



MASTER SUBSCRIPTION SERVICES AGREEMENT

BY ACCEPTING THIS AGREEMENT, ACCESSING OR USING THE SERVICES OR PRODUCTS, YOU ARE ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNLESS A SEPARATE WRITTEN AGREEMENT IS IN EFFECT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT USE THE SERVICES OR PRODUCTS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT; IF YOU ARE USING THE SERVICES OR PRODUCTS AS AN EMPLOYEE OR AGENT OF AN ORGANIZATION OR ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO SIGN FOR AND BIND SUCH ORGANIZATION OR ENTITY IN ORDER TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT.

This Master Subscription Services Agreement ("**Agreement**") contain the terms and conditions between Turning Tech Intermediate, Inc. d/b/a Echo360, a company organized under the laws of Delaware ("**Echo360**"), with offices located at 6000 Mahoning Ave, Suite 254, Youngstown, OH 44515, United States of America, and you or the entity you represent placing an Order Form or SOW for or accessing the Services or Products ("**Customer**"). Echo360 and Customer may individually be referred to as a "party" or collectively as the "parties".

1. DEFINITIONS

- a. "**Admin User**" means the User provided the ability to administer the User subscriptions, enabling and disabling access to the Subscription Services.
- b. "**Affiliates**" means with respect to a Party, any individual or entity that Controls, is Controlled by, or is under common Control with the Party, where "**Control**" means either the beneficial ownership of at least 50% of the voting interests of an entity or the power to direct the management or affairs of such entity.
- c. "**Applicable Law**" means any local, state, national, administrative and/or foreign laws, rules, regulations and/or orders applicable to a party.
- d. "**Confidential Information**" means all written, electronic or oral non-public information disclosed by either Party (the "**Owner**") to the other (the "**Recipient**") under this Agreement, including, but not limited to, information that is identified as confidential at the time of disclosure or that should be reasonably understood by the Recipient to be confidential by the nature of the information or the circumstances of its disclosure, and shall include, but is not limited to, information regarding a Party's financial condition and financial projections, business and marketing plans, know-how, trade secrets, processes, engineering, product plans, product and device prototypes, the results of product testing, research data, market intelligence, technical designs and specifications, secret methods, manufacturing processes, hardware, hardware configuration information, software, source code of proprietary software, software documentation, application programming interfaces (API), firmware, firmware code, developments, inventions, customer lists, vendor lists, subscribers, markets, internal cost data.
- e. "**Content**" means all content, including text, fonts, images, photographs, artwork, other illustrations, audio or video segments, animations, graphics, charts and tables.
- f. "**Customer Content**" means all information, data, documents, and Content, supplied, submitted, uploaded by or on behalf of Customer to Echo360, through the Subscription Services. By way of example, Customer Content may include video captures, PowerPoint presentations, course syllabi, and assignment submissions, and other Customer property, which involves all Intellectual Property Rights embodied in the Customer Content.
- g. "**Documentation**" means the standard manuals, tutorials, reference or instructional materials and similar materials, whether in print or electronic format, ordinarily provided by Echo360 to customers that describe the functionality of the Services or Products.
- h. "**Echo360 Property**" means (i) the Services, including all of Echo360 products in its EchoSystem, (ii) all Content and software supplied by Echo360 in connection with, or used by Echo360 in the provision of the Services, (iii) the Documentation, (iv) all Improvements, (v) Statistical Viewer Usage Data, (vi) all Products, and (viii) all Intellectual Property Rights embodied in or related to any of the foregoing.



- i. **"Improvements"** means any changes, revisions, updates, modifications, developments, feedback, recommendations, or enhancements to any of Echo360's Services or Products that are developed, made or created by either party, whether or not patentable.
- j. **"Intellectual Property Rights"** are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including, but not limited to (i) the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the rights to use, make, have made, sell, offer to sell, and import patented subject matter and to practice patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including privacy rights and any rights in databases recognized by Applicable Law.
- k. **"Marks"** means the trademarks, service marks, trade names, including logos, and the company name Echo360.
- l. **"Order Form"** means a purchase order or similar document that references this Agreement, is incorporated as part of this Agreement, and sets forth the Subscription Services or Products being purchased, the price of each, and any additional terms or conditions.
- m. **"Personal Information"** means any information relating or unique to an identified or identifiable, or which can be used to identify, a particular person.
- n. **"Products"** means capture appliances or any other tangible, portable or fixed hardware devices or products sold by Echo360 to Customer pursuant to, and as described in an Order Form.
- o. **"Professional Services"** means the technical, configuration, advisory and/or other professional services provided or to be provided by Echo360 for Customer under a SOW, issued pursuant to this Agreement, describing such consultant-performed services.
- p. **"Representatives"** means with respect to a party, its employees, agents, contractors and other representatives of such party (as applicable).
- q. **"Security Breach"** means the unlawful or unauthorized acquisition of Customer Content that compromises the security, confidentiality, or integrity of such Customer Content.
- r. **"Services"** means, collectively, the Subscription Services, Professional Services or any other services purchased by Customer pursuant to an Order Form and/or SOW.
- s. **"SOW"** means the statement of work executed by the Parties describing the Professional Services purchased by Customer.
- t. **"Standard Support"** means the right to receive (i) bug fixes, updates and upgrades of Subscription Services, if any, that Echo360 may make available to its customers generally; and (ii) technical support regarding the general use and operation of the Subscription Services.
- u. **"Statistical Viewer Usage Data"** means de-identified, statistical information, derived from analysis of User interaction with the Subscription Services that is collected, retained, and owned by Echo360, including, by way of example, counts of views of segments of a presentation or video within certain Customer Content, frequency of views and of User participation in discussion, indications of confusion, bookmarks into content, and statistical analysis of notes and discussion.
- v. **"Subscription Services"** means the software services and platform provided by Echo360 that are ordered by Customer in an Order Form and made available by Echo360, the Documentation, and any modifications, updates, derivative works, optional modules, enhancements, updates and upgrades to or of any of the foregoing.
- w. **"Subscription Start Date"** means the date when the Subscription Services start as set forth in the Order Form.
- x. **"Subscription Term"** has the meaning set forth in the section titled "Subscription Term" hereinafter.
- y. **"System"** means the operating environment on which the Subscription Services are managed.



