Terms and Conditions

WHEREAS, Provider provides access to the Services to its customers;

WHEREAS, Customer desires to access and use the Services, and Provider desires to provide Customer with access to the Services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1.   **Definitions**.

a.   "Aggregated Statistics" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

b.   "Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

c.   "Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

d.   "Deliverables" means any documents, downloads, reports, job summaries, embedded links, work product, and other materials that are delivered to Customer under this Agreement or prepared by Provider for Customer in connection with performing the Services.

e.   "Documentation" means Provider's user manuals, guides, installation or release notes relating to the Services that are provided or made available by Provider to Customer either electronically or in hard copy form/end user documentation relating to the Services available at https://ellio.raftelis.com/Help.

f.   "Authorized User License Agreement" or "AULA" means the authorized user license agreement that governs each Authorized User's use of the Services, which each Authorized User must agree to as a condition of being granted access to the Services whether through the Website or in any other form or on any other platforms (including mobile platforms), in each case, as Provider may determine from time-to-time in its sole discretion.

g.   "Provider IP" means the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the

avoidance of doubt, Provider IP includes Aggregated Statistics, and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

h. "Services" means the software-as-a-service offering described in Exhibit A.

i. "Third-Party Products" means any third-party products described in Exhibit A provided with or incorporated into the Services.

j. Capitalized terms not defined in this Section 1 shall have the meanings set forth in this Agreement.

2. **Access and Use.**

a. Access to the Services. Subject to the terms and conditions of this Agreement, including, without limitation, the payment of Fees in Section 5(a), Provider hereby grants Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 22) right to access and use the Services ("License"), including any Deliverables, during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein and the Authorized User License Agreement. Such use is limited to Customer's internal business use. Provider shall provide to Customer the necessary Authorized User accounts or connections to enable Customer to access the Services.

b. Documentation. Subject to terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 22) license to use the Documentation during the Term of this Agreement and solely for Customer's internal business purposes in connection with its use of the Services.

c. Use Restrictions. Customer is prohibited from using the Services for any purposes beyond the scope of the access granted in this Agreement. 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, Deliverables, or Documentation, in whole or in part;

(ii) Rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services, Deliverables, or Documentation;

(iii) Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component, code, or algorithm of the Services, in whole or in part;

(iv) Remove any proprietary notices from the Services, Deliverables, or Documentation; or

(v)   Use the Services, Deliverables, or Documentation 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.

d.   Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and License expressly granted hereunder, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to Provider IP, Documentation, Deliverables, or Services.

e.   Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if:

(i)   Provider reasonably determines that (1) there is a threat or attack on the Services or any of the Provider IP; (2) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Services, Provider IP, or to any other customer or vendor of Provider; (3) Customer, or any Authorized User, is using the Services or Provider IP for fraudulent or illegal activities; or (4) Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law;

(ii)   Any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or

(iii)   In accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

f.   Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. All right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, is and shall remain the exclusive property of Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available

in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

g. Password/Account Settings. Customer is responsible for maintaining the confidentiality of the username(s) and password(s) used in connection with the Services, and Customer is fully responsible for all activities that occur under its username(s) and password(s). Customer may request Provider to allow its employees or agents to access the Platform on its behalf. Customer shall be responsible for all activities by such employees and agents. Customer shall prevent unauthorized use of the Services using the password. Customer agrees to immediately notify Provider of any unauthorized use of such username or password or any other breach of security. Provider will not be liable for any loss or damage arising from Customer's failure to comply with this provision. Customer's administrative Authorized User(s) have the option to change access levels for any Authorized User within Customer's organization, including re-assigning an Authorized User account from an inactive user to a new Authorized User.

