



## END USER TERMS & CONDITIONS FOR LICENSE AND SERVICES

1. THESE END USER TERMS & CONDITIONS FOR LICENSE AND SERVICES ("END USER TERMS & CONDITIONS") SHALL APPLY TO THE PURCHASE OF ALL SERVICES AND THE LICENSING OF EMPLOYEE NAVIGATOR SOFTWARE SOLUTIONS BY THE UNDERSIGNED AND EACH INDIVIDUAL OR ENTITY WHO BECOMES A LICENSEE OF EMPLOYEE NAVIGATOR'S INFORMATION TECHNOLOGY PRODUCTS AND/OR A CUSTOMER OF EMPLOYEE NAVIGATOR'S SERVICES (EACH A "CUSTOMER") LICENSED TO CUSTOMER BY THE AUTHORIZED LICENSOR ("LICENSOR") UNDER ANY ORDER THEREFOR. **Employee Navigator Solutions and Services.** Employee Navigator is the developer and licensor of proprietary information technology solutions for the agency and company management segment of the insurance industry including certain application service provider solutions (each an "ASP Solution(s)") that delivered remote access to Employee Navigator's servers. Employee Navigator also aggregates and makes available in electronic format certain content of third party publishers, including information relating to health insurance, health, payroll and welfare benefits and other employee benefits (the "**Employee Navigator Content**"). Employee Navigator also publishes in print and/or electronic media certain technical and user documentation describing the use and operation of the ASP Solutions (the "**Documentation**", which together with the ASP Solutions and Employee Navigator Content are referred to collectively as the "**Employee Navigator Solutions**"). Employee Navigator Solutions includes the reports, extracts and other works, including without limitation, the selection, organization, format and arrangement of the information and data (including Customer Data, defined in Article 9) contained in such reports, extracts and other works, generated, displayed or provided to Customer in connection with Customer's access to and use of the ASP Solutions (the "**Employee Navigator Solutions Output**"). Employee Navigator also provides certain services related to the Employee Navigator Solutions, including Support Services, Training Services, and Professional Services, as further described in Article 4 below (collectively, the "**Services**").
2. **Ordering Licenses and Services Generally.** Customer may purchase from Licensor the right to use one or more Employee Navigator Solutions (each a "**License**"). These End User Terms & Conditions set forth the basis for the relationship between the parties and the terms applicable to such Licenses and Services. For the provision of specific Licenses and Services a "**License Order**" or a "**Service Order**" must be executed is deemed to be incorporated and to be governed by these End User Terms & Conditions. When taken together, these End User Terms & Conditions and amendments and related documents shall be referred to as the **Agreement**.
3. **License Orders.** Provided Customer is not otherwise in breach of an Agreement, Customer shall have the right to request the purchase of a License by completing a License Order.
  - 3.1. **Contents of License Orders.** Each License Order shall set forth:
    - (a) the effective date of the License Order (the "**License Effective Date**");
    - (b) the name of the Employee Navigator Solution to which the License is granted;
    - (c) the fees to be paid for the License (the "**License Fees**") and the schedule of payments;
    - (d) the duration of the License granted under the License Order (the "**License Term**");
    - (e) the number of Authorized Entities/Companies for the use of the Employee Navigator Solution; and such other metrics or criterion of authorized use on which the scope of the License and License Fees may be based such as, number of employers, etc.;
    - (f) the legal name of the entities intended by the parties to use the Employee Navigator Solutions under each License Order (the "**Authorized Entities**");
    - (g) such other terms and conditions regarding Customer's authorized use of the applicable Employee Navigator Solutions. Except as may be set forth in a License Order, Employee Navigator may increase License Fees upon sixty (60) days notice to Customer after the expiration of the initial term.
  - 3.2. **License Grant.** Effective upon the complete execution of an applicable License Order and subject to termination in accordance with Articles 7 and 8 of these End User Terms &

Conditions, Licensor grants to Customer, during the Term, a revocable, limited, non-exclusive, non-transferable license (without further right to sublicense, distribute, transfer or transmit) to access the Employee Navigator Solutions, solely in connection with Customer's business operations in the United States to: (i) permit the Authorized Users set forth on the applicable License Order to access the ASP Solutions described on such License Order; (ii) permit the Authorized Entities and their Authorized Users set forth on the applicable License Order access to the ASP Solutions solely for the purpose of such Authorized Entities' internal business operations in the United States and solely for administering such Authorized Entities' benefit plans for the benefit of its employees; (iii) permit the Authorized Entities and their Authorized Users set forth on the applicable License Order to disclose and distribute to Customer's clients and client-prospects the Employee Navigator Solutions Output solely in connection with providing services to such clients or conducting marketing activities targeted at such clients and client-prospects; and (iv) permit the Authorized Entities and Authorized Users to display and reproduce (including by printing the electronic version) the Documentation as reasonably required to permit the Authorized Entities and the Authorized Users to exercise the rights expressly granted in this Section, in each case, subject to each Authorized Entity and Authorized User first accepting the End User Terms & Conditions, shown to such Authorized Entities and Authorized Users upon first accessing an ASP Solution.

