

## RESPISIM E-LEARNING TERMS AND CONDITIONS

These Terms and Conditions apply to purchases of subscriptions to software and/or purchase of hardware whether online at <https://www.ingmarmed.com/product/respisim-elearning/> or by purchase order, quotation or other documentation. By affirmatively agreeing to these Terms and Conditions, or by execution of any documentation referencing these Terms and Conditions, they are and remain applicable to all use of the associated software and hardware. IngMar hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Subscriber that already have been or hereafter may be presented to IngMar in connection with these Terms or Conditions or in association with the use of the IngMar Materials (as defined below). If Subscriber has submitted or will submit additional and/or different terms and conditions to IngMar, or submit a counteroffer to IngMar, IngMar's subsequent performance will not be construed as either acceptance of Subscriber's additional and/or different terms or Subscriber's counteroffer. To the extent that any documentation conflicts with these Terms and Conditions, these Terms and Conditions will control.

### 1. Certain Definitions.

**"Access Credentials"** means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify a Named User's identity and authorization to access and use the Services.

**"Disabling Device"** means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by IngMar or its designee to disable Subscriber's or any Named User's access to or use of the Services automatically with the passage of time or under the positive control of IngMar or its designee.

**"Documentation"** means any manuals, instructions, videos or other documents or materials that IngMar provides or makes available to Subscriber which describe the functionality, components, features or requirements of the Services.

**"Error"** means a failure of the Services to substantially comply with the applicable published Documentation.

**"Fix"** means a correction of an Error, including a work-around, in order for the Services to function in accordance with the applicable published Documentation.

**"Harmful Code"** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby, or (b) prevent Subscriber or any Named User from accessing or using the Services as intended by this Agreement. Harmful Code does not include any Disabling Device.

**"IngMar Materials"** means the Services, Documentation and any and all other information, data, documents, materials, works and other content, devices, methods, processes, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by IngMar in connection with the Services.

**"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.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance.

**“Maintenance Services”** means IngMar’s provision of qualified technical representatives by telephone, email or other remote means to assist Subscribers with the operation and answering of questions related to the Services.

**“Named User”** means each named individual authorized to use the Services pursuant to Section 3.1 and the other terms and conditions of this Agreement.

**“Order Form”** means any form, tangible or electronic, including without limitation the web-based order form located at <https://www.ingarmed.com/product/respisim-elearning/> or any .pdf or other invoice, quote or other documentation which specifies the Software and Hardware addressed by these Terms and Conditions.

**“Subscriber Data”** means information, data and other content, in any form or medium, that is collected, uploaded or otherwise received, directly or indirectly from Subscriber through the use of the Services.

**“Subscriber Systems”** means the Subscriber’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Subscriber or through the use of third-party services.

## 2. **Services.**

2.1. **Services.** Subject to and conditioned on Subscriber’s and its Named Users’ compliance with the terms and conditions of this Agreement including the payment of Fees, during the Term, IngMar shall use commercially reasonable efforts to provide access to the IngMar Materials listed on any Order Form, including to host, manage, operate and maintain the IngMar Materials for remote electronic access and use by Subscriber and its Named Users (“**Services**”). The Services may include both hosted processing services and related mobile or remote software for installation and use by Named Users (“**End User Software**”).

2.2. **Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:

2.2.1. IngMar has and will retain control over the operation, provision, maintenance and management of the Services, including the: (i) selection, deployment, modification and replacement of the End User Software; and (ii) performance of Service maintenance, upgrades, corrections and repairs.

2.2.2. Subscriber has and will retain sole control over the operation, maintenance and management of, and all access to and use of its own systems, and sole responsibility for all access to and use of the Services and End User Software by any Named User, including any: (i) information, instructions or materials provided by any of them pursuant to the Services; (ii) results obtained from any use of the Services; and (iii) conclusions, decisions or actions based on such use.

2.3. **Changes.** IngMar reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful, but shall give Subscriber prior written notice of any such changes.

