

## Standard Terms and Conditions for Licenses and Services

Effective Date: March 1, 2017

These Standard Terms and Conditions for Licenses and Services (these “**Standard Terms**”) are incorporated into the Order for Licenses and Services executed by you (“**Customer**”) and Vertafore, Inc., a Delaware corporation, on behalf of itself and its affiliates (collectively, “**Vertafore**”).

CUSTOMER AGREES THAT THESE STANDARD TERMS ARE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY CUSTOMER. BY EXECUTING THE ORDER FOR LICENSES AND SERVICES, OR BY DOWNLOADING, COPYING, INSTALLING OR USING A VERTAFORE SOLUTION, CUSTOMER AGREES TO BE BOUND BY THESE STANDARD TERMS AND ACCEPTS ALL OF THE PROVISIONS OF THESE STANDARD TERMS. THESE STANDARD TERMS ARE ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT INSTALLS OR USES A VERTAFORE SOLUTION AND ANY PERSON OR ENTITY (E.G., A SYSTEM INTEGRATOR, CONSULTANT OR CONTRACTOR) THAT INSTALLS OR USES A VERTAFORE SOLUTION ON ANOTHER PERSON’S OR ENTITY’S BEHALF.

**1. Introduction.** Vertafore develops, licenses and provides proprietary information technology, information solutions and related services for the insurance industry. Customer has purchased a License or Services by submitting an Order for Licenses and Services (the “**Order**”) to Vertafore. The Order is effective when signed by authorized representatives of Customer and Vertafore or when submitted by Customer and acknowledged and accepted by Vertafore whether or not signed by the parties (the “**Order Effective Date**”). Any terms and conditions provided by Customer on a purchase order or other document not expressly incorporated into the Order and these Standard Terms shall not be valid.

**2. Solution Type; License Type.** Vertafore provides both In-House Software and Online Services.

**2.1. In-House Software.** **In-House Software** is delivered by Vertafore in object code form by electronic download or via a physical medium for loading on Customer’s systems for use by its Authorized Users.

**2.2. Online Services.** **Online Services** are delivered by allowing Customer’s Authorized Users remote access to Vertafore’s systems which host the object code. Licenses for Online Services are referred to as “**Subscriptions**”.

**2.3. Start Date.** Unless otherwise explicitly set forth in an Order or a Statement of Work, the license (as defined in Section 10.2) will begin (i) if In-House Software is delivered in object code form by electronic download, upon delivery of e-mail instructions and access to the FTP site for download, (ii) if In-House Software is delivered on a physical medium, F.O.B. shipping point; (iii) for Online Services, when logon access codes are delivered by Vertafore; or (iv) in the event none of the foregoing has occurred, one hundred eighty (180) days from the Order Effective Date (in each case, the “**Start Date**”).

**2.4. Documentation.** Technical and user documentation describing the use and operation of the In-House Software and the Online Services, including any minimum hardware and software requirements necessary for recommended operational performance, and other information (the “**Documentation**”) may be included with the In-House Software or Online Services in print and/or electronic media.

**2.5. User License Type.** The method of determining the number of Customer employees permitted to use a Vertafore Solution (“**Authorized Users**”) is Named User, unless otherwise specified in an Order. In a “**Named User**” license, each Named User license permits a single named user to access a Vertafore Solution. Each named user must have a distinct log on ID and a separate Named User license to be an Authorized User, and licenses and log on IDs may not be shared among users. If a Customer account contains multiple databases, a distinct Named User license will be required for access to each database. Fees for Vertafore Solutions are based on the number of Authorized Users purchased under an Order for licenses and are not based on actual usage. Customer agrees and acknowledges that each Authorized User will be identified by a unique email address and password (“Login”) and that a Login may only be used by one (1) individual. Customer on behalf of itself and its Authorized Users agrees that such persons will not share any Logins among multiple individuals or with any unauthorized users. Customer on behalf of itself and the Authorized Users, agrees to be responsible for maintaining the confidentiality of all Login information for Customer’s account.

**2.6. Vertafore Solutions.** The term “**Vertafore Solutions**” refers to the In-House Software, Online Services and Documentation licensed or received by Customer as may be further set forth on an applicable Order.

