



Master SaaS and Services Agreement

This Master SaaS and Services Agreement (this “**Agreement**”) is entered into effective this ____ day of _____, until _____ of _____ by and between Sharp Performance Inc., a Delaware corporation (“**Sharp Performance**”) with a place of business at 2659 State Street #100, Carlsbad, CA 92008, and _____, a municipal corporation (“**The Department/The Customer**”). Sharp Performance and the Department/Customer are sometimes referred to herein jointly as the “Parties” or singularly as a “Party.”

RECITALS:

WHEREAS, The Department/Customer desires to obtain access to the Services (as defined below) with respect to certain of its information technology needs, for use by its Department and Sharp Performance desires to provide the Services to the Department/Customer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SERVICES.

1.1 Purpose. This Agreement sets forth the terms and conditions under which Sharp Performance agrees to provide (i) certain hosted “software as a service” (the “**Subscription Services**”) for certain software applications (each such application together with any applicable documentation thereto, and programming and user interfaces therefor, a “**Platform**”) to Authorized Users, as further set forth and described on each order form (the “**Order Form**”) attached hereto as Schedule A, and (ii) if applicable, all other implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management (collectively the “**Professional Services**”, and together with the Subscription Services, referred to herein as the “**Services**”) related to the Department’s/Customer’s access to, and use of, such Subscription Services and each Platform, as further set forth and described on each statement of services (the “**Statement of Work**”) attached hereto as Schedule B, issued hereunder (Order Forms and Statements of Professional Services are sometimes referred to jointly as a “Statement of Services”).

1.2 The Services; Access and Use License. Subject to the terms and conditions of this Agreement, during the Term, Sharp Performance shall use commercially reasonable efforts to provide (i) the Department/Customer and Authorized Users access to each Platform, and (ii) the Department/Customer the Professional Services. Subject to the terms and conditions of this Agreement, during the Term, Sharp Performance hereby grants the Department/Customer and Authorized Users a non-exclusive, non-sublicensable, non-transferable (except in compliance with



Section 16 herein), worldwide license to access and use each Platform, solely for internal business purposes in connection with the Department's/Customer's use of the Services as set forth herein. For the avoidance of doubt, this license shall not extend to access to any documents or information created or maintained by Sharp Performance in connection with peer coaching sessions and pertaining to an individual Authorized User, including but not limited to peer coaching notes. Neither the Department/Customer nor Authorized Users shall have any rights to access, review, or receive any documents or information created or maintained by Sharp Performance pertaining to any individual Authorized Users, except to the extent required by law.

1.3 Subscription Services. Each applicable Order Form shall specify and further describe the Subscription Services to be provided in accordance with the representations and warranties set forth herein, and shall identify, each applicable Platform, user limitations, fees, subscription term and other applicable terms and conditions.

1.4 Professional Services. Each applicable Statement of Work shall specify and further describe the Professional Services to be provided in accordance with the representations and warranties set forth herein, and may, but need not, include, the Professional Services offered, limitations, milestones, fees, term and other applicable terms and conditions.

1.5 Changes to Platform. Sharp Performance may, in its sole discretion, make any changes to any Platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Sharp Performance's products or services to its the Departments, (b) the competitive strength of, or market for, Sharp Performance's products or services, (c) such Platform's cost efficiency or performance, or (ii) to comply with applicable law.

2. **PLATFORM ACCESS AND AUTHORIZED USER**

2.1 Administrative Users. During the configuration and set-up process for each Platform, the Department/Customer will identify an administrative username and password for the Department's/Customer's Sharp Performance accounts. Each member will receive their own individual account with its own unique username and password. Sharp Performance reserves the right to refuse registration of, or cancel usernames and passwords it deems inappropriate.

2.2 Authorized Users. the Department/Customer may allow such number of the Department's/Customer's employees and/or independent contractors as is indicated on an Order Form to use the applicable Platform on behalf of the Department/Customer as "**the Department/Customer Users.**" Authorized User subscriptions are for designated Authorized Users and cannot be shared or used by more than one Authorized User, but may be reassigned to a new Authorized User replacing former Authorized Users who no longer require ongoing use of the applicable Platform.