- z. **"Term"** has the meaning set forth in the section entitled "Term" hereinafter.
- aa. **"User"** means any individual or entity who accesses and/or uses the Subscription Services as set forth in this Agreement. Users may include Customer's employees, consultants, contractors, faculty, instructors, professors, students, and agents.

2. TERM

- 2.1 Term.** This Agreement commences on the Effective Date and, unless terminated earlier hereunder, shall continue in full force and effect until the expiration of the last Subscription Term, or SOW term, as applicable, in effect (**"Term"**). The term of each SOW shall continue for the period set forth in that SOW, and, if no period is provided, upon Echo360's completion of the Professional Services described therein.
- 2.2 Subscription Term.** The Order Form commences on the **"Subscription Start Date"** and continues for the subscription term indicated on the Order Form, and unless terminated earlier pursuant to the terms of this Agreement shall continue for the term set forth therein (the **"Subscription Term"**). If no Subscription Term is indicated in the Order Form, then the initial Subscription Term shall be 12 months from the Order Form's effective date. Unless stated otherwise in the Order Form, the Order Form will automatically renew for a duration equal to the initial Subscription Term (a **"Renewal Subscription Term"**), unless either party gives the other party written notice of non-renewal or Customer opts out in writing, in each case, at least 30 days prior to the expiration of the then-current Order Form term. Expiration or termination of one Order Form shall not affect any other Order Forms.

3. LICENSE & USE RIGHTS/RESTRICTIONS

- 3.1 Subscription Services/Order Forms.** During the Subscription Term and subject to Customer's payment of the applicable fees and compliance with the terms and conditions of this Agreement, Echo360 will: (a) make the Subscription Services available to Customer pursuant to this Agreement and the applicable Order Forms, (b) provide the Standard Support for the Subscription Services to Customer. The rights purchased as part of Standard Support are limited to the particular Subscription Services purchased by Customer. Each Order Form will describe the number and type of Subscription Services and/or Products being purchased, applicable fees, Subscription Term, the number of and/or class of permitted Users and the permitted scope of use of the Subscription Services. Each Order Form shall be subject to the terms of this Agreement.
- 3.2 Rights Granted by Echo360.** During the Subscription Term and subject to Customer's compliance of this Agreement, Echo360 grants to Customer a nonexclusive, non-assignable, non-transferable, non-sublicensable, revocable, limited right to access and use the Subscription Services solely for Customer's internal business use and operations as described in an applicable Order Form and the Acceptable Use Policy. The Subscription Services are purchased as subscriptions and Customer may permit Users to use the Subscription Services as detailed in sections entitled "Restrictions" and "Customer's Responsibilities" hereinafter, and the Acceptable Use Policy. Customer is responsible for its Users' compliance with this Agreement. Upon the conclusion of the Subscription Term, Customer's right to access and use the Subscription Services specified in the Order Form shall immediately terminate. Customer acknowledges that Echo360 provides access only and has no obligation to deliver copies of the Echo360 software to Customer or its Users. **"Acceptable Use Policy"** means the Echo360 policy for the use of the Services currently available at <https://echo360.com/other-policies/> as it may be updated from time to time.
- 3.3 Restrictions.** Customer agrees it will not and will not permit its Users to: (a) copy, adapt, or create any derivative works based on the Services, Documentation or Software; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, commercially exploit, or otherwise transfer or make the Services and the Documentation available to any third-party; (c) use the Services in violation of Applicable Law or in a way that infringes any Intellectual Property Rights of Echo360 or a third party; and (d) use the Services in any manner that sends or stores any Malicious Code in the Subscription Services. **"Malicious Code"** means code, files, scripts, agents and/or programs intended to do harm, including, but not limited to, viruses, worms, time bombs, and Trojan Horses.
- 3.4 Rights Granted by Customer.** During the Subscription Term, Customer grants to Echo360 and its Affiliates (a) a worldwide, non-exclusive and royalty-free right and license to host, access, copy, reproduce, transmit, use and display the Customer Content and any other Customer Content made available to Echo360 or any of its Affiliates as necessary for Echo360 to provide the Products and/or Services and perform its obligations in accordance with this



Agreement, and (b) a perpetual, non-exclusive, transferable, assignable, sublicensable, royalty free, irrevocable license to host, transmit, display, use, process, and analyze System Data in any format whatsoever, so long as such data that is specific to Customer is de-identified or made anonymous so that no Customer Content can be directly related to an identifiable individual. **"System Data"** means any data collected or created by Echo360's software (including firmware) as a result of the software's normal operation, including error messages. Subject to the limited rights and licenses granted herein, Echo360 acquires no right, title or interest from Customer or its licensors under this Agreement in or to Customer Content.

3.5 Accounts. Customer is responsible to ensure that its contact information is accurate and kept up to date. If a User registers via an invitation from Customer, use of the Service by that User is governed by this Agreement. Each individual User shall create his or her own User account for use of the Service. TO MAINTAIN REQUIRED SECURITY AND PRIVACY, SHARING OF LOGIN INFORMATION (INCLUDING BUT NOT LIMITED TO USER NAME AND PASSWORDS) (**"Logins"**) IS PROHIBITED IN ALL CIRCUMSTANCES. Customer agrees to the need for its Users to safeguard their Logins to the Service, to ensure others do not have access to them, and to log off when finished using the Service. Customer is responsible for: (i) maintaining the confidentiality Logins and Admin User subaccounts; (ii) managing access to Logins and Admin User subaccounts; and (iii) ensuring that Admin Users comply with this Agreement. Echo360 is not responsible for any loss or damage arising from Customer or its Users failure to comply with these safeguards.

