

Subscription & Services Agreement

This Subscription and Services Agreement (this “Agreement”) is an agreement between the subscriber (“Client”) and Camtiva LLC (“Camtiva”). This Agreement sets forth the terms and conditions under which Camtiva agrees to grant Client access to and use of Camtiva’s Services. Client accepts and agrees to be bound by this Agreement by executing a Sales Order or other provisioning document that incorporates these terms by reference, or by using Camtiva’s Services.

Camtiva is the sole owner of certain Services and software related to revenue cycle management in the healthcare industry. Client desires to engage Camtiva to provide the Services as set forth herein and Client and Camtiva desire to enter into this Agreement, to include the terms upon which Camtiva will provide the Services. Client and Camtiva agree as follows:

1. Definitions.

- 1.1. “Affiliate(s)” means any entity that directly or indirectly controls, is controlled by, or is under common control or ownership with Client, where “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct, cause or influence the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2. “Aggregate Data” means de-identified, anonymous data in the form of summary level information and does not include any Personal Information or information that identifies or is specific to a particular Client.
- 1.3. “Camtiva Website” means www.camtiva.com or any other website that Camtiva may own or manage.
- 1.4. “Client Data” means any data uploaded to the Service by or on behalf of Client or Affiliates and the resulting Client unique output that is generated by the Technology when processing the uploaded information and does not include Aggregate Data.
- 1.5. “Confidential Information” has the meaning ascribed to it in Section 8.
- 1.6. “Data” means any information uploaded to the Technology by Client or Affiliates, and resulting Client unique output that is generated by the Technology when processing the uploaded information.
- 1.7. “Documentation” means the Technology user guides, training manuals and other similar software documentation, as updated or revised by Camtiva from time to time, which Camtiva provides to Client.
- 1.8. “Effective Date” means the earliest of: (i) the date Client signs Sales Order or (ii) a date mutually agreed by the parties in writing.
- 1.9. “Exhibit” or “Exhibits” means any documents referenced in this Agreement, whether included as an addendum, attachment or referenced in a web uniform resource locator (URL).
- 1.10. “Expenses” means any reasonable, preapproved expenses described in a Sales Order or SOW or otherwise as being reimbursable to Camtiva by Client, that Camtiva actually incurs while providing Client the Services or Professional Services.
- 1.11. “Intellectual Property” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks),

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service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in Inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

- 1.12. “Invention” means any work of authorship, invention, know-how, device, design, algorithm, method, process, improvement, concept, idea, expression, discovery or invention, whether or not copyrightable or patentable and whether or not reduced to practice.
- 1.13. “Personal Information” means personally identifiable information of an individual person that is required to be protected by applicable law.
- 1.14. “Personnel” has the meaning ascribed to it in Section 9.
- 1.15. “Professional Services” means services supplemental to the Camtiva Services, including professional consulting services, to be performed for Client by Camtiva’s employees or contractors, as specified in the applicable Sales Order or an SOW.
- 1.16. “Renewal Term” has the meaning ascribed to it in Section 6.
- 1.17. “Sales Order” means Camtiva’s sales order form, sales proposal or other ordering document that describes the Services, Professional Services, fees, support plans, Expenses and any special terms for using the Services that Client has ordered.
- 1.18. “Services” means the Technology service offerings to which Client subscribes, as specified in the applicable Sales Order, SOW, Exhibit or Distributor Agreement.
- 1.19. “SOW” means a services description or statement of work executed by the parties that describes the Professional Services that Camtiva will provide to Client, and any related obligations either party may have. Each SOW is subject to this Agreement. Upon execution by both Client and Camtiva, each SOW is made a part of this Agreement.
- 1.20. “Subscription Term” has the meaning ascribed to it in Section 6.
- 1.21. “Technology” means products and services offered by Camtiva and purchased by Client as further described in Client’s SOW together with other computer software programs, networks and equipment that Camtiva uses to make them available to its clients as an online software as a service offering. Technology does not include Third Party Applications.
- 1.22. “Third Party Applications” means computer software programs and other technology that are provided or made available to Client by third parties. Third Party Applications may interoperate with the Services.
- 1.23. “User” means Client’s employees and those of Client’s Permitted Affiliates and, to the extent they are providing services for Client or Client’s Permitted Affiliates’ benefit, the employees of Client’s Affiliates’ to whom Client grants access to the Services.
- 1.24. In this Agreement, and any Exhibits, SOWs, or Sales Orders, the following words are to be interpreted as designated: (i) “or” connotes any combination of all or any of the items listed; (ii) where “including” is used to refer to an example or begins a list of items, such example or list is not exclusive; (iii) “specified” requires that an express statement is contained in the relevant document; and (iv) “will” is, unless the context requires otherwise, an expression of command, not merely an expression of future intent or expectation.

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2. Services.

