

Posit Software, PBC  
**LEARNING SERVICES AGREEMENT**

Last Updated: November 2, 2022

**IMPORTANT:** PLEASE READ THIS AGREEMENT CAREFULLY AND PRINT THIS LEARNING SERVICES AGREEMENT (THE “AGREEMENT”) FOR YOUR RECORDS. POSIT SOFTWARE, PBC (“POSIT”) IS WILLING TO LICENSE THE SOFTWARE AND/OR PROVIDE THE SERVICES TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT AND AGREE TO ALL THE TERMS CONTAINED IN THIS AGREEMENT THROUGH ONE OF THE METHODS DESCRIBED HEREIN. YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, ORDER, RECEIVE OR USE THE SOFTWARE OR SERVICES. THIS AGREEMENT IS BETWEEN THE POSIT ENTITY THAT ACCEPTS THE ORDER FORM FOR THE APPLICABLE SOFTWARE OR SERVICE (“POSIT”) AND THE INDIVIDUAL DOWNLOADING, INSTALLING, ORDERING, RECEIVING OR USING POSIT-SUPPLIED SOFTWARE OR SERVICES, OR THAT CLICKS THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED AS PART OF THE PROCUREMENT, INSTALLATION, UPGRADE OR UPDATE PROCESS (“MEMBER” OR “YOU”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY. QSTREAM OR ITS AFFILIATES MAY PROVIDE CUSTOMER OR ITS AFFILIATES WITH CERTAIN SERVICES AS DESCRIBED IN ONE OR MORE ORDER FORM(S) (AS DEFINED BELOW) ISSUED PURSUANT TO THIS AGREEMENT.

**1. Definitions.**

“**Acceptable Use Policy**” or “**AUP**” means Posit’s Acceptable Use Policy which applies to the use of the Learning Services Platform and is set forth at <https://posit.co/about/acceptable-use-policy/> as the same may be updated from time to time.

“**Access Credentials**” mean login information and/or authentication mechanisms through which Members access and use the Learning Services Platform.

“**Affiliate**” means all companies and subsidiaries that directly or indirectly control or are controlled by a party to this Agreement or are under common control with such party. As used in this definition, “control” means equity ownership of fifty percent (50%) or greater interest in the voting shares held by an entity.

“**Compiled Information**” means any information, data, and metadata derived from or generated by Customer’s and its Members’ access and use of the Learning Services Platform and the Learning Services and any questions, answers and other feedback submitted to Interactive Areas, but expressly excluding personally identifiable information and personal data of a Member and which cannot be used, alone or in conjunction with other information, to identify any specific person or entity. Compiled Information will always be anonymized such that it will not identify Customer or its Members and may be aggregated with Compiled Information of other customers to create statistical information such as performance and benchmarking data.

“**Customer Data**” means any data submitted to the Learning Services Platform by or on behalf of Customer, including without limitation from Third Party Services or by Customer’s Members.

“**Customer Generated Content**” means any applications, computer code, analysis, reports and other content created or submitted by Customer or its Members through the use of the Learning Services Platform, but expressly excluding any Posit Property and Feedback.

“**Feedback**” means ideas, suggestions, recommendations, enhancement requests, techniques, know-how, comments, thoughts, criticisms, feedback or other input relating to any Posit product or service, including in response to any product plans or roadmaps shared with Customer.

**“Intellectual Property Rights”** mean any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) registrations, applications, renewals, extensions, or reissues of the foregoing, in each case, in any jurisdiction throughout the world.

**“Interactive Areas”** means those elements of the Learning Services Platform that enable Members to interact and collaborate, such as interactive forums, communities and similar collaboration features including without limitation enabling Member interaction with assigned Mentors.

**“Laws”** means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

**“Learning Services”** means all educational curriculum, videos, pictures, images, graphics, sound clips, text, recipes, cheat sheets, exercises, exams, projects, posts, chats, frequently asked questions, recommendations, data, files, slides, applications, computer code, scripts, libraries, materials, and all other content, materials and works of authorship made available by Posit through the Learning Services Platform and all Updates thereto, but expressly excluding Third Party Content and Third Party Services.

**“Learning Services Platform”** Posit’s proprietary software platform that is provided by Posit on a software as a service basis over the Internet as hosted by Posit or its third party hosting provider and accessible by Customer’s Members through a web interface over the Internet, and all Updates thereto, but expressly excluding Customer Data and Customer Generated Content. The Learning Services Platform includes Interactive Areas.

