

XaaS Terms of Service

Customer understands that DLT Solutions, LLC] ("Provider") has engaged Serverless Heroes, Inc. dba A Cloud Guru ("Subcontractor") to perform the XaaS subscription services as further described below and Subcontractor is hereby deemed Provider's licensor of such XaaS subscription services and a permitted subcontractor of Provider to perform the Subscription Services (as defined below). **THESE TERMS OF SERVICE FOR XAAS SUBSCRIPTION SERVICES ("TERMS OF SERVICE") FORM A LEGALLY BINDING CONTRACT BETWEEN CUSTOMER AND PROVIDER AND SET FORTH THE TERMS AND CONDITIONS THAT GOVERN THE ACCESS AND USE OF THE SUBSCRIPTION SERVICES.**

1. Subscription Services.

Pursuant to the terms of these Terms of Service, Subcontractor will provide to Customer and Customer's employees, independent contractors or other individual persons that Customer has designated and authorized to use the Subscription Services (the "Authorized Users") with access to the all training materials available pursuant to Customer's subscription, whether prior to or after the date of these Terms of Service, including without limitation, all formatting, documentation, PowerPoint presentations, images, photographs, printed or graphic matter, forms, designs, "look and feel," illustrations, drawings, audio, video and/or audio-visual works and recordings, research, and similar material created, developed, furnished or made in connection therewith (collectively, the "Content") made available through the Subcontractor website portal or mobile applications (the "Website") and access to discussion forums for Customer and its Authorized Users (the "Subscription Services").

2. Intellectual Property Rights

"Intellectual Property Rights" means any and all intellectual property rights, whether registered or unregistered, including but not limited to any patents, trademarks, domain names, URLs, design rights, copyright, software rights, database rights, rights in and to business names, product names and logos, processes, trade secrets, confidential information and any similar right in any jurisdiction.

Subcontractor and Subcontractor's licensors reserve all Intellectual Property Rights and other rights in the Content, Website and other Subscription Services not expressly granted to Customer, Customer's Affiliates or the Authorized Users in these terms. The parties agree that the Subscription Services are not, and do not produce "works for hire" and, as such, purchasing Subscription Services does not give Customer, Customer' Affiliates or any Authorized User ownership of the Content, Website or other Subscription Services or the Intellectual Property Rights therein. All trademarks, service marks, and trade names displayed on the Subscription Services and the Content are proprietary to Subcontractor or Subcontractor's licensors, all of which are the property of their respective owners. Subject to Customer's and Authorized Users' observance to the terms of Terms of Service, Subcontractor grants Customer, its affiliates and each of their respective Authorized Users, a limited, non-exclusive, non-sublicenseable and non-transferable right to access and use the Subscription Services through the Termination Date. The "Termination Date" shall be the earlier of (a) the termination date set forth in the order form with Provider and (b) the date that a party terminates this Terms of Service or the applicable Provider order form in accordance with the terms herein.

The Subscription Services will require that customer data related to Customer or Authorized Users ("Customer Data") be provided to Subcontractor or its third-party service providers. Customer hereby grants to Subcontractor the non-exclusive, sublicensable, fully paid and royalty free license to access and use the Customer Data in connection with the Subscription Services. Customer hereby represents and warrants that by supplying the Customer Data to Subcontractor, Customer does not violate any agreement with any third party and that Customer has the authority and consent to provide the Customer Data to Subcontractor.

3. Restrictions on Use

Customer will use and will cause each of its Authorized Users to use the Subscription Services only (i) for internal business purposes, (ii) for purposes that are in accordance with all laws and regulations, (iii) in accordance with all

license terms imposed by Subcontractor and third parties that are made known to Customer. Customer will be deemed to have taken any action that any of its respective Authorized Users take related to these Terms of Service or use of the Subscription Services and Customer is responsible for any of its Authorized User's use of the Subscription Services. Customer will ensure that its respective Authorized Users comply with the obligations under these Terms of Service and that the terms of Customer's agreement with each of its respective Authorized Users are consistent with these Terms of Service.

