and shall be effective for the term of the Agreement. The most recent version of this addendum can be downloaded from <https://luxsci.com/gdpr>.

## 1. OVERVIEW

This Agreement states the terms and conditions by which Lux Scientiae will deliver and Customer will receive any or all of the services, servers, professional/support services, and content processing or delivery provided by Lux Scientiae. Each Order Form, accepted and executed by both Parties, is hereby incorporated by reference herein. This Agreement is intended to cover any and all Services ordered by Customer and provided by Lux Scientiae, which are not explicitly covered by other agreements. Capitalized terms shall have the meanings assigned to them herein or as defined in Section 10.

## 2. DELIVERY OF SERVICES; LIMITED-RIGHT LICENSE; TERM

**2.1 Delivery of Services.** By submitting an Order Forms(s), Customer agrees to take and pay for (i) the Service(s) during the Initial Term and for any Renewal Term, and (ii) certain limited services and equipment needed by Customer on a “one-off” or emergency basis (“Supplemental Services”) where such services are not included within the scope of the Services as described in the Order Forms(s). Customer agrees to pay Lux Scientiae the fees charged by Lux Scientiae for Supplemental Services, and hereby authorizes Lux Scientiae to perform such services on its behalf. ALL SUPPLEMENTAL SERVICES ARE PROVIDED ON AN “AS IS” BASIS AND EXCLUDE WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED in accordance with Lux Scientiae’s current policies and prices.

**2.2 Limited-Right License.** Upon execution of this Agreement and subject to the terms and conditions set forth herein, Customer is granted for the duration of the Initial Term or Renewable Term, as specified herein, a non-transferable, non-sublicensable, non-exclusive, limited-right license for Customer’s employees, affiliates and independent contractors who are authorized by Customer to access and utilize the Services and/or Supplemental Services (and any Lux Scientiae Technology incorporated into such Services), as applicable. For the avoidance of doubt, under no circumstances will Customer be permitted to market or resell any Services, directly or indirectly, as a value-added reseller (“VAR”). As used herein, VAR refers to a company that enhances the value of any Lux Scientiae Services resold to end-users by adding customized products or services, which, when resold, directly competes with one or more other Lux Scientiae Services that Customer may or may not be selling.

### 2.3 Term.

(a) Term Commencement. The term for each Service will commence on the Service Commencement Date. This date is either the date agreed upon by both the Customer and Lux Scientiae, or, if there is no such explicit date, it is the date when the Customer’s account is first activated.

(b) Renewal Term(s). Upon expiration of the Initial Term or any Renewal Term, the term shall be extended automatically on a month-to-month or year-to-year basis, depending

on contracted terms, to ensure a continuation of the Customer's Services. The renewal terms for month-to-month contracts begin on the first day of the month.

(c.1) For Customers in a month-to-month term, the term shall automatically renew for an additional month until and unless either Party gives the other at least 30-days written notice of termination. In the case of termination with notice by Customer, Customer is responsible for paying for the complete month in which the last day of account service falls.

(c.2) For Customers in year or multi-year term, the term shall automatically renew for an additional year until and unless either Party gives the other at least 30-days written notice of termination. At any point during the term, and subject to Lux Scientiae management approval, Customer may downgrade as long as Customer's services are not changing in a material way.

(d) "Written notice" of termination must be made by the primary administrator of the Customer's account by opening an account closure request support ticket in the Lux Scientiae member's portal. Lux Scientiae reserves the right to seek verification from the account holder of any account closure requests for security reasons.

(e) Account termination is only possible if the Customer's account is paid in full for all Terms and other obligations incurred through the end of the current Term; accounts with unpaid balances cannot be terminated until said balances due are paid in full. Fees for Renewal Terms that start on or after the desired account closure date are exempt from this condition.

### 3. FEES AND PAYMENT TERMS

**3.1 Fees and Expenses.** Customer will pay all fees due according to the prices and terms listed in the Order Form(s) and all other fees incurred by Customer related to Supplemental Services, Professional Services, reinstatement of service fees and fees for switching or upgrading servers or services, all in accordance with the then current Lux Scientiae prices and policies.