### **3. License Grant and Restrictions.**

**3.1. License Grant.** Subject to Customer’s compliance with the terms and conditions of these Standard Terms, including payment of all fees due hereunder, Vertafore grants to Customer a revocable, limited, non-exclusive, non-transferable license to use the Vertafore Solutions set forth in the applicable Order (each a “**License**”) solely in connection with Customer’s internal business operations in the United States and data processed by Customer’s Authorized Users for the Term. In the case of a Subscription, Customer may have the number of Authorized Users set forth on the Order access the Online Services and display and reproduce the Documentation (including by printing the electronic version) as reasonably required to permit the Authorized Users to exercise the rights expressly granted in this Section. In the case of In-House Software, the license shall permit Customer to (i) install and use applications solely on a designated number of servers, workstations, or computers set forth on an Order for access by the number of Authorized Users; (ii) reproduce a single copy of the In-House Software solely as reasonably necessary for customary back-up and disaster recovery purposes; and (iii) permit the Authorized Users to display and reproduce the Documentation (including by printing the electronic version) as reasonably required to permit the Authorized Users to exercise the rights expressly granted in this Section. Vertafore Solutions may include additional license terms in an end user agreement or other agreement, including click-to-agree licenses provided with the Vertafore Solution, which supplement these Standard Terms. Where updates, upgrades or product enhancements are provided from time to time for a Vertafore Solution, they are provided subject to the license terms applicable to such Vertafore Solution and any additional license terms included with such updates, upgrades or enhancements.

**3.2. License Restrictions.** Subject to the limited rights expressly granted herein, Vertafore reserve all rights, title and interest in and to the Vertafore Solutions and the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Customer is prohibited from: (i) copying, framing, mirroring, modifying, displaying, transferring, transmitting or otherwise distributing or providing the Vertafore Solution to any third party; (ii) creating derivative works from any Vertafore Solution; (iii) reverse engineering, decompiling or otherwise attempting to create human readable materials from the object code of the Vertafore

Solutions; (iv) allowing use of the Vertafore Solutions for any purpose not expressly permitted in these Standard Terms or an applicable Order hereunder; (v) using or exploiting the Vertafore Solutions to provide application hosting, business process outsourcing, service bureau, application service provider or any other similar or related services to any individual or entity; (vi) removing proprietary rights notices, asset tags, brand labels or marks placed on the Vertafore Solutions or any Equipment, Third Party Software or Third Party Content; (vii) attempting to circumvent or compromise the security features of the Vertafore Solutions or introducing any viruses, worms or other disabling code into the Online Services; or (viii) build a competitive product or service. Customer is solely responsible for obtaining the proper hardware and software necessary to operate the Vertafore Solutions as further described in the Documentation.

#### **4. Services.** Vertafore provides the types of services (collectively “**Services**”) set forth below.

**4.1. Support Services; Maintenance.** Support services are included in a Subscription for Online Services including Customer access to the Vertafore-hosted Customer database, IT services, database maintenance, frequent and automatic upgrades and bug fixes, bandwidth, limited storage and other hosting related services. Maintenance services (“**Maintenance**”) are purchased independently for In-House Software and include access to updates, upgrades, bug fixes and enhancements provided generally by Vertafore as well as applicable support services.

**4.2. Professional Services.** Vertafore also provides professional services (the “**Professional Services**”) related to the Vertafore Solutions which may include, for example, staff augmentation; installation and implementation of the Vertafore Solutions; data conversion and migration; creation of enhancements, customizations, and other services. Some Professional Services may require that Vertafore and Customer agree to a more comprehensive description than that contained in an Order. In such cases, the parties shall enter into a statement of work (each, a “**Statement of Work**”) containing such detailed terms. All Statements of Work shall be governed by these Standard Terms except as may be expressly set forth in the Order or the Statement of Work.

#### **5. Terms Applicable to All Services.**

**5.1. General.** Services performed by Vertafore may be performed by its own employees and or by Vertafore-approved subcontractors. The successful and timely rendering of the Services requires the good faith cooperation of Customer. Customer shall provide reasonable cooperation to Vertafore, including, without limitation, making available, as may be reasonably required or requested: (i) information concerning Customer’s business as it relates to the Services; (ii) qualified personnel of Customer; and (iii) sufficient access to Customer’s facilities and systems; provided that the foregoing shall be provided so as not to unreasonably disrupt Customer’s business.

**5.2. Acceptance.** Unless otherwise stated in a Statement of Work, the Services and all resulting deliverables shall be deemed accepted by Customer on payment or within ten (10) business days after performance, whichever occurs first. In no event will acceptance or payment be unreasonably withheld, conditioned or delayed. Additions or deletions to the number of resources or changes to the duration of performance under an existing Statement of Work or any similar amendment to such Order shall require the execution of a new Statement of Work.

**5.3. Customer Premises.** Vertafore’s personnel may perform certain Services at Customer’s premises from time to time as mutually agreed to by Vertafore and Customer. In such instances, Customer agrees to provide working space and facilities and any other services and materials Vertafore

or its personnel may reasonably request in order to perform such Services, and to take reasonable precautions to prevent injury to persons or property.

