



**MANAGED SERVICES - ORDER FORM # WTA0415200F**

**CUSTOMER INFORMATION**

Company: Whatcom Transportation Authority	AP/Billing Contact: Andy Rowson
Address: 4011 Bakerview Spur, Bellingham, WA 98226	Project Contact (if different):
Email: andyr@ridewta.com	Phone: 360-788-9321 <span style="float:right">Tax-Exempt <input type="checkbox"/></span>

**ORDER INFORMATION**

Plan Date (Month/ Day): 1/1	Term Start Date (MM/DD/YY): 5/1/20
Number of Employees: Up to 300	Term End Date (MM/DD/YY): 12/31/22
Customer PO: (If required)	AFFIRMITY Contact: Tracy Zambonino

**SERVICES AND FEES**

Item Description (collectively also referred to as "Services" or "Managed Services")	Quantity	One-Time Deliverable	Annual Fee		
			Term 1 1/1/20 – 12/31/20	Term 2 1/1/21 – 12/31/21	Term 3 1/1/22 – 12/31/22
<input checked="" type="checkbox"/> <b>Complete Resource Center (CRC)</b> (SaaS Subscription License) <input checked="" type="checkbox"/> Services	Up to: 2 Named Users		\$5,000	\$5,000	\$5,000
<input checked="" type="checkbox"/> <b>Managed Services* -</b> (See Appendix II – Scope of Services)	Up to: 2 AAPs 2 Narratives 2 Monitoring Cycles 1 Compensation Reports (Tipping Test) 1 Number of Passes <input checked="" type="checkbox"/> TotalView 3 Structures 3 Groups 2 Number of Availability sources <input checked="" type="checkbox"/> Standard Audit Support Services <input checked="" type="checkbox"/> Full Data Reconciliation Services <input checked="" type="checkbox"/> Other – Complete an FTA plan in 2021 (every three years)		INCLUDED	INCLUDED	INCLUDED
<b>TOTAL</b>		\$	\$5,000	\$5,000	\$5,000

\*During the term of the Order Form the parties may agree to substitute a Managed Service identified above for another Managed Service as offered by us at such time, provided that such change does not decrease the total price for such Managed Services based on our then-current prices. The parties agree that any such change will be documented and agreed through an e-mail approval between You and us during the term and no such substitution will act to extend or amend the Term End Date unless we agree to such change in a written agreement or amendment signed by both parties.



**Terms and Conditions:**

**Term:** The term of this Order Form between You and Learning Technologies Group Inc., through its division, AFFIRMITY ("we", "us" or "AFFIRMITY") is as set forth above. This Order Form Term is non-cancellable, except as permitted herein. This Order Form shall each time automatically renew for periods of time equal in length to this Order Form Term (each a "Renewal Term"), unless either party gives the other party at least forty-five (45) days written notice prior to the Term End Date, or Renewal Term end date, as applicable. Upon the expiration or termination of this Order Form, all access to SaaS Subscription Licenses shall immediately cease.

**Payment:** We will invoice You for the Total One-Time Deliverable and first Term Annual Fee upon signature. For subsequent Terms we will invoice You thirty (30) days before each anniversary of the Term Start Date. All payments are due thirty (30) days from the invoice date and are non-refundable except as provided herein. Travel and other living expenses are not included herein and shall be invoiced separately. You will reimburse pre-approved expenses incurred in connection with any Services. All stated fees are exclusive of all applicable taxes, which shall be added to the fees shown above, if and as applicable, and be payable by You. We may reasonably increase our fees each time effective the start of a new Renewal Term with no less than 45 days prior written notice.

**Service Levels Terms.** Any SaaS Subscription Licenses purchased under this Order Form shall be subject to the Service Level Terms attached to this Order Form (provided that we may change such Service Level Terms on reasonable notice to You). Service Level Terms state Your full and exclusive right and remedy, and AFFIRMITY's only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.

**Entire Agreement:** This Order Form is between You and us, and incorporates the attached Appendices: I - Terms and Conditions, II - Statement of Work, and III - CRC Service Level Terms, Exhibit A - Technical and Organizational Security Measures and together they all constitute the entire agreement between you and us in connection with the subject matter hereof ("Agreement").

