

## EVALUATION AGREEMENT

This EVALUATION AGREEMENT (this "Agreement") is entered into between Geneia LLC ("Geneia") and the Customer identified on the Evaluation Order Form (the "Customer" or "You").

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCEPTING OR BEFORE USING THE SERVICE, OR ANY PART THEREOF. THE THEON<sup>®</sup> PLATFORM IS COPYRIGHTED AND PROVIDED AS A SERVICE (NOT SOLD). TAKING ANY STEP TO USE OR LOG-IN TO THE THEON PLATFORM CONSTITUTES YOUR ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT. WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. YOUR USE OF THE THEON<sup>®</sup> PLATFORM IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST IMMEDIATELY CEASE ALL USE OF THE THEON<sup>®</sup> PLATFORM.

IMPORTANT NOTE: IF YOU HAVE PURCHASED RIGHTS TO USING THE THEON<sup>®</sup> PLATFORM FOR COMMERCIAL PURPOSES, THEN THIS AGREEMENT DOES NOT APPLY TO YOU AND YOUR USE. YOUR USE OF THE THEON<sup>®</sup> PLATFORM IS GOVERNED BY THE MASTER SUBSCRIPTION AGREEMENT ENTERED INTO BETWEEN YOU AND GENEIA.

### Recitals

WHEREAS, Geneia is the developer and owner of various Theon<sup>®</sup> Platform applications, provided through the salesforce.com, inc. AppExchange and a provider of various consulting services; and

WHEREAS, Customer has entered into or will enter into a separate contract with salesforce.com, inc.; and

WHEREAS, Customer has entered into or will enter into an Evaluation Order Form with Geneia and wishes to subscribe to, access and use a portion of the Theon<sup>®</sup> Platform application identified in the Evaluation Order Form.

### Agreements

In consideration of the foregoing recitals, the terms and conditions set forth below and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the Parties hereby agree as follows:

#### 1. Definitions.

- a. "**Customer Data**" means all data or information submitted by, or on behalf of, Customer, or Users to the Platform.
- b. "**Go-Live Date**" means the first date on which Geneia makes the Platform available to Customer, as applicable, under this Agreement, as described in an initial Order Form.
- c. "**Implementation**" – see section 3.f. below.

- d. **"Maintenance and Support"** see section 3.h. below.
- e. **"Non-SFDC Application"** means a Web-based, mobile, offline or other software process or functionality that is provided by Customer or a third party, is listed on the Salesforce AppExchange and interoperates with a salesforce.com ("SFDC") service or product, including, for example, the Platform.
- f. **"Order Form"** means the Evaluation Order Form executed by Customer and Geneia. The Order Form will evidence Customer's Evaluation Subscription to the Platform and any other related activities provided by Geneia to Customer pursuant to this Agreement. The fully executed Order Form will be incorporated by reference in this Agreement.
- g. **"Platform"** means the Theon<sup>®</sup> Platform for Care Management – COVID-19 Solution provided (by subscription or otherwise) to Customer through the SFDC AppExchange, all as more particularly described in an Order Form.
- h. **"Salesforce Health Cloud"** is the Salesforce platform upon which the Platform operates.
- i. **"Third Party Provider"** means any third party provider that offers products and/or services related to the Platform, including but not limited to integration, implementation, customization and other consulting services related to Customer's use of the Platform.
- j. **"User Provisioning"** means the creation, management and maintenance of User rights and privileges for access to and use of the Platform.
- k. **"Users"** means individual employees or agents of Customer who are provisioned under this Agreement to use the Platform on Customer's behalf or through Customer's account or passwords. User Provisioning will be managed by Customer. An individual who is not authorized to access and use the Platform or who has been removed as a User by Customer, is not entitled to access or use the Platform under this Agreement, and any such access or use by such individual will be unauthorized and will constitute an immediate and automatic default under this Agreement, upon the occurrence of which Geneia shall be entitled to terminate this Agreement and the outstanding Order Form with Customer.