**6. Vertafore's Ownership.** As between Vertafore and Customer, Vertafore exclusively owns all right, title and interest in and to the Vertafore Solutions, all improvements or modifications made thereto and works based thereon, and all deliverables, software, materials, ideas, processes, methods and other works made or conceived by Vertafore in connection therewith, including but not limited to the performance of Services, including all intellectual property rights (including patents, trademarks and copyrights), proprietary rights (including trade secrets) and moral rights (including, rights of attribution and authorship) embodied in or relating to any of the foregoing throughout the world (collectively, the **"Vertafore Materials"**). Except for the limited license rights explicitly set forth herein and in any Order, no right, title or interest in or to the Vertafore Materials is granted or otherwise transferred to Customer.

**7. Equipment.** Unless otherwise expressly stated in an Order, equipment and hardware (the **"Equipment"**) required for the use of the Vertafore Solutions shall be obtained by Customer directly from third parties. In certain instances, Equipment may be ordered through Vertafore. Equipment ordered pursuant to an Order shall be installed by Customer or its designee in accordance with all installation guidelines from Vertafore or the manufacturer of the Equipment. Customer assumes full responsibility for such Equipment. Vertafore shall have no liability or responsibility or risk of loss with respect to any such Equipment or the delivery of any Equipment other than to assign to Customer, if assignable, any applicable manufacturers' warranties and remedies available from those original equipment manufacturers or distributors for whom Vertafore is an authorized reseller or representative.

**8. Third Party Materials.** The Vertafore Solutions may include software owned and/or licensed by third parties (the **"Third Party Software"**). Third Party Software shall be obtained by Customer either directly from its original third party licensor or from Vertafore. The Vertafore Solutions may also include content owned by third parties (the **"Third Party Content"**), such as content or libraries of electronic publications, manuals, guides, forms, newsletters, or other reference materials contained in products. Customer may use the Third Party Software and Third Party Content solely in conjunction with the applicable Vertafore Solutions subject to the Standard Terms and any terms and conditions required by the licensors of such Third Party Software and Third Party Content. Vertafore will pass through to Customer, to the fullest extent possible, any warranties and indemnities that Vertafore receives from licensors of Third Party Software and Third Party Content. In the event Vertafore provides Third Party Software or Third Party Content to Customer, Vertafore may provide Customer's contact information to the licensor of the Third Party Software or Third Party Content for such third party's use.

**9. Fees, Taxes & Payments.** Unless otherwise explicitly set forth in an Order or a Statement of Work, (i) all upfront or setup fees shall be due and payable within thirty (30) days of the Order Effective Date, and (ii) the monthly recurring fees set forth in an Order shall commence on the Start Date. Customer shall pay to Vertafore the applicable fees in accordance with any payment terms and schedules for payment set forth in each applicable Order. If no payment terms are specified, fees and other charges shall be due and payable by Customer within thirty (30) days of the date of Vertafore's invoice. Amounts not paid when due shall bear interest at a rate of one and one-half percent (1.5%) per month (18% per annum) or the maximum rate permitted by law, whichever is lowest. Customer's failure to pay any amount within thirty (30) days of the due date may result in the suspension of the Services related to Customer's failure to pay and Vertafore's obligation to provide such Services shall cease until such time as Customer becomes current on its payment of the applicable fees (including all past due

amounts and applicable late payment charges and interest). In the event of a default in the payment of an invoice, Customer will be responsible for all of Vertafore's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. Customer shall pay all taxes, however and by whatever authority levied as a result of these Standard Terms (except for taxes on the income of Vertafore). To the extent that Vertafore is required to collect taxes on behalf of a taxing authority, such taxes shall be in addition to the prices set forth in the applicable Order and may be invoiced separately. Except as may be specifically set forth in an Order, Vertafore may change the charges for our Vertafore Solutions and Services upon sixty (60) days' notice to Customer. Customer must pay additional charges if Customer exceeds the scope of use specified in any Order based on the rates specified on the Order and Vertafore's standard pricing, whichever is greater. Vertafore may change the charges if Customer's mergers, acquisitions or divestitures give additional access to the Vertafore Solutions, Services, or data.

## **10. Term and Termination.**

**10.1. Term.** These Standard Terms shall continue hereunder and remain in effect for so long as the applicable Order is in effect. Vertafore may terminate any Order or Statement of Work in whole or in part on six (6) months' written notice to the Customer in relation to a Vertafore Solution or Service which is being discontinued by Vertafore.