**3.2 Payment Terms.** On the Service Commencement Date, Customer will be billed (the "Initial Bill") an amount as indicated on the Order Form. Any initial amount paid above and beyond the Initial Bill will remain as a credit on the account to be applied to future charges. Any credit remaining in the Customer's account can be refunded to Customer if Customer's account is terminated without cause under the dictates of this contract and the Order Form.

**3.3** Subsequent monthly billing of paid-monthly items will occur on the 23rd day of each calendar month for the period beginning on the 1st of the next calendar month. Subsequent billing of paid-yearly items will occur 30 days prior to the anniversary of the Service Commencement Date for each respective recurring yearly charge. Monthly and

yearly recurring charges will be billed (the “Recurring Bill”) in advance of the provision of Services. All other charges for Services received and expenses incurred for Supplemental or Professional Services during a month (e.g., disk usage overage fees) will either be billed immediately or at the end of the month in which the Services were provided. Payment for all fees is due upon receipt of each Lux Scientiae billing statement. All payments will be made in U.S. Dollars. Notwithstanding anything to the contrary in this Agreement, Lux Scientiae expressly reserves the right to alter, change or amend its billing practices in its sole discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

**3.4. Contract Changes.** After the Customer’s account is active, the Customer may choose to alter service level by adding or changing services. Customers on contracts that span multiple months cannot remove contracted services except as per 2.3.c.2, unless the customer and Lux Scientiae enter into a new contract, or until their contracted term expires. Such changes will affect the Recurring Bill amount. All agreements regarding payment and late payments apply to new charges due to service level changes.

**3.5 Multiple Bill Types.** It is possible that a Customer may have both yearly and monthly Recurring Bills. Each Recurring Bill is subject to its own individual Renewal Terms and Payment Terms as appropriate to its periodicity.

**3.6 Late Payments.** Any payment not received within fifteen (15) days of the invoice date of the Initial Bill and thirty (30) days of the invoice date of a Recurring Bill (respectively, a “Payment Default”) will accrue a late fee at the lesser of 2.5% per 30 days or the maximum rate permitted by law. Customer also shall pay to Lux Scientiae all expenses incurred by Lux Scientiae in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable attorneys’ fees and the fees of any collection agency retained by Lux Scientiae.

**3.7 Taxes.** Customer will be responsible for and will pay in full, except for taxes on Lux Scientiae net income, all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services.

**3.8 Fee Increases.** Recurring and non-recurring fees are here referred to as “Fees”. Lux Scientiae may increase any or all “Fees” by giving notice to Customer of not less than 45 days prior to the beginning of a Renewal Term applicable to the particular Fees subject to increase. Such increase shall be effective on the first day of the applicable Renewal Term. Unless you give notice to Lux Scientiae that you do not wish to renew these services, as per Section 2.3, you are deemed to have accepted the increased Fee for the applicable Renewal Term and any subsequent Renewal Terms (unless the fees are increased in the same manner for a subsequent Renewal Term).

## 4. INTELLECTUAL PROPERTY OWNERSHIP AND USAGE

**4.1 Intellectual Property Ownership.** This Agreement does not transfer from Lux Scientiae to Customer any Lux Scientiae Technology, and all right, title and interest in and to Lux Scientiae Technology will remain solely with Lux Scientiae. Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from Lux Scientiae and/or its third-party vendors.

**4.2 Limited Use of Customers Trademarks.** WHEREAS, Customer grants to LuxSci a limited nonexclusive, nontransferable license to use and/or reproduce the Customer's Trademarks for the Initial Term or Renewable Term of this Agreement as specified herein. Customers Trademarks shall mean those registered and unregistered names, marks, symbols, emblems, logos, design, trade dress, slogans, taglines and other designations utilized by Customer. The limited, nonexclusive, nontransferable license granted by Customer to LuxSci to use and/or reproduce the Trademarks of Customers shall be for the sole use by LuxSci on its company Web site and advertising materials. The purpose of such use and/or reproduction by LuxSci shall be solely to provide examples of companies that are currently using LuxSci services. LuxSci agrees to not:

- i. use the Customer's Trademarks in any manner likely to diminish the Customer's Trademarks commercial value
- ii. knowingly use any other trademark likely to cause confusion with Customer's Trademarks; and
- iii. make any representation to the effect that the Customer's Trademarks is owned by LuxSci rather than by Customer.