**Validity:** Unless otherwise accepted by us, the pricing contained within this Order Form is valid only if executed by You on or before 4/31/20.

**Special Terms:**

**Whatcom Transportation Authority ("You" or "Customer")**

By: PETER L STANK  
Printed Name: PETER L STANK  
Title: GENERAL MANAGER  
Date: 4/27/20



## APPENDIX I - TERMS AND CONDITIONS

**1. OUR SERVICES.** Learning Technologies Group Inc., through its division, AFFIRMITY ("we", "us" or "AFFIRMITY") will provide You with the services and deliverables (collectively, the "Services") as described in the Order Form and its appendices, related to the preparation of Affirmative Action Plans and related documents ("AAPs"), solely based on the data that You supply to us. We will work with You to set up the structure of the AAPs, determine external and internal availabilities of protected classes of Your employees and perform the utilization analysis. Where you purchased our CRC Services subscription, You may use our online CRC solution solely to deliver your data to us and to receive the AAPs. You will provide us with a list of Named Users of CRC as provided in the Order Form, whom you can change from time to time, and you agree that no-one else will use CRC.

**2. CONFIDENTIAL INFORMATION.** We will keep confidential all employee data and non-public information You provide to us under this Agreement, and You will keep confidential all non-public information we provide to You, such as our pricing and passwords for the use of the CRC. Neither party will use confidential information of the other for any other purpose or disclose it to any person (other than employees, consultants or agents under confidentiality agreements who have a need to know) without the other's written permission. However, if a party is required by law, regulation or court order to disclose confidential information, it may do so but it will provide prompt notice to the other party of such disclosure. We may combine information about Your use of the Services with similar information about other customers to compile anonymized, aggregate statistical analysis data and reports, but we will not include any information that would identify You or any of Your employees. You agree not to send us social security numbers or other governmental IDs for Your employees, because they are not necessary to our provision of the Services, and we will not be liable for any such information.

**3. YOUR PAYMENTS.** Pricing for the Services assumes that all AAPs are processed concurrently and is based upon the specified number of employees and length of project as outlined in the Order Form. The project will begin and end in accordance with a mutually-agreed schedule. If You request modifications or additional work, such as additional plans or narratives, unless otherwise agreed, for instance in a statement of work, we will invoice You on a time and materials basis at our then-current hourly rate. If Your employee headcount or number of AAPs increases by 10% or more, pricing will be adjusted accordingly. If any undisputed invoice is not paid when due, we will send you written notice of non-payment, and if the invoice is not paid in full within ten (10) days of this notice, we may terminate this Agreement or suspend the provision of Services. Your delay or provision of incorrect or otherwise problematic data will not relieve You of Your obligation to pay all fees and expenses under this Agreement. We will also be entitled to collect our reasonable expenses, including attorneys' fees, incurred in collecting amounts not subject to a good faith dispute. All quoted prices and fees are exclusive of sales, value added and similar taxes, which we will invoice as applicable, and You agree to pay any such taxes applicable to Your use of the Services (but not taxes based on our net income). If You are a tax exempt organization, please check the box on the Order Form and provide us with a copy of Your tax exemption certificate. You agree to reimburse us for all reasonable costs and expenses, including without limitation, attorneys' fees, travel, and hourly time, in connection with compliance with and response to any subpoena or other court order arising out of or related to the work done pursuant to this Agreement.

**4. PASSES.** We will conduct the number of passes for the AAPs specified in the Order Form or statement of work. If You have selected a two-pass process, the first pass creates a first version of the AAPs. You will then have an opportunity to adjust Feeder Job Groups, Factor Weights, Labor Markets, Job Groups and Census Codes. We will incorporate Your adjustments into the plans and subsequently provide You with final AAPs.

**5. CLIENT OBLIGATIONS.** You warrant that: (i) your use of the Services and Your own human resources policies and procedures shall at all times comply with applicable laws and regulations; (ii) You will promptly provide us with the data we request and that it will be complete, correct and in the agreed format; and (iii) any data provided by You and any of Your human resources policies and procedures will not infringe any laws or regulations, or the rights of any third party. You will indemnify, defend and hold us harmless from and against all losses (including reasonable attorney fees) incurred by us arising from your breach of any of these warranties. You also agree to respond in a prompt and accurate manner to any of our requests for information or direction.