2.3 Authorized User Conditions to Use. As a condition to access and use of a Platform (i) each Authorized User shall agree to abide by the terms of Sharp Performance's end-user terms of use which it may adopt from time to time, (ii) the Department/Customer Users shall agree to abide by the terms of this Agreement, and (iii) Vendor Users shall agree to abide by the terms of the



then-current Sharp Performance Vendor Terms of Service applicable to such Platform, and, in each case, the Department/Customer shall ensure such compliance. the Department/Customer shall immediately notify Sharp Performance of any violation of the terms of any of the foregoing by any Authorized User upon becoming aware of such violation, and shall be liable for any breach of the foregoing agreements by any Authorized User as provided herein.

2.4 Account Responsibility. With respect to Sharp Performance only the Department/Customer will be responsible for (i) all uses of any account that the Department/Customer has access to, whether or not the Department/Customer has authorized the particular use or user, and regardless of the Department's/Customer's knowledge of such use, and (ii) securing its Sharp Performance account, passwords (including but not limited to administrative and user passwords) and files. Sharp Performance is not responsible for any losses, damages, costs, expenses or claims that result from stolen or lost passwords.

2.5 Use Restrictions. the Department/Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. The Department/Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Platform, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Platform; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Platform; (v) use the Services or Platform in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, or (vi) input, upload, transmit, or otherwise provide any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code.

2.6 Reservation of Rights. Sharp Performance reserves all rights not expressly granted to the Department/Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to the Department/Customer or any third party any intellectual property rights or other right, title, or interest in or to the intellectual property of Sharp Performance.

3. ADDITIONAL RESTRICTIONS AND RESPONSIBILITIES

3.1 Software Restrictions. The Department/Customer will not, nor permit or encourage any third party to, directly or indirectly (i) reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the source code, object code or underlying structure, ideas, know-how or algorithms relevant to a Platform or any software, documentation or data related to a Platform (“**Software**”); (ii) modify, translate, or create derivative works based on a Platform or any Software; (iii) use a Platform or any Software for timesharing or service bureau purposes or other computer service to a third party; (iv) modify, remove or obstruct any proprietary notices or labels; or (v) use any Software or a Platform in any manner to assist or take part in the development, marketing



or sale of a product potentially competitive with such Software or Platform. For the avoidance of doubt, Software and the Services, including all user-visible aspects of the Services, are the Confidential Information of Sharp Performance, and the Department/Customer will comply with Section 4 with respect thereto.

3.2 The Department/Customer Compliance. The Department/Customer shall use, and will ensure that all Authorized Users use, each Platform, Software, and the Services in full compliance with this Agreement, Sharp Performance's end-user terms of use and all applicable laws and regulations. The Department/Customer represents and warrants that it (i) has accessed and reviewed any terms of use or other policies relating to a Platform provided by Sharp Performance, (ii) understands the requirements thereof, and (iii) agrees to comply therewith. Sharp Performance may suspend the Department's/Customer's account and access to each Platform and performance of the Services at any time and without notice if Sharp Performance believes that the Department/Customer is in violation of this Agreement. Although Sharp Performance has no obligation to monitor the Department's/Customer's use of a Platform, Sharp Performance may do so and may prohibit any use it believes may be (or alleged to be) in violation of the foregoing.

3.3 Cooperation. The Department/Customer shall provide all cooperation and assistance as Sharp Performance may reasonably request to enable Sharp Performance to exercise its rights and perform its obligations under, and in connection with, this Agreement, including providing Sharp Performance with such access to the Department's/Customer's premises and its information technology infrastructure as is necessary for Sharp Performance to perform the Services in accordance with this Agreement.

3.4 Training and Education. The Department/Customer shall use commercially reasonable efforts to cause the Department/Customer Users to be, at all times, educated and trained in the proper use and operation each Platform such the Department/Customer Users utilize, and to ensure that each Platform is used in accordance with applicable manuals, instructions, specifications and documentation provided by Sharp Performance from time to time.

3.5 The Department/Customer Systems. The Department/Customer shall be responsible for obtaining and maintaining—both the functionality and security of—any equipment and ancillary services needed to connect to, access or otherwise use each Platform, including modems, hardware, servers, software, operating systems, networking, web servers and the like.

3.6 Restrictions on Export. The Department/Customer may not remove or export from the United States or allow the export or re- export of the Software or anything related to a Platform, Software or Services, or any direct product thereof in violation of any restrictions, laws or regulations of any United States or foreign agency or authority.

4. **CONFIDENTIALITY.**

4.1 Confidential Information. Each Party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has been, and may be, exposed to or acquired business,



technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Confidential Information**"). Confidential Information of Sharp Performance includes non-public information regarding features, functionality and performance of each Platform and Software. Confidential Information of the Department/Customer includes non-public data provided by the Department/Customer to Sharp Performance to enable the provision of access to, and use of, the Services as well as all content, data and information recorded and stored by each Platform for the Department/Customer ("**The Department/Customer Data**"). The terms and conditions of this Agreement, including individual account pricing are Sharp Performance's Confidential Information. The total cost of the contract is disclosable by The Department/Customer.

