



RightAnswers, Inc.
Standard End User Hosted Subscription License Agreement

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE ACCESSING OR USING THE RIGHTANSWERS PRODUCT. ACCESS OR USE OF THE PRODUCT INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. DEFINITIONS

“**Knowledge-Paks®**” shall mean the knowledge-base product accessed via the hosted site on the Internet that RightAnswers established (*Knowledge-Paks Online*) that includes a searchable knowledge base of technical information that is segmented in collections relating to a particular product or group of products.

“**Product**” means the RightAnswers Products specified on the Sales Order Form.

“**Sales Order Form**” Licensee shall submit to RightAnswers a “Sales Order Form” requesting the Product, which is attached hereto as Exhibit C. The parties agree that this Agreement shall govern all concurrently or subsequently executed Sales Order Forms that reference this Agreement and pertain to RightAnswers products. In the case of conflict between a particular Sales Order Form and the terms of this Agreement, the respective Sales Order Form shall prevail.

“**Passwords**” If the Sales Order Form provides for the use of any of the *Knowledge-Paks Online* version of our Products, RightAnswers or its distributor will provide Licensee with the uniform resource locators for the Product or Products for which Licensee has subscribed and paid the appropriate fees, and a password to access those Products. Licensee shall use its password only for the purpose of exercising the rights expressly granted herein, and shall maintain its password in confidence and not disclose it to any third party.

“**Updates**” means standard releases containing additions, improvements and/or modifications to the Product, which are not priced as separate new products or options, released from time to time by RightAnswers. Updates will be delivered via the hosted site.

“**RightAnswers Products**” means the Product and Updates.

“**Seller**” means an authorized representative of RightAnswers who is selling the Product license to you.

“**We**”, “**us**”, “**our**” and “**RightAnswers**” mean RightAnswers, Inc.

“**Licensee**”, “**you**”, “**your**”, and “**Customer**” means the party purchasing a license to use the RightAnswers Products.

2. PRODUCT LICENSE GRANT

2.1 License Grant. During the Initial Term (as specified on Sales Order Form) and any Renewal Terms (together, the “Subscription Term”), Customer will receive the license and maintenance service rights and benefits as described in this Agreement. Subject to the terms and conditions of this Agreement, including but not limited to Customer’s payment of all Subscription License Fees, RightAnswers grants to the Customer a non-exclusive, nontransferable, time-limited license to use the RightAnswers Product and the accompanying documentation (the “Documentation”) (the RightAnswers Products and the Documentation together are referred to as the “Licensed Material”) only within the for Customer’s internal use. Customer is permitted to use the Licensed Material only strictly in compliance with the authorized usage identified in the Sales Order Form. This license grant terminates upon any expiration or termination of this Agreement or expiration of the Subscription Term.

Customer may not: (i) use the Licensed Material for the purpose of creating or augmenting a third party’s knowledge base, database, document or software except as authorized by RightAnswers; (ii) copy any portions of the Licensed Material; (iii) distribute or otherwise make the Licensed Material, or any portion of the Licensed Material, available to any third party (except as permitted otherwise in this Agreement) by way of the World Wide Web or other means, without prior written permission; (iv) modify, adapt, translate, reverse engineer, decompile, disassemble, assign, re-sell, sub-license, rent, or lease any portion of the Licensed Material; (v) translate the content into another language, or allow the content to be translated by other parties; (vi) use the Licensed Material to create knowledge bases which Licensee or a third party uses in any way that competes with Licensed Material; or (vii) use the Licensed Material in what is commonly known as an “outsourced” support mode whereby the Licensed Material is used by Customer’s own employees, staff or contractors to provide any type of support service to another organization. Nothing herein shall prevent Licensee from allowing a third party Outsourcer to manage the usage of the Licensed Material and to access them for that purpose, with the permission of RightAnswers, which cannot be withheld without valid business reasons.

Licensee will be solely responsible for any unauthorized use of its Password, and shall notify RightAnswers immediately upon unauthorized disclosure or loss of its Password or upon learning of any unauthorized use of its Password for *Knowledge-Paks Online*.