- 3.3. **License Conditions and Restrictions.** As a condition of each License, Customer is prohibited from: (a) copying, modifying, displaying, transferring, transmitting or otherwise distributing or providing the Employee Navigator Solution to any third party; (b) reverse engineering, decompiling or otherwise attempting to create human readable materials from the object code of the Employee Navigator Solutions; (c) allowing use of the Employee Navigator Solutions for any purpose not expressly permitted in these End User Terms & Conditions or an applicable Order hereunder; (d) using or exploiting the Employee Navigator Solutions to provide application hosting, business process outsourcing, service bureau, ASP or any other similar or related services to any individual or entity; (e) removing proprietary rights notices, asset tags, brand labels or marks placed on the Employee Navigator Solutions or any Third Party Materials (as defined in Article 6 below); (f) attempting to circumvent or compromise the security features of the Employee Navigator Solutions or introducing any viruses, worms or other disabling code into any ASP Solution; or (g) exporting the Employee Navigator Solutions or Third Party Materials in violation of any U.S. export law or regulation. If Customer is required to provide any governmental or regulatory body with use or access to the Employee Navigator Solutions or Third Party Materials, then such use and access shall be subject to this Section and the confidentiality obligations of Customer and all items so provided or accessed shall bear the "Restricted Rights" legend in addition to all other notices and shall be subject to the provisions of Article 17 below. Customer shall be responsible for all acts and omissions of its representatives and each Authorized Entity and each of their individual employees and contractors who may be authorized users under a License as if performed or omitted by Customer. In connection with the use of Employee Navigator Content, Customer will not, and will not permit any Authorized Entities, Authorized Users or any third parties: (i) to make copies of Employee Navigator Content except for purposes of downloading and/or printing for use by Customer or Authorized Entities and/or Authorized Users in connection with their proper use of the ASP Solution; or (ii) to distribute, disseminate or republish all or part of any of the Employee Navigator Content in any hardcopy or electronic form except for purposes of downloading and/or printing for use by Customer or Authorized Entities and/or Authorized User in connection with their proper use of the ASP Solution. Customer will ensure that all Employee Navigator Content for the applicable License in the possession or control of Customer, Authorized

Entities and Authorized Users, regardless of the medium in which it is stored, is returned to Licensor upon termination of the applicable License. Licensor does not warrant the accuracy, completeness, currency, merchantability or fitness for a particular purpose of the Employee Navigator Content. Licensor or its licensor(s) owns all rights (including copyright), title and interest in the Employee Navigator Content or is sublicensing content from a third party provider.

#### 4. Services and Equipment Orders.

**4.1. Support and Training.** Licensor (or its licensor) provides, through its own employees and certain approved subcontractors, Services for user and technical support for the Employee Navigator Solutions (the "**Support Services**") and services related to instruction and training in the use and operation of the Employee Navigator Solutions (the "**Training Services**").

**4.2. Statements of Work.** Licensor (or its licensor) also provides services for: installation and implementation of the equipment ("**Equipment**") and Employee Navigator Solutions; data conversion and migration; creation of enhancements, customizations or other derivative works and improvements for the Employee Navigator Solutions; services for the creation of interfaces between the Employee Navigator Solutions and third parties' software or systems (collectively, the "**Professional Services**"). Certain types of Professional Services may require that Licensor and Customer agree to a more comprehensive description than that contained in the Services Order such as a detailed specification for deliverables, a timetable for delivery, change control procedures and the like. If so required, the parties shall enter into a statement of work (each, a "**Statement of Work**") containing such detailed terms.

**4.3. Contents of Services Orders Generally.** The successful and timely rendering of the Services requires the good faith cooperation of Customer. Customer shall provide reasonable cooperation to Licensor, including, without limitation, making available, as may be reasonably required or requested: (a) information concerning Customer's business as it relates to the Services; (b) qualified personnel of Customer; and (c) sufficient access to Customer's facilities and systems. Unless otherwise stated in a Statement of Work, the Services and all resulting deliverables shall be deemed accepted by Customer on payment or within ten (10) business days after performance, whichever occurs first. In no event will acceptance or payment be unreasonably withheld, conditioned or delayed. Additions or deletions to the number of resources or changes to the duration of performance under an existing Services Order shall require execution of a new Services Order.

**4.4. Customer Premises.** Licensor's (or its licensor's) personnel may perform certain Professional Services at the Customer's premises from time to time as may be mutually agreeable to Licensor (or its licensor) and Customer.

