



WATERSHED SUBSCRIPTION SERVICES AGREEMENT

This Watershed Subscription Services Agreement effective as of _____ (“**Effective Date**”), is entered by and between Watershed Systems, Inc., with its principal place of business at 210 Gothic Ct, Suite 100, Franklin, TN 37067, USA (“**Watershed**”) and _____ with its principal place of business at _____ (“**Customer**”).

WHEREAS, Watershed has developed a Learning Record Store (LRS) known as the Watershed LRS application, which it makes available to subscribers on a Software-as-a-Service subscription basis via the internet for the purpose of collecting learning experiences and assessing training performance.

WHEREAS, Customer wishes to obtain the right to access and use the Subscription Services for its business operations.

WHEREAS, Watershed has agreed to provide access to, and Customer has agreed to accept and pay for access to, and use of the Subscription Services subject to the terms and conditions of the Agreement.

1. Definitions

When used in this Agreement or in any Subscription Order, now or hereafter, the following terms shall have the following meanings.

“**Affiliate(s)**” means any entity, including and without limitation, any individual, corporation, company, partnership, limited liability company, or group that directly or indirectly, through one of more intermediaries, controls, is controlled by, or is under common control with such party.

“**Agreement**” means this Watershed Subscription Services Agreement and any Subscription Order.

“**Authorized Users**” means collectively, Learners and Administrators of Customer. The number of Authorized Users shall not exceed the number Customer agreed with Watershed from time to time.

“**Customer Data**” means any permitted documents, files, information or data stored or processed through use of the Subscription Services that concerns, but is not limited to, Customer’s employees, training materials, learning record stores, scoring methods, results, and Statements.

“**Documentation**” means the user and administrator documentation as may be made available by Watershed to the Customer from time to time.

“**Intellectual Property Rights**” means rights in know-how, unpatented inventions, patent applications, patents, registered and unregistered trademarks or service marks, names or logos



(and in each case applications thereof), trade names, licenses, domain name rights, know-how and other trade secret rights, copyrights and all other intellectual or industrial property rights, in the broadest meaning of the term, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

“**Learner**” means an individual employee or independent contractor of Customer (or Customer’s Affiliates) who is (i) either a) the subject of a xAPI Statement or b) actively engaged with or accessing the learning tools who is reported on utilizing the Watershed Technology or for whom the Customer uses the Watershed Technology to run reports against (collectively, “Active Learner”), or (ii) learners who are not Active Learners, but whose data, reporting, or other metrics have not been disengaged or removed from the system (collectively, “Inactive Learner”).

“**Prohibited Information**” means credit or debit card numbers, passwords, protected health information as defined in HIPAA (45 C.F.R. § 160.103), information relating to a customer or consumer of a financial institution under GLBA (15 U.S.C. §§ 6801–6809) or other highly sensitive personal information.

“**Statements**” shall be defined in Section 2.1 below.

“**Subscription Order**” means a document, attached to, or referencing this Watershed Subscription Services Agreement, evidencing the agreed-upon initial subscription or any subsequent subscription, specifying, among other things, the quantities contracted for, the applicable fees, the billing period, the provisioned Statement storage, and any other terms as agreed to between the parties. Each such Subscription Order is subject to the terms and conditions of the Agreement (in the event of any conflict between the terms of this Watershed Subscription Services Agreement and the terms of any such Subscription Order, the terms of this Watershed Subscription Services Agreement shall prevail).

“**Subscription Services**” means the Watershed LRS application made available to Customer on a Software-as-a-Service (SaaS) subscription basis and the Support.

“**Support**” means the Watershed standard support services as outlined in Section 8 of this Watershed Subscription Services Agreement.

“**Watershed Technology**” means all of Watershed's proprietary technology (including the Watershed LRS applications, the Subscription Services and all other proprietary software, hardware, products, processes, algorithms, user interfaces, reports, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Watershed in connection with the Agreement.

2. Grant of access and use right; Restrictions



2.1. For the duration specified in the Subscription Order, Watershed grants Customer the right to access and use the Subscription Services to receive, store (subject to Section 2.4) and share experiential data in the form of statement objects (“**Statements**”) on behalf of a limited number of unique Learners solely for Customer’s own internal business purposes, subject to the terms and conditions of the Agreement and the agreed quantities and/or scope as set forth in the applicable Subscription Order. All rights not expressly granted in the Agreement are reserved by Watershed.

