SERVICE TERMS AND CONDITIONS
ABSORB SOFTWARE INC.

THE ORDER FORM AND THESE SERVICE TERMS AND CONDITIONS INCLUDING APPLICABLE EXHIBITS (COLLECTIVELY REFERRED TO AS THE "**AGREEMENT**"), SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN **YOU** AND YOUR AFFILIATES ("**CLIENT**") AND ABSORB SOFTWARE INC. AND ITS AFFILIATES ("**ABSORB**"), CONCERNING USE OF THE ABSORB LEARNING MANAGEMENT SYSTEM. BY ORDERING OR OTHERWISE USING THE SERVICE, CLIENT AGREES TO AND ACCEPTS THIS AGREEMENT IN ITS ENTIRETY. ABSORB AND CLIENT MAY BE REFERRED TO COLLECTIVELY AS THE **"PARTIES"** OR INDIVIDUALLY AS A **"PARTY."**

This Agreement includes, as applicable, the following Exhibit(s):

Exhibit A Service Level Agreement

DEFINITIONS: In this Agreement, the following terms shall have the following definitions:

"Absorb Academy" means a structured curriculum that teaches administrators how to use Absorb LMS. Absorb Academy is available at your leisure through your portal's Help & Support menu and will cover the most common features of the LMS.

"Add-on Services" means any component, product, services or module purchased as part of the Service as set forth in an applicable Order Form. Add-on Services may include, but are not limited to products such as Absorb Analyze, Absorb Engage, Absorb Create, SSO, or services such as Elite Service, Enterprise Service, Historical Imports or Exports, Professional Services, etc.

"Admin" means a User who is a system Administrator with "Admin" access enabled on their user profile.

"Affiliate" means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under common control with, such entity or one or more of the other Affiliates of that entity (or a combination thereof). For purposes of this definition, an entity shall control another entity if the first entity: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities/shares of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity.

"**Client Content**" means courses, programs, materials, and other collateral uploaded by Client or on Client's behalf to the Service.

"**Client Data**" means any and all records or data files used, created, or submitted to Absorb by Client, or received by Absorb on behalf of Client, in connection with the Service. Client Data does not include Client Content.

"**Documentation**" means Absorb's technical documentation and usage guides, and other written information made available through the Knowledge Base, Absorb Academy or through the Service that describes the specifications, features, functions, and use of the Service, as applicable.

"**Fees**" means all amounts payable by Client to Absorb as specified in applicable Order Form(s).

"**Intellectual Property**" means any material or property that derives from the work of the mind or intellect, including, without limitation, all information, data, databases and documentation thereof, designs, inventions, improvements, enhancements, formulae, works, trade secrets, know how, methods, devices, techniques, discoveries, ideas, processes, marketing and sales relationships, marketing plans, computer programs, software in both object code and source code format, including that which may be subject to protection under any one or more Intellectual Property Rights.

"**Intellectual Property Rights**" means any right or protection in any Intellectual Property existing from time to time in a specific jurisdiction under any patent law, copyright law, mask work rights law, moral rights law, trade secret law, industrial design law, semiconductor chip protection law, trade-mark law, domain name law, unfair competition law, or other similar law and includes legislation by competent governmental authorities and judicial decisions under common law or equity (including applications for, and registrations, extensions, renewals, and re-issuances of, the foregoing).

"**Knowledge Base**" means a searchable self-serve site that consists of a collection of articles, videos, and documentation that provides an overview from onboarding to integrations to best practices. The Knowledge Base can be accessed via the Absorb Assistant within your LMS Admin Interface, or through our Help Desk.

"**One-Time Fees**" means fees that occur and are payable only once for the provision of services purchased by Client as specified in applicable Order Form(s).

"**Order Date**" means the date of full execution of an applicable Order Form, and the date on which this Agreement becomes effective.

"**Order Form**" means the form whereby Client agrees to purchase the Service from Absorb as outlined therein, including any amendments or exhibits thereto.

"**Recurring Subscription Fees**" means recurring amounts payable by Client to Absorb for the provision of the Service as specified in applicable Order Form(s).

"**Service**" means the Absorb Learning Management System (LMS), a wholly Absorb owned proprietary Internet-based software application for the administration, documentation, tracking, and reporting of training programs, classroom and online events, e-learning programs, and training content. The Service includes all related services, software, associated offline components, and other designated websites, but excluding Third Party Applications, as provided by Absorb, and which are agreed by Client to be purchased as set forth in an applicable Order Form(s).