**10.2. Licenses.** An Order may specify a term for a license as either perpetual (a "**Perpetual License**") or for a set term (a "**Term License**"). Subscriptions are Term Licenses. In-House Licenses may be Perpetual or Term Licenses as specified in an Order and if not specified are Term Licenses. Term Licenses shall be for an initial term of one (1) year from the Order Effective Date (the "**Initial Term**"). After the Initial Term of a Term License, the agreement shall renew for additional one (1) -year terms (each, an "**Renewal Term**") unless Customer provides notice of its intention not to renew by providing written notice at least sixty (60) days' prior to the expiration of the Initial Term or any Renewal Term (the Initial Term and each Renewal Term, the "**Term**"). If an Order includes an implementation, and that implementation is not scheduled within twelve (12) months after the Order Effective Date, then the Order shall expire and all payments made under the Order shall be non-refundable.

**10.3. Maintenance Services.** For In-House Vertafore Solutions, Maintenance may be terminated separately from the applicable Licenses. Unless otherwise specified in an Order, Maintenance for In-House Software shall commence on the Order Effective Date and continue for the Initial Term. After the Initial Term, Maintenance shall renew for an Additional Term unless Customer provides notice of its intention not to renew by providing written notice at least sixty (60) days' prior to the expiration of the Initial Term or any Additional Term. Vertafore shall have the right to terminate Maintenance at any time for any reason or no reason upon one hundred eighty (180) calendar days' prior written notice to Customer. The term of Maintenance for additional Licenses for a Vertafore Solution shall be the same as the term for Maintenance already purchased Licenses. If Customer terminates and then requests Vertafore to reinstate Maintenance for any In-House Software, Customer agrees that: (i) Vertafore may reinstate Maintenance at its sole discretion; and (ii) reinstatement of Maintenance will require Customer to pay Maintenance for the prior period of inactivity before reinstatement at Vertafore's then-current Maintenance fees.

**10.4. Termination for Breach.** If either party materially breaches any obligation hereunder or, in the case of Customer, its scope of licensed use, the non-breaching party may provide a written notice specifying the nature of the breach and demand that the breaching party cure the breach. The breaching party shall have fifteen (15) business days from receipt of such notice to cure the breach. If the breach is

not cured within such period, the non-breaching party may terminate these Standard Terms by providing written notice of termination. Any attempt to liquidate operations or seek or obtain protection from creditors shall be a material breach subject to the foregoing provisions. Upon termination for breach, the applicable Order shall automatically terminate.

**10.5. Effect of Termination.** Upon termination of an Order for any reason, Customer shall promptly discontinue use of all Vertafore Solutions licensed to Customer pursuant to the applicable Order, return all copies of such Vertafore Solutions to Vertafore or destroy all copies and certify such destruction to Vertafore and immediately pay all amounts then due and payable to Vertafore.

**10.6. Survival.** Sections 6, 8, 9, 10.5, 10.6, 11, 12.3, 12.4, and 13 through 21 shall survive the termination or expiration of these Standard Terms for any reason.

**10.7. Injunctive Relief.** Each party stipulates and agrees that: (i) Vertafore will suffer irreparable harm in the event of any breach by Customer of the provisions of Section 3 or Section 11; and (ii) Customer will suffer irreparable harm in the event of any breach by Vertafore of the provisions of Section 11 and that monetary damages will be inadequate to compensate the non-breaching party for any such breach. Accordingly, each party stipulates and agrees that, in the event of a breach or threatened breach (a) by Customer of the provisions of Section 3 or Section 11 or (b) by Vertafore of the provisions of Section 11, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, the non-breaching party will be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach or threatened breach.

## **11. Confidentiality.**

**11.1. “Confidential Information”** means all of the information, data and software furnished by one party to the other in connection with these Standard Terms and any Order. Without limiting the generality of the foregoing, the parties agree that “Confidential Information” will specifically include: (i) any data provided by Customer to Vertafore or input into the Online Services by Customer in connection with Customer’s use of the Online Services hereunder (collectively, “**Customer Data**”); (ii) the Vertafore Solutions; and (iii) all passwords provided by Vertafore allowing Customer access to an Online Services. Customer Data shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

“Confidential Information” does not include information which: (a) may be or has been publicly disclosed by the party disclosing the information either prior to or subsequent to the receipt of such information by the receiving party; (b) is or becomes generally known in the trade through no fault of the receiving party; (c) has been lawfully disclosed to the receiving party by a third person who has lawfully acquired the Confidential Information; or (d) was independently developed by the receiving party without use of the Confidential Information; provided, however, that the receiving party hereby stipulates and agrees that, if it seeks to disclose, display, divulge, reveal, report, publish or transfer, for any purpose whatsoever, any Confidential Information, such receiving party will bear the burden of proving that any such information was independently developed or is or became publicly available without any such breach. A party’s failure to mark any Confidential Information as confidential, protected or proprietary will not affect its status as Confidential Information under these Standard Terms.

