

THE TRAINING ARCADE® SUBSCRIPTION AGREEMENT

This Subscription Agreement is by and between **The Game Agency LLC** with an address at 470 West Avenue, Suite 2002, Stamford, CT 06902 (“**TGA**”) and the entity you represent (“**Subscriber**”). It consists of the terms and conditions below as well as Subscription Details, Terms of Use, Privacy Policy, Guidelines and Restrictions, and Statement of Work (if any) (together, “**Agreement**”).

1. DEFINITIONS

Administrator means an employee, agent, or independent contractor of Subscriber who is designated by Subscriber via the Portal as the administrator authorized to exercise the rights set forth in Sections 2.1(b) and (c). For the purpose of clarity, the Primary Administrator is authorized to exercise the rights set forth in Sections 2.1(a), (b), and (c), and the View-Only Administrator is authorized to exercise the rights set forth in Section 2.1(c). In the case of a Subscriber who is a Publisher, Publisher may designate employees, agents, and independent contractors of Publisher (but not Publisher Client) as Administrator and Primary Administrator.

Authorized Users means the Primary Administrator, Administrator(s), and View-Only Administrator(s) as well as Trainees to whom Subscriber provides access to the Games.

Confidential Information means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in accordance with Section 9.

Fees means the Subscription Fees and fees for storage space, bandwidth usage, support, training, and custom services as well as other amounts, if any, set forth in the Subscription Details and Statement of Work.

Deliverable means the deliverables resulting from custom services, which may consist of modifications and customizations to the Product to be made by TGA, as set forth in a Statement of Work, if any.

Game means a Game Type populated with Subscriber Content via the Portal.

Game Type means a customizable game template in The Training Arcade for the reinforcement, evaluation, and optimization of training that TGA may make available to Subscriber via the Portal from time to time as part of the Subscription, as more particularly described in the applicable Subscription Details. The availability of Game Types may vary from time to time.

Guidelines and Restrictions means subdomain URL policy, technical requirements and other guidelines and restrictions for use of Subscriber Content in connection with the Product and Service, as may be updated by TGA from time to time. The current Guidelines and Restrictions are available at [this link](#).

Platforms means the hardware and software on which the Product is designed to operate, as set forth in the Guidelines and Restrictions.

Portal means The Training Arcade site and related tools and processes for the Platform, as may be provided by TGA from time to time.

Post-Expiration Period means the duration of certain continuing rights (*e.g.*, for View-Only Administrator(s) to continue to exercise the rights set forth in Section 2.1(c) and/or the Trainees to continue to exercise the rights set forth in Section 2.1(d)) following expiration of this Agreement or any Subscription, as set forth in the Subscription Details.

Primary Administrator means an employee, agent, or independent contractor of Subscriber who is designated by Subscriber via the Portal as the primary administrator authorized to exercise the rights set forth in Sections 2.1(a), (b), and (c), to act as the sole liaison between Subscriber and TGA, and to oversee Subscriber’s fulfilment of its obligations under this

Agreement. In the case of a Subscriber who is a Publisher, Publisher may designate an employee, agent, or independent contractor of Publisher as Primary Administrator.

Privacy Policy means the privacy policy for the Portal, as may be updated by TGA from time to time. The current Privacy Policy is available at <https://thetrainingarcade.com/privacy-policy/>

Product means the Game Types, Portal, and any other products and services subscribed to by Subscriber or otherwise provided by TGA under this Agreement as well as modifications and customizations, if any, to such online software applications, as described in the applicable Statement of Work.

Prohibited Data The Subscriber may not use The Training Arcade® to collect or process any of the following “Prohibited Data” which means any: (1) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1), any successor legislation, and any applicable United Kingdom laws including the U.K. GDPR; (2) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) (HIPAA); (3) credit, debit, or other payment card data or financial account information, including bank account numbers; (4) credentials granting access to an online account (e.g. username plus password); (5) social security numbers, driver’s license numbers, or other government identification numbers; (6) other information subject to regulation or protection under specific laws such as the Children’s Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations); or (7) any data similar to the above protected under foreign or domestic laws; and shall not use the Product or Services in connection with any activities where its use or failure could lead to death, personal injury, or environmental damage, such as in life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control (collectively, “High Risk Activities”). Publisher acknowledges that the Product and Services are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that TGA is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything else in this Agreement, TGA has no liability for Prohibited Data processed, or High Risk Activity-related use, in connection with the Product or Service and Subscriber shall fully defend, indemnify and hold TGA harmless in connection therewith.

