

## TERMS OF USE: CUSTOMER

Company and its Authorized Users' right to access and use SimplyMerit® is subject to the terms and conditions set out below, including terms and conditions set out in certain policies incorporated by reference herein. Please read on to find out more about your rights, as well as what is expected of you, as Company.

1. **Acceptance.** These Terms of Use are entered into by and between Company (as defined on the Order Form or Statement of Work) and MorganHR ("MorganHR"). The following terms and conditions, together with any documents they expressly incorporate by reference, collectively, "Terms of Use"), govern your access to and use of the Software, including any content, functionality, and services offered on or through same. Please read the Terms of Use carefully before you start to use the Software. By using the Software, or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and any documents incorporated herein by reference. If you do not want to agree to these Terms of Use, you must not access or use the Software.

### 2. Access and Use

2.1. Access. SimplyMerit® (the "Software") is a cloud-based human resources management solution being provided to Company and its Authorized Users for Company's internal business purposes, provided Company remains in compliance with the Terms of Use. Company will use commercially reasonable screening, security procedures and other safeguards necessary to: (i) securely administer the distribution and use of all Access Credentials and reasonably protect against any unauthorized access to or use of the Software; and (ii) control the content and use of Company Data, including the uploading or other provision of Company Data for Processing.

2.2. Access Changes. Company manages who has access to the Software including Authorized Users and Account Administrators.

2.3. Unauthorized and Restricted Use. Company will not, and will not permit any third party to, access or use the Software, except as expressly permitted by the Terms of Use. Examples of such unauthorized and restricted use of the Software, include, but are not limited to, the following: (a) copy, modify, correct, translate, create, enhance, or otherwise prepare derivative works or improvements, in whole or in part; (b) make available to any third party, including through the internet or any time-sharing, service bureau, software as a service, cloud or other technology; (c) attempt to derive or gain access to the source code, in whole or in part, by any means, including by reverse engineering, disassembling, decompiling, decoding or adapting; (d) by pass or breach any security device or protection or access or use other than by an Authorized User through his or her own valid user credentials; (e) remove, alter, supplement, or otherwise change any trademarks (or other marks or Intellectual Property Rights), terms, proprietary rights or other symbols, or notices; (f) input or otherwise provide to or through any unlawful or injurious information or materials or contain, transmit, or activate Harmful Code with the purpose or effect to permit unauthorized access or otherwise harm any computer, software, system, firmware, hardware or network, or any application or function or the security, integrity, confidentiality or use of any data Processed of or by the foregoing or preventing Company or any Authorized User from accessing or using, as intended by the Terms of Use; (g) damage, disable, interfere with, or otherwise harm; (h) use in any manner or for any purpose that infringes, misappropriates, or otherwise violates any

Intellectual Property Rights or other rights of any third party, or that violates any applicable law; or (i) use for the purpose of benchmarking or competitive analysis, developing or providing a competing product or any other purpose that is to MorganHR's detriment or commercial disadvantage.

- 2.4. Corrective Action and Notice. If Company becomes aware of any actual or threatened activity prohibited by this Article 2, Company shall, and shall cause its Authorized Users to, promptly: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify MorganHR of any such actual or threatened activity.

### 3. Fees and Payment

- 3.1. Payment. Company shall pay all undisputed Fees and any other undisputed amounts due and owing under the Terms of Use as outlined in the Order Form or Statement of Work. Company shall make all payments hereunder in U.S. dollars.
- 3.2. Taxes. All Fees and other amounts payable by Company under the Terms of Use are exclusive of taxes and similar assessments. Company is responsible for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Company hereunder, other than any taxes imposed on MorganHR's income, which is the responsibility of MorganHR. Should any payment for Software provided under the Terms of Use be subject to withholding tax by any government, Company shall reimburse MorganHR for such withholding tax.
- 3.3. No Deductions or Setoffs. All amounts payable to MorganHR under the Terms of Use shall be paid by Company to MorganHR in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