"**Service Term**" means the duration of the provision of the Service measured in months as indicated in an applicable Order Form, and any applicable Renewal Term(s) thereafter, as outlined therein.

"**Service Term Start Date**" means the date on which the Service Term commences, as indicated on an applicable Order Form.

"**Third-Party Applications**" refers to online, internet-based applications and offline software products, if any, that are provided by third parties and interoperate with the Service (for example, web browsers, video players, etc.) that do not form a part of the Service.

"**Users**" means individuals who are authorized by Client to use the Service, for whom subscriptions to the Service have been purchased, and to whom Client has supplied user identifications and/or passwords. Users may include, but are not limited to, Client's employees, consultants, contractors, agents, or third parties authorized by Client.

"**Zero Downtime Deployment**" means a software deployment method whereby the Service is updated or patched while still available.

Definitions not otherwise defined above have the meaning given to them elsewhere in this Agreement.

1.   THE SERVICE

1.1   The Service is provided to Client and Users on a subscription basis as provided in an applicable Order Form(s), and as otherwise provided herein. Client's right to use the Service is limited therein. Client access to the Service includes (a) full and unlimited use of Client Content, and (b) all updates, upgrades and enhancements that Absorb makes publicly available. Absorb reserves the right to provide emergency updates for the purpose of security updates and emergent functionality patches from time to time without notice. Any new features that augment or enhance the Service, including the release of new tools and resources, shall be subject to this Agreement.

2.   FEES AND PAYMENT FOR SERVICE.

2.1   **Fees.** Client shall promptly pay all Fees specified in all Order Form(s). Except as otherwise specified in an Order Form, (a) Fees are quoted and payable in the currency specified in an applicable Order Form, (b) Fees are based on the Service User subscription model specified in the Order Form, and (c) payment obligations are non-cancellable and Fees paid are non-refundable, except as set forth in Section 3.3 (Refund or Payment Upon Termination).

2.2   **Invoicing and Payment**.

2.2.1   **Payment Method.** If paying by credit card, Client shall provide Absorb with valid and updated credit card information. Client authorizes Absorb to charge such credit for all Fees listed in the Order Form for the initial subscription term and any subsequent renewal subscription term(s) as set forth in the Agreement. If payment will be made by a method other than a credit card, Client shall provide Absorb with a valid purchase order or alternative purchase documentation acceptable to Absorb.

2.2.2   **Invoicing.** Absorb shall provide invoice in accordance with the applicable Order Form(s). Invoiced charges are due as set forth in the applicable Order Form(s). Client is responsible for maintaining complete and accurate billing and contact information.

2.2.3   **Timing.** At the date of signature of the Order Form, Absorb will invoice the One-Time Fees as specified in the applicable Order Form. Within thirty (30) days of full signature of the Order Form, Absorb will invoice Recurring Subscription Fees and any other recurring fees, as applicable. Thereafter, Recurring Subscription Fees shall be billed in advance annually, or as otherwise stipulated by the Order Form.

2.3 **Overdue Charges**. If complete payment is not received by the due date, and unless otherwise provided in the Order Form, then at Absorb's discretion (a) such charges may accrue late interest at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) future subscription renewals and Order Forms may be conditioned on payment terms shorter than those specified in Section 2.2 (Invoicing and Payment).

2.4 **Suspension of Service.** If any amount owing under this Agreement for the Service or other related services is thirty (30) or more days overdue, Absorb may, without limiting its other rights and remedies, suspend Service and other related services until such amounts are paid in full.

2.5 **Payment Disputes.** Absorb shall not exercise its rights under Section 2.3 (Overdue Charges) or 2.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and both Parties are cooperating diligently to resolve the dispute.

2.6 **Taxes.** The Fees do not include any sales or other applicable taxes, levies, duties, or similar assessments assessable by any jurisdiction. Each Party is responsible for their own tax obligations. If Absorb has the legal obligation to pay or collect taxes for which Client is responsible under this Section 2.6 (Taxes), the appropriate amount will be invoiced to and paid by Client, unless Absorb is provided with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. **TERM AND TERMINATION**

3.1 **Term of Agreement.** This Agreement commences on the Order Date specified in an applicable Order Form and continues until the end of the Service Term specified therein (the "**Initial Term**"), unless terminated earlier in accordance with the terms of this Agreement.