**“Member”** means Customer’s employees that Posit authorizes to access and use the Learning Services and Learning Services Platform, up to the number of Members purchased by Customer and set forth on Schedule 1 attached hereto, and which are bound by written terms at least as protective of Posit as those in the Agreement and which includes all restrictions set forth herein.

**“Mentor”** means either a Customer assigned employee or consultant or a Posit assigned employee or consultant that provides a Member with one-on-one virtual check-ins and guidance during the Subscription Term.

**“Posit Property”** means the Learning Services, the Learning Services Platform, Posit Confidential Information, Posit Technology, Compiled Information and any and all derivative works thereof and Intellectual Property Rights therein and thereto.

**“Posit Technology”** means the computer software, computer code, scripts, application programming interfaces, methodologies, templates, tools, algorithms, user interfaces, know-how, trade secrets, techniques, designs, inventions, third party services and other tangible or intangible technical material, information and works of authorship underlying or otherwise used to make available the Learning Services and the Learning Services Platform, including, without limitation, all Intellectual Property Rights therein and thereto.

**“Privacy Policy”** means the Posit privacy policy set forth at <https://posit.co/about/privacy-policy/> as the same may be updated from time to time.

**“Sensitive Personal Information”** means any of the following: (i) financial account information or credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (“**PCI DSS**”); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (“**HIPAA**”); (iii) social security numbers, passport numbers or other government issued id numbers, date of birth and/or gender; (iv) any other personal data of an EU citizen deemed to be in a “special category” (as identified in EU General Data Protection Regulation or any successor directive or regulation); (v) would require notification to government agencies, individuals or law enforcement if subject to unauthorized access, use or disclosure; (vi) reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, sex orientation or activities, or genetic or biometric data; or (vii) other information which a reasonable person would

recognize as being highly sensitive (but excluding, for avoidance of doubt, contact information such as name, mailing address, IP address, email address, and phone number).

“**Subscription Term**” means the period of time set forth in Schedule 1 attached hereto during which Customer has the right to access and use the Learning Services and Learning Services Platform.

“**Taxes**” means any sales, use, GST, value-added, withholding, or similar taxes, duties or levies, whether domestic or foreign, other than taxes based on the income, employees or property of Posit.

“**Third Party Content**” means any videos, information, materials and other content that is created by a third party and is made accessible by Posit to Members of the Learning Services through the Learning Services Platform, including any Third Party Content that is accessible by links to a Third Party Service or a third party website. Third Party Content will be clearly identified to Members through a copyright notice on the Third Party Content which attributes copyright ownership to the third party.

“**Third Party Services**” means any software services or other services of a third party that are integrated with or made accessible by Posit to Members of the Learning Services through the Learning Services Platform and which are subject to the third party’s terms of service or terms of use or a separate license agreement. Third Party Services will be clearly identified to Members when they first access the Third Party Service through a notification alerting the Member that the Third Party Service is subject to the Members’ agreement to the Third Party Service’s applicable terms and conditions separately made available by the third party or posted on the third party’s website.

“**Updates**” mean all upgrades, enhancements, improvements, maintenance releases, additions, and modifications, of the Learning Services and Learning Services Platform made generally commercially available by Posit to all of its customers during the applicable Subscription Term.

## **2. Learning Services and Learning Services Platform.**

**2.1. Right to Use.** Subject to all terms and conditions of the Agreement, Posit grants Customer the right to access and use, and to permit its Members to access and use, the Learning Services and Learning Services Platform for the sole purpose of educating its Members with respect to the use of Posit’s products and services. All other rights are expressly reserved.

**2.2. Restrictions.** Customer will not, directly or indirectly through a third party: (a) rent, lease, provide access to, sublicense, distribute, transfer or otherwise make available, in whole or in part, the Learning Services or the Learning Services Platform to a third party, other than free of charge to its Members in accordance with Section 2.1 above; (b) use the Learning Services or Learning Services Platform, in whole or in part, to provide, or incorporate the Learning Services or Learning Services Platform, in whole or in part, into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Learning Services or Learning Services Platform, in whole or in part, except to the extent expressly permitted by applicable law (and then only upon advance notice to Posit); (d) adapt, alter, modify, improve, translate or create derivative works of the Learning Services or Learning Services Platform, in whole or in part; (e) copy the Learning Services or Learning Services Platform, in whole or in part, or create any derivative work from any of the foregoing; (f) remove or obscure any copyright, proprietary or other notices contained in the Learning Services or Learning Services Platform; or (g) publicly disseminate benchmarking or other information regarding the performance of the Learning Services or Learning Services Platform. For the avoidance of doubt, Customer and its Members may not download, copy, screen shot, make available to third parties or other Members or otherwise reproduce, transmit, transfer or distribute any of the Learning Services, in whole or in part, to Customer’s Members or any third party. All Learning Services must be accessed by Customer’s Members only through the Learning Services Platform and only by Members for which Customer has paid the applicable fees.