As a material inducement to the other party to disclose Confidential Information, each party agrees that it will not at any time directly by itself or indirectly through any agent or employee, except with the prior written consent of the other party (x) reproduce, distribute, transmit, publicly display, modify, create derivative works based upon, or disclose, deliver, display, divulge, reveal, report, publish or transfer to any person or entity, for any purpose whatsoever, any Confidential Information of the other party or (y) use Confidential Information of the other party for any purpose other than in connection with the performance of its obligations or the exercise of its rights pursuant to these Standard Terms. Each party further agrees to handle the Confidential Information of the other party in the same manner that the party handles its own most confidential information and, in any event, to take all steps reasonably necessary to preserve the confidentiality of Confidential Information, including without limitation adopting appropriate confidentiality policies, inserting appropriate confidentiality terms in agreements with all employees and subcontractors, and maintaining Confidential Information in a manner designed to ensure that it will not be used or disclosed improperly.

**11.2. Customer Data.** To the extent it hosts Customer Data from Customer, Vertafore agrees to implement and maintain reasonably appropriate safeguards and security measures designed to meet the requirements of all laws and regulations of the United States and any state thereof applicable to Vertafore's use, reuse, non-disclosure and protection of such Customer Data, including the Gramm-Leach-Bliley Act.

**11.3. De-identified Aggregate Data.** Notwithstanding any other provision herein, Vertafore shall have the right to access, compile, and aggregate Customer Data into de-identified data that does not include (i) any personally identifiable information of any employee, enrollee, subscriber, beneficiary, or other individual; or (ii) the identity of an employer, trade group, insured, insurer or any other entity ("**De-identified Aggregate Data**"). Vertafore may use or distribute such De-Identified Aggregate Data for any lawful purpose, including without limitation analytics, benchmarking and research purposes. Without affecting Customer's rights in and to the Customer Data, Vertafore shall own all De-identified Aggregate Data.

**11.4. Notification Obligation.** A party will promptly notify the other party if it becomes aware of any unauthorized use or disclosure of any Confidential Information of the other party and, at the other party's request, will take such action as may be reasonably necessary and legally permissible to terminate or remedy any unauthorized use or disclosure that results from any act or omission of the party or any of its employees, subcontractors or agents. If a receiving party is compelled by a court or other body of competent jurisdiction to disclose the Confidential Information, to the extent legally permissible the receiving party shall inform the disclosing party by written notice and shall provide reasonable assistance in obtaining and enforcing a protective order or other appropriate means of safeguarding the Confidential Information required to be disclosed. The receiving party may then disclose only so much of the Confidential Information as is legally required to be disclosed.

**11.5. Return of Confidential Information.** If these Standard Terms are terminated by either party or expire pursuant to their terms, then all Confidential Information of each party shall be returned to the disclosing party and Customer shall erase and remove all copies of the applicable Vertafore Solutions located on Customer's computers or servers. In the event Vertafore maintains any Customer Data, such copies will be destroyed in accordance with Vertafore's back-up policies and procedures, provided Vertafore shall maintain the confidentiality of such Customer Data until such Customer Data has been destroyed.

## **12. Warranties and Warranty Limitations; Indemnification.**

**12.1. General Representations and Warranties.** Each party represents and warrants that it has the legal power and authority to enter into these Standard Terms and each Order. Customer represents and warrants that it has not falsely identified itself nor provided any false information to gain access to the Vertafore Solutions and that Customer's billing information is correct.