3.1.1 Except as otherwise specified in an applicable Order Form, upon expiration of the Initial Term, this Agreement will automatically renew for additional period(s) of twelve (12) months (each a "**Renewal Term**"), unless either Party provides written notice of non-renewal to the other Party at least sixty (60) days prior to the expiration of the then-current Service Term. Any discount(s) provided to Client is applicable only to the Service Term detailed in an applicable Order Form(s), and will not be applied to any subsequent Renewal Term. Recurring Subscription Fees for each Renewal Term will be billed at Absorb's then-current list price, unless Absorb has provided written notice of a pricing increase at least sixty (60) days prior to the expiration of the then-current Service Term. In any case, any pricing increase shall be effective upon commencing each Renewal Term and thereafter.

3.1.2   **Term of Add-on Service**. Except as otherwise specified in an applicable Order Form, recurring Add-on Services (for example Absorb Engage, Absorb Analyze, Elite Service, etc.) are coterminous with the Service Term of the Service to which Add-On Service are added and will automatically renew for additional period(s) of twelve (12) months unless either Party provides written notice of non-renewal to the other Party at least sixty (60) days prior to the expiration of the then-current Service Term.

3.2   **Termination for Cause.** Either Party may terminate this Agreement for cause: (a) upon thirty (30) days of providing written notice of termination to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, examinership, liquidation or assignment for the benefit of creditors.

3.3   **Refund or Payment upon Termination.** Upon any termination for cause by Client, Absorb shall refund any prepaid Recurring Subscription Fees covering the remainder of the applicable Service Term of all subscriptions after the effective date of termination. In no event shall any termination relieve Client of the obligation to pay any Fees payable for the period prior to the effective date of termination.

3.3.1   **Deletion of Client Data**. At Client's written request upon termination of the provision of the Service, or upon expiration of this Agreement, Absorb shall delete any existing copies of Client Data and Client Content, unless required by law to refrain from such deletion. Provided, however, that Absorb may retain copies of Client Data and Client Content that are stored on Absorb's backup or recovery systems until the ordinary course of deletion thereof.

3.4   **Surviving Provisions**. Section 2 (Fees and Payment for Service), Section 3.3.1 (Deletion of Client Data), Section 4 (Proprietary Rights), Section 9 (Confidentiality Obligations), Section 10 (Warranties and Disclaimers), Section 11 (Mutual Indemnification), Section 12 (Limitation of Liability), and Section 13 (General Terms) of this Agreement shall survive any termination or expiration of this Agreement.

4.   **PROPRIETARY RIGHTS**

4.1   **Reservation of Rights**. Subject to the limited rights expressly granted hereunder, Absorb reserves all right, title and interest in and to the Service, including all related Intellectual Property Rights related thereto. No rights are granted to Client hereunder other than as expressly set forth herein. The Service is protected by copyright and other Intellectual Property laws and treaties. Absorb grants a time limited, non-exclusive, and non-transferable license to Client to use the Service. Absorb or its licensors own the title, copyright, and all other Intellectual Property Rights in the Service. The Service is licensed, not sold, and

this Agreement only gives Client limited rights to use the Service. Unless applicable law gives Client more rights despite this limitation, Client may use the Service only as expressly permitted in this Agreement.

4.2 **Ownership of Client Content and Client Data.** Client exclusively owns all right, title and interest in and to all Client Content and Client Data. Client grants Absorb a non-exclusive, royalty-free, non-transferrable irrevocable license for the limited purposes of performing its obligations under this Agreement to use Client Data during the Service Term solely for internal reference, research, and analysis for the purpose of providing technical support, which may include benchmarking system usage or performance, solely for the benefit of the Client.

4.3 **Suggestions and Custom Enhancements**. Absorb shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Client, including Users, relating to the operation of the Service, but not including any Client Confidential Information.

5. **UNAUTHORIZED USE**.

5.1 Without the express prior written consent of Absorb (which may be arbitrarily withheld), Client may not access the Service (i) if Client is a direct competitor of Absorb; (ii) for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (iii) for purposes of performing intrusive testing on the Service, including but not limited to vulnerability scanning, penetration testing, load testing, or any other intrusive testing.