3.6 Customer Responsibilities. Customer agrees it will:

- a) ensure that Customer and its Users comply with this Agreement, the Acceptable Use Policy, the Documentation and Applicable Law, and use the Subscription Services only in accordance with the terms herein;
- b) be solely responsible for all Customer Content and any Personal Information contained therein, including its collection, accuracy, quality, completeness, legality use rights, storage, and maintain appropriate security, protection and backup to protect the Customer Content from unauthorized access;
- c) prevent unauthorized access to or use of the Subscription Services, and promptly notify Echo360 of any such unauthorized access or use;
- d) be solely responsible for its Users' use of, and actions taken with Customer Content, including any deletion, corruption, or sharing of Customer Content to third parties;
- e) be solely responsible for identifying any laws, regulations and statutes that specifically apply to Customer, its Representatives, or any deliverable requested by Customer, and verifying that any such deliverable meets such legal requirements; and
- f) be solely responsible for the Content of all communications (including without limitation, electronic communications) and require its Users will not and do not transmit or communicate (by way of electronic communication or otherwise), Content that: (i) is libelous, harmful to minors, obscene or constitutes pornography, hate speech or is excessively violent; (ii) infringes the Intellectual Property Rights of a third party or is otherwise unlawful; or (iii) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any Applicable Law (collectively, **"Communication Breaches"**).

3.7 Customer Content. Customer agrees to use the Subscription Services only in accordance with this Agreement and the Documentation. Customer acknowledges that Echo360 has no obligation to monitor Customer Content and is not responsible for the accuracy, completeness, appropriateness, or legality of Customer Content or any other information or content Customer may be able to access and upload using the Services. Except as otherwise set forth herein Echo360 shall not: (a) modify Customer Content, (b) disclose Customer Content except as compelled by Applicable Law or as permitted in writing by Customer, or (c) access or use Customer Content except to provide the Services and prevent or address Service or technical problems, or at Customer's request. Notwithstanding anything to the contrary set forth in this Agreement, Echo360 may access, alter, and/or remove Customer Content if such Customer Content: (i) violates this Agreement, (ii) violates Applicable Law, or (iii) negatively impacts the Services and/or Echo360's ability to provide Services to any other customers.



3.8 Submissions. Customer and its Users, when using the Services, may provide Echo360 with videos, recordings, files, scoring, comments, or other content (“**Submissions**”). Submissions are a subset of Customer Content. Customer agrees to not copy, upload, download or share Submissions unless it has the right to do so. Customer and its Users are solely responsible for the content of any Submissions they post to the Services. Echo360 is not responsible for the content, quality or accuracy of any Submissions or related content posted or shared by Users or other third parties via the Services. Echo360 may remove any Submission at its sole discretion, with notice to the affected User. Customer and its Users use all Submissions at their own risk. Any User’s interactions with other Users are solely the responsibility of those Users and Echo360 is not responsible for the results of those interactions. Echo360 is not liable if there is a dispute between Users arising from such Submissions. Customer grants Echo360 and its Affiliates permission to host, back up and share Submissions for the provision of the Services. The Services may provide Customer with features such as thumbnails, downloads, document previews, sorting, editing, sharing or searching which may require the Echo360 Systems to access, store and scan Submissions. Posting Submissions over the Internet involves networks not controlled by Echo360. Echo360 is not responsible for Submissions that are delayed, lost, altered, or stored during transmission over those networks.

4. PROFESSIONAL SERVICES

4.1 Professional Services; Subcontractors. When requested by Customer and mutually agreed upon by Echo360, Echo360 will provide Professional Services to Customer as described in each mutually agreed SOW, each issued pursuant to this Agreement and each a separate transaction. Echo360 will not be responsible for providing any services, tasks, and/or items that are not included in the SOW, unless separately agreed upon in an executed Change Order. Echo360 reserves the right, in its sole discretion, to use, assign and remove personnel performing the Professional Services. Echo360 may retain the services of subcontractor(s) to perform a portion of or all the Professional Services. Each such subcontractor shall work at the direction of Echo360 and be contractually bound to substantially similar terms to those of this Agreement. Echo360 shall remain liable for the acts or omissions of each such subcontractor. Each SOW shall include a description of the Professional Services to be provided to Customer, the applicable fees and payment terms. If either Customer or Echo360 request a change in the scope of Professional Services, any agreed-upon changes, including changes in fees and expenses, will not be binding against either Party unless set forth in a written change order executed by the Parties (each, a “**Change Order**”).

4.2 Customer Assistance. Customer acknowledges that Echo360’s ability to timely deliver the is dependent upon Customer’s ongoing cooperation and assistance. Accordingly, Customer agrees to provide prompt assistance, cooperation, information, data, materials, and resources (collectively “**Assistance**”) reasonably necessary to enable Echo360 to perform the Professional Services and any other responsibilities designated in the applicable SOW. Customer acknowledges that Echo360 is relying upon Assistance provided by Customer. As a result, the accuracy and results of the Professional Services are dependent upon the timeliness, accuracy, and completeness of the information furnished to Echo360 by Customer. Echo360’s obligations to provide the Professional Services are conditioned upon Customer’s cooperation and timely: (i) performance stated in the SOW; (ii) provision of approvals and information under the applicable SOW, including but not limited to the Customer Content in mutually agreed formats and access to Customer’s Content creation team and content users, as applicable; and (iii) access to Customer’s personnel reasonably required for Echo360 to perform the Professional Services. Delays due to Customer’s failure to satisfy or comply with its obligations in (i) – (iii) above or any other responsibilities designated in a SOW may result in delays and additional fees in the provision of the Professional Services. Echo360’s period of performance shall be equitably extended to account for any delays resulting from Customer’s failure to fully comply with the foregoing.