Publisher means a Subscriber who purchases a Subscription for Publisher’s Primary Administrator to exercise the rights set forth in Sections 2.1(a), (b), and (c), for Publisher’s Administrator(s) to exercise the rights set forth in Sections 2.1(b), for Publisher Client’s View-Only Administrator(s) to exercise the rights set forth in Section 2.1(c), and for Publisher Client’s Trainees to exercise the rights set forth in Section 2.1(d).

Publisher Client means a client of Publisher who enters into a written agreement with Publisher to have Publisher purchase a Subscription for Publisher’s Primary Administrator to exercise the rights set forth in Sections 2.1(a), (b), and (c), for Publisher’s Administrator(s) to exercise the rights set forth in Sections 2.1(b), for Publisher Client’s View-Only Administrator(s) to exercise the rights set forth in Section 2.1(c), and for Publisher Client’s Trainees to exercise the rights set forth in Section 2.1(d).

Service means custom services, which may consist of modifications and customizations to the Product to be made by TGA, as set forth in a Statement of Work, if any.

Statement of Work means the custom services statement of work describing Services, which may include modifications and customizations to the Product to be made by TGA, and other terms mutually agreed by the parties. From time to time, the TGA may, in its sole discretion, offer to render Services pursuant to the terms of this Agreement. For each such offer accepted by Subscriber, TGA and Subscriber shall execute a document labelled “Statement of Work #,” where “#” is consecutively numbered beginning with the number 1. Upon execution of such a document by the parties, it shall be deemed a part of this Agreement and referred to as a “Statement of Work.”

Subscriber Content means the questions, answers, images, videos, sounds, and other materials that the Primary Administrator or Administrator provides and populates in Games on behalf of Subscriber (or Publisher Client) for the purpose of facilitating internal training of Trainees in accordance with this Agreement.

Subscriber Data means data pertaining to Authorized Users that is provided to (a) TGA by Subscriber or its Authorized Users (e.g., information enabling Authorized Users to access and use the Product, such as name and company e-mail address) or (b) Subscriber (or Publisher Client) by TGA through the Product (e.g., information about Authorized Users' engagement with one or more Game Types).

Subscription means the subscription purchased by Subscriber, which may entitle the Primary Administrator to exercise the rights set forth in Sections 2.1(a), (b), and (c), Administrator(s) to exercise the rights set forth in Sections 2.1(b) and (c), View-Only Administrator(s) to exercise the rights set forth in Section 2.1(c), and Trainees to exercise the rights set forth in Section 2.1(d), in accordance with the applicable Subscription Details and other terms and conditions of this Agreement.

Subscription Details means the subscription details for Subscriber describing the Game Types, Subscriptions, Subscription Fees, Term, Territory and related terms applicable to Subscriber, as listed in the Portal or in the corresponding area of a reseller website or otherwise agreed by the parties in writing.

Subscription Fees means the subscription fees payable by Subscriber to TGA for the Subscriptions, as set forth in the applicable Subscription Details.

Subscription Term means the duration of the subscription for each Game Type, as set forth in the applicable Subscription Details, unless earlier terminated in accordance with this Agreement.

Support Policy means the standard technical support policy for the Game Types, as may be updated by TGA from time to time as described in the frequently asked questions available at [this link](#).

Term means the duration of this Agreement, which commences on the date TGA provides Subscriber with confirmation of the Subscription Details and continues until all Subscriptions hereunder have expired or have been terminated.

Terms of Use means the terms of use for the Portal as may be updated by TGA from time to time. The current Terms of Use are available at <https://thetrainingarcade.com/terms-of-use/>

Territory means the countries set forth in the applicable Subscription Details.

TGA Parties means TGA and its affiliates and their respective officers, directors, employees, agents, licensors, successors, and assigns.

