

Memorandum

To: Sierra County Board of Supervisors
From: Lea Salas, Administrative Director
Reference: Agenda Item
Date of memo: July 14, 2020
Date of Board Meeting: July 21, 2020

Requested Action: Agreement between Relias LLC and Sierra County Mental Health for annual subscription of employee training services

Mandated by:

Funding

Budgeted? Yes No

Revenue	\$9,432.43	MHSA WET
Expenses	\$9,432.43	MHSA WET
Difference	0	

Background Information: This is a renewal agreement. Relias has now absorbed Essential Learning, which in the past Essential Learning was a stand alone that was offered through Relias. This subscription provides valuable training to employees funded through Sierra County's Mental Health Services Act (MHSA) Workforce, Education and Training (WET) component. The MHSA WET Plan has been approved through our annual update.

Potential Issues to consider: None

Alternatives or Impacts of disapproval: Sierra County would not have this valuable service and would not meet the outcomes of the MHSA WET plan.



Proposal to Sierra County Mental Health Services

Prepared by:

Tarik Ghiradella
Relias LLC
1010 Sync Street, Suite 100
Morrisville, NC 27560

Submitted:

4/1/2020



Renewal Document

Sierra County Mental Health Services

704 Mill Street
 P.O. Box 265
 Loyalton, CA 96118

The term of this agreement is: 12 Months Method of Payment: ACH

Billing Frequency: Annually

Renewal Subscription Start Date is: 7/1/2020

Subscription Services Name	Subscription Metric	Subscription Quantity
Core Open 1.0	Per Employee	35
Developmental Disabilities Open 1.0	Per Employee	35
Integrated Care	Per Employee	35
RLMS Portal	Per User	35
RLMS Portal	Per User	1
Veterans/Active Duty	Per Employee	35
Legacy Custom Library	Per Employee	35
Legacy Custom Library	Per Employee	1
CAS	Per Employee	1
Community Access Site	Maximum Catchment Area	1

Year 1 Annual Subscription Total

USD 9,432.43

PRICING EXPIRES IF NOT EXECUTED BY 6/5/2020

This Ordering Document, together with the Master Services Agreement and the Schedules linked below, form the entire Agreement between the parties.

Prices quoted do not include taxes. Please consult with the tax advisors within your state if you have questions about local tax requirements. If required by local law, Relias must collect taxes and pay them on your behalf.

Contract Document	Link to Contract Document
MSA	https://www.relias.com/msa-2017

CONFIDENTIAL



CUSTOMER SIGNATURE PAGE

This Agreement (as hereinafter defined) is entered into between Relias LLC ("Company") and the customer identified in the signature block below ("Customer"), effective as of 7/1/2020 ("Effective Date"). This Agreement establishes the general terms and conditions to which the parties have agreed in order to facilitate the provision of certain services as more fully described herein and in each Ordering Document.

By signing below, the Customer acknowledges that they have read and understood the Agreement and agree to be bound by all the terms and conditions contained therein.

Sierra County Mental Health Services

Relias LLC

Signature: _____
Print Name: _____
Job Title: _____
Date: _____

Signature: _____
Print Name: _____
Job Title: _____
Date: _____

Address for Notices:

Sierra County Mental Health Services
704 Mill Street
P.O. Box 265
Loyalton, CA96118

Address for Notices:

Relias LLC
1010 Sync Street, Suite 100
Morrisville, NC 27560

Liaison Contact :

Billing Contact :

