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1. DEFINITIONS

For purposes of this Agreement, the following terms have the following meanings:

“**Appliance**” means the computing environment that may include hardware, operating system and the Software, and SaaS Services that is engineered by Licensor and dedicated for Licensee Use.

“**Cloud Computing**” is the on-demand availability of computer system resources which includes Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS).

“**Cloud Computing Vendor**” means such third-party cloud hosting vendor, as applicable from time to time, from which Hypori operates Cloud Computing.

“**Cloud Platform**” means Hypori’s application cloud platform, as provided by the Cloud Computing Vendor, for the delivery of Cloud Computing.

“**Documentation**” means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software, SaaS Services or Appliance.

“**Hypori Licensed Product**” – Software, SaaS Services, Appliance or Documentation licensed to you by Licensor and made available to you from a source approved by the Licensor.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Licensee**” has the meaning set forth in the preamble.

“**Licensor**” has the meaning set forth in the preamble.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**SaaS Services**” means a Hypori cloud-based software-as-a-service offering purchased by Licensee.



“**Software**” means the software and systems licensed to you by Licensor and made available to you from a source approved by the Licensor.

“**Term**” has the meaning set forth in Section 9.

“**Third Party**” means any Person other than Licensee or Licensor.

“**Use**” means download, install, activate, access, run or otherwise use the Hypori Licensed Product.

2. LICENSES

(a) Grant and Scope. Subject to and conditioned upon the Licensee’s strict compliance with all terms and conditions set forth in this Agreement and the applicable ordering agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the Term for use solely by and through authorized users of this Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee’s authorized users, to:

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(ii) Use the Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee:

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(B) will be subject to the terms and conditions of this Agreement; and

(C) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.

(b) SaaS Services Additional Terms. If Licensee acquires SaaS Services, subject to Licensee’s compliance with this Agreement and payment of all fees due, Hypori grants Licensee the limited, non-exclusive, non-transferable right to access and use the SaaS Services for the Term, solely for Licensee’s internal business purposes and for the number of users and/or the capacity specified in the applicable Order. Licensee is solely responsible for maintaining the confidentiality of all usernames and passwords required for use of the SaaS Services and for all activities conducted in connection with the use of such passwords or access to the SaaS Services. Hypori will use commercially reasonable efforts to provide consistent site availability for the SaaS Services during the Term (excluding scheduled maintenance and downtime, connectivity problems, Licensee actions or misuse, or other matters outside Hypori’s reasonable control). Hypori does not warrant or guarantee uninterrupted availability. Licensee’s use of the SaaS Services is subject to the SaaS Acceptable Use Policy (“AUP”) located at <https://hypori.com/legal/>. Hypori may also impose temporary limits on certain features and services or temporarily restrict Licensee’s access to parts



of the SaaS Services for maintenance, support or system administration purposes without notice or liability. Hypori agrees to provide commercially reasonable notice under the circumstances of any such suspension before its implementation. Licensee is solely responsible for the accuracy, quality, integrity, and legality, of all Licensee data stored or uploaded to the SaaS Services. Upon the termination of this Agreement or expiration of the Term, Licensee will have no further rights to access the SaaS Services hereunder. For a period of thirty (30) days after such termination or expiration, upon Licensee's prior written request, Hypori will allow Licensee limited access to retrieve any Licensee data remaining on the SaaS Services. After such thirty (30) day period, Licensee will have no further rights to access the SaaS Services.

3. USE RESTRICTIONS

Licensee shall not, and shall require its authorized users not to, directly or indirectly:

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- (b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software, SaaS Services or Documentation;
- (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software, SaaS Services or Documentation or any part thereof;
- (d) combine the Software, SaaS Services or any part thereof with, or incorporate the Software, SaaS Services or any part thereof in, any other programs;
- (e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- (f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Hypori Licensed Product, including any copy thereof;
- (g) except as expressly set forth in Section 2(a) and Section 2(b), copy the Software or Documentation, in whole or in part, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Hypori Licensed Product, or any features or functionality of the Hypori Licensed Product, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;
- (h) use the Hypori Licensed Product in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:
 - (i) power generation systems;



- (ii) aircraft navigation or communication systems, air traffic control systems, or any other transport management systems;
 - (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications, or any police, fire, or other safety response systems; and
 - (iv) military or aerospace applications, weapons systems, or environments;
 - (v) use the Hypori Licensed Product in violation of any law, regulation, or rule; or
 - (vi) Use the Hypori Licensed Product for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.
- (i) Use the Software in a manner inconsistent with this EULA.