2.2. Customer’s use of the Subscription Services does not require the entry or collection of Prohibited Information. Customer agrees not to use the Subscription Services to collect or manage Prohibited Information. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, WATERSHED DISCLAIMS ANY AND ALL LIABILITY THAT MAY ARISE FROM CUSTOMER’S USE OF THE SUBSCRIPTION SERVICES TO COLLECT OR MANAGE PROHIBITED INFORMATION.

2.3 Watershed shall provide Customer with unique usernames and access passwords based on the Subscription Order. Customer shall ensure that each individual Authorized User has a unique ID and will not allow any Authorized User ID to be used by more than one individual Authorized User unless the Unique ID has been permanently reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Subscription Services.

2.4. The Subscription Services are provided subject to an agreed provisioned Statement storage allowance, as specified in the Subscription Order or, where not so specified, at the rate of US\$200 per one million Statements per year or at Watershed’s then-current generally applicable rate for provisioned Statement storage allowance (as the case may be). Watershed shall monitor Customer’s actual Statement storage use against its provisioned Statement storage allowance and shall use reasonable efforts to notify Customer when its actual Statement storage use reaches 80% of the provisioned allowance. Watershed shall in addition use reasonable efforts to notify again if the percentage use reaches 90%, 100% and 110% of the provisioned allowance in any year. On receiving a notification, Customer shall each time consider whether to retire Statements relating to Inactive Learners or other historical Statements in order to reduce its actual Statement storage usage or whether to increase its provisioned Statement storage allowance, which it may do at any time by notifying Watershed. If Customer’s actual Statement storage usage reaches 120% of the provisioned allowance, Watershed shall contact Customer to instruct Customer to retire historical Statements as aforesaid and, if within 20 Business Days of Watershed instructing Customer the Customer has not done so, Watershed shall retire historical Statements (including Statements relating to Inactive Learners) by exporting it and delivering it to Customer, or on request by Customer shall archive it for an additional fee agreed between Customer and Watershed) in which case Watershed shall submit its invoice, in accordance with Section 6.3. If Watershed and Customer cannot reach agreed as to the fee for archiving, Watershed shall export the said historical



Statements to Customer. The increased provisioned Statement storage allowance shall be applied to any Subsequent Term unless otherwise set out in the renewal Subscription Order.

2.5 With respect to the Subscription Services, Customer shall not: (i) permit unauthorized use of the Subscription Services; (ii) infringe or violate the intellectual property rights, privacy, or any other rights of any third party or any applicable law; (iii) submit information that is defamatory, obscene, threatening, abusive or hateful, as determined by Watershed; (iv) sell, resell, transfer, assign, distribute or otherwise commercially exploit or make it available to any third party in any way (except that Customer may allow Customer's contractors access to the Subscription Services as required in order to perform their obligations towards Customer); (v) transmit or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs or upload, post, or transmit any unlawful, harassing, libelous, or abusive material on the Subscription Services; (vi) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (vii) attempt to gain unauthorized access to the Service or its related systems or networks; (viii) reverse engineer, decompile, recompile, alter, copy, rent, disassemble or modify the Subscription Services or any Watershed Technology.

3. Customer Data

3.1 Customer acknowledges that to use the Subscription Services, Customer may be required to provide Watershed with Customer Data. Watershed acknowledges that Customer Data shall be Customer Confidential Information and that Watershed does not own any Customer Data. Customer grants Watershed a royalty-free license to store, process and access the Customer Data to the extent required for Watershed to provide the Subscription Services.

3.2 Watershed may aggregate, anonymize and de-identify Customer Data (collectively, "**Anonymous Data**") with other data in its possession and may use such Anonymous Data for the purpose of improving the Subscription Services.

4. IP Ownership and Confidentiality

4.1 Watershed alone (and/or its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Subscription Services, the Watershed Technology, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Subscription Services or the Watershed Technology. Watershed's name, Watershed's logo, and the product names associated with the Subscription Services are trademarks of Watershed or third parties, and no right or license is granted to use them except as expressly authorized herein.