## 2. Term and Termination.

- a. Term. This Evaluation Agreement begins upon the effective date of the Order Form and terminates on September 30, 2020, or a later date if Geneia, in its sole discretion, decides to extend the Term.
- b. Termination for Convenience. This Agreement and the Order Form may be terminated by either party upon five (5) days' written notice to the other party, for any reason or no reason at all, upon written notice to the other party.
- c. Termination for Material Breach. Geneia may terminate this Agreement and the Order Form immediately in the event that Customer or any User violates Section 3.a, Section 4.c, Section 4.d, Section 5, Section 6.c, or Customer or User infringes or misappropriates any Geneia IP Rights, in each case immediately, without notice by or liability to Geneia.

- d. Effect of Termination. Upon termination of this Agreement pursuant to this Section 2, the active Order Form will also terminate and Customer shall no longer have access to the Platform.

### 3. Access to and Use of the Platform.

- a. Access and Use by Customer. During the term of the Order Form, Customer shall be entitled to use the Platform as contemplated by this Agreement. Except as expressly permitted by this Agreement, Customer shall not, directly or indirectly, license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform available, in whole or in part, to any third party.
- b. Responsibilities of Customer: Customer Data; Compliance with Laws; Equipment. In connection with its performance under this Agreement and its access to and use of the Platform, Customer agrees to: (a) work together with Geneia to ensure implementation of and Customer's access to the Platform; (b) be solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (c) comply with all applicable local, state, federal, and foreign laws (including laws regarding privacy and protection of information) and, if using the Platform outside of the United States, not to use the same in a manner that would violate any federal or state laws of the United States if *conducted therein*; and (d) maintain all computer hardware, software and communications equipment needed to access the Platform as described in the Order Form.
- c. Responsibilities of Customer: Users; System Access. Customer is responsible and liable for: (a) proper User Provisioning; (b) any usage limits as agreed to in an Order Form; (c) Users' access to and use of the Platform and all activities that occur under User accounts, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (d) any use of the Platform through Customer's account, whether authorized or unauthorized. Customer will take reasonable steps to prevent unauthorized access to the Platform, including without limitation, by protecting its passwords and other log-in information.
- d. Notification to Geneia. To the extent Customer or any User becomes aware of any performance issues regarding the Platform, or Customer or any User has any query, question, complaint or concern regarding the Platform, Customer shall promptly notify Geneia via one the methods described in section i. below.
- e. Availability. During the term of the Order Form, Geneia agrees to make the Platform available to Customer, and to permit Customer to access and use the Platform subject to the terms and conditions set forth in this Agreement and the Order Form.
- f. Implementation. Implementation will be provided by Geneia to Customer pursuant to the Order Form.
- g. Updates. Updates to the Platform incorporating revised functionality will be pushed to Customer.
- h. Maintenance and Support. Maintenance and Support will be provided by Geneia to Customer as follows:

- i. Geneia will provide reasonable technical support services accessible by Customer's designated support representatives via web portal, email or telephone. Support services will be available 8:00am to 5:00pm ET Monday through Friday excluding public bank holidays ("Business Hours").

Portal: <https://my.geneia.com>

Email: [Theonsupport@Geneia.com](mailto:Theonsupport@Geneia.com)

Phone: 1-844-86-THEON

- ii. Support services cover only the current publicly-available version of the Platform and do not cover any Salesforce.com related hardware, operating systems, networks or other third-party software interaction.
- iii. Support availability and response times:
  - Support requests can be logged 24 hours a day, 7 days a week. Once requests are submitted, Customer will receive an email acknowledgment which includes a brief description of the issue, issue tracking number, and an assigned priority designation.
  - Support requests opened during Business Hours will be responded to within 30 minutes.
  - Non-critical support requests opened outside of Business Hours will be responded to on the next business day.