5. FEES AND PAYMENT

5.1 Fees. Customer shall pay all fees, applicable taxes and expenses specified in each Order Form and/or SOW, as quoted and payable in the currency stated. Payment obligations are non-cancelable, and fees paid are non-refundable unless otherwise set forth in this Agreement. For Subscription Services, except as otherwise specified herein or in an Order Form, fees are based on the number of Users in the System.

5.2 Payment Obligations/Billing Disputes. Fees will be invoiced immediately, upon the execution of this Agreement and the corresponding Order Form or SOW (or acceptance of the Order Form by Customer), and immediately upon the



execution or acceptance of each subsequent Order Form. Unless otherwise stated in the applicable Order Form or SOW, payment terms are net cash due and payable thirty (30) days after receipt of an invoice issued to Customer. Interest shall accrue on any amounts due and unpaid more than thirty (30) days after the invoice is received at a rate equal to the lesser of 1.5% per month, or the highest rate permitted by law. Customer is responsible for providing complete and accurate billing and contact information and notifying Echo360 of any changes to such information. Customer also agrees to pay Echo360 all reasonable costs of collection, including reasonable attorneys' fees. Any dispute involving invoiced fees must be in writing and submitted to Echo360 within ten (10) days of the invoice date and include a reasonably detailed statement describing the nature and amount of the disputed fees. Customer shall cooperate with Echo360 to promptly address and attempt to resolve any billing dispute. Customer agrees that in the event Customer does not submit a billing dispute notice in accordance with the foregoing, Customer waives all rights to dispute such invoice and all fees set forth in such invoice will be considered due by Customer. Notwithstanding any billing dispute commenced in accordance with this section, Customer shall remain obligated to pay all undisputed fees due and owing as set forth herein. Echo360 shall not exercise its right to charge interest or "Suspension of Service" section below, if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.3 Suspension of Service. Echo360 reserves the right to suspend access to any User account and/or use of the Service in its reasonable discretion if any fees owed by Customer is thirty (30) days or more overdue. Echo360 will give Customer ten (10) or more days prior notice that its account is overdue before suspending the Service. The suspension will remain until such undisputed amounts are paid in full.

5.4 Taxes. Customer acknowledges that, except to the extent it is exempt under Applicable Law, any sales taxes, use taxes, value-added taxes, import or export duties, tariffs, or similar charges (collectively, "**Taxes**") imposed upon the transactions that are subject to this Agreement are payable in addition to all royalties, fees and other amounts that this Agreement expressly requires Customer to pay. Customer agrees to pay all those Taxes directly to the applicable taxing authorities, or, if at any time Echo360 is required by Applicable Law to collect those Taxes from Customer, Customer will pay them directly to Echo360 within thirty (30) days after Echo360 issues an invoice for the Taxes. Customer agrees not to withhold any amounts from its payments to Echo360 for purposes of paying Taxes, unless Customer is required to do so by Applicable Law, in which case Customer acknowledges that full payment to Echo360 is not discharged and will accrue interest until fully paid. Each Party agrees to obtain and keep receipts from applicable taxing authorities if it pays any Taxes that may be imposed on transactions subject to this Agreement, and it will promptly provide copies of those receipts to the other Party upon request. Neither Party has any responsibility for paying any portion of any Taxes imposed on the other Party by Applicable Law.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Echo360 Property. Echo360 retains all rights, title and interest in and to the Echo360 Property, the Services, Software, Documentation and all related Intellectual Property Rights. No rights are granted by implication, and Customer acquires no ownership, use, or license rights in excess of the scope and duration of an applicable Order Form(s) and this Agreement.

6.2 Customer Property. Customer retains all rights, title and interest in and to the Customer Content provided hereunder and all related Intellectual Property Rights. Except as expressly set out in this Agreement, no right, title, or license under any Customer Content is granted to Echo360 or implied hereby, and for any Customer Content that is licensed to Echo360, no title or ownership rights are transferred with such license.

7. CONFIDENTIALITY

7.1 Confidentiality Obligations. Each Party agrees to protect the Confidential Information of the other Party with the same degree of care that it uses to protect the confidentiality of its own proprietary and confidential information of a like kind. Recipient agrees not to disclose or permit access to the Owner's Confidential Information, except to Recipient's officers, directors, employees, consultants, legal advisors and agents (a) on a need to know basis, and (b) who are informed of the confidential nature of the Confidential Information and who have agreed in writing or who are otherwise legally bound to treat Owner's Confidential Information in a manner consistent with Recipient's confidentiality duties under this Agreement. Recipient will not use the Owner's Confidential Information except (i) as necessary to perform Recipient's duties under this Agreement; and (ii) in any other manner that this Agreement



expressly authorizes. Fees associated with this Agreement are Confidential Information and may not be disclosed without consent of Owner; notwithstanding the foregoing, fees may be disclosed upon written request where applicable open records laws deem such as public records.