4. RESPONSIBILITY FOR USE OF SOFTWARE

Licensee is responsible and liable for all uses of the Software, SaaS Services and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software, SaaS Services and Documentation by its authorized users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software, SaaS Services, and/or Documentation, whether such access or use is permitted by or in violation of this Agreement. Licensee is responsible for Users compliance with the AUP.

5. APPLIANCES

- (a) If applicable, Licensor will provide to Licensee on loan, certain Appliances listed in the Order Form. Licensee will be fully responsible for all Appliances including without limitation all risk of loss and damage to Appliances while in its possession or control shall be the responsibility of Licensee, save normal wear and tear. Licensee shall provide Licensor with physical access to the Appliances upon request after reasonable advance notice. Licensee shall not, nor allow any third party to, modify, repair, relocate, sell, lease, assign, encumber, or otherwise tamper with any of the Appliances Licensor's express written consent. Any change of location of the Appliances may warrant that Licensee pay Licensor any additional installation and related charges associated with such relocation, charged by Licensor's third-party vendors.
- (b) Licensor shall deliver Appliances to Licensee's location as provided in the Order Form, At the end of the applicable Term, Licensee shall be responsible to return all Appliances to Licensor, using a shipment method and carrier acceptable to Licensor, at the place from which Appliances was shipped (or as otherwise designated by Licensor) in as good condition as exists at the commencement of the term, reasonable wear and tear, and casualty, in respect thereto excepted.
- (c) Appliances and all parts and components thereof shall retain its character as personal property and all right, title and interest thereto shall not pass to Licensee, but title and ownership shall remain exclusively with Licensor. Licensee shall be and shall have the duties of a bailee of the Appliances. Licensee shall not remove, conceal or otherwise interfere with the title or

ownership plate of Licensor affixed to Appliances.

(d) If Licensee sells, assigns or attempts to sell or assign Appliances or any interest therein, or if Licensee defaults in any of the covenants, conditions or provisions of this Agreement, it is agreed that Licensor may immediately and with notice take possession of Appliances wheresoever found and to remove and keep or dispose of the same and any unpaid fees shall at once become due and payable. If any step is taken by legal action or otherwise by Licensor to recover possession of Appliances or otherwise enforce this Agreement or to collect moneys due hereunder Licensee shall pay Licensor the equivalent.

6. CLOUD COMPUTING TERMS AND CONDITIONS

In addition to the terms of the Agreement, the use of the Software and SaaS Services with Cloud Computing is subject to the Cloud Computing Vendor terms and conditions, which are subject to change, and Licensee acknowledges that Hypori is limited in the provision of the Cloud Platform by the provisions of such Cloud Platform Vendor's terms and conditions. Hypori reserves the right to change the Software and SaaS Services to reflect any change to the Cloud Computing Vendor's terms and conditions or as mandated by applicable law. In the event of any material change, Hypori will give Licensee reasonable prior written notice setting out the scope and contents of the change and the impact of the same. If in the reasonable opinion of Licensee such changes will materially impair the functionality of the Software or SaaS Services then the Parties shall discuss in good faith a resolution to such impairment. .

7. COLLECTION AND USE OF INFORMATION

(a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

- (i) the provision of maintenance and support services; and
- (ii) security measures included in the Software.

(b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software, SaaS Services by Licensee or on Licensee's equipment, including but not limited to:

- (i) improving the performance of the Software, SaaS Services; and
- (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software, SaaS Services.

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9. TERM & TERMINATION

- (a) This Agreement and the license granted hereunder shall remain in effect for the term set forth in an ordering agreement with Licensor, or Licensor's authorized reseller, or until earlier/until terminated as set forth herein (the "**Term**").
- (b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.
- (c) When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Licensor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- (d) Reserved.
- (e) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all amounts due under an applicable ordering agreement that may have become due before such expiration or termination or entitle Licensee to any refund.
- (f) Any termination of this Agreement is subject to Licensee's return of any Appliances as specified in Section 5 above.