**4.5. Customer Delays.** If performance by Licensor (or its licensor) under any Statement of Work is delayed as a result of any failure of Customer to provide appropriate information, resources, or personnel reasonably necessary for Licensor's (or its licensor's) performance, appropriate adjustments to the applicable performance schedule may be made and any reasonable costs or expenses incurred may be charged to the Customer.

**4.6. Changes in Scope of Work.** Customer may from make changes to proposed work. Customer must submit them to Licensor in writing and Customer and Licensor must execute an amendment to such Statement of Work. If any such change causes an increase or decrease in the estimated charges or causes a schedule change from that originally agreed upon, an equitable adjustment shall be made.

**5. Employee Navigator's Ownership.** As between Licensor and Customer, Authorized Entities and Authorized Users, Licensor exclusively retains all intellectual property rights, patents, trademarks, copyrights, proprietary rights, trade secrets, rights of attribution and authorship and all of their derivative works and improvements including, without limitation, all materials that result from Employee Navigator's Services. No right, title or interest is granted or otherwise transferred to Customer, any Authorized Entity or any Authorized User except for the license rights expressly granted under these End User Terms & Conditions. Nothing in this Article 5 shall be construed to transfer or convey to Licensor, or detract in any way from, any right, title or interest of Customer in and to Customer Data (defined in Article 9).

**6. Third Party Materials.** Employee Navigator Solutions also may have embedded software applications owned by third parties (the "**Third Party Software**") or content, guides, publications and other resource materials

owned by third parties ("**Third Party Content**"); collectively referred to as "**Third Party Materials**". Licensor (or its licensor) may incorporate certain Third Party Materials in the Employee Navigator Solutions for ease of reference by the Customer only. LICENSOR CANNOT AND DOES NOT WARRANT (EXCEPT FOR LICENSOR'S WARRANTY THAT IT HAS ALL REQUISITE RIGHTS NECESSARY TO USE AND ACCESS THE THIRD PARTY MATERIALS IN CONNECTION WITH THE EMPLOYEE NAVIGATOR SOLUTIONS), AND LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THIRD PARTY MATERIALS, INCLUDING THE COMPLETENESS OR ACCURACY THEREOF OR FITNESS FOR USE.

**7. Fees, Taxes & Payments.** Customer shall pay to Licensor the applicable License Fees, Services Fees, Recurring Fees and Third Party Materials. Charges shall be due and payable by the Customer within thirty (30) days of the date of Licensor's invoice. Customer's failure to pay any amount within sixty (60) days of the due date may result in the suspension of the Services.

**8. Term & Termination.** Unless terminated earlier, Customer's right to purchase Licenses and Services under these End User Terms & Conditions shall continue hereunder for so long as there is a License Order for any Employee Navigator Solution continuously in effect without dispute (the "**Term**"). The term of each License shall be the License Term specified in each Order, so long as Customer continues to purchase ongoing Support Services. In the event a term is not stated in an Order, the license term applicable to such Order shall be one (1) year, which shall automatically renew for successive one (1) year periods, subject to earlier termination as provided in these End User Terms & Conditions and the Order. Licensor may terminate any Order upon sixty (60) days notice in the event Licensor discontinues the Employee Navigator Solutions or Services covered by such Order. If either party materially breaches any obligation hereunder or, in the case of Customer, its scope of licensed use, the non-breaching party may provide a written notice specifying the nature of the breach and demand that the breaching party cure the breach. The breaching party shall have fifteen (15) business days from receipt of such notice to cure the breach. If the breach is not cured within such period, the non-breaching party may terminate these End User Terms & Conditions by providing written notice of termination. Any attempt to liquidate operations or seek or obtain protection from creditors shall be a material breach subject to the foregoing provisions. In addition, unless otherwise expressly provided in an Order, Licensor shall have the right to terminate Support Services at any time for any reason or no reason upon one hundred twenty (120) calendar days prior written notice to Customer. If these End User Terms & Conditions are terminated by either party or expire pursuant to their terms, then all Confidential Information of each party (as defined below) shall be returned to the disclosing party; provided, however, Licensor may destroy Customer Data (as defined below) upon expiration or termination of these End User Terms & Conditions, if Licensor (or its licensor) has not received a request or payment from Customer for delivery to Customer of an electronic file or extract containing such Customer Data. Upon termination, Customer shall promptly discontinue use of all Employee Navigator Solutions, return all copies of such Employee Navigator Solutions to Licensor and immediately pay all amounts then due and payable to Licensor. Articles 7,9,10,11,13 and 14 shall survive the termination or expiration of these End User Terms & Conditions for any reason.