#### 4. Proprietary Rights.

- a. Geneia Technology. Customer acknowledges that, in providing the Platform, Geneia utilizes: (a) the Geneia name, the Geneia logo, the Geneia domain name, the product and service names associated with the Platform and other trademarks and service marks (the "**Geneia Marks**"); and (b) certain proprietary and third party audio and visual information, documents, software and other works of authorship and other proprietary and third party technology, hardware, products, processes, algorithms, data schemas, user interfaces, know-how, trade secrets and other confidential information, techniques, designs, inventions and other tangible or intangible technical material or information (together with any modifications or improvements to or derivative works of any of the foregoing, collectively, the "**Geneia Technology**").
- b. Geneia IP Rights. As used in this Agreement, the term "**Geneia IP Rights**" means any patent, copyright, trade secret, trademark or other intellectual property or other proprietary right embodied in or related to the Geneia Technology. As between Customer and Geneia, Geneia alone shall own all right, title and interest in and to the Platform, the Geneia Marks, the Geneia Technology and the Geneia IP Rights. Customer's use of the Geneia Marks as authorized herein will not create in Customer's favor any right, title or interest therein. Customer hereby assigns and will assign and will cause each of its Users to assign all right, title and interest in and to any and all Geneia Technology created, developed or reduced to practice by or on behalf of Customer or any of its Users. Other than the limited usage rights granted in this Agreement, no license or other rights in or to the Platform, the Geneia Marks, the Geneia Technology

or the Geneia IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

- c. Limited License. Subject to the terms and conditions of this Agreement, during the term set forth in the applicable Order Form, Geneia hereby grants Customer a limited, non-exclusive, non-transferable and non-sublicenseable right to access and use the Platform (the “**Evaluation Subscription**”).
- d. Restrictions. Except to the extent otherwise expressly permitted by this Agreement, neither Customer nor any agent or contractor of Customer shall: (a) modify, copy or create derivative works based on the Platform or other Geneia Technology; (b) disassemble, reverse engineer, or decompile the Platform or other Geneia Technology; or (c) access or use the Platform or other Geneia Technology in any manner not expressly permitted under this Agreement, including, without limitation, in order to: (i) build a competitive product or service; (ii) build a product or service using similar ideas, features, functions or graphics of the Platform; or (iii) copy any ideas, features, functions or graphics of the Platform. The occurrence of any of the actions described in subparagraphs (a) through (c) immediately above, constitute a breach of this Agreement. If the Agreement is terminated as a result of such breach, the limited warranties set forth in Section 6.b below will be void.
- e. Customer Data. As between Geneia and Customer, all Customer Data is and it will be owned exclusively by Customer. All Customer Data will be considered Customer’s Confidential Information (as defined below). Geneia shall not access or use Customer Data except as needed for Implementation, to provide Maintenance and Support, as otherwise detailed in this Agreement, or as specifically agreed to in an Order Form.
- f. De-Identified and/or Aggregated Data. Customer understands and expressly agrees that Geneia may retain and use Customer Data provided by Customer for business purposes; provided, however, that all Protected Health Information (“PHI”) will be de-identified and/or aggregated in accordance with the requirements of the Health Information Portability and Accountability Act (“HIPAA”) Regulations (“De-Identified and/or Aggregated Data”). Customer further agrees that Geneia shall be permitted to use and disclose De-Identified and/or Aggregated Data without restriction, including using such information to test or create software applications, perform statistical analysis, new or modified functionality, reports and products, for both internal and commercial purposes. Any such De-Identified and/or Aggregated Data will be the sole property of Geneia.
- g. Customer IP Rights. Geneia will not obtain any right, title or interest in any IP Rights (as defined below) of Customer, as the case may be, by virtue of this Agreement. As used in this Agreement, the term “**IP Rights**”, as applied to any person or entity (not including Geneia), means any patent, copyright, trade secret, trademark or other intellectual property or other right of or owned by any such person or entity, but does not include the Geneia IP Rights.
- h. Suggestions. Customer hereby grants Geneia a worldwide, perpetual, royalty-free, sublicenseable license and right to use any suggestions, ideas, inventions, information, processes, know-how and/or techniques expressed in any information provided by Customer and any User relating to the operation of the Platform (collectively, the “**Suggestions**”), including the right to make, have made, sell, have sold, offer

for sale, import, have imported and lease or have leased products and Platform which practice, embody, incorporate or utilize any Suggestions.