10. LIMITED WARRANTIES

APPLIANCES SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR ONE (1) YEAR FROM THE DATE OF SHIPMENT. THE HYPORI LICENSED PRODUCT ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND

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11. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE HYPORI LICENSED PRODUCT; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR (i) THE SOFTWARE, SAAS SERVICES AND APPLIANCES AND (ii) UP TO TWELVE (12) MONTHS OF THE SPECIFIC SERVICES,



THAT IS OR ARE THE SUBJECT OF THE CLAIM. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

(c) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

12. TRIAL PRODUCTS

(a) Hypori may provide certain Hypori Licensed Product to Licensee at no charge specifically for trial purposes ("**Trial Products**"). Subject to Licensee's compliance with this Section 12 (Trial Products), Hypori grants Licensee a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to install and use the Trial Products solely for internal, non-commercial evaluation purposes for thirty (30) days from Licensee's receipt of the Trial Products, unless otherwise extended by Hypori in writing in its sole discretion ("**Trial Term**"). In the event the Trial Products are not yet generally available and provided to Licensee in an beta or other pre-release format, Licensee acknowledges, as a condition of their use: (i) such Trial Products are under development and not at the level of performance or compatibility of generally available products; (ii) may not operate correctly, may contain errors, bugs, and design flaws; (iii) may be modified by Hypori prior to being made generally available; (iv) may not be made available for general release; and (v) do not include Support Services. Licensee agrees to use reasonable efforts to notify Hypori of any bugs or problems in the Trial Products.

(b) Licensee will not upload or store personal data or confidential information into any Trial Product, and Licensee will only use the Trial Products with non-production data in a non-production environment. If Licensee elects to upload or store production data, Licensee assumes all risk in doing so, and Hypori shall have no liability with regard thereto, including for any loss or corruption of data. Upon expiration or termination of the Trial Term, Licensee's right to use the Trial Product ends, and Licensee's access to SaaS Services Trial Products will cease. Licensee will contact Hypori Support at <https://hypori.com/support/for> Trial Product return instructions. Licensee shall securely delete all data from the Trial Products upon termination or expiry of the Trial Term. Notwithstanding the foregoing, Licensee is responsible for the Trial Products (except for reasonable wear and tear), until the Trial Products are back within Hypori's possession and control. Licensee acknowledges that any data remaining on any Trial Product returned to Hypori may be disposed of or destroyed by Hypori without any liability to Hypori. At all times, Hypori retains title and ownership to the Trial Products. HYPORI, ITS SUPPLIERS AND LICENSORS SHALL HAVE NO LIABILITY UNDER ANY LEGAL OR EQUITABLE THEORY IN RELATION TO TRIAL PRODUCTS FOR LOSSES, COSTS, OR DAMAGES OF ANY KIND IN EXCESS OF ONE THOUSAND DOLLARS (\$1000).

13. EXPORT REGULATION

The Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, directly or

indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software or Documentation available outside the US.

14. US GOVERNMENT RIGHTS

The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

15. GOVERNMENT INDEMNIFICATION EXCEPTION CLAUSE

Notwithstanding any other provision of this Agreement, no term or condition shall be construed as obligating any agency of the United States Government to indemnify, hold harmless, or otherwise assume liability for the acts or omissions of any party. Any indemnification or hold harmless obligation is expressly disclaimed with respect to U.S. Government end users and shall be null and void to the extent such obligation is prohibited by applicable federal law, including but not limited to the Anti-Deficiency Act (31 U.S.C. § 1341). Nothing in this clause shall be interpreted as a waiver of the Licensor's rights or remedies under applicable law, nor shall it limit the Licensor's ability to seek available legal relief for unauthorized use, violation of license terms, or breach of contract, subject to applicable federal laws and procedures.

16. MISCELLANEOUS

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the Federal laws of the United States without giving effect to any choice or conflict of law provision or rule.

(b) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the applicable ordering agreement (or to such other address as may be designated by a party from time to time in accordance with this Section 16(b)).

(c) This Agreement, together with the applicable ordering agreement, all annexes, schedules,



and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(d) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(e) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) For purposes of this Agreement, (i) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The ordering agreements and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(h) The parties agree that for U.S. Government end users, the terms of this Agreement are fixed and may not be materially modified by the vendor through unilateral updates, amendments, or revised versions of this Agreement without the prior written consent of an authorized Government Contracting Officer. Non-material changes that do not affect pricing, scope, or legal rights may be made at the vendor's discretion, provided they are promptly communicated to the Government. When Hypori makes changes, we will revise the “Last Updated” date at the top of



this License Agreement. A copy of the latest License Agreement will always be available on Hypori.com.

(i) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

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