**6. WARRANTY.** We warrant that (i) the AAP calculations performed by us based on the data provided by You will be performed in accordance with the Office of Federal Contract Compliance Programs guidelines applicable as of the date each AAP is delivered; (ii) CRC will substantially conform to our published documentation; and (iii) CRC does not infringe any intellectual property right of a third party. **Your sole and exclusive remedy for any breach of these warranties will be for us to exercise commercially reasonable efforts to repair, modify or replace the defective Service or deliverable, and, if we are unable to do so in our opinion, we will refund the amounts paid in respect of the defective Service or deliverable.** Except as expressly set forth in this Agreement, neither party makes any representations or warranties of any kind, whether express or implied, including any warranties of merchantability, fitness for a particular purpose, or non-infringement, and the services and deliverables are provided "as is".

**7. LIABILITY.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND YOUR PAYMENT OBLIGATIONS, **IN NO EVENT WILL EITHER PARTY'S (OR OUR LICENSORS' OR SUBCONTRACTORS') AGGREGATE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES YOU PAID TO US FOR THE RELEVANT SERVICES OR DELIVERABLES WITHIN THE PRECEDING TWELVE (12) MONTHS.** IN NO EVENT WILL EITHER PARTY OR OUR LICENSORS OR SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. FURTHER, IN NO EVENT WILL WE BE LIABLE TO YOU FOR THE INITIATION, PROCESSING, OR RESULT OF ANY LEGAL OR ADMINISTRATIVE ACTION RELATED TO EMPLOYMENT DISCRIMINATION OR AFFIRMATIVE ACTION PLANNING.

**8. TERM AND TERMINATION.** The term for the Services will be as set out in the Order Form. Either party may terminate the Services for any material breach not cured within thirty (30) days following written notice of such breach, or immediately upon written notice if the other party files for bankruptcy, becomes the subject of any bankruptcy proceeding or becomes insolvent. **If You terminate this Agreement for**



**our material breach, we will refund to You any prepaid fees for Services that You have not yet received.** Should we terminate this Agreement for Your uncured material breach, You will remain responsible for payment of all amounts set forth in the Order Form.

**9. NO LEGAL AND PROFESSIONAL ADVICE.** We and our licensors are not in the business of providing legal, financial, or accounting services or advice. Consult the services of a competent professional when You need this type of assistance. Our representatives or employees are not authorized to provide such services or advice on our behalf.

**10. GENERAL AGREEMENT.** This Agreement will be governed by the laws of the State of Delaware without regard to its conflicts of laws principles. However, if You are a State Agency or Entity, this Agreement will be governed by the laws of Your state without regard to its conflicts of laws principles. This Agreement constitutes the complete and

exclusive statement of our agreement and supersedes all prior agreements or understandings (including, without limitation, verbal or electronic communications) between the parties concerning the subject matter of this Agreement. No amendment, waiver or other alteration of this Agreement may be made except by mutual agreement in writing. If a particular term is not enforceable, the remaining terms will continue to be enforceable. Any notices required under this Agreement must be in writing and delivered personally, or by registered, certified or overnight mail and addressed as follows, or to such other address as each party may designate in writing: if to us: AFFIRMITY, 400 East Las Colinas Boulevard Suite 500, Irving, TX 75039, USA, and if to You: At the address set forth in this Order Form. The terms of any purchase orders You issue are for Your convenience only and will not change or add to the terms of this Agreement. This Agreement may be executed in separate counterparts, all of which, when taken together, will constitute one and the same instrument.



## **APPENDIX II - Statement of Work Managed Services**

The purpose of this Statement of Work (SOW) is to identify the deliverables and scope for the work to be provided by Learning Technologies Group Inc., through its division, AFFIRMITY ("we", "us" or "AFFIRMITY") to You as part of the Managed Services as purchased by You through an Order Form to which this is an attachment ("Order Form").