**9. Confidentiality.** "**Confidential Information**" will mean all of the information, data and software furnished by one party to the other in connection with these End User Terms & Conditions. Notwithstanding the foregoing, and excepting any proprietary financial information, "Confidential Information" will not include information which: (i) may be publicly disclosed by the party disclosing the information either prior to or subsequent to the receipt of such information by the receiving party; (ii) is or becomes generally known in the trade through no fault of the receiving party; (iii) is lawfully disclosed to the receiving party by a third person who has lawfully acquired the Confidential Information; or (iv) was independently developed by the receiving party; provided, however, that the receiving party hereby stipulates and agrees that, if it seeks to disclose, display, divulge, reveal, report, publish or transfer, for any purpose whatsoever, any Confidential Information, such receiving party will bear the burden of proving that any such information was independently developed or is or became publicly available without any such breach. Without limiting the generality of the foregoing, the parties stipulate and agree that "Confidential Information" will specifically include: (1) the Employee Navigator Solutions; (ii) all passwords provided by Licensor allowing Customer access to an ASP Solution; and (iii) any data provided by Customer to Licensor (or its licensor) or input into the



ASP Solution by Customer in connection with Customer's use of the ASP Solution hereunder (**Customer Data**). A party's failure to mark any Confidential Information as confidential, protected or proprietary will not affect its status as Confidential Information under these End User Terms & Conditions. Except for Licensor's (or its licensor's) right to use Customer Data as expressly permitted by the terms of these End User Terms & Conditions, all Customer Data is and shall be owned solely and exclusively by Customer.

Each party acknowledges that, in performing its obligations and exercising its rights hereunder, a party may acquire the Confidential Information of the other party. As a material inducement to the other party to disclose such Confidential Information, each party covenants and agrees that it will not, except with the prior written consent of the other party, at any time directly by itself or indirectly through any agent or employee: (i) reproduce, distribute, transmit, publicly display, modify, create derivative works based upon, or disclose, deliver, display, divulge, reveal, report, publish or transfer to any person or entity, for any purpose whatsoever, any Confidential Information of the other party or (ii) use Confidential Information of the other party for any purpose other than in connection with the performance of its obligations or the exercise of its rights hereunder. Each party further covenants and agrees to handle the Confidential Information of the other party in the same manner that the party handles its own most confidential information and, in any event, to take all steps reasonably necessary to preserve the confidentiality of Confidential Information, including without limitation adopting appropriate confidentiality policies, inserting appropriate confidentiality terms in agreements with all employees and subcontractors, and maintaining Confidential Information in a manner designed to assure that it will not be used or disclosed improperly.

Notwithstanding any other provision herein, Licensor (or its licensor) shall have the right, and Customer hereby grants to Licensor (or its licensor) a royalty-free, non-exclusive license, to access, compile, aggregate and use Customer Data for statistical analysis, benchmarking and research purposes, provided, that the Customer Data is compiled and presented in aggregate form only, without identifying or being capable of identifying (i) the source of the Customer Data; (ii) any employee, enrollee, subscriber, beneficiary, or other individual; or (iii) an employer, trade group, or insured. To the extent that any Customer Data is compiled or aggregated by Licensor (or its licensor) in accordance with the terms herein (collectively, the "Aggregate Data"), such Aggregate Data will be owned solely by Licensor (or its licensor) and may be used by Licensor (or its licensor) for any lawful business purpose without a duty of accounting to Customer. Further, Licensor (or its licensor) may de-identify any and all personally identifiable Customer Data, and such de-identified Customer Data shall not be subject to the provisions of this Article 9.

A party will promptly notify the other party if it becomes aware of any unauthorized use or disclosure of any Confidential Information of the other party and, at the other party's request, will take such action as may be reasonably necessary and legally permissible to terminate or remedy any unauthorized use or disclosure that results from any act or omission of the party or any of its employees, subcontractors or agents. If a receiving party is compelled by a court or other body of competent jurisdiction to disclose the Confidential Information, the receiving party shall inform the disclosing party by written notice and shall provide reasonable assistance in obtaining and enforcing a protective order or other appropriate means of safeguarding the Confidential Information required to be disclosed. The receiving party may then disclose only so much of the Confidential Information as is legally required to be disclosed.

## 10. Warranties

**10.1. Performance Warranties.** Licensor warrants to Customer that the ASP Solutions shall operate and be available as described in the applicable Documentation for such ASP Solutions; and the Services shall be performed in a professional, workmanlike manner. Licensor does not warrant that the Employee Navigator Solutions will meet Customer's requirements, will achieve any particular result, operate without interruption or are error free. Customer's sole remedy and Licensor's only liability for breach of a warranty contained in this Section 10.1 shall be, with respect to the ASP Solutions, to repair or replace the ASP Solutions to bring them into compliance with the applicable warranty, and, with respect to the Services, to re-perform the Services to bring them in compliance with the applicable warranty; provided, however, that Customer shall give notice to Licensor within thirty (30) days after

discovering any warranty breach and during normal business hours.