- 7.2 Exceptions.** Confidential Information does not include any information that: (1) is or becomes generally known to the public without breach of any obligation owed to the Owner; (2) was known to the Recipient prior to its disclosure by the Owner without breach of any obligation owed to the Owner; (3) is received from a third-party without breach of any obligation owed to the Owner; or (4) was independently developed by the Recipient without access to or use of the Owner's Confidential Information. For clarity, Customer agrees that Echo360 will have no liability in connection with any disclosures of Customer Content by Customer's Users, Representatives, students, faculty members, or other parties associated with Customer or by any other third parties who received information from Customer.
- 7.3 Compelled Disclosure; Retention; Injunctive Relief.** Recipient may disclose Owner's Confidential Information to the extent compelled by Applicable Law, or by a court order of competent jurisdiction, or in response to a valid request by governmental agencies, and shall limit, to the extent possible, the disclosure to the minimum amount that will comply with the request. Unless prevented by Applicable Law, Recipient agrees to notify Owner as far in advance as reasonably possible before Recipient discloses Owner's Confidential Information hereunder. Notwithstanding anything to the contrary contained herein and provided the obligations of this "Confidentiality" section will continue to apply for the period such Confidential Information is retained, Recipient: (1) will be entitled to retain copies of Confidential Information for internal record keeping purposes, compliance with Applicable Law and industry standards or for the purposes of defending or maintaining litigation; and (2) will not be obligated to delete Confidential Information that is contained in its archived data storage. Recipient acknowledges that its breach of this section may cause irreparable damage to Owner and hereby agrees that Owner shall be entitled to seek injunctive relief for breach of this section, as well as such further relief as may be granted by a court of competent jurisdiction.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 Mutual Warranties.** Each Party represents and warrants to the other that it: (a) has the authority to enter into this Agreement and each SO and SOW; (b) is a properly incorporated organization in good standing in the state or country where it is formed; and (c) possesses the right, title, and interest for the intellectual property required to execute its obligations hereunder.
- 8.2 Echo360 Warranties.** Echo360 warrants to Customer that the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards. Echo360 further warrants that during the applicable Subscription Term: (1) the Subscription Services will, in all material respects, perform in accordance with the applicable portions of the Documentation; and (2) it will not materially decrease the overall functionality of the Subscription Services; provided, however, that this Subscription Services warranty shall not apply to non-conformities, errors, or problems caused by acts within the control of Customer or any of its Representatives or Users, arising from: (a) Customer's negligence or improper use of the Subscription Service, (b) unauthorized modifications made to the Subscription Service, (c) use of the Subscription Services in an unsupported operating environment or manner, or (d) Customer's or any third party's software or systems. For any breach of a warranty above, Customer's exclusive remedy shall be, at Echo360's option, either: (i) termination of the relevant Order Form and a pro-rata refund of the subscription fees prepaid by Customer for such defective Subscription Services, or (ii) repair or replacement of the Subscription Services in a manner that conforms to the warranty.
- 8.3 Customer Content Warranty.** Customer represents and warrants to Echo360 that (i) Customer owns all right, title and interest in, or has the legal right to use and make available to Echo360 the Customer Content, the upload thereof to Echo360's Products and/or Services, and the use thereof by Echo360 does not and shall not infringe or violate the Intellectual Property Rights of any third party, including privacy rights; and (ii) Customer will not use the Services for unlawful purposes or in a manner that infringes or otherwise violates the rights of any third party.
- 8.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES (INCLUDING WEBSITES, MOBILE APPLICATIONS, AND ALL OTHER FEATURES ON THE SERVICES), MATERIALS, SOFTWARE, DATA, CONTENT PROVIDED BY ECHO360 ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND "WITH ALL FAULTS," AND EACH PARTY EXPRESSLY



DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, CONDITIONS, UNDERTAKINGS AND GUARANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. ECHO360's LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, REPRESENTATION OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF SUPPLYING THE SERVICES AGAIN.

9. INDEMNIFICATION

9.1 Indemnification by Echo360. Echo360 shall defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of the Subscription Services as permitted hereunder and in accordance with the terms and conditions of this Agreement infringes or misappropriates the registered Intellectual Property Rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, reasonable attorney's fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer. In the event of a Claim Against Customer, or if Echo360 reasonably believes that any part of the Subscription Services may infringe or misappropriate, Echo360 may in its discretion: (i) modify the Services so that they no longer infringe or misappropriate, (ii) procure for Customer the right to continue using the Subscription Services in accordance with this Agreement, or (iii) terminate Customer's User subscriptions for such Services and refund Customer any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination. Echo360 will not have any responsibility or liability under this Agreement in connection with indemnity claims made by third parties to the extent they are directed at or arise from: (a) modifications or alterations of any of the Subscription Services (other than by Echo360), (b) use or combination of any Subscription Services with software, hardware, network or system, materials, media, content, information or methods not provided by Echo360 under this Agreement, including Customer Content, (c) use of any open source software, any of the Linked Sites, or any products other than the Subscription Services, (d) use of any Subscription Services other than in accordance with the Documentation and the terms of this Agreement, and/or (e) Customer's violation of Applicable Law or third party rights (all of the foregoing (a-e), "**Customer's Misuses**"). This section entitled "Indemnification by Echo360" states Echo360's sole liability to, and Customer's exclusive remedy for, any type of indemnity claim hereunder.

9.2 Indemnification by Customer. Customer shall defend and indemnify Echo360, its officers, directors, and employees, against any and all claims, demands, suits or proceedings, losses, liabilities, costs and expenses, including reasonable attorneys' fees, made or brought against Echo360 by a third party arising from or related to: (i) any allegation that any Customer Content, or Customer's use of the Services beyond the rights and license granted in this Agreement, infringes, violates or misappropriates any Intellectual Property Right of any third party; (ii) Customer's or its Users' use of the Services and/or Products in breach of this Agreement or any Customer's Misuses; (iii) Customer or its Users' violation of Applicable Law; and/or (iv) a dispute between Customer and any User. If the laws of the jurisdiction in which Customer is formed or located prohibit Customer from indemnifying Echo360 as set forth herein, then Customer agrees that the occurrence of any condition, event, act or omission giving rise to an indemnity claim against Echo360 will be considered a material breach of this Agreement by Customer.