5.2 Client may not (i) reverse engineer, decompile or disassemble the Service; (ii) publish the Service for others to copy; (iii) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (iv) use the Service to store or transmit malicious code; or (v) use the Service in any way that is against the law.

6. **PURCHASED SERVICE**. Absorb shall make the Service available to Client pursuant to this Agreement and the applicable Order Form during an applicable Service Term. Client agrees that Client use hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Absorb regarding future functionality or features, save and except as mutually agreed upon in writing by the parties. Unless otherwise specified in the applicable Order Form, (a) the Service is purchased on a User subscriptions basis and may be accessed by no more than the specified number of Users in accordance with the Order Form; (b) additional User subscriptions may be added during the Service Term at the same pricing as that for the already existing subscriptions, prorated

for the remainder of the Service Term in effect at the time the additional User subscriptions are added in accordance with the subscription model purchased; (c) the added User subscriptions shall terminate on the same date as the pre-existing User subscriptions; and (d) User subscriptions are for designated Users and cannot be shared with other Users but may be reassigned to new Users replacing former Users who no longer require ongoing use or access to the Service and have been deleted from the Client's User database.

7. **CLIENT RESPONSIBILITIES**.

7.1 Client will ensure that:

7.1.1 Client shall: (a) be responsible for all Users' compliance with this Agreement; (b) be solely responsible for the accuracy, quality, integrity and legality of Client Content and of the means by which Client acquired Client Content; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Absorb promptly of any such unauthorized access or use, and (d) use the Service only in accordance with applicable laws and government regulations, and any additional instruction manuals which Absorb may make available or provide.

7.1.2 Client shall not: (a) make the Service available to anyone other than Users; (b) sell, resell, rent or lease the Service as a whole (for clarity, Client is permitted to sell courses or access to the LMS to authorized Users (including Client's customers), but may not act as a reseller); (c) interfere with or disrupt the integrity or performance of the Service or third party content contained therein; (d) permit any third party to access the Service except as permitted herein; (e) create derivate works based on the Service; (f) attempt to gain unauthorized access to the Service or its related systems or networks; (g) use the Service for commercial software hosting services; (h) access the Service in order to build a competitive product or service, or copy any features, functions or graphics of the Service; or (i) work around any technical limitations in the Service.

7.2 Client must not upload any "**Prohibited Data**" to the Service, which means any: (1) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (2) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"); (3) credit, debit, or other payment card data or financial account information, including bank account numbers; (4) social security numbers, driver's license numbers, or other government identification numbers; (5) other information subject to regulation or protection under specific laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations); or (6) any data similar to the above protected under foreign or domestic laws. Client also must not use the Service or related features in connection with

any activities where its use or failure could lead to death, personal injury, or environmental damage, such as in life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control (collectively, "**High Risk Activities**"). Client acknowledges that the Service and related features are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Absorb is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything contrary contained in this Agreement, Absorb has no liability for Prohibited Data processed, or High Risk Activities-related use, in connection with the Service.

7.3   It shall be the responsibility of Client to be familiar with and abide by all applicable local, national and international laws and regulations (including but not limited to policies and laws related to the privacy of personal information of Users) in relation to the use of the Service. Client is solely responsible for all acts or omissions that occur under Client's account for use of the Service. Absorb does not and will not interpret any laws, rules, or regulations for Client, and Client is ultimately responsible for making informed decisions regarding the data collection of Users and the legalities of such collection, use or disclosure. Client herein represents, covenants, and warrants that Client shall use the Service only in compliance with this Agreement, any applicable Order Form(s), and all applicable Exhibits, Addenda and/or Appendices.

8.   **THIRD PARTY PROVIDERS**

8.1   Client may use the Service with Third-Party Applications (for example, web browsers, video players, etc.). Client acknowledges that Third-Party Applications do not form part of the Service and that Client's use of Third-Party Applications is subject to Client's agreement with the relevant provider and not this Agreement. For clarity, as Third-Party Applications are not controlled by Absorb and do not form part of the Service, Absorb bears no responsibility or liability for Third-Party Applications, including their security, availability, functionality, or inoperability, or any effect they may have on Client's websites, infrastructure, networks, mobile applications, or other systems ("Client Properties") or how the Third-Party Applications or their providers use Client Data. If Client enables a Third-Party Application with the Service, Absorb may access and exchange Client Data or Client Content with the Third-Party Application on Customer's behalf as required for the inter-operation of such Third-Party Applications with the Service for the provision of the Service. Use of the Service with a Third-Party Application does not expand Client's rights or Absorb obligations under this Agreement. Absorb does not provide technical support for Third-Party Applications or products.

