

Order Form for Hopkins County Schools - KY

Hopkins County Schools
320 S SEMINARY ST
MADISONVILLE, KY 42431-2447

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Reference: 20250527-120823721
Quote expires: September 30, 2025

 **Red Rover**
Red Rover Technologies, LLC
559 W. Uwchlan Ave
Suite 200
Exton PA 19341

Prepared by: Ben Allston
benallston@redroverk12.com

PRODUCTS & SERVICES	QUANTITY	ANNUAL RATE	TOTAL
Annual Subscription - Absence Management	1	\$18,600.00	\$18,600.00
SUBSCRIPTION SUBTOTAL			\$18,600.00
YEAR ONE ONLY FEES			TOTAL
Implementation - Absence	1	\$3,800.00	\$3,800.00
YEAR ONE ONLY SUBTOTAL			\$3,800.00

Total Annual Subscription: \$18,600.00

Total Contract Value: \$22,400.00

Subscription year: July 1 to June 30

Invoicing details: Prorate initial invoice Renewal invoices will be based on the subscription year.

Additional Terms

Red Rover subscription fees will begin January 1st to allow time to setup Red Rover.

This order is subject to the terms of the Master Services Agreement attached hereto as Exhibit A.

Signature

Before you sign this quote, an email must be sent to you to verify your identity. Find your profile below to request a verification email.

<div><div>Eydie Tate</div><div>eydie.tate@hopkins.kyschools.us</div></div>	[sig req signer1]
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MASTER SERVICES AGREEMENT

Red Rover Technologies LLC ("Red Rover") with an address at **559 W. Uwchlan Ave, Suite 200, Exton, PA 19341** and the customer identified on the Order (as defined below) referencing this Master Services Agreement ("**Customer**") hereby enter into this Master Services Agreement as of the date of the Order referencing this Master Services Agreement. Red Rover and Customer are sometimes referred to herein, individually, as a "**Party**" and, collectively, the "**Parties**".

The terms and conditions of this Master Services Agreement and any appendices, exhibits or attachments attached hereto and referenced herein (together, the "**MSA**") set forth the terms and conditions under which the Parties agree that Customer may purchase, and Red Rover will provide, access to the Red Rover software-as-a-service offerings (the "**Platform**") and any related services (collectively, the "**Service**"), in return for applicable fees (the "**Fees**"), in each case as described in any executed ordering document issued by Red Rover from time to time (an "**Order**") in accordance with the MSA. Each executed Order referencing the MSA will constitute the entire agreement between the Parties (hereinafter, the "**Agreement**").

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for good and valuable consideration, the Parties agree as follows:

1. Orders. Orders shall specify the Service being purchased, the quantity, price, applicable dates defining the term of such Order or otherwise, and any other applicable terms. No obligation to furnish or to pay for a subscription to the Service (a "**Subscription**") arises under the Agreement until there is an executed Order for the Subscription to the Service, and Customer is not authorized to access or use, and shall not have a right to receive the Service unless expressly set forth in an Order. Unless an Order states otherwise, each Order is independent of each other Order (but each Order is part of and integral to the Agreement). Upon the Effective Date, the Parties shall enter into an initial Order for a Subscription to the Service (the "**Initial Order**"). Customer may add Authorized Users to the Subscription for the Service or add Supplementary Services at any point during the Initial Order Term by adding them to the Service and, in such case, Customer is agreeing that it may be billed by Red Rover for them in the next billing cycle.

2. Service and Supplementary Services.

A. Service. Upon full execution of an Order, unless otherwise specified in the Order, subject to the terms of the Agreement, including, without limitation, Customer's payment of any Fees, Red Rover hereby grants to Customer during the Order Term, the non-exclusive, non-sublicensable, non-transferable and non-assignable (except as set forth in Section 11(A)), right for any Authorized Users (subject to Section 2(B) to (i) access, display and use the Service as made available to Customer by Red Rover as described in an Order; (ii) receive Support for the Service for the Order Term in the manner described in the Agreement, and (iii) use any written, printed, electronic or other format materials published or otherwise made available by Red Rover that relate to the functional, operational and/or performance capabilities of any aspect of the Platform, all as may be updated and redistributed to Customer by Red Rover from time to time ("**Documentation**"), each solely for the internal business or operational purposes of Customer. Customer shall provide the equipment and software (e.g., internet access, third-party software licenses, etc.) required to access the Platform.