9.3 Process. The Party seeking indemnification under this section (the "Indemnified Party") shall: (1) provide prompt written notice of the claim to the proposed indemnifier (the "Indemnifying Party"), provided, however, that the failure to give such notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent prejudiced thereby; (2) cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the defense of such claim; and (3) give the Indemnifying Party the right to control the defense and settlement of any such claim, provided, however, that the Indemnified Party may: (i) at its own expense, select counsel to participate in the defense of any claim, and (ii) undertake control of such defense in the event of the material failure of the Indemnifying Party to undertake and control the same. The Indemnifying Party will not settle a claim in a manner that imposes liability or additional obligations upon the Indemnified Party, unless agreed to by the Indemnified Party in writing.



10. LIMITATION OF LIABILITY

10.1 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OF EITHER PARTY UNDER THIS AGREEMENT, NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

10.2 Exclusion of Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED, OR FOR ANY LOSS OF BUSINESS, REVENUE, AND/OR LOSS OR CORRUPTION OF ANY DATA AND/OR COST OF DATA RECONSTRUCTION OR PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS OR SERVICES, OR LOSS OF GOODWILL OR REPUTATION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

11. TERMINATION

11.1 Termination for Cause. Echo360 has the right to suspend performance under this Agreement in the event that Customer is in breach of any of its obligations hereunder (including but not limited to any Communication Breaches; actual or reasonably suspected breach of the Acceptable Use Policy). The suspension will remain until such breaches are cured at the discretion of Echo360. A Party may terminate this Agreement in whole or in part for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is instituted and not dismissed within sixty (60) days.

11.2 Effect of Termination. Upon termination of this Agreement Customer shall immediately cease use of the Services. If this Agreement is terminated by Echo360 for cause, all fees covering the remainder of the Term of all Order Forms and SOWs shall become immediately due and payable within ten (10) days of the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Echo360 for the period prior to the effective date of termination. Following termination or expiration of this Agreement, Echo360 may immediately deactivate accounts of Customer and its Users and, following a period of not less than thirty (30) days, shall be entitled to delete such accounts, including all Customer Content therein. During this 30-day period and upon Customer's written request, Echo360 will grant Customer limited access to the Service for the sole purpose of retrieving Customer Content, provided that all fees owed to Echo360 under this Agreement are paid in full.

11.3 Surviving Provisions. The sections titled "Fees and Payment," "Intellectual Property Rights," "Confidentiality," "Indemnification," "Limitation of Liability," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

12. PRIVACY & SECURITY

12.1 Privacy. Echo360 maintains a publicly available Privacy Policy, accessible at the following link <https://echo360.com/privacy/> that describes its privacy practices with respect to collection, use, storage and access of Personal Information. With respect to Personal Information contained in the Customer Content, Echo360 will follow its Privacy Policy and agrees to comply with applicable data privacy laws. To the extent that in the provision of the Services hereunder Echo360 processes any Customer Personal Information that is subject to data privacy laws, the definition of Applicable Law as it relates to privacy shall be limited to the data privacy laws of the United States (including those of the individual states), Canada, the United Kingdom, the European Economic Area and Australia, as applicable. Customer acknowledges in all cases that Echo360 acts as the "data processor" or "service provider" and Customer is the "data controller" or "owner" for all Customer Content, as such terms (or other similar terms) are defined under such applicable data privacy laws. Customer will obtain and maintain all required consents and permissions necessary to permit the processing of Customer Content and all Personal Information therein.



12.2 Personal Information. Echo360 may receive Personal Information from Customer or its Users during the provision of the Services. Customer agrees that it shall be responsible for correcting and updating such Personal Information. Customer has exclusive control and responsibility for determining what data Customer submits to the Services. Except for contact information for which Customer has obtained necessary rights of access and use from the individuals, in the use of the Services, Customer is prohibited from using, uploading, retrieving, transmitting, sending, storing and submitting Restricted Information. If Customer uses, uploads, retrieves, transmits, sends, stores or submits Restricted Information into the Services, it is at Customer's own risk and the subject information shall be treated as Personal Information, but Echo360 shall have no additional obligations relating to such Restricted Information, including but not limited to for notifications requirements, credit monitoring and the like relating to such information. If instructed by Echo360, Customer will immediately remove such Restricted Information from the Services. **"Restricted Information"** means an individual's Protected Health Information (as defined in the U.S. Health Insurance Portability and Accountability Act of 1996 - HIPAA); biometric and genetic data; an individual's financial information or credit history, including account number for a credit card, debit card or bank account; precise location data, children's data; any Sensitive Personal Information as defined herein and by Applicable Laws; and any other highly protected and highly regulated Personal Information, including but not limited to: birth date, social security number or other government issued identification number. **"Sensitive Personal Information"** means data consisting of information relating to an individual with regard to racial or ethnic origin, political opinions, religious and philosophical beliefs or other beliefs of a similar nature, trade union membership, physical or mental health or condition, sexual life, sexual orientation, and criminal record, status as a victim of crime, or citizenship or immigration status as defined by Applicable Law. Notwithstanding the foregoing, the restriction in this section does not apply with respect to Protected Health Information if the Parties have executed a Business Associate Agreement for a particular HIPAA compliant service.

12.3 Data Security. Echo360 has implemented and will maintain administrative, physical, and technical safeguards consistent with industry standards for protection of the security, confidentiality and integrity of Customer Personal Information. Such safeguards include measures to protect against unauthorized access, and, except as otherwise permitted in this Agreement, measures to prevent access, use, modification, or disclosure of Customer Personal Information. Upon request, Echo360 will provide to Customer its then current policy with respect to protection and storage of Customer Personal Information. This policy outlines, amongst other things, technical specifications relevant to the security standards of the Echo360 System and network. Echo360 may update its policy from time to time at its discretion.