- 2.1. Use of the Services. Camtiva grants Client a nonexclusive, nontransferable right, for the Subscription Term, to access and use the Services, solely for Client's and its Permitted Affiliates' internal business operations. Camtiva reserves all other rights.
- 2.2. Hosting. Camtiva shall use commercially reasonable efforts to host the Services in accordance with this Agreement described below, and as further described on Camtiva's website.
- 2.3. Camtiva's Responsibilities. During the Subscription Term, Camtiva will: (i) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for scheduled downtimes for upgrades and any unavailability caused by circumstances beyond Camtiva's reasonable control, including internet service provider failures or delays or denial of service attacks.
- 2.4. Service Level Commitments. Camtiva will provide the Services in accordance with the applicable service levels and terms ("Service Terms") located on Camtiva's website at <https://www.camtiva.com/legal>.
- 2.5. Statements of Work. Client may request and Camtiva may agree to perform additional Services pursuant to this Agreement as set forth in a mutually agreed upon SOW. Each SOW must be signed by each party to be effective and shall be subject to all the terms and conditions of this Agreement. In the event the terms of an SOW conflict with the terms (other than fee terms) of this Agreement and the SOW does not clearly provide otherwise, the terms of this Agreement shall control.

3. Client Obligations.

- 3.1. Client Cooperation. Camtiva's provision of the Services is dependent upon Client cooperating with Camtiva and performing the tasks and providing the items as may be identified orally or in writing in connection with the Services. When provided reasonable prior notification, Client agrees to cooperate with and assist Camtiva in the performance of the Services by timely providing such information and access to Personnel and other resources as may be necessary in connection with such performance. Client acknowledges and agrees that any delay in the provision of information as required by this Agreement or any SOW or as requested from Camtiva may result in delays in the provision of the Services. The parties agree that, to the extent that Client declines, fails or delays in performing the obligations set forth in this Section 3 for any reason, Client's payment obligations remain unchanged, and Camtiva's obligations and performance times for the Services shall be appropriately extended, adjusted or excused, as determined by Camtiva in its sole discretion. As set forth in Section 12 hereof, Camtiva shall bear no responsibility for any penalties, fines, or other losses (including resulting from any business disruption) that may arise due to delayed implementation.
- 3.2. Client Responsibilities. Except to the extent of any Professional Services for which Client has expressly subscribed, Client is responsible for (a) the accuracy and completeness of Client's configuration and set up of the Services, (b) ensuring that the Services are compatible with Client's business systems requirements; (c) the accuracy, quality and integrity of the Data that

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Client inputs into the Technology, and (d) the maintenance and use of Client's hardware, network, internet connectivity and software. In addition, Camtiva, in the performance of the Services, may assist Client in the implementation of the Services, however, Client retains sole responsibility and liability for the accuracy and completeness of Client Data uploaded to the Services, as well as the security and integrity of their own systems in relation to Camtiva's Technology and Services. Client will comply with the Acceptable Use Policy referenced in Section 3.6 and with all applicable laws, rules and regulations. Client will ensure that any Users, Affiliates, employees, agents and representatives who gain access to or use Client's account shall comply with all of Client's obligations under this Agreement, and Client is responsible for their acts and omissions relating to this Agreement as though they were those of Client.

- 3.3. Client's Account. On or immediately following the Effective Date, Camtiva will enable an account that is personal to Client for provision of the Services ("Account"). Client will identify and maintain a designated representative who will be authorized to act as Client's primary contact and who will have the authority to act on Client's behalf with respect to all matters relating to this Agreement and the Services. Client's designated representative shall (i) establish and manage the Account (ii) request and maintain usernames, passwords and permissions for the Account. Client is solely responsible for maintaining the status of its User base, and Client will ensure the safeguarding of all usernames, passwords and permissions in its possession or under its or its Affiliate's control. Client is responsible for all activities that occur under the Account and, except to the extent caused by Camtiva's breach of this Agreement, Camtiva is not responsible for unauthorized access to the Account. Client will contact Camtiva immediately if Client believes an unauthorized third party may be using the Account or if Account information is lost or stolen. Client's failure to commence or complete configuration or set up of the Services does not release Client from any of Client's obligations under this Agreement. Camtiva will retain access to Account to assist with implementation, Professional Services and ongoing support, but Camtiva will log any critical actions performed by Camtiva's users.
- 3.4. Restrictions. Refer to Section 7.2
- 3.5. Use of the Services by Client's Affiliates. Client may use the Services to process the activities of Client's Affiliates (each a "Permitted Affiliate") if agreed upon with Camtiva through a properly executed Sales Order or SOW. Client acts as agent for Client's Affiliates with respect to all interaction among Client, Client's Affiliates and Camtiva under or in connection with this Agreement, and Client represents that it has authority to do so. Camtiva will invoice Client (and not its Affiliates) for the Services used and Client will be solely responsible for paying all invoices to Camtiva. Only Client (and not its Affiliates) may request technical support with respect to the Services, unless otherwise agreed in writing. Only Client (and not its Affiliates) may initiate and participate in any dispute or litigation with Camtiva with respect to this Agreement. However, Camtiva may directly enforce these terms against any of Client's Affiliates, or Client, or both, in Camtiva's sole discretion, in the event of any breach of this Agreement.