Customer and its Authorized Users will not:

- circumvent, or attempt to circumvent, any security feature of the Subscription Services or the Content,
- modify, decompile, reverse engineer, recreate, disassemble, or otherwise make any changes to the Subscription Services or the Content,
- falsify or delete any author attributions, legal, or other proper notices or proprietary designations or labels of the origin or source of software, the Content, or other material contained in a file that is uploaded,
- use the Subscription Services to provide services or Content to any third party other than Authorized Users,
- permit any third party to view, use, access, or copy the Subscription Services or the Content,
- access or use the Subscription Services in a way intended to avoid incurring fees or exceeding usage limits, including allowing multiple persons to use one Authorized User license,
- use the Subscription Services in any manner that could damage, disable, overload, or impair the Subscription Services or interfere with any other party's use and enjoyment of the Subscription Services,
- obtain, or attempt to obtain, any materials, information, or other content through any means not intentionally made available or provided for through the Subscription Services,
- use the Subscription Services or the Content in any manner that infringes upon or violates any Intellectual Property Rights, privacy or confidentiality of any third party,
- disclose, publish, broadcast, sell, or otherwise redistribute the Subscription Services or the Content,
- input, upload, transmit or otherwise provide to or through the Subscription Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code or viruses,
- access or use the Subscription Services for purposes of competitive analysis of the Subscription Services, the development, provision or use of a competing service or product, or
- otherwise access or use the Subscription Services beyond the scope of the authorization granted herein.

4. Termination

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Provider shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Upon any termination, Subcontractor will refund Provider on a pro-rata basis any fees applicable to the remainder of the current term of the applicable Provider order form, except that the fees will not be refundable in the event of any termination for cause by Subcontractor unless such a refund is awarded as a result of a final resolution under the Contracts Disputes Act.

Upon the termination of the Subscription Services for any reason (a) Customer shall, and shall cause its Authorized Users to, immediately discontinue use of the Subscription Services and Content and (b) all licenses and rights granted to Customer, its affiliates or their respective Authorized Users by Subcontractor or Subcontractor's licensors will immediately terminate. All provisions relating to proprietary rights (including Intellectual Property Rights), payment of fees, Confidential Information, disclaimers and limitation of liability shall survive the expiration or earlier termination of these Terms of Service or the Provider order form.

5. Confidentiality

“Confidential Information” means all data, information (including without limitation, pricing), Customer Data and Subcontractor’s and its licensors’ Intellectual Property Rights) disclosed or provided to the Receiving Party pursuant to the Subscription Services.

The party receiving Confidential Information (“Receiving Party”) will (a) keep the disclosing party’s (“Disclosing Party”) Confidential Information confidential, (b) not use such Confidential Information or disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this confidentiality provision, (c) treat all Confidential Information with the same degree of care as Receiving Party provides to its own confidential or proprietary information but, in no case less than commercially reasonable care, and (d) promptly advise Disclosing Party if Receiving Party learns of any unauthorized use or disclosure of any Confidential Information.

Each party may use each other’s Confidential Information solely to exercise its respective rights and perform its respective obligations under these Terms of Service and, without prior written consent of Disclosing Party, shall disclose such Confidential Information (a) solely to the employees and third party service providers and contractors who have a need to know such Confidential Information in order to provide the Subscription Services (and the third party services related to the Subscription Services) and who are bound by terms of confidentiality at least as protective of the Confidential Information as the terms set forth in this confidentiality provision, or (b) as necessary to comply with any court order, subpoena or applicable law, provided that if Receiving Party believes that it is required to disclose Confidential Information due to court order, subpoena or applicable law, Receiving Party will (i) use commercially reasonable efforts not to disclose such Confidential Information until Receiving Party has notified Disclosing Party in writing of such legal process and (ii) take all reasonable precautions so that Disclosing Party may file for a protective order, at the expense of Disclosing Party, to ensure confidential treatment of any Confidential Information so disclosed.