This document outlines the following key project information:

- The services that have been agreed
- The main assumptions, dependencies and constraints
- Activities that are out of scope of the project
- The project's terms and conditions

### **1.0 Definition of Services**

Depending on the requirements, services and quantity as agreed with You (either as outlined in the Order Form in detail, or by reference in the Order Form to a maximum number of person-days of our Professional Services purchased by you), we may provide you with part or all of the following in our performance of the Managed Services:

#### **1.1 Affirmative Action Plans (AAPs):**

- Project Definition & Planning:
  - Project Planning Conference Call
  - Define planning structure for compliant and, if selected, management plans (TotalView)
    - Identify Compliant Structure & Grouping
    - Identify Management Structure(s) & Grouping(s)
  - Data File Specifications Review
    - Employee file snapshot
    - Historical data file
    - Translation Tables
    - Applicant data file
  - Define Immediate & Recruitment Labor Area for US Census Data and/or SEDs
  - Define the Project Calendar with milestones
  - Develop the Final Project Development Plan
- Data Analytics Professional Services:
  - Data Validation of Data File (s)
  - Data Reconciliation of Employee, History & Applicant data files
  - Identify/Correct missing or inconsistent data
  - Validate definitions of promotions and transfers (if provided)
  - Provide results of data analytics via a data questions file
  - Correct identified data concerns based on your response to data questions provided
  - Assign census category codes by job title
  - Update data file(s) as need for completeness
  - Load complete & accurate data files
- Plan Generation:
  - Build empirical Analysis structure
  - Validate internal management reporting structure
  - Validate immediate & recruitment labor areas
  - Identify Included/Excluded employees
  - Compile and load US census data and other data as identified in the order form
  - Review census category assignments & make adjustments as needed
  - Analyze and adjust calculated internal & external weights as applied to each factor
- Statistical Analysis
  - Calculate Total Weighted Availability based on weighted factor assignments
  - Calculate current representation based on group assignments defined at project planning meetings



- Complete comparative analysis to identify areas of underrepresentation based on group assignments and utilizing the statistical method(s) identified at the project planning meeting such as:
  - 80% Difference
  - 2-Standard Deviation
  - Exact Binomial
- Complete prior period comparative analysis to identify areas of placement goal achievement, including identifying areas no achievement and no opportunity for achievement
- Complete an adverse impact analysis on selection decisions (Hires, promotions & terminations) for the monitoring cycle period(s) identified utilizing statistical methods.
- For each result of statistical significance provide a summary of findings
- All statistical analyses to be completed to compare gender as well as race category
- Prepare required statistical & support reports
- Load statistical reports & analysis to the CRC
- Preliminary Review & Recommendations (if selected in the Order Form)
  - Conduct remote meeting to discuss the preliminary findings, provide recommendations for consideration
  - Make requested adjustments to underlying statistical output
  - Re-Calculate Statistical analysis and prepare final required and support reports
  - Load final statistical reports & analysis to the CRC
- Final Review & Recommendations
  - Conduct remote meeting to discuss the findings, provide underlying statistical output and recommendations for consideration
- Standard Support & Consulting Services
  - We will provide unlimited telephone support during the term of the contract on the reports and plans prepared
  - We will provide unlimited telephone support during the term of the contract as needed during a confirmed OFCCP Audit Notice.
  - Standard Audit Support Services (if elected on the order form) will include:
    - Meet with client via phone to discuss the audit process and develop an action plan
    - Review current AAP and monitoring, clean up and correct data, address any concerns / areas of vulnerability
    - Set up weekly project calls prior to the submission to ensure submission is on track
    - Identify any additional analysis needed
    - Review reports and submission documentation, make any final adjustments as needed
    - Assist in preparing the audit submission and provide all support documentation
    - Throughout the audit, give guidance and assistance with additional requests as received from the compliance officer

**1.2 Deliverables:**

Depending on the quantity limit on the order form and as agreed, we may provide you with the following reports in conjunction with our Managed Services:

**Summary Reports**

- AAP Assessment
- Monitoring AAP Assessment

**Required Affirmative Action Reports**

- Work Force Analysis
- Work Force Analysis - Included/Excluded Employees
- Job Group Analysis
- Job Group Analysis - Included/Excluded Employees
- Incumbency vs. Availability
- Placement Goals
- Placement Goals Summary
- Veteran Benchmark Analysis Summary
- Disability Goal Attainment Report
- Data Collection for VEVRAA & Section 503
- Prepare Narrative:

- Minorities and Women
- Individuals with Disabilities
- Protected Veterans

**Support Affirmative Action Reports & Charts**

- Census Codes and Job Titles
- Reasonable Recruitment Labor Area Distributions
- Internal Availability
- Summary Analysis
- Work Force Analysis Roster
- Work Force Analysis Summary
- Job Group Analysis Roster
- Job Group Roster – Veterans & Disabled
- Job Group Analysis Summary
- Charts (provided electronically)
  - Overall Representation
  - Work Force Analysis



- Job Group Analysis
- Problem Area Analysis
- Placement Goals
- Incumbency vs. Availability

#### **Compensation (upon request)**

- Item #19 by Job Title and Job Group
- Item #19 by Salary Code
- Item #19 by Job Group

#### **TotalView Management Reports**

- Prepare and deliver reports according to management reporting structure.

#### **Monitoring/Impact Ratio Analysis**

##### **Required Monitoring Reports**

- Goal Attainment
- Hires Counts (All Races)
- Promotions Counts (All Races)
- Termination Counts (All Races)
- Voluntary Termination Counts (All Races)
- Involuntary Termination Counts (All Races)

##### **Support Monitoring Reports**

- AAP Scorecard
- Monitoring Summary Analysis
- Monitoring Selection Analysis
- Monitoring Scorecard Veterans
- Monitoring Scorecard Disabled
- Placement Detail
- Applicant Roster

- Monitoring Transactions Listing (Hires, Promotions, Transfers, Terminations)
- Charts (provided electronically)
  - Monitoring Overall Representation
  - Goal Attainment

##### **Adverse Impact Analysis (Hires contingent on applicant data)**

- Hires (Summary, All Races, Analysis)
- Promotions (Summary, All Races, Analysis)
- Total Terminations (Summary, All Races, Analysis)
- Involuntary Terminations (Summary, All Races, Analysis)
- Voluntary Terminations (Summary, All Races, Analysis)
- Most Favored (Summary All Races, Analysis)

##### **Other Plan Reports**

- AAP Profile
- AAP Profile Summary
- AAP Profile Monitoring
- AAP Profile Monitoring Summary

##### **AAP Insight Reports**

- AAP Current Workforce to Availability
- AAP Current Workforce to Availability Progress
- AAP Current Workforce Gap
- AAP Progress Trend
- AAP Impact of Sourcing on Hiring
- AAP Talent Lifecycle Chart

##### **CRC Dashboards**

- AAP Dashboard
- Monitoring Dashboard

## **2.0 Assumptions, dependencies and constraints:**

### **2.1 Assumptions:**

**2.1.1** We reserve the right to replace or reassign any resources used in connection with this SOW at our sole discretion. Where resources are replaced or reassigned we will not make an additional charge to You for the handover between resources.

**2.1.2** The Professional Services described herein are based on You providing clean, accurate and complete data to us in the format requested during the project planning meeting. Unanticipated data problems will be explained to You and where you request our assistance to remedy such problems, we will do so at our current then hourly rates as mutually agreed to by both parties by signing of a change order.

**2.1.3** The Professional Services described herein are based on all plans/reports being processed concurrently and is based on the specified number of employees, number of plans and length of time as outlined in the order form.

**2.1.4** You shall be responsible for making available appropriate and prompt resources during services provision hereunder.

**2.1.5** The Services described herein are based on an assumed minimum 30-day project calendar which starts at our receipt of Your clean and accurate data. The Project Calendar will be set and agreed to at the project planning meeting. Any additional work beyond the set project calendar not caused by us may incur additional costs and we reserve the right to charge these to You. Project Calendar dates missed will be subject to reschedule based on our availability of resources.

**2.1.6** Any service not delivered before the Term End Date as set forth in the Order Form due to Your delays or inaction, unless otherwise mutually agreed, will be automatically considered as completed, accepted and fully delivered on the Term End Date.

**2.1.7** After the final report review and summary of data findings has been completed, all Services defined in this SOW are complete. Additional requests to modify reports beyond a confirmed OFCCP Audit notice could incur additional costs of which we shall advise You.