4.2 Exceptions. Notwithstanding anything to the contrary contained herein, Confidential Information shall not include any information that the Receiving Party can document (i) is or becomes generally available to the public, (ii) was in its possession or known by it prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to it without restriction by a third party, or (iv) was independently developed without use of any Confidential Information of the Disclosing Party.

4.3 Non-use and Non-disclosure. With respect to Confidential Information of the Disclosing Party, the Receiving Party agrees to: (i) use the same degree of care to protect the confidentiality and prevent the unauthorized use or disclosure of such Confidential Information it uses to protect its own proprietary and confidential information of like nature, which shall not be less than a reasonable degree of care, (ii) hold all such Confidential Information in strict confidence and not use, sell, copy, transfer reproduce, or divulge such Confidential Information to any third party, (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, this Agreement.

4.4 Compelled Disclosure. Notwithstanding Section 4.3, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent necessary to comply with a court order or applicable law; provided, however, that the Receiving Party delivers reasonable advance notice of such disclosure to the Disclosing Party and uses reasonable efforts to secure confidential treatment of such Confidential Information, in whole or in part.

4.5 Remedies for Breach of Obligation of Confidentiality. The Receiving Party acknowledges that breach of its obligation of confidentiality may cause irreparable harm to the Disclosing Party for which the Disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation, or threatened violation, by the Receiving Party of its obligations under this Section, the Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.

5. PROPRIETARY RIGHTS

5.1 Ownership. The Department/Customer shall own all rights, title and interest in and to the Department/Customer Data. Sharp Performance shall own and retain all right, title and



interest in and to (i) each Platform, Software and the Services and all improvements, enhancements or modifications thereto, (ii) any software, applications, inventions or other technology developed in connection with the Services, and (iii) all intellectual property and proprietary rights in and related to any of the foregoing (collectively, “**Services IP**”). To the extent the Department/Customer acquires any right, title or interest in any Services IP, the Department/Customer hereby assigns all of its right, title and interest in such Services IP to Sharp Performance.

5.2 The Department/Customer Data and Vendor Information License. The Department/Customer hereby grants to Sharp Performance a non-exclusive, transferable, sublicensable, worldwide and royalty-free license to use and otherwise exploit the Department Data to provide the Services to the Department hereunder and as necessary or useful to monitor and improve a Platform, Software and the Services, both during and after the Term. “For the avoidance of doubt, Sharp Performance may use, reproduce and disclose Platform-, Software- and Services-related information, data and material that is anonymized, de-identified, or otherwise rendered not reasonably associated or linked to the Department/Customer for product improvement and other lawful, all of which information, data and material will be available to Sharp Performance through the existence of the license of Consumer Data. It is the Department’s/Customer’s sole responsibility to back-up the Department/Customer Data during the Term, and the Department/Customer acknowledges that Sharp Performance will not have access to the Department/Customer Data through Sharp Performance or any Platform following the expiration or termination of this Agreement.

5.3 No Other Rights. No rights or licenses are granted except as expressly set forth herein.

6. FEES & PAYMENT

6.1 Fees. The Department shall pay Sharp Performance the then-applicable fees described in an Order Form or Statement of Work, as applicable, in accordance with the terms set forth therein (“**Fees**”), including, for the avoidance of doubt, any fees incurred through the Department’s use of a Platform exceeding a services capacity parameter specified on an Order Form.

6.2 Payment. Sharp Performance may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Sharp Performance thirty (30) days after the mailing date of the invoice (unless otherwise specified on the applicable Order Form). Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum interest rate permitted by law, whichever is lower, plus all expenses of collection. In addition to any other remedies available, Sharp Performance may suspend Services in the event of payment delinquency.

6.3 Payment Disputes. If the Department/Customer believes that Sharp Performance has billed the Department/Customer incorrectly, the Department/Customer must contact Sharp Performance no later than thirty (30) days after the closing date on the first billing statement in which



the alleged error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Sharp Performance's support department or the applicable Account Manager.

6.4 Taxes. All Fees and other amounts payable by the Department/Customer under this Agreement are exclusive of taxes and similar assessments. The Department/Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by the Department/Customer hereunder, other than any taxes imposed on Sharp Performance's income.