9.   **CONFIDENTIALITY OBLIGATIONS**

9.1   **Definition of Confidential Information**.   As used herein, "Confidential Information" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally, or in writing, or in electronic form, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Client's Confidential Information shall include but is not limited to the following: Client Content and Client Data, including personal information. Confidential Information of each Party shall include but is not limited to Client pricing for the Service, as well as confidential business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party by the Receiving Party or any third party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without any limitation on use or disclosure and without breach of any obligation owed to the Disclosing Party, by the Receiving Party or any third party (c) is lawfully in Receiving Party's possession and was received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party prior to the date of disclosure by the Disclosing Party.

9.2   **Protection of Confidential Information**.   Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall use the same or substantially similar degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of performing its obligation herein in accordance with this Agreement, and (b) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's employees, contractors and agents who need such access for purposes consistent with this Agreement and who have duties or obligations of confidentiality no less stringent than those herein.

9.3   **Protection of Client Content and Client Data**. Without limiting the above, Absorb shall maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Client Content and Client Data and shall only use such data as set out in this Agreement and in accordance with Client instructions. Except as authorized by Client, Absorb shall not: (i) modify Client Content and Client Data, (ii) disclose Client Content and Client Data, except as compelled by law or in accordance with Section 9.3 (Compelled Disclosure), or (iii) access Client Content and Client Data except to provide the Service or prevent or address Service or technical problems, or at Client request in connection with customer support matters. Absorb shall ensure that all staff who have access to Client

personal data have committed to obligations of confidentiality as stringent as set forth under this Agreement. In addition, Absorb shall, as soon as reasonably practicable, notify Client of any suspected or actual breach and provide Client with reasonable assistance to respond and mitigate such breach.

9.4   **Compelled Disclosure**.   The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted), diligent efforts to limit disclosure and to obtain confidential treatment or a protective order and reasonable assistance to protect against and/or limit such disclosure, at the Disclosing Party's cost. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

10.   **WARRANTIES AND DISCLAIMERS.**

10.1   Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the right, power and authority to enter this Agreement and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (c) the execution of any applicable documentation by its representative whose signature is set forth therein has been duly authorized by all necessary corporate or organizational action of the Party; and (d) it will abide by all applicable federal, state and local laws and regulations with respect to the Service.

10.2   Absorb warrants that (a) the Service will operate in substantial conformity with applicable Documentation and (b) the Service will be provided in a professional and workmanlike manner. This warranty will not apply if any error or non-conformance was caused by misuse of the Service or modifications to the Service by Client or any third-party, or third-party hardware, software, or services used in connection with the Service.

10.3   EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT THE SERVICE IS DISTRIBUTED "AS IS" WITHOUT ANY WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABSORB SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This waiver of warranty affects Client specific legal rights, but is without prejudice to any rights to which Client are entitled (to the extent that they cannot be waived) under applicable law. For example,

Client may have rights which may vary depending upon where Client is located. Some jurisdictions do not allow limitations on implied warranties, so the limitations above may not apply to Client.

11.   **MUTUAL INDEMNIFICATION**.

11.1   **Indemnification by Absorb.** Subject to Section 12 (Limitation of Liability), Absorb shall defend and hold harmless Client, its affiliates, officers, directors and Users from and against any and all third-party claims and causes of actions ("**Claim**") which directly arise out of:

(a)   (i) the infringement of any third-party Intellectual Property Right by Client's authorized use of the Service; or (ii) Absorb's violation of its confidentiality obligations as set forth herein (collectively referred to as "**Absorb Special Indemnity Claim(s)**"); or

(b)   Absorb's breach of this Agreement; or

(c)   Absorb's breach of applicable law; or

(d)   Absorb's gross negligence or wilful misconduct.

Absorb shall indemnify Client for any damages and costs awarded against Client by a court of competent jurisdiction in a final judgment, arising out of such Claim, and for reasonable legal fees incurred by Client in connection with such Claim.