**10.2. Non-Infringement Warranty.** Licensor warrants to Customer that as of the date and in the form delivered hereunder and when used by Customer in the manner authorized by each License and as described in the applicable Documentation, the Employee Navigator Solutions shall not infringe or violate under the laws of any Berne Convention signatory-nation as of the Master Effective Date, either the copyrights, trademark rights or trade secret rights of any third party or the rights of any third party under any valid, applicable, United States patent (the "**Non-Infringement Warranty**").

**10.3. Conditions of Warranty.** Licensor shall not be responsible in any manner under the warranties described in this Article 10 for actual or alleged breaches arising out of: (a) causes external to the Employee Navigator Solutions including Equipment, third party telecommunications or data lines; (b) Customer's use of the Employee Navigator Solutions in a manner or on Equipment that does not conform to Licensor's specifications; (c) any defect, infringement or non-conformity not reported by Customer in accordance with these End User Terms & Conditions; (d) any use of the Employee Navigator Solutions in combination with or as part of any products or equipment of any third party; (e) any modifications to the Employee Navigator Solutions made by any party other than Licensor (or its licensor) or Customer acting at Licensor's (or its licensor's) express direction; or (f) Customer's breach of these End User Terms & Conditions. Without limiting the generality of the exclusions set forth in this Article, and except as otherwise provided in these End User Terms & Conditions, Customer shall be exclusively responsible as between the parties for, AND LICENSOR MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO whether the Employee Navigator Solutions or the Third Party Materials will achieve the results desired by Customer; ensuring the accuracy of any input data used with the Employee Navigator Solutions, including (without limitation) data input to the Employee Navigator Solutions in conjunction with any data conversion (i) establishing adequate operational backup provisions in the event of a defect or malfunction that impedes the anticipated operation of the Employee Navigator Solutions or Third Party Materials; or (ii) ensuring that Customer's access to the ASP Solution will at all times be uninterrupted or error-free or secure. In addition, the Non-Infringement Warranty shall not apply to the claimed infringement of any right in which Customer or any subsidiary or affiliate of Customer has any ownership or interest (by license or otherwise) independent of their relationship hereunder.

**10.4. Remedy for Breach of Non-Infringement Warranty.** If Licensor is found to have breached the Non-Infringement Warranty, or if at any time Licensor reasonably believes that the Employee Navigator Solutions have earlier been subject to a claim that would constitute breach of the Non-Infringement Warranty, then Licensor shall have the further obligation to: (a) modify the applicable portions of the Employee Navigator Solution to be non-infringing without material alteration to its material functions; or (b) obtain for Customer a license to continue using the infringing portions of the Employee Navigator Solution without material change in its critical functionality. If each of the foregoing fails to cure the alleged or prospective infringement after a reasonable number of attempts by Licensor, Licensor shall refund to Customer that portion of the License Fees attributable to the infringing portion or component of the Employee Navigator Solution and as have been actually paid by Customer and after accounting for depreciation on a straight-line basis over a period of sixty (60) months commencing on the License Effective Date. This Section and the indemnification provisions of 11 set forth Customer's sole remedy and Licensor's entire liability with respect to breach or alleged breach of the Non-Infringement Warranty.

**10.5. Customer Representations and Warranties.** Customer represents and warrants that Customer and Authorized Users possess validly issued insurance producer licenses in good standing and are authorized to provide the risk management, insurance and/or employee benefit services and products that are the subject of these End User Terms & Conditions in each state and jurisdiction in which Customer currently conducts business. Customer covenants that, during the Term, it shall maintain all such licenses and authorizations in good standing and shall notify Licensor promptly

in writing of any suspension, revocation or non-renewal of any such license or authorization or the commencement of any proceeding with respect thereto, except where such suspension, revocation, non-renewal or proceeding will not have a material adverse effect on Customer's ability to perform its obligations under these End User Terms & Conditions. Customer further represents and warrants that (a) it owns all right, title and interest in and to the Customer Data necessary to enter into these End User Terms & Conditions; (b) it has the necessary rights to input the Customer Data into the ASP Solution hosted on Licensor's (or its licensor's) servers located in the U.S.; (c) it has the necessary rights to assign and to grant the rights assigned and granted to Licensor (or its licensor) hereunder, free and clear of all liens, encumbrances, claims and restrictions; (d) that the Customer Data does not infringe any intellectual property rights of any third party; (e) Customer shall audit any Employee Navigator Solutions Output at least one (1) time per month to ensure the quality and accuracy of the data. .