Trainees means those employees, agents, and independent contractors of Subscriber to whom Subscriber provides access to the Games via a link to the Portal as trainees authorized to exercise the rights set forth in Section 2.1(d), in accordance with the applicable Subscription Details. In the case of a Subscriber who is a Publisher, Publisher may provide access to the Games via a link to the Portal to employees, agents, and independent contractors of Publisher Client as Trainees authorized to exercise the rights set forth in Section 2.1(d), in accordance with the applicable Subscription Details.

View-Only Administrator means an employee, agent, or independent contractor of Subscriber who is designated by Subscriber via the Portal as the view-only administrator authorized to exercise the rights set forth in Section 2.1(c), in accordance with the applicable Subscription Details. In the case of a Subscriber who is a Publisher, Publisher may designate employees, agents, and independent contractors of Publisher Client as View-Only Administrators.

2. SUBSCRIPTION

2.1 Subject to the terms and conditions of this Agreement and in accordance with the Subscription identified in Subscription Details, TGA hereby grants to Subscriber a non-exclusive, non-transferable, revocable, limited right solely for Subscriber's non-commercial internal training purposes (and in the case of a Subscriber who is a Publisher, solely for Publisher Client's non-commercial internal training purposes) in the Territory during the applicable Subscription Term:

(a) to permit the Primary Administrator to designate one (1) subdomain via the Portal; (in the case of a Subscriber who is a Publisher, such Publisher must designate a unique subdomain for each Publisher Client);

(b) to permit the Primary Administrator and Administrator(s) to access Game Type authoring tools to populate the Game Types with Subscriber Content via the Portal and to invite all or a subset of Trainees to access the Games via a link to the Portal;

(c) to permit the Primary Administrator, Administrator(s), and View-Only Administrator(s) to view the Game analytics dashboard and leaderboard via the Portal; and

(d) to permit Trainees to access and play the Games via a link to the Portal, as set forth in the Guidelines and Restrictions.

2.2 The Subscription is subject to usage limits, including, for example, the quantities specified in Subscription Details. Subscriber undertakes that the maximum number of Administrators, View-Only Administrators, and Trainees that it authorizes shall not exceed the applicable number of Subscriptions set forth in the Subscription Details. If Subscriber exceeds a usage limit, TGA may work with Subscriber to seek to reduce Subscriber's usage so that it conforms to that limit. If, notwithstanding TGA's efforts, Subscriber is unable or unwilling to abide by a usage limit, Subscriber will agree to additional Subscriptions promptly upon TGA's request, and pay any invoice for excess usage in accordance with Section 4.

2.3 If Subscriber wishes to designate more than one (1) subdomain via the Portal, then Subscriber must purchase another Subscription for each additional subdomain and enter into separate agreements for each Subscription. In the case of a Subscriber who is a Publisher, Publisher must designate a unique subdomain for each Publisher Client. Accordingly, if Publisher wishes to have more than one (1) Publisher Client, then Publisher must purchase another Subscription for each additional Publisher Client and enter into separate agreements for each Subscription. Publisher shall not permit any third-party to access and play the Games, other than Publisher Client's Trainees as provided under this Section 2.

2.4 Unless otherwise noted in the Subscription Details, TGA will provide the Primary Administrator and Administrators with standard customer support services in accordance with the Support Policy in effect at the time that the Game Types are provided. Subscriber may purchase enhanced support services separately at TGA's then current rates.

2.5 TGA will provide the Primary Administrator and Administrators with the training services set forth in the applicable Subscription Details. Subscriber may purchase enhanced support services separately at TGA's then current rates.

2.6 TGA may make pre-release, beta, and trial subscriptions available "as-is" and "as-available." Pre-release, beta, and trial subscriptions are excluded from customer support, training services, limited warranties, and indemnification provided by TGA in this Agreement. TGA may change or discontinue pre-release, beta, and trial subscriptions at any time without notice.

2.7 TGA reserves the right, in its sole discretion, to make any changes to the Product and Service that it deems necessary or useful to maintain or enhance the quality, delivery, competitive strength, marketability, cost efficiency, or performance of the Product and Service, or to comply with applicable law.