11.1.2   If the Service becomes, or in the opinion of Absorb may potentially become, the subject of a Claim which directly relates to or directly arises out of the violation or infringement of any third-party Intellectual Property Rights, Absorb may, at its sole option and expense, without any recourse or claim by the Client against Absorb, (i) (a) obtain for Client the right to continue using the Service; or (b) modify the affected portion of the Service, so that it becomes non-infringing while providing substantially equivalent functionality; or (ii) if such remedies are not available on commercially reasonable terms as determined by Absorb in its sole discretion, terminate the license or subscription for Service without any penalty, provided that Absorb shall refund to Client prepaid Recurring Subscription Fees covering the remainder of the Service Term of all Client's subscriptions after the effective date of termination.

11.1.3   Notwithstanding any terms contained in this Section 11.1, Absorb shall have no liability for any Claim (including any Absorb Special Indemnity Claim) to the extent that it is directly or indirectly based on, or arises from or out of: (i) Client Data; or (ii) Client Content; or (iii) use of the Service by Client and/or any User, for purposes not intended or outside the scope of the rights granted in this Agreement; or (iv) failure

of Client and/or User to use the Service in accordance with applicable law or Documentation as provided by Absorb; or (iv) use by the Client and/or User of the Service in combination with any software or other materials, products, or services provided, installed, developed by any third party or the Client which are not reasonably intended to be used with the Service; or (v) any customization or modification of the Service not made or authorized by Absorb.

11.2   **Indemnification by Client**. Subject to Section 12 (Limitation of Liability), Client shall defend and hold harmless Absorb, its affiliates, officers, directors and employees from and against any and all Claims, actions, or proceedings, which relate to or arise out of:

(a)   (i) Client Data; or (ii) Client Content, including but not limited to infringement of any third-party Intellectual Property Right; or (iii) Client's violation of its confidentiality obligations as set forth herein; or (iv) any customization or modification of the Service not made or authorized by Absorb (collectively referred to as "**Client Special Indemnity Claim(s)**"); or

(b)   Client's breach of this Agreement; or

(c)   Client's breach of applicable law; or

(d)   Client's gross negligence or wilful misconduct.

Client shall indemnify Absorb for any damages and costs awarded against Absorb by a court of competent jurisdiction in a final judgment arising out of such Claim, and for reasonable legal fees incurred by Absorb in connection with such Claim. The foregoing provisions of Section 11.2 shall not be applicable to the extent that any claim relate to or arise from Absorb's use of Client Data or Client Content in violation of this Agreement.

11.3   **Indemnification Procedures.** To obtain indemnification, indemnitee shall: (i) give written notice of any Claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such Claim, provided that the indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any Claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such Claim.

11.4   **Exclusive Remedy**. This Section 11 (Mutual Indemnification) states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of Claim described in this section.

12. LIMITATION OF LIABILITY.

12.1   Limitation of Liability.

12.1.1   **General Liability**. Except for (i) an Absorb Special Indemnity Claim; (ii) a Client Special Indemnity Claim; or (iii) an Excluded Claim (as hereafter defined), each Party's maximum aggregate liability arising out of or related to this Agreement, whether in contract, tort, or under any other theory of liability, will be limited to the total amount paid by Client hereunder to Absorb in the twelve (12) consecutive months preceding the incident causing the Claim (the "**General Liability Cap**").

12.1.2   **Special Indemnity Claim.** Either Party's maximum aggregate liability relating to or arising out of: (i) an Absorb Special Indemnity Claim(s) in the case of the Absorb, (ii) a Client Special Indemnity Claim(s) in the case of the Client, shall be limited to two times (2x) the General Liability Cap (the "**Special Indemnity Cap**").

12.1.3   **Excluded Claim.** Any limitation(s) of liability set forth herein will not apply to claims (i) for which liability cannot be limited under applicable law; or (ii) arising from a Party's gross negligence or willful misconduct (collectively referred to as "**Excluded Claim(s)**").

12.1.4   The existence of more than one claim under the General Liability Cap or the Special Indemnity Cap shall not expand the applicable limit under each such cap. Limitation(s) of liability as set forth herein will apply to Client and to each of its affiliates separately and shall not be cumulative among and between the Client and each of its affiliates. The foregoing shall not limit the payment obligations under Section 2 (Fees and Payment for Service). The Parties acknowledge that the provisions of Section 12 allocate risks under this Agreement between Parties and that the Fees agreed upon are based in part on these limitations, and that these limitations will apply notwithstanding any failure of any essential purpose of any limited remedy.