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- 3.6. Additional Terms of Use. The following additional terms and conditions (“Additional Terms of Service”) apply to Client’s use of the Services: Camtiva’s Acceptable Use Policy, Service Terms, and Privacy Policy located at <https://www.camtiva.com/legal>.
4. Fees and Payments.
 - 4.1. Fees and Payment. Fees for the Services are set forth on an applicable SOW or Sales Order. Unless otherwise specified in an invoice, Sales Order or SOW, all fees are (i) due and payable within thirty (30) days of the date of the invoice; (ii) quoted and payable in United States dollars; (iii) based on the quantity of Services purchased and not actual usage; (iv) non-cancelable and fees paid are nonrefundable; and (v) not subject to reduction or deferment on account of any claim, counterclaim or set-off. All fees for periods after the period covered by the initial invoice will be due and payable in advance of the subscription period covered by that invoice, unless otherwise specified in a Sales Order or SOW. All amounts not paid within forty-five (45) days of the date of the invoice may be subject to a late charge of 1.0% per month or at the highest rate allowed by law. In addition to any other remedies available to Camtiva, the failure of Client to pay any amounts when due may constitute sufficient cause for Camtiva, in its sole discretion, to discontinue, withhold or suspend its provision of Services to Client, and any such action shall not be deemed a breach of this Agreement by Camtiva. Client agrees to pay all costs involved in collecting overdue amounts, including, without limitation, attorneys’ fees.
 - 4.2. Subscription Plans. Client’s subscription plan for the Services is specified in the applicable Exhibit or Sales Order. Client may not reduce Client’s commitment under the Service subscription plan specified in the Exhibit or Sales Order during the Service Subscription Term, unless Camtiva specifies otherwise in writing. Client is not entitled to any refund of fees paid or relief from fees due if the Services Client actually uses is less than the Client ordered, and Client may not carry over any of the unused Services to Client’s next Subscription Term. If Client wishes to reduce the Service subscription plan, then Client must notify Camtiva at least thirty (30) days before the start of the Renewal Term for the applicable Service; the reduction will be effective at the start of the Renewal Term.
 - 4.3. Subscription to Upgraded or Additional Services. If Client upgrades or adds additional Services during a Subscription Term, then the Subscription Term for the upgraded Service will be coterminous with the current Subscription Term and Camtiva will invoice Client a pro-rata amount for the upgraded or additional Services.
 - 4.4. Late Payments. If Client fails to make payments as required under this Agreement, Camtiva may condition future Service subscription renewals upon payment terms shorter than those specified in this Agreement, or any applicable invoice, Sales Order or SOW.
 - 4.5. Taxes. All fees are exclusive of, and Client is responsible for, applicable federal, state, and local sales, use, excise, export or other applicable taxes other than taxes on the net income of Camtiva. Client shall pay or reimburse Camtiva for any such taxes and Camtiva may add any such taxes to invoices, SOWs or Sales Orders.

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- 4.6. **Fee Increase.** Following the first anniversary of the Effective Date of this Agreement, Camtiva may increase one or more of its fees once each twelve (12) month period by an amount not to exceed 5%. Client acknowledges that the following do not constitute fee increases: (i) additional fees for any upgrade or additional Service or Professional Service that Client orders; and (ii) expiration of any discount or incentive programs to which Client was previously entitled. For clarification, if Client upgrades or adds a new Service or Professional Service at any time during the Subscription Term, the additional amounts due to Camtiva for such upgrade or additional Service will not be deemed a fee increase.
5. **Temporary Service Suspension**
- 5.1. Generally, Camtiva may suspend Client's right to access or use any portion of the Services immediately upon notice to Client if Camtiva reasonably determines (i) Client's use of or registration for the Services: (a) poses a security risk to the Services or any third party, (b) may adversely impact the Services or the networks or Data of any other Camtiva Client or business partner, (c) may subject Camtiva or any third party to liability, or (d) may be fraudulent; (ii) Client is using any Camtiva trademarks, service marks, trade names, or logos other than as expressly permitted by Camtiva in writing; (iii) that Client, Client's Affiliates or any of Client's Users is in breach of this Agreement, including if Client is delinquent in its payment obligations for more than thirty (30) days; or (iv) Client has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Client's assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.
- 5.2. **Effect of Suspension.** If Camtiva suspends Client's right to access or use some or all of the Services, then (i) Camtiva will not immediately erase any Client Data as a result of Client's suspension. Client Data will be retained for a reasonable period of at least sixty (60) days following the date of Camtiva's notice of suspension to Client or until termination, whichever is first, after which time Camtiva will have the right to destroy or overwrite Client Data, in Camtiva's sole discretion; (ii) Client remains responsible for all fees and charges, including for Services to which Client continues to have access, if any; and (iii) Client will not be entitled to any compensation or credits for any period of suspension. If Camtiva suspends Client's account as a result of late payment and Client wishes to re-activate Client's account, then Camtiva may charge Client a re-activation fee, in Camtiva's sole discretion.
- 5.3. **Termination Rights.** Camtiva's right to suspend Client's ability to access or use the Services is in addition to Camtiva's right to terminate this Agreement pursuant to Section 6 below.
6. **Term and Termination.**
- 6.1. **Term.** Unless otherwise specified on the Sales Order, this Agreement will commence upon the Effective Date and will continue for a period of two (2) years (the "Initial Term") unless earlier terminated in accordance with Section 6.2. The Agreement will automatically renew for additional one (1) year terms, (each a "Renewal Term") unless either party provides at least thirty (30) days written notice of its intention not to renew this Agreement prior to the