**12.2. Performance Warranties.** Vertafore warrants to Customer that: (i) the material functions of the In-House Software licensed under an Order shall perform substantially as described in the Documentation for such In-House Software on the date the applicable Order is executed and for ninety (90) calendar days thereafter; (ii) the Online Services shall operate as described in the applicable Documentation for such Online Services; and (iii) the Professional Services shall be performed in a workmanlike manner. Customer's sole remedy and Vertafore's only liability for breach of a warranty contained in Section 12.2 shall be, with respect to the Vertafore Solution, to repair or replace the Vertafore Solution to bring it into compliance with its applicable warranty, and, with respect to the Services, to re-perform the Services to bring them into compliance with the applicable warranty; provided, however, that Customer shall give written notice to Vertafore within thirty (30) days after discovering any warranty breach and during normal business hours. Notwithstanding anything in this Section 12 to the contrary, Vertafore shall have no liability or obligation under this Section 12 with respect to any Claim because of any of the following: (i) Customer's or a third party's software, hardware or network; (ii) Customer's actions or inaction (other than proper use of the Vertafore Solution or Service) such as failing to follow the usage instructions or Documentation or adhering to the minimum recommended technical requirements; (iii) changes Customer or any third party makes to any Vertafore Solution or Service; (iv) Customer's failure to implement and maintain proper and adequate backup and recovery systems; (v) Customer's failure to install updates Vertafore has provided to Customer; (vi) Vertafore's compliance with designs, data, instructions or specifications provided by Customer; (vii) the combination, operation or use of the Vertafore Solution with other hardware or software where the Vertafore Solution would not by itself be infringing; or (viii) other causes not attributable to Vertafore.

**12.3. Warranty Limitations.** Vertafore shall not be responsible in any manner under the warranties described in this Section 12 or in any Order for actual or alleged breaches arising out of: (i) causes external to the Vertafore Solutions including Equipment, Third Party Software, Third Party Content and third party telecommunications or data lines; (ii) Customer's use of the Vertafore Solutions in a manner or on Equipment that does not conform to Vertafore's specifications; (iii) any defect, infringement or non-conformity not reported by Customer in accordance with these Standard Terms; (iv) any use of the Vertafore Solutions in combination with or as part of any products or equipment of any third party, including Third Party Software or Third Party Content; (v) any modifications to the Vertafore Solution made by any party other than Vertafore or Customer acting at Vertafore's express direction; or (vi) Customer's breach of these Standard Terms. Vertafore does not warrant that the Vertafore Solutions will meet Customer's requirements or will achieve any particular result. Without limiting the generality of the exclusions set forth in this Section 12.3, and except as otherwise provided in these Standard Terms, Customer shall be exclusively responsible for, and Vertafore makes no warranty or representation with respect to: (a) determining whether the Vertafore Solution or the Equipment will achieve the results desired by Customer; (b) selecting, procuring, installing, operating, and maintaining Equipment or Third Party Software required to satisfy Customer's requirements; (c) training Customer's personnel in computer operations, other than such Vertafore-provided training as may be expressly set forth in an Order; (d) ensuring the accuracy of any input data used with the Vertafore Solutions, including (without limitation) data input to the Vertafore Solutions in conjunction



with any data conversion services provided by Vertafore; (e) establishing adequate data backup provisions for backing up Customer Data with respect to In-House Software; (f) establishing adequate operational backup provisions (e.g., alternate manual operation plans) in the event of a defect or malfunction that impedes the anticipated operation of the Vertafore Solution or the Equipment; or (g) whether Customer's access will at all times be uninterrupted or error-free or secure.

#### **12.4. Indemnification.**

**12.4.1. By Vertafore.** Subject to Sections 12.2 and 12.3, Vertafore shall defend, indemnify, and hold harmless Customer and its permitted assigns from and against any and all losses, liabilities, claims, damages, actions, suits, proceedings, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees) (collectively, "**Claims**") arising out of or in connection with any third party claim that the Vertafore Solutions, in the form delivered hereunder and when used by Customer in the manner authorized by each License and as described in the applicable Documentation, infringes or misappropriates the intellectual property rights of a third party.

**12.4.2. By Customer.** Customer shall defend, indemnify, and hold harmless Vertafore, and its permitted assigns, from and against any and all Claims (including any and all costs and expense of responding to any subpoena, discovery request or any other litigation-related or similar expense), arising out of or in connection with the use of the Vertafore Solutions or the results thereof by Customer, its employees, agents and contractors.

**12.4.3. Indemnification Procedure.** Upon the assertion of any Claim or the commencement of any suit or proceeding against one party (the "**Indemnified Party**") by any third party that may give rise to an indemnification obligation or other liability of the other, indemnifying party under this Section (the "**Indemnifying Party**"), the Indemnified Party shall promptly notify the Indemnifying Party of the existence of such Claim and shall give the Indemnifying Party the option, determined in the Indemnifying Party's sole reasonable discretion, of defending and/or negotiating a settlement of the Claim with counsel of its own selection in accordance with this Section. The Indemnified Party shall provide, at the Indemnifying Party's cost, all reasonable cooperation requested by the Indemnifying Party in connection with such Claim and its defense or settlement.

**12.4.4. Exclusive Remedy.** This Section 12.4 states the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy against, the other party for any Claims described in this Section.