3. **Customer Responsibilities.**

a. General. Customer is responsible and liable for its use of the Services and Provider IP, including such use by its Authorized Users, regardless of whether such access or use is permitted by or in violation of the Agreement. Customer is responsible for all acts and omission of its Authorized Users and is required to ensure that all of its Authorized Users use the Services and Provider IP in accordance with this Agreement and applicable law.

b. Customer Representations and Warranties. Customer warrants and represents to Provider that: (i) Customer owns the Customer Data that it will view in connection with its use of the Services; or (ii) Customer has secured all necessary authorizations, permissions, and consents that may be required pursuant to applicable law to use the Services in connection with the Customer Data that it is viewing. Customer also warrants and represents that Customer and its Authorized Users will not: (i) use the Services or Provider IP to violate applicable law or any third party's rights; or (ii) use the Services or Provider IP in connection with any property that Customer does not have specific authorization to view or access.

c. Third-Party Products. From time to time, Provider may make certain Third-Party Products available to Customer and any such Third-Party Products will be subject to their own term and conditions and the applicable flow-through provisions, if any, included in Exhibit A. In the event that Customer does not agree to adhere to the applicable terms for any Third-Party Products, then Customer must not install or use any such Third-Party Products.

4. **Service Levels and Support.**

a. Service Levels. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service levels set forth in Exhibit B, which is attached hereto.

b. Support. The access rights granted hereunder entitle Customer to the support services described in Exhibit B. Provider may amend the support services from time-to-time in its sole discretion.

5. **Fees and Payment.**

a. Fees. Customer shall pay Provider the fees ("Fees") set forth in Exhibit A, which is attached hereto, without any offset, deduction, or claim of set-off. Customer shall make all payments due under this Agreement in U.S. dollars on or before the due date set forth in Exhibit A. In the event that Customer fails to make any payment when due, without limiting Provider's other rights and remedies, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

b. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar governmental expenses. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind that are imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder; provided, however, that Customer will not be responsible for any taxes imposed on Provider's income.

c. Audit Rights. During the Term of this Agreement, Provider may, in Provider's sole discretion, audit Customer's use of the Services to ensure Customer's compliance with this Agreement. Customer shall cooperate with Provider's personnel conducting such audits and provide all access requested by Provider to records, systems, equipment, information, and personnel, including, without limitation, machine identification information, serial numbers, and related information necessary for Provider to verify compliance with the terms of this Agreement. If the audit determines that Customer's use of the services exceeds or exceeded the use permitted by this Agreement, then Customer shall, within thirty (30) days following the date of Provider's written notification thereof, pay Provider: (i) the retroactive Fees for such excess use and, unless Provider terminates this Agreement as set forth herein, Customer shall obtain and pay for a valid license to bring Customer's use into compliance with this Agreement; and (ii) the cost incurred by Provider to conduct the audit. Provider's remedies hereunder are cumulative and are in addition to, and not in lieu of, all other remedies that Provider may have at law or in equity, whether under this Agreement or otherwise.

6. **Confidentiality.**

a. Confidential Information. The term "Confidential Information" means all confidential, non-public, or proprietary information disclosed or made available by a Party ("Disclosing Party") to the other Party ("Receiving Party"), whether disclosed orally, or disclosed or access in written, electronic, or other form or media and whether or not marked or designated as "confidential," including, without limitation, business and financial information, supplier information, customer information, pricing, technical information, intellectual property, patents, copyrights, trademarks, trade secrets, algorithms, code, data, designs, documentation, drawings, forecasts, formulas, hardware, ideas, inventions, whether patentable or not, photographs, plans, procedures, processes, budges, records, reports, sketches, software or other information a

reasonable person would understand being confidential (collectively, "Confidential Information"). The term Confidential Information does not include information which: (a) is or becomes part of the public domain other than as a result of any violation of this Agreement by the Receiving Party; (b) is received by the Receiving Party from a third party on a non-confidential basis; or (c) is independently developed by the Receiving Party, as established by the Receiving Party's written records, without use of or reference to any of the Disclosing Party's Confidential Information.