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expiration of the Initial Term or any Renewal Term. The Initial Term and each Renewal Term are individually referred to in this Agreement as the “Subscription Term.” Unless Camtiva receives notice from Client of termination or non-renewal, Client authorizes Camtiva to collect any applicable fees and taxes, using the payment method Client had entered when establishing Client’s Account, or as updated from time to time.

- 6.2. Termination. Either party may terminate this Agreement at any time upon written notice in the event the other party has committed a material breach of this Agreement or an SOW that remains uncured thirty (30) days from the date of the written notice of such breach or thirty (30) days in the event Client is delinquent in its payment obligations hereunder. In addition, either party may terminate this Agreement immediately upon written notice if: (i) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors; or (ii) proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceeding or debtor’s relief law and such proceedings are not vacated or set aside within sixty (60) days from the commencement thereof. Upon termination, all unpaid amounts will be immediately due and payable by Client.
- 6.3. Consequences of Termination by Client for Breach. If Client terminates this Agreement or any Service in accordance with the termination for breach provisions in Section 6.2 above, then Camtiva will refund Client a pro rata amount of any prepaid Service subscription fees (excluding, for clarification, any time and materials fees or Expenses) applicable to the unutilized portion of the Subscription Term of the terminated Services.
- 6.4. Immediate Termination by Camtiva for Cause. Camtiva may immediately terminate this Agreement by notice to Client if: (i) Camtiva determines that Client, Client’s Affiliates, any User or any person using Client’s Account has violated the terms of this Agreement or the Acceptable Use Policy and the violation represents: (a) a threat to the security, integrity, or availability of the Services, any Data, any Camtiva Intellectual Property or any data or technology owned by third parties; or (b) a violation of applicable law; or (iii) Camtiva must do so to comply with the law or requests of governmental entities.
- 6.5. Consequences of Termination by Camtiva for Breach or Cause. If Camtiva terminates this Agreement or any Service in accordance with the termination for breach or cause provisions of Sections 6.2 or 6.4 above, then Camtiva has no obligation to refund Client or relieve Client from, and Client remains obligated to pay, all fees attributable to the terminated Services, including those attributable to the unutilized portion of the terminated Subscription Term.
- 6.6. Access to and Retention of Client Data. Camtiva will provide Client with an export file of Client Data stored on the Technology if, within sixty (60) days of any termination or suspension, Client notifies Camtiva of Client’s request for an export file. To maintain Aggregate Data needs, Camtiva may retain certain de-identified Client Data for an indefinite period of time.
- 6.7. Events upon Termination. Upon any termination of this Agreement: (i) all of Client’s rights under this Agreement immediately terminate (with the exception of those expressly surviving termination); (ii) all SOWs shall terminate; (iii) except as provided in Section 4.3, Client

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remains liable for all fees, charges, Expenses and any other obligations Client has incurred through the actual date of termination and Camtiva shall invoice Client for all accrued fees, all reimbursable Expenses and all unaccrued Service fees, and Client shall pay the invoiced amount immediately upon receipt of such invoice; (iv) Camtiva shall have no further obligation to provide or perform any Services for Client (other than to provide copies of Client Data as specified in this Agreement); (v) each party will return or, if instructed, destroy all of Confidential Information of the other party in its possession or control, subject to Section 6.6, and certify its compliance with this provision to the disclosing party in writing, provided that Camtiva may retain Confidential Information that has been retained in its archive or backup systems and any such retained Confidential Information shall be held pursuant to the terms of this Agreement. The following Sections will survive any termination of this Agreement: 1, 3.3, 4.5, 6.3-6.7, 7, 8, and 11-13.