12.4 Security Breaches. In the event Echo360 becomes aware of a Security Breach impacting the Customer Content, Echo360 will use commercially reasonable efforts to notify Customer without undue delay of such Security Breach. Echo360 will promptly investigate the Security Breach and take reasonable measures to identify its root cause(s) and prevent a recurrence. As information is collected or otherwise becomes available, unless prohibited by Applicable Law, Echo360 will provide Customer with a description of the Security Breach and the type of data that was the subject of the breach. The Parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected individuals and/or the relevant data protection authorities.

12.5 Data Transfers (Applicable to Australia). Echo360 will not store or otherwise change or modify the storage location of any Customer Personal Information outside of Australia without the express consent of Customer, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer agrees Echo360 may view and/or access Personal Information in the United States or other areas outside of Australia for purposes of fulfilling its performance of the Services, specifically including, but not limited to, providing Standard Support services.

13. COMPLIANCE WITH APPLICABLE LAWS

13.1 FERPA. Echo360 acknowledges that Customer may be required to protect certain Personal Information and student education records from disclosure under the U.S. Family Educational Rights and Privacy Act (**"FERPA"**), or equivalent law in the jurisdiction where the Services are being provided. To the extent Customer is subject to FERPA, and to the extent Echo360 may be subject to FERPA in its capacity as a third-party service provider, Echo360 agrees to (i) secure all Personal Information and student education records related to Customer's students using industry standard security practices; and (ii) use reasonable commercial efforts to protect Personal Information and student



education records in its possession and control to the extent required of third party service providers to which such information is released. Echo360 shall not be liable to Customer for the use or re-disclosure of any metadata which Echo360 reasonably believes falls outside the scope of the information protected by FERPA.

13.2 COPPA. Related to the U.S. Children’s Online Privacy Protection Act (“**COPPA**”), or equivalent law, Echo360 does not knowingly collect information about children under the age of 13 without appropriate parental/guardian consent or sell products to children under the age of 13. Echo360 may provide Products and/or Services to Customer which may be used with children under the age of 13. It is the responsibility of Customer to fully comply with and meet parental/guardian consent requirements under COPPA.

13.3 Notification. In the event that Customer receives a notification of an alleged violation of FERPA, COPPA, the U.S. Protection of Pupil Rights Amendment (“**PPRA**”), or equivalent laws in the jurisdiction where the Services are being provided, or any other Applicable Law with respect to Customer’s use of Echo360’s Products and/or Services, Customer shall promptly and no later than forty-eight (48) business hours after receipt, inform Echo360 in writing.

13.4 Accessibility. Echo360 makes accessibility part of its system design, development, and testing and uses commercially reasonable efforts to stay current with relevant legal standards and standard industry practices. Echo360 agrees to respond, within a commercially reasonable time, to any reasonable complaint related to compliance with Section 508 of the U.S. Rehabilitation Act of 1973, as amended (29 U.S.C. §794d) accessibility requirements of its software for content access and playback (on personal computers or laptops) under this Agreement that has been identified and brought to the attention of Echo360.

13.5 Export Control and Sanctions. The Subscription Service and related technical data and services (collectively, “**Controlled Technology**”) may be subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR - 15 C.F.R. Parts 730-774), and other applicable country export control and trade sanctions laws and regulations (“**Export Control and Sanctions Laws**”) where Controlled Technology is imported or re-exported. Customer agrees to comply with all applicable Export Control and Sanctions Laws and will not export or re-export any Controlled Technology in contravention to these laws, nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. Customer represents and warrants that: (i) Customer and the Users (a) are not citizens of, or located within, a country or territory that is subject to U.S. trade sanctions or other significant trade restrictions (including without limitation Cuba, Venezuela, Iran, North Korea, Syria, China, Russia, and the Crimea region of Ukraine) and that Customer and the Users will not access or use the Services, or export, re-export, divert, or transfer the Service, or any part thereof, in or to such countries or territories; (b) are not persons, or owned 50% or more, individually or in the aggregate by persons, identified on the U.S. Department of the Treasury’s Specially Designated Nationals and Blocked Persons List or Foreign Sanctions Evaders Lists; and (c) are not persons on the U.S. Department of Commerce’s Denied Persons List, Entity List, or Unverified List, or U.S. Department of State proliferation-related lists; (ii) Customer and the Users will not take any action that would constitute a violation of, or be penalized under, U.S. antiboycott laws administered by the U.S. Department of Commerce or the U.S. Department of the Treasury. Customer is solely responsible for complying with the Export Control and Sanctions Laws and monitoring them for any modifications.

14. TRIALS. Echo360 may make available to Customer trial, pilot or evaluation use of the Services, including software or features that may not yet be generally available, including pre-release or beta versions of the foregoing which may not operate correctly (collectively, “**Trials**”). Trials will be designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Trials may include partial features or functionality of the Services or Products. Customer may access and use Trials solely for the purpose of evaluating and testing the Services/Products and related features. Echo360 may discontinue the Trials at any time or terminate Customer’s access and use of any Trial at any time in its sole discretion, without any liability. Customers agrees that Trials are provided “as is” and “as available” with no express or implied warranty of any kind whatsoever whether express, implied, statutory, or otherwise, without support, and are outside the scope of Echo360’s indemnification obligations. Notwithstanding Section entitled Limitation of Liability or any other provision of this Agreement, Echo360’s maximum aggregate liability under any Trial shall be USD\$2,000.