4.2 "**Confidential Information**" means all information and materials obtained by a party (the "Recipient") from the other party (the "Disclosing Party"), whether in tangible form, written or oral, that is identified as confidential or would reasonably be understood to be confidential given the nature of the information and circumstances of disclosure, including without limitation



Customer Data, the Subscription Services, and the terms and pricing set out in the Agreement. Each party shall preserve as confidential and not copy, adapt, alter or communicate to any party (other than employees with a 'need to know' or independent contractors bound by a written agreement of confidentiality no less restrictive than this section), or use for any reason other than performance under the Agreement, all Confidential Information. The confidentiality obligations of this section shall not apply to: (i) information that is publicly known prior to the disclosure or becomes publicly known through no wrongful act of the Recipient; (ii) information that was in lawful possession of the Recipient prior to the disclosure without any agreement of confidentiality restricting its use or disclosure, and was not received as a result of any breach of confidentiality with respect to the other party (iii) is independently developed by the Recipient without use of or reference to the Disclosing Party's Confidential Information; or (iv) becomes known by the Recipient from a third party and, to the Recipient's knowledge, is not subject to an obligation of confidentiality to the Disclosing Party. The Recipient may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order, provided that the Recipient provides prior notice of such disclosure to the Disclosing Party, unless such notice is prohibited by law, rule, regulation or court order. Watershed and Customer acknowledge that monetary remedies may be inadequate to protect their rights with respect to a breach of this section and agree that, in addition to legal remedies otherwise available, injunctive relief is an appropriate judicial remedy to protect such rights, and each party hereby waives its right to assert that monetary remedies are adequate.

4.3 Watershed and Customer agree that both companies have the right to express publicly their business relationship. This includes the right to republish logos, company names, and software names of the other party. Either company may request that a specific reference to them by the other party be removed, and it is agreed that publications by either Watershed or Customer will be generally positive in tone.

5. Privacy & Security

5.1 Watershed will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Customer Data. These methods include protection such as encryption and user authentication to prevent unauthorized user access or other malicious activities. In addition, Watershed limits access to its databases, keeping a clear separation between the off-line servers where Customer Data is analyzed, and the on-line, on-demand servers where processes are stored. Notwithstanding any other provision, this section sets forth Watershed's entire obligation to protect Customer Data on the Subscription Services. Customer will maintain and enforce commercially reasonable security methods and procedures to prevent misuse of the Subscription Services log-in information of its employees and other users. Watershed shall not be liable for any damages incurred by Customer or any third party in connection with any unauthorized access resulting from the actions of Customer or its representatives.

6. Charges and Payment of Fees



6.1. In consideration for the Subscription Services to be performed by Watershed, Customer agrees to pay to Watershed the agreed fees in the timeframe as specified in the Subscription Order, or, lacking such specification, within thirty (30) days of the date of Watershed's invoice. All payments shall be made in U.S. currency, without credit, set-off or reduction. For any fees not paid within thirty (30) days of its due date, Customer shall be liable for late charges at the rate equal to the lesser of 1.5% per month, or, if lower, the highest rate allowed by law, calculated from the due date until the amounts are paid, together with all costs and expenses incurred in collection, including reasonable attorney's fees. Watershed may also suspend (any part of) the Subscription Services on giving the Customer no less than five (5) business days' notice in writing if any fees are due and outstanding, until such payment is received, provided that Customer will remain obligated to make all payments due under the Agreement and/or the relevant Subscription Order. All fees committed by Customer in a Subscription Order will be fixed for the term specified in such Subscription Order and thereafter may be increased by Watershed beginning with each annual term upon providing Customer no less than sixty (60) days prior written notice. Watershed's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Watershed's net income.

6.2 Customer may add additional Authorized Users or increase its provisioned Statement storage allowance by executing additional written Subscription Orders and paying the additional fees. Except as may be otherwise specifically agreed on in the additional Subscription Orders, added Authorized Users or increased provisioned Statement storage allowance will be subject to the following: (i) orders for added Authorized Users/increased provisioned Statement storage will be coterminous with the then preexisting billing period with respect to then-existing Subscription Services; and (ii) the fee for the added Authorized Users/increased provisioned Statement storage will be the then-current generally applicable Subscription Services fee.