7. Rights and Restrictions.

- 7.1. Grant of Usage Rights. During the Term, Camtiva hereby grants to Client a limited, non-exclusive, non-transferable right to: (i) access and use the Services set forth on the applicable Sales Order for Client and Client's Affiliates internal business purposes (which shall not include providing the Services to third parties); (ii) make a reasonable number of copies of any user Documentation provided by Camtiva solely for use in connection with the Services; and (iii) view, download and make a reasonable number of copies of data, forms and information made available by Camtiva, provided Client keeps intact all attribution, copyright and other proprietary notices.
- 7.2. Restrictions. Nothing in this Agreement shall be construed, except to the extent as may be permitted by applicable law or required by Camtiva's licensors, as an implied grant to Client of any right to, and Client shall not, and shall not permit any person or third party to: (i) distribute, disclose, display, share, sell, rent, lease or allow use of any of the Services, Technology or Documentation in any format, through any timesharing service, service bureau, network or by any other means, to or by any third party, except as expressly set forth herein; (ii) decompile, disassemble, reverse assemble, or otherwise reverse engineer or attempt to reconstruct, discover or derive any source code or underlying ideas or algorithms of any of the Services or Technology by any means whatsoever; (iii) reproduce, modify, alter, create or prepare derivative works of any of the Technology or Documentation except as provided for herein; (iv) alter, destroy or otherwise remove any proprietary notices or labels on or embedded within the Technology or Documentation; (v) create any security interest in the Services or Technology; or (vi) disclose the results of any Service or program benchmark tests without Camtiva's prior written consent. Client shall cooperate with Camtiva, and shall render all reasonable assistance requested by Camtiva, to assist Camtiva in preventing and identifying any use of or access to the Services or Technology in violation of the terms and restrictions of the rights granted herein or any other breach of this Agreement. Client may use Camtiva Services only as defined in this Agreement, the Documentation, an SOW or Sales Order and not for the benefit of any third party.

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- 7.3. **Aggregate Data.** Camtiva asserts no ownership rights in Client Data, Client’s Personal Information or Client’s Confidential Information. Camtiva will use Client Data only to fulfill its obligations to Client under this agreement, to maintain and improve Camtiva products and Services, to comply with applicable law, to generate Aggregate Data for analysis and statistical reporting, and to respond to a Disclosure Order. Camtiva may use Aggregate Data collected through Client’s use of the Services, provided that such data is not identified as Client Data (other than to the Personnel of Camtiva or its Affiliates collecting and analyzing such data) and such Aggregate Data is combined with Data from other Camtiva clients or other sources so that Client and Affiliates cannot be identified as the source of such Data.
 - 7.4. **Camtiva’s Intellectual Property and Ownership Rights.** As between Client and Camtiva, Camtiva and Camtiva’s licensors retain and own all right, title, and interest in all Intellectual Property rights in and to the Technology, the Documentation, Camtiva’s Confidential Information, the Services, the Professional Services (including any Inventions used, created or developed by Camtiva or its employees or subcontractors in connection with the Professional Services), and all enhancements or improvements to, or derivative works of the foregoing (collectively, “Camtiva Intellectual Property”). Nothing in this Agreement transfers or conveys to Client any ownership interest in or to the Camtiva Intellectual Property.
 - 7.5. **Suggestions.** If Client provides Camtiva with any suggested improvements to the Services (“Suggestions”), then Client also grants Camtiva a nonexclusive, perpetual, irrevocable, paid up, royalty free, worldwide, transferable license, with right to sublicense, to make, have made, sell, offer for sale, use, import, reproduce, distribute, display, perform, and make derivative works of the Suggestions.
 - 7.6. **Federal Government End Use Provisions.** Camtiva provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency requires rights not conveyed under this Agreement, then such rights must be separately negotiated and will be reflected in a mutually agreed upon written addendum to this Agreement.
8. **Confidential Information.**
 - 8.1. **Confidential Information.** “Confidential Information” shall mean all information designated by a party as confidential and that is disclosed by either party to the other party, regardless of the form of disclosure, and shall be deemed to include, without limitation, the Technology, the Documentation, all information relating to prerelease offerings, business plans, pricing, products, patents, security policies and processes, inventions, procedures, methods, designs, source and object code, data, programs, improvements and other works of authorship of the disclosing party.