Customer may revoke this right at any time by providing such revocation to LuxSci in writing or via Support Ticket from the Customer Account Administrator. Upon receipt of such revocation LuxSci shall have 10 business days to remove Customer's Trademarks from LuxSci's web site and shall cease use any printed marketing materials with Customer's Trademarks.

To **opt out** of the limited nonexclusive, nontransferable license to use and/or reproduce the Customer's Trademarks, Customer representative has placed there initials here \_\_\_\_\_ and this contract will be signed and submitted to LuxSci directly (i.e. overriding the automatic electronic consent to this Agreement made while placing an order online).

## 5. LIMITED WARRANTIES

**5.1 Limitation.** Each of the guarantees in the Service Level Agreement(s) is null and void if Customer fails to follow Lux Scientiae's Acceptable Use Policy and other policies or otherwise breaches the Agreement in any respect.

## **5.2 Service Level Agreement (“SLA”).**

**5.2.1** The most recent SLA is located at <https://luxsci.com/sla>

**5.2.2** Lux Scientiae may change its SLA upon fifteen (15) days’ notice to Customer, which notice may be provided by posting such new SLA at the Lux Scientiae Web site at the link listed in 5.2.1. Customer may request a current copy of the SLA by sending, emailing, or faxing a request to Lux Scientiae, or by visiting its Web site and downloading a copy from there. Customer agrees that it has received, read and understands the current version of the SLA applicable to the Services being ordered.

**5.3 No Other Warranty.** SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND CUSTOMER’S USE OF SERVICES IS AT ITS OWN RISK. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES MAY CHANGE OVER TIME. EXCEPT AS EXPRESSLY PROVIDED IN THE ORDER FORM(S) AND ASSOCIATED AGREEMENTS SUCH AS THE SLA AND BAA, LUX SCIENTIAE DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LUX SCIENTIAE DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER’S NEEDS OR BE UNINTERRUPTED, ERROR-FREE, TIMELY, RELIABLE, OR COMPLETELY SECURE.

## **5.4 Disclaimer of Actions Caused by and/or Under the Control of Third Parties.**

LUX SCIENTIAE DOES NOT AND CANNOT CONTROL THE FLOW OF INFORMATION TO OR FROM LUX SCIENTIAE’S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER’S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). LUX SCIENTIAE CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, LUX SCIENTIAE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

# **6. CUSTOMER OBLIGATIONS**

## **6.1 Warranties of Customer.**

(a) General. Customer covenants, represents and warrants that:

- i. Customer is at least eighteen (18) years of age;
- ii. Customer possesses the legal right and ability to enter into this Agreement, and
- iii. the performance of its obligations and use of the Services (by Customer, its customers and users) will not cause a breach of any agreements with any third parties or unreasonably interfere with other Lux Scientiae



customers' use of Lux Scientiae services. Customer assumes all risks related to processing of transactions related to electronic commerce.

(b) Customer Information. Customer covenants, represents and warrants that (i) all information provided to Lux Scientiae for the purposes of establishing and maintaining the Services is accurate.

(c) Compliance with Law and Acceptable Use Policy. Customer covenants, represents and warrants that it will use the Services only for lawful purposes and in accordance with this Agreement. Customer will, and shall cause its customers and users to, comply at all times with (i) all applicable laws, rules, regulations, accrediting agency standards, and orders of governmental authorities (collectively, "law(s)") governing Customer's use of the Services and (ii) the Acceptable Use Policy, as updated by Lux Scientiae from time to time. The Acceptable Use Policy is incorporated herein and made a part hereof by this reference. Lux Scientiae may change the Acceptable Use Policy upon fifteen (15) days' notice to Customer, which notice may be provided by posting such new Acceptable Use Policy at the Lux Scientiae Web site. Customer may request a current copy of the Acceptable Use Policy by sending, emailing, or faxing a request to Lux Scientiae, or by downloading a copy from the Lux Scientiae Web site. Customer agrees that it has received, read and understands the current version of the Acceptable Use Policy.

(d) Emails and CAN-SPAM Compliance. Customer covenants, represents and warrants that it will not use the Services for the sending of unsolicited email ("spam") in violation of applicable law. In connection with the foregoing, Customer hereby covenants, represents and warrants that: (i) Customer shall ensure that all messages, communications and data sent using the Services comply with all requirements of the CAN-SPAM Act and other related anti-spam laws; and (ii) Customer will not, and will not permit any third party to use the Services for the sending of unsolicited bulk email in violation of the CAN-SPAM Act or other related anti-spam laws.