2.4. **Suspension or Termination of Services.** IngMar may, directly or indirectly, and by use of a Disabling Device or any other lawful means, suspend, terminate or otherwise deny Subscriber’s, any Named User’s or any other access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) IngMar receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires IngMar to do so; or (b) IngMar believes, in its sole discretion, that: (i) Subscriber or any Named User has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement; (ii) Subscriber or any Named User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This Section does not limit any of IngMar’s or Subscribers rights or remedies, whether at law, in equity or under this Agreement.

## 3. **Authorization and Subscriber Restrictions.**

3.1. **Authorization.** Subject to and conditioned on Subscriber’s payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, IngMar hereby authorizes Subscriber to access and use, during the Term, the IngMar Materials as IngMar may supply or make available to Subscriber solely for the

use by and through Named Users. This authorization is non-exclusive and non-transferable, however, Subscriber may substitute different natural persons as Named Users once per semester.

- 3.2. **Reservation of Rights.** Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, IngMar Materials or End User Software, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the IngMar Materials and the End User Software are and will remain with IngMar.
- 3.3. **Authorization Limitations and Restrictions.** Subscriber shall not, and shall not permit any other person or entity to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Subscriber shall not, except as this Agreement expressly permits: copy, modify or create derivative works or improvements of the IngMar Materials; rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any other person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part; bypass or breach any security device or protection used by the Services or access or use the Services other than by a Named User through the use of his or her own then valid Access Credentials; input, upload, transmit or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, in whole or in part; remove, delete, alter or obscure any trademarks, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any IngMar Materials, including any copy thereof; access or use the IngMar Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; access or use the Services for purposes of competitive analysis of the Services or, the development, provision or use of a competing software service or product or any other purpose that is to the IngMar's detriment or commercial disadvantage; or otherwise access or use the Services beyond the scope of the authorization granted under this Agreement.
4. **Subscriber Systems.** Subscriber shall at all times maintain its own systems for accessing the Services and utilizing the End User Software. IngMar has no responsibility for the continued operation of such systems, or access to the Services or End User Software.
5. **Service Level and Support.**
  - 5.1. **Service Level.** Subject to the terms and conditions of this Agreement, IngMar will use commercially reasonable efforts to make the Services available for Subscriber's use 99.5% of each calendar month, based upon a 720 hour month, less scheduled downtime. IngMar makes no other representation or warranty of any kind with respect to availability of the IngMar Materials, the use of the End User Software, the compatibility of the Services with any third party software or the compatibility of the End User Software with anything other than the hosting device operating systems and versions associated therewith. To the extent IngMar does not comply with the availability provision of this Section, IngMar will offer a credit to Subscriber of ten (10%) percent of the following calendar month invoice. IngMar has no other obligation to issue any credit for downtime of the Services or inoperability of the End User Software.
  - 5.2. **Support.** Subject to payment of all Fees, IngMar will make the Maintenance Services available during its then-current normal business hours. Such technical support shall include, but is not limited to, troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Services in accordance with the Documentation. Subscriber shall report problems with the Services (each such report, a "**Service Request**") as soon as practicable for entry into IngMar's support tracking system.
  - 5.3. **Fixes.** As part of Maintenance Services, IngMar shall make commercially reasonable efforts to provide Fixes for Errors identified in a Service Request in accordance with the Response Time, Effort Level, and Escalation Path (as defined in the Service Levels) guidelines outlined below for the applicable Severity Levels (as defined in the Service Levels) as identified in the chart attached hereto as Exhibit A (together, the "**Service Levels**"). IngMar's obligations with respect to Service Levels are contingent upon Subscriber: (i) devoting an appropriate level of effort to resolving the Error as is required of IngMar, (ii) responding to requests made by IngMar within the applicable Response Time (including the timely provision of access to the Software), and (iii) assigning its most qualified personnel to help IngMar address the Error.