Name: _____
Job Title: _____
Email: _____
Phone: _____
Address: _____

Name: _____
Job Title: _____
Email: _____
Phone: _____
Address: _____

RELIAS

MASTER SERVICES AGREEMENT

1. DEFINITIONS

- 1.1 **Affiliate** means any company that (i) controls, (ii) is controlled by or (iii) is under common control with either Party or its parent corporation. A company shall be deemed to control a company if it has the power to direct or cause the direction of the management or policies of such company, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2 **Agreement** or **MSA** means this Master Services Agreement, Ordering Document(s), Schedules (attached hereto and/or detailed and linked within the Ordering Document(s)), and such other documents, attachments and exhibits that the parties' authorized representatives mutually agree to in writing.
- 1.3 **Client** means the entity set forth on the Ordering Document(s) and receiving Subscription Services under the Agreement.
- 1.4 **Client Data** means all required electronic data or information submitted by Client to Company for the provision of Subscription Services and/or Professional Services.
- 1.5 **Company** means the entity set forth on the Ordering Document(s) and providing Subscription Services under the Agreement.
- 1.6 **Content** means materials provided or posted by Company in connection with the Subscription Services, including but not limited to training courses, tests, assessments, surveys, text, images, graphics, audio and sound recordings, and videos and modifications, enhancements, or new versions thereof.
- 1.7 **Effective Date** means the date defined within the Ordering Document(s), or if no such date is defined, the date of the final required signature.
- 1.8 **Intellectual Property** means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, User interfaces and screen designs, general purpose consulting and software tools, utilities and routines, logic, coherence and methods of operation of systems, training methodology and materials, which Company has created, acquired or otherwise has rights in, and may, in connection with the performance of Subscription Services or Professional Services hereunder, create, employ, provide, modify, acquire or otherwise obtain rights in.
- 1.9 **Ordering Document** means the document(s), regardless of actual name, executed by the parties from time to time, which incorporates by reference the terms of this Agreement and describes order-specific information such as description of Subscription Services and/or Professional Services ordered, Subscription Metrics, fees, and other business terms. **Statement of Work (SOW)** shall be synonymous with Ordering Document.
- 1.10 **Professional Services** means consulting, implementation, training, creation of custom content, or other professional services to be performed by the Company described in the attached Ordering Document or Schedule to this Agreement mutually agreed to by the parties in writing.
- 1.11 **Schedule** means a product-specific set of terms and conditions that serves as an addendum to this Agreement and will either come attached hereto and/or be referenced within the Ordering Document(s) with a hyperlink provided.
- 1.12 **Site** means the web interface at a URL designated by Company.
- 1.13 **Subscription Metrics** means each of the per-unit metrics specified in the Ordering Documents to describe the scope of Client's right to use each of the Subscription Services, such as the maximum number of Users, restricted Users, Content type, and the like.
- 1.14 **Subscription Services** means services described in the relevant schedule.
- 1.15 **Subscription Start Date** means the date specified on the Ordering Document(s).
- 1.16 **User(s)** means those persons who (a) have been authorized by Client to access and use the Subscription Services and Professional Services for data analytics, testing and skill assessments, and/or training and education purposes; (b) have complied with any registration requirements reasonably requested by Company, (c) have been issued a personal and unique User ID and Password; and (c) have acknowledged, where required, the terms and conditions applicable to the particular Subscription Services. Only current employees and independent contractors of Client are eligible to be Users.

2. USE RIGHTS

- 2.1 **Grant of Use.** Subject to the terms of the Agreement, Company grants to Client the right to access and use the Subscription Services described in the Ordering Document(s), solely for its internal business purposes and solely in connection with the personal training, analysis, or assessment of its Users or business.
- 2.2 **Authorized Users.** Client shall provide Company with the required demographic data for all Users in the specified electronic format provided by Company to complete the initial registration process. Client agrees not to activate and deactivate Users repeatedly as a method of keeping the number of Users within range of the Subscription Metrics stated in the Ordering Document(s).
- 2.3 **Acceptable Use.** Client and all Users shall use the Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees and shall ensure that Users agree not to post or upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains computer viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law. Client further agrees and shall ensure that Users agree not to interfere or disrupt networks connected to the Subscription Services, not to interfere with another entity's use of similar services and to comply with all regulations, policies and procedures of networks connected to the Subscription Services. Company may remove any violating content posted on the Subscription Services or transmitted through the Subscription Services without notice. Company may suspend or terminate any User's access to the Subscription Services in the event that Company reasonably determines that such User has violated the terms and conditions of this Agreement.
- 2.4 **Restrictions.** Client shall not itself, or through any affiliate, employee, contractor, agent or other third party (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Subscription Services, the Site or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Subscription Services, in whole or in part; (iii) allow access to, provide, divulge or make available the Site or the Subscription Services to anyone other than an authorized User; (iv) create derivative works based upon the Subscription Services; or modify, adapt, translate or otherwise make any changes to the Subscription Services or any part thereof; (v) use the Subscription Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without Company's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Subscription Services; or (vii) remove from any Subscription Services or other materials owned by Company identification, patent, copyright, trademark or other notices. Proprietary notices, including without limitation patents, copyrights and trademarks notices, as well as disclaimer notices, must be reproduced on any such authorized copies.
- 2.5 **Enforcement.** Client shall (i) ensure that all Users of Subscription Services comply with the terms and conditions of this Agreement, (ii) promptly notify Company of any actual or suspected violation thereof and (iii) cooperate with Company with respect to investigation and enforcement of the Agreement. Client shall be solely responsible

for all acts and omissions of its Users in connection with their access and use of the Subscription Services.

2.6 Environment. The Subscription Services will be hosted on a server that is maintained by Company or its designated third-party subcontractor. User access to the Subscription Services is provided through the Site. Client is solely responsible for obtaining and maintaining, at its own expense, all equipment needed to access the Site, including but not limited to Internet access and telecommunications network with adequate bandwidth.

2.7 Availability. Company shall use commercially reasonable efforts to make the Subscription Services available 24x7, except for scheduled downtime events where notice is provided to Client, emergency downtime events, or Internet service provider failures or delays. Company will use commercially reasonable efforts to perform scheduled downtime events outside of normal business hours. Client acknowledges that the Subscription Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications; Company is not responsible for any delays, delivery failures, or other damage resulting from such problems.

2.8 Content. Access to Content, if applicable, shall be provided by Company through the Subscription Services. Client is responsible for selecting which Content will be available to authorized Users. Company continuously reviews and updates Content based on an ongoing-needs analysis. Company reserves the right to add, revise, or withdraw from its Content any item or part of an item in its sole discretion.