2.2 License Limitations. This License is granted solely to: (i) permit use of the RightAnswers Products in accordance with the terms of this license by as many authorized users or on as many servers as you have purchased rights for; (ii) use the RightAnswers Products for your organization's internal purposes (including use by your third-party consultants who agree to be bound by the terms and conditions of this Agreement); and (iii) copy the RightAnswers Products for testing, archival or disaster recovery purposes only. If the number of users accessing the RightAnswers Products exceeds the number of users authorized, then Licensee shall immediately notify RightAnswers and purchase the number of additional licenses necessary to bring Licensee's use of the RightAnswers Products into compliance with this Agreement. RightAnswers may, in its sole discretion, alter or modify any portion of *Knowledge-Paks Online* without notice, at any time. RightAnswers' monitors use of *Knowledge-Paks Online* to capture de-identified queries and responses for use in developing, upgrading and improving the Products.

2.3 Hosting Service Agreement. Online usage and access to RightAnswers Products is governed by the Hosting Service Agreement attached as Exhibit A.

2.4 Other Sites. RightAnswers may provide links, in its sole discretion, to other sites on the Internet for the convenience of its users. These sites have not been reviewed by RightAnswers and are maintained by third parties over whom RightAnswers exercises no control and, accordingly, RightAnswers expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such sites. RightAnswers is not responsible for the availability of such sites and does not endorse such sites.

3. MAINTENANCE

3.1 Updates. RightAnswers agrees to provide Licensee with Updates during the Subscription Term.

3.2 Support. RightAnswers will provide technical support for Licensee during Licensee's Subscription Term. Licensee can contact the technical support department during RightAnswers' standard hours of operation via telephone and/or via "live chat" and may submit electronic requests for support at any time. Support Representatives may be contacted in any of the following ways:

VIA PHONE: (732)-396-9010
VIA EMAIL: support@rightanswers.com
VIA LIVE CHAT: <http://www.rightanswers.com>,

All support requests are responded to as soon as practical. Requests received after 5:00 pm ET are responded to by 10:00 am ET the next business day. RightAnswers shall have no obligation to provide support if a problem is caused by a malfunction of hardware, software not supplied by us, modification of the RightAnswers Products not made by us, operator error, or use of the Product or Updates in a manner not in accordance with the operating instructions for the Product.

3.3 Subscription Term. The term shall automatically renew for successive one-year terms at the end of the Initial Term at the then-current fees, subject to an adjustment limitation that any increase shall not to exceed five percent (5%) per year, unless either party provides the other prior written notice of its intent to terminate the subscription license no later than sixty (60) days in advance of the anniversary date for the renewal term. The subscription fees for any renewal term shall be due and payable at such anniversary date. During the Subscription Term, Customer shall receive the license and maintenance service rights and benefits as described herein and as elaborated in the attached Appendices.

4. EMPLOYEES

Licensee shall be responsible for ensuring that its employees, agents and consultants comply with the terms and conditions of this Agreement, and shall be responsible for the failure of such employees, agents or consultants to abide hereby.

5. PAYMENTS

Licensee shall pay the fees set forth in any applicable Sales Order Form and any invoice for renewal of the Subscription Term. All fees shall be paid within thirty (30) days of the receipt of an invoice except as otherwise stated on the applicable Sales Order Form. Payments not made within fifteen (15) days of the date due shall accrue interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less. All invoices shall be expressed

and payable in United States dollars. All fees and charges hereunder are exclusive of all sales, use or other taxes. Licensee shall be responsible for all taxes arising hereunder, except for taxes on RightAnswers net income.

6. COPYRIGHT/CONFIDENTIALITY PROTECTION

We retain all intellectual property rights in the RightAnswers Products and RightAnswers confidential information, including without limitation, all derivative works thereto. You agree to retain all proprietary marks, legends and patent and copyright notices that appear on the RightAnswers Products and the RightAnswers confidential information delivered to you and all partial copies thereof. You may not copy or otherwise use the RightAnswers Products and any related documentation, in whole or in part, except as expressly permitted in this Agreement. You recognize that the RightAnswers Products contain certain confidential information, and you must reasonably protect the confidential information contained in the RightAnswers Products and provide at least the same safeguards afforded your own confidential information, but in no event, shall you apply less than a reasonable standard of care to protect the confidentiality of our confidential information.