6.3 The Subscription Services have usage limitations based on the number of Learners, Administrators, Data Sources, provisioned Statement storage allowance, and/or other agreed metrics as set forth in the Subscription Order ("Quantity"). Customer shall maintain accurate records regarding Customer's actual use based on the number of its Learners, Administrators, Data Sources and/or other agreed metrics ("Actual Use"). Watershed shall monitor Customer's Actual Use of the Subscription Services and its actual Statement storage usage. Unless otherwise set forth in an Order Form and except in relation to provisioned Statement storage allowance, when Customer's Actual Use exceeds the applicable Quantity, Customer shall, upon receipt of Watershed's invoice, pay additional fees on a proportionate basis for the excess use in minimum blocks of 10% of the applicable Quantity, for prior excess use and for the remainder of the then current term. Where Customer's actual use of Statement storage is 120% or more of its provisioned Statement storage allowance and Customer does not elect to retire Statements relating to Inactive Learners or other historical Statements, Customer shall, upon receipt of Watershed's invoice, pay additional fees on a proportionate basis for the remainder of the then current term.



6.4. If Customer believes the Watershed invoice is incorrect, Customer must contact Watershed in writing within thirty (30) days of the invoice date stating the amount in question and the reason for non-payment of that amount to be eligible to receive an adjustment or credit. In any event, Customer must pay the undisputed amount based on the payment terms that were agreed on with Watershed.

7. Term and Termination

7.1 Unless terminated earlier pursuant to the Agreement, the initial term (“**Initial Term**”) of the Agreement shall be for a period of twelve (12) months from the Effective Date and shall thereafter automatically renew for subsequent twelve (12) month terms (each a “**Subsequent Term**”) unless either party provides notice of termination to the other no less than sixty (60) days prior to the expiration of the then current Term.

7.2 The Agreement can be terminated by either party upon written notice: (i) if the other party breaches any material term or condition of the Agreement and such breach remains uncorrected for thirty (30) calendar days following written notice from the non-breaching party specifying the breach; (ii) immediately upon written notice if the other party files for bankruptcy, becomes the subject of any bankruptcy proceeding or becomes insolvent; or (iii) immediately upon written notice if the Subscription Services are unavailable due to a Force Majeure event (defined below) for ten (10) or more consecutive business days, so long as such notice is given no later than five (5) business days after the conclusion of such Force Majeure event. Termination of the Agreement shall be without prejudice to the survival of any provisions in the Agreement which by their nature survive termination.

7.3 Upon request of the other party, each party will return to the other any proprietary materials and data which have been delivered by the other party, which contain, embody, reflect or reference all or any part of any Confidential Information of the other party or will provide a letter signed by an authorized representative of the receiving party that such Confidential Information and data have been destroyed. Customer shall have forty-five (45) days from the termination of the Agreement to request a copy of the Customer Data from Watershed, and if requested, Watershed shall use commercially reasonable efforts to provide a copy of that data within forty-five (45) days. After such thirty (30) day period, Watershed shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

8. Service Performance and Support

Watershed will, as part of the Subscription Services, and at no additional cost to Customer, provide Customer with Watershed’s standard customer support services (“Support”) in accordance with Schedule A.

9. Warranties and Disclaimer of Warranties



9.1 AUTHORITY. EACH PARTY WARRANTS AND REPRESENTS THAT IT HAS ALL REQUISITE LEGAL AUTHORITY TO ENTER INTO AND PERFORM ITS RESPECTIVE OBLIGATIONS UNDER THE AGREEMENT AND THAT IT SHALL COMPLY WITH ALL LAWS APPLICABLE TO ITS PERFORMANCE HEREUNDER.

9.2 WATERSHED REPRESENTS AND WARRANTS THAT IT WILL PERFORM ALL SUBSCRIPTION SERVICES IN A PROFESSIONAL MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS

9.3 EXCEPT AS OTHERWISE STATED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. WATERSHED (INCLUDING ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNEES) AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, AND/OR (B) THE SUBSCRIPTION SERVICES AND/OR THEIR QUALITY WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

10. Indemnification

10.1. Customer shall defend, indemnify, and hold harmless Watershed and its Affiliates and their respective officers, shareholders, employees, agents, successors and assigns (each a "Watershed Indemnified Party") from and against any and all damages, losses, costs and expenses (including any reasonable attorney's fees and expenses) in connection with any third party claim, suit, action, or proceeding (each a "Claim") brought against a Watershed Indemnified Party to the extent arising out of or in connection with:

10.1.1 Customer's use of the Subscription Services;

10.1.2 Any gross negligent act or willful misconduct by Authorized Users and any agents, employees, or subcontractors of Customer; or

10.1.3 An allegation that the Customer Data or any other content, data or information supplied by Customer, or the use thereof, infringes the Intellectual Property Rights of a third party.

