



## CLOUD SERVICES SUBSCRIPTION AGREEMENT

**BY SIGNING AN ORDER SCHEDULE, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS CLOUD SERVICES SUBSCRIPTION AGREEMENT. THIS CLOUD SERVICES SUBSCRIPTION AGREEMENT AND THE APPLICABLE ORDER SCHEDULE (INCLUDING AMENDMENTS) AND SERVICE LEVEL AGREEMENT (COLLECTIVELY, THE “AGREEMENT”) GOVERN CUSTOMER’S USE AND CLEARED4’S PROVISION OF THE CLOUD SERVICES.**

### **1. CLOUD SERVICES**

**(a) Subscription.** CLEARED4 will provide a non-exclusive and non-transferable right to access and use the Cloud Services during the Subscription Term identified in the Order Schedule subject to the Subscription Metrics in the applicable Order Schedule and the terms of this Agreement.

**(b) Provision of Cloud Services.** CLEARED4 and its Suppliers may provide the Cloud Services (including the processing, transfer, and storage of Customer Data) from the United States or any country where CLEARED4, CLEARED4’s Affiliates, or Suppliers operate or maintain facilities. Customer consents to this processing, transfer, and storage of Customer Data. CLEARED4 will and will require its Suppliers to comply with all local, state, federal, and foreign laws and regulations applicable to CLEARED4’s provision of the Cloud Services.

**(c) Support.** CLEARED4 or its designated representative will provide updates and incident management (“*Support*”) for the Cloud Services during the Subscription Term. CLEARED4 will provide Support under CLEARED4’s Service Level Agreement. Support does not include support for any enhancement or custom changes to the Platform requested by Customer unless separately purchased for an extra fee.

**(d) Affiliates.** Portions of the Cloud Services may be provided by CLEARED4’s Affiliates, in which case CLEARED4 will be responsible for any breaches of this Agreement by those CLEARED4 Affiliates. CLEARED4 Affiliates may also offer Cloud Services directly to Customer (or Customer’s Affiliate) by entering a separate Schedule with Customer (or Customer’s Affiliate).

**(e) Third-Party Services.** The Cloud Services and Platform interoperate with several Third-Party Services for identity verification and fraud protection, including Jumio, Human API, and other Third-Party Services to verify User identities and test results. Some of the Cloud Services depend on the availability of Third-Party Services. If any Third-Party Service is unavailable, CLEARED4 may stop providing the feature(s) and provide Customer with a pro-rata refund of any pre-paid and unused fees for the functionality provided by the Third-Party Service. To use the features of the Cloud Services related to the Third-Party Services, Customer and Users may have to register for an account with the Third-Party Service, provide certain personal information to the Third-Party Service, or connect another Third-Party Service account to the Third-Party Service. Customer agrees that CLEARED4 is not responsible for, and does not control, Third-Party Services and is not liable, directly or indirectly, or for any damage or loss related to, caused or alleged to be caused by or in connection with using, or reliance upon, any content, goods, or services available on or through any Third-Party Services or for the availability of Third-Party Services.

**(f) Security–ISO Framework.** CLEARED4 has implemented and will maintain all technical and organizational security measures, including the ISO/IEC 27001 framework. For as long as CLEARED4 has any Customer Data, in any form, it will periodically test, monitor, and audit its information security systems, measures, and procedures, including those related to proper disposal of Customer Data, to ensure that its systems, measures, and procedures follow Good Industry Practice.

**(g) Security–HIPAA.** CLEARED4 uses best efforts to maintain and handle all Customer Data under industry-standard privacy and security practices and measures adequate to preserve its confidentiality and security as required by privacy laws and regulations, including the federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (“*HITECH*”), and their regulations (collectively, “*HIPAA*”). As between CLEARED4 and Customer for disclosure of Customer Data, to



the extent it may contain individually identifiable health information transmitted or maintained in or by electronic or any other media (“PHI”), if CLEARED4 is a Business Associate, the parties agree to enter into a Business Associate Agreement (“BAA”) as required by HIPAA on terms mutually acceptable.

**(h) Security Event.** To the extent permitted by law, CLEARED4 will notify Customer within 24 hours of any unauthorized access, use, or disclosure of Customer Data (“Security Event”). CLEARED4 will make commercially reasonable efforts to mitigate any harm caused by or arising from the Security Event and will work to identify and remedy the cause of the Security Event promptly.

## 2. CUSTOMER’S USE OF THE CLOUD SERVICES

**(a) Customer’s Obligations.** Customer is responsible for all activity under its and User accounts and logins. Customer must: (i) use the Cloud Services solely for its internal business purposes and not to benefit any third parties, except as permitted by the Order Schedule; (ii) obtain all required consents from Users and third parties with whom Customer has a business relationship (e.g., network providers or outsourced IT resource providers) necessary for CLEARED4 and its Suppliers to provide the Cloud Services; (iii) before providing personal data to CLEARED4, provide to, and obtain and maintain from, third parties (including Customer’s Users, contacts, administrators, and employees) all notices and consents reasonably requested by, and required for CLEARED4 and its Suppliers to process personal data under the law; (iv) keep a secure password for the Cloud Services and require each User to keep the password confidential; and (v) promptly notify CLEARED4 of any unauthorized access or use of the Cloud Services, passwords, authentication credentials, or a Security Event or Emergency Security Issue.