**2.3. Modifications.** Posit reserves the right to modify the Learning Services and Learning Services Platform from time to time, including without limitation implementing Updates. If any such modification materially and adversely reduces the functionality of the Learning Services and/or Learning Services Platform, Customer sole and exclusive remedy shall be for Customer to terminate its subscription, upon which Posit will refund to Customer any prepaid fees for the unused portion of the Subscription Term. Posit may condition the implementation of new

features, functionality or other modifications to the Learning Services and/or Learning Services Platform on Customer's payment of additional fees provided that Posit generally charges other customers for such features, functionality and/or modifications.

**2.4. Third Party Content and Third Party Services.** The Learning Services Platform may include links or otherwise make Third Party Content accessible to Members and may support integrations with certain Third Party Services. Customer is solely responsible for complying with any relevant terms and conditions of the Third Party Services and, if applicable, maintaining appropriate accounts in good standing with the providers of the Third Party Services. Customer acknowledges and agrees that Posit has no responsibility or liability for any Third Party Services or Third Party Content or for any Customer Data exported to, or imported from, a Third Party Service. Posit does not guarantee that the Learning Services Platform will maintain integrations with any Third Party Services and Posit may disable integrations with Third Party Services at any time with or without notice to Customer. Customer acknowledges and agrees that use of any Third Party Services will be subject to any applicable third party terms and conditions between Customer and such Third Party Service provider and Posit is not responsible for providing any warranties or support for a Third Party Service and shall have no liability with respect to the use of a Third Party Service or for any damages or losses caused by use of a Third Party Service or the Third Party Service provider.

### **3. Customer Responsibilities.**

**3.1. Access Credentials.** Customer will safeguard, and ensure that all Members safeguard the Access Credentials. Customer will be responsible for all acts and omissions of Members. Member IDs are granted to individual, named persons and may not be shared. Customer agrees to: (1) keep its Access Credentials secure and confidential and not to allow any of Customer's Members to provide their Access Credentials to anyone else; and (2) not permit others to use Customer's Access Credentials. Customer will notify Posit immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security with respect to the Learning Services Platform or Customer's Access Credentials. Customer shall be solely responsible for ensuring that its Members comply with the terms of this Agreement and the Acceptable Use Policy. Customer will promptly notify Posit of any suspected or alleged violation of the terms and conditions of this Agreement or the Acceptable Use Policy and will cooperate with Posit with respect to: (i) investigation by Posit of any suspected or alleged violation of this Agreement or the Acceptable Use Policy, and (ii) enforcement of this Agreement and the Acceptable Use Policy. Posit reserves the right, in its sole discretion and without liability to Customer or its Members, to take any action Posit deems necessary or reasonable to ensure the security of the Learning Services Platform and Customer's Access Credentials and account, including terminating Customer's access or the access of any of Customer's Members, changing passwords, or requesting additional information to authorize activities related to Customer's account. If any Member who has access to a user ID is no longer an employee (or consultant) of Customer, then Customer will immediately delete such user ID and otherwise terminate such Member's access to the Learning Services Platform.

**3.2. Customer Access.** Customer acknowledges and agrees that Customer's and its Members' access and use of the Learning Services Platform is dependent upon access to telecommunications and Internet services. Customer will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Learning Services Platform, including, without limitation, all costs, fees, expenses, and taxes of any kind related to the foregoing. Customer and its Members' ability to access the Learning Services and Learning Services Platform may be affected by performance of these external factors. High speed Internet is recommended. Customer acknowledges and agrees that such system requirements, as may change from time to time, are Customer's and its Members' responsibility. Posit will not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications or Internet services or any such hardware or software. Customer acknowledges that if Customer desires to protect Customer's transmission of Customer Data to Posit, it is Customer's responsibility to use a secure encrypted connection to communicate with and/or utilize the Learning Services Platform. Customer acknowledges and agrees that it will not collect, store, process, submit or use Sensitive Personal Information in its use of the Learning Services Platform and that Posit will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