2.9 Site Administrator. Client shall designate a primary contact who shall function as the liaison to Company and who shall be trained by Company so that the contact shall be able to train and support Users on the use of the Subscription Services (**Site Administrator**). The Site Administrator shall be the primary interface with Company on all issues related to the Subscription Services.

2.10 Passwords. Client is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized User. Client is entirely responsible for any and all activities that occur under its account. Client shall immediately notify Company of any unauthorized use or any other breach of security known to Client. Company shall have no liability for any loss or damage arising from Client's failure to comply with these requirements.

2.11 Client Data Responsibilities. Client shall be solely responsible for the accuracy, quality, integrity and legality of data uploaded in the Subscription Services by Client. Client shall own or shall obtain all proprietary rights necessary, including copyrights, patents, and trade secrets, in and to any content or data it provides, develops, or uploads for use in the Subscription Services. Client authorizes Company and the data center to serve as the host and repository for the data Client enters into the Subscription Services.

2.12 Changes. Company reserves the right to add and/or substitute functionally equivalent products in the event of product unavailability, end-of-life, or changes to software requirements. Company regularly updates the Subscription Services, meaning that such Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require Client to schedule and implement the changes.

3. PROFESSIONAL SERVICES

3.1 Cooperation. Client shall provide Company with good-faith cooperation and access to such information, facilities, personnel and equipment as Company may reasonably require in order to provide the Professional Services. Client acknowledges that Company's performance is dependent upon the timely and effective completion of Client's responsibilities hereunder and Client's timely decisions and approvals in connection with the Professional Services. Company shall be entitled to rely on all such decisions and approvals.

4. FINANCIAL TERMS

4.1 Fees, Payment Terms, and Taxes. Fees and payment terms are specified in the applicable Ordering Document. All payments made hereunder shall be in US Dollars. Company may, after the first twelve (12) months of the initial term, and not more than once in a twelve (12) month period, modify the fees for Subscription Services upon sixty (60) days' written notice. Payment of all fees is due thirty (30) days after the invoice date. Interest accrues on past-due balances at 1% per month. Failure to make timely payments shall be a material breach of the Agreement and Company will be entitled (i) to suspend any or all Subscription Services or Professional Services hereunder upon thirty (30) days' written notice to Client and/or (ii) to modify the payment terms, and to request full payment before any additional performance is rendered by Company. Unless expressly provided otherwise, prices do not include taxes. Client agrees to pay any federal, state or local sales, use, personal property, excise taxes or other taxes arising out of this Agreement.

4.2 Subscription Metrics. Client understands and agrees that (i) all fees are based on the Subscription Metrics purchased and that (ii) unless expressly stated otherwise in the Ordering Document, the quantity(ies) of Subscription Metrics provided in the initial Ordering Document or most recent amendment, if applicable, represent minimum amounts that Client has committed to for the Subscription Service Term (as defined in Section 9.2). Additional Subscription Metrics must be purchased in the event actual use exceeds the licensed quantity, at Company's then-current fees. Additional Subscription Metrics, if any, are prorated for the remainder of the then-current Subscription Services Term. There shall be no fee adjustments or refunds for any decreases in usage during Subscription Services Term.

4.3 Professional Services. Additional Professional Services may be provided on a time and materials (**T&M**) basis at the Company T&M rates in effect at the time the Professional Services are performed or on a fixed fee basis, as indicated in an Ordering Document. On a T&M engagement, if an estimated total amount is stated in the Ordering Document, that amount is solely a good-faith estimate for Client's budgeting and Company's resource scheduling purposes and not a guarantee that the work will be completed for that amount. On a fixed fee engagement, Professional Services purchased must be used within, and prices quoted are valid for, the time period specified in the Ordering Document. Hours that are not used or have expired are non-refundable.

4.4 No Contingencies. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Company regarding future functionality or features.

5. CONFIDENTIALITY

5.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. **Confidential Information** means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary" or which should be reasonably understood by each party to be confidential or proprietary, including, but not limited to, the terms and conditions (but not the existence) of this Agreement, all trade secrets, Intellectual Property as well as results of testing and benchmarking of the Subscription Services. Each party will protect the other party's Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Company may use, for purposes outside of this Agreement, anonymous, de-identified data; however, Company agrees not to use or disclose this information to the extent prohibited by applicable law. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was lawfully in the receiving party's possession before receipt from the disclosing party without a duty of confidentiality; (iii) is lawfully obtained from a third-party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

5.2 Compelled Disclosure. A party (**Disclosing Party**) may disclose Confidential Information of the other party if it is compelled by law to do so, provided the Disclosing Party gives the other party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

6. OWNERSHIP

6.1 All rights not expressly granted in this Agreement are reserved by Company and its licensors.

6.2 **Subscription Services.** Company and its licensors shall retain sole and exclusive ownership of, and all rights, title, and interest in, Subscription Services and the Site, including without limitation (a) Intellectual Property embodied or associated therein, and (b) all derivative works and copies thereof.

