

Tualta Platform Licence Agreement

This Tualta Platform Licence Agreement, any Addenda attached hereto or referenced herein are incorporated into each Order Form between Tualta, LLC ("**Tualta**") and the customer set forth in the Order Form ("**Customer**") and shall govern the provision of the Services to Customer by Tualta, as set forth in the applicable Order Form. The Agreement shall commence on the Effective Date of Customer's first executed Order Form ("**Effective Date**") and will continue until otherwise terminated in accordance with the Agreement.

1. **DEFINITIONS.**

- 1.1. "**Access Credentials**" means any user name, identification number, password, license or security key, security token, personal identification number (PIN) or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Platform.
- 1.2. "**Agreement**" means, collectively, this Tualta Platform Licence Agreement, any Addenda attached hereto or referenced herein and any Order Form(s) entered into by Tualta and Customer.
- 1.3. "**Authorized User**" means each of the employees, contractors, customers, end users, or other individuals authorized to access and use the Platform by Customer pursuant to Customer's licence hereunder.
- 1.4. "**Customer**" means the customer indicated on an applicable Order Form.
- 1.5. "**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Platform. For the avoidance of doubt, Customer Data includes information reflecting the individual and personal information of any Authorized User which could be used to identify them, other than Resultant Data.
- 1.6. "**Customer Systems**" means Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), networks and internet connectivity, whether operated directly by Customer or through the use of third-party services.
- 1.7. "**Harmful Code**" means any software, hardware or other technology, device or means, including any virus, trojan horse, worm, backdoor, malware or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any: (i) computer, software, firmware, hardware, system or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Platform as intended by this Agreement.
- 1.8. "**IP Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trade-mark,

trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection in any part of the world.

- 1.9. **“Order Form”** means an order form executed by Trualta and Customer which incorporates by reference this Trualta Platform Licence Agreement and any Addenda attached hereto or referenced herein.
 - 1.10. **“Party”** means Trualta and Customer, individually, and collectively are referred to as **“Parties”**.
 - 1.11. **“Permitted Uses”** means any use of the Platform by Customer for the purposes of administering the Services, and any use by an Authorized User for receiving personal caregiver training, education, and skills development.
 - 1.12. **“Personal Information”** means any information that, individually or in combination, does or can identify a specific individual or device or by or from which a specific individual or device may be identified, contacted or located. Personal Information may be expanded to include any individual user data which is deemed sensitive and protected under applicable law.
 - 1.13. **“Platform”** means Trualta digital learning platform which allows users to access learning tools, materials, and content related to home caregiver topics and which is hosted online for access by Customer and Authorized Users, all of such foregoing content and resources, all underlying software or applications and any third-party or other software that makes up such Platform, and all new versions, updates, revisions, improvements and modifications of the foregoing.
 - 1.14. **“Process”** means to take any action or perform any operation or set of operations on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.
 - 1.15. **“Resultant Data”** means information, data and other content that is derived by or through the Services from Processing Customer Data that is sufficiently aggregated and/or de-identified so that the specific underlying Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.
 - 1.16. **“Services”** the services described on an applicable Order Form and includes provision of the Platform.
 - 1.17. **“Updates”** means any updates, bug fixes, patches, or other error corrections to the Platform that Trualta generally makes available free of charge to all customers of the Platform.
2. **SERVICES AND LICENCE.**
- 2.1. **License Grant.** Subject to and conditional upon Customer's payment of Fees when due and Customer's ongoing compliance with these Terms and Conditions, Trualta hereby grants Customer a non-exclusive, non-sublicenseable, and non-transferable licence during the Term

for the number of Authorized Users set out on an Order Form to access and use the Platform solely for the Permitted Uses.

2.2. Use Restrictions. Customer shall not, and shall not permit any Authorized User or other person or third party to, at any time, directly or indirectly, except as expressly permitted by this Agreement:

- 2.2.1. copy, modify or create derivative works or improvements of the Platform;
- 2.2.2. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Platform or any portion thereof, including on or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;
- 2.2.3. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Platform, or any part thereof;
- 2.2.4. bypass or breach any security device or protection used by the Platform or access or use the Platform other than by an Authorized User through the use of his or her own then-valid Access Credentials;
- 2.2.5. input, upload, transmit or otherwise provide to or through the Platform any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- 2.2.6. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Platform or Tualta's provision thereof to any third party, in whole or in part;
- 2.2.7. remove, delete, alter or obscure any trade-marks, documentation, end user licence agreement, warranties or disclaimers, or any copyright, trade-mark, patent or other intellectual property or proprietary rights notices from the Platform or its contents including any copy thereof;
- 2.2.8. access or use the Platform in any manner or for any purpose that infringes, misappropriates or otherwise violates any IP Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Tualta customer), or that violates any applicable Law;
- 2.2.9. access or use the Platform for purposes of competitive analysis of the Platform, the development, provision or use of a competing software service or product or any other purpose that is to Tualta's detriment or commercial disadvantage; or
- 2.2.10. otherwise access or use the Platform beyond the scope of the authorization granted under these Terms and Conditions,

(the foregoing restrictions, collectively "**Use Restrictions**").

2.3. Site Moderation. If Customer elects to activate a "comment box" feature in the Platform, Customer and its Authorized Users may post messages, communications, and content to the Platform which is viewable by the other users ("**Communication Posts**"). Customer acknowledges and agrees that Tualta does not and will not monitor the Communication Posts

and has no obligation or responsibility to Customer or any Authorized User to review Communication Posts and disclaims, to the maximum extent permitted by law, any and all liability for Communication Posts. Customer shall be granted certain administrative and moderation capabilities on the Platform, and shall be responsible for monitoring and moderating all Communication Posts and Authorized User interactions and posts. Without limiting the foregoing, Customer agrees promptly remove any Communication Posts which violate the Use Restrictions.

- 2.4. Indemnity. Customer hereby and holds harmless Tualta and all of its officers, directors, owners, agents and employees from and against any and all liability and costs incurred in any claim arising out of any breach of these Terms and Conditions by or on behalf of Customer or Authorized Users.
- 2.5. Reservation of Rights. Tualta reserves all rights not expressly granted to Customer in these Terms and Conditions. Except for the limited rights and licences expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Platform.
- 2.6. Changes. Tualta reserves the right, in its sole discretion, to make any changes to the Platform that it deems necessary or useful to maintain or enhance the quality or delivery of Tualta's services to its customers, the cost efficiency or performance of the Platform, or to comply with applicable law.
- 2.7. Suspension or Termination of Services. Tualta may, directly or indirectly, and by use of any other lawful means, suspend, terminate or otherwise deny access to, or use of, all or any part of the Platform by Customer, any Authorized User or any other party, without incurring any resulting obligation or liability, if: (a) Tualta receives an order from a government body or legal authority to do so; (b) Tualta believes, in its reasonable discretion, that failure to do so would cause irreparable harm to Tualta, the Platform, or any person; (c) Tualta believes, in reasonable discretion, that Customer or any Authorized User has failed to comply with the Agreement; or (d) this Agreement expires or is terminated. This Section does not limit any of Tualta's other rights or remedies, whether at law, in equity or under this Agreement.
- 2.8. Additional Content. As agreed upon by Tualta and Customer from time to time in writing, Tualta may implement Customer-provided content and resources, whether or not it is modified, on the Platform (the "**Customer Content**") for Customer's exclusive use. Such Customer Content shall be governed by Sections 5.6 and 5.7.

3. CUSTOMER RESPONSIBILITIES.

- 3.1. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) the provision of all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User; (c) the setup and maintenance of all Customer Systems; (d) the security and use of Access Credentials of Customer and its Authorized Users; and (e) all access to and use of the Platform directly or indirectly by or through the Customer Systems or its Authorized Users' Access Credentials. Without limiting the generality of the foregoing, Customer is responsible for all acts and

omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer.

3.2. Customer Systems and Cooperation. Customer shall at all times during the Term:

3.2.1. employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to ensure its and its Authorized Users' compliance with the terms of this Agreement;

3.2.2. upon request, furnish Trualta with an updated list of Authorized Users; and

3.2.3. provide all cooperation and assistance as Trualta may reasonably request to enable Trualta to exercise its rights and perform its obligations under and in connection with the Agreement.