**4. Fees; Payment.** In consideration for the rights granted hereunder, Customer will pay to Posit the fees set forth in Schedule 1 within 45 days of receipt of Posit's invoice. All fees are payable in United States Dollars and are

nonrefundable, except as expressly otherwise set forth herein. Customer is responsible for paying all Taxes, and all Taxes are excluded from any fees. If Customer is required by applicable law to withhold any Taxes from Customer's payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, Posit receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less. In the event of any dispute of an invoice, Customer shall notify Posit in writing within thirty (30) days of receipt of the invoice of the disputed amount and the reason for the dispute, and the parties agree to negotiate promptly and in good faith a reasonable settlement of the disputed amount. Amounts not disputed within such thirty (30) day period will be deemed valid and may not later be disputed.

## **5. Customer Data and Customer Generated Content.**

**5.1. Customer Rights in Customer Data and Customer Generated Content.** As between the parties, Customer will retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Data and Customer Generated Content. Subject to the terms and conditions of the Agreement, Customer hereby grants to Posit a non-exclusive, worldwide, royalty-free, fully paid up, irrevocable (except on termination of this Agreement) license with right of sublicense to use, execute, host, copy, store, process, transmit, distribute, display and perform the Customer Data and Customer Generated Content solely to the extent necessary to provide the Learning Services and Learning Services Platform to Customer and its Members.

**5.2. Customer Obligations.** Customer is solely responsible for the accuracy, content and legality of all Customer Data submitted by Customer or its Members to the Learning Services Platform and for all Customer Generated Content created by Customer or its Members in their use of the Learning Services Platform. Customer represents and warrants to Posit that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data and to create Customer Generated Content as contemplated by the Agreement and that no Customer Data or Customer Generated Content will violate or infringe (i) any third party Intellectual Property Rights or any publicity, privacy or other rights, (ii) any Laws, (iii) any terms of service, privacy policies or other agreements governing the Customer's accounts with any Third Party Services or (iv) the Acceptable Use Policy. Although Posit has no obligation to monitor usage of the Learning Services or Learning Services Platform, Posit reserves the right to remove any Customer Data or Customer Generated Content that is in breach of this Agreement or the Acceptable Use Policy.

**5.3. Storage of Customer Data and Customer Generated Content.** Posit does not provide an archiving or data backup service and Customer should download or otherwise backup all Customer Data and Customer Generated Content such that a copy is retained by Customer outside the Learning Services Platform. Posit expressly disclaims all obligations and liability with respect to storage and data backup.

## **6. Term; Termination; Suspension**

**6.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms.

**6.2. Termination for Cause.** Either party may terminate this Agreement if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay undisputed fees) within ten (10) business days after receipt of written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

**6.3. Effect of Termination.** Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Learning Services and the Learning Services Platform (including any and all related Posit Property) and will irretrievably delete (or, at Posit's request, return) any and all Learning Services materials, Access Credentials and Posit Confidential Information in its custody or control and all copies, summaries and extracts thereof. Provided this Agreement was not terminated for Customer's breach, Customer may retain and use internally all Customer Generated Content created by Customer or its Members through the Learning Services

Platform prior to termination. Customer acknowledges that following termination it will have no further access via the Learning Services Platform to any Customer Data or Customer Generated Content, and that Posit may delete all of such Customer Data and Customer Generated Content following termination. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Posit prior to the effective date of termination and if Posit terminates this Agreement pursuant to Section 6.2, all amounts payable by Customer under this Agreement will become immediately due and payable.

**6.4. Suspension of Service.** If Customer's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Posit reserves the right to suspend Customer's access to the Learning Services Platform (and any related Learning Services) without liability to Customer until such amounts are paid in full. Posit also reserves the right to suspend Customer's access to the Learning Services Platform (and any related Learning Services) without liability to Customer if (i) Customer's or its Members' use of the Learning Services or Learning Services Platform is in violation of the license or other rights granted under the Agreement or is in violation of the AUP or (ii) a threat to the technical security or technical integrity of the Learning Services Platform exists as determined by Posit in its sole and absolute discretion or (iii) Posit's third party hosting provider suspends access to the Learning Services Platform other than due to Posit's acts or omissions.