**(b) Restrictions.** To the extent permitted by law, Customer will not and will not permit others to: (i) modify, copy, duplicate, download, reverse engineer, disable, decompile, translate, disassemble, create any derivative work of, or otherwise attempt to extract the source code, algorithms, proprietary technology, or analytics from, the Cloud Services; (ii) copy any features, functions, integrations, interfaces, or graphics of the Cloud Services; (iii) access or use Cloud Services to build a competitive product or service; (iv) license, sublicense (if a license is granted), sell, resell, rent, lease, lend, transfer, assign, distribute, time share, offer in a service bureau, or commercially exploit the Cloud Services, use the Cloud Services to provide hosting services to third parties, or otherwise provide the Cloud Services to any third-party other than the Users as permitted under this Agreement; (v) disable, interfere with or circumvent any aspect of the Cloud Services; (vi) use any method other than the one approved by CLEARED4 for connection to the Cloud Services; (vii) intentionally interfere with other authorized Users’ use of the Cloud Services; (viii) generate, distribute, publish, facilitate, or send spam in violation of law; or (ix) send or store infringing, obscene, threatening, defamatory, obscene, racially or ethically offensive, libelous, fraudulent or otherwise unlawful or tortious material, including material harmful to children or violating third-party rights, including privacy rights. Customer may not, without CLEARED4’s prior written consent, perform any technical, application, or infrastructure security integrity review, penetration test, or vulnerability scan (“Ethical Hack”). If CLEARED4 agrees and Customer performs an Ethical Hack, Customer will work with CLEARED4 regarding the results and keep those results confidential.

**(c) Customer agrees that:** (i) all Users are responsible for their own medical diagnosis, care, treatment, and oversight; (ii) the content provided on the Platform is for informational purposes only and DOES NOT CONSTITUTE THE PROVIDING OF MEDICAL ADVICE, and is not intended to be a substitute for independent professional medical judgment, advice, diagnosis, or treatment; (iii) Users should always seek the advice of their physician or other qualified health provider with questions regarding their health; and (iv) Users should never disregard or delay seeking medical advice relating to treatment or standard of care because of information contained in or transmitted through the Platform.

(d) **User Terms.** Users may receive an SMS text message to their mobile phone or email from Customer, CLEARED4, or a Third-Party Service with a link to access the Platform on no less than a daily basis. All Users must acknowledge the Platform disclaimer to use the Platform. If any User does not agree to the disclaimer and other User Terms, the User cannot use the Cloud Services. CLEARED4 may terminate any User account in CLEARED4's reasonable discretion and will provide notice to Customer of the same. Customer acknowledges that the SMS text messages received by a User must comply with all laws, rules, and regulations applicable to sending mass SMS text messages (including the Telephone Consumer Protection Act) and that CLEARED4 must cease sending SMS text messages to any User who opts out. Customer will not receive any data through the Platform from any User who opts out of SMS text messages, and Customer will add a pro-rata refund of any Fees for the provision of the Services related to any User who opts out during a billing month.

### 3. CUSTOMER DATA

(a) **Ownership of Customer Data.** Customer is and will remain the exclusive owner of all right, title, and interest in the Customer Data, including any IP Rights.

(b) **Customer Data.** Customer grants CLEARED4 the right to process, store, access, use, transmit, copy, display, disclose, or modify Customer Data, only as permitted to (i) provide the Cloud Services (including to prevent or address service or technical problems); and (ii) improve and enhance its Cloud Services. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and means by which Customer acquired the Customer Data. Customer represents and warrants that it has complied with all laws in collecting, using, and disclosing the Customer Data. CLEARED4 will have no obligation, but reserves the right, to review Customer Data for, without limitation, accuracy, quality, integrity, legality, reliability, or appropriateness solely to provide the Cloud Services.

(c) **Personal Information.** CLEARED4 only processes personal data about Customer and its Users, agents, representatives, employees, or other related third parties to provide the Cloud Services and activities incidental to it, including without limitation: (i) processing orders; (ii) managing Customer's account with CLEARED4; and (iii) compiling Aggregate Data. Customer may request access to and correction of the personal information or exercise any other rights regarding this personal data. CLEARED4 will not sell any Customer Data for any purpose. Notwithstanding the above, CLEARED4 may sell and integrate Aggregated Data from Customer Data into the Platform if that Aggregated Data does not identify Customer, Customer's Users, or any individual user on the Customer's account. CLEARED4 will not itself disaggregate or re-identify Customer Data, nor will it allow any third party to disaggregate or re-identify the data.

(d) **Non-active Users.** CLEARED4 stores Non-active Users' data until and unless deleted by Customer. Once deleted, CLEARED4 only keeps a backup of the deleted data for 30 days. CLEARED4 charges a \$0.10 fee per month for every Non-active User on the Platform.

### 4. ORDERS, FEES, & PAYMENT

(a) **Orders.** Customer places a binding order, subject to CLEARED4's acceptance, by sending a signed Order Schedule. Purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by CLEARED4, its Affiliates, its distributors, or resellers regarding future functionality or features of the Cloud Services.

(b) **Fees Generally.** Customer pays CLEARED4 for the Cloud Services and related expenses at the rates on the Order Schedule. Invoiced amounts will be due and payable 30 days from receipt of the invoice in US Dollars. Unless otherwise expressly agreed in the Order Schedule, fees are non-refundable, and Customer's payment obligation is

not cancelable.

(c) **Overdue Payments.** Any payment (except payment subject to a good faith dispute under Section 4(d)) not received from Customer on the due date may, at CLEARED4's discretion and without limiting its rights or remedies, accrue late charges at 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date the payment was due until the date paid.