3.3. Effect of Customer Failure or Delay. Trualta is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement.

3.4. Case Study Cooperation. In order to facilitate the assessment and development of the Platform, Customer shall assist Trualta in developing a case study based on the use of the Platform under this Agreement, as follows:

3.4.1. Customer shall direct a representative to participate in an interview with Trualta, at a time and date to be determined by mutual agreement of the Parties but no later than 6 months after the Term of this Agreement, and to cooperate with Trualta as reasonably required in order to collect feedback on the Platform;

3.4.2. subject to the consent of Customer and all parties involved, which may be reasonably withheld, Customer shall permit Trualta to conduct interviews with Authorized Users or other individuals that interact with the Platform, and facilitate any communication and logistics necessary in order to complete these interviews; and

3.4.3. from time to time upon the written request of Trualta, and following any termination of this Agreement, Customer shall provide to Trualta de-identified or anonymized data that it collects about the use of the Platform by Authorized Users or other individuals which may interact with the Authorized Users, which data shall be deemed to be Resultant Data.

4. **FEES AND PAYMENT.**

4.1. Fees. Customer shall pay Trualta the fees set out on an applicable Order Form (the "**Fees**"). Unless otherwise indicated on the applicable Order Form, Fees shall be due and payable at the commencement of the Initial Term and any subsequent Renewal Terms.

4.2. Fee Increases on Renewal. Trualta may increase the Fees by up to 10% from the previous amount for each Renewal Term after the Initial Term of this Agreement by providing written notice to Customer prior to or upon the commencement of such Renewal Term, and the applicable Order Form will be deemed amended accordingly.

- 4.3. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all HST/GST, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any state, federal, provincial, or territorial governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Trualta's income. The foregoing amounts may be charged by Trualta to Customer in addition to the Fees for subsequent remittance as required under applicable laws.
- 4.4. Payment. Unless otherwise set forth on an applicable Order Form, Customer shall pay all Fees for each applicable Term prior to accessing the Services. If Customer fails to make any payment of Fees when due, then, in addition to all other remedies that may be available, Trualta may charge interest on the past due amount at the lesser of 18% per annum or the highest legally permitted rate and/or immediately suspend provision of the Platform until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.
- 4.5. No Deductions or Set-Offs. All amounts payable to Trualta under this Agreement shall be paid by Customer to Trualta in full without any set-off, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

5. IP RIGHTS.

- 5.1. Reservation of Rights. All right, title and interest in and to the Platform, including all IP Rights therein, are and will remain with Trualta and the respective rights holders in the Third-Party Products. Customer acknowledges and agrees that it has no right, license or authorization with respect to any of the Platform and its contents (including any IP Rights therein), including any developments or improvements to the foregoing that result under this Agreement, except as expressly set forth in Section 2.1, subject to Section 2.2. All other rights in and to the Platform and Third-Party Products are expressly reserved by Trualta and the respective third-party licensors.
- 5.2. Ownership of Resultant Data. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably acknowledges and agrees that all right, title and interest in and to the Resultant Data shall remain the sole property of Trualta. Customer hereby assigns all interests and rights in and to any Resultant Data to Trualta, and further waives all rights, title, interest, or moral rights in the Resultant Data, and agrees to execute any documents or instruments as may be reasonably necessary to give effect to such assignment and waiver, and as requested by Trualta in order to secure its IP Rights to the Resultant Data. Trualta hereby grants Customer a non-exclusive, non-sublicenseable, and non-transferable licence during the Term to access and use the Resultant Data for Customer's internal business purposes as they relate to the Permitted Uses, and to provide access to proper Authorized Users for the Permitted Uses, in each case conditional upon the Authorized Users' acceptance of Trualta's "**Terms and Conditions of Use**" as they may be amended from time to time, the current version of which may be found at <https://www.trualta.com/terms-of-service/>.
- 5.3. Customer Data. As between Customer and Trualta, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all IP Rights relating thereto, subject to the rights and permissions granted in Section 5.4.

5.4. Consent to Use Customer Data. Customer hereby grants to Trualta an irrevocable, perpetual, worldwide, fully paid-up, royalty free, transferable and sublicenseable license to use Customer Data for the purposes of: (a) providing the Platform and performing the Services; and (b) to Trualta as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

5.5. Confidentiality.

5.5.1. Confidential Information. “**Confidential Information**” of a Party means any and all information of a Party (the “**Disclosing Party**”) that has or will come into the possession or knowledge of the other Party (the “**Receiving Party**”) in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party’s past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, “**Confidential Information**” does not include information that is: (i) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available); (ii) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind; (iii) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or (iv) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received.