- 5.4. **Exclusions.** IngMar shall have no obligation to Subscriber to the extent any Software is adversely affected by:
- i. use of the Services in combination with other software, equipment or communications networks that are not referenced in the Documentation or otherwise approved in writing by IngMar;
  - ii. any modification to the operating environment that is made other than by or at the direction of IngMar, or with notification to IngMar and appropriate testing;
  - iii. any modification to Subscriber's data structure to the extent interoperable with the Services made without reasonable notice to IngMar;
  - iv. viruses or other malware introduced through no fault of IngMar;
  - v. use of the Services other than as permitted by IngMar; or
  - vi. Subscriber's failure to perform Subscriber responsibilities in accordance with this Maintenance Agreement.
- 5.5. **Data Backup.** IngMar will exert commercially reasonable efforts to maintain any Subscriber Data hosted by IngMar pursuant to the Services. EXCEPT AS MAY BE CAUSED BY IngMar'S NEGLIGENCE OR WILFUL MISCONDUCT, IngMar HAS NO OBLIGATION OR LIABILITY OTHER THAN PURSUANT TO THE MASTER SERVICES AGREEMENT FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF SUBSCRIBER DATA.
6. **Fees; Payment Terms.**
- 6.1. **Fees.** Subscriber shall pay IngMar the fees set forth on the Order Form ("Fees").
- 6.2. **Taxes.** All Fees and other amounts payable by Subscriber under this Agreement are exclusive of taxes and similar assessments. Subscriber is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Subscriber hereunder, other than any taxes imposed on IngMar's income.
- 6.3. **Payments.** Subscriber shall make all payments hereunder in US dollars. Except as provided herein, Fees are non-refundable.
7. **Intellectual Property Rights.**
- 7.1. **Services and IngMar Materials.** All right, title and interest in and to the Services, End User Software and IngMar Materials, including all Intellectual Property Rights therein, are and will remain with IngMar. Subscriber has no right, license or authorization with respect to any of the Services, End User Software or IngMar Materials. All other rights in and to the Services, End User Software and IngMar Materials are expressly reserved by IngMar.
- 7.2. **Subscriber Data.** As between Subscriber and IngMar, Subscriber is and will remain the sole and exclusive owner of all right, title and interest in and to all Subscriber Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 7.3.
- 7.3. **Consent to Use Subscriber Data.** Subscriber hereby irrevocably grants all such rights and permissions in or relating to Subscriber Data: (a) to IngMar as necessary or useful to perform the Services; and (b) to IngMar as are necessary or useful to enforce this Agreement and exercise and perform its rights and obligations hereunder.
8. **Term and Termination.**
- 8.1. **Term.** The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect as set forth on the Cover Sheet or the relevant statement of work (the "Term"). To the extent this Agreement is renewable, it shall automatically renew absent written notice of termination by Subscriber no less than ninety (90) days prior to its expiration date.
- 8.2. **Termination for Cause.** In addition to any other express termination right set forth elsewhere in this Agreement or the Master Agreement, IngMar may terminate this Agreement, effective on written notice to Subscriber, if Subscriber fails to pay any undisputed amount when due hereunder, and such failure continues more than thirty (30) days after IngMar's delivery of written notice thereof. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts

as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

- 8.3. Refund of Fees Upon Termination. Only if Subscriber is terminating this Agreement for cause as set forth in Section 8.2, shall IngMar be obligated to refund any prepaid Fees calculated from the effective date of termination to the end of the then-current term.
- 8.4. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate; IngMar shall immediately cease all use of any Subscriber Data or Subscriber's Confidential Information and (i) return to Subscriber, or at Subscriber's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Subscriber Data or Subscriber's Confidential Information; (ii) if requested within ninety (90) days of cancellation, provide Subscriber with a file of Subscriber Data within a commercially reasonable period of time and (iii) permanently erase all Subscriber Data and Subscriber's Confidential Information from all systems IngMar directly controls. Subscriber shall immediately cease all use of any Services or IngMar Materials and (i) return to IngMar, or at IngMar's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any IngMar Materials or IngMar's Confidential Information; and (ii) permanently erase all IngMar Materials and IngMar's Confidential Information from all systems Subscriber directly controls. IngMar may disable all Subscriber and Named User access to the Services and IngMar Materials.