6.3 **Professional Services.** Company shall retain all rights, title and interest in and to any and all Intellectual Property used or in any manner employed by Company in the provision of Professional Services.

7. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY

7.1 **General.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

7.2 **Professional Services.** Company warrants that the Professional Services will be performed in a workmanlike manner. As Client's exclusive remedy for any claim under this warranty, Client shall notify Company in writing of its claim within thirty (30) days of Company's completion of the applicable services and, provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall re-perform the applicable service. Company's entire liability and Client's exclusive remedy for any breach of the warranty set forth in this section shall be the re-performance of the applicable service.

7.3 EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7, ALL SUBSCRIPTION SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED ON AN 'AS IS' AND 'AS AVAILABLE' BASIS. COMPANY, ITS LICENSORS, DATA CENTER AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, DATABASE, SUBSCRIPTION SERVICES, DELIVERABLES OR PROFESSIONAL SERVICES ARE ERROR-FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY COMPANY, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SUBSCRIPTION SERVICES ARE NOT DESIGNED OR INTENDED TO MEET ALL OF ITS OR ITS USERS' TRAINING, ANALYTICS, OR ASSESSMENT NEEDS OR REQUIREMENTS, INCLUDING THOSE REQUIRED UNDER APPLICABLE LAWS. CLIENT ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES PROVIDED HEREUNDER TO ACHIEVE ITS INTENDED RESULTS.

CLIENT ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR ITS USERS' COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. CLIENT FURTHER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR RESULTS OBTAINED FROM THE USE OF THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. CLIENT ACKNOWLEDGES AND AGREES THAT THE SUBSCRIPTION SERVICES ARE NOT INTENDED TO PROVIDE MEDICAL ADVICE, OPINIONS, DIAGNOSIS, OR A SUGGESTED COURSE OF TREATMENT. CLIENT FURTHER AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY DIAGNOSTIC, CLINICAL OR MEDICAL INFORMATION RESIDES SOLELY WITH THE HEALTHCARE PROVIDER. COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH CLIENT'S OR ANY OF USERS' USE OF THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, IN COMBINATION WITH ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE OR WEB SITES THAT ARE ACCESSED VIA LINKS FROM WITHIN THE SUBSCRIPTION SERVICES.

TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES AWARDED UNDER THIS AGREEMENT) TO CLIENT AND USERS FOR ANY CLAIM BY CLIENT OR ANY THIRD PARTIES UNDER THIS AGREEMENT, WILL BE LIMITED TO THE FEES PAID FOR SUCH ITEMS THAT ARE THE SUBJECT MATTER OF THE CLAIM FOR THE PRIOR TWELVE (12) MONTHS. IN NO EVENT WILL COMPANY, ITS LICENSORS AND SUPPLIERS BE LIABLE TO CLIENT OR USERS OR OTHER THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF ONE YEAR OR THE PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED.

THIS SECTION 7 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

8. INDEMNIFICATION

8.1 **Client Indemnification.** Client shall indemnify and hold Company, its affiliates, suppliers, data center, employees and officers (**Company Indemnified Parties**) harmless from and against all liability, claims, damages, fines, losses, expenses (including reasonable attorney's fees and court costs, and the cost of enforcing this indemnity) suffered or incurred by Company or any Company Indemnified Party arising out of, or in connection with (a) any material breach by Client or any User of any of the terms of this Agreement; or (b) any use or reliance by Client or any User of any Subscription Services, including all third-party claims, causes of action, suits, and legal proceedings asserted against Company or a Company Indemnified Party arising out of, or relating to, the use of or reliance by Client or any User on any Subscription Services.

8.2 **Company Indemnification.** Company shall indemnify and hold harmless Client and its principals, officers, directors, agents, and employees (**Client Indemnified Parties**), and at Company's option, either defend Client Indemnified Parties or pay their attorney's fees and court costs, from any loss, cost, damage, or expense incurred by Client that is finally awarded by a court of law to any third party as a result of a claim alleging that the Subscription Services infringe or misappropriate a U.S. patent, U.S. copyright, U.S. trademark or U.S. trade secret of a third party, solely provided such alleged infringement or misappropriation does not arise from: (i) a modification of the Subscription Services as delivered to Client, (ii) the combination of the Subscription Services with any other process, hardware, software, data, or functionality, (iii) any Client-originating data or content communicated using such Subscription Services; or, (iv) any use of the Subscription Services by Client in a manner inconsistent with the documentation or instructions provided by Company or otherwise in breach of this Agreement.

8.3 **Indemnification Procedure.** The indemnifications made hereunder are solely provided upon the following conditions: (i) the indemnifying party controls any settlement or any suit or claim indemnified hereunder (ii) the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed, is obtained prior to any settlement by the indemnifying party that affects the indemnified party's rights and obligations; (iii) the indemnifying party is promptly informed of any third-party claim indemnified hereunder; and, (iv) in the case of Client, Client ceases any alleged infringing activity upon actual or constructive notice of any claim or allegation of infringement.