**6.5. Survival.** The following Sections will survive any expiration or termination of this Agreement: 1 (Definitions), 4 (Fees; Payment), 5.1 (Customer Rights in Customer Data and Customer Generated Content), 6.3 (Effect of Termination), 6.5 (Survival), 7.2 (Warranty Disclaimer), 8 (Indemnification), 9 (Limitation of Liability), 10 (Confidential Information), 12 (Posit Ownership of Posit Property) and 14 (General Terms).

## **7. Limited Warranty**

**7.1. Limited Software Warranty.** Posit warrants, for Customer's benefit only, that the Learning Services Platform will include the Learning Services functionality during the Subscription Term. Posit's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Posit to use commercially reasonable efforts to correct the reported non-conformity, or if Posit determines such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 7.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, or (ii) if the nonconformity was caused by Customer's or its Members' acts or omissions.

**7.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 7.1, THE LEARNING SERVICES AND LEARNING SERVICES PLATFORM ARE PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER POSIT NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. POSIT DOES NOT WARRANT THAT CUSTOMER'S USE OF THE LEARNING SERVICES OR LEARNING SERVICES PLATFORM WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, NOR DOES POSIT WARRANT THAT THE RESULTS FROM USE OF THE LEARNING SERVICES OR LEARNING SERVICES PLATFORM WILL MEET CUSTOMER'S OR ITS USERS' EXPECTATIONS OR WILL BE ACCURATE OR RELIABLE. POSIT DOES NOT WARRANT THAT POSIT WILL REVIEW THE CUSTOMER DATA SUBMITTED TO THE POSIT PLATFORM FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS OR CORRUPTION. POSIT SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD PARTY SERVICES OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF POSIT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POSIT'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, TERM, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE

LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE LEARNING SERVICES AGAIN. No Posit reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired.

## **8. Indemnification.**

### **8.1. By Posit.**

8.1.1 *Indemnity.* Posit will defend Customer from and against any claim by a third party brought against Customer contending that the Learning Services or Learning Services Platform when used as authorized under this Agreement and in accordance with the Documentation infringes the Intellectual Property Rights of a third party and will indemnify and hold harmless Customer and its officers, directors and employees from and against any damages and costs finally awarded against Customer by a court of competent jurisdiction or agreed in settlement by Posit (including reasonable attorneys' fees) resulting from such claim.

8.1.2 *Remedy.* If Customer's use of the Learning Services or Learning Services Platform is (or in Posit's opinion is likely to be) enjoined, if required by settlement or if Posit determines such actions are reasonably necessary to avoid material liability, Posit may, in its sole discretion require Customer to cease all use of the Learning Services and Learning Services Platform and either: (a) substitute substantially functionally similar services; (b) procure for Customer the right to continue using the affected Learning Services or Learning Services Platform; or if (a) and (b) are not commercially feasible within a commercially reasonable period of time, (c) terminate this Agreement and refund to Customer any prepaid fees paid by Customer for the portion of the Subscription Term that remained unused following the termination date.

8.1.3 *Exclusions.* The obligations of Posit under this Section 8 will not apply: (1) if the Learning Services or Learning Services Platform is modified by any party other than Posit or its authorized contractors, to the extent the infringement would not have arisen but for such modification; (2) if the Learning Services or Learning Services Platform is combined with software, hardware or other materials not developed by Posit, to the extent the infringement would not have arisen absent such combination; (3) to any use of the Learning Services or Learning Services Platform in violation of this Agreement or the Acceptable Use Policy; (4) to any action arising as a result of Customer Data, Customer Generated Content, Third Party Content or Third Party Services; (5) to the extent the alleged infringement is not caused by the particular technology or implementation of the Learning Services Platform but instead by features common to any similar product or service; (6) an allegation that does not state with specificity that the Learning Services or Learning Services Platform is the basis of the claim; or (7) if Customer settles or makes any admissions with respect to a claim without Posit prior written consent.

8.1.4 *Sole Remedy.* THIS SECTION 8 SETS FORTH POSIT'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**8.2 By Customer.** Customer shall defend, indemnify and hold Posit and its employees, officers, and directors harmless from and against any and all losses, damages, costs, expenses, settlements, fines, penalties and any and all other liabilities (including reasonable attorneys' fees) arising out of or in connection with third party claims, suits, proceedings, demands, or actions brought against an Posit indemnitee and arising out of or related to (i) Customer's or any Member's use of the Posit Learning Services or Learning Services Platform not in accordance with the terms of this Agreement or the Acceptable Use Policy or (ii) the Customer Data or Customer Generated Content, including without limitation any claim that any of the foregoing, in whole or in part, infringe, violate or misappropriate the Intellectual Property Rights of, or has otherwise harmed, a third party.