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- 8.2. Restrictions on Use and Disclosure. Neither party will disclose the other party's Confidential Information to any third party without express authorization and shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, contractors or consultants. The terms of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.
 - 8.3. Exclusions. Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (v) is Aggregate Data. Restrictions on use or disclosure of Confidential Information do not apply to use or disclosure authorized in writing by the disclosing party.
 - 8.4. Disclosures Required by Law. If the receiving party is required to disclose the disclosing party's Confidential Information by law or a governmental authority, including pursuant to a subpoena or court order (a "Disclosure Order") such Confidential Information may be disclosed, provided that the receiving party, where practicable and legally permissible, (a) promptly notifies the disclosing party of the disclosure requirement, (b) cooperates with the disclosing party's reasonable efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be accorded the disclosing party's Confidential Information and (c) furnishes only Confidential Information that the party is legally compelled to disclose.
 - 8.5. Protection of Personal Information. Camtiva will implement and maintain commercially reasonable security methods designed to prevent any unauthorized use, disclosure of or access to Personal Information that Client does not expressly authorize, subject to Section 8.4 and 7.3. Camtiva will endeavor to ensure that its security methods will comply with all applicable laws, rules and regulations. Camtiva will notify Client of unauthorized access, use, or disclosure of Personal Information within Camtiva's custody and control upon confirmation of the same; each party will reasonably cooperate with the other with respect to such unauthorized access, use, or disclosure, including its containment and investigation. Upon confirmation of any vulnerability or breach of Camtiva's security affecting Personal Information in Camtiva's custody and control, Camtiva will modify its processes and security program as necessary to remediate the vulnerability or breach.
9. Employees.
 - 9.1. Assignment. Camtiva reserves the right to determine which of its Personnel shall be assigned to perform Services, and to replace or reassign such Personnel during the Subscription Term hereof; provided, however, that it will provide written notice of staffing changes for

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Personnel providing Services at Client's premises pursuant to an SOW and will use commercially reasonable efforts to honor Client's request for specific individuals.

- 9.2. Hiring. Except as expressly authorized in writing, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during Client's Subscription Term or twelve (12) months following termination or non-renewal. For purposes of this Agreement, "Personnel" means any individual or company a party employs as a partner, employee or independent contractor and with whom a party comes into direct contact during the Subscription Term. Nothing herein shall prevent a party from hiring Personnel who respond to a publicly posted job opportunity.

10. Warranties.

- 10.1. Each party represents and warrants to the other party that it has the right to enter into this Agreement and perform its obligations hereunder in the manner contemplated by this Agreement, and this Agreement shall not conflict with any other agreement entered into by it.
- 10.2. Client represents and warrants that it (i) owns (or has been duly licensed) all rights in all Client Data delivered to Camtiva hereunder, as well as in all Data transmitted hereunder; (ii) has not provided any false information to gain access to or use of any Camtiva Intellectual Property; (iii) is not on the United States Department of Treasury, Office of Foreign Asset Control's list of Specially Designated National and Blocked Persons and Client is not otherwise a person to whom Camtiva is legally prohibited to provide the Services; and (iv) Client does not conduct business for any unlawful purpose.
- 10.3. Client acknowledges that Camtiva will assume all information provided to Camtiva is accurate and will not independently verify the accuracy of such information. CLIENT ACKNOWLEDGES AND AGREES THAT CAMTIVA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY REPORTS OR SUGGESTIONS PROVIDED BY SERVICES (WITH REGARD TO ACCURACY, COMPLETENESS OR OTHERWISE) AND SHALL RETAIN NO LIABILITY THEREFOR.
- 10.4. Camtiva warrants to Client that: (i) the Technology, as provided by Camtiva to Client, will perform in all material respects in accordance with its applicable, then current Documentation; (ii) Camtiva will use commercially reasonable efforts, using then current versions of commercially available antivirus software, to ensure that the Technology as provided by Camtiva to Client under these terms contains no computer virus, Trojan horse, worm, or other similar malicious code, and (iii) Camtiva will perform the Professional Services in a professional manner. Camtiva does not warrant that the Technology is free from all bugs, errors, or omissions.
- 10.5. If Camtiva fails to conform to any of the foregoing warranties and if Camtiva does not render the Technology or Professional Services conforming within thirty (30) days of Camtiva's receipt of Client's notice of the nonconformance then, at Client's sole and exclusive remedy for any nonconformance, Client may terminate this Agreement upon immediate notice to Camtiva, and Camtiva will refund Client a pro rata amount of (i) any prepaid Service