7. TERM AND TERMINATION.

7.1 General. This Agreement becomes effective upon the date set forth on the Sales Order Form referencing this Agreement or use of the Product, whichever occurs first ("Effective Date").

7.2 Effects of Termination/Expiration. The license to use the RightAnswers Products shall immediately terminate upon expiration or termination of this Agreement. This Agreement and/or the licenses granted hereunder, as applicable, will terminate automatically based on an uncured material breach by either party, provided that, for breaches other than for the payment of money, the breaching party is given thirty (30) days prior written notice of termination as an opportunity to cure such breach. Upon termination for any reason, you agree that you will cease to use the RightAnswers Products and destroy or return to us all copies and related documentation., Sections 6, 7, 8, 10, and 13 shall survive termination of this Agreement.

8. INDEMNIFICATION

8.1 By RightAnswers. RightAnswers hereby agrees to defend and indemnify Licensee and its officers, directors, shareholders, legal representatives, employees, successors, assigns, and agents and hold them harmless from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and litigation expenses) based upon a third party's claim that the RightAnswers Products infringes a United States patent or copyright, provided that RightAnswers is given prompt notice of the action or claim, the right to control and direct the investigation, defense and settlement thereof, and that Licensee shall reasonably cooperate with RightAnswers regarding the foregoing. If such a claim arises, RightAnswers will, at its option, either procure the right for Licensee to continue using the RightAnswers Products or, if the foregoing is commercially unreasonable, terminate the license and refund a prorated portion of the license fees paid hereunder.

8.2 By Licensee. Licensee hereby agrees to defend and indemnify RightAnswers and its affiliates, and all of their officers, directors, shareholders, legal representatives, employees, successors, assigns and agents and hold them harmless from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including reasonable attorney's fees and litigation expenses) relating to or arising from Licensee's modification or material misuse of the RightAnswers Products.

9. LIMITED WARRANTY

RightAnswers warrants, for a period of ninety (90) days from the Effective Date ("Warranty Period"), that the Product will perform, in all material respects, the functionality described in the Documentation for such Product. This warranty does not apply (i) if the Product is not used in accordance with the Documentation; (ii) the Product or any part thereof has been modified without the prior written consent of RightAnswers; or (iii) a defect in the Product has been caused by any malfunctioning equipment. Should the Product not perform in accordance with this warranty, Customer's exclusive remedy, and RightAnswers' exclusive liability under this warranty is, upon Customer's notice to RightAnswers during the Warranty Period, for RightAnswers at its sole discretion to correct the defect or refund the Subscription License Fee paid by Customer for the defective Product. This limited warranty is the only warranty provided by RightAnswers regarding the Licensed Material. EXCEPT FOR THE LIMITED WARRANTY ABOVE, THE LICENSED MATERIAL IS PROVIDED "AS IS."

In addition, RightAnswers will generally utilize commercially available virus detection software to determine whether any disruptive or corrupting software ("Virus") was coded or introduced to the Licensed Material by RightAnswers or its employees, prior to delivering the Licensed Material to Customer. Customer will be responsible for conducting

Virus-checking procedures before allowing installation or using the Licensed Material and for each new version, upgrade or service pack. If a Virus is introduced into Customer's system from the Licensed Material, each party will use commercially reasonable efforts to identify and neutralize such Virus and to mitigate any adverse effect of such Virus.