B. Authorized Users.

i. Definition. "**Authorized User**" means (a) Customer's employees, and (b) employees of Customer's consultants and contractors that have a written obligation to Customer in advance with respect to the use of any aspect of the Service or Red Rover Confidential Information that are no less protective of Customer, or restrictive upon such consultant or contractor, than the terms of the Agreement are protective of Red Rover, or restrictive of Customer, with respect to such party's use of the same, (i) who are authorized by Customer to access and use the Service and any Red Rover Confidential Information under the rights granted to Customer pursuant to the Agreement and (ii) for whom access to the Service has been purchased hereunder.

ii. General. Customer acknowledges and agrees that different types of Authorized Users may have differing access and/or usage rights with respect to the Service. The types and total quantity of Authorized Users will be as set forth in the Order for the initial one (1) year period identified therein. Unless agreed otherwise, for subsequent one (1) year periods, the Fees payable by Customer shall be proportionately increased or decreased in accordance with the actual number of Authorized Users who used the Service during the preceding year. Customer acknowledges and agrees that, if an Order is for multiple years, the foregoing shall still apply, and any increases in the number of Authorized Users will result in payable amounts proportionate to such number.

- iii. **Service Administrators.** At all times during the Order Term, Customer must have an employee or employees that has completed administrator training from Red Rover (a "**Service Administrator**"). If a Service Administrator ceases to serve as such, Customer shall promptly provide written notice to Red Rover and have another employee obtain Red Rover Service Administrator training (at Red Rover's then current rates for such training) and be designated as a Service Administrator.
- iv. **Third-Party Authorized Users.** Customer may not sublicense, outsource or otherwise grant access to the Service to any third party, including, without limitation, any third-party vendor, nor may any such third party be an Authorized User, without Red Rover's prior written consent.
- v. **User-IDs.** Except for Customer's Service Administrators where reasonably necessary for administrative or security purposes, Customer will not allow any user ID for the Platform to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the user ID. Customer will safeguard its user ID and other security data and methods furnished to Customer in connection with the Service and prevent unauthorized access to or use of the Service.
- vi. **Usernames and Passwords.** Customer is solely responsible for approving and provisioning any and all usernames and passwords assigned to or adopted by Customer's Authorized Users in connection with use of the Service. Customer is responsible for all activities that occur as a result of the use of such usernames and passwords. Customer will notify Red Rover promptly of any unauthorized use of such usernames and passwords or any other breach of security known to Customer.
- vii. **Monitoring of Use.** Customer acknowledges and agrees that Red Rover shall have the right (but not the obligation) to monitor Customer's and its Authorized Users' usage of the Service, including the number of Authorized Users and activity within all Customer accounts to confirm Customer's and its Authorized Users' compliance with the terms of the Agreement.

C. Use Restrictions. Customer shall not at any time, directly or indirectly, and shall not cause or permit any Authorized Users or other third party to: (i) copy, modify or create derivative works of the Service or Documentation, in whole or in part (except that Customer may copy the Documentation solely in connection with Customer's use of the Service); (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer or otherwise make available the Service or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove, alter or obscure any proprietary notices in the Service or Documentation; (v) access or use the Service or Documentation for purposes of competitive analysis, the development, provision or use of a competing software service or product, or any other purpose that is to Red Rover's detriment or commercial disadvantage; or (vi) use the Service or Documentation in any manner or for any purpose that infringes upon, misappropriates or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. All rights not expressly granted to Customer are reserved by Red Rover and its licensors, if any.

D. Support. Red Rover will provide Service Administrators with remote support in accordance with Red Rover's standard customer support availability Monday through Friday, during Red Rover's normal business hours, unless indicated otherwise in an Order.