6.5 No Deductions or Setoffs. All amounts payable to Sharp Performance hereunder shall be paid by the Department/Customer to Sharp Performance in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason except as may be required by applicable law.

6.6 Subpoena Expenses. If Sharp Performance has to provide information in response to a subpoena related to the Department's/Customer's account, then Sharp Performance may charge the Department/Customer for Sharp Performance's reasonable costs. Such charges may include fees for attorney and employee time spent retrieving records, preparing documents and participating in depositions or other legal process as well as other costs incurred in complying with such legal processes

7. TERM AND TERMINATION

7.1 Term. This Agreement shall remain in effect until its termination as provided below (the "Term"). The term of each Statement of Services shall begin on the applicable "Services Effective Date" and continue for the "Service Term," in each case as specified in such Statement of Services. The Term may renew upon agreement of the parties. This Agreement and each Order Form will renew only upon agreement of the parties prior to the termination date of the initial Order Form. The parties may agree, by amendment, to continue the Agreement under the original terms, or to adjust the original terms of the Agreement.

7.2 Termination. Sharp Performance may terminate this Agreement upon written notice to the Department/Customer if no Statement of Services is in effect. In addition to any other remedies it may have, either party may also terminate this Agreement upon written notice if the other party fails to pay any amount when due or otherwise materially breaches this Agreement and fails to cure such breach within thirty (30) days or as agreed upon by both parties after receipt of written notice of such breach from the non-breaching party. Notwithstanding the foregoing, if the Department/Customer is a state agency or a political subdivision of a state, or a federal agency or a political subdivision of the federal government, or a public entity, the Department/Customer may terminate this Agreement at any time (i) for convenience upon ninety (90) days' written notice to Sharp Performance, or (ii) if adequate funds to pay Sharp Performance all fees owed hereunder are not appropriated to such the Department/Customer during the Term, unless otherwise authorized by law; provided, it is expressly agreed that the Department/Customer shall not activate this non-appropriation



provision for its convenience, substitution with another procurement system or solution, or to circumvent the requirements of this Agreement in any way. Sharp Performance reserves the right to terminate this agreement in the event of a merger, reorganization, consolidation, sale of assets, bankruptcy, and/or dissolution of Sharp Performance.

7.3 Effect of Termination. Upon termination of the Agreement, each outstanding Statement of Services, if any, shall terminate and the Department/Customer shall immediately cease all use of, and all access to, the Subscription Services and Sharp Performance shall immediately cease providing the Professional Services. If (i) Sharp Performance terminates this Agreement pursuant to the second sentence of Section 7.2, or (ii) the Department/Customer terminates this Agreement pursuant to clause (i) of the last sentence of Section 7.2, all Fees that are earned to the date of termination will become immediately due and payable. .

7.4 Survival. Sections [3.1, 4–6, 7.2, 7.4, 9–12, 14-17] shall survive any termination or expiration of this Agreement. All other rights and obligations shall be of no further force or effect.

8. **WARRANTY AND DISCLAIMER**

8.1 Warranties. Sharp Performance represents and warrants that it will perform the Professional Services in a professional and workmanlike manner. Each party represents and warrants that it has the legal power to enter into this Agreement. Additionally, the Department/Customer warrants that (i) the Department/Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of all of the Department/Customer Data that is placed on, transmitted via or recorded by a Platform and the Services; (ii) the provision and use of the Department/Customer Data as contemplated by this Agreement and each Platform and the Services does not and shall not violate any the Department's/Customer's privacy policy, terms-of-use or other agreement to which the Department/Customer is a party or any law or regulation to which the Department/Customer is subject to; and (iii) none of the Department/Customer Data will include social security numbers or other government- issued identification numbers, financial account numbers, credit card or debit card numbers, credit report information or other personal financial information, health or medical information or other information that is subject to international, federal, state, or local laws or ordinances now or hereafter enacted regarding data protection or privacy, including, but not limited to, the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, the Fair Credit Reporting Act, the Children's Online Privacy Protection Act and the Gramm-Leach-Bliley Act.