10. LIMITATION OF LIABILITY

EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE LICENSED MATERIALS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER WARRANTIES, OR CONDITIONS EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE OR COURSE OF DEALING. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE LICENSED MATERIALS IS ASSUMED BY YOU. NEITHER WE NOR OUR SELLERS SHALL HAVE ANY LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY, INCIDENTAL, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, LOST OR DAMAGED DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE, OR FOR CLAIMS BY A THIRD PARTY. OUR MAXIMUM AGGREGATE LIABILITY TO YOU, AND THAT OF OUR SELLERS, SHALL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT. THE LIMITATIONS IN THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM, OR A FUNDAMENTAL BREACH. Some states/countries do not allow the exclusion or limitation of liability for consequential or incidental damages so the above limitation may not apply to you.

11. EXPORT

Licensee shall not export or transmit the Licensed Materials directly or indirectly, to any restricted countries or in any manner that would violate United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, and any export administration regulations issued thereafter.

12. U.S. GOVERNMENT RESTRICTED RIGHTS

If the Licensed Materials are supplied to the U.S. Government, the Licensed Materials are classified as "restricted computer software" as defined in clause 52.227-19 of the Federal Acquisition Regulations (or any successor regulations) (the "FAR"). The U.S. Government's rights in the Licensed Materials are as provided in clause 52.227-19 of the FAR.

13. GENERAL

This Agreement may not be assigned by you without our prior written consent. If any provision of this Agreement is held to be invalid or unenforceable under any circumstances, its application in any other circumstances and the remaining provisions of this Agreement shall not be affected. No waiver of any right under this Agreement by either party shall be effective unless given in writing by that party. No waiver of any right by either party shall be deemed to be a waiver of any other right arising under this Agreement. This Agreement does not establish the relationship of partnership, joint venture, franchise or principal and agent among the parties, and neither party shall have any authority to incur obligations or take other actions on behalf of the other party.

The laws of the State of New York govern this Agreement. The sole forums for resolving disputes arising under or relating to this Agreement shall be the State and Federal Courts of the State of New York, and the parties hereby consent to the jurisdiction of such courts and agree that venue shall be in New York County, New York.

14. ENTIRE AGREEMENT

You agree that this Agreement and any applicable Sales Order Form is the complete and exclusive agreement between you and us, and that it supersedes any proposal or prior agreement or license, oral or written, and any other communication relating to the subject matter hereof. We are not bound by any provision of any purchase order, receipt, acceptance, confirmation, correspondence or otherwise, unless we specifically agree to the provision in writing. No vendor, distributor, provider, reseller, OEM, sales representative or other person is authorized to modify this Agreement or to make any warranty, representation or promise regarding the RightAnswers Products and/or services.

Exhibit A Hosting Service Agreement

1. Hosting Services

- 1.1. **Hosting Services.** The "Hosting Services" shall include the hosting by RightAnswers of the Content (as herein after defined) for access by RightAnswers Products.

2. Definitions.

- 2.1. "RightAnswers Data" means all product information, technology, methods, processes, specifications, solutions, utilities, graphics and data supplied or provided by RightAnswers for use in the Content.
- 2.2. "Customer Data" means all product information, technology, methods, processes, specifications, solutions, utilities, graphics and data supplied or provided by Customer for use in the Content.
- 2.3. "RightAnswers Content" means the knowledge-base product that includes the RightAnswers Data in a searchable knowledge base of technical information that is segmented in collections relating to a particular product or group of products.
- 2.4. "Customer Content" means the structured, searchable content created by RightAnswers at the request of Customer based on Customer Data incorporated into inquiries and responses.
- 2.5. "Content" means the RightAnswers Content and the Customer Content collectively.

3. SERVICE LEVELS

- 3.1. **Availability.** RightAnswers will use its commercially reasonable efforts to have the Hosting Service available 99.95% of the time except for Scheduled Maintenance and as set forth in the Service Level Agreement attached as Exhibit B.
- 3.2. **Scheduled Maintenance Policy.** The Parties acknowledge that the Applications and Services are constantly being upgraded and improved, and may be unavailable during required maintenance and upgrade work. RightAnswers agrees that it will perform its Scheduled Maintenance in accordance with the Service Level Agreement attached as Exhibit B. RightAnswers reserves the right to carry out emergency maintenance work at any time on the network, giving the Customer as much warning as reasonably possible. Scheduled Maintenance work shall not be considered emergency maintenance work for purposes of this Section 3.2 and Exhibit B.
- 3.3. **Problems with Service Level.** Each Party shall, acting in good faith, endeavor to give the other Party a reasonable opportunity to cure a problem under this article which does not rise to the level of a material breach before giving notice invoking its right to terminate, including advising the other party as soon as it determines that such a problem has occurred, and using reasonable efforts to cooperate with the other party to solve the problem.