E. Integration. At its discretion, Red Rover may make available to Customer certain functionalities and/or processes that facilitate Customer's integration of the Service with other third-party software utilized by Customer. Notwithstanding the foregoing, Customer acknowledges that Red Rover does not control third-party software, and therefore Red Rover cannot and does not guarantee that integrations will always be available or operable and if the third-party provider ceases to make the third-party software available for the Service, Red Rover may cease providing such Service features without entitling Customer to any refund, credit or other compensation.

F. Suspension. Notwithstanding anything to the contrary in the Agreement, Red Rover may temporarily suspend Customer's and any Authorized User's access to all or any portion of the Service if: (i) Red Rover reasonably suspects or determines that (A) there is a threat or attack on the Platform; (B) Customer's or any Authorized User's use of the Platform disrupts or poses a security risk; (C) Customer or any Authorized User is using the Platform for fraudulent or illegal activities; or (ii) Customer fails to make a timely payment due under the Agreement within five (5) days of Red Rover's written notice to Customer. Red Rover shall use commercially reasonable efforts to provide written notice of any Service suspension to Customer and to provide updates regarding resumption of access to the Service following any Service suspension. Red Rover will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service suspension.

G. Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, Customer acknowledges and agrees that Red Rover may monitor Customer's use of the Service and collect and compile data and information related to Customer's and its Authorized Users' use of the Service that is compiled by Red Rover in an aggregate and anonymized manner, including to compile statistical and

performance information related to the provision and operation of the Service ("**Aggregated Statistics**"). Aggregated Statistics do not constitute Customer Data (as defined in Section 6(A)). As between Red Rover and Customer, all right, title, and interest in and to Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Red Rover. Customer acknowledges that Red Rover may compile Aggregated Statistics based on Customer Data and Customer's and Authorized Users' usage of the Service, which Red Rover may use for purposes including, without limitation, operations management, performance analysis, product improvement, and research and development. Customer agrees that Red Rover may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that Red Rover's use of the Aggregated Statistics does not identify Customer, any Authorized User or Customer's Confidential Information.

H. **Customer Responsibilities.** Customer is solely responsible for maintaining the security and confidentiality of its systems and access credentials to access and use the Service and is responsible and liable for all uses of the Service resulting from access provided by Customer, directly or indirectly. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Agreement if taken by Customer will be deemed a breach of the Agreement by Customer. Customer shall make all Authorized Users aware of the Agreement's provisions as applicable to such Authorized User's use of the Service (including without limitation the provisions of Red Rover's privacy policy as can be found at www.redroverk12.com ("**Privacy Policy**")), and shall cause Authorized Users to comply with such provisions. Customer represents and warrants that Customer has the authority, including providing appropriate disclosures and obtaining all necessary rights and consents, to provide personal information of Authorized Users to Red Rover for purposes of Red Rover's provision of the Service under the Agreement.

3. Fees, Invoicing and Payment.

A. **Order Term Fees and Invoicing.** All Fees and charges shall be set forth in the applicable Order. The annual subscription fee for the Service will be invoiced to Customer by Red Rover at the commencement of the applicable Order unless otherwise stated in the Order.

B. **Renewal Order Term Fees and Invoicing.** Unless otherwise stated in the Order, (i) annual subscriptions for the Service automatically renew each year unless Customer provides a written non-renewal notice to Red Rover within thirty (30) days after the anniversary of the applicable subscription start date and (ii) Red Rover may increase Fees on an annual basis, with the following provisions. For the first three (3) years of each Service, Red Rover will not increase the rates, after which, rates will not be increased by more than either (a) three percent (3%) above the amount of the prior year or (b) the increase in the CPI-U (Consumer Price Index for all Urban Consumers) for the applicable period, whichever is greater.

C. **Payment.** Customer shall pay Red Rover the Fees within thirty (30) days of the invoice date unless otherwise stated in the Order.

D. **Taxes.** All Fees and any other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Customer 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 Customer unless Customer provides Red Rover with a valid applicable tax exemption certificate.

4. Confidentiality.

A. **Standard of Care.** Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

B. **Compelled Disclosure.** If Receiving Party is compelled by law to disclose Confidential Information, it shall provide Disclosing Party with prior written notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest it.