(d) **Payment Dispute Procedure.** CLEARED4 will not exercise its rights under the "Overdue Payments" section above if Customer is disputing the charges reasonably and in good faith and is cooperating diligently to resolve the dispute. To submit a dispute, Customer must notify CLEARED4 in writing of the dispute within 10 days of the date of the disputed invoice and describe the dispute. CLEARED4 will promptly review and respond to the notice. Where Customer disputes only part of an invoice, Customer must pay all undisputed amounts when due. After the dispute is resolved, Customer will immediately pay any amounts no longer in dispute.

(e) **Taxes.** All amounts payable under an Order Schedule are exclusive of any sales or use taxes, value-added tax (VAT), goods and services tax (GST), or any similar taxes or legally imposed fees, duties, or contributions based on the amounts payable; all of which will be Customer's sole responsibility whether due now or imposed by any jurisdiction. If required, CLEARED4 will charge VAT, GST, sales tax, or other consumption or similar taxes ("*Indirect Taxes*") in addition to Subscription Fees under the Order Schedule, on condition that CLEARED4's invoice meets the requirements for a valid tax invoice for Indirect Taxes after consideration of any tax exemption certificate. The address used for Indirect Tax purposes is Customer's Address on the Order Schedule. If the Cloud Services are provided to Customer elsewhere, Customer must notify CLEARED4.

(f) **Withholding Tax.** If Customer must withhold income tax on any payments due under this Agreement, it will promptly provide CLEARED4 with the official receipt of payment of these taxes to the proper taxing authority. Customer withholds taxes only to the extent legally required under existing tax laws of Customer's legal country of domicile and after fully considering income tax treaty provisions between Customer's and CLEARED4's respective legal countries of domicile. If tax is withheld and Customer does not submit a tax certificate to CLEARED4 within 30 days after the payment due date, Customer will immediately remit full payment for the outstanding amount to CLEARED4.

## 5. PROPRIETARY RIGHTS

(a) **Reservation of Rights.** CLEARED4 is and will remain the exclusive owner of all right, title, and interest in the Cloud Services and Aggregate Data, including any IP Rights. All IP Rights in any work arising from or created, produced, or developed by CLEARED4 (whether alone or jointly with others) under or during this Agreement, including those arising from the Cloud Services, will immediately, upon creation or performance, vest in and will be and remain the property of CLEARED4. Customer acquires no right, title, or interest in the same. All rights not specifically granted in this Agreement to Customer are exclusively reserved to CLEARED4 or its licensors.

## 6. CONFIDENTIALITY

(a) "*Confidential Information*" means all information disclosed by a party ("*disclosing party*") to the other party ("*receiving party*"), whether orally or in writing, or obtained, accessed, disclosed, provided to, or learned by the receiving party during the Term, that is designated as confidential, or that reasonably should be understood to be confidential given the information and the circumstances of disclosure. Confidential Information includes, without limitation, technical, business, financial, marketing, or other information of every kind or nature (including, without limitation, trade secrets, know-how, and information relating to the technology, Cloud Services, specifications, and prototypes, customers, business plans, strategies, product plans, and designs, promotional and marketing activities, finances, and other business affairs and processes of a party), third-party confidential information, including personal and medical information, the terms of this Agreement (including pricing), and any information arising from or relating to an Ethical Hack performed by Customer, and, regarding Customer, or Customer Data.

**(b) Exclusions.** Confidential Information includes no information that: (i) is or becomes generally available to the public through no improper action or inaction by the receiving party or any affiliate, agent, consultant, or employee of the receiving party; (ii) was properly in the receiving party's possession or properly known by it, without restriction, before receipt from the disclosing party; (iii) was lawfully disclosed to the receiving party by a third-party without restriction; or (iv) is independently developed by the receiving party without the use of or reference to the disclosing party's Confidential Information.

**(c) Confidentiality Obligations.** During the Term and Termination, each party will: (i) hold in strict confidence all Confidential Information of the other party; (ii) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement; and (iii) not transfer, display, convey, or otherwise disclose or make available all or any part of the other party's Confidential Information to any person or entity other than to its directors, officers, employees, consultants, subcontractors, auditors, and legal and financial advisers (or those of its Affiliates), and with respect to CLEARED4, its Suppliers and subcontractors ("*Representatives*") who need to know the Confidential Information and who are under confidentiality obligations at least as restrictive as this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. Except as otherwise provided in this Agreement, neither party will use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party will use the same care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

**(d) Additional Permitted Disclosures.** The receiving party may disclose the Confidential Information of the disclosing party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action if: (i) to the extent permitted by law or regulation, the disclosing party is notified in writing before disclosure of the information; (ii) the receiving party uses reasonable efforts to obtain a protective order or, absent a protective order, to limit the disclosure of the disclosing party's Confidential Information and to obtain confidential treatment thereof; and (iii) the receiving party has allowed the disclosing party to participate in the proceeding that requires the disclosure.

**(e) Know-how.** Nothing in this Section 6 prevents either party from using any techniques, business insights, ideas, or know-how gained during the performance of the Agreement in its normal business if this use does not result in improperly disclosing the other party's Confidential Information or an infringement of its IP Rights.

**(f) Ownership.** The disclosing party's Confidential Information is and will remain the disclosing party's property. The receiving party obtains no right, title, interest, or license in or to the disclosing party's Confidential Information except for the rights stated in this Agreement.