9. TERM AND TERMINATION

9.1 **Agreement Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the expiration or termination of all Ordering Documents and attachments, unless otherwise terminated earlier as provided hereunder.

9.2 **Subscription Services Term.** The initial term of Subscription Services commences on the Subscription Start Date specified in, and continues for the term set forth in, the Ordering Documents. Following the end of the initial term, Subscription Services shall automatically renew for the same length as the initial term unless either party

gives written notice at least sixty (60) days prior to the end of the initial term, or any renewal term, of its intention to terminate any of the Subscription Services. The pricing for the first twelve (12) months of any renewal term shall be provided by Company to Client in writing no less than sixty (60) days prior to the end of the initial term or any renewal term. The initial term and renewal term(s) are collectively referred to as the **Subscription Services Term**.

9.3 Termination. Either party may terminate the Agreement including all Ordering Documents executed thereunder immediately upon written notice (i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach; or (ii) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.

9.4 Partial Termination. Where a party has rights to terminate, the non-breaching party may at its discretion either terminate the entire Agreement or the applicable Ordering Documents. Ordering Documents that are not terminated shall continue in full force and effect under the terms of this Agreement.

9.5 Effect of Termination. Following termination of this Agreement (for whatever reason provided for under the Agreement), Client shall certify that Client has returned or destroyed all copies of the Subscription Services, Confidential Information and Intellectual Property of Company and all materials or documents relating to the Subscription Services in any format and residing on any media. Client acknowledges that its rights to use the same are relinquished. Company has no obligation to retain Client Data after three months following the expiration or termination of Subscription Services; however, Company shall provide Client Data to Client, upon reasonable request and during Company's normal business hours, for no additional fee during these three months, after which additional fees may be incurred.

Termination for any reason shall not excuse Client's obligation to pay in full any and all amounts due or that become due through such termination or that arise under Section 10.19, nor shall termination result in a refund of fees paid, except as expressly provided otherwise in this Agreement.

Upon termination for any reason of a Professional Services engagement, all work product, including all drafts and works in progress of deliverables shall be delivered to Client. Upon its receipt of a notice of termination, Company shall cease and shall cause any agent or subcontractor to cease all work under the applicable Ordering Documents and minimize any additional costs or reimbursable expenses unless otherwise directed in writing by Client. Except as may be expressly set forth in the applicable Ordering Documents, Client shall pay Company's fees for services performed to the date of termination on a T&M basis together with any expenses reasonably incurred in connection therewith.

10. GENERAL PROVISIONS

10.1 Suspension. Company will be entitled to suspend any or all Subscription Services and Professional Services (i) immediately in the event Client is in breach of Section 2.3, above, or (ii) upon thirty (30) days' written notice to Client in the event Client is otherwise in breach of this Agreement. Company may impose an additional charge to reinstate service following such suspension.

10.2 Force Majeure. Neither party shall incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform any part of this Agreement (except for payment obligations) to the extent caused, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this subsection. Such events may include, but are not limited to acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

10.3 Subcontractors. Company may subcontract or delegate Subscription and/or Professional Services to any third party without Client's prior written consent, provided that Company shall remain responsible to Client for any services for which it subcontracts or delegates.

10.4 Assignment. Company may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Client may not assign or transfer this Agreement without Company's prior written consent.

10.5 Non-solicitation. During the term of this Agreement and for a period of one (1) year following its termination, neither party will solicit for employment directly or through other parties, without the other party's written permission, any individual employed by the other party, provided however that the solicitation or hiring of individuals responding to general public marketing and recruiting advertisements and events shall not be a violation of this provision; only active, targeted solicitation is prohibited.

10.6 Compliance. Company reserves the right to utilize Client Data to verify compliance with the terms of this Agreement. Company may monitor the usage, performance and operation of the Subscription Services using electronic, remote and other means and without notice to Client.

10.7 Notices. Any notice required or permitted to be sent under this Agreement (except for invoices and notices related to payment of fees and price increases) shall be delivered by hand, by overnight courier, or by registered mail, return receipt requested, to the address of the parties first set forth in the Agreement Signature Page or to such other address of the parties designated in writing in accordance with this subsection.

10.8 Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

10.9 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

10.10 No Waiver. No waiver or failure by either party to exercise any option, right or privilege under the terms of this Agreement on any occasion or occasions will be construed to be a waiver of the same on any other occasion or of any other option, right or privilege. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of the Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such party's rights under the Agreement and shall not in any way affect the validity of the whole or any part of the Agreement or prejudice such party's right to take subsequent action.

10.11 Entire Agreement. This Agreement, including Ordering Documents and other attachments incorporated by reference, constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, proposals, conditions, representations, warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to the Agreement will be binding unless in writing signed by an authorized representative of each party. All pre-printed or standard terms of any of Client's purchase order or other business processing document shall have no effect.