## 5. Confidentiality.

- a. Definition of Confidential Information. As used herein, the term “**Confidential Information**” means all confidential and proprietary information of a Party (each, a “**Disclosing Party**”) disclosed to the other Party(ies) (each, a “**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided, that the following will be deemed to be Confidential Information even if not so marked or identified: (a) the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder); (b) the Platform and the Geneia Technology and any results in connection with Customer’s use of the Platform and/or the Geneia Technology; (c) the Suggestions; (d) the Customer Data; (e) the Disclosing Party’s business and marketing plans and information, technology and technical information, product designs, and business processes; (e) any information or materials with the name, sign, trade name or trademark of the Disclosing Party; and (f) any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. The term “Confidential Information” will not include any information that a Receiving Party can show: (i) is or has become generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- b. Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written consent; provided, that a Receiving Party may disclose any Confidential Information of the Disclosing Party to the Receiving Party’s employees, agents or contractors (collectively, “**Representatives**”) who have a need to know such Confidential Information and who have been advised of and who have agreed to abide by the obligations of confidentiality relating to such Confidential Information herein. The Receiving Party shall be responsible for any breach of the provisions set forth in this Section 5 by its Representatives and, at its own expense, shall take all reasonable measures (including court proceedings) to restrain such Representatives from prohibited disclosure or use of such Confidential Information.
- c. Protection. Each Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Parties in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall a Receiving Party exercise less than reasonable care in protecting the Confidential Information of any Disclosing Party.
- d. Privacy Legislation. To the extent Customer discloses information that is covered by HIPAA, including any amendments thereto or regulations promulgated thereunder, Geneia and Customer shall execute a Business Associate Agreement (a “Business Associate Agreement”) that sets forth the rights and responsibilities of both Customer and Geneia as required by HIPAA. The Parties agree to comply with its respective obligations as set forth in such Business Associate Agreement by and between the Parties, if applicable.

- e. Compelled Disclosure. If a Receiving Party is compelled by law to disclose Confidential Information of a Disclosing Party, the Receiving Party shall provide the Disclosing Party with prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to limit or contest such compelled disclosure, and the Receiving Party shall, in any event, limit any disclosure to the minimum amount of Confidential Information the Receiving Party has been advised by counsel is required to be disclosed.
- f. Remedies. If a Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of a Disclosing Party in breach of this Section 5, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the necessity of posting bond, it being specifically acknowledged by the Parties that any other available remedies would be inadequate.

## **6. Representations and Warranties; Warranty Disclaimers.**

- a. Representations, Warranties and Covenants of all of the Parties. Each Party (a) represent and warrant to the other Party that it has the legal power and authority to enter into this Agreement; and (b) covenants to and for the benefit of the other Party that it shall comply with all laws, rules and regulations applicable to its respective performance under this Agreement.
- b. Warranty Regarding Customer Data. Customer represents and warrants to and covenants for the benefit of Geneia that: (a) Customer owns all right, title and interest in and to, or otherwise has legal authority to use in the manner contemplated by this Agreement, all Customer Data; (b) Customer has secured (or that it will secure as applicable) all consents, permissions, clearances and authorizations that may be required to assure that Customer can use the Customer Data as contemplated by this Agreement, and Customer will abide by the terms of any and all agreements which govern the use of any Customer Data owned by third parties; and (c) the use of the Customer Data by Customer as contemplated by this Agreement does not infringe the intellectual property rights or any privacy or other legal rights of any third party nor give rise to any legal claim by the owner of such Customer Data.
- c. Limited Warranty Regarding the Platform and other Geneia Technology.
  - i. Geneia warrants to Customer, that the Platform, including all Geneia Technology incorporated or used as part of the Platform, will perform substantially in accordance with the Specifications as detailed in Attachment 1 (Module Details) to the Evaluation Subscription Order Form.
  - ii. Geneia warrants to Customer that except as otherwise set forth above, all services provided by Geneia will be performed by qualified professional personnel in accordance with generally prevailing standards in the industry.
  - iii. Customer's sole and exclusive remedy for any breach of the limited warranty set forth in Section 6.c.i shall be Geneia providing Maintenance and Support as provided in Section 3.g such that, upon completion, the Platform will perform substantially in accordance with the Specifications.