### 4. Control and Management

- 4.1. Control. Except as otherwise provided herein:
- (a) Company has and will retain sole responsibility for and over: (i) all Company Data, as defined herein, including its content and use; (ii) the security and use of Company's and its Authorized Users' Access Credentials (any user name, identification number, license or security code, key or token, PIN, method or technology, or device used to verify an individual's identity and authorization to access and use the Software); and (iii) all access to and use of the Software directly or indirectly by or through the Company Systems or its Authorized Users' Access Credentials, with or without Company's knowledge or consent.
- (b) MorganHR has and will retain sole control over the operation, provision, maintenance, and management of the Software. MorganHR may make changes to the Software that

it deems reasonably necessary to: (i) maintain or enhance the quality, delivery, competitive strength, cost efficiency, or performance of the Software to its customers; or (ii) to comply with applicable law; provided however that MorganHR shall notify Company in writing and in advance of any such changes that will materially impact the functionality of the Software.

4.2. Notwithstanding anything to the contrary in the Terms of Use, the Software shall be provided solely from, within, and on computers, servers, systems, networks, and other infrastructure located in the United States unless otherwise agreed to in writing by the Parties.

## 5. Monitoring and Security Measures

5.1. MorganHR shall employ security measures, including protection of any information and/or data provided by Company, in accordance with its [Privacy Policy](#) as amended from time to time (“Privacy Policy”).

5.2. Company acknowledges and agrees that (a) MorganHR may use technological and other lawful measures, including inspecting and/or monitoring all access and use of the Software, to verify Company's compliance with the terms of the Terms of Use and enforce MorganHR's rights. MorganHR may deny any individual, including Authorized Users, access to and/or use of the Software if MorganHR, in its discretion, reasonably believes their use of the Software would violate any provision of the Terms of Use; (b) MorganHR may collect, maintain, process, and use diagnostic, technical, usage, and related information that MorganHR may gather periodically to improve the performance of the Software or to develop any maintenance updates; and (c) the Software is not designed with security and access management for processing Prohibited Data. Company shall not, and shall not permit any Authorized User or any third party to, provide any Prohibited Data to MorganHR. Company is solely responsible for reviewing all Company Data and shall ensure that no Company Data constitutes or contains any Prohibited Data.

## 6. Intellectual Property Rights

6.1. Intellectual Property Ownership. Company acknowledges and agrees that all right, title, and interest in and to the Software, including all Intellectual Property Rights therein, are and will remain with MorganHR. Company has no right, license, or authorization with respect to any of the Software except as expressly set forth herein. All other rights in and to the Software are expressly reserved by MorganHR.

6.2. Company Data and Use. Company is and will remain the sole and exclusive owner of all right, title, and interest in and to all Company Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 6.3 below. Company hereby grants all such rights and permissions in or relating to Company Data to MorganHR as are necessary or useful: (a) to perform the Processing; and/or (b) to enforce the Terms of Use and exercise its rights and perform its obligations hereunder. This grant of rights shall automatically expire upon the expiration or earlier termination of the Terms of Use.

6.3. Resultant Data. Notwithstanding the foregoing, Company hereby unconditionally and irrevocably grants to MorganHR an assignment of all right, title, and interest in and to any Resultant Data; including all Intellectual Property Rights relating thereto.

## 7. Confidentiality

- 7.1. Protection of Confidential Information. Except as may be permitted under the terms and conditions of Section 7.2, MorganHR will not disclose or permit access to Confidential Information other than to its employees or authorized representatives who need to know such Confidential Information for purposes of the Company's exercise of its rights or performance of its obligations under and in accordance with the Terms of Use. MorganHR also agrees to safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care.
- 7.2. Compelled Disclosures. Disclosure of Confidential Information will not be precluded if such disclosure is in response to a valid order of a court or other governmental body of the United States or is otherwise required to be disclosed by law, provided however, that MorganHR shall first give written notice, if allowed by law, to the Company.
- 7.3. Authorized Copy. Notwithstanding anything to the contrary in the Terms of Use, Morgan HR may, but is not required to, retain one or more copies of the Confidential Information (i) for the purpose of defending any claim related to the Terms of Use and in accordance with its data retention policy, on condition that any retained Confidential Information will remain subject to the obligations and restrictions set forth in the Terms of Use and as may be required in accordance with MorganHR's legal, compliance and/or automated backup archiving practices.