C. **Exclusions.** The term "Confidential Information" shall not include any information that is or becomes generally available to the public without breach of any obligation by Receiving Party; was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation by Receiving Party; was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or is received by Receiving Party from a third-party without breach of any obligation owed to Disclosing Party.

D. **Right to Seek Injunction.** If Receiving Party discloses or uses (or threatens to disclose or use) Confidential Information in breach of the Agreement, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

5. **Red Rover Intellectual Property.** As between Customer and Red Rover, Red Rover (and Red Rover's licensors, where applicable) is the exclusive owner of all right, title and interest, including all related intellectual property rights, in and to all aspects of the Service, including without limitation any integrations thereto, and any other Red Rover intellectual property, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the Service provided by Customer or Authorized Users ("**Feedback**"), regardless of any participation or collaboration by Customer in the design, development or implementation of the Service. No title or ownership of intellectual property rights in and to the Service, or any component thereof, is transferred to Customer or any third parties hereunder.

6. **Customer Data; Data Privacy and Security.**

- A. "**Customer Data**" means information, data and other content, in any form or medium, that is submitted, posted or otherwise transmitted by or on behalf of Customer or an Authorized User in connection with their use of the Service. For the avoidance of doubt, Customer Data does not include any Aggregated Statistics, Feedback or any other information reflecting the access or use of the Service by or on behalf of Customer or any Authorized User.
- B. **Customer Owns Customer Data.** As between Red Rover and Customer, Customer owns all right, title and interest in and to Customer Data, which shall never be deemed to be part of the Service, even if delivered or incorporated therewith. Customer shall have sole responsibility, and Red Rover shall have no responsibility whatsoever for, the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership of Customer Data, and Red Rover shall not review, monitor or check Customer Data except as instructed by Customer in accordance with the Agreement or as otherwise set out in the Agreement and necessary to provide the Service to Customer. Customer hereby grants to Red Rover a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Red Rover to provide the Service to Customer.
- C. **Customer Data Processing.** Red Rover processes Customer Data utilizing administrative, technical and physical safeguards designed to protect the security, confidentiality and integrity of it and will not disclose Customer Data to any third party except (i) to Red Rover's affiliates contractors who are performing services for Red Rover for Red Rover to provide the Service and are subject to written confidentiality requirements no less protective than those contained in Section 4, (ii) to other third parties as Red Rover deems necessary to provide the Service to Customer, or (iii) as required by applicable law. Notwithstanding the foregoing, Red Rover is responsible for any disclosures of Customer Data by Red Rover's affiliates or contractors, and/or other third parties as referenced above to whom Red Rover discloses or transmits Customer Data. Without limiting Red Rover's applicable obligations under this Section 6(C), Customer acknowledges that Red Rover is not responsible for any Customer Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Red Rover, Red Rover's affiliates or contractors, including, but not limited to, the Internet and Customer's local network.
- D. **Privacy Policy.** In performing the Service, Red Rover will comply with its Privacy Policy, which is available at www.redroverk12.com and incorporated into the Agreement by reference. The Red Rover Privacy Policy is subject to change at Red Rover's discretion; however, Red Rover privacy policy changes will not result in a material reduction in the level of protection provided for Customer Data during the Order Term.

7. **Term and Termination.**

- A. **Agreement Term.** Unless otherwise terminated as provided herein, the Agreement shall commence on the Effective Date and continue until the expiration of all Orders that the Parties have executed (the "**Term**").
- B. **Order Term.** Unless otherwise specified in an Order, each Order (and any license or subscription rights granted therein) shall commence upon the applicable Order start date and, unless Customer provides a written non-renewal notice to Red Rover within thirty (30) days after the anniversary of the applicable Subscription start date, shall automatically renew annually thereafter (any such renewal period shall be referred to as the "**Renewal Order Term**") (together, the Initial Order Term and each Renewal Order Term shall be referred to as the "**Order Term**"). Except as specifically set forth in Sections 7(C), (D) or (E) below, Customer may not terminate an Order at any time in the middle of the Order Term.
- C. **Termination for Cause.** In addition to any other express termination right set forth in the Agreement: (i) Red Rover may terminate the Agreement and/or any applicable Order upon written notice to Customer, if Customer fails to pay any undisputed amount when due hereunder and such failure continues for a period of ten (10) days after Red Rover's delivery of written notice thereof; or (ii) either Party may terminate the Agreement, effective on written notice to the other Party, if the other Party breaches the Agreement, and such breach is incapable of cure or, being capable of cure, remains uncured to the reasonable satisfaction of the non-breaching Party thirty (30) days after delivery of such notice.