- iv. Customer's sole and exclusive remedy for any breach of the limited warranty set forth in Section 6.c.ii shall be for Geneia to re-perform the non-conforming services.
- v. Customer acknowledges that the Platform is a tool that Customer may use in various ways in their businesses. Any reliance upon, interpretation of and/or use of the Platform by Customer is solely and exclusively at the discretion of the Customer. Geneia does not provide medical care or determine whether any kind of medical care is appropriate or needed. Customer shall not represent the Platform in any way other than as expressed in this Agreement, including all Order Forms, other Exhibits and Attachments thereto.

d. Limitations of Warranty.

- i. General Warranty Disclaimer. GENEIA MAKES NO AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, WHETHER EXPRESS OR IMPLIED, TO CUSTOMER OR TO ANY USER WITH RESPECT TO THE PLATFORM AND THE GENEIA TECHNOLOGY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREOING, GENEIA DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE RESULTS OBTAINED FROM USE OF THE PLATFORM WILL BE ACCURATE OR RELIABLE.
- ii. Other Specific Warranty Disclaimers. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR UNDER APPLICABLE LAW TO THE CONTRARY, GENEIA WILL NOT BE RESPONSIBLE FOR: (A) ERROR, DELAY, INTERRUPTION OR IMPAIRMENT OF THE PLATFORM CAUSED BY ACTS OR OMISSIONS OF CUSTOMER OR ANY USER CONTRARY TO THIS AGREEMENT, OR OF ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY INTERNET SERVICE PROVIDER; (B) FAILURE OF INTEROPERABILITY OF CUSTOMER'S OR ANY USER'S EQUIPMENT OR APPLICATIONS WITH THE PLATFORM OR CUSTOMER'S OR ANY USER'S FAILURE TO ACCESS THE PLATFORM DUE TO FAILURE OF SUCH EQUIPMENT OR APPLICATIONS OR AS A RESULT OF ERROR, DELAY, INTERRUPTION OR IMPAIRMENT OF ANY THIRD PARTY SERVICE OR APPLICATION, INCLUDING THE INTERNET; AND (C) ANY PRODUCTS OR PLATFORM OF, OWNED OR OPERATED (INCLUDING THOSE LICENSED TO CUSTOMER OR USER BY ANY THIRD PARTY) BY ANY THIRD PARTY.
- iii. No Warranty with Respect to Third Party Providers. Geneia does not provide any warranties, guaranties or indemnification regarding any Third Party Providers or any of their products or services, whether or not such products or services are implemented by Geneia or designated by Geneia as "certified," "validated" or otherwise. Any exchange of data or other interaction between Customer and a Third Party Provider, and any purchase by Customer of any product or service offered by such Third Party Provider, is solely between Customer and such Third Party Provider.