## 9. Representations and Warranties.

- 9.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that: it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 9.2. Additional IngMar Representations and Warranties. IngMar represents and warrants that the Services and End User Software will perform substantially in accordance with the IngMar Materials. IngMar further represents, warrants and covenants to Subscriber that when used by Subscriber in accordance with this Agreement, no Services or End User Software as delivered by IngMar does or will: infringe, misappropriate or otherwise violate any United States intellectual property right of any third party.
- 9.3. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, ALL SERVICES AND IngMar MATERIALS ARE PROVIDED "AS IS" AND INGMAR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND INGMAR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, , AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, INGMAR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR INGMAR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

## 10. Infringement Indemnification.

- 10.1. IngMar Indemnification. IngMar shall indemnify, defend and hold harmless Subscriber from and against any and all Losses incurred by Subscriber arising out of or relating to any claim, suit, action or proceeding (each, an "Action") by a third party that the Services, End User Software or IngMar Materials or Subscriber's use of the Services, End User Software, or IngMar Materials (excluding Subscriber Data) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to

any: access to or use of the Services, End User Software or IngMar Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by IngMar; modification of the Services, End User Software or IngMar Materials; or failure to timely implement any modifications, upgrades, replacements or enhancements made available to Subscriber by or on behalf of IngMar.

- 10.2. Subscriber Indemnification. Subscriber shall indemnify, defend and hold harmless IngMar and its officers, directors, employees, agents, successors and assigns from and against any and all Losses incurred by such indemnitee in connection with any Action by a third party that arises out of or relates to any: Subscriber Data or any other materials or information provided solely by or on behalf of Subscriber or any Named User; or breach of any of its representations, warranties, covenants or obligations under this Agreement. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any Subscriber Data or any other materials or information developed by Subscriber or any Named User at the direction of IngMar.
- 10.3. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified. The party seeking indemnification shall cooperate with the other party at the indemnifying party's sole cost and expense. The indemnifying party shall have the right to take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same.
- 10.4. Mitigation. If any of the Services, End User Software or IngMar Materials are, or in IngMar's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Subscriber's or any Named User's use of the Services, End User Software or IngMar Materials is enjoined or threatened to be enjoined, IngMar may, at its option and sole cost and expense: obtain the right for Subscriber to continue to use the Services and IngMar Materials as contemplated by this Agreement; modify or replace the Services, End User Software and/or IngMar Materials, in whole or in part, to avoid infringement and make the Services, End User Software and/or IngMar Materials (as so modified or replaced) non-infringing; or by written notice to Subscriber, terminate this Agreement and require Subscriber to immediately cease any use of the Services, End User Software and/or IngMar Materials.

THIS SECTION SETS FORTH SUBSCRIBER'S SOLE REMEDIES AND INGMAR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND INGMAR MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

#### 11. **Limitations of Liability.**

OTHER THAN AS SET FORTH HEREIN, IN NO EVENT WILL INGMAR BE LIABLE 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, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

OTHER THAN AS SET FORTH HEREIN, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY 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 LICENSE FEES RECEIVED BY INGMAR OR PAID BY SUBSCRIBER FOR THE PRECEDING ONE YEAR PERIOD. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION DOES NOT APPLY TO INGMAR'S INDEMNIFICATION OBLIGATIONS HEREIN.

12. **Force Majeure**. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate

power or telecommunications or transportation. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