**8.3 Indemnification Process.** The foregoing obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, provided, that any failure to promptly notify the indemnifying party shall not relieve the indemnifying party of its obligations except to the extent it was unduly prejudiced; (b) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, provided that any settlement shall fully release the indemnified party from liability and shall not impose any obligations or restrictions on the indemnified party without the indemnified party's consent; and (c)

cooperating and, at the indemnifying party's written request and expense, assisting in such defense. The indemnifying party will not reimburse the indemnified party for any expenses incurred by the indemnified party without the prior written approval of the indemnifying party. The indemnified party will have the right to participate in the defense and settlement of a claim at the indemnified party's expense.

## **9. Limitation of Liability.**

**9.1. Consequential Damages Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR AMOUNTS PAYABLE BY CUSTOMER TO POSIT, THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, ANY BREACH BY CUSTOMER OF ITS OBLIGATIONS UNDER SECTIONS 2.1, 2.2, 3, 5.2 OR 13.10, EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR BREACH OF CONFIDENTIALITY UNDER SECTION 10, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF DAMAGE TO, OR CORRUPTION OF, DATA, FAILURE OF SECURITY MECHANISMS, LOSS OF USE, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES.

**9.2. Liability Cap.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR AMOUNTS PAYABLE BY CUSTOMER TO POSIT, THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, ANY BREACH BY CUSTOMER OF ITS OBLIGATIONS UNDER SECTIONS 2.1, 2.2, 3, 5.2 OR 13.10, EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR BREACH OF CONFIDENTIALITY UNDER SECTION 10, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO POSIT (OR ITS AUTHORIZED RESELLER) UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE. THE FOREGOING LIMITATIONS ARE CUMULATIVE AND NOT PER INCIDENT AND SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**9.3. Nature of Claims and Failure of Essential Purpose.** SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE LIMITATIONS HEREIN MAY NOT APPLY. Neither party shall be responsible or liable for any loss, damage or inconvenience suffered by the other or by any third person, to the extent that such loss, damage or inconvenience is caused by the failure of the other party to comply with its obligations under this Agreement. The parties agree that the waivers and limitations specified in this apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

**9.4. Allocation of Risk.** Each party acknowledges that the fees payable by Customer to Posit reflect the allocation of risk between the parties and that the other party would not enter into this Agreement without the limitations on its liability set forth in this Section 9.

## **10. Confidential Information.**

**10.1 Confidential Information.** Each party (the "**Disclosing Party**") may from time to time during the term of this Agreement disclose to or learn from the other party (the "**Receiving Party**") certain information regarding the Disclosing Party's business, including without limitation, technical, marketing, financial, and other confidential or proprietary information whether disclosed orally, in writing or visually, that is either marked or designated as confidential or is identified in writing as confidential at the time of disclosure or which the Receiving Party knew or

should have known, due to the nature of the information and/or the circumstances under which disclosure was made, was considered confidential or proprietary by the Disclosing Party (“**Confidential Information**”). For the avoidance of doubt, the Learning Services, Learning Services Platform, the Posit Technology, any pricing provided by Posit, Compiled Data and any performance or benchmarking information with respect to the Learning Services and Learning Services Platform constitute Confidential Information of Posit.

**10.2. Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees agents, contractors and other representatives of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will (a) protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care; and (b) promptly advise the Disclosing Party upon becoming aware of any loss, disclosure, or duplication of the Confidential Information or of any breach of this Agreement, including, without limitation, the misappropriation of the Confidential Information. Both parties acknowledge and agree that the Disclosing Party may be irreparably harmed by any violation of this Section 10 (Confidential Information) and that the use of the Confidential Information for any purpose other than that stated herein may, among other things, enable the Receiving Party or other third parties receiving such Confidential Information to compete unfairly with the Disclosing Party. Therefore, in the event of a breach or threatened breach, the disclosing party shall be entitled, in addition to all other rights and remedies available at law or in equity, to seek (i) an injunction restraining such breach, without being required to show any actual damage or to post security or other bond; or (ii) a decree for specific performance of the applicable provision of this Agreement. Notwithstanding the termination or expiration of this Agreement, the obligations of the Receiving Party, with respect to the Confidential Information of Disclosing Party, shall be in full force and effect until such Confidential Information falls within an exception set forth in Section 10.3.