(e) Service Use Restrictions. Customer covenants, represents, and warrants that Customer will not, and will not permit any third party to use the Services for any illegal purpose, for soliciting the performance of any illegal activity, or as otherwise prohibited by this Agreement or the Acceptable Use Policy, including without limitation (i) offering to sell illegal pharmaceuticals or other goods or services that are illegal in any applicable jurisdiction; or (ii) engaging in any conduct that is likely to result in retaliation against Lux Scientiae by offended users.

**6.2 Breach of Warranties.** In the event of any breach of any of the foregoing warranties in Section 6.1, in addition to any other remedies available at law or in equity, Lux Scientiae will have the right, in its sole discretion, to suspend or terminate immediately any Services.

**6.3 Reseller Provisions.** Customer may desire to obtain the right to act as an

independent non-exclusive Reseller of the LuxSci Services. These Services shall include but not be limited to Secure High Volume, Secure Email Hosting, Secure Connector, Secure Forms, and Secure Web Hosting. Customer may not resell LuxSci's Secure Marketing Services, unless each customer is provisioned on a separate dedicated instance of the Secure Marketing application.

6.3.1 Promotion. Customer shall use its best efforts to market and promote services to Customer's clients. in the market, for example by: (a) attendance by Customer at trade shows at which Customer promotes the services, (b) listing the services in Customer's service lists and Customer's other marketing materials, and (c) advertising services in trade journals, online advertisements, and other appropriate locations.

6.3.2 Marketing Practices. Customer will at all times perform hereunder in an ethical and professional manner and in accordance with this Agreement and any guidelines issued by LuxSci. Customer will: (a) conduct business in a manner that reflects favorably at all times on the services and the good name, goodwill and reputation of LuxSci; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to LuxSci, the services or the public, including but not limited to disparagement of LuxSci or the services; (c) make no false or misleading representation with respect to LuxSci or the services; and (d) make no representations with respect to LuxSci or the services that are inconsistent with LUXSCI's Master Services Agreement, Acceptable Use Policy, Service Level Agreement, HIPAA Business Associate Agreement, promotional materials, and other literature distributed by LuxSci, including all liability limitations and disclaimers contained in such materials.

6.3.3 Promotional Materials. During the term of this Agreement, LuxSci may provide to Customer promotional materials with respect to services. Customer may not use the promotional materials for any purpose other than advertising and promoting the services to customers in the market. Notwithstanding anything to the contrary herein, Customer may not distribute any Customer-created promotional materials with respect to LuxSci or the services without LuxSci 's prior written approval of such materials.

6.3.4 Permits. Licenses and Compliance with Laws. Customer will, at its sole cost and expense, obtain all permits and licenses necessary in connection with its performance of this Agreement, and will comply with all applicable laws, rules and regulations in the performance of this Agreement. Without limiting the generality of the foregoing, Customer will comply with all applicable export laws. Without limiting the foregoing, Customer agrees that it will not knowingly export or re-export any services to any Country unless prior written consent is given.

6.3.5 Privacy/Data Collection. Customer will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any End User data



that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. Customer will act only on LuxSci's instructions in relation to the collection, use, disclosure and processing of any such End User data, but in all instances in accordance with all applicable laws, rules and regulations.

**6.3.6 Resale Of Services.** Customer shall ensure that it has contractual agreement in place with all of its clients which use LuxSci. These agreements must reflect the terms and conditions in LuxSci's Master Services Agreement, Acceptable Use Policy, and Business Associate Agreement in such a way that LuxSci's requirements on its users are preserved and/or strengthened, the protections of LuxSci are upheld, and the requirements on LuxSci are not increased. Customer may charge its clients for Services at prices determined in Customer's sole discretion. LuxSci will bill Customer for all aggregate service usage by Customer and Customer's clients; it is Customer's sole responsibility to bill its clients directly for their use of LuxSci's services. LuxSci is not responsible for interaction with Customer's clients unless specifically authorized by Customer. Customer shall be solely responsible for providing a level of technical support to its clients to a degree specified in the pricing terms agreed upon with LuxSci; where no such agreement is made, LuxSci will provide technical support to Customer's clients.