## 7. WARRANTIES & DISCLAIMERS

**(a) General Warranty.** Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.

**(b) Warranty.** CLEARED4 warrants that the Cloud Services will conform in all material respects to the Documentation and will operate without material or frequent error during the Term of this Agreement. If any Subscription Content fails to fulfill or does not comply with the warranty in this Section 7(b), then Customer must inform CLEARED4 in writing and provide information and materials, reasonably requested by CLEARED4, to document and reproduce the noncompliance. Customer's exclusive remedy under this provision will be to have CLEARED4, at CLEARED4's expense and sole option, either: (i) repair the non-conforming portion of the Subscription Content; (ii) modify or replace the non-conforming portion of the Subscription Content with other services offering comparable functionality; or (iii) if CLEARED4 cannot correct the warranty issue after a commercially reasonable time, Customer may terminate the Cloud Services for the non-conforming Subscription Content, and CLEARED4 will refund any pre-paid, unused fees covering the remainder of the Term concerning the non-conforming Subscription Content only. If

refunded, Customer's access to the noncompliant Subscription Content will be terminated. This warranty does not apply to problems caused by: (I) abuse, misuse, alteration, neglect, accident, unauthorized repair or installation, or acts or omissions of any party other than CLEARED4, CLEARED4's Affiliates, Suppliers, or subcontractors; (II) Customer's hardware, software, networks or systems; (III) Customer's failure to promptly install or allow an installation of a revision, update, or release provided by CLEARED4 or its licensor; (IV) use of the Subscription Content not under, or inconsistent with the terms of, the Documentation or the Agreement; (V) any Subscription Content that CLEARED4 provides for testing or demonstration purposes or Subscription Content for which CLEARED4 does not receive a subscription fee. THIS SECTION SETS OUT CLEARED4'S ENTIRE OBLIGATION AND LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY BREACH OF THE SUBSCRIPTION CONTENT WARRANTY IN THIS SECTION.

**(c) Additional Warranties.** CLEARED4 warrants and represents that (i) the Subscription Content has been developed under and will not violate any laws or regulations; (ii) the Subscription Content will not contain or execute any virus, Trojan horse, worm, malicious code, or other contaminating or destructive feature that could delay, disrupt, or interfere with the proper functioning of any software, website, systems, or computer; and (iii) the Subscription Content will not infringe, violate, or misappropriate any third-party IP rights, including any patents, copyrights, database rights, compilations, designs and trademarks, and proprietary rights, or any other intellectual property rights and similar or equivalent rights anywhere in Customer's country of residence which exist or are recognized.

**(d) DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOUD SERVICES ARE OFFERED "AS IS." CLEARED4 DOES NOT MAKE ANY AND EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING BY USAGE OR TRADE PRACTICE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MEETING THE CUSTOMER REQUIREMENTS, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. CLEARED4 DOES NOT WARRANT THAT THE USE OR OPERATION OF THE CLOUD SERVICES WILL BE SECURE, UNINTERRUPTED, OR ERROR-FREE OR THAT THE CLOUD SERVICES WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE, EQUIPMENT, OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY IN THE DOCUMENTATION), OR THAT THE CLOUD SERVICES WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA, OR THAT THE CLOUD SERVICES WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS. CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, TELEPHONIC AND ELECTRONIC COMMUNICATIONS, AND CLEARED4 IS NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE AS A RESULT.

## 8. INDEMNIFICATION

**(a) Indemnification.** CLEARED4 will indemnify, defend, and hold harmless Customer against any losses (including reasonable legal fees) arising from or in connection with (i) any IP Claim; (ii) disclosure of Customer's Confidential Information in violation of this Agreement; (iii) violation of any data privacy laws; (iv) CLEARED4's breach of its security obligations; (v) a material breach by CLEARED4 of its representations and warranties; or (vi) CLEARED4's gross negligence or willful misconduct. Customer agrees to indemnify, defend, and hold CLEARED4 and its Affiliates, Suppliers, and licensors harmless against any unaffiliated third-party claim or legal action arising from or in connection with: (I) Customer's breach of Section 3 (Customer Data); (II) Customer's use of the Cloud Services in violation of any local, state, federal, or foreign law or regulation applicable to Customer's use of the Cloud Service; or (III) CLEARED4's collection or use of any Customer Data provided by Customer or a User.

**(b) Possible Infringement.** If CLEARED4, in its sole discretion, reasonably determines that the Cloud Service, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party Intellectual Property Right, CLEARED4 will, as Customer's sole and exclusive remedy (but without limitation of CLEARED4's indemnification obligations under Section 8(a)), and at CLEARED4's sole discretion, either: (i) obtain the right, at a reasonable cost, for Customer to continue using the Cloud Service, or relevant portion thereof; (ii) modify



the Cloud Service while retaining substantively equivalent functionality; (iii) provide a non-infringing, functionally equivalent replacement; or (iv) terminate the Cloud Service in whole or in part and give Customer a refund for any unused, pre-paid fees for the infringing Cloud Service covering the remainder of the Term, after Termination.