**10.3. Exceptions.** The Receiving Party’s obligations under this subsection will not apply to any portion of the Disclosing Party’s Confidential Information if the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by employees of the Receiving Party who had no access to such information, without use of or reference to the Disclosing Party’s Confidential Information, and without breach of this Agreement. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Any Confidential Information required to be disclosed shall otherwise remain subject to the terms and conditions of this Agreement.

**10.4. Return of Confidential Information.** The Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party (including without limitation all copies, extracts and summaries thereof) in the Receiving Party’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. At the Disclosing Party’s request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this subsection.

## **11. Ownership of Posit Property.**

**11.1. Posit Property.** Customer acknowledges that it is obtaining only a limited right to use the Learning Services and Learning Services Platform to the extent expressly granted herein and that irrespective of any use of the

words “purchase”, “sale” or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that Posit and its suppliers own and retain all right, title and interest in and to all Posit Property, including without limitation any and all related and underlying technology and documentation and all modifications, enhancements, improvements, new versions, new releases, corrections and derivative works, and all Intellectual Property Rights in and to all of the foregoing, including as may incorporate Feedback (“**Posit Property**”), and Posit expressly reserves all rights not expressly granted herein.

**11.2. Feedback.** Customer, from time to time, may submit Feedback to Posit. Customer grants to Posit a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, translate, distribute, perform, display, import, sell, license, offer for sale, make, have made and otherwise exploit the Feedback in any form, media, or technology, whether now known or hereafter developed, and to allow others to do the same without restriction or obligation of any kind, on account of confidential information, Intellectual Property Rights or otherwise, and may incorporate into its products and services any service, product, technology, enhancement, documentation or other development (“**Improvement**”) incorporating or derived from any Feedback with no obligation to license or to make available the Improvement to Customer or any other person or entity.

**11.3. Compiled Data.** Notwithstanding anything to the contrary herein, Customer agrees that Posit may use Compiled Data to analyze, improve, enhance, support and operate the Learning Services and Learning Services Platform and otherwise for any business purpose during and after the term of this Agreement, including without limitation to generate benchmark and statistical information, best practice guidance, recommendations, frequently asked questions, and similar content for distribution to and consumption by Customer and other Posit customers.

## **12. Governing Law; Dispute Resolution**

**12.1. Direct Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, whether arising in contract, tort or otherwise, (“**Dispute**”), the parties shall first use their commercially reasonable efforts to resolve the Dispute. If a Dispute arises, the complaining party shall provide written notice to the other party in a document specifically entitled “Initial Notice of Dispute,” specifically setting forth the precise nature of the dispute (“**Initial Notice of Dispute**”). If an Initial Notice of Dispute is being sent to Posit it must be emailed to [legal@posit.co](mailto:legal@posit.co) and sent via mail to:

Posit Software, PBC  
250 Northern Avenue  
Boston, MA 02210  
Attn: Legal Department

Following receipt of the Initial Notice of Dispute, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution of the Dispute that is satisfactory to both parties (“**Direct Dispute Resolution**”). If the parties are unable to reach a resolution of the Dispute through Direct Dispute Resolution within thirty (30) days of the receipt of the Initial Notice of Dispute, then the Dispute shall subsequently be resolved by arbitration as set forth below.

**12.2. Arbitration.** IN THE EVENT THAT A DISPUTE BETWEEN THE PARTIES CANNOT BE SETTLED THROUGH DIRECT DISPUTE RESOLUTION, AS DESCRIBED ABOVE, THE PARTIES AGREE TO SUBMIT THE DISPUTE TO BINDING ARBITRATION. BY AGREEING TO ARBITRATE, THE PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL. The arbitration shall be conducted before a single neutral arbitrator, before JAMS in Boston, Massachusetts. The arbitration shall be administered by JAMS in accordance with this document and the JAMS Streamlined Rules and Procedures for the Arbitration, with one addition: The limitation of one discovery deposition per side shall be applied by the arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of parties and the diversity of their interests and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery. The arbitration will occur in Boston, Massachusetts, but the parties may choose to appear by person, by phone, by another virtual means, or through the submission of documents. The arbitrator will issue a ruling in writing. Any issue concerning the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by the arbitrator. To the extent state

law is applicable, the arbitrator shall apply the substantive law of Massachusetts. All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrator's award may be entered in any court having jurisdiction. The arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

**12.3. Governing Law; Jurisdiction; Jury Waiver; Translations.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the Commonwealth of Massachusetts, without giving effect to any conflicts of laws principles that require the application of the law of a different state. The Parties expressly disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods does and the Uniform Computer Information Transactions Act. FOR ANY CLAIM WHICH IS NOT SUBJECT TO THIS DISPUTE RESOLUTION PROVISION, CUSTOMER HEREBY IRREVOCABLY AGREES TO SUBMIT AND CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE STATE AND FEDERAL COURTS LOCATED WITHIN SUFFOLK COUNTY, MASSACHUSETTS. **The parties irrevocably waive any right to a trial by jury.** The English language version of this Agreement shall govern in lieu of any translation.