**11. Injunctive Relief & Indemnities.**

**11.1. Injunctive Relief.** Each party stipulates and agrees that: (a) Licensor will suffer irreparable harm in the event of any breach by Customer of the provisions of Articles 3 or 9; and (b) Customer will suffer irreparable harm in the event of any breach by Licensor of the provisions of Article 9 and that monetary damages will be inadequate to compensate the non-breaching party for any such breach. Accordingly, each party stipulates and agrees that, In the event of a breach or threatened breach (a) by Customer of the provisions of Articles 3 or 9 or (b) by Licensor of the provisions of Article 9, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, the non-breaching party will be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach or threatened breach.

**11.2. Indemnification**

**11.2.1. By Licensor.** Licensor shall defend, indemnify, and hold harmless Customer, its officers, directors, trustees, employees, agents, representatives, affiliates, and permitted assigns, from and against any and all losses, liabilities, claims, damages, actions, suits, proceedings, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees) arising out of or in connection with (a) any third party claim for a breach by Licensor of the Non-Infringement Warranty; and (b) the willful misconduct or gross negligence of Licensor.

**11.2.2. By Customer.** Customer shall defend, indemnify, and hold harmless Licensor, its officers, directors, trustees, employees, agents, representatives, affiliates, licensors and permitted assigns, from and against any and all losses, liabilities, claims, damages, actions, suits, proceedings, settlements, judgments, losses, costs and expenses (including without limitation reasonable attorney's fees) arising out of or in connection with (a) breach by Customer of its representations, warranties or covenants under these End User Terms & Conditions; and (b) the willful misconduct or gross negligence of Customer.

**11.2.3. Indemnification Procedure.** Upon the assertion of any claim or the commencement of any suit or proceeding against one party (the "**Indemnified Party**") by any third party that may give rise to an indemnification obligation or other liability of the other, indemnifying party under this Article (the "**Indemnifying Party**"), the Indemnified Party shall promptly notify the Indemnifying Party of the existence of such claim and shall give the Indemnifying Party the option, determined in the Indemnifying Party's sole reasonable discretion, of defending and/or negotiating settlement of the claim or suit with counsel of its own selection in accordance with this Section. The Indemnified Party shall provide, at the Indemnifying Party's cost, all reasonable cooperation requested by the Indemnifying Party in connection with such claim and its defense or settlement

**12. Disclaimers.** UNLESS EXPRESSLY PROVIDED FOR IN WRITING, LICENSOR DOES NOT WARRANT THAT ANY EMPLOYEE NAVIGATOR SOLUTIONS OR SERVICES WILL (i) MEET CUSTOMER'S REQUIREMENTS; (ii) MEET ANY PERFORMANCE

LEVEL, RESOURCE UTILIZATION, RESPONSE TIME OR SYSTEM OVERHEAD REQUIREMENTS; OR (iii) OPERATE UNINTERRUPTED, FREE OF ERRORS, OR WITHOUT DELAY. LICENSOR IS NOT RESPONSIBLE FOR PROBLEMS CAUSED BY: (1) USE OF ANY EMPLOYEE NAVIGATOR SOLUTIONS OR SERVICES OUTSIDE THE SCOPE OF THIS AGREEMENT; (2) ANY MODIFICATION NOT MADE OR APPROVED BY LICENSOR (OR ITS LICENSOR); OR (3) USE OF ANY EMPLOYEE NAVIGATOR SOLUTIONS WITH HARDWARE OR SOFTWARE THAT IS NOT IS NOT REPRESENTED IN THE APPLICABLE DOCUMENTATION AS INTEROPERABLE WITH THE EMPLOYEE NAVIGATOR SOLUTIONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES (INCLUDING IMPLIED AND STATUTORY WARRANTIES) OTHER THAN THOSE EXPRESSLY PROVIDED IN ARTICLE 10 ABOVE, AND FURTHER: BECAUSE (a) LICENSOR IS NOT THE ORIGINAL MANUFACTURER OF THE THIRD PARTY MATERIALS; AND (b) THE EQUIPMENT, NETWORKING AND TELECOMMUNICATIONS INFRASTRUCTURE USED BY CUSTOMER TO ACCESS THE EMPLOYEE NAVIGATOR SOLUTIONS IS THE SOLE RESPONSIBILITY OF CUSTOMER; LICENSOR DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, MAINTENANCE OR PERFORMANCE OF THE THIRD PARTY MATERIALS AND THE DELIVERY AND PERFORMANCE OF THE EMPLOYEE NAVIGATOR SOLUTIONS IN CONNECTION WITH THE ACCESS BY CUSTOMER TO THE ASP SOLUTIONS. CUSTOMER IS SOLELY RESPONSIBLE FOR OBTAINING AUTHORITY TO DO BUSINESS IN ALL APPLICABLE JURISDICTIONS.