2.8 Subscriber shall not and shall not allow third parties to: (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product; (b) access all or any part of the Product in order to build a product or service which competes with the Product or Service; or (c) use the Product to provide services to any third-party, except Authorized Users; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit, or otherwise make the Product available to any third-party except Authorized Users, or (e) attempt to obtain, or assist third parties in obtaining, access to the Product, other than Authorized Users as provided under this Section 2. Without limiting the generality of the foregoing, Subscriber shall not permit any third-party to access and play the Games, other than Trainees as provided under this Section 2.

2.9 TGA retains all rights not expressly granted to Subscriber hereunder. Except for the limited rights expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Subscriber or any third-party any intellectual property rights or other right, title, or interest in or to any of the Products or Services. The distribution, sale, or other use of any Product or Service as premiums, giveaways, or otherwise for marketing or publicity purposes, or for bundling or for sale in combination with any other products whatsoever, or for any marketing, promotion, advertising or association with any third-party or third-party services or products, shall be subject to the parties' mutual agreement in writing, including without limitation, as to Fees, specifications, submission, and approvals.

3. SUBSCRIBER CONTENT, SUBSCRIBER DATA, AND COOPERATION

3.1 Subscriber shall have sole responsibility for all Subscriber Content and Subscriber Data, including without limitation, the legality, reliability, integrity, accuracy, and quality of Subscriber Content and Subscriber Data. Subscriber shall secure and maintain all rights in Subscriber Content and Subscriber Data necessary for TGA to provide the Product and Service to Subscriber without violating the rights of any third-party or otherwise obligating TGA to Subscriber or any third-party. TGA shall, in providing the Product, comply with its Privacy Policy relating to the privacy and security of Subscriber Content, as may be amended from time to time by TGA in its sole discretion; provided, however, that as between Subscriber and TGA, in the event any terms in this Agreement conflict with the Privacy Policy with respect to Authorized Users, the terms herein shall prevail to the extent of such conflict. Where Subscriber collects Subscriber Data from the Product for its own use, Subscriber represents and warrants that it shall ensure that its collection, use, and any other processing of that Subscriber Data complies with all applicable laws and Subscriber's privacy policy that shall be made available and agreed to by the Authorized Users. TGA shall not be responsible for any loss, destruction, alteration, or disclosure of Subscriber Content or Subscriber Data caused by any third-party, to the maximum extent permitted by law.

3.2 Subscriber shall comply with TGA's technical requirements, guidelines, and related policies, as may be amended from time to time by TGA in its sole discretion. Subscriber shall not access, store, distribute, upload, or transmit to or from the Product nor include in the Subscriber Content: anything (including any software, code, file, or program) which may prevent, impair, or otherwise adversely affect the operation of any computer software, hardware, or network, any telecommunications service, equipment, or network, or any other service or device; prevent, impair, or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging,

altering, or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, and other similar things or devices; or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, discriminatory based on race, gender, colour, religious belief, sexual orientation, or disability, facilitates illegal activity, promotes unlawful violence, is otherwise illegal, or causes damage or injury to any person or property. TGA reserves the right, without liability or prejudice to its other rights to Subscriber, to remove or disable access to any material that breaches the provisions of this Section 3; provided, however, TGA shall have no obligation to screen, verify, censor, or disable access to such material.

3.3 Subscriber is responsible for maintaining the confidentiality of any non-public account or authentication credentials associated with Subscriber's use of the Product. Subscriber shall promptly notify TGA about any possible misuse of Subscriber's account or authentication credentials or any security incident related to the Product.

3.4 Subscriber shall provide TGA with all necessary cooperation in relation to this Agreement. Subscriber is responsible for controlling access to the Product by Authorized Users in accordance with this Agreement. Subscriber shall ensure that Authorized Users comply with this Agreement, including the Terms of Use, Privacy Policy, and Guidelines and Restrictions. Subscriber shall be responsible for any Authorized User's breach of this Agreement. Subscriber shall comply with all applicable laws, rules, and regulations and terms and policies, including without limitation, Terms of Service and Community Standards of social media sites (e.g., Facebook) and other third parties with respect to its activities under this Agreement. Without limiting the generality of the foregoing, Subscriber shall be solely responsible for sponsoring and administering challenges, contests, and other promotions and/or awarding prizes and incentives, if any, to Trainees, and complying with all promotion, tax, and other applicable laws. Subscriber shall ensure that its network and systems comply with the relevant specifications provided by TGA from time to time; and be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to TGA's data centers, and all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to Subscriber's network connections or telecommunications links or caused by the internet. Subscriber shall appoint a Primary Administrator to oversee the foregoing.