4. CUSTOMER'S OBLIGATIONS

- 4.1. **Customer Responsibilities.** As between Customer and RightAnswers, Customer agrees that it is solely responsible for and assumes all liability relating to the following: (a) all aspects of Customer's business, including Customer's obligations to third parties and all business or financial results obtained by Customer from using the Hosting Services; (b) all technology, content and Customer Data provided to RightAnswers by or through Customer for use with the Hosting Services, including performance of software applications provided by Customer; (c) decisions about Customer's computer and communications systems needed to access the Hosting Services; and (d) compliance with all applicable laws and governmental regulations regarding Customer's business or use of the Hosting Services.
- 4.2. **License of Customer Applications.** The Customer warrants that the Customer has, and maintains, valid licenses or rights to use and redistribute all Customer Data which it provides to RightAnswers free of any infringement of the intellectual property or other rights of any other person or entity.
- 4.3. **Use of the Services.** Customer covenants that it will not engage in the operation of any illegal transaction or business and will not use nor permit anyone to use the Hosting Services for any illegal purpose. Customer covenants that Customer will not use the Content in a manner that violates the terms of this Agreement.

5. TERMINATION

- 5.1. **Termination by RightAnswers for Cause.** In addition to any other remedy available at law or in equity, RightAnswers may terminate this Agreement immediately, in whole or in part, without further obligation to Customer in the event of: (i) any material breach by Customer of Sections 4, 6.5 and 7.5 of this Agreement or any other material breach of this Agreement by Customer which is not cured pursuant to the procedure provided in Section 5.3; (ii) Customer making an assignment for the benefit of its creditors, or the filing by or against Customer of a voluntary or involuntary petition under any bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import, or the appointment of a trustee or receiver for Customer or its property; and (iii) use of the Hosting Services by Customer (a) presents a material security risk or will interfere materially with the proper continued operation of a data center or related services or (b) is subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop. Upon notice of not less than seven (7) days and failure to cure within the notice period, RightAnswers may terminate this Agreement, in whole or in part, if, in RightAnswers' reasonable judgment, use of the Hosting Services by Customer violates applicable laws or governmental regulations, including, without limitation, consumer protection, securities regulation, child pornography, obscenity, data privacy, data transfer and telecommunications laws.
- 5.2. **Termination by Customer for Cause.** In addition to any other remedy available at law or in equity, and in addition to Customer's rights to terminate as set forth in other Sections of this Agreement, and subject to Section 5.3, Customer may terminate this Agreement immediately, in whole or in part, without further obligation to RightAnswers in the event of: (i) any material breach by RightAnswers of Sections 6, 7.1 and 7.5 of this Agreement or any other material breach of this Agreement by RightAnswers which is not cured pursuant to the procedure provided in Section 6.6; or (ii) RightAnswers making an assignment for the benefit of its creditors, or the filing by or against RightAnswers of a voluntary or involuntary petition under any bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import, or the appointment of a trustee or receiver for RightAnswers or its property.
- 5.3. **Cure of Material Breach.** Either Party may terminate this Agreement with immediate effect if the other Party materially breaches this Agreement and does not remedy the breach within 30 days from the time one Party notifies the other of the material breach. Either Party shall notify the Party in breach and in the notice, explain what the breach is and include a warning that it plans to terminate this Agreement unless the breach is remedied. During this 30 day period, the Parties shall cooperate in good faith to remedy the breach.