D. Termination for Insolvency. Either Party may terminate the Agreement and/or any applicable Order by written notice to the other Party if (i) the other Party takes any step or action in connection with its entering administration, provisional liquidation, or any composition or arrangement with its creditors (other than in relation to a solvent restructuring or reorganization), being wound up (whether voluntary or by order of the court unless for the purpose of a solvent restructuring or reorganization), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction or (ii) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or substantially all of its business.

E. Termination for Non-Appropriation. In the event that Customer is a public school district or similar public entity for which any payment obligation is dependent upon necessary funds being appropriated, budgeted and otherwise made available to Customer for payment of Fees pursuant to applicable laws and regulations, and funds are not made available for such purpose, Customer may terminate the Agreement upon written notice to Red Rover, in which case Red Rover shall not be obligated to refund any prepaid Fees, but Customer shall not be obligated to pay any future Fees under any Order terminated in accordance with this Section 7(E).

F. Responsibility of the Parties Upon Termination of Agreement. Upon expiration or earlier termination of the Agreement, Customer shall immediately discontinue use of the Service. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund, except to the extent set forth in Section 7(E).

G. Customer Data Upon Termination. Red Rover shall store and retain Customer Data for a period of two (2) years after the expiration or termination of the Agreement unless otherwise required by applicable law. Red Rover shall make Customer Data available in a reasonable format of its choosing upon receipt of a written request from the Customer subject to a fee.

8. Limited Warranties; Disclaimers.

A. Red Rover Warranties.

i. **Limited Warranty.** Red Rover warrants that the Platform will perform substantially in accordance with the specifications set forth in the then-current Documentation and that the Service shall be performed in a good, professional and commercially reasonable manner and it will use individuals with the requisite level of skill and expertise in order to do so. If Customer discovers that any functionality in the Platform fails to conform to the limited warranty provided in this Section 8(A)(i), Customer shall give Red Rover written notice of such nonconformity promptly after discovery and in any event, no later than thirty (30) days after delivery of the Service or any component thereof to Customer.

ii. **Remedy.** Customer's sole remedy for any breach by Red Rover of the Platform warranty provided in Section 8(A)(i) shall be to use reasonable efforts to repair or replace the nonconforming functionality in the Service or provide Customer with an alternative means of accomplishing the desired performance pursuant to Red Rover's provision of support, at Red Rover's expense, as described herein, or re-perform any Service, as applicable, and if Red Rover cannot repair or replace it for Service or provide Customer with an alternative means of accomplishing the desired performance pursuant to Red Rover's provision of support for the Service within a reasonable period of time, or re-perform the Service in a manner that meets with the limited warranty within a commercially reasonable period of time, as applicable, Red Rover, at its option, may terminate the Agreement and give Customer a refund for the period during which the functionality failed to meet the warranty or a refund for the period during which the Service failed to meet the warranty, as applicable, and reimburse Customer for any pre-paid amounts paid by Customer for the remainder of the Order Term.

iii. **Exceptions.** Notwithstanding the above, warranty coverage shall not extend to circumstances in which any failure is the result of the following: (a) Customer is in default or breach of any of its obligations under the Agreement, or (b) any non-conformance of the Service due to (1) Customer's failure to permit the installation/implementation of any update, upgrade or release provided by Red Rover; (2) Customer's negligence, abuse, misapplication or misuse of the Service (including the Customer's failure to operate it in accordance with the Documentation); (3) any repairs, modifications, configurations, customizations or rules set by persons other than Red Rover (i.e., where the issue is determined to be caused by it); (4) Customer Data; (5) any malicious action on the part of Customer or any third party that is gaining unauthorized access to the servers and/or workstations of Red Rover's or Customer's devices, including, but not limited to, malware, computer viruses, computer hacking or other compromising of operating system, applications or system data; or (6) any other fault or failure that is not due to a fault or failure of the Service to conform to the warranty that the Service will perform substantially in accordance with the specifications set forth in the then-current Documentation.