### **2.2 Dependencies:**

**2.2.1** Timely feedback is expected from You and Your team to requests for data, answers to questions, or other information needed to complete the Services described above.



**2.3 Constraints:**

**2.3.1** All Services stated herein are performed remotely with no onsite presence, unless otherwise specified in the Order Form.

**3.0 Out of Scope:**

**3.1** Receipt of new data files or new fields to be included in the analysis after the initial data file is received could incur additional costs

**3.2** Merging multiple data files to create the single file layout for Applicants, Employee Snapshot & History Snapshot was requested during the project planning meeting could incur additional costs

**3.2.2** Multiple data question files for each plan.

**3.3** Increases to the number of employees, plans or the length of time could incur additional costs

**3.4** Request to complete analysis off-cycle (not concurrent) with defined Scope

**3.5** More than one final review meeting could incur additional costs

**3.6** More than one project calendar for a single project scope could incur additional costs

**3.7** Request to complete additional/refined analysis not identified in the order form.

**4.0 Terms & Conditions:**

**4.1** The services in this SOW shall be subject to the terms of the Order Forms and those included herein.

**5.0 Payment Terms and Fees:**

**5.1** The fees for the Professional Services herein are outlined in the Order Form. Any person-days required in addition to the number purchased by You in the Order Form can be purchased at the (2020) rates included below.

**5.2** Any additional Services beyond this scope will be billed at our current then hourly rates and agreed to in a change order prior to proceeding.

**5.2.1** Hourly Rates:

Our (2020) hourly rates for Professional Services are as follows:

Project Manager - \$300

Senior Consultant - \$300

Business Consultant - \$250

Data Analyst - \$150

These rates are guaranteed through the Order Form End Date and are subject to reasonable increase thereafter.



### APPENDIX III - CRC SERVICE LEVEL TERMS

This Service Level Schedule outlines AFFIRMITY's support and service level schedule for its CAAMS, AAPlanner and CRC SaaS Subscription Licenses and Hosting Services. We may change the content of this Service Level Agreement from time to time to reflect the current status of our support services.

#### *Contacting Support*

Support requests should be submitted by You to AFFIRMITY's Customer Support Center by telephone, email or web, as provided below or as otherwise communicated by us. Your helpdesk will provide first line support to your internal users, and all initial support requests will be first received and addressed by Your own helpdesk.

#### *Support*

You have primary responsibility for administering the CAAMS, AAPlanner and CRC applications and we will provide assistance as specified herein. You are responsible for ensuring that Your hardware and software used to access the CAAMS, AAPlanner and CRC SaaS Subscription Licenses and Hosting Services meet the minimum requirements required by us in the Documentation.

#### *Support for Services includes:*

- Access to our Customer Support Center website for receipt of product information and submission of support requests (24/7).
- Helpdesk telephone support during normal business hours of Monday through Friday (8am-6pm CST) excluding Texas, USA public holidays ("Business Hours").

#### *Updates and Upgrades*

- From time to time, our software applications (or associated hosting infrastructure) may be updated or upgraded by us to facilitate improved service levels (provided that we have no obligation to perform such updates or upgrades). You agree to each time accept any general software and hardware distribution updates, upgrades, enhancements and/or new releases that are provided and applied by us to our general customer base from time to time at no additional cost to You.
- Any such changes will be made by us automatically during regularly scheduled maintenance with advance notice.

#### *Availability Commitment for Services*

The SaaS Subscription Licenses and Hosting Services will be Available (as defined below) 99.5% of each calendar month (the "Availability Commitment").

If we fail to meet the Availability Commitment for three (3) consecutive calendar months, then within thirty (30) days from the conclusion of the third consecutive calendar month, You may promptly terminate the relevant Order Form by giving us thirty (30) days prior written notice of termination, without liability for any cancellations fees, penalties or other damages associated with such termination. Notwithstanding any other term or provision in the Agreement, the remedies stated in this paragraph are Your sole and exclusive remedies for failure to meet the Availability Commitment specified herein.