**7. Indemnification; Limitation of Liability.**

- a. Indemnification by Customer. Customer agrees to indemnify and defend Geneia and Geneia's affiliates and their respective current and future members, directors, trustees, managers, officers, employees,



consultants and agents (collectively, the “**Geneia Indemnified Parties**”), from and against any and all claims, losses, penalties, costs or other liabilities or expenses, including reasonable attorney’s fees and actual out-of-pocket expenses (including but not limited to court costs) (collectively, “**Claims**”) made by third parties arising from or relating to: (a) the Customer Evaluation Subscription and Customer’s or any User’s use of the Platform or the other Geneia Technology as contemplated by this Agreement or any Customer Order Form; (b) Customer’s or any User’s breach of any representation or warranty under this Agreement, including but not limited to those set forth in Section 6.a or Section 6.b above; (c) Customer’s and any User’s breach of any covenant of this Agreement or any Order Form (after giving effect to any notice and/or cure period that may be applicable thereto) or of any law, rule or regulation applicable to Customer or User; and (d) Customer’s and any User’s gross negligence or willful misconduct, except in each case to the extent such Claims are the direct and proximate result of any breach of this Agreement by Geneia. To the extent any Claims are asserted or instituted with respect to which Geneia is entitled to indemnification, then Geneia shall promptly notify Customer in writing of all material details of such Claims known to Geneia.

- b. Indemnification by Geneia. Geneia agrees to indemnify and defend Customer and its affiliates, current and future members, directors, trustees, managers, officers, employees, consultants and agents from and against any and all Claims made by third parties arising from or relating to: (a) Geneia’s breach of any representation or warranty under this Agreement; (b) Geneia’s breach of any covenant of this Agreement applicable to it (after giving effect to any notice and/or cure period that may be applicable thereto) or of any law, rule or regulation applicable to it; (c) any claim by any third party that the Platform or the other Geneia Technology that is the subject of any Customer Evaluation Subscription violates the IP Rights of such third party; and (d) Geneia’s gross negligence or willful misconduct, except to the extent such Claims are the direct and proximate result of any breach of this Agreement by Customer. To the extent any Claims are asserted or instituted with respect to which Customer is entitled to indemnification, then Customer shall notify Geneia in writing of all material details of such Claims known to Customer.
- c. No Equitable or Implied Indemnification. No indemnitee or other person or entity will be entitled to any form of equitable or implied indemnification, under this Agreement, any Order Form or otherwise (including under applicable law) at any time.
- d. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL, UNDER ANY CIRCUMSTANCES, HAVE ANY LIABILITY TO ANY OTHER PARTY (OR, IN THE CASE OF GENEIA, TO ANY USER) FOR: (A) ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR DAMAGES BASED ON OR FOR LOSS OF PROFITS, LOSS OF USE, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS OPPORTUNITY, REGARDLESS OF WHETHER SUCH CLAIM ARISES FROM, IS BASED ON OR GROUNDED IN CONTRACT, TORT OR OTHER THEORY OF LIABILITY, AND WHETHER OR NOT GENEIA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS OR DESTRUCTION OF ANY DATA UNLESS CAUSED BY THE OTHER PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING BUT NOT LIMITED TO THE CUSTOMER DATA), EQUIPMENT OR PLATFORM.

- e. MAXIMUM LIABILITY. EXCEPT FOR BREACH OF IP RIGHTS AND OBLIGATIONS OR AN OBLIGATION TO INDEMNIFY, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER ARISING FROM, BASED ON OR GROUNDED IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT OF ONE THOUSAND DOLLARS (\$1,000.00).

## 8. General Provisions.

- a. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Geneia will be considered an independent contractor in connection with the performance of the Platform under this Agreement and any Order Form.
- b. Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, if any, and they are not to be construed as conferring any rights on any other persons.
- c. Publicity and Advertising. The Parties agree that either Party may issue press releases, endorsements and other public announcements or statements which reference the other Party or includes statements attributable to the other Party, provided the releasing Party obtains the prior written consent of the other Party, which consent may be withheld in the reasonable discretion of such Party. Neither party shall make disparaging remarks or statements regarding the other, or encourage, incite or assist others in making such statements, either verbally, in writing or electronically.
- d. Federal Government End Use Provisions. To the extent the Platform and related technology, is accessed by a federal government end User, such delivery for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Platform include only those rights customarily provided to the public as specified 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 252.2277015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Geneia to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable Order Form.
- e. Notices. Except as provided below, all notices under this Agreement will be in writing and delivered by certified U.S. mail, overnight courier or email to the addresses or numbers listed below.