## **7. LIABILITY**

**7.1 Delays and Interruptions.** LUX SCIENTIAE SHALL NOT BE LIABLE FOR ANY LOSS OF DATA RESULTING FROM DELAYS, CORRUPTION OF DATA, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS, EXCEPT AS EXPRESSLY INDICATED IN THE SLA OR OTHER AGREEMENTS BETWEEN THE PARTIES SUCH AS THE BAA. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND LUX SCIENTIAE SHALL HAVE NO LIABILITY THEREFOR. EXCEPT TO THE EXTENT OF LUX SCIENTIAE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER LUX SCIENTIAE NOR ITS NETWORK SERVICES SUPPLIER WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO LUX SCIENTIAE'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF, IN WHOLE OR IN PART, LUX SCIENTIAE'S OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

**7.2 Limitation of Liability.** EXCEPT FOR THE PARTIES' EXPRESS INDEMNITY OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY OR ITS

AFFILIATES BE LIABLE OR RESPONSIBLE TO THE OTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE.

**7.3** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY CONTAINED IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, LUX SCIENTIAE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF: (I) THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO LUX SCIENTIAE FOR THE THREE (3) MONTHS FOR SERVICES COVERED BY THIS AGREEMENT PRECEDING THE DATE OF SUCH INDIVIDUAL CLAIM OR (II) TEN THOUSAND DOLLARS (\$10,000) FOR ALL CLAIMS IN THE AGGREGATE IN CONNECTION WITH THIS AGREEMENT.

**7.4** Lux Scientiae may provide Customer access to other third-party software and/or services ("Third Party Products") through relationships Lux Scientiae has established with certain commercial vendors ("Third Party Vendors"). Lux Scientiae makes no representations or warranties, express or implied, regarding any Third-Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD-PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND FROM LUX SCIENTIAE OR SUCH THIRD-PARTY VENDORS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY PROVIDERS AND LUX SCIENTIAE WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD-PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

## **8. INDEMNIFICATION**

**8.1 By Lux Scientiae.** Lux Scientiae agrees to indemnify, defend and hold harmless Customer and its affiliates from and against all actions, claims, demands and liabilities, and against all loss, damages, cost and expenses, including reasonable attorney's fees (collectively, "Claims") asserted against Customer by a non-affiliate third party alleging that the Services (or any portion thereof) (collectively, the foregoing is "Covered

Material”) infringe or misappropriate a United States patent, trademark, copyright or trade secret of a non-affiliate third party. In addition, and at the option and expense of Lux Scientiae, Lux Scientiae may, at any time after any such Claim has been asserted, and shall, in the event the Covered Material is held to constitute an infringement, either procure for Customer the right to continue using that Covered Material, or replace or modify that Covered Material so that it becomes non-infringing, provided that such replacement or modified Covered Material has substantially the same functional characteristics as the infringing Covered Material, or, if the prior two remedies are commercially impractical, refund to Customer a Pro-Rata share of all fees, costs, and charges paid by Customer to Lux Scientiae for that infringing Covered Material and any other Covered Material reasonably rendered ineffective as the result of said infringement. Pro-Rata means to refund fees paid by Customer for Services not yet provided to Customer. Lux Scientiae shall not be liable to Customer under the terms of this Section 8.1 or otherwise for any infringement or Claim based upon a combination the Covered Material with anything else, such as any other system, other programs, hardware or other computing equipment. Lux Scientiae shall not be liable to Customer under the terms of this Section 8.1 or otherwise for liability arising from following specifications or instructions provided by Customer (e.g., specifications for performing Services for Customer). The foregoing provisions state the full extent of Lux Scientiae’s responsibility with respect to possible intellectual-property infringement.

**8.2 By Customer.** Customer agrees to indemnify, defend and hold harmless Lux Scientiae and its affiliates and its and their respective officers, directors, shareholders, parents, subsidiaries, employees and agents from and against any and all Claims whatsoever related to or arising out of (i) any violation of or failure to comply with the Lux Scientiae Acceptable Use Policy, the BAA, this Agreement, or any other related agreement between the Parties or (ii) any content or data provided by Customer or the customers/clients of Customer to Lux Scientiae.