Nothing in these Terms of Use will prohibit or limit the Receiving Party’s use of information: (a) previously known to it without breach or obligation of confidence, (b) independently developed by or for it without use of or access to Disclosing Party’s Confidential Information, (c) acquired by it from a third party that was not under an obligation of confidence with respect to such information at the time of disclosure, or (d) that is or becomes publicly available through no breach of these Terms of Service. Provider recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

Disclosing Party owns and will continue to own all of its Confidential Information. Receiving Party shall be liable for any unauthorized disclosure or use of Confidential Information made by its Authorized Users.

6. Limitation of Liability; Disclaimers.

EXCEPT WITH RESPECT TO THIRD PARTY CLAIMS, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST OPPORTUNITIES OR PROFITS). IN NO EVENT SHALL SUBCONTRACTOR’S MAXIMUM CUMULATIVE LIABILITY IN CONNECTION WITH THE SERVICES, REGARDLESS OF THE FORM OF ACTION, EXCEED FIVE (5) TIMES THE AMOUNT OF THE PAYMENTS MADE TO SUBCONTRACTOR FOR THE SUBSCRIPTION SERVICES GIVING RISE TO SUCH CLAIM IN THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM.

PROVIDER WARRANTS THAT THE SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SERVICES WRITTEN MATERIALS ACCOMPANYING IT. IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTY BY PROVIDER, CUSTOMER’S EXCLUSIVE REMEDY WILL BE THAT OF A REPAIR OR REPLACEMENT OF THE NON-PERFORMING SERVICES (OR NON-PERFORMING PORTION THEREOF). EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICES ARE PROVIDED “AS-IS” AND “WITH ALL FAULTS”, AND SUBCONTRACTOR AND THE SUBCONTRACTOR INDEMNIFIED PARTIES EXCEPT AS EXPLICITLY SET FORTH IN THESE TERMS OF SERVICE, DISCLAIM ANY AND ALL REPRESENTATIONS AND CONDITIONS OF ANY KIND,

EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE RELATED TO THE SUBSCRIPTION SERVICES OR THE CONTENT INCLUDING WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND ACCURACY AND NON-INTERFERENCE. EXCEPT AS OTHERWISE SET FORTH IN THESE TERMS OF SERVICE, SUBCONTRACTOR DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES OR CONTENT WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, FREE FROM VIRUSES OR OTHER PROGRAM LIMITATIONS OR THAT THE SERVICES WILL MEET CUSTOMER'S, CUSTOMER'S AFFILIATES', OR ITS AUTHORIZED USER'S REQUIREMENTS OR EXPECTATIONS. NO VERBAL OR WRITTEN REPRESENTATIONS, INFORMATION OR ADVICE GIVEN BY SUBCONTRACTOR OR ANY SUBCONTRACTOR INDEMNIFIED PARTY WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY HEREIN.

7. Miscellaneous.

. Customer does not otherwise waive immunities existing under applicable laws, and it is expressly understood that the waiver here granted is a limited and not a general waiver, and that its effect is limited to specific claims under these terms of Service.

Customer acknowledges and agrees that: (a) Provider is the sub licensor of worldwide Intellectual Property Rights that are owned by third-party licensors; (b) the acknowledgements, obligations, restrictions and undertakings given or accepted by Customer in these Terms of Service are for the benefit of Subcontractor and its licensors and Subcontractor and such licensors are third-party beneficiaries under these Terms of Service and may enforce those provisions directly against Customer or through Provider; and (c) Customer is prohibited from bringing any claims related to Provider's services against Subcontractor or such licensors.

Customer will not assign or otherwise transfer these Terms of Service or any of Customer's rights and obligations under these Terms of Service, without Provider's prior written consent. Any assignment or transfer in violation of this section will be void. These Terms of Service will bind Customer's successors and permitted assigns. Nothing in these Terms of Service creates an agency, partnership or joint venture or employment relationship between Customer and the Subcontractor. The waiver or failure of Provider to exercise in any respect any right provided for under these Terms of Service will not be deemed a waiver of any further right under these Terms of Service by Provider. If any provision of these Terms of Service are determined to be invalid or unenforceable, the provision will be severed from these Terms of Service and such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions.

The Federal laws of the United States, without reference to conflict of law rules, govern these Terms of.

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them.

A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.