**(d) Exceptions.** CLEARED4 has no liability for an IP Claim to the extent the IP Claim is based on or arises from: (i) the modification of the Cloud Services by Customer; (ii) the combination of the Cloud Services, or any portion thereof, with any other third-party software, hardware, service, technology, content or material not provided by CLEARED4 if infringement would not occur without the combination, unless contemplated by this Agreement or the Documentation expressly authorizes a combination with that other third-party software, hardware, services, technology, content, or material; (iii) Customer's use of the Cloud Services not under, or inconsistent with the terms of, the Documentation or this Agreement; or (iv) modification of the Cloud Services or CLEARED4's compliance with Customer's specifications or directions, including incorporating any software or other materials, functionality modifications, or processes provided by or requested by Customer if the infringement would not have occurred without Customer's specifications or directions.

**(d) Procedure.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under Section 8(a) to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have the exclusive right to control and direct the investigation, defense (including appeals), negotiations, and settlement (if applicable) of the indemnified portion of the claim, except that: (i) it may not admit fault on behalf of the other party without written consent; (ii) any settlement requiring the party seeking indemnification to admit liability, pay money, or take or do not take any action materially detrimental to its overall business and reputation (except regarding use or non-use of the Cloud Service) requires prior written consent, not to be unreasonably withheld or delayed; and (iii) the other party may join in the defense with its own counsel at its own expense. The indemnifying party will: (I) retain and pay attorneys, expert witnesses, and court costs as part of its defense obligation; (II) reimburse the other party for reasonable out-of-pocket expenses it incurs in helping; and (III) pay any resulting unfavorable final judgment (including any award of attorneys' fees and costs), penalties, sanctions, or settlement. SECTION 9 STATES THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR CLAIMS DESCRIBED IN THIS SECTION 8.

## 9. LIMITATION OF LIABILITY

**(a) General Limitation.** THE CUMULATIVE, AGGREGATE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES TO THE OTHER PARTY FOR ALL CLAIMS RELATED TO THE CLOUD SERVICES AND/OR THIS AGREEMENT (INCLUDING ALL ORDER SCHEDULES BUT EXCLUDING DATA PROTECTION LOSSES WHICH IS COVERED UNDER SECTION 9(b) BELOW) IS LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO CLEARED4 FOR THE CLOUD SERVICE HEREUNDER. THIS LIMITATION APPLIES TO ANY DAMAGE, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE (ACTIVE OR OTHERWISE), THE USE OR PERFORMANCE OF THE CLOUD SERVICES, OR OTHERWISE AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR NOT.

**(b) Data Protection Losses Limitation.** IN NO EVENT WILL CLEARED4 OR ITS AFFILIATES' CUMULATIVE AGGREGATE LIABILITY FOR DATA PROTECTION LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDER SCHEDULES AND THE DATA PROCESSING ADDENDUM) EXCEED 150% OF THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT. TO THE EXTENT THAT ANY BREACH OF SECTION 6 (CONFIDENTIALITY) OF THIS AGREEMENT RELATES TO THE PROCESSING OF ANY PERSONAL DATA, THEN THE CAP IN THIS SECTION 9(b) APPLIES.

**(c) Damages Waiver.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (OR ITS RESPECTIVE AFFILIATES OR THE SUPPLIERS) IS LIABLE FOR ANY LOSS, WHETHER DIRECT OR INDIRECT, OF PROFITS, REVENUE, BUSINESS, BUSINESS INFORMATION, OPPORTUNITY, USE, GOODWILL, DATA, OR FOR

INTERRUPTION OF BUSINESS, DELETION OR LOSS OF DATA, FAILURE TO STORE DATA (WITHOUT LIMITING ANY OBLIGATION ON CLEARED4 TO PROVIDE AGREED DISASTER RECOVERY OR BACKUP SERVICES), COSTS OF RECREATING DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE OR SERVICES, OR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF THE CLOUD SERVICES OR THIS AGREEMENT, HOWEVER CAUSED, AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY), AND EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN THAT THE LOSS OR DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**(d) EXCEPTIONS TO LIMITATIONS.** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S (OR THEIR RESPECTIVE AFFILIATES' OR THE SUPPLIERS') LIABILITY FOR: (I) THE TORT OF DECEIT; (II) DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE OR THAT OF ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS; (III) FRAUD OR FRAUDULENT MISREPRESENTATION; (IV) CUSTOMER'S VIOLATION OF CLEARED4'S INTELLECTUAL PROPERTY RIGHTS; (V) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (VI) CUSTOMER'S FAILURE TO FULFILL ITS PAYMENT OBLIGATIONS; (VII) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8; (VIII) DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, EXCEPT WHERE THAT BREACH RELATES TO THE PROCESSING OF ANY PERSONAL DATA IN WHICH CASE THE CAP IN SECTION 9(b) APPLIES; OR (IX) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW. FURTHER, NEITHER PARTY WILL BE LIABLE FOR ANY CLAIM BROUGHT BY THE OTHER PARTY MORE THAN 12 MONTHS AFTER THE OTHER PARTY BECAME AWARE OF THE CLAIM.

## 10. TERM & TERMINATION

**(a) Subscription Term.** Cloud Services are available for the period specified in the applicable Order Schedule and will, subject to anything to the contrary on the Order Schedule, begin on the Schedule's Effective Date. The Effective Date is when the Subscription Term begins, which is not dependent on a Customer launch date, go-live date, or the date Cloud Services are ready for a production environment. The fees specified in the applicable Order Schedule are fixed during the initial term. CLEARED4 may increase fees for any renewal term by providing written notice to Customer at least 60 calendar days before the commencement of any such renewal term. After the initial term, this Agreement automatically renews for successive 1-year periods unless either party gives the other written notice at least 60 days before the expiration of the then-current contract period that it does not desire that the Agreement continue. If Customer provides notice, the Agreement terminates at the end of the then-current term.