"Available" means the SaaS Subscription Licenses and Hosting Services are available (following Activation, defined below) 24 hours per day x 7 days a week, measured on a calendar month, subject to the exclusions set forth above less actual downtime for (a) scheduled maintenance performed during the regular planned maintenance window as we may reasonably designate from time to time; (b) acts or omissions of You or anyone gaining access to the SaaS Subscription Licenses or Hosting Services through Your passwords or equipment; (c) Your use of hardware and network services, which components are controlled by You and their performance or failure to perform can impair Your connections to the Internet and the transmission of data; (d) Events beyond our Immediate Control (defined below).

"Activation" means the date that the last of the following is completed and we have provided notice of the same to You: (i) hardware is setup; (ii) application software is installed with its default configuration (i.e., pre-configured); and (iii) access is provided by AFFIRMITY.

"Events beyond our Immediate Control" include (i) the flow of data to or from our network and other portions of the Internet which depends on the performance of Internet services provided or controlled by third parties other than our data center facility; (ii) a service interruption caused by a security threat until such time as the security threat has been eliminated; (iii) reasons of a Force Majeure Event (defined below); and (iv) emergency maintenance, of which we will notify You of as soon in advance as is practicable but will first endeavor to remedy the emergency.

"Force Majeure Event" means causes beyond our reasonable control, including but not limited to, delays caused by the other party, acts of God, war, terrorism, criminal activity, civil disturbance, court order or other government action, third party performance or non-performance, strikes or work stoppages, provided that such party gives prompt written notice to the other party of such event.

#### *Severity Levels and Target Resolution\* Times*

Severity levels are assigned by us based on the Severity level definitions and examples. Errors and problems are generally either hardware related or software defects. Hardware issues are generally much quicker to resolve than a code defect.

SLA LEVEL	DEFINITION	EXAMPLES
<b>Severity 1</b>	<p><b>Fatal Impact – Unable to use system – No Workaround</b> Severity 1 items are generally equipment failures that prevent the application from being accessible or usable. These are generally quickly resolved by the engineering team.</p> <p>Severity 1 items in the application may also occur. This is defined as a problem that affects multiple users in the application code that fatally impacts usage and there is no known workaround. Severity 1 application code problems are rare and may be related to a new code release to production. The typical response to a Severity 1 code item is to back out the release to the previous release which resolves the problem.</p> <p>The objective is to provide relief or a workaround** or mutually agreeable Resolution within twenty-four (24) hours of notification to our Service Support and replication of the problem.</p> <p>Final Resolution that requires coding work and QA may take longer to complete beyond the workaround. If Customer assistance is needed to replicate or provide information about the Severity 1 item and the Customer is unavailable, the incident will be downgraded to a Severity 2 until Customer assistance is available.</p>	<p><b>Such incidents would include widespread instances that affect multiple users. Examples are:</b></p> <ul style="list-style-type: none"> <li>a) Total inaccessibility of the application</li> <li>b) Significant and critical data integrity issues.</li> <li>c) Significant and critical database system issues.</li> <li>d) Inability to log into for multiple machines</li> <li>e) Security breaches</li> </ul>
<b>Severity 2</b>	<p><b>Severe Impact – Important issue to normal business operations.</b> Indicates a defect in the application that impacts a portion of the application for usage and/or availability, and for which a workaround may or may not exist.</p> <p>Severity 2 items that are code issues will require a code fix. Workaround processes will be provided if available while the code fix is being worked.</p> <p>The objective is to provide relief or a workaround or mutually agreeable Resolution within seventy-two (72) hours of notification to our Service Support and replication of the problem.</p> <p>Final Reresolution that requires coding work and QA may take longer to complete beyond the workaround.</p>	<p><b>Such incidents would include the following:</b></p> <ul style="list-style-type: none"> <li>a) Application unavailable for a single user but available to others</li> <li>b) Inability to successfully import data due to an application defect or operational problem</li> <li>c) Noticeable and significant differences in system performance that deviate from the expected system performance.</li> <li>d) Reports not rendering correctly</li> <li>e) Inability to complete a plan due to an application defect or operational problem</li> </ul>
<b>Severity 3</b>	<p><b>Degraded Operations or Normal Customer calls for information on product usage:</b> Severity 3 is the standard default severity level for most Customer requests for support. This includes informational requests on how to perform functions in the application.</p> <p>Severity 3 includes defects in the application that impacts usage and/or availability of limited functions, but the impacted functions are not critical to overall usage.</p> <p>The objective is to provide relief or a workaround or mutually agreeable Resolution as soon as reasonably possible of notification to our Service Support and replication of the problem.</p> <p>Final Resolution that requires coding work and QA may take longer to complete beyond the workaround.</p>	<p><b>Such defects would include the following:</b></p> <ul style="list-style-type: none"> <li>a) Minor differences in system performance that deviate from the expected system performance.</li> <li>b) Minor formatting or printing issues</li> <li>c) Cosmetic or spelling errors</li> <li>d) Minor impairment of product functionality</li> </ul> <p><b>Normal Customer calls for support information include:</b></p> <ul style="list-style-type: none"> <li>a) Questions regarding how to perform a function</li> <li>b) Assistance with setting up an import</li> <li>c) Questions regarding report interpretation</li> </ul>