**13. DISCLAIMERS.** EXCEPT AS EXPLICITLY PROVIDED IN SECTION 12 ABOVE, VERTAFORE MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THE VERTAFORE SOLUTIONS OR THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. VERTAFORE AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT THE VERTAFORE SOLUTIONS AND/OR THE SERVICES PROVIDED HEREUNDER SHALL BE UNINTERRUPTED OR ERROR-FREE. FURTHER: (I) BECAUSE VERTAFORE IS NOT THE ORIGINAL MANUFACTURER OF THE EQUIPMENT OR THIRD PARTY SOFTWARE OR THIRD PARTY CONTENT; AND (II) IF CUSTOMER IS AN AUTHORIZED ONLINE SERVICES LICENSEE, THE EQUIPMENT, NETWORKING AND TELECOMMUNICATIONS

INFRASTRUCTURE USED BY CUSTOMER TO ACCESS THE VERTAFORE SOLUTION IS THE SOLE RESPONSIBILITY OF CUSTOMER; VERTAFORE DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, MAINTENANCE OR PERFORMANCE OF THE EQUIPMENT, THIRD PARTY SOFTWARE, THIRD PARTY CONTENT AND THE DELIVERY AND PERFORMANCE OF THE VERTAFORE SOLUTION IN CONNECTION WITH THE ACCESS BY CUSTOMER TO THE ONLINE SERVICES.

**14. LIMITATIONS OF LIABILITY.** EXCEPT WITH RESPECT TO VERTAFORE'S INDEMNIFICATION OBLIGATION IN SECTION 12.4.1 AND A BREACH BY VERTAFORE OF SECTION 11.2, VERTAFORE'S AGGREGATE, CUMULATIVE LIABILITY IN CONNECTION WITH ALL AGREEMENTS, THE VERTAFORE SOLUTIONS AND ALL SERVICES PERFORMED SHALL BE CAPPED AT THE AMOUNT EQUAL TO THE FEES ACTUALLY RECEIVED BY VERTAFORE FROM CUSTOMER UNDER THE ORDER FROM WHICH THE EVENT CAUSING LIABILITY ARISES IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL VERTAFORE BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR LOST DATA. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 14 APPLY TO ALL CLAIMS OR CAUSES OF ACTION ON WHATEVER BASIS AND UNDER WHATEVER THEORY BROUGHT AND IRRESPECTIVE OF WHETHER THE PARTY HAS ADVISED OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM. ALL CLAIMS AND CAUSES OF ACTION BROUGHT BY CUSTOMER HEREUNDER SHALL BE BROUGHT NO LATER THAN ONE (1) YEAR FOLLOWING (I) THE TERMINATION OR EXPIRATION HEREOF OR (II) THE DATE ON WHICH THE CLAIM OR CAUSE OF ACTION AROSE, WHICHEVER OCCURS FIRST. THE LIMITATIONS OF DAMAGES OR LIABILITY ARE IMPORTANT ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN VERTAFORE AND CUSTOMER. CUSTOMER UNDERSTANDS AND AGREES THAT VERTAFORE COULD NOT ECONOMICALLY OFFER THESE TERMS, AND ITS SUBJECT MATTER, TO CUSTOMER WITHOUT THESE LIMITATIONS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 14 IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE VERTAFORE SOLUTIONS AND SERVICES FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF VERTAFORE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. VERTAFORE HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU THE RIGHTS TO ACCESS AND USE THE VERTAFORE SOLUTIONS AND SERVICES PROVIDED FOR IN THESE TERMS.

**15. Force Majeure.** Vertafore shall not be liable to Customer or deemed in breach of these Standard Terms including for its failure or delay in performing any of its obligations under these Standard Terms during any period in which such performance is rendered impracticable, unlawful, or impossible due to circumstances beyond Vertafore's reasonable control, including, but not limited to, acts of God, fire, explosion, flood, drought, riot, disease outbreaks, sabotage, terrorism, war, invasion, embargo, strikes or other labor trouble, failure in whole or in part of suppliers to deliver materials, equipment or machinery, interruption of or delay in transportation or telecommunications or compliance with any order, subpoena, or regulation of any government entity.

**16. Assignment.** Customer shall not assign these Standard Terms (including any Order) or any of its rights, interests or obligations hereunder whether voluntarily, by operation of law, or otherwise without

the prior written consent of Vertafore in its sole discretion, and any attempt to do so without such consent shall be void. Subject to the foregoing, these Standard Terms shall be binding upon the parties and their respective successors and permitted assigns.

**17. Publicity.** Neither party shall use the name, trade name, trademark or service mark of the other party in any way without the prior consent of the other party, which consent may be withheld in the sole discretion of the party.