**13. Limitation of Liability.** EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS FOR INFRINGEMENT CLAIMS UNDER SECTION 11.2.1, LICENSOR'S AGGREGATE, CUMULATIVE LIABILITY IN CONNECTION WITH THESE END USER TERMS & CONDITIONS, ALL AGREEMENTS, THE EMPLOYEE NAVIGATOR SOLUTIONS AND ALL SERVICES PERFORMED SHALL BE LIMITED TO DIRECT DAMAGES AND CAPPED AT THE AMOUNT EQUAL TO THE FEES ACTUALLY RECEIVED BY LICENSOR FROM CUSTOMER UNDER THE ORDER FROM WHICH THE EVENT CAUSING LIABILITY ARISES. The limitations and exclusions set forth in this Article 13 apply to all claims or causes of action on whatever basis and under whatever theory brought and irrespective of whether the party has advised or has been advised of the possibility of such claim. All claims and causes of action brought by Customer hereunder shall be brought within ninety (90) calendar days of the termination or expiration hereof or within six (6) months of the date the harm is actually discovered, whichever occurs first. IN NO EVENT SHALL LICENSOR BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR LOST DATA.

**14. Responsibility to Audit.** It is the responsibility of the End User and/or Customer to regularly audit Employee Navigator Content such as enrollment in plans, costs, plan descriptions, etc. including but not limited to COBRA, health, life retirement, disability, etc. to ensure the carrier enrolment and plan descriptions are accurate. For the purposes of this Agreement, Regularly Audit refers to the grace period a benefit provider will retroactively adjust an enrollment after its discovery. The End User and/or customer agrees to hold Employee Navigator harmless for any and all claims, premium payments or payroll errors resulting from inaccurate enrollment at insurance carrier, third party administrators or other providers. Customer agrees the regular audit requirement is reasonable due to (a) Employee Navigator may be configured to turn on and off services which may result in the termination, extension, notification or lack of notification for enrollment and (b) an improper design of Employee Navigator may not produce the desired result.

**15. Assignment.** Customer shall not assign these End User Terms & Conditions or any of its rights, interests or obligations hereunder whether voluntarily, by operation of law, or otherwise without the prior written consent of Employee Navigator. These End User Terms & Conditions

shall be binding upon the parties and their respective successors and permitted assigns.

- 16. Publicity.** Licensor (or its licensor) shall have the right, at its expense, to (a) list Customer in its general listing of customers, and (b) issue press releases regarding the general nature of the software and services provided under an Order. Except as provided in the foregoing sentence, neither party shall, in connection with its activities under these End User Terms & Conditions, use the name, trade name, trademark or servicemark of the other party in any way without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party.
- 17. No Hiring.** Customer shall not, without the express written consent of Licensor in each instance, during the Term and for a period of one (1) year thereafter, directly or indirectly solicit, employ, offer to employ, nor engage as a consultant, any employee or independent consultant of Licensor with whom Customer had contact pursuant to an Order or these End User Terms & Conditions.
- 18. Force Majeure.** Licensor shall not be liable to Customer or deemed in breach of these End User Terms & Conditions for its failure or delay in performing any of its obligations hereunder during any period in which such performance is rendered impracticable or impossible due to circumstances beyond Licensor's reasonable control, including, but not limited to, acts of God, fire, explosion, flood, drought, riot, sabotage, terrorism, war, invasion, embargo, strikes or other labor trouble, failure in whole or in part of suppliers to deliver materials, equipment or machinery, interruption of or delay in transportation or telecommunications or compliance with any order or regulation of any government entity acting with color of right.
- 19. Business Associate Agreement, Requirements & Provisions**

**19.1. Scope and Purpose.** To the extent Licensor or Customer is considered a Business Associate of any Authorized Entity for purposes of the Health Insurance Portability and Accountability Act of 1996 and its accompanying regulations, as the same may be amended from time to time ("HIPAA"), with respect to any Agreement, the Business Associate provisions set forth below (the "**BA Provisions**") will, in addition to the other confidentiality obligations set forth herein, apply to the performance of such party. The parties will amend the BA Provisions, when necessary to comply, and to enable all Authorized Entities to comply, with HIPAA. However, Customer acknowledges that any such changes may require technical modifications to the affected Employee Navigator Solutions or Professional Services, for which Licensor (or its licensor) must be compensated. The parties will mutually agree upon any such compensation before amending these End User Terms & Conditions, and Licensor will not be required to implement any technical modifications or deliver any additional functionality under this Section prior to the parties' mutual written agreement regarding the feasibility of the requested changes and the fees to be paid to Licensor. Any term used but not defined in these BA Provisions will have the meaning given to it under HIPAA.