3.5 Subscriber acknowledges and agrees that TGA may access via the Portal and/or obtain from Subscriber, information, assets, and services, including but not limited to Subscriber Data and security access information, to facilitate TGA's performance of its obligations, respond to support requests, detect, prevent, or otherwise address fraud, security, legal, or technical issues, verify Subscriber's performance of its obligations hereunder, and enforce the terms and conditions of this Agreement.

4. FEES AND PAYMENT

Subscriber shall pay all Fees to TGA or its authorized reseller either by pre-payment giving Subscriber access to the Product for a specific time period as set forth in the Subscription Details or as otherwise set forth in the Subscription Details or Statement of Work. In the event payments are not received by TGA or its authorized reseller after becoming due: (a) TGA or its authorized reseller may charge interest on any such unpaid amounts at a rate of one and one-half percent (1.5%) per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; (b) TGA may suspend performance for all Products and Services until payment has been made in full; and (c) Subscriber shall reimburse TGA for all reasonable costs incurred by TGA in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency

fees. Subscriber shall have no responsibility for taxes imposed on TGA's net income by any taxing authority.

5. REPRESENTATIONS AND WARRANTIES

5.1 Each party represents and warrants to the other party that: (a) it is a duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement; (c) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms. Without limiting the generality of the foregoing, Publisher represents and warrants that it is authorized to act as Subscriber on behalf of Publisher Client and to bind Publisher Client to the terms and conditions of this Agreement.

5.2 Subscriber represents and warrants to TGA that: (a) Subscriber owns or otherwise has and will have the necessary rights and consents in and relating to the Subscriber Content and Subscriber Data, and in the case of a Subscriber who is a Publisher, Publisher has the necessary rights and consents from Publisher Client; (b) the Subscriber Content and Subscriber Data do not and will not infringe, misappropriate, or otherwise violate any intellectual property, privacy, or other rights of any third-party or violate any applicable laws; (c) Subscriber shall not use any Product or Service or any Subscriber Data provided through the Product or Service in a manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property, privacy, or other rights of any third-party or violates any applicable laws; and (d) Subscriber shall not use any Product or Service for purposes of competitive analysis of the Product or Service, the development of a competing software product or service, or any other purpose that is to TGA's commercial disadvantage.

5.3 TGA represents and warrants to Subscriber that the Game Types will perform substantially in accordance with the specifications made available to Subscriber by TGA. TGA's undertaking set forth in this Section 5 shall not apply to the extent of any non-conformance which is caused by access to or use of the Product or Service contrary to TGA's instructions, or modification or alteration of the Product or Service by Subscriber or anyone other than TGA or TGA's duly authorized contractors or agents. If the Game Types do not conform to the foregoing undertaking, TGA will, at its expense, use commercially reasonable efforts to correct any such non-conformance, or provide Subscriber with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Subscriber's sole and exclusive remedy for any breach of the undertaking set out in this Section 5.

6. DISCLAIMERS

EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 5, TGA MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, AND TGA HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCT AND SERVICE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, TGA MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCT, SERVICE OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT

INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER PRODUCTS OTHER THAN THE PLATFORM, OR BE COMPLETE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN SUBSCRIBER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. TGA SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS AND SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

7. PROPRIETARY RIGHTS

7.1 TGA acknowledges and agrees that as between TGA and Subscriber, Subscriber owns all intellectual property rights in Subscriber Content.

7.2 Subscriber acknowledges and agrees that as between TGA and Subscriber, TGA owns all intellectual property rights in the Products. Except as expressly stated herein, this Agreement does not grant Subscriber any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Products. Any and all updates, enhancements, modifications, corrections, and derivative works that are made to the Products will be owned by TGA. Unless otherwise expressly set forth in the applicable Statement of Work, TGA owns all intellectual property rights in all intellectual property in the results of Services, including without limitation art themes, sounds, and other general game settings, which shall not be deemed to constitute Subscriber Content.