6. INTELLECTUAL PROPERTY

- 6.1. **RightAnswers Content & Data.** All right, title, copyright and other interest in and to any part or all of the RightAnswers Data and RightAnswers Content shall at all times remain the sole and exclusive property of RightAnswers. The Customer shall not cause or permit actions, which may endanger or damage any industrial or intellectual property rights of RightAnswers or title to such rights in RightAnswers, and Customer agrees that it shall not take any action inconsistent with RightAnswers' rights.
- 6.2. **Customer Data and Content.** Except for any software tools, specifications, ideas, concepts, know-how, processes, and techniques used by RightAnswers in creating the Customer Content, the Customer Data and the Customer Content shall be and will remain the property of Customer, and all right, title and interest therein shall vest in Customer, and shall, to the fullest extent permitted by law, constitute "work made for hire" under United States copyright law. To the extent that the Customer Content, in whole or in part, does not constitute works made for hire, RightAnswers hereby assigns, grants and conveys to Customer all right, title and interest now existing or that may exist in the future in and to any intellectual property rights, including any copyrights and patents, in any and all aspects of the Customer Content developed hereunder.
- 6.3. **Grant of License by RightAnswers.** RightAnswers hereby grants to Customer a worldwide, irrevocable for the term of this Agreement, non-assignable, non-exclusive license for Customer, its successors, agents and assigns to use the RightAnswers Content and RightAnswers Data for the term of this Agreement, solely in connection with provisions hereunder and use of same for its internal business purposes. RightAnswers warrants that it has the right to do so for any third-party software included with the RightAnswers Data.
- 6.4. **Grant of License by Customer.** Customer hereby grants to RightAnswers a limited, revocable, non-assignable, non-exclusive license to use the Customer Data for the term of this Agreement, solely in connection with developing the Content and providing the Hosting Services hereunder. RightAnswers may

make only such copies of the Customer Data and Customer Content as may be necessary to perform its obligations under this Agreement.

- 6.5. Monitoring of Use.** Customer shall (i) use the Hosting Services strictly as prescribed under this Agreement, and (ii) not retransmit or redistribute the RightAnswers Content to other persons or entities.

7. INDEMNIFICATION; LIMITATION OF LIABILITY

- 7.1. RightAnswers Representations and Warranties.** RightAnswers hereby warrants that: (i) all Hosting Services performed under this Agreement by RightAnswers shall be performed and prepared in a workmanlike manner with professional diligence and skill; (ii) RightAnswers has the legal right and authority, during the Term of this Agreement, to provide or supply the Hosting Services to Customer under this Agreement (iii) the Content do not, to the best knowledge of RightAnswers, infringe any patents copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or similar rights of any person or entity; (iv) RightAnswers has taken reasonable commercial efforts to ascertain that, and to the best of its knowledge, the RightAnswers Content does not and will not contain any Trojan horses, worms, viruses or other malicious code; and (v) RightAnswers shall perform all work called for by this Agreement in compliance with applicable laws.
- 7.2. Customer Indemnification.** Customer agrees to indemnify and hold harmless RightAnswers and its officers, directors, employees, representatives and counsel from any and all losses, liabilities, damages, costs or expenses, whatsoever as incurred, including without limitation attorney's fees, arising out of any claim brought against RightAnswers alleging that the Customer Data infringes any third party proprietary right, including patent, copyright, trade secrets, trademarks, service marks, brand names and trade names (collectively, "Intellectual Property Rights").
- 7.3. RightAnswers Indemnification.** RightAnswers agrees to indemnify and hold harmless Customer and its officers, directors, employees, representatives and counsel from any and all losses, liabilities, damages, costs or expenses, whatsoever as incurred, including without limitation attorney's fees, arising out of any claim brought against Customer alleging that any RightAnswers Content supplied by RightAnswers infringes any third party Intellectual Property Rights. RightAnswers shall defend at its own cost and expense any action or claim brought against Customer to the extent that it is based on a claim that any equipment or technology supplied by RightAnswers infringes any third party Intellectual Property Rights. RightAnswers agrees to pay all costs, expenses, damages, and losses incurred by Customer in any action that is attributable to any such claim.
- 7.4. Network Connection.** Customer shall access the Content by various possible means, including but not limited to, a public Internet network or common carrier connection or other TCP/IP-enabled network connection ("Network Connection") provided by, including but not limited to, an internet service provider, online service provider or other network provider. Customer understands and accepts that the reduced performance or non-availability of this Network Connection may result in reduced performance, interruption or temporary termination of the Hosting Services. Customer further understands and accepts that RightAnswers bears no responsibility for the performance or availability of the Network Connection. RightAnswers shall have no liability to Customer or any third person for any loss or expense relating to reduced performance, interruption or termination of Hosting Service due to the reduced performance or unavailability of a Network Connection.
- 7.5. Privacy/Confidential Information.** Both Parties agree to comply with all applicable privacy or data protection statutes, rules or regulations governing the respective activities of the parties.
- 7.6. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Sales Order Forms and the Customer Data and Customer Content hereunder), the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data and Customer Content) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 7.7. Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