**19.2. BA Obligations of the Parties with Respect to PHI.**

**19.2.1. Obligations.** With regard to use and/or disclosure of PHI, each party will:

- 19.2.1.1.** Not use or further disclose PHI other than as permitted or required by these BA Provisions or as required by law;
- 19.2.1.2.** Use appropriate administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided for by these BA Provisions and to reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI created, received, maintained or transmitted on behalf of any Authorized Entity;
- 19.2.1.3.** Report to the applicable Authorized Entity (a) any use or disclosure of PHI not provided for by these BA Provisions, or (b) any Security Incident, as defined in 45 C.F.R. 164.304 (as modified by or interpreted under any subsequent guidance issued by the federal Department of Health and Human Services), of which it becomes aware;
- 19.2.1.4.** Require all of its subcontractors and agents that receive or use, or have access to, PHI under the End User Terms & Conditions, to agree, in writing, to the same restrictions and conditions on the use and/or disclosure and safeguarding of PHI that apply to it pursuant to these BA Provisions;
- 19.2.1.5.** Make available PHI necessary for Authorized Entities to respond to individuals' requests for access to PHI about them in the event that the PHI in its possession constitutes a

Designated Record Set;

- 19.2.1.6.** Make available PHI for amendment and incorporate any amendments to PHI in accordance with the Privacy Rule in the event that the PHI in its possession constitutes a Designated Record Set;
  - 19.2.1.7.** Make available the information required to provide an accounting of disclosures in accordance with the Privacy Rule;
  - 19.2.1.8.** Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of HHS for purposes of determining an Authorized Entity's compliance with the Privacy and Security Rules; and
  - 19.2.1.9.** Return to the applicable Authorized Entity or destroy, within ninety (90) days of the termination of these BA Provisions, the PHI in its possession as a result of these End User Terms & Conditions and retain no copies, if it is feasible to do so. If return or destruction is infeasible, it will extend all protections contained in these BA Provisions to its use and/or disclosure of any retained PHI, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.
- 19.2.2. Permitted Uses and Disclosures of PHI.** Except as otherwise specified in these BA Provisions, each party may make any and all uses and disclosures of PHI to the extent directly related and necessary to perform its obligations under the End User Terms & Conditions, including by way of example and not limitation, each party may:
- 19.2.2.1.** Use the PHI in its possession for its proper management and administration and to carry out its legal responsibilities;
  - 19.2.2.2.** Disclose the PHI in its possession to a third party for the purpose of its proper management and administration or to carry out its legal responsibilities, provided that the disclosures are required by law or it obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule;
  - 19.2.2.3.** Provide Data Aggregation services relating to the health care operations of the applicable Authorized Entity; and
  - 19.2.2.4.** De-identify any and all PHI obtained hereunder and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule.
- 19.2.3. Termination.** Upon receipt of notice from an Authorized Entity asserting any material breach of these BA Provisions, Customer and Licensor shall work cooperatively together and with such Authorized Entity promptly to cure such breach. If the parties fail to cure such breach in a reasonable time to the Authorized Entity's reasonable satisfaction, Authorized Entity may terminate all Agreements involving such Authorized Entity and the use or disclosure of PHI.
- 19.2.4. Survival.** These BA Provisions shall survive termination of these End User Terms & Conditions and continue indefinitely solely with respect to any PHI that a party retains in accordance with Section 18. above.
- 20. Miscellaneous.** Nothing in these End User Terms & Conditions (including in the BA Provisions) shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever. These End User Terms & Conditions and each Agreement are the complete agreement of the parties with respect to their subject matter and supersede all prior discussions, negotiations and agreements and any earlier proposals all whether verbal or written. These End User Terms & Conditions and each Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to principles of conflicts of laws and all claims and actions related hereto shall be brought in the appropriate state or federal court located in Montgomery County, State of Maryland. All notices, including notices of address changes, given by either party shall be sent by certified mail or by reputable overnight commercial delivery. Notices to Customer shall be sent to the invoicing address specified by Customer in the initial paragraph of these End User Terms & Conditions or the applicable License Order or Service Order. Notices to Licensor shall be sent to the Licensor address in the initial paragraph of these End User Terms & Conditions or the applicable License Order or Service Order. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship, or to subject the parties to any implied duties or obligations respecting the



conduct of their affairs which are not expressly stated herein. If any provision of these End User Terms & Conditions or any Agreement is held unenforceable the enforceability of the remaining provisions shall not be affected. Waiver by either party of any breach shall not constitute waiver of any other breach. The headings in these End User Terms & Conditions and each Agreement are used for convenience of reference only. These End User Terms & Conditions and each Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. Neither these End User Terms & Conditions nor any Agreement hereunder shall be amended except in a writing signed by both parties.

The parties to these End User Terms & Conditions have caused it to be duly executed and adoption effect on the Order Confirmation date.