13. **General Indemnification.** Each Party shall indemnify and hold harmless the other party and its officers, shareholders, and the directors, agents, and employees thereof (collectively, the “**Indemnified Parties**” and individually, an “**Indemnified Party**”) from and against all losses, claims, damages, expenses, costs, and attorneys' fees because of any injury to person, life, or property or injury resulting in the death of any person or persons, arising out of or in connection with the performance of this Agreement or progress of the work to be done hereunder, including those alleged to be the result of the negligence of one or more Indemnified Parties. In the event one or more of the Indemnified Parties is made a party to any suit or litigation (whether or not the Indemnified Parties are the only parties alleged to be negligent) because of injury or damage or alleged injury or damage to person, life, or property or injury or alleged injury resulting in the death of any person or persons arising out of or in connection with the performance of this Agreement or progress of the work to be done hereunder, the indemnifying Party shall defend such action on behalf of the Indemnified Party or Parties by counsel chosen by the indemnifying Party, and shall pay all damages, costs, expenses, and attorneys' fees incurred in connection with such defense. If judgment shall be obtained, then the indemnifying Party shall pay and satisfy such judgement to the extent that the indemnifying Party is found liable. If a claim shall be allowed in any of such proceedings against any of the Indemnified Parties or a settlement is reached, the indemnifying Party shall pay and satisfy such claim, or settlement.
14. **Sale of Hardware.** To the extent that any Order Form references hardware to be sold by IngMar to Subscriber for use in connection with the IngMar Materials, the following terms apply:
  - 14.1. **PRICE:** Subscriber’s order for goods is accepted subject to delivery, when available, at IngMar’s price, point of delivery, payment and other standard terms in effect at date of shipment. Subscriber shall pay all taxes, excises, fees, or charges with respect to the sale and transportation of all goods shipped to Subscriber. In the case of multiple or future deliveries, prices are subject to revision by IngMar at any time. If IngMar desires to revise the price, point of delivery or terms of payment for the goods hereunder, but is restricted or prevented from doing so by reason of any governmental law, regulation, order or action, IngMar shall have the right to terminate this contract for sale of goods, with respect to any goods not then delivered, by notice to the Subscriber.
  - 14.2. **BUYER’S CREDIT:** IngMar reserves the right to terminate this contract or to suspend further deliveries in the event Subscriber fails to pay in full for any shipment when same becomes due. If at any time, in IngMar’s opinion, Subscriber’s credit is limited, IngMar shall have the right to require payment in advance, cash on delivery, or satisfactory security for future goods delivered.
  - 14.3. **SHIPMENT:** IngMar will arrange for shipments to Subscriber as nearly in accordance with Subscriber’s shipping instructions as permitted by IngMar’s ability to schedule manufacturing and shipping. IngMar shall not be responsible to Subscriber for any failure to meet Subscriber’s shipping instructions. On sales made F.O.B. delivered basis, no allowances for shortage or damage will be made by IngMar unless Subscriber furnishes acknowledgement from the carrier that same occurred in transit. On sales F.O.B. IngMar’s plant or warehouse, Subscriber will, in the event of loss or damage in transit, file its own claim with carrier.
  - 14.4. **RETURN POLICY:** IngMar will accept and will provide a refund or credit for the full purchase price of merchandise returned in new and saleable condition within 60 days of delivery. A refund or credit may be issued upon receipt and evaluation of merchandise. Please contact the Client Success Team for a Service Request Order (SRO) prior to returning any items. SRO numbers are valid for 60 days. All returned merchandise is subject to a 15% restocking fee. Purchased educational content such as training and scenarios is non-refundable.
  - 14.5. **HARDWARE WARRANTIES:** All products are generally guaranteed to be free of defects for a period of one (1) year from date of delivery. The defect shall be a result of workmanship or material. The warranty period will not exceed a period of one (1) year, except if an extended warranty has been purchased. Defects caused by misuse, mishandling, tampering, or by modifications not authorized by IngMar are excluded from this warranty. IngMar is not responsible for deterioration wear or abuse. In any case, IngMar will not be liable beyond the original selling price. In order to obtain coverage under this warranty, IngMar must be promptly notified, in writing, upon detection of the defective goods. This notification must be received by IngMar no later than two (2) weeks following expiration of this warranty.

THE STATED EXPRESSED WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS, WHETHER EXPRESSED OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