## 9. TERMINATION

**9.1 Termination Without Cause During Renewal Term.** This Agreement may be terminated by either Party at any time during any Renewal Term for any or no reason upon either Party giving to the other written notice of termination as per Section 2.3. No matter which Party terminates the Agreement pursuant to this Section 9.1, any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due and payable, and Customer shall be required to prepay for any portion of the Services that have not been paid for and are to be rendered through the end of the final term.

**9.2 Termination for Cause.** In addition to any other rights it may have under this Agreement or applicable law, Lux Scientiae may immediately terminate this Agreement or suspend service, effective without notice, in the event of (i) a Payment Default that is not cured within 30 days, or (ii) Customer’s breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to

comply with any of the terms of the Acceptable Use Policy, BAA if applicable, or other policies of Lux Scientiae. Customer may terminate this Agreement if Lux Scientiae breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of same.

**9.2.1 Suspension or Termination for Cause by Server Provider.** For Dedicated Hosting Customers, The Server Provider reserves the right to suspend or terminate services without notice due to (i) violations of Server Provider Acceptable Use Policies (“AUPs”), (ii) failure to cooperate with any reasonable investigation of any suspected AUP violation, (iii) Server Provider reasonably believes that suspension of services is necessary to protect its network or other customers, (iv) requirements of law enforcement or government agency.

**9.2.2** If this Agreement is terminated under this Section 9.2, all remaining monthly recurring and other charges specified on the applicable Order Form(s) for the balance of the then current term (be that monthly or yearly) shall immediately become due and payable. In addition to the foregoing, Lux Scientiae reserves the right to prohibit any conduct or to remove any materials or content in violation of the Acceptable Use Policy or which Lux Scientiae believes in its sole discretion to be illegal or potentially harmful to others or may expose Lux Scientiae to harm or liability.

**9.3 No Liability for Termination.** Neither Party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other arising from or incident to any termination or expiration of any Service or this Agreement in accordance with its terms, whether or not such Party is aware of any such damage, loss or expenses.

**9.4 Survival.** All provisions of this Agreement which by their nature should survive any termination of this Agreement shall remain in full force and effect after such termination, including without limitation, Sections 3, 4, 5, 7, 8, 9, 10 and 11.

**9.5 IP Addresses:** Upon expiration, cancellation or termination of this Agreement, Customer shall relinquish any Internet protocol (“IP”) numbers, addresses or address blocks assigned to Customer by Lux Scientiae or its network services supplier (but not the URL or top-level domain connected therewith). Lux Scientiae reserves, in its sole discretion, the right to change or remove any and all such IP numbers, addresses or address blocks.

## 10. DEFINITIONS

(a) “Customer Technology” means Customer’s proprietary technology, including Customer’s Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), knowhow, trade secrets and any related intellectual property rights throughout the world (whether owned

by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.

(b) “Initial Term” means the minimum term for which Lux Scientiae will provide the Service(s) to Customer, as indicated on the Order Form(s).

(c) “Professional Services” means any non-standard professional, consulting or support service provided by Lux Scientiae to Customer. In particular, this includes any consulting agreements for work or services not covered in the Order Form(s).

(d) “Lux Scientiae Technology” means Lux Scientiae’s proprietary technology, including Lux Scientiae Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, knowhow, trade secrets and any related intellectual property rights throughout the world (whether owned by Lux Scientiae or licensed to Lux Scientiae from a third party) and also including any derivatives, improvements, enhancements or extensions of Lux Scientiae Technology conceived, reduced to practice, or developed during the term of this Agreement by either Party that are not uniquely applicable to Customer or that have general applicability in the art.

(e) “Renewal Term” means any service term following the Initial Term, as specified in Section 2.3.

(f) “Acceptable Use Policy” means the Lux Scientiae general Acceptable Use Policy governing Customer’s use of Services, including, but not limited to, online conduct and Lux Scientiae’s Acceptable Use Policy, which can be found at <https://luxsci.com/extranet/aup.html>.

(g) “Service(s)” means the specific service(s), servers, professional/support services, and content processing or delivery provided by Lux Scientiae pursuant to this Agreement.