10.12 No Third-Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party.

10.13 Governing Law and Venue. The Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles of conflict of laws. Any dispute arising from or relating to the Agreement shall be litigated in the state or federal courts located in Wake County, North Carolina, to whose exclusive jurisdiction the parties hereby consent.

10.14 Headings and Drafting. The headings in the Agreement shall not be used to construe or interpret the Agreement. The Agreement shall not be construed in favor of

or against a party based on the author of the document.

10.15 Counterparts. The Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and the parties agree that facsimile, scanned copies of signatures, and electronic signatures shall be as effective and binding as original signatures.

10.16 Notice of U.S. Government Restricted Rights. If the Client hereunder is the U.S. Government, or if the Subscription Services are acquired hereunder on behalf of the U.S. Government with U.S. Government federal funding, notice is hereby given that the Subscription Services are commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Software delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Software by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987)."

10.17 OFAC Compliance. Client warrants that it is currently in compliance with, and shall at all times during the term of this Agreement remain in compliance with, and cause its Users to comply with, the regulations of the OFAC of the Department of the Treasury and any statute, executive order, or other governmental action relating thereto.

10.18 Conflict of Documents. If there is a conflict between the provisions of this MSA and any other documents concerning the Subscription Services performed under this MSA, the order of precedence for purposes of resolution shall be: (i) this MSA, (ii) any applicable Schedule identified in the Ordering Document(s), (iii) the Ordering Document(s), (iv) any other document executed by the parties.

10.19 Survival. The following provisions will survive any termination or expiration of the Agreement or Ordering Documents: Sections 4, 5, 6, 7, 8, 9, 10, and all corresponding Sections in the attached Schedule(s).

ADDITIONAL TERMS AND CONDITIONS:

[Schedule A – Learning](#)

[Schedule B – Assessments](#)

[Schedule C – Analytics](#)

[END DOCUMENT]

1. DEFINITIONS

1.1 Administrative Site means the main Site that is designated for administrative functions related to a group of Sub-Portals in an Enterprise System. The Administrative Site will have administrative capabilities over every Sub-Portal in the Enterprise System, including the ability to run reports, assign Content, and designate other Administrators.

1.2 Client's Enterprise System means a specific configuration of the Services that provides for an Administrative Site linked to additional Sub-Portals.

1.3 Client Organization means an organization that has a corporate or contractual relationship with or is a member of Client. Client may specify Client Organizations that will receive Subscription Services through a Sub-Portal to this Agreement in an attached Exhibit. The addition of Sub-Portals shall require the execution of an amendment to this Agreement.

1.4 Documentation means the LMS User instructions, release notes, and online help files in the form generally made available by Company to its Clients, as updated from time to time by Company.

1.5 LMS means Company's proprietary learning management system and other software access provided in connection with Subscription Services, including the Documentation, modifications, enhancements and new versions thereof.

1.6 Site Administrator means the Administrator in the Administrative Site. The level of access for the Site Administrator will be determined during implementation.

1.7 Subscription Services means access to the LMS and Content through the Site for Client's internal training purposes.

1.8 Sub-Portals means an individual Site that is included in an Enterprise System that has a direct relationship with other sub-portals and the Administrative Site.

1.9 Sub-Portal Administrator means a User who has been authorized by Client or Client's Site Administrator to have access to all administrative functionality within the individual Sub-Portal.

2. CONFIDENTIALITY

2.1 No Protected Health Information. Client will not provide Company with access to any Protected Health Information (as defined in 45 CFR § 160.103, **PHI**). Company reserves the right not to accept access to Client Data that contains PHI. Client represents and warrants that: (i) Client has the right and authority necessary to provide the Client Data to Company as provided hereunder, (ii) that Client will disclose to Company only such Client Data as Client is authorized to disclose to Company, and (iii) such disclosure will be provided at all times in compliance with all applicable law, including, to the extent applicable, with the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191 and regulations promulgated thereunder by the U.S. Department of Health and Human Services, each as amended from time to time (**HIPAA**). The parties acknowledge that, under the terms of this Agreement, Company does not collect or possess Protected Health Information, as defined in 45 C.F.R. § 160.103, and that Company shall not be required to execute a Business Associate Agreement or similar agreement. Client warrants and represents that it shall not upload in any of the Subscription Services or otherwise provide Company or its suppliers access to any such Protected Health Information.

3. OWNERSHIP

3.1 Modified Content; Client Content. Certain Users designated by Client may have authority to modify portions of the Content to meet certain of Client's needs or requirements (**Modified Content**) or to create unique content to meet certain of Client's needs or requirements (**Client Content**). In the case of Modified Content, Client shall own the specific modifications made by authorized Users (but not the underlying Content). In the case of Client Content, as between Company and Client, Client shall own the Client Content created or uploaded by authorized Users. Client shall be solely responsible for the accuracy, quality, integrity and legality of data, Client Data, Modified Content, and Client Content uploaded in the LMS by Client.