**(b) Early Termination or Suspension of Cloud Services.** Besides any other rights or remedies CLEARED4 may have under the Agreement or by law, CLEARED4 may, subject to Section 10(c), immediately suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part, with or without notice if: (i) CLEARED4 reasonably concludes there is an Emergency Regulatory Issue; (ii) CLEARED4 reasonably concludes there is an Emergency Security Issue; or (iii) Customer has breached any of its obligations to CLEARED4 under Section 2 and Customer fails to cure the breach within 30 days after CLEARED4 provides Customer notice of the breach. In addition, if Suppliers cease to make available to customers Third-Party Services or any portion or feature thereof, then CLEARED4 will use commercially reasonable efforts to replace the Third-Party Services with functionally equivalent services. If after a commercially reasonable period, CLEARED4 has not replaced the Third-Party Services with functionally equivalent services, then subject to Section 10(c), and upon CLEARED4's advance written notice to Customer, CLEARED4 may suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part. Where CLEARED4 terminates the Cloud Services (in whole or in part) due to an Emergency Regulatory Issue or, to the extent the Customer's acts or omissions have not caused the same (whether directly or indirectly), or an Emergency Security Issue, then CLEARED4 will refund to Customer any pre-paid but unused fees for the portion of the Cloud Service so terminated pro-rata. Any other periods of unavailability or suspension of the Cloud Services will conform to the Service Level Agreement.

**(c) Procedure for Early Termination or Suspension of Cloud Services.** CLEARED4's right to terminate,



suspend, withhold, or disable access to the Cloud Services under Section 10(b)(i) and (ii) is conditioned upon: (i) CLEARED4 exercising its right only to the minimum extent and minimum duration required to prevent or resolve the issue (if the issue is capable of resolution); and (ii) if CLEARED4 exercises its right without prior notice to Customer, CLEARED4 will provide Customer the reason for the Termination, suspension, withholding, or disabling of access when reasonably practicable.

**(d) Termination for Cause; Bankruptcy.** Except as otherwise set forth in Section 10(b)(iii), either party may terminate this Agreement and any Order Schedules for cause if: (i) the other party materially breaches this Agreement, including untimely payment, and does not cure the breach within 30 days after its receipt of written notice specifying the breach from the non-breaching party (consent to extend the cure period will not be unreasonably withheld, so long as the breaching party has started the cure during the 30-day notice period and pursues cure of the breach in good faith); or (ii) the other party: (I) becomes insolvent, (II) cannot pay, or fails to pay, its debts as they become due, (III) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law which results in an inability to perform its obligations under this Agreement, (IV) makes or seeks to make an assignment for the benefit of its creditors, or (V) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business. Upon Termination by Customer under this Section, CLEARED4 will refund Customer any pre-paid but unused fees pro-rata. Upon Termination by CLEARED4 under this Section, all fees owed by Customer under this Agreement as of the Termination date become immediately due.

**(e) Effect of Termination.** Upon Termination, all Order Schedules terminate at once except that the parties remain bound by the obligations within Section 10(f) below. Upon Termination: (i) Customer must cease accessing or using the Cloud Services at once; and (ii) all subscriptions, licenses, and rights granted under this Agreement on the Cloud Services terminate at once. Termination or any Cloud Service will not prevent either party from pursuing all available legal remedies. Any payment of obligations as of the termination of the Agreement or Cloud Service will remain in effect.

**(f) Transition Period.** Upon Termination, except for CLEARED4's Termination under Section 10(b), and upon Customer's advance written request, Customer will have the right, for 30 days from Termination ("*Transition Period*"), to continue to use the Cloud Services in the Order Schedule. All terms of this Agreement will remain in full effect during the Transition Period, and Customer will, before the Transition Period, pay CLEARED4 a prorated amount of the then-in-effect Total Annual Subscription fees for the Transition Period. If the transition requires professional services, the parties will enter into a separate professional services agreement and/or statement of work. CLEARED4 will charge Customer CLEARED4's then-current time and materials rates. After the expiration of the Transition Period, Customer's access to the Cloud Services will cease at once.

**(g) Return of Customer Data.** Customer must download Its Customer Data before or upon Termination. CLEARED4 will securely delete all Customer Data in its systems or otherwise in its possession or under its control and will certify the same to Customer 30 days after Termination. Notwithstanding the foregoing, CLEARED4 will not delete: (i) any non-production data; (ii) Aggregate Data; or (iii) any third-party data sourced by or on behalf of, CLEARED4.

**(h) Survival.** Sections about the parties' rights and obligations after Termination or that are necessary to enforce any right will survive Termination, including the Sections titled "Proprietary Rights," "Orders, Fees and Payment," "Effect of Termination," "Return of Customer Data," "Confidentiality," "Indemnification," "Limitation of Liability," and "General."

## 11. GENERAL

**(a) Good Faith Negotiation.** The parties will first attempt in good faith to resolve any dispute by negotiation and consultation between themselves, including without limitation not fewer than two negotiation sessions attended by the Customer and CLEARED4, with counsel for both invited to attend. This Section 11(a) is an express condition precedent to bringing a Claim.

**(b) Governing Law.** This Agreement and the rights and obligations of the parties regarding their relationship under this Agreement are governed by, must be construed, and enforced, without reference to its choice of law rules, under the internal laws of the State of Delaware. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are excluded from this Agreement.