5.5.2. Protection of Confidential Information. In its capacity as the Receiving Party, each Party shall:

5.5.2.1. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

5.5.2.2. subject to Section 5.5.3, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this Section; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section;

5.5.2.3. 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; and

5.5.2.4. ensure its representatives’ compliance with, and be responsible and liable for any of its representatives’ non-compliance with, the terms of this Section.

- 5.5.3. Compelled Disclosures. Receiving Party may disclose Confidential Information of Disclosing Party if and solely to the extent required by applicable Laws, provided that Receiving Party must first give Disclosing Party written notice of such compelled disclosure (except where such notice is prohibited by applicable Laws) to provide Disclosing Party an opportunity to seek a protective order or other remedy.
- 5.6. Customer Content Representation. In the event that Customer provides any content, data, writings, diagrams, methods, processes, images, or other forms of materials or resources to Tualta for implementation as Customer Content on the Platform or as part of the Platform pursuant to Section 2.9 herein, Customer represents and warrants to Tualta that Customer has title or right, and all necessary permissions or licences, to use all such provided content, and that such provided content does not violate or infringe any applicable laws or any intellectual property rights of any third parties, and notwithstanding any other term of this Agreement, Customer shall indemnify Tualta for any third party claims, actions, or damages that arise from a breach of this representation and warranty.
- 5.7. Customer Content Licence. Customer hereby grants Tualta a limited, revocable, fully paid-up, royalty-free, non-transferable, non-sublicenseable, non-exclusive, and worldwide license to use any content, data, writings, diagrams, methods, processes, images, or other forms of materials that are delivered by Customer to Tualta to act as Customer Content pursuant to Section 2.9. herein for the purposes of providing the Customer Content to Customer on the Platform, and such licence shall be automatically revoked upon the termination of this Agreement.
- 5.8. Provider Systems and Security Obligations. Tualta will employ security measures in accordance with Tualta's data privacy and security policy as amended from time to time, and which shall be available on Tualta's website at <https://www.tualta.com/privacy-policy/> or a successor website address (the "**Privacy and Security Policy**").
- 5.9. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) the provision of all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Access Credentials of Customer and its Authorized Users; and (e) all access to and use of the Services and Tualta's materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.
- 5.10. Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to, or use of, the Services; and (b) control the content and use of the Customer Data, including the uploading or other provision of Customer Data for Processing by or within the Platform.
6. **WARRANTY DISCLAIMER**.

THE PLATFORM IS PROVIDED "AS IS" AND TRUALTA HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TRUALTA SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL CONDITIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TRUALTA MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE PLATFORM, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY PLATFORM, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

7. **LIMITATIONS OF LIABILITY.**

IN NO EVENT WILL TRUALTA BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE OR EXEMPLARY DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL TRUALTA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO TRUALTA UNDER THE APPLICABLE ORDER FORM IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

8. **TERMINATION.**

8.1. Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

8.1.1. Tualta may terminate this Agreement, effective immediately upon delivery of written notice to Customer, if Customer (a) fails to pay any amount when due hereunder, OR (b) breaches any of its obligations under Section 2.2.

8.1.2. Either Party may terminate this Agreement, effective upon delivery of written notice to the other Party, if the other Party materially breaches their obligations or the terms under this Agreement, and such breach is incapable of cure, OR being capable of cure, remains uncured for 30 days after the non-breaching Party provides the breaching Party with written notice of such breach.

- 8.1.3. Either Party may terminate this Agreement, upon delivery of written notice to the other Party, if the other Party becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- 8.2. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:
- 8.2.1. all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate, except for those set out under Sections 5.2;
- 8.2.2. Tualta shall immediately cease all use of any Customer Data or Customer's Confidential Information and permanently erase all Customer Data and Customer's Confidential Information, provided that, Tualta may retain Customer Data in its backups and archives until deleted in the ordinary course, so long as such data remains subject to all confidentiality, security and other applicable requirements of this Agreement, and Tualta's obligations under this Section shall not apply to any Resultant Data; and
- 8.2.3. Tualta shall disable all Customer and Authorized User access to the Platform, and Customer shall immediately cease all use of the Platform.
- 8.3. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Sections 2.3, 2.6, 3.4, 4, 5.2, 5.5, 6, 7, this Section 8, Section 10, and any subsection thereof where applicable.