7.3 TGA may compile aggregate data, anonymous data, and other statistical information related to Subscriber's use of the Products and Services and may make such information publicly available, provided that such information does not incorporate Subscriber's Confidential Information or personally identifiable information of any Authorized User. TGA processes personally identifiable information of Authorized Users, including Subscriber Data that is personally identifiable, on Subscriber's behalf in order to provide the Product and Services to Subscriber and its Authorized Users. Without limiting the generality of the foregoing, TGA may use in its marketing and advertising, the total number of users, average time spent per user, number of points earned by users, activities used by users and other statistics (such as badges and awards) to attract new customers. TGA owns all intellectual property rights in such aggregate data, anonymous data, and other statistical information.

7.4 Subscriber acknowledges and agrees that TGA owns all rights to any feedback provided to TGA, including any survey responses, bug reports, enhancement requests, issue reports, and support information; and TGA shall be free to use such feedback for any purpose.

8. SUBSCRIBER SURVEYS AND REFERENCES; PUBLICITY

As a means of continually improving customer satisfaction, TGA may ask Subscriber to complete a brief survey of Subscriber's experience of the Product and Service from time to time. Subscriber hereby approves use of its name and logo in TGA's websites, case studies, industry awards, and other sales and marketing materials that reference TGA's customers generally, unless otherwise agreed by the parties in writing. Subscriber shall also make reasonable efforts to serve as a reference account and to participate in case studies and other promotional activity at TGA's reasonable request, unless otherwise agreed by the parties in

writing. In the case of a Subscriber who is a Publisher, Publisher shall make reasonable efforts to have Publisher Client approve use of its name and logo and otherwise comply with this Section 8, unless otherwise agreed by the parties in writing.

9. CONFIDENTIALITY

Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third-party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third-party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third-party. Subscriber acknowledges that details of the Products and Services, and the results of any performance tests of the Products and Services, constitute TGA's Confidential Information.

10. INDEMNITY

10.1 TGA shall defend Subscriber against any claim that the Game Type infringes any copyright, trademark, or trade secret right, and shall indemnify Subscriber for any amounts awarded against Subscriber in judgment or settlement of such claims, provided that: TGA is given prompt notice of any such claim; Subscriber provides reasonable cooperation to TGA in the defense and settlement of such claim, at TGA's expense; and TGA is given sole authority to defend or settle the claim. In the defense or settlement of any infringement claim, TGA may procure the right for Subscriber to continue using the Game Type, replace or modify the Game Type so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement upon notice to Subscriber without any additional liability or obligation to pay liquidated damages or other additional costs to Subscriber. This Section 10.1 states Subscriber's sole and exclusive rights and remedies, and TGA's entire obligation and liability for infringement.

10.2 Subscriber shall defend, indemnify, and hold harmless TGA Parties from and against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any actual or alleged breach of any representation, warranty, or covenant made by Subscriber hereunder; (or under any agreement between Publisher and Publisher Client); or relating to Subscriber Content, Subscriber Data, or any other technology, materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Subscriber, including TGA's compliance with any specifications or directions provided by or on behalf of Subscriber.

11. LIMITATION OF LIABILITY

11.1 TGA PARTIES WILL NOT BE LIABLE UNDER ANY SECTION OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL,

INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, LOST REPUTATION), WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS IN ADVANCE. IN NO EVENT WILL TGA PARTIES BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY SUBSCRIBER. IN ADDITION, IN NO EVENT WHATSOEVER SHALL TGA PARTIES' TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL SUBSCRIPTION FEES PAID FOR THE SUBSCRIPTIONS DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

11.2 Notwithstanding anything to the contrary set forth in this Agreement, TGA Parties shall have no obligation or liability, including (without limitation) with respect to support, warranties, indemnification, or otherwise in connection with any: (a) unauthorized use or negligence on the part of Subscriber or any third-party; (b) Product that is altered, damaged, or modified by Subscriber or any third-party; (c) Product that is not the then current release available from TGA; (d) Product or Service problems caused by Subscriber's or any third-party's negligence, hardware malfunction, or other causes beyond the control of TGA; (e) Product accessed on a hardware or operating system environment that is not supported by TGA; (f) pre-release, beta, or trial Product; (g) Subscriber Content, Subscriber Data, or any other technology, materials or information provided by Subscriber or any third-party; or (h) any actions taken by TGA at Subscriber's direction.