b. Use of Confidential Information. The Receiving Party may use the Confidential Information solely in connection with the provision of and/or use of the Services. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, agents or representatives (collectively, "Representatives") who have a need to know the Confidential Information for the Representatives' job function and in connection with the Receiving Party obligations under this Agreement. The Receiving Party shall remain liable for any violations of this Agreement by its Representatives. Notwithstanding the foregoing, a Receiving Party is permitted to disclose Confidential Information to the extent required in order to comply with applicable law, including without limitation in response to a court order, subpoena, or other legal demand; provided, however, that the Receiving Party shall promptly provide the Disclosing Party with prior written notice (unless otherwise prohibited by applicable law) and provide its reasonable cooperation, at the Disclosing Party's sole expense, in obtaining a protective order or other injunctive relief against disclosure. If any such efforts to prevent disclosure should fail, then the Receiving Party shall only disclose the minimum amount of Confidential Information necessary, on the advice of legal counsel, to satisfy the legal obligation. The Receiving Party is also permitted to use Confidential Information to establish its rights under this Agreement, including to make required court filings.

c.   Protection of Confidential Information. Each Receiving Party shall protect Confidential Information hereunder using at least the same care that it uses to safeguard its own information of a similar sensitivity, which in no event shall be less than a reasonable amount of care. The Receiving Party shall protect Confidential Information from access or use by an unauthorized party in violation of this Agreement. In the event that a Receiving Party discovers or otherwise learns that any Confidential Information has been access or used by an unauthorized third party or in violation of this Agreement (each, a "Security Incident"), the Receiving Party shall promptly notify the Disclosing Party of the Security Incident and undertake immediate efforts to investigate and remedy the Security Incident while mitigating any damages therefrom. The Receiving Party shall not use any Confidential Information under this Agreement except for the purposes of its performance under this Agreement. The Receiving Party shall not use or disclose any Confidential Information for the benefit of any third party.

d. Confidential Information upon Expiration or Termination of the Agreement. Upon the earlier to occur of expiration or termination of the Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes

a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. **Intellectual Property.**

a. <u>Provider IP Ownership</u>. Customer acknowledges that Provider and its licensors and service providers own all right, title, and interest in and to, all intellectual property rights that, are included in the Services, any platform utilized to make the Services available, and all Provider IP. Customer further acknowledges and agrees that nothing contained in this Agreement confers any ownership or property rights in the Services or any Provider IP, except for the right to use the Services as set forth in this Agreement.

b. <u>Customer Data License</u>. Customer grants Provider a perpetual, worldwide, royalty free, irrevocable, and transferrable license to reproduce, distribute, and otherwise use and display the Customer Data and to perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within Aggregated Statistics.

c. <u>Feedback</u>. In the event that Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("<u>Feedback</u>"), Customer warrants and represents to Provider that Provider is free to use such Feedback. Customer further warrants and represents to Provider that it has all rights, title, and interest in and to such Feedback and that such Feedback does not infringe on any patent, copyright, or any other intellectual property right of a third party. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. **Warranty Disclaimer.** PROVIDER MAKES THE WEBSITE, SERVICES, AND PROVIDER IP AVAILABLE "AS IS." PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE WEBSITE, SERVICES, AND PROVIDER IP AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, COURSE OF PERFORMANCE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET OUT IN THIS SECTION 8, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE WEBSITE, SERVICES, PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF OTHER USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WITH ANY SOFTWARE, SYSTEM, OR OTHER

SERVICES, OR BE SECURE, ACCURATE, COMPLETE, ERROR FREE, OR FREE OF HARMFUL CODE.

9. **Indemnification.**

a. Provider Indemnification. Provider shall fully indemnify, defend, and hold Customer harmless from and against any and all lawsuits, claims, causes of actions, and other proceedings asserted by third parties (collectively, "Third Party Claims") and pay all losses, damages, liabilities, costs, fees (including attorney's fees) and expenses (collectively, "Losses") resulting from such Third Party Claims that the Services or the use of the Services or Provider IP in accordance with this Agreement infringes upon or misappropriates the intellectual property rights of a third party, except that Provider will have no duty to indemnify hereunder to the extent any Third Party Claim arises out of: (i) Customer's use of the Services or Provider IP in a manner that is not approved by Provider or (ii) Customer's use of the Services in combination with data, software, hardware, equipment, or technology that is not provided by Provider or authorized in writing by Provider; or (iii) any modifications to the Services not made by Provider.