**12.4 Injunctive Relief.** Notwithstanding the above provisions, either party may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

### **13. General Terms.**

**13.1. Assignment.** Neither party will assign this Agreement without obtaining the prior written consent of the other party, and any attempted assignment in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement without such consent to its successor in connection with a merger, acquisition, reorganization or change of control, including without limitation a sale of all or substantially all of its assets, voting securities or business to which this Agreement relates. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

**13.2. Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**13.3. Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth in the preamble or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail. In addition, Customer acknowledges and agrees that Posit may provide notices to Customer via email to Customer's email account on file with Posit or through the Learning Services Platform and such notices will be deemed given when sent.

**13.4. Waivers; Remedies.** No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**13.5. Entire Agreement.** To the maximum extent permitted by applicable law, this Agreement, together with all exhibits hereto and documents referenced and linked to herein, constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to entering into the Agreement, except as expressly stated in the Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into the Agreement (unless such untrue statement was made fraudulently) and that party's only remedy in respect of any untrue

statement shall be for breach of contract as provided in this Agreement. No supplement, modification, amendment, or waiver of any provision of the Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Customer acknowledges and agrees that its agreement is not contingent upon the delivery of any future functionality or features not specified herein or dependent upon any oral or written, public or private comments made by Posit with respect to future functionality or features for the Learning Services or Learning Services Platform. In the event of any conflict between the provisions in this Agreement and any documents referenced and linked to herein, the terms of such documents referenced and linked to herein shall prevail. No terms or conditions stated in a Customer purchase order or in any other Customer provided business forms or order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**13.6. Force Majeure.** Any failure of or delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by an act of God, act of war, acts of terrorism, riot, labor dispute, strike, pandemic, epidemic, shortage of materials, natural disaster, fire, earthquake, flood, failure of internet service providers, failure of utility or telecommunications providers, failure denial of service attacks, failure of suppliers or service providers, or any other event beyond the reasonable control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as commercially practicable.

**13.7. Subcontractors.** Posit may use the services of its third party service providers and permit them to exercise the rights granted to Posit in order to perform Posit's obligations and exercise Posit's rights under this Agreement, provided that Posit remains responsible for (i) compliance of any such third parties with the terms of this Agreement and (ii) for the overall performance of this Agreement.

**13.8. No Third Party Beneficiaries.** The Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to the Agreement may enforce it.

**13.9. Independent Contractors.** The parties to the Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**13.10. Export Control; Anti-Corruption.** In its use of the Posit Products and Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its Members to) access or use the Learning Services or Learning Services Platform in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Learning Services Platform any information that is controlled under the U.S. International Traffic in Arms Regulations. Both parties agree to fully comply with the provisions of the United States Foreign Corrupt Practices Act ("FCPA") and/or the Organization for Economic Cooperation and Development ("OECD") prohibiting foreign bribery and improper payments. Without limiting the generality of the foregoing, Both parties represent and warrant that it has not and shall not at any time during the Subscription Term pay, give, or offer or promise to pay or give, any money or any other thing of value, directly or indirectly, to or for the benefit of: (i) any government official, political party, or candidate for political office; or (ii) any other person, firm, corporation or other entity, with knowledge that some or all of that money or other thing of value will be paid, given, offered or promised to a government official, political party or candidate for political office, for the purpose of obtaining or retaining any business, or to obtain any other unfair advantage, in connection with this Agreement.

**13.11. Government End-Users.** Elements of the Posit Learning Services Platform is commercial computer software and was developed fully at private expense. Posit provides the Learning Services and Learning Services Platform, including related software and technology, for ultimate federal government end use solely in accordance with the following: If the user or licensee of the Learning Services or Learning Services Platform is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Learning Services or Learning Services Platform, or any related

documentation of any kind, including technical data and manuals, is restricted by the terms of this Agreement in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Posit to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement. All other use is prohibited.

**13.12. Construction.** The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (iii) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (iv) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.