## 8. Term and Termination

- 8.1. Initial Term. The initial term of the Terms of Use commences as of the Effective Date and, unless terminated earlier as provided herein, will continue in effect until one (1) year from such date ("Initial Term") unless otherwise specified in the Order Form or Statement of Work.
- 8.2. Renewal Term. The Terms of Use will automatically renew for successive one (1) year terms (each a "Renewal Term" and collectively, together with the Initial Term, the "Term") unless earlier terminated as provided herein or unless Company gives MorganHR written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.
- 8.3. Termination. In addition to any other express termination rights set forth herein, the Terms of Use may be terminated at any time:
  - (a) by either Party, at any time and for any reason, upon thirty (30) days written notice;
  - (b) by MorganHR, effective on written notice to Company, if Company fails to pay any amount when due under the Terms of Use, where such failure continues more than fifteen (15) days after MorganHR's delivery of written notice thereof ("Payment Failure") or if three (3) or more Payment Failures occur in any six (6) month period;

- (c) by either Party, effective on written notice to the other Party, if the other Party materially breaches the Terms of Use and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;

by either Party, effective immediately upon written notice to the other Party, if the other Party: (i) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (ii) makes or seeks to make a general assignment for the benefit of its creditors; or (iii) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property; or

- (d) by MorganHR effective immediately if it receives a judicial or other governmental demand, subpoena, or law enforcement request requiring MorganHR to do so.

8.4. Effect of Termination or Expiration. On the expiration or earlier termination of the Terms of Use:

- (a) All rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate;
- (b) Company shall immediately cease all use of and other activities with respect to the Software;
- (c) MorganHR shall, within thirty (30) days, permanently erase from all devices and systems that MorganHR directly or indirectly controls, the Company Data; and
- (d) Any and all amounts payable by Company to MorganHR of any kind, including Fees for unused year(s), under the Terms of Use shall become immediately payable and due and Company shall pay all such amounts no later than fourteen (14) day after the effective date of the expiration or after termination of the Terms of Use by either Party.

## 9. Representations and Warranties

9.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it has the full right and authority and is in good standing as a legal entity under applicable laws to enter into the Terms of Use, perform its obligations under the Terms of Use, and grant all of the rights granted by it under the Terms of Use; (b) the execution and delivery of the Terms of Use has been duly authorized and will constitute the binding obligations enforceable in accordance with its terms; (c) it shall comply with all applicable laws, including any import, export, and data privacy laws, as related to the respective business of such party; and (d) no approval or other action by a third party is required in connection with its execution and performance of the Terms of Use.

9.2. Additional MorganHR Representations, Warranties. MorganHR represents and warrants to Company that MorganHR will perform hereunder in accordance with all applicable laws using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under the Terms of Use.

- 9.3. Additional Company Representations, Warranties. Company represents, warrants, and covenants to MorganHR that Company owns or otherwise has and will have the necessary rights and consents in and relating to the Company Data so that, as received by MorganHR and Processed in accordance with the Terms of Use, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.
- 9.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, THE SERVICES AND SOFTWARE ARE PROVIDED “AS IS” AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. MORGANHR MAKES NO WARRANTY THAT THE SERVICES OR SOFTWARE OR ANY PRODUCTS WILL OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE WITH ANY OTHER PRODUCT, OR BE ACCURATE, COMPLETE, OR FREE OF HARMFUL CODE 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 CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 10. Indemnifications

- 10.1. Mutual General Indemnification. Each Party agrees to indemnify, defend, and hold harmless the other Party and its officers, directors, agents, contractors, and employees (each, an “Indemnitee”) from and against any and all third-party Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) the gross negligence (meaning the intentional or willful disregard for the reasonable and proper duties of care) or willful misconduct of the indemnifying Party; and (c) the material breach of the Terms of Use by the indemnifying Party; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.
- 10.2. Intellectual Property and Data Indemnifications. MorganHR shall indemnify, defend, and hold harmless Company and its Indemnitees from and against any and all Claims incurred by Company Indemnitee to the extent that such Claims arise from any allegation that Company's or an Authorized User's use of the Software (excluding Company Data) in compliance with the Terms of Use infringes a U.S. Intellectual Property Right, provided; however, the foregoing obligation does not apply to any Claim arising out of or relating to any: (a) access to or use of the Software in combination with any hardware, system, software, network, or other materials or service not provided or authorized in writing by MorganHR; (b) modification of the Software other than by or on behalf of MorganHR or with MorganHR's written approval in accordance with MorganHR's written specification; or (c) unauthorized or restricted use of the Software by Company in accordance with the Terms of Use. Company shall indemnify, defend and hold harmless MorganHR and MorganHR Indemnitees from and against any and all Claims incurred by MorganHR and such