If any Third Party Claim is made or appears possible, Customer agrees that Provider shall be permitted, at Provider's sole discretion to: (1) modify or replace the Services, or any component or part thereof, so that the Services are no longer infringing; or (2) obtain the right for Customer to continue using the Services. In the event that Provider determines that neither the alternative in (1) or (2) is reasonably available, Provider may terminate the Agreement, in its entirety, or with respect to the affected component or part, effective immediately on written notice to Customer.

b. Customer Indemnification. Customer shall fully indemnify and hold harmless, and at Provider's option, defend Provider, including its directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all Third Party Claims and pay all Losses arising out of or in connection with (i) Customer's or any Authorized User's violation of this Agreement; (ii) negligence or willful misconduct by Customer or any Authorized User; (iii) use of the Services or Provider IP in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

c. Indemnification Procedure. In the event that either Party has the right to seek indemnification hereunder, it shall promptly provide written notice to the indemnifying Party of the Third Party Claim and any underlying lawsuit or other relevant documentation received in connection therewith. Any delay by the indemnified Party in providing notice to the indemnifying Party will not serve to extinguish the indemnification obligation under this Section, unless the indemnifying Party can established that it was materially prejudiced by such delay. Except as otherwise provided in this Section 9, the indemnifying Party shall be entitled to assume the defense of such Third Party Claim with counsel approved by the indemnified Party, which shall not be unreasonably withheld. The indemnified Party shall have the right to employ its own legal counsel

in any such Third Party Claim, at the indemnified Party's sole expense. No indemnifying Party shall settle any claim against an indemnified Party that includes any admission of guilt or liability without the prior written consent of the indemnified Party. Moreover, any settlement shall include a complete release for the indemnified Party.

    d. <u>SOLE REMEDY</u>. THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATIONS FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

    10. DISCLAIMER OF DAMAGES. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, ENHANCED, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF GOODWILL, DAMAGE TO REPUTATION, INCREASED COSTS, DIMINUTION IN VALUE, LOSS OF BUSINESS, OR ANY LOSS OF DATA.

    11. LIMITATIONS OF LIABILITY. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, IN NO EVENT WILL PROVIDER'S TOTAL AGGREGATE LIABILITY EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO PROVIDER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE DISCLAIMER OF DAMAGES IN SECTION 10 AND THE LIMITATION OF LIABILITY IN THIS SECTION 11 SHALL APPLY REGARDLESS OF LEGAL THEORY AND WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR SOME OTHER THEORY OF LIABILITY AND REGARDLESS OF WHETHER PROVIDER WAS WARNED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE FORESEEABLE.

    12. Term and Termination.

    a. <u>Term</u>. This Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to the express provisions of this Section, will continue in effect for one year from such date (the "<u>Initial Term</u>"). This Agreement shall automatically renew for additional one year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "<u>Renewal Term</u>" and together with the Initial Term, the "<u>Term</u>"). Other than the express provisions for Termination of subsection b. of this Section, no party may terminate prior to the end of the Term, such that no refund shall issue and the Agreement will continue through the remainder of the Term.

    b. <u>Termination</u>.

(i)   Provider may terminate this Agreement, effective immediately if Customer: (1) fails to pay any amount when due hereunder, and such failure continues for more than seven (7) days after Provider's delivery of written notice of the failure or make payment; or (2) breaches any of its obligations under Section 2(c) or Section 6;

(ii)   Either Party may terminate this Agreement, effective immediately, if the other Party materially breaches this Agreement and such breach: (1) is incapable of being cured; or (2) being capable of being cured, remains uncured thirty (30) days following the breaching Party's receipt of written notice from the non-breaching Party detailing such breach; or

(iii)   Either Party may terminate this Agreement, effective immediately, upon written notice to the other Party, if the other Party: (1) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (2) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (3) makes or seeks to make a general assignment for the benefit of its creditors; or (4) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

c.   Effect of Termination or Expiration. Upon the earlier to occur of expiration or termination of this Agreement, Customer shall immediately discontinue its use of Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

13.   Entire Agreement. This Agreement, together with any other documents incorporated by reference herein and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, regardless of form (whether written, oral or otherwise), with respect to such subject matter hereof.