- 7.8. **Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.
- 7.9. **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 7.10. **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7.5, the 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.
- 7.11. **Disclaimer of Warranties.** EXCEPT AS PROVIDED FOR HEREIN, RIGHTANSWERS DOES NOT WARRANT OR GUARANTEE THAT THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THE SERVICES WILL BE ERROR-FREE OR TROUBLE-FREE, AND THAT THE SERVICES ARE BEING PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 7.12. **Disclaimer of Liability.** EXCEPT AS PROVIDED FOR HEREIN, NEITHER RIGHTANSWERS NOR CUSTOMER SHALL HAVE ANY LIABILITY TO THE OTHER, OR TO ANY THIRD PERSON FOR LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN, NONOPERATION OR INCREASED EXPENSES OF OPERATION; OR DIRECT, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING FROM ANY CAUSE EVEN IF THE PARTY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES TO HOLD RIGHTANSWERS AND ITS VENDORS HARMLESS FROM AND AGAINST SUCH SUITS, PROCEEDINGS, LIABILITY, LOSS OR DAMAGE BASED UPON ANY THIRD PARTY CLAIMS FOR USE OF THE SERVICE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR CLAIMS FOR WHICH RIGHTANSWERS IS OBLIGATED TO INDEMNIFY CUSTOMER PURSUANT TO SECTION 7.3 (INDEMNIFICATION), RIGHTANSWERS' LIABILITY FOR ANY LOSSES OR DAMAGES RELATING TO OR ARISING FROM THE SERVICES, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT.
- 7.13. **Further Disclaimer of Liability.** BECAUSE THE SERVICE IS TRANSMITTED OVER THE INTERNET, RIGHTANSWERS CANNOT BE RESPONSIBLE FOR ANY TRANSMISSION PROBLEMS OR FOR ANY HACKING, VIRUSES OR OTHER ACTS BY THIRD PARTIES WHICH CAUSE INACCURACIES, DELAYS OR OTHER PROBLEMS OF ANY KIND IN THE TRANSMISSION OF THE CONTENT. ACCORDINGLY, ANYTHING TO THE CONTRARY HEREIN SET FORTH NOTWITHSTANDING, RIGHTANSWERS, ITS OFFICERS AND EMPLOYEES, AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS, VENDORS, AND ITS THIRD-PARTY AGENTS SHALL NOT, DIRECTLY OR INDIRECTLY, BE LIABLE, IN ANY WAY, TO CUSTOMER, ITS END USERS OR ANY OTHER PERSON OR COMPANY FOR (a) ANY INACCURACIES OR ERRORS IN OR OMISSIONS FROM THE HOSTING SERVICE AND CONTENT, (b) ANY DELAYS, ERROR OR INTERRUPTIONS IN THE TRANSMISSION OR DELIVERY OF THE SERVICE OR CONTENT, OR (c) ANY LOSS OR DAMAGE ARISING THEREFROM OR OCCASIONED THEREBY, OR BY ANY REASON OF NONPERFORMANCE.
- 7.14. **No Security Warranty and RightAnswers' Obligations.** As set forth in the Service Level Agreement attached as Exhibit B, RightAnswers shall take commercially reasonable precautions to protect the customer's content and proprietary data; protect against unauthorized access to the Customer's data; define login ID/password combinations specifically for the customer to protect against unauthorized user access; and have appropriate physical securities in place at its hosted facilities to protect the Customer's data.