3.2 De-Identified Data. Client acknowledges and agrees that Company has the unrestricted right to use the Client's de-identified data for any purpose, in accordance with applicable law, including but not limited to quality assessment and improvements to the Subscription Services.

4. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY

4.1 LMS Limited Warranty. Company warrants that the LMS will operate in all material respects in conformity with the functional specifications described in the Documentation. If the LMS does not perform as warranted and there is a material failure of the LMS to conform to its functional specifications described in the Documentation that is reported by the Client to, and replicable by, Company (**Errors**), Company shall use commercially reasonable efforts to correct Errors. As Client's exclusive remedy for any claim under this warranty, Client shall promptly notify Company in writing of its claim. Provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall, within thirty (30) days of its receipt of Client's written notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Company, then Company or Client may terminate the affected Subscription Services, and Client will be entitled to a refund of the pre-paid portion of the fees paid for the affected Subscription Services. The preceding warranty cure shall constitute Company's entire liability and Client's exclusive remedy for cure of the warranty set forth herein in this Section 4.1 of Schedule A. If Client elects not to terminate the Subscription Services, Client waives all rights for the applicable warranty cure set forth herein. Company is not responsible for any claimed breach of any warranty set forth in this section caused by: (i) modifications made to the LMS by anyone other than Company; (ii) Company's adherence to Client's specifications or instructions; (iii) Errors caused by or related to Internet connections; (iv) Client deviating from the LMS operating procedures described in the Documentation; (v) discrepancies that do not significantly impair or affect the operation of the Subscription Service; or (vi) any systems or programs not supplied by Company.

4.2 Links. The Subscription Services may include links to third-party Internet sites or other resources provided by third parties. Because Company has no control over such sites and resources, Client acknowledges and agrees that Company is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. Client further acknowledges and agrees that Company shall not be responsible or liable, directly or indirectly, from any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods, or services available on or through any such third-party site or resource.

5. INDEMNIFICATION

5.1 Indemnification for Modified/Client Content. Client shall indemnify and hold Company, its affiliates, suppliers, data center, employees and officers (**Company Indemnified Parties**) harmless from and against all liability, claims, damages, fines, losses, expenses (including reasonable attorney's fees and court costs, and the cost of enforcing this indemnity) suffered or incurred by Company or any Company Indemnified Party arising out of, or in connection with any use or reliance by Client or any User of any Content, Modified Content, or Client Content, including all third-party claims, causes of action, suits, and legal proceedings asserted against Company or a Company Indemnified Party arising out of, or relating to, the use of or reliance by Client or any User on any Content, Modified Content, or Client Content.



SCHEDULE B - ASSESSMENTS

1. DEFINITIONS

1.1 **Aggregate Data** means de-identified Company Processed Data.

1.2 **Assessments** are Content, including but not limited to, tests, assessments, surveys, and training courses.

1.3 **Company Processed Data** means any Client Data that Company processes, analyzes, integrates, normalizes, maps, aggregates, sorts, transforms or otherwise modifies, including any processed data that Company makes available to Client in connection with the Services.

1.4 **Subscription Services** means the Site, the Assessments, and access to the Assessments for End Users.

2. USE RIGHTS

2.1 **Additional Restrictions.** Client may use the Subscription Services report or assessment-generating features or functions that are intended to provide for the creation and export of reports or other data analytic output derived from Company Processed Data (**Client Reports**) for distribution of Client Reports to third parties, but, unless otherwise permitted by Company in writing, such Client Reports shall be so used and distributed only in furtherance of Client's internal business purposes and associated research and publication activities, and not for commercial sale or distribution to third parties. For the avoidance of doubt, Client does not have the right to disclose or distribute to any third party Company Processed Data other than discrete components of Company Processed Data that may be included in Client Reports.

3. OWNERSHIP

3.1 **Client Data Suitability.** Client acknowledges and agrees that not all Client Data will be suitable for use in the Services and that Company retains the discretion to determine which Client Data will serve as the basis for the creation of Company Processed Data.

3.2 **Company Right to Use Client Data.** Client hereby grants to Company a fully paid-up, worldwide, right and license to process, analyze, integrate, normalize, compile, store, validate, aggregate, sort, manipulate, and create derivative works of Client Data, for the purpose of creating (i) Company Processed Data to provide the Services to Client, and (ii) Aggregate Data. Client acknowledges and agrees that Company has the unrestricted right to use the Aggregate Data for any purpose, in accordance with applicable law, including but not limited to quality assessment and improvements to the Services.

3.3 **Effect of Termination.** For avoidance of doubt: (i) Company's right, title and ownership of the Company Processed Data (as defined above) existing as of the date of termination of this Agreement is perpetual and irrevocable and shall continue in effect notwithstanding the termination of this Agreement for any reason whatsoever and (ii) subject to the terms and conditions of this Agreement, including without limitation, the restrictions on use in Section 2.1 of this Schedule, Client's right to use Client Reports (as defined above) will survive termination of this Agreement.

4. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY

4.1 **Additional Disclaimer.** CLIENT UNDERSTANDS AND AGREES THAT ANY ASSESSMENTS PROVIDED BY COMPANY, RESULTS OF THE INDIVIDUAL'S PERFORMING ANY ASSESSMENTS, AND THE INFERENCES DRAWN THEREFROM ARE BROAD MEASUREMENTS ONLY AND BY THEIR NATURE ARE SUBJECT TO VARYING INTERPRETATION. CLIENT UNDERSTANDS AND AGREES THAT WHILE COMPANY BELIEVES THAT THESE SERVICES CAN PROVIDE ONE REASONABLE MEASURE OF LIKELY INDIVIDUAL KNOWLEDGE IN CERTAIN AREAS OF HEALTH-CARE EMPLOYMENT, COMPANY DOES NOT WARRANT THE ACCURACY OF THE SERVICES OR THE SUITABILITY OF ANY INDIVIDUAL CANDIDATE FOR ANY PARTICULAR FIELD OF ENDEAVOR BASED ON SUCH CANDIDATE'S PERFORMANCE IN CONNECTION WITH THE SERVICES. CLIENT AGREES AND WARRANTS THAT, IN THE EVENT SERVICES ARE ADMINISTERED IN CONNECTION WITH ITS HIRING AND PERSONNEL DECISIONS, CLIENT WAIVES ANY CLAIMS AGAINST COMPANY BASED IN WHOLE OR IN PART ON THE SERVICES SUPPLIED BY COMPANY, OR ITS END USERS' USE OF THE SERVICES, OR FROM THE INFERENCES DRAWN OR DECISIONS MADE BY CLIENT AS A RESULT OF ITS USE OF THE SERVICES.

1. DEFINITIONS

- 1.1 HIPAA** refers to the Administrative Simplification Provisions of Title II of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91, 42 U.S.C. 1301 et. seq.) and implementing regulations enacted by the United States Department of Health and Human Services (45 CFR Parts 160 through 164).
- 1.2 Patient(s)** are individuals enrolled in a health plan agency or receiving health care services directly from, or paid for by, Client or Providers.
- 1.3 Protected Health Information (PHI)** means individually identifiable information about the physical or mental health of any person or payment for physical or mental health services that is created by Client or received by Client from a third party, or created by Company on behalf of Client.
- 1.4 Standard Data Input File** means records provided to Company in the requested, standard format including but not limited to number of files, column header names and order, data types, field lengths, and identification of required versus optional data.
- 1.5 Subscription Services** refers to the Relias data analytics platform which provides predictive analyses, data aggregation, report generation, management measures and similar services as set forth in the accompanying Ordering Document(s).

2. USE RIGHTS

- 2.1 Ordering Document.** Each Ordering Document shall: (i) describe the Subscription Services and the covered Patient populations in sufficient detail to enable Company to determine the resources required to deliver Subscription Services to Client; (ii) identify any professional services to be provided, and fees to be paid for such services; (iii) identify project managers responsible for coordination of the efforts of Company and Client; (iv) state the responsibilities of Company and Client related to the provision of data and implementation of the Subscription Services; (v) establish milestones and a timetable for implementation of the Subscription Services; (vi) identify the Client Data required to enable Company to operate and perform the Subscription Services; and (vi) describe the compensation to be paid to Company for provision of the Subscription Services.
- 2.2 Modifications.** Company reserves the right to modify the manner in which it delivers Subscription Services from time to time, provided that such modifications shall not have a material impact on Company's delivery of the Subscription Services to Client pursuant to this Agreement and that Client is notified in advance of any such modifications.

3. DATA

- 3.1 Data Requirements.** Client shall provide Company all data necessary to perform the Subscription Services, which shall be detailed in the accompanying Ordering Document(s) (**Required Data**). All required Data will be delivered to Company as a Standard Data Input File. Client may provide Company data in a non-standard format for an additional fee in accordance with the Ordering Document. Required Data must include a roster of Users, including email addresses, identified to access data analytics information via Subscription Services, and may include some or all of the following data examples: (i) Patient data, (ii) claims data, (iii) Patient survey data, (iv) industry standards.
- 3.2 HIPAA Compliance.** The parties have entered a Business Associate Agreement that includes the terms and conditions required by the HIPAA Privacy and Security Rules (45 CFR Parts 160 – 164) (**BAA**). Company will not use or disclose PHI except as permitted by the BAA. The BAA is deemed incorporated into this Agreement by reference. As required by the BAA, Company will implement reasonable and appropriate administrative, technical, and physical safeguards of the confidentiality, integrity, and availability of PHI in a manner that is consistent with the standards and implementation specifications of HIPAA.

4. OWNERSHIP

- 4.1 Data Products.** Company shall own the Subscription Services and any modifications or customization of the Subscription Services, as well as any general analytic results, data products, or derivative works produced by Company in the process of rendering services to Client (collectively, the **Data Products**). Data Products shall be considered Company Intellectual Property and shall not be considered "work for hire" under copyright law.