**(c) Jurisdiction and Venue.** Subject to Section 11(d) below, any dispute, controversy, claim, question, or disagreement (“*Claim*”) related to this Agreement: (i) will, if Customer’s place of incorporation or principal place of business is in the United States, be brought exclusively in the state or federal courts in Dallas County, Texas and Customer submits to the personal jurisdiction of such state and federal courts; or (b) will, in all regions other than the United States, be finally resolved by binding arbitration before three arbitrators under the commercial arbitration rules of the International Chamber of Commerce in effect when the Claim is submitted to arbitration. The Arbitrators must have substantial and longstanding experience with the computer software business. The arbitrators will have no authority to make any ruling, finding, or award that does not conform to this Agreement. The judgment upon the award rendered by the arbitrators will be final and binding on all parties and may be entered as a judgment enforceable by any court of competent jurisdiction.

**(d) Equitable Relief.** Each party acknowledges that money damages may not be sufficient compensation for a breach of Sections 1 (Cloud Services), 2 (Customer Use of the Cloud Services), 3 (Customer Data), 5 (Proprietary Rights), or 6 (Confidentiality). Notwithstanding anything to the contrary in this Agreement, (i) any party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, against the other party in any court of competent jurisdiction regarding any equitable remedies sought with this Agreement; and (ii) CLEARED4, at its option, may pursue any remedies available at law and in equity in any court of competent jurisdiction regarding any claim against Customer for nonpayment under this Agreement.

**(e) Attorneys’ Fees and Costs.** The prevailing party, in any proceeding to enforce this Agreement, including any efforts to collect amounts due under this Agreement, may recover from the other party its costs and attorneys’ and experts’ fees in addition to its damages.

**(f) Notices.** Notices must be in writing, in English, and signed by a party’s authorized representative. Notices may be sent by email, except for notices of breach or demands for indemnification, which must be sent by either certified mail or responsible courier to the address stated in the Order Schedule or other address as either party may indicate by at least 10 days prior written notice to the other party. Notices to CLEARED4 must be addressed to the Chief Executive Officer, with a copy to the Chief Legal Officer at CLEARED4, Inc., 17250 Dallas Parkway, Dallas, TX 75248, USA, with an email version sent to [legal@CLEARED4.org](mailto:legal@CLEARED4.org).

**(g) Entire Agreement.** This Agreement, including any Order Schedules, sets the entire understanding and Agreement between Customer and CLEARED4. It supersedes and extinguishes all previous agreements, negotiations, proposals, communications, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to the subject of this Agreement. If any conflict occurs or inconsistency between the documents that make up the Agreement, the documents will control and govern, to the extent to resolve the conflict or inconsistency, in the following order: the Order Schedule (including any amendments or supplements to the Order Schedule) and then these terms. Customer will not require CLEARED4 or its employees to sign, or otherwise enter into, any other agreements, addenda, or other documents not specifically referenced and incorporated in this Agreement nor require CLEARED4 or its employees to undergo any security or background screening not in this Agreement as a condition of CLEARED4 performing any Cloud Services under this Agreement.

**(h) Amendment; Waiver.** Any amendment, waiver, or other change of this Agreement or a Order Schedule must be in writing and signed by the party to be bound. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**(i) Severability.** If any provision is invalid or unenforceable, that provision will be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability. The remaining provisions

of this Agreement will remain in full force and effect.

**(j) Assignment; Successors and Assigns.** Customer may not assign any of its rights or obligations under this Agreement without CLEARED4’s prior written consent (not to be unreasonably withheld), except that Customer may assign this Agreement in its entirety, without the other party’s consent, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. Subject to the foregoing, this Agreement binds and inures to the benefit of the parties, their respective successors, and permitted assigns.

**(k) Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of obligations and Confidentiality obligations) due to causes beyond its reasonable control, including labor disputes, strikes, lockouts, riots, war, acts of terror, shortage or inability to obtain labor or materials, internet failure, communication line failure or power failures, acts of God, earthquake, fire or other action of the elements, accidents, quarantines, epidemics or pandemics, or governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of the Cloud Services). Neither party will be liable for any losses, injury, delay, or damages suffered or incurred by the other party due to the above causes.

**(l) Purchase Orders.** Any inconsistent or extra terms of Customer’s purchase order or similar document are excluded regardless of CLEARED4 accepting the purchase order or other Customer document for payment.

**(m) Independent Contractors.** The parties are independent contractors. CLEARED4 performs none of Customer’s regulatory obligations nor assumes any responsibility for Customer’s business or operations.

**(n) Third-Party Rights.** No third party is an intended or unintended third-party beneficiary of this Agreement.

**(o) Export.** Each party ensures that its actions regarding the Cloud Services follow the export control laws of the United States, United Kingdom, European Union, and any other applicable law. Customer will not, directly or indirectly, export or re-export, transfer or re-transfer, sell, supply, or allow access to or use of the Cloud Services to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end users under US, UK, European Union, or other applicable law (“*Prohibited Uses*”).

**(p) Interpretation.** If a dispute arises between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the parties’ intent as shown by this Agreement.

**(q) Counterparts.** This Agreement may be executed electronically in several counterparts, each of which is considered an original, and which together constitute the same instrument. The parties agree that a portable document format (pdf) of a signed counterpart is effective and has the same effect as an original. The parties’ consent to use electronic signatures and those signatures are valid.