(h) “Service Commencement Date” means the date Lux Scientiae will begin providing the Service(s) to Customer as indicated on the Order Form(s).

(i) “Shared Hosting” means the use of email, Web site, SecureForm, database, FTP, and other services on servers that may be shared with other Customers of Lux Scientiae for their use of similar services.

(j) “Dedicated Server Hosting” means that Customer will use a dedicated physical or virtual server for some or all services ordered. These dedicated server(s) will not be made available to any other Lux Scientiae Customers for their own use; i.e., they will



not be shared with any other Customers.

(k) “Server Provider” means the company providing the data center and server hardware, which is being used by Customer for Dedicated Server Hosting. Lux Scientiae is leasing and coordinating the use of this hardware on behalf of Customer. Lux Scientiae retains the right to change its Service Provider in its sole discretion.

## 11. MISCELLANEOUS PROVISIONS.

**11.1 Force Majeure.** Lux Scientiae shall not be deemed to be in default of any provision of this Agreement or be liable for any delay, failure of performance or interruption of the provision of Services to Customer resulting, directly or indirectly, from any unforeseen event such as a fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts, labor difficulties, generalized internet interruptions (through denial of service, worms, telecommunications problems or the like) or any other cause beyond Lux Scientiae’s reasonable control. Performance times shall be considered extended for the period required to make up the work lost because of such cause.

**11.2 No Third-Party Beneficiaries.** Lux Scientiae and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

**11.3 Governing Law.** This Agreement is made under and will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods.

**11.4 Binding Arbitration.** With the exception of intellectual property claims between the Parties, any controversy or claim arising out of or relating to the Agreement or the breach, termination, or validity thereof not settled through informal dispute resolution (collectively, any “Dispute”), and except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief which shall be subject to the ruling of an applicable court of competent jurisdiction, the Dispute shall be settled by binding arbitration in accordance with the commercial dispute arbitration rules of the American Arbitration Association, provided that, the aggrieved Party must give written notice of any Dispute to the other Party within one (1) year after the aggrieved Party first knew or should have known of the facts giving rise to the Dispute. Each Party shall bear its own costs and expenses, attorney’s fees, and an equal share of the arbitrators’ fees and other administrative expenses related to the arbitration. Unless Customer and Lux Scientiae otherwise agree, the arbitration will be conducted in Boston, Massachusetts. Judgment upon an award in arbitration may be entered in any court of competent jurisdiction, or application may be made to such court for a judicial acceptance of the



award and enforcement, as the law of the state having jurisdiction may require or allow. For clarity, intellectual property claims between the Parties are not subject to the arbitration requirements in this Section, and the Parties may seek resolution of such claims utilizing any remedies available at law or in equity. With respect to any suit, action or other proceeding directly or indirectly arising out of this Agreement that is permitted or required to go to litigation, each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury. All Disputes arising out of or relating to this Agreement that are not subject to the arbitration requirements in this Section shall be submitted to the exclusive jurisdiction of the state and federal courts in Massachusetts and each party irrevocably consents to such personal jurisdiction and waives all objections thereto.

**11.5 Severability.** In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portion of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intention of the Parties.

**11.6 Waiver.** The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving Party.

**11.7 Assignment.** Customer may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Lux Scientiae, and any attempted assignment or delegation without such consent will be void. Lux Scientiae may assign this Agreement in whole or part. Lux Scientiae also may delegate the performance of certain Services to third parties, including Lux Scientiae's wholly owned subsidiaries.

**11.8 Notices.** All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, upon receipt of delivery of overnight mail, or when submitted through Lux Scientiae's online support ticketing system by an authorized account administrator.

**11.9 Independent Contractor.** Lux Scientiae and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Lux Scientiae and Customer. Neither Lux Scientiae nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

**11.10 Entire Agreement.** This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the Parties

with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Except as expressly provided in this Agreement, this Agreement may be changed only by a written document signed by authorized representatives of Lux Scientiae and Customer in accordance with this Section 11.

**11.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original.

**11.12 Construction.** The Parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement.

**11.13 Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

Authorized representatives of Customer and Lux Scientiae have read the foregoing and all documents incorporated therein and, by executing the Order Form(s), agree and accept such terms effective as of the date on the initial Service Order Form.

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Customer Signature

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Customer Company, Name and Title

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Date