12.2   Exclusion of Certain Damages. Notwithstanding any provision in this Agreement to the contrary, in no event shall either Party have any liability to each other arising out of or related to this Agreement for any lost profits or revenues, lost business opportunities, business interruption, or for any indirect, special, incidental, exemplary, consequential, or punitive damages or loss of goodwill however caused, whether in contract, tort or under any other theory of liability, and whether or not such Party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

13.   **GENERAL TERMS**.

13.1   **Notice**. All notices which may be given under this Agreement shall be delivered in person, by email, courier, or sent by regular mail (a) to Absorb Software Inc., #2500 – 685 Centre St. S, Calgary, Alberta, Canada T2G 1S5, with a copy to email: legal@absorblms.com, or (b) to Client at the contact information contained in the applicable Order Form.

13.2   **Manner of Giving Notice**. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) on date of such personal delivery, (ii) on the day of receipt of such mail, or (iii) the first business day after verified receipt of email (provided email shall not be sufficient for notices of indemnifiable Claim). Notices to Client shall be addressed to the relevant contact(s) indicated by Client on the Order Form. Either Party shall give notice of a change of address or contact person to the other Party.

13.3   **Governing Law and Jurisdiction**. This Agreement will be construed in accordance with and governed by the applicable governing laws set forth in the table below without regard to choice or conflicts of law rules. The Parties agree to submit any dispute relating to this Agreement to the exclusive jurisdiction of the applicable courts set forth in the table below without regard to conflict of laws principles and consent to personal jurisdiction and venue therein.

If Client is domiciled in:	Governing Laws:	Courts with Jurisdiction:
The United States, or a country in Central or South America	Delaware and controlling U.S. federal law	Delaware
Canada	Alberta and controlling Canadian federal law	Court of Queen's Bench, Alberta
The United Kingdom	England and Wales	England and Wales
A country in Europe, the Middle East, or Africa	Ireland	Ireland
Australia, or a country in Asia or the Pacific region	Australia	District Court of New South Wales

Absorb Software Inc.
#2500 – 685 Centre St. S
Calgary, Alberta, Canada
T2G 1S5

13.4   **Export Compliance**. Each Party shall comply with applicable export laws and regulations in providing and using the Service. Without limiting the foregoing, (i) each Party represents that it is not named on any applicable government list of persons or entities prohibited from receiving exports, and (ii) Client shall not permit Users to access or use the Service in violation of any applicable export embargo, prohibition or restriction.

13.5   **Relationship of the Parties**. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.6   **No Third-Party Beneficiaries**. There are no third-party beneficiaries to this Agreement.

13.7   **Waiver and Cumulative Remedies**. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13.8   **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

13.9   **Legal Fees**. If any legal action or other proceeding is brought to enforce any provision of this Agreement by either Party, the prevailing Party shall be entitled to recover reasonable attorney fees incurred in the action, in addition to any other relief to which the prevailing Party may be entitled

13.10   **Assignment**. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (provided all Order Forms are also assigned), without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale, of all or substantially all of its assets not involving a direct competitor of the other Party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.11   **Entire Agreement**. These Service Terms and Conditions together with all applicable Order Forms, and any exhibits or amendments thereto, constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral,

concerning its subject matter. To the extent of any conflict or inconsistency between the provisions in the body of these Service Terms and Conditions and any applicable Order Form, the terms of such Order Form shall prevail.

13.12   **Conflict.** If there is any inconsistency between the Service Terms and Conditions, Order Form, and Data Processing Agreement (if applicable), a term contained in a document higher in the list shall have priority over one contained in a document lower in the list below:

1. Data Processing Agreement (if applicable);

2. Order Form; and

3. Service Terms and Conditions.

13.13   **Modification:** Absorb reserves the right to amend this Agreement from time to time, in which case the new Agreement will supersede prior versions. Absorb will notify Client of material changes not less than ten (10) days prior to the effective date of any such amendment, and Client continued use of the Service following the effective date of any such amendment will constitute consent to any such amendment.

EXHIBIT A
SERVICE LEVEL AGREEMENT

1.   TECHNICAL SUPPORT

1.1   Technical Support. Technical Support will be provided in the English language and includes: (i) troubleshooting, error correction, bug fixes, and assistance with LMS functionality; (ii) access to comprehensive Knowledge Base, and (iii) access to the Absorb Academy. Technical support is provided directly to Client Admins.