8.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN A STATEMENT OF SERVICE, SHARP PERFORMANCE DOES NOT WARRANT THAT ACCESS TO THE PLATFORMS, SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES SHARP PERFORMANCE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. FURTHER, SHARP PERFORMANCE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SERVICES PROVIDED BY THIRD PARTY TECHNOLOGY SERVICE PROVIDERS RELATING TO OR SUPPORTING A PLATFORM, INCLUDING HOSTING AND MAINTENANCE



SERVICES, AND ANY CLAIM OF THE DEPARTMENT/CUSTOMER ARISING FROM OR RELATING TO SUCH SERVICES SHALL, AS BETWEEN SHARP PERFORMANCE AND SUCH SERVICE PROVIDER, BE SOLELY AGAINST SUCH SERVICE PROVIDER. THE PLATFORMS, SOFTWARE AND SERVICES ARE PROVIDED "AS IS," AND SHARP PERFORMANCE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. **INDEMNITY.** The parties agree to seek indemnification to the extent allowable under applicable State law and Federal law.

10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL (I) SHARP PERFORMANCE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED IN THE AGGREGATE THE TOTAL FEES PAID OR OWED BY THE DEPARTMENT/CUSTOMER AND VENDORS HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM (SUCH AMOUNT BEING INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT), AND (II) EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL,

COVER, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THIS EXCEPTION DOES NOT APPLY TO INFRINGEMENT CLAIMS.

11. **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement is governed in all respects by the laws of the State of California, without giving effect to its rules relating to conflict of laws. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in the Superior Court for the state or federal courts in Riverside County, California. Neither any adoption of the Uniform Computer Information Transactions Act nor the U.N. Convention on the International Sale of Goods applies to this Agreement or to the rights or duties of the parties under this Agreement. Prior to and as a condition of either Party's filing suit in state or federal court, the Parties shall engage in non-binding mediation conducted under the auspices of JAMS or other mutually agreeable dispute resolution service and in accordance with the California Rules of Court. The Parties shall mediate in good faith until settlement is reached or an impasse is declared by the mediator.

12. **SECURITY.** Sharp Performance may, from time to time, host and/or maintain a Platform using a third-party technology service provider. The Department acknowledges that Sharp



Performance cannot offer any additional or modified procedures other than those put in place by such technology provider with respect to such technology service.

13. **PUBLICITY.** The Department/Customer agrees that Sharp Performance may identify the Department/Customer in Sharp Performance's promotional materials. The Department/Customer may request that Sharp Performance stop doing so by submitting an email to ben@sharppperformance.tech at any time. The Department/Customer acknowledges that it may take Sharp Performance up to 30 days to process such request. Notwithstanding anything herein to the contrary, The Department/Customer acknowledges that Sharp Performance may disclose the existence and terms and conditions of this Agreement to its advisors, actual and potential sources of financing and to third parties for purposes of due diligence.

14. **NOTICES.** All notices, consents, and other communications between the Parties under or regarding this Agreement must be in writing (which includes email and facsimile) and be addressed according to information provided on an Order Form. All notices, consents and other communications between the parties under a Statement of Services will be sent to the recipient's address specified thereon. All communications will be deemed to have been received on the date actually received. Either Party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

15. **FORCE MAJEURE.** Sharp Performance is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of the Department/Customer or any Authorized User.

16. **ASSIGNMENT.** Neither party may assign this Agreement to any third party without the prior written consent of the other; provided that no consent is required in connection with an assignment to an affiliate or in connection with any merger, reorganization, consolidation, sale of assets or similar transaction. For the avoidance of doubt, a third-party technology provider that provides features or functionality in connection with a Platform shall not be deemed a sublicensee under this Agreement. This Agreement is binding upon and insures to the benefit of the Parties and their respective permitted successors and assigns.

17. **GENERAL PROVISIONS.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement, together with Statement of Services entered into hereunder and all exhibits, schedules, annexes, and addenda hereto and thereto is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither party has authority of any



kind to bind the other party in any respect whatsoever. In the event of a conflict between this Agreement and any Statement of Services, such Statement of Services shall prevail unless otherwise expressly indicated in this Agreement or such Statement of Services. The heading references herein are for convenience purposes only and shall not be deemed to limit or affect any of the provisions hereof. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words “hereof,” “hereby,” “herein,” “hereto,” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular Section or paragraph of this Agreement; (ii) the words “include,” “includes” or “including” are deemed to be followed by the words “without limitation;” (iii) references to a “Section” or “Exhibit” are references to a section of, or exhibit to this Agreement; and (iv) derivative forms of defined terms will have correlative meanings. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.



IN WITNESS WHEREOF, the undersigned execute this instrument as of the day and date first above written.

SHARP PERFORMANCE, INC.

By: _____

By: _____

Name: Benjamin Curley

Name: _____

Title: CEO/President

Title: _____

Date: _____

Date: _____