15. GENERAL PROVISIONS



- 15.1 Customer Affiliates.** An Affiliate of Customer may purchase Services subject to the terms of this Agreement by executing Order Forms and/or SOWs directly with Echo360. By entering into an Order Form or SOW, the Customer Affiliate agrees to be bound by the terms of this Agreement as if it were an original party (Customer) hereto.
- 15.2 Notices.** Any notice, consent, approval, or waiver under this Agreement must be in writing and in English and delivered by personal delivery, overnight courier, or certified/registered mail, return receipt requested, and will be deemed given, (a) upon personal delivery, one (1) day after deposit with an overnight courier, and (b) five (5) days after deposit in the certified or registered mail. Notices will be sent to a Party at its address set forth below or such other address as that Party may specify in writing pursuant to this Section.
- 15.3 Authorized API.** Echo360 may include application programming interfaces (API) when providing the Subscription Services as set forth in the applicable Order Form ("**Authorized APIs**"). Customer shall use the Authorized APIs in accordance with the Documentation and will promptly correct any usage of Authorized APIs that does not comply with the Documentation. Authentication Keys must be restricted to use by Authorized API Author only. "**Authentication Key**" means any access key, application key or authentication key necessary for utilizing an Authorized API. "**Authorized API Author**" means a User who is issued login credentials to the Subscription Services for the purpose of creating and modifying Customer Content and who needs access to an Authorized API. Customer is solely responsible for maintaining the security of all Authentication Keys and for all activities that occur using any Authentication Key issued to Customer and must promptly notify Echo360 of any unauthorized use. The Authentication Keys are the property of Echo360 and may be revoked by Echo360 in connection with any permitted suspension of Customer's right to use an Authorized API.
- 15.4 Suggestions.** By submitting to Echo360 any suggestions, enhancement requests, comments, recommendations, feedback or other input relating to the Services ("**Feedback**"), Customer and/or Customer's Representatives (as applicable) grant to Echo360 a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use and incorporate into the Services and Products any such Feedback.
- 15.5 Statistical Viewer Usage Data.** Echo360 may use Statistical Viewer Usage Data at its discretion and make such data publicly available, provided that (i) such information does not incorporate any of Customer's Content and (ii) such use does not identify Customer or Customer's Users or Representatives either directly or indirectly.
- 15.6 Continuous Development.** Subject to the Subscription Services purchased, Customer agrees that Echo360 may continually develop, modify, update and add Improvements and other capabilities or features to the Subscription Services without prior notice, provided that, the functionality of the Subscription Services purchased by Customer is not materially diminished. Each such update or modification will be part of the Subscription Services and shall be governed by the terms of this Agreement. Echo360 will use commercially reasonable efforts to notify Customer of any discontinuations of the Subscription Services or any of its features.
- 15.7 Links to Third Party Sites.** The Subscription Services may contain links to third party web sites ("**Linked Sites**"), such as external library content or links entered by Users in the use of the Services. Echo360 has no control over the Linked Sites or their content. Echo360 does not guarantee, represent, or warrant that the content contained in the Linked Sites, including, without limitation other links, is accurate, legal, and/or not offensive. Echo360 does not endorse the content of any Linked Site, nor does Echo360 warrant that a Linked Site will not contain computer viruses or other Malicious Code that can impact computers or other devices. By using the Services to link to another site, Customer agrees that such use is entirely at Customer's own risk, and Customer may not make any claims against Echo360 for any damages or losses resulting from such use.
- 15.8 Governing Law and Jurisdiction; Class Action Waiver.** The Parties intend that the laws of the State of Ohio, United States, should be used to interpret and enforce this Agreement. The Parties do not intend or desire for the UN Convention on Contracts for the International Sale of Goods to apply to this Agreement. The Parties agree that any litigation between them may only be brought in courts located in Mahoning County, Ohio (United States), and each Party consents to the jurisdiction of those courts. However, a Party may bring an action solely for purposes of seeking an injunction to stop or prevent infringement of Intellectual Property Rights or misappropriation of Confidential Information by the other Party in any court that has jurisdiction. The Parties expressly waive the right to bring or participate in any kind of class, collective, or mass action or any other representative action.



- 15.9 Severability; No Waiver.** In the event that any term or condition of this Agreement is determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition in this Agreement shall not be construed as a waiver of any rights conferred by such term or condition.
- 15.10 Assignment.** Neither Party can assign this Agreement, or delegate or sublicense any of their rights under this Agreement, without the prior written consent of the other Party. Any assignment in violation of this Section will be void. Notwithstanding the foregoing, each Party may assign this Agreement or any of its rights or obligations hereunder without requiring the other Party's consent, (a) to an Affiliate, or (b) to any third party acquiring all or substantially all the assets relating to this Agreement or a controlling interest in the voting stock or voting interest of the assignor. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 15.11 Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by a Force Majeure event. "Force Majeure Event" shall mean any event, including, but not limited to, acts or omissions of government or military authority, an act of war, civil unrest, riots, act of terror, hostility, or sabotage (including hacking); act of God such as flood, fire, earthquake, pandemics; electrical, internet or telecommunication outage or delay that is not caused by the obligated party; material shortages, transportation delays, Linked Sites, denial of service attack; government restrictions (including the denial or cancellation of any export or other license); strike or other labor problem; unanticipated tariffs; or other event outside the reasonable control of the obligated party. Both parties agree to use reasonable efforts to mitigate the effect of a Force Majeure event. This Section does not excuse Customer's payment obligations.
- 15.12 Independent Contractors.** Customer and Echo360 acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the parties are acting as independent contractors in making and performing this Agreement.
- 15.13 Publicity.** Customer agrees that Echo360 may use Customer's name and logo on any list of Echo360's customers and for publicity purposes.
- 15.14 Entire Agreement.** This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, this Agreement supersedes the terms of any other agreement accepted by Customer. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. However, in the event of a conflict between the provisions of this Agreement and any Order Form or SOW, the provisions of this Agreement will supersede and govern, except in instances when the Order Form or SOW expressly identifies a particular section of this Agreement and expressly states that the Order Form or SOW should supersede and govern any conflict with that particular section in that instance.