1.2   Support Availability. Technical support is available 24/7 via web, e-mail, and by phone:

email:	support@absorblms.com	
Website:	https://support.absorblms.com	
Phone:	North America	1-877-820-2575
	EMEA	+44 808 281 2767
	APAC	+61 1800 531 598

1.3   Support Levels. Once a technical support request has been received by Absorb, and all required information has been gathered, a severity level will be assigned to the request as set forth below:

Support Level	Rating	Target Response
Elite + Premium	Level 1 - Critical	2 Hours
	Level 2 - High	4 Hours
	Level 3 - Normal	8 Hours
	Level 4 - Low	24 Hours

- **Level 1 - Critical**: The Service is not functioning or is materially unavailable. The Service is not available to many Users, or the production system is down, or all features/functions are unavailable. For example: No course content is available, no Users can login, or the administrative interface is unavailable.

- **Level 2 - High**: The LMS Service is functioning, but with significant impairment. The Service is not available to a significant proportion of Users or a major area of the Service is not functioning. For example: A department of Users cannot access the Service, the courses section of the administrative interface is unavailable, e-Commerce is unavailable, or new enrollments cannot be made.

Absorb Software Inc.
#2500 – 685 Centre St. S
Calgary, Alberta, Canada
T2G 1S5

- **Level 3 - Normal**: The Service is functioning but with minor impairment. The Service is not available to a small proportion of Users, or a specific area of the Service is not functioning. For example: certificates are not displaying, an individual report is not accessible, or enrollment emails are not sending out.

- **Level 4 - Low**: Any request that is not level 1, 2, or 3 is a severity level 4.

1.4   **Authorized Support Contacts.**

1.4.1   Client may designate a limited number of Client personnel ("Authorized Support Contacts"), for LMS administration authorized by Client to interact with Absorb for LMS support. Authorized Support Contacts must be full-time employees of Client or contractors acting as full-time employees. The number of Authorized Support Contacts is limited as set forth below:

Support Package:	Authorized Support Contacts:
Premium	3
Elite	5

1.4.2   Client and Absorb agree that Authorized Support Contacts must be trained on the Service prior to becoming an Authorized Support Contact. Training can be achieved either by (i) attending Absorb offered training, or (ii) by "train the trainer" training provided by another Authorized Support Contract resource who has been trained on the Service.

1.4.3   Absorb retains the right to withhold support to untrained designated Authorized Support Contacts, which will not be unreasonably withheld.

2.   **AVAILABILITY**

2.1   **Access to Service**. Absorb shall use all commercially reasonable efforts to make the Service available twenty-four (24) hours a day, seven (7) days a week, except for:

a)   Planned downtime, which may include but is not limited to software updates and hardware maintenance. Absorb will provide seven (7) days advance notice for all planned downtime, and shall schedule it to the extent practicable in order to minimize interruptions to the Service.

I.   For software updates, Absorb will utilize Zero Downtime Deployment, during which Users may experience slight slowdowns. While it is not the intent, Absorb reserves the right to

make the Service temporarily unavailable in the event that an update cannot be completed with zero downtime.

II.   For hardware upgrades or maintenance, which may occur only as reasonably necessary, the Service will be unavailable for no more time than is required to perform the necessary work.

b)   "**Force Majeure Event(s)**" is any failure or delay by either Party in performing its obligations under the Agreement provided that such failure or delay: (i) is not due to its own act, failure to act, negligence or willful misconduct, (ii) could not have been overcome by the exercise of due diligence by the non-performing Party, (iii) could not have been prevented by reasonable precautions of the non-performing Party (whether or not taken), (iv) could not have been avoided by the non-performing Party through the use of alternate sources, work-around plans or other means including but not limited to such non-performing Party's compliance with its business continuity and disaster recovery plans, and (v) is caused by fire, flood, earthquake, elements of nature or acts of God, public utility or electrical failure, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, imposition of martial law or any similar cause that is beyond the reasonable control of the non-performing Party;

c)   Client's acts or omissions including, without limitation, unauthorized modification of the Service, negligence, willful misconduct, delay in performing or failure to perform any of its obligations under the Agreement; or use of Service in breach of the Agreement; and

d)   Any failure of Client's network, Internet, hardware, software or systems.