## 12. DEFINITIONS

These terms used in this Agreement have these meanings:

The term		Means
12.1	Affiliate	about a party, any individual, partnership, corporation, company, or other entity that directly or indirectly controls, is controlled by, or is under common control with, that party (and about the Customer, which is not a competitor of CLEARED4).

The term		Means
12.2	Aggregate Data	anonymous data in aggregate form generated from, or based upon Customer’s use of the Cloud Services (including the amount of uptime for the service monthly and annually, analysis of which functions within the Cloud Services are more/less frequently used, security threats encountered and handled, and/or metrics such as number of Green Passes, Blue Passes, surveys completed, number of Monthly Active Users, number of negative COVID test results, number of positive COVID test results).
12.3	Cloud Service	the Subscription Content (including any Third-Party Services) provided as a SaaS or cloud service by subscription on the Platform as specified in an Order Schedule.
12.4	Control	about a party, having the power, directly or indirectly, to direct or cause the direction of the management and policies of that party, whether through the ownership of voting securities, by contract, or otherwise, whether alone or under agreement with other holders of voting rights.
12.5	Customer	the entity or entities referenced as “Customer” on the applicable Order Schedule.
12.6	Customer Data	Customer’s Confidential Information and the electronic data or information (including any User data) submitted, provided, uploaded, transmitted, imported, displayed, or otherwise provided by Customer through the Cloud Services. “Confidential Information” is defined in Section 6.
12.7	Data Protection Loss	any loss, expense, compensation, fine, penalty, liability, damage, or cost relating to CLEARED4’s, CLEARED4’s Affiliates, or Suppliers’ breach of their respective obligations regarding the processing of Customer Data under the Agreement.
12.8	Documentation	CLEARED4’s standard instructions, published protocols, standards, technical specifications, and functional specifications or use cases.
12.9	Emergency Regulatory Issue	any current or future government regulation, requirement or obligation or court rule, verdict, decision, or order that: (i) subjects CLEARED4 or its Suppliers to any regulation, requirement, or obligation not generally applicable to businesses operating there; (ii) presents a hardship for CLEARED4 or its Suppliers to continue operating the Cloud Services without modification or necessary governmental formalities; or (iii) causes CLEARED4 or its Suppliers to reasonably believe the Cloud Services and/or this Agreement may conflict with the government regulation, requirement or obligation or court rule, verdict, decision, or order.

The term		Means
12.10	Emergency Security Issue	either: (i) Customer’s use of the Cloud Services disrupts (a) the Cloud Services, (b) other customers’ use of the Cloud Services, or (c) the network or servers used to provide the Cloud Services; or (ii) unauthorized third-party access to the Cloud Services.
12.11	Good Industry Practice	standards, practices, methods, and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as CLEARED4 under the same or similar circumstances.
12.12	Instance	a single configuration of the Platform’s administrative settings. Multiple identically configured CLEARED4 Instances running with separate configurations are considered separate instances.
12.13	IP Rights	any registered and unregistered intellectual property rights granted, applied for, or otherwise, now or hereafter, in existence under or related to any patent, copyright, trademark, trade secret, tradename, moral rights, database protection, or other intellectual property laws, and all similar or equivalent rights or forms of protection, in any part of the world, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Cloud Services are used or offered.
12.14	IP Claim	a claim by an unaffiliated third party against Customer that the Cloud Services, when used within the scope of the terms, infringes a third-party copyright or trademark, infringes a patent, or misappropriates a third-party trade secret.
12.15	Measurement Date	the first day of the month, measuring the average Users from the previous month.
12.16	Monthly Active Users	the average Users marked with status as “Active” via a Customer administrator in the 30 days ending on the Measurement Date. Active Users can access their pass, receive messages, upload medical information, and generally use the CLEARED4 mobile web experience to engage with the Customer’s health & safety workflows. This activity can be done via the User or an API that updates the User’s record or data. The system can be configured to automatically move Users into a “Deactivated” status if they have not completed any activity on the Platform in a set period.
12.17	Non-active Users	registered Users in the CLEARED4 cloud platform who are not Monthly Active Users. This includes suspended, terminated, and deactivated Users. Deleted users are not Non-active Users or Monthly Active Users.

The term		Means
12.18	Order Schedule	CLEARED4's ordering document specifying the Cloud Service(s) to be provided, and that is entered into between Customer (or Customer's Affiliate) and CLEARED4 (or any of CLEARED4's Affiliates) and which is issued under or incorporates this Agreement by reference.
12.19	Platform	CLEARED4's software-as-a-service platform covering Covid-19 health surveys, access control, contact tracing, Covid-19 testing, and vaccination verification.
12.20	Service Level Agreement or SLA	the service level commitments in CLEARED4's Services Level Agreement applicable to Customer.
12.21	Services Support Level	the support plan in the applicable SLA.
12.22	Subscription Content	all content received by or provided to a Customer and User from or by CLEARED4 with the Cloud Services.
12.23	Subscription Metrics	subscription metrics and values specified in the applicable Order Schedule.
12.24	Subscription Term	the time during which CLEARED4 will provide the Cloud Services, as specified in the applicable Order Schedule.
12.25	Suppliers	third parties who provide Third-Party Services.
12.26	Termination	termination of this Agreement.
12.27	Third-Party Services	portions of the Cloud Services provided by Suppliers under agreements between CLEARED4 and the Suppliers.
12.28	User	an individual who, under this Agreement, may use the Cloud Services and who has been provided user identifications and passwords by Customer.