14.   Notices. All notices, requests, consents, claims, demands, waivers, and other communications permitted or required under this Agreement (each, a "Notice") must be in writing and address to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

15.   Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent that such failure or delay is caused by circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, natural disaster, pandemic, explosion, war, terrorism, invasion, riot, cyber incident or other civil unrest, or any action taken by governmental or public authority, including imposing an embargo.

16.   Survival. Sections 1, 5, 6, 7, 8, 9, 10, 11, and 12-25 of this Agreement are intended to and shall survive the expiration or termination of this Agreement.

17.   Amendment and Modification. No amendment to or modification of this Agreement is effective unless it is in writing and signed by authorized representatives of each Party.

18.   Waiver. No waiver will be effective unless it is in a writing signed by a duly authorized representative of the Party whom enforcement is sought. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19.   Severability. In the event that any provision of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, then such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement, which shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20.   Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than the State of North Carolina.

21.   Arbitration. Any dispute, lawsuit, cause of action, or proceeding arising out of or in relation to this Agreement or the licenses granted under this Agreement shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place in Mecklenburg County, North Carolina before one arbitrator. The arbitrator shall award the prevailing party its attorney's fees, expenses, costs and fees. Nothing in this Section 21 shall preclude a party from seeking equitable relief as contemplated in Section 24 of this Agreement in a court of competent jurisdiction.

22. **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations under this Agreement. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

23. **U.S. Government Rights.** Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

24. **Equitable Relief.** The Parties acknowledge and agree that a breach or a threatened breach by a Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

BY PROVIDING AND ACCESSING THE SERVICES, the Parties hereto have entered into this Agreement as of the Effective Date.

EXHIBIT A

This Exhibit A to the Software as a Service Agreement ("Exhibit A") is governed by the Software as a Service Agreement ("Agreement") entered into between the Parties as of the Effective Date, which is incorporated by reference here. Capitalized terms not otherwise defined in this Exhibit A shall have the meanings set forth in the Agreement.

1.   **Services**. Subject to the terms of the Agreement and payment of the Fees as set forth in Sections 2 and 3 of this Exhibit A, Customer has contracted with Provider to purchase a

Standard License for Authorized Users to access the Services. For purposes of this Exhibit A and the Agreement, the Services include access to the Ellio Tool software-as-a-service.

2.   **Subscription Fees**. The Fees for a license to use the Services is an annual fee determined based upon the module selected by the Customer. The Fee shall be invoiced to Customer and payable as set forth in Section 3 of this Exhibit A. Fees for any Renewal Term may be increased by Provider and will be invoiced on the same schedule as in effect for the billing period immediately prior to the expiration of the Term.

3.   **Payment Terms**.   All payments due under this Agreement shall be made in US dollars by check, credit card, or electronic transfer. Provider's payment terms on subscriptions that are paid via an invoice are NET thirty (30) days from the date of invoice without any set-off or other deduction. For any undisputed invoice that goes unpaid beyond thirty (30) days from the date of invoice, Provider may charge interest at a rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law. Fees for any Renewal Term must be paid before the start of the Renewal Term or access will be suspended. Customer is not entitled to withhold any Fees due and payable under this Agreement by reason of any setoff of any claim or dispute with Provider, whether relating to the Provider's breach, bankruptcy, or otherwise.

EXHIBIT B

This Exhibit B to the Software as a Service Agreement ("Exhibit B") is governed by the Software as a Service Agreement ("Agreement") entered into between the Parties as of the Effective Date, which is incorporated by reference here. Capitalized terms not otherwise defined in this Exhibit B shall have the meanings set forth in the Agreement.

      1.   **Service Levels.** Services shall be available 99.95% of the time during each full calendar month of the applicable Term, excluding periods of scheduled maintenance.

      2.   **Service Support.** Provider will provide technical support via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Pacific Time, and user support on weekdays during the hours of 6:00 am through 5:00 pm Pacific Time, with the exclusion of federal holidays. Inquiries will have same day response with resolution of user requests in 48 hours, and technical requests in 72 hours.