10.2. Watershed shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorney's fees) incurred by it in connection with any Claim brought against Customer by a third party, excluding Customer Affiliates, alleging that the use of the Subscription Services as contemplated hereunder infringes any copyright, trademark or trade secret rights of such third party. In the event that the Subscription Service or any part thereof are likely to or do become the subject of an infringement related Claim, and Watershed



cannot, at its sole option and expense, procure for Customer the right to continue using the Subscription Services, or any part thereof, or modify the Subscription Services, or any part thereof, to make them non-infringing, then Watershed has the right to promptly terminate the Agreement, reimbursing the Customer with any prepaid, unused Subscription Services fees.

11. Limitation of Liability

EXCEPT FOR DAMAGES RESULTING FROM GROSS NEGLIGENCE, FRAUD OR WILFUL MISCONDUCT, AND LIABILITY FOR DEATH OR BODILY INJURY OF ANY PERSON CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF A PARTY, IN NO EVENT SHALL THE TOTAL LIABILITY OF WATERSHED, ITS AFFILIATES, SERVICE PROVIDERS, LICENSORS, CONTRACTORS, OR SUPPLIERS, UNDER OR IN CONNECTION WITH THE AGREEMENT, WHETHER IN TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), CONTRACT, OR ON ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SUBSCRIPTION SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE EVENT GIVING RISE TO THE CLAIM FIRST AROSE. IN NO EVENT WILL EITHER PARTY, THEIR AFFILIATES, SERVICE PROVIDERS, LICENSORS, CONTRACTORS, OR SUPPLIERS, BE LIABLE FOR LOST REVENUE, PROFITS, BUSINESS OR DATA, OR FOR ANY COSTS OF COVER, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT.

12. Customer's Responsibilities

Customer shall provide Watershed with all necessary cooperation in relation to any Subscription Order and all necessary access to such information as may be required by Watershed to provide the Service. Customer shall carry out their responsibilities set out in the Agreement in a timely and efficient manner. Customer shall ensure that the Authorized Users use the Subscription Services in accordance with the terms and conditions of the Agreement. Customer shall: (i) notify Watershed immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) suspend all user accounts for individuals who are no longer authorized to access those accounts, and (iii) comply with any lawful instructions concerning access to and/or use of the Subscription Services that Watershed may give from time to time.

13. General.

13.1 Employees. Each party agrees that during, and for one year after, the term of the Agreement, it will not directly or indirectly solicit for hire any of the other party's employees who were actively engaged in the provision or use of the Subscription Services without the other party's express written consent. This restriction shall not apply to offers extended solely as a



result of and in response to public advertising or similar general solicitations not specifically targeted at the other party's employees.

13.2. Independent Contractors. The parties are independent contractors and not agents or partners of, or joint venturers with, the other party for any purpose. Neither party shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

13.3. Assignment; Subcontracting. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other, which shall not be unreasonably withheld. However, either party may assign the Agreement to any Affiliate, or to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business or assets to which the Agreement pertains, by purchase of stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under the Agreement, provided that Customer shall not assign the Agreement to a direct competitor of Watershed. Any assignment or attempted assignment in breach of this section shall be void. The Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns. Watershed may subcontract any part of the Agreement to any Affiliate or third party, provided that it shall remain responsible for the actions and omissions of the relevant Affiliate or third party in accordance with, and subject to the provisions of the Agreement.