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- subscription fees applicable to the unutilized portion of the Subscription Term of the terminated Services, and (ii) any fees paid for the nonconforming Professional Services.
- 10.6. The warranties in this Section will automatically abate to the extent that the Technology or Professional Services have been modified by persons other than Camtiva's employees or authorized representatives, or other than at Camtiva's express written direction. Because of Camtiva's reliance upon Client's accurate configuration of the Technology, Camtiva provides no guarantee or assurance that the Technology will accurately determine Client's or Client Affiliates' results. The warranties in this Agreement are for Client's sole benefit, and may not be extended to any other person or entity.
- 10.7. Disclaimer of Implied Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED AND PERFORMED "AS IS" WITHOUT ANY WARRANTY, AND CLIENT'S USE OF THE SERVICES AND ANY INFORMATION MADE AVAILABLE THROUGH THE SERVICES ARE SOLELY AT CLIENT'S OWN RISK. CAMTIVA DOES NOT WARRANT THAT THE SERVICES AND/OR INFORMATION WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW, CAMTIVA DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, CONCERNING OR RELATED TO ANY SUBJECT MATTER OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES OF CORRECTNESS, COMPLETENESS, ACCURACY OR NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES OR PROFESSIONAL SERVICES, AS WELL AS ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
11. Indemnification.
- 11.1. Client shall defend, indemnify and hold harmless Camtiva and its respective officers, directors, owners and employees from and against any and all costs, claims, expenses, losses, damages and liabilities, (collectively "Losses"), including reasonable attorneys' fees, arising out of or in connection with any third party claim, suit, or investigation to the extent based on: (a) any claim that the Client Data, infringes any patent, copyright, trademark or other intellectual property or proprietary rights (collectively an "Infringement"); or (b) Client's failure to comply with applicable law. Client will indemnify and hold Camtiva harmless from any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any noncompliance with the Acceptable Use Policy for which Client, Client's Users, or Client's Affiliates are responsible.
- 11.2. Camtiva shall defend Client from and against claims by any third party that the Technology, as furnished by Camtiva under this Agreement, directly infringes an issued patent or other intellectual property right of such third party under the laws of a country in which the Technology is actually provided to Client. Further, Camtiva will indemnify Client from and against all damages finally awarded against Client or agreed to be paid by Client in a written settlement approved in writing by Camtiva, that result from the infringement.
- 11.3. If Camtiva believes that the Technology may be subject to any claim of Infringement, then Camtiva may, and if Client's use of the Technology is held to infringe and its use is enjoined,

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then Camtiva will, at Camtiva's own expense, procure for Client the right to continue using the Technology, or replace the same with non-infringing technology, or modify the Technology so that it becomes non-infringing. If none of the foregoing is available on terms that are commercially reasonable for Camtiva, then Camtiva may terminate Client's rights to access and use the Services that require the infringing Technology, in which case Camtiva will refund Client a pro rata amount of any prepaid Service Subscription fees (excluding, for clarification, any Expenses) applicable to the unutilized portion of the Subscription Term of the terminated Services. Camtiva has no obligation with respect to any actual or claimed Infringement if the Infringement is caused by Client Data, use of the Technology other than as specified in the Documentation or this Agreement, or combination of the Technology with any products, software, services, data or other materials not provided by Camtiva.

- 11.4. Process. The obligations of a party ("Indemnitor") to defend or indemnify the other ("Indemnitee") under this Section 11 are subject to the following: (a) the Indemnitee promptly informs the Indemnitor in writing of any claim within the scope of the Indemnitor's defense or indemnity obligations set forth in this Agreement; (b) if required to defend, the Indemnitor is given exclusive control of the defense of such claim and all negotiations relating to the settlement thereof (except that the Indemnitor may not settle any such claim unless the settlement unconditionally releases the Indemnitee of all liability and the Indemnitee may participate in the defense of the claim at its sole cost and expense); and (c) the Indemnitee reasonably assists the Indemnitor in all necessary respects in connection with the defense of the claim at the Indemnitor's expense.

12. Limitation of Liability.

- 12.1. Exclusion of Certain Claims: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR LOST PROFITS DAMAGES OF ANY KIND, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING DAMAGES FOR LOSS OF DATA, GOODWILL, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES, INTERRUPTION IN USE OR AVAILABILITY OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NONPERFORMANCE OF THE TERMS OF THIS AGREEMENT OR OF PRODUCTS, SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT; (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT, INDEMNITY, OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, OR OTHER TORT.; OR (iii) ANY OTHER THEORY FOR FINES, PENALTIES, INTEREST, SANCTIONS, OR OTHER DAMAGES, CLAIMS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF, UNDER OR IN CONNECTION WITH CLIENT'S USE OF THE SERVICES.
- 12.2. Limitation of Liability. TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE FEES ACTUALLY PAID BY CLIENT TO CAMTIVA UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD IMMEDIATELY

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PRECEDING THE EVENT GIVING RISE TO SUCH A CLAIM, REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED IN CONTRACT, MISREPRESENTATION, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE. THE FOREGOING DOES NOT APPLY TO EACH PARTY'S DEFENSE AND INDEMNIFICATION OBLIGATIONS, TO CLIENT'S OBLIGATIONS TO PAY FEES AND EXPENSES WHEN DUE AND PAYABLE, NOR TO ANY INFRINGEMENT OR MISAPPROPRIATION BY CLIENT OF ANY OF CAMTIVA'S INTELLECTUAL PROPERTY RIGHTS.

12.3. General. Client agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of Client, its Affiliates or Users or if the remedies fail of their essential purpose. Client agrees that without these limitations the fee for the Services and Professional Services would be significantly higher. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some or all of the above exclusions or limitations may not apply and the parties may have additional rights.