### **Geneia LLC**

1000 North Cameron Street, Suite 500  
Harrisburg, Pennsylvania 17103  
Attn: Contract Management  
Email: ContractAdmin@geneia.com

### With a copy to:

Geneia Legal Counsel  
Email: GeneiaLegal@geneia.com

- f. Waiver. No failure or delay by any Party in exercising any right under this Agreement will constitute a waiver of that right.
- g. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.
- h. Assignment. This Agreement and each Order Form will be binding upon the assignees and successors of Geneia and Customer. Customer shall not be permitted to assign its rights, interests or obligations under this Agreement or any Order Form, as applicable, without the prior written consent of Geneia; provided, that Customer shall be entitled to assign its rights, interests or obligations under this Agreement or any Order Form, as applicable, to any affiliate of Customer (where the term "**affiliate**" means any entity that controls, is controlled by or under common control with Customer, and where the term "**control**" means the ability to direct the management or affairs of a party through the ownership of a majority of voting interests, the ability to appoint or replace directors or managers or otherwise). Any attempt by Customer to assign its rights or obligations under this Agreement in breach of this Section 8.h will be void and of no effect.
- i. Governing Law; Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any conflict or choice of law provisions (including those of the Commonwealth of Pennsylvania) that would result in the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties agree that the state and federal courts seated in Dauphin County, Pennsylvania, will have exclusive jurisdiction over all actions and proceedings arising out of or related to this Agreement.
- j. Export Control Laws. The Geneia Technology may be subject to export control and import laws and regulations of: (a) the United States, including, without limitation, the U.S. Export Administration Regulations and other controls administered by the U.S. Department of Commerce, and the sanctions regulations administered by the U.S. Department of Treasury Office of Foreign Assets Control; (b) the European Union and its member states, including, without limitation, Council Regulation (EC) No. 1334/2000; and (c) and other countries (collectively, the "**Export/Import Laws**"). Customer agrees to comply with all Export/Import Laws applicable to the Geneia Technology and assumes sole responsibility for obtaining licenses and other authorizations that are required under Export/Import Laws to deliver and use the Geneia Technology.
- k. Force Majeure. No Party shall be liable for failure to fulfill its obligations under this Agreement (other than a failure to pay money) if that failure is caused, directly or indirectly, by flood, communications failure, extreme weather, fire, mud slide, earthquake, or other natural calamity or act of God, interruption in water, electricity, heating or air conditioning (depending on the season), acts of terrorism, riots, civil disorders, rebellions or revolutions, acts of governmental agencies, quarantines, embargoes, malicious

acts of third parties, labor disputes affecting vendors or subcontractors and for which the Party claiming force majeure is not responsible, or any other similar cause beyond the reasonable control of such Party.

- l. Entire Agreement. This Agreement, including all Exhibits and addenda to this Agreement, along with all Order Forms executed hereunder, constitute the entire agreement among the Parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement and such Order Forms. No modification, amendment, or waiver of any provision of this Agreement or any Order Form will be effective unless in writing and signed by all of the Parties thereto.
- m. Order of Precedence. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum to this Agreement, or Order Form executed hereunder, the terms of such exhibit, addendum or Order Form will prevail.
- n. Counterparts. This Agreement or any Order Form may be executed in any number of counterparts, each of which when so executed will be deemed to be an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement or any Order Form by facsimile or by PDF will be as effective as delivery of a manually executed counterpart of this Agreement.
- o. Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole; (b) references to one gender include all genders; (c) "or" has the inclusive meaning frequently identified with the phrase "and/or"; (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation"; and (e) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, will be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The Parties agree that this Agreement and each Order Form will be fairly interpreted in accordance with its respective terms without any strict construction in favor of or against any Party and that ambiguities will not be interpreted against the drafting Party.