- 14.6. **LIMITATION OF LIABILITY:** IngMar shall not be liable for, and Subscriber assumes responsibility and agrees to indemnify seller for all personal injury and property damage resulting from the handling, possession, use or resale of any goods, whether used alone or in combination with other goods. In no event shall IngMar be liable for, and Subscriber shall indemnify IngMar for, any incidental, consequential or other similar damages, or noncompliance with regulations of foreign governments. BUYER'S EXCLUSIVE REMEDY, WHETHER IN TORT, CONTRACT, OR OTHERWISE SHALL BE FOR MONEY DAMAGES WHICH SHALL NOT EXCEED THE PRICE FOR THE GOODS IN RESPECT TO WHICH THE CLAIM IS MADE.
- 14.7. **SALE OF GOODS OUTSIDE THE UNITED STATES:** The rights and obligations of the Subscriber and IngMar shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather, their rights and obligations shall be governed by the laws of the Commonwealth of Pennsylvania, including its provisions of the Uniform Commercial Code. Regardless of terms of shipment, if Subscriber is located in a country other than the United States, title to and risk of loss of goods shall pass to Subscriber upon clearance through customs in country of origin.
- 15. Miscellaneous.**
- 15.1. **Further Assurances.** Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- 15.2. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 15.3. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 15.4. **Entire Agreement.** This Agreement and the Contract constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 15.5. **Assignment.** Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent, which consent may be given or withheld in the party's sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving either party (regardless of whether Subscriber or IngMar is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which the other party's prior written consent is required. No delegation or other transfer will relieve either party of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 15.6. **Amendment and Modification; Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15.7. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or



render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- 15.8. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Pennsylvania in each case located in Pittsburgh, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 15.9. Counterparts; Electronic Execution. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Exhibit A – Service Levels**

<b>Severity Level</b>	<b>Response Times</b>	<b>Effort Level and Escalation Path</b>
<p><b>Critical</b></p> <p>An error for which there is no work-around, which causes the design making capability of the Software to be unavailable and which requires immediate attention.</p> <p>Critical issues must be reported by phone to initiate an appropriate response to a Critical error. Requests initiated by email or web interface are logged without a Severity Level until reviewed by IngMar and validated as a higher priority.</p>	<p>During regular business-hours, if support personnel are not reached by phone, IngMar will respond to a Critical support voice message as soon possible by a return communication to Subscriber to validate receipt of the critical support call and begin the process of addressing the issue.</p> <p>IngMar will respond to Subscriber within 4 business hours with a status update of the reported critical issue and provide further updates for unresolved issues on agreed upon intervals until the issue is resolved. Subscriber is expected to respond to a IngMar inquiry or request within three hours.</p>	<p>IngMar will make reasonably diligent efforts to resolve the error on a 24x7 basis or as otherwise agreed by the Parties. A request shall be escalated to IngMar management if a Fix is not provided within 1 business day of IngMar's receipt of the Subscriber report of an error in this category.</p>
<p><b>High</b></p> <p>An error other than a Critical Severity Level error for which there is no work-around that results in a loss of access to the Software or that causes features of the Software to not work which limits access or use of the Software causing the Subscriber to miss required business deadlines.</p> <p>High severity errors must be reported by phone to initiate a High severity appropriate response. Requests initiated by email or web interface are logged without a Severity Level until reviewed by IngMar and validated as a higher priority.</p>	<p>IngMar will respond to the Subscriber within 1 business day and will update the Subscriber at least every other day. Subscriber will respond to a IngMar inquiry or request within 1 business day.</p>	<p>IngMar will make reasonably diligent efforts to resolve the error during normal business hours. A request shall be escalated to IngMar management if a Fix is not provided within 3 business days of IngMar's receipt of the Subscriber report of an error in this category.</p>
<p><b>Medium</b></p> <p>An error other than a Critical or High Severity Level error that has a material impact on the functionality of the Software that results in an inconvenient use of or access to the system (e.g., a feature is not working as documented but a workaround is available and business functions are not materially impaired).</p>	<p>IngMar will respond to the Subscriber within 2 business days.</p>	<p>IngMar will reasonably attempt to resolve the error during normal business hours.</p>
<p><b>Low</b></p> <p>An error other than a Critical, High, or Medium Severity Level error that is typically cosmetic and does not degrade the use of the system.</p>	<p>IngMar will respond to the Subscriber within 3 business days or as otherwise agreed by the Parties.</p>	<p>IngMar will reasonably attempt to resolve the error during normal business hours.</p>
<p><b>Feature Request</b></p> <p>A service request for an enhancement or new functionality.</p>	<p>N/A</p>	<p>The request will be evaluated for future product enhancement on a case by case basis.</p>