MorganHR Indemnitee to the extent that such Claims arise out of or relate to: (a) Company's use or connection to the Software in violation of the Terms of Use; or (b) Company Data.

10.3. Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Claim for indemnity pursuant to this Article 10. The Indemnitee shall cooperate with the other Party (the "Indemnitor") and the Indemnitor shall take control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 10.3 will only relieve the Indemnitor of its obligations under this Article 10 to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. This Article sets forth Company's sole remedies for any actual, threatened, or alleged Claims that MorganHR's Software infringes or misappropriates or otherwise violates any third party's Intellectual Property Rights.

**11. Limitations of Liability.** IN NO EVENT WILL MORGANHR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, FOR (A) ANY LOSS OF PRODUCTION, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SOFTWARE; (B) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA OR BREACH OF DATA OR SYSTEM SECURITY OR (C) ANY DELAY OR FAILURE OF PERFORMANCE CAUSED IN WHOLE OR IN PART BY COMPANY'S DELAY IN PERFORMING, OR FAILURE TO PERFORM, ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (EACH, A "COMPANY FAILURE"). FURTHER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, LOST PROFITS INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. THE COLLECTIVE AGGREGATE LIABILITY OF MORGANHR UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, WILL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO MORGANHR FOR THE SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY. ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE.

## **12. Miscellaneous**

12.1. Force Majeure. Neither Party shall have liability or responsibility to the other Party nor shall either Party be deemed to have defaulted under or breached this Agreement, from any failure or delay in performing any term of this Agreement or for any loss, damage, or expense from any delay or failure of performance due to any cause beyond the control of such affected Party (each a "Force Majeure Event"). Events not within a Party's control include, but are not limited to, war, strike, work stoppages or slowdowns, shortages in transportation, power, labor or material, freight embargo, riot or civil commotion, default of the supplier, mechanical failures, severe weather conditions, or other acts of God. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice, as soon as possible under the circumstances, to the other Party stating the period of time the occurrence is expected to continue and that the performing Party will use commercially

reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

- 12.2. Entire Agreement. This Agreement constitutes the entire Agreement among the Parties pertaining to the subject matter hereof. Any and all agreements and exhibits attached hereto or referenced herein are specifically incorporated herein. No amendment or modification of any provision of this Agreement will be effective unless set forth in a written document that purports to amend this Agreement, executed by the Parties.
- 12.3. Headings. The headings and titles of the sections herein are for convenience only and do not nor are intended to limit, expand, interpret, or construe the contents of the sections.
- 12.4. Assignment. Neither Party shall sell, transfer, or assign any right or obligation hereunder by sale, merger, or operation of law, except as expressly provided herein without the prior express written consent of the other Party such consent not to be unreasonably withheld. Any act in derogation of the foregoing shall be null and void.
- 12.5. Governing Law. The validity, construction, and performance of this Agreement shall be governed by the substantive laws of the State of Illinois. The Parties further agree that, in the event of a dispute arising hereunder, the jurisdiction and venue of any proceeding shall be proper solely in the County of Cook, State of Illinois.
- 12.6. Severability and Waiver. Any provision of this Agreement held by a court of competent jurisdiction to be contrary to law or invalid, shall be enforced to the extent permissible and the remaining portions of this Agreement shall remain in full force and effect. No delay or omission of the right to exercise any remedy, right or power by either Party shall impair any such right or power. One or more waivers of any covenant, power, right, agreement, term, or condition of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same covenant, power, right, agreement, term, or condition.
- 12.7. Notice. Unless otherwise specified in this Agreement, any notice required or permitted by this Agreement shall be in writing and provided to the respective Party as follows:

If to MorganHR: MorganHR Inc., Attn: Neil Morgan, 21720 W. Long Grove Rd., Suite C-216, Deer Park, IL 60010

Em.: [nmorgan@morganhr.com](mailto:nmorgan@morganhr.com)

If to Customer: As provided on the Order Form or Statement of Work

Such notice shall be deemed delivered (a) that day if it is sent by electronic communication, with a copy sent first class United States mail, postage prepaid; (b) the next business day after deposit in overnight mail with a nationally recognized overnight mail courier; or (c) three (3) business days after mailing by registered or certified United States mail, postage prepaid. Notwithstanding the forgoing, notices sent in between a Party's legal counsel shall be deemed sufficiently sent under the terms hereof without necessity of delivery directly to the Party itself. A Party may change its address for receipt of notices by service of a notice of such change on all Parties, such change shall be effective upon receipt of such notice.



- 12.8. Surviving Terms. Any right, obligation or provision under the Terms of Use that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement, including Articles 6, 7, 8, 9, 10, 11 and 12.
- 12.9. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Articles 6 or 7 may cause the other Party irreparable harm for which monetary damages may not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- 12.10. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing Party.
- 12.11. Cooperation. Each Party shall at all times during the Term provide all cooperation and assistance as the other Party may reasonably request to enable such Party to exercise its rights and perform its obligations under and in conjunction with this Agreement.

## 13. Rules of Interpretation and Defined Terms

### 13.1. Rules of Interpretation.

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (b) The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day. For the purposes of this Agreement, the term “Business Day” means any day other than Saturday, Sunday, or a legal holiday recognized under the laws of the State of Illinois.

### 13.2. Defined Terms. The following capitalized terms shall have the meaning given below

- (a) “Access Credentials” means any user name, identification number, license or security code, key or token, PIN, method or technology, or device used to verify an individual’s identity and authorization to access and use the Software.
- (b) “Authorized User” means the individuals designated by Company as having authority to use the Software pursuant to the license granted under the Terms of Use.
- (c) “Account Administrator” means one or more Authorized Users designated by Company as having the requisite authority, skill, qualifications, and experience to have responsibility for all communications between Company and MorganHR.
- (d) “Claim” means any and all third-party liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments, including actual reasonable attorneys’ fees, costs, and expenses incidental thereto (collectively, “Claims”).
- (e) “Company Data” means information, data, materials, and other content that is received directly or indirectly from Company or an Authorized User or is derived from the Processing (as defined herein) of such information through the Software. Company Data is and shall remain the sole and exclusive property of Company and shall be deemed Company Confidential Information.
- (f) “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary and would be understood as confidential or proprietary by a reasonable person, including information consisting of or relating to the Disclosing Party’s technology, intellectual property, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as “confidential”. Confidential Information does not include information that the Receiving Party can demonstrate by competent written evidence: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the

Receiving Party in connection with the Terms of Use; (b) was or becomes generally known by the public other than by the Receiving Party's or any noncompliance with the Terms of Use; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

- (g) "Harmful Code" means any technology, including any virus or other malicious computer code.
- (h) "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise existing under any patent, copyright, trademark, trade secret intellectual property rights laws.
- (i) "Order Form" means the order form filled out and submitted by or on behalf of Company, and accepted by MorganHR, for Company's purchase of the right to use the Software granted under the Terms of Use.
- (j) "Processing" means taking any action or performing any operation(s) that the Software is capable of taking or performing on any data, information, or content.
- (k) "Prohibited Data" (a) data that is classified and or used on the U.S. Munitions list, including software and technical data; (b) articles, services and related technical data designated as defense articles or defense services; and (c) ITAR (International Traffic in Arms Regulations) related data.
- (l) "Resultant Data" meaning any information, data, and content derived from Processing Company Data, but solely to the extent that the Resultant Data cannot be reversed engineered or identified as Company Data from inspection, analysis or further Processing of such data.
- (m) "Statement of Work" refers to statements of work defining consulting projects and/or education courses.