## **EXHIBIT A**

### **Technical and Organizational Security Measures**

Affirmity will only use Customer Data for the purposes of fulfilling its obligations under the Agreement. Affirmity will maintain and enforce physical and logical security procedures with respect to its access and maintenance of Customer Data contained on Affirmity servers.

Affirmity will use reasonable measures to secure and defend its location and equipment against “hackers” and others who may seek to modify or access the Affirmity servers or the information found therein without authorization. Affirmity will test its systems for potential security breaches at least annually.

Affirmity has a written information security program (“Information Security Program”) that includes administrative, technical, and physical safeguards that protect against any reasonably anticipated threats or hazards to the confidentiality of the Customer Data, and protect against unauthorized access, use, disclosure, alteration, or destruction of the Customer Data. In particular, the Affirmity’s Information Security Program shall include, but not be limited, to the following safeguards where appropriate or necessary to ensure the protection of Confidential Information and Personal Data:

Access Controls – policies, procedures, and physical and technical controls: (i) to limit physical access to its information systems and the facility or facilities in which they are housed to properly authorized persons and (ii) to authenticate and permit access only to authorized individuals.

Security Incident Procedures – policies and procedures to detect, respond to, and otherwise address security incidents, including procedures to monitor systems and to detect actual and attempted attacks on or intrusions into Customer Data or information systems relating thereto, and procedures to identify and respond to validated security incidents, mitigate harmful effects of security incidents, and document security incidents and their outcomes.

Contingency Planning – policies and procedures for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, and natural disaster) that damages Customer Data or systems that contain Customer Data, including a data backup plan and a disaster recovery plan.

Device and Media Controls – policies and procedures that govern the receipt and removal of hardware and electronic media that contain Customer Data into and out of a Affirmity data center, and the movement of these items within a Affirmity data center, including policies and procedures to address the final disposition Customer Data.

Audit controls – hardware, software, and/or procedural mechanisms that record activity in information systems that contain or use Customer Data.

Data Integrity – policies and procedures to guard against the unauthorized disclosure, improper alteration, or unauthorized destruction of Customer Data.

Transmission Security – encryption of electronic information while in transit to guard against unauthorized access to Customer Data that is being transmitted over public communications network.

Secure Disposal – policies and procedures regarding the disposal of Customer Data, taking into account available technology that can be used to sanitize storage media such that stored data cannot be practicably read or reconstructed.

Testing – Affirmity shall regularly test the key controls, systems and procedures of its Information Security Program to verify that they are properly implemented and effective in addressing the threats and risks identified. Tests will be conducted or reviewed in accordance with recognized industry standards (e.g. ISO27001 or SSAE18 and their successor audit standards, or similar industry recognized security audit standards).

Adjust the Program – Affirmity shall monitor, evaluate, and adjust, as it deems necessary, the Information Security Program in light of any relevant changes in technology or industry security standards, the sensitivity of Customer Data, and internal or external threats to Affirmity or the Customer Data.

Security Training – Affirmity shall provide annual security awareness and data privacy training for its employees that will have access to Customer Data.

Confidentiality – Affirmity shall require that all Affirmity employees who are granted access to Customer Data undergo appropriate screening, where lawfully permitted, and enter into a confidentiality agreement prior to being granted such access.