B. **Red Rover Warranty Disclaimers.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION 8, THE SERVICE IS PROVIDED "AS IS" AND RED ROVER AND ITS AFFILIATES MAKE NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, INCLUDING QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR ARISING FROM CUSTOM, COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, RED ROVER AND ITS AFFILIATES DO NOT WARRANT THAT THE SERVICE WILL: (I) BE SUITABLE FOR THE PURPOSES OF CUSTOMER OR ITS USERS OR WILL ACHIEVE ANY INTENDED RESULT; (II) OPERATE IN ANY HARDWARE AND SOFTWARE COMBINATIONS OR BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION OR MATERIALS; (III) BE COMPLETELY SECURE, ACCURATE, COMPLETE OR FREE OF HARMFUL CODE OR DISABLING CODE; OR (IV) BE COMPLETELY UNINTERRUPTED OR ERROR FREE IN ITS OPERATION OR PERFORMANCE.

C. **Customer Warranties.** Customer represents and warrants that: (i) Customer owns all right, title, and interest in and to, or otherwise has obtained all rights, consents, permissions or licenses necessary to grant the use of Customer Data and to otherwise allow the Service access to, or possession, manipulation, processing or use of, the Customer Data and any other materials in the manner in which it is doing so, including, without limitation, use of the same with the Service; and (ii) Customer Data will not infringe upon a third party's intellectual property rights.

9. Limitations on Liability.

A. This section 9 sets out the entire financial liability of Red Rover (including any liability for the acts or omissions of Red Rover's affiliates, contractors and licensors) to Customer or its employees, agents, sub-contractors or any third party acting on Customer's behalf arising under or in connection with the Agreement or the Service. Except as expressly provided in the Agreement, Customer agrees that it assumes sole responsibility for results, outputs and values obtained from the use of the Service by Customer and for conclusions drawn from such use. Red Rover shall have no liability for any damage caused by errors or omissions in any information, content, instructions or scripts provided to it by or on behalf of Customer in connection with the Service or any actions taken by Red Rover at Customer's direction.

B. **No Consequential Damages.** IN NO EVENT WILL RED ROVER HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES, OR LOSS OF CORRUPTION OF DATA OR PURE ECONOMIC LOSS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, LOSS, COSTS, CHARGES OR EXPENSES, HOWEVER ARISING UNDER THE AGREEMENT, WHETHER AN ACTION IS IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION, RESTITUTION OR ANY OTHER THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

C. **Maximum Aggregate Liability.** IN NO EVENT SHALL RED ROVER'S AGGREGATE LIABILITY ARISING OUT OF THE AGREEMENT IN CONTRACT, TORT, MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE AGREEMENT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER TO RED ROVER FOR THE SPECIFIC ORDER UNDERLYING ANY CLAIM BROUGHT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM.

D. **Independent Allocations of Risk.** EACH PROVISION OF THE AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THE AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY RED ROVER TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THE AGREEMENT. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THE AGREEMENT.

10. Indemnification.

A. **By Red Rover.** Red Rover shall indemnify, defend and hold harmless Customer and its directors, officers, members, managers, employees and representatives (each a "**Customer Indemnitee**") from and against any and all losses or other liabilities incurred by any Company Indemnitee resulting from any demand, claim, suit or action by a third party (an "**Action**") alleging that the Service infringes or misappropriates such third party's U.S. patents, copyrights or trade secrets. This Section 10(A) does not apply to the extent that the alleged infringement arises from: (i) Customer or third-party materials, including Customer Data; (ii) negligence, abuse, misapplication or misuse of the Service by or on behalf of Customer; (iii) use of the Service by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by the Agreement or in any manner contrary to Red Rover's instructions; or (iv) events

or circumstances outside of Red Rover's reasonable control (including any third party hardware, software, or system bugs, defects, or malfunctions). This Section 10(A) sets forth Customer's sole remedy and Red Rover's sole liability and obligation for any actual or alleged claims that the Service infringes or misappropriates the intellectual property rights of any third party.