12. TERM AND TERMINATION

12.1 This Agreement shall remain in effect until the Term has expired, a Subscription is renewed as provided in Section 12.2, or this Agreement is terminated as provided in Section 12.3, whichever is earlier.

12.2 Upon renewal of a Subscription, this Agreement will terminate and the Subscription will thereafter be governed by the terms and conditions set forth in the Portal on the date on which the Subscription is renewed. If Subscriber does not agree to such terms and conditions of renewal, then Subscriber may decline to renew the Subscription.

12.3 Without prejudice to any other rights or remedies to which TGA may be entitled, TGA may at any time terminate this Agreement, any Statement of Work, and Subscriber's access to any and all Products and Services if Subscriber breaches any provision of this Agreement; TGA is required to do so by law; or TGA elects to discontinue the Product or Service, in whole or in part, such as if it becomes impractical for TGA to continue offering the Product or Service due to a change of law.

12.4 On expiration or termination of this Agreement, all Subscriptions and rights granted to Subscriber under this Agreement shall immediately terminate and no portion of any prior payments shall be repayable to Subscriber, and any and all payments due or to become due shall be immediately due and payable, except as otherwise set forth in the Subscription Details or Statement of Work. Subscriber may request an extension for the View-Only Administrator(s) to continue to exercise the rights set forth in Section 2.1(c) and/or the Trainees to continue to exercise the rights set forth in Section 2.1(d) during the Post-Expiration Period, subject to Subscriber's payment of applicable Fees as set forth in the Subscription Details and fulfillment of all other obligations under this Agreement. TGA shall use commercially reasonable efforts to allow such extension, provided that TGA shall have no support or other obligations in connection therewith. After the Post-Expiration Period, if any, or termination of this Agreement, TGA shall have the right, without obligation, to disable Subscriber's access to the Product, including links, and dispose of, or archive any of Subscriber Content and Subscriber Data in its possession. The accrued rights of the parties as of the date of expiration or termination, or the continuation after expiration or termination of any provision expressly

stated to survive or implicitly surviving expiration or termination, shall not be affected or prejudiced. Without limiting the generality of foregoing, Sections 4 through 21 shall survive expiration or termination of this Agreement.

13. FORCE MAJEURE

TGA Parties shall have no liability to Subscriber under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, work stoppage, strikes, lock-outs or other industrial disputes (whether involving the workforce of TGA or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, or direction, accident, breakdown of plant or machinery, fire, flood, storm, tornado, technological, computer hardware or software errors, delays, or breakdowns, including those caused by attacks from unauthorized users who access the technological infrastructure, *e.g.*, hackers, or default of sub-contractors or other third parties.

14. WAIVER

A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

15. SEVERABILITY

If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. ENTIRE AGREEMENT

This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous promotional or other offer, arrangement, understanding, or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty, or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Any purchase orders issued by Subscriber shall be deemed to be for Subscriber's convenience only and, notwithstanding acceptance of such orders by TGA, shall in no way change, override, or supplement this Agreement.

17. ASSIGNMENT

Subscriber may not assign or otherwise transfer this Agreement or any right or obligation of this Agreement, by operation of law or otherwise, without prior written consent of TGA. TGA may assign or otherwise transfer this Agreement or any right or obligation of this Agreement, by operation of law or otherwise, without prior written consent of Subscriber.

18. RELATIONSHIP OF PARTIES

This Agreement shall not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

19. THIRD-PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns and TGA Parties).

20. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, sent by fax to the other party's fax number as set out in this Agreement, or sent by electronic mail to the other party's address as set out in this Agreement or as the other party may specify in writing. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender). A notice sent by electronic mail shall be deemed to have been received when the recipient acknowledges receipt of such notice.

21. GOVERNING LAW AND JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the State of New York. The parties irrevocably agree that the courts located in the State of Connecticut have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).