13. Miscellaneous.

13.1. General. This Agreement, together with the Exhibits, constitutes and embodies the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. The Additional Terms of Service and, upon Camtiva's acceptance of them, each Sales Order and SOW, are incorporated into and made a part of this Agreement. This Agreement may not be modified or amended except by a written instrument acceptable to both parties. In the event of any conflict between the provisions of this Agreement and any terms and conditions of an Exhibit, SOW or Sales Order, the Exhibit, SOW or Sales Order shall govern and control solely with respect to the particular Service described therein. In the event any provision of this Agreement, or the application thereof, becomes or is declared by a tribunal of competent jurisdiction to be illegal, void or unenforceable, that provision shall be limited to the extent necessary to comply with law or eliminated, and the remainder of this Agreement will continue in full force and effect. The parties further agree that such tribunal shall replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision, consistent with the parties' intent as expressed in this Agreement. No amendment, change, waiver or discharge hereof shall be valid unless in writing and signed by both parties. Any waiver or consent by either party to any variation from any provision of this Agreement shall be valid only in the specific instance in which it is given, and no such waiver or consent shall be construed as a waiver of any other provision of this Agreement or with respect to any similar instance or circumstance. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.

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- 13.2. Notices. All notices and consents required or permitted to be given under this Agreement shall be in writing to the parties at the addresses designated herein or to such other address as either party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made in the form of a certified letter, confirmed facsimile transmission or acknowledged receipt of electronic mail.
- 13.3. Publicity. Camtiva may use Client's name and trademarks (including use of logos) in Camtiva's customer lists for marketing or promotional purposes, such as on its website or in other sales and marketing collateral and emails. With prior written approval (which may occur via email), Camtiva may use Client's name and trademarks (including use of logos) in press releases, case studies, and other communications pertaining to Client's agreement to use Camtiva's services.
- 13.4. Reserved.
- 13.5. Export Compliance. Each party will comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, Client represents that neither Client, Client's Affiliates, nor Client's Users are prohibited by any government from receiving any exports.
- 13.6. Force Majeure. Camtiva may suspend or delay its performance of any Services provided hereunder upon the occurrence of any disruption or unavailability of communication facilities, utility or Internet service provider failure, acts of vandalism, lightning, fire, strikes or any other causes beyond Camtiva's reasonable control.
- 13.7. Relationship of the Parties; Client acknowledges and agrees that Camtiva and Camtiva's other business partners, including any third party retained by Client to provide services, are independent of Camtiva and are not Camtiva's agents.
- 13.8. Third Parties. Camtiva is not responsible for nor does Camtiva in any way endorse any Third Party Applications or websites, to include any sites to which the Camtiva Website or Services may provide links.
- 13.9. Dispute Resolution. Subject to the terms of this Agreement, the procedures of this Section shall control the resolution of any and all disputes that might arise between the parties that are related to this Agreement. The parties agree to proceed as follows:
- 13.9.1. Good Faith Negotiations. The Client and Camtiva shall first seek to resolve each dispute by having a management representative from each organization discuss the issues at dispute. If good faith negotiations by these managers cannot resolve the dispute, then both parties shall seek to resolve the dispute by having a senior executive officer from each organization discuss the issues at dispute.
- 13.9.2. Governing Law; Venue. If good faith negotiations by these senior executive officers cannot resolve the dispute, then the parties shall seek to resolve the dispute through arbitration under the rules of the American Arbitration Association by a panel of three arbitrators appointed in accordance with those rules. The place of arbitration shall be held within 350 miles of Rexburg, Idaho. The arbitrator shall determine the matters in dispute, in accordance with the laws of the State of Idaho. The decision rendered by the arbitrators chosen shall be final and binding upon all the parties. All such arbitration

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matters and procedures shall be under closed seal and are never to be disclosed to persons outside the arbitration procedure.

- 13.10. Equitable Relief. Each party acknowledges that damages may be an inadequate remedy if the other party, or the other party's Affiliates or Users violates its obligations under this Agreement pertaining to the protection, security or integrity of the other party's technology, Confidential Information or Intellectual Property. Accordingly, each party shall have the right, in addition to any other rights such party may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce such obligations.
- 13.11. Promotional Rights. Neither party may issue any press release regarding this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of clients or vendors.
- 13.12. Other Technology or Services; Changes. Client acknowledges and agrees that Client has not relied on any future availability of any Service offerings, technology, or enhanced or updated features or functionality, and that the Services do not include any audit support (unless otherwise specified in an SOW).
- 13.13. Assignment. This Agreement may not be assigned by either party without the other party's prior written consent, such consent not to be unreasonably withheld; provided, however, that either party may assign this Agreement without consent in the event of a merger or acquisition of substantially all of such party's stock, assets or business unless, in the case of an assignment by Client, the assignee is a competitor of Camtiva. It is not unreasonable for Camtiva to withhold consent to an assignment to a competitor. Any attempt to assign this Agreement other than in accordance with this Section will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns Camtiva may subcontract certain of its obligations hereunder.
- 13.14. Purchase Orders. Client's standard terms of purchase (including purchase order terms), if any, are inapplicable.
- 13.15. Counterparts. This Agreement and any SOW or Sales Order may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one contract.