B. By Customer. To the maximum extent permitted by applicable law, Customer shall indemnify, defend and hold harmless Red Rover and its directors, officers, members, managers, employees and representatives (each a "**RR Indemnitee**") from and against any and all losses or other liabilities incurred by any RR Indemnitee resulting from any Action alleging that that use of Customer Data infringes the rights of, or has caused harm to, a third-party or any claim to the extent caused by the Service's access to, or possession, manipulation, processing or use of the Customer Data as necessary to provide the Service to Customer.

11. General.

- A. Assignment.** Neither Party may assign any of its rights or obligations under the Agreement, whether by operation of law or otherwise, without the other Party's prior written approval (not to be unreasonably withheld); provided, however, Red Rover may assign the Agreement without consent to (i) a parent or subsidiary, or (ii) in connection with a merger, acquisition, corporate reorganization, change in control, or sale of all or substantially all of its assets. Any purported assignment in violation of this Section 11(A) shall be void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- B. Authorized Use.** During the Term, Red Rover may publicize the fact that Customer has engaged in the authorized use of the Service and Red Rover may use Customer's name and brand image or trademark according to Customer's published guidelines for such use, and will not state or imply that Customer endorses or recommends the Service unless authorized by Customer to do so.
- C. Construction and Interpretation.** The Agreement may be executed and delivered by manual or electronic signature in one or more counterparts, each of which will be deemed to be an original copy of the Agreement and all of which, when taken together, will be deemed to constitute one and the same document. The Parties agree that the Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either Party and that ambiguities shall not be interpreted against the drafting Party.
- D. Entire Agreement; No Pre-Printed Forms.** The Agreement comprises the entire agreement between Customer and Red Rover and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein. Any purchase made under the Agreement is not dependent on the delivery of any future functionality or feature of the Service or any oral or written public comments by Red Rover regarding any future functionality or feature of the Service. Any preprinted or other terms contained on Customer's purchase order or otherwise shall be inapplicable to the Agreement. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.
- E. Notice.** Any notice delivered pursuant to the Agreement shall be in writing and shall be deemed delivered: (i) upon delivery if delivered in person; (ii) three (3) business days after deposit in the US mail, registered or certified mail, return receipt requested, postage prepaid; or (iii) one (1) business day after deposit with a national overnight courier; in each case addressed to the addresses provided on the applicable Order, or to such other address as may be specified by either Party hereto upon notice given to the other in accordance with this Section.
- F. Force Majeure.** Neither Party shall be liable to the other for any failure or delay in the performance of its obligations for any cause that is beyond the reasonable control of such Party, including, without limitation, acts of God, shortages of supplies, labor or materials, strikes and other labor disputes, storms, floods, acts of war or terrorism, failure of third-party hardware, software, services or networks, failure of service providers, utility blackouts or brownouts, failure of telecommunications or the internet, pandemics and actions by a governmental authority (such as changes in government codes, ordinances, laws, rules, regulations, or restrictions) provided that such Party promptly notifies the other Party of the expected duration of such event.
- G. Amendments.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by both Parties.
- H. No Waiver of Rights.** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- I. Severability.** If any provision of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or

unenforceable provision(s), with all other provisions remaining in full force and effect. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

J. **Survival.** Except for Sections 4, 5, 6, 7, 9, 10 and 11, which shall survive any termination or expiration of the Agreement, no other provisions of the Agreement survive the expiration or earlier termination of the Agreement.

K. **WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

L. **Relationship of the Parties.** No joint venture, partnership, employment or agency relationship exists between Customer and Red Rover as a result of the Agreement or use of the Service.

M. **Third-Party Beneficiaries.** There are no third-party beneficiaries to the Agreement and the Agreement does not confer any rights on any person or party other than the Parties (and, where applicable, their successors and permitted assigns).