13.4. Governing Law; Dispute Resolution. The Agreement shall be exclusively governed by the laws of the State of Tennessee, without regard to the conflict of law provisions thereof. Except for the right of either party to apply to a court of competent jurisdiction for an injunction or other equitable relief or for the collection of an account stated, any controversy, claim or dispute related to the Agreement will be settled by binding arbitration before a single arbitrator, who is an attorney with experience in the software industry. The arbitration will be conducted under the then current Commercial Arbitration Rules of the American Arbitration Association. The decision and award of the arbitrator will be final and binding, and the award rendered may be entered in any court having jurisdiction thereof. The arbitration will be held in Williamson County, Tennessee. The arbitrator will enforce the terms of the Agreement and will have no authority to award punitive damages, non-compensatory damages or any damages other than direct damages, or to award direct damages in excess of the limitations and exclusions set forth in the Agreement. In the event that Customer initiates an arbitration for alleged breach of the Agreement, and Customer does not prevail in the arbitration, Customer agrees that Watershed shall be paid its reasonable attorneys' fees and costs. The existence of the arbitration, the arbitration proceedings and the outcome of such arbitration will be treated as Confidential Information under the Agreement and will not be disclosed by either party.

13.4 No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of the Agreement are intended or shall be construed to confer upon or give to any person or entity other than Customer and Watershed any rights, remedies or other benefits under or by reason of the Agreement.



13.5. No Waiver; Severability. The waiver by either party of a breach of any provision of the Agreement or the failure by either party to exercise any right hereunder shall not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right. If any one or more of the provisions in the Agreement are determined invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of the Agreement, and the Agreement will be construed as if such invalid, illegal or unenforceable provisions had never been contained in the Agreement.

13.6. Force Majeure. Neither party will be responsible to the other for any delay, failure in performance, loss or damage, unless through the exercise of reasonable diligence, the non-performing party was able to prevent interference with and/or interruption of its performance of the Agreement, due to fire, explosion, power blackout, earthquake, volcanic action, cable cuts by third parties, flood, severe weather elements, strike, embargo, labor disputes, civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond their reasonable control ("Force Majeure"), except that Customer must pay for any Subscription Service used. Any such delay or failure shall suspend the Agreement until the Force Majeure event ceases, provided that such party gives the other party prompt written notice of the failure to perform, the reason for the failure to perform, its expected duration, and its anticipated effect on the ability to perform the obligations, and uses its reasonable efforts to limit the resulting delay in its performance.

13.7 Miscellaneous. No text or information set forth on any other purchase order, preprinted form or document (other than a Subscription Order, if applicable and where expressly stated that it amends or deviates from the terms of this Agreement) shall add to or vary the terms and conditions of the Agreement. The Agreement comprises the entire Agreement between the parties and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained therein. All terms and provisions of the Agreement which should by their nature survive the termination of the Agreement shall so survive, including without limitation those terms regarding payment of fees, ownership and confidentiality, disclaimer of warranties and limitations of liability. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Service. Section headings contained in the Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation of the Agreement.

13.8 Actions Permitted. Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than one year after the cause of action has accrued.

By the signatures of their duly authorized representatives below, Watershed Systems Inc. and Customer agrees to be legally bound to all of the provisions of the Agreement.



Customer

Watershed Systems, Inc.

By: _____

By: _____

Authorized Signature

Authorized Signature

Print name

Print name

Title

Title

Date

Date



Schedule A - WatershedLRS Service Level Agreement (“SLA”)

Definitions

- “Business Days” means US working days, hence not including weekends and US holidays.
- “Business Hours” means 8am – 5pm Central Time during Business Days.
- “Documentation” means the user guidelines, operating manuals, training manuals and technical materials describing the Software as may be made available by Watershed to its clients from time to time.
- “Error” means failure of the Software to perform in accordance with the applicable Specifications.
- “Incident” means a single, reproducible issue, problem or symptom regarding the Software.
- “Specifications” means any description of the applicable features, functions, performance and/or other attributes of, and requirements, for the Software set forth in the Documentation.
- “Software” means the WatershedLRS Software-as-a-Services application.