**18. International Use; Export and Import Compliance.** Use of the Vertafore Solutions may be subject to the export and import laws of the United States and other countries. Customer agrees to comply with all laws and regulations applicable to the Vertafore Solutions, including all applicable export and import laws and regulations. In particular, Customer: (i) represents that it is not a party identified on any government export exclusion list, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists, nor will it transfer software, technology, and other technical data via the Vertafore Solutions to parties identified on such lists; (ii) agrees not to use the Vertafore Solutions for military, nuclear, missile, chemical or biological weaponry end uses in violation of U.S. export laws; and (iii) agrees not to transfer, upload, or post via the Online Services any software, technology or other technical data in violation of U.S. or other applicable export or import laws.

**19. Restricted Rights (Government Contracts).** The Vertafore Solutions include commercial technical data and/or computer licensed databases and/or commercial computer software and/or commercial computer software documentation, as applicable, that were developed exclusively at private expense by Vertafore and/or its licensors. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer licensed databases and/or commercial computer software and/or commercial computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

**20. Verification.** Vertafore has the right to verify Customer's compliance with these Standard Terms. Customer agrees to: (i) implement internal safeguards to prevent any unauthorized copying, distribution or use of the Vertafore Solution; (ii) keep records relating to the Vertafore Solution (including the number of Licenses installed, copied or used and all Authorized Users and their usage) and upon Vertafore's request, provide Vertafore with written certification of the number (by product and version) of copies installed or of Customer's peak usage in the case of concurrent licenses; (iii) allow a Vertafore representative or an independent auditor to inspect and audit Customer's systems and records for compliance with these Standard Terms during Customer's normal business hours. Customer shall fully cooperate with such audit and provide any necessary assistance and access to all records and systems. If an audit reveals that Customer has or at any time have had unlicensed installation or use of the Vertafore Solution, Customer will promptly acquire and pay Vertafore for sufficient licenses to cover any shortage and for any prior unlicensed usage. If a material license shortage of 5% or more is found, Customer shall reimburse Vertafore for the costs incurred in the audit and acquire and pay Vertafore for the necessary additional licenses and for any prior unlicensed usage within thirty (30) days without benefit of any otherwise applicable discount.

**21. Additional Terms and Conditions.** If Customer is licensing the ReferenceConnect product, then the use thereof is subject to the ReferenceConnect License and Subscriber Agreement which can be found at <http://www.vertafore.com/RefConAgreement20160101>. If Customer is licensing the BenefitPoint product, then the Business Associate Agreement found at [www.vertafore.com/BPBAA20160101](http://www.vertafore.com/BPBAA20160101) is applicable.

**22. Miscellaneous.** These Standard Terms as modified and supplemented by any applicable amendments, Orders, Statements of Work, and related schedules between the parties are the complete agreement of the parties with respect to its subject matter and supersede all prior discussions, negotiations and agreements and any earlier proposals all whether verbal or written. Except for those third parties which have licensed software or other intellectual property to Vertafore and which is included as part of the Vertafore Solutions, no person or entity will be a third party beneficiary of these Standard Terms or have any right or cause of action hereunder. These Standard Terms shall be governed by and construed in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws and all claims and actions related hereto shall be brought in the appropriate state or federal court located in Denver, Colorado. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to these Standard Terms. Notices to Customer shall be delivered by certified or overnight mail to its invoicing address specified by Customer in the License Order or its current address in Vertafore's invoicing records; by means of a notice, which may be a general notice, on the Online Services; or by electronic mail to Customer's administrator e-mail address on record in Vertafore's account information. Notices to Vertafore shall be sent by overnight or certified mail to Vertafore, 999 18<sup>th</sup> Street, Denver, Colorado 80202, Attention: General Counsel with an electronic copy sent to [notices@vertafore.com](mailto:notices@vertafore.com). The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship, or to subject the Parties to any implied duties or obligations respecting the conduct of their affairs which are not expressly stated herein. Customer agrees not to directly or indirectly employ or engage or solicit for employment or engagement any personnel of Vertafore during the Term and for twelve (12) months thereafter; provided that employment resulting from a response to a general public advertisement or search engagement not specifically targeted at the relevant personnel is not precluded. If any provision of these Standard Terms is held unenforceable the enforceability of the remaining provisions shall not be affected. Waiver by either party of any breach shall not constitute waiver of any other breach. The headings in these Standard Terms are used for convenience of reference only. These Standard Terms shall not be amended except in a writing signed by both parties or pursuant to or in connection with an Order or Statement of Work, or as otherwise expressly provided herein.