9. **AVAILABILITY GUARANTEE AND CREDIT ALLOWANCE.**

- 9.1. Availability Guarantee. Tualta's objective is to make the Service available pursuant to the Agreement twenty-four hours a day, seven days a week, except for scheduled maintenance. Tualta guarantees that Customer will be able to access the Service ninety-seven percent (97%) of the time (excluding scheduled maintenance) in any given month ("**Availability Guarantee**").
- 9.2. Remedy. In the event that Customer's access to the Service hereunder becomes unavailable, Customer shall immediately furnish notice of such unavailability to Tualta. Unless Customer's access to the Service hereunder is rendered unavailable for reasons beyond Tualta's control, such as events described in this Section 9.2, if Customer has furnished Tualta with the prescribed notice and Customer's access to the Service hereunder, during any month, falls below the Availability Guarantee, then Tualta will, upon Customer's request, grant to Customer a credit in an amount equal to a percentage of the Fees (equal to the Unscheduled Downtime

(in hours) divided by the total hours in the month) for the month in which Customer's access fell below the Availability Guarantee. Scheduled maintenance shall not be counted in the calculation of Unscheduled Downtime. The availability of the Service shall be calculated based on the total hours in a particular month, and all months shall be deemed to be comprised of thirty (30) days. For purposes of calculating credits, any period of unavailability ("**Unscheduled Downtime**") shall be counted from the time such unavailability is reported to Trualta by Customer until such time that access is restored. Unscheduled Downtime shall not include disruptions caused by (i) events beyond Trualta's reasonable control, including vandalism, civil disturbance, fire, flood, storm, or other exposures to the elements or to temperature extremes; (ii) unavailability or malfunctioning of telecommunication services; (iii) tampering, failure of electric power, abuse, or misuse; (iv) operator mistakes; (v) equipment, software, or other items not developed, manufactured, created, or produced by Trualta; (vi) a failure to comply with the the Agreement or to use the Service in accordance with its intended purpose; or (vii) combinations or integrations of the Service with devices or software not provided by Trualta. Except as stated in this Section 9 and the Availability Guarantee, Trualta makes no representations or warranties with respect to up-time, availability, or the like.

- 9.3. Scheduled Maintenance. Customer acknowledges and agrees that Trualta will, from time to time, need to perform routine maintenance or repair, and that during such periods of maintenance or repair, the Service may not be available for Customer's use. Trualta's objective is to minimize the duration of any such unavailability and will endeavor to perform routine maintenance outside of normal business hours. Trualta, to the extent possible, will give Customer at least twenty-four (24) hours advance notice of down-time for scheduled maintenance.

10. **MISCELLANEOUS.**

- 10.1. Further Assurances. Each Party shall, upon the reasonable request, and at the sole cost and expense, of the other Party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
- 10.2. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.
- 10.3. Public Announcements. Each Party may only issue or release an announcement, statement, press release or other publicity or marketing materials relating to this Agreement, with the prior written consent of the other Party, provided that Trualta may, without Customer's consent, include Customer's name in its lists of Trualta's current or former customers of Trualta in promotional and marketing materials.
- 10.4. Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (b) on the date sent by

facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient.

If to Trualta: Attention: Jonathan Davis
Trualta, LLC.
825 Edmond Street
St. Joseph, ME 64501
jonathan@trualta.com

If to Customer: The address and email set forth on the signature page hereto.

- 10.5. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- 10.6. Entire Agreement. This Agreement, together with any schedules or exhibits attached hereto, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 10.7. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Trualta's prior written consent, which consent Trualta may give or withhold in its sole discretion. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Trualta may assign or transfer any or all of its rights, obligations, or other interest in this Agreement at any time upon notice in writing to Customer.
- 10.8. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 10.9. Amendment, Modification, Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 10.10. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 10.11. Governing Law: Forum Selection. Unless otherwise set out on an applicable Order Form, this Agreement and all exhibits and schedules attached hereto and all matters arising out of or relating to this Agreement shall only be governed by and construed in accordance with the Laws of the State of Missouri and the federal laws of the United States applicable therein. Any claim,

action, cause of action, demand, lawsuit, or other legal proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the State of Missouri.

- 10.12. Independent Legal Advice. The Parties acknowledge that they have been advised to obtain independent legal advice, and have obtained or have had an opportunity to obtain independent legal advice in connection with this Agreement, and further acknowledge that they have read, understood, and agree to be bound by all of the Terms and Conditions contained herein.
- 10.13. Agreement Binding. This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective personal representatives, executors, administrators, heirs, successors and assigns.