Support Standards

Incident Severity Levels

Incidents are assigned a severity level. The severity level establishes the priority of the Incident and is provided by a Watershed Analyst at its sole discretion at the time of logging. Priority attention is given to the Incident based on its severity. There are four (4) levels of Incident severity, as follows:

Severity Level	Description	Examples
1	Production Down	The Software is inoperable. A major application failure has occurred or data integrity issues exist, and business processes are halted. There is no workaround available.
2	High	A critical business process is impaired, causing a serious disruption of a major business function. It is causing serious impact on daily functions or processing, and there is no acceptable workaround. The workaround is unacceptable if one or more



		<p>of the following are true:</p> <ul style="list-style-type: none"> • Workaround is very labor intensive or time consuming. • Workaround affects transactions that are repeated throughout the day. • The Watershed Analyst has to reallocate and/or add staff to accomplish the workaround.
3	Medium	Non-critical problems occur with the Software, but the Watershed Analyst is able to run the system and/or application, and there is an acceptable workaround for the problem.
4	Low	An inquiry and/or low system impact issue which does not require immediate attention. This includes cosmetic issues on screens or a request for information regarding the use of the Software.

Response and Resolution Targets

Incidents are responded to upon Customer's initial logging in Watershed's online support tool and each time Customer makes an update to the Incident. The response targets are calculated as the time difference between each initial log and subsequent update Customer makes to the Incident and Watershed's corresponding response. Resolution targets are calculated as the difference between the time the Incident is logged by Customer and it having supplied sufficient details to Watershed for us to be able to determine or replicate the issue, and the time a resolution is provided and the Incident is closed. The resolution to the Incident can be an answer to a question, an acceptable workaround, an existing code correction, or a new code correction, each time as communicated and determined by Watershed. The response and resolution targets are based on the severity level of the Incident and are defined below. Severity 1 Incidents receive progress updates every 4 Business Hours, and Severity 2 Incidents receive progress updates every 8 Business Hours.



Severity Level	Response Target	Resolution Target
Severity 1 - Production Down	Within 1 Business Hour	Within 1 Business Day
Severity 2 - High	Within 4 Business Hours	Within 3 Business Days
Severity 3 - Medium	Within 8 Business Hours	Within 5 Business Days
Severity 4 - Low	Within 12 Business Hours	To be mutually agreed upon

Network connectivity issues shall not be deemed Errors where such connectivity is not controlled or provided by Watershed or its subcontractors.

Cloud Service Availability

Cloud Service Availability is defined as the availability of the Software to receive and process transactions from Customer, and to send responses back to Customer. Cloud Services Availability shall be measured over the period of each calendar year, calculated with the unit of minutes as set forth below.

- Planned Cloud Service Availability = Available Time in Calendar Year – Scheduled Outages
- Actual Cloud Service Availability = Planned Cloud Service Availability – Unavailability
- Cloud Service Availability Level (%) = (Actual Cloud Service Availability / Planned Cloud Service Availability) x 100

“Scheduled Outages” means any time Watershed temporarily suspends operation of the Software to perform scheduled maintenance. Such maintenance hours shall normally be scheduled outside of Business Hours.

Service Level Reporting

Watershed will make available periodic reports assessing Watershed’s performance against the Cloud Service Availability. Watershed shall measure and report on minutes of Unavailability, Planned Cloud Service Availability, and Cloud Service Availability Level.



Service Credits

A “Service Credit” is a dollar credit applied against future invoices (if any) calculated as a percentage of the total charges paid by Customer for the Services for the annual billing cycle in which the Unavailability occurred in accordance with the table below.

Watershed will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from Watershed. A Service Credit will be applicable and issued only if the credit amount for the applicable annual billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, Customer’s sole and exclusive remedy for any Unavailability, non-performance, or other failure by Watershed to provide the Services in accordance with the terms of this SLA is the receipt of a Service Credit (if eligible) in accordance herewith.

To receive a Service Credit, Customer must submit a claim by opening a case at support@watershedlrs.com. To be eligible, the credit request must be received by Watershed within sixty (60) days of the renewal date on the annual billing cycle, and must include:

- The words “SLA Credit Request” in the subject line;
- The dates and times of each Unavailability incident that you are claiming;
- Customer’s request logs that document the Errors and corroborate your claimed outages (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Cloud Service Availability percentage during any calendar year is:	Then the Service Credit shall equal this percentage of the annual fees:
99.0% or greater	0%
Greater than 98% but less than 99.0%	5%
Greater than 97% but not more than 98%	10%
Greater than 96% but not more than 97%	15%
Greater than 95% but not more than 96%	20%
Less than 95%	25%