NOTWITHSTANDING THE FOREGOING, RIGHTANSWERS DOES NOT GUARANTEE THAT ITS PROCEDURES AND SERVICES WILL PREVENT LOSS, ALTERATIONS OR UNAUTHORIZED ACCESS TO CUSTOMER DATA HOSTED BY RIGHTANSWERS.

8. MISCELLANEOUS

- 8.1. **Governing Law.** This Agreement is made and entered into in the State of New York and shall be governed by the laws of that State without regard to conflict of law principles.

- 8.2. **Force Majeure.** Neither Party will be responsible for delays or failures in performance, resulting from acts or circumstances beyond the control of such Party. Such acts or circumstances will include, but not be limited to acts of God, strikes or other labor disputes, riots, acts of war, governmental regulations imposed after the fact, communication line failures, power failures, fire or other disasters that materially affect the performance by the Parties of their obligations under this Agreement.
- 8.3. **Headings.** The Section titles in this Agreement are used solely for the convenience of Customer and RightAnswers, and have no legal or contractual significance.
- 8.4. **Survival.** Notwithstanding the termination of this Agreement for any reason, Sections 5, 6, 7.5, 7.12 and 8.1 hereof, and Customer's obligation to make payments under this Agreement hereof accrued to the date of such termination, shall survive such termination and shall remain in full force and effect.

Exhibit B Service Level Agreement (SLA)

Service Availability Commitment

RightAnswers Service Availability Commitment is to limit Customer's Server unavailability to less than four hours in any calendar month. RightAnswers will attempt to maintain 99.95% or better availability to our *Knowledge-Paks Online* Site ("Site Availability"). This availability pertains to network uptime and Web site/server availability (ability to access operating system and Web servers).

If for some reason, connectivity to our Site is unavailable, RightAnswers agrees to respond to the issue within one hour of notification during RightAnswers' business hours. RightAnswers will thereafter immediately begin troubleshooting procedures to resolve the issue to the best of its abilities, provided the cause of issue is not within the customer's environment.

Exclusions:

The following reasons for outages will qualify as exclusions and any outages experienced under such circumstances will not be counted in measuring RightAnswers success in meeting its Service Level obligations:

- ❖ Outages caused by delay or interruption in telecommunications provided by third party services, including DNS propagation service.
- ❖ Outages, to the extent directly caused by any event or condition not within the control of RightAnswers, including without limitation, acts of any governmental body, war, insurrection or embargo.
- ❖ Outage on the server during Scheduled Maintenance or emergency maintenance events.
- ❖ Outages caused by negligence or willful misconduct of Customer or others authorized by Customer to use *RightAnswers Self-Service* and/or *Knowledge-Paks Online*.

Scheduled Maintenance Scope:

Scheduled Maintenance shall mean either (1) any maintenance in the RightAnswers data center (a) of which Customer is notified 48 hours in advance, and (b) that is performed in a standard maintenance window during off-peak hours (Sunday 6:00 p.m. through 6:00 a.m. prevailing Eastern Time) at the RightAnswers data center or (2) any maintenance of Customer's server (a) of which Customer is notified 48 hours in advance and to which Customer has agreed in writing, and (b) that is performed during a non standard maintenance window (i.e., other than Sunday 6:00 p.m. through 6:00 a.m. prevailing Eastern Time). All maintenance notifications from RightAnswers to Customer will be provided to Customer's designated point of contact by a method agreed upon with the Customer (telephone, email, fax or pager). Scheduled Maintenance related outages will not be counted in measuring RightAnswers success in meeting its Service Availability Commitment.

Service Availability Commitment Process:

If Customer opens a trouble ticket with RightAnswers Support within 5 days of Customer's failure to access the site and RightAnswers determines in its reasonable commercial judgment that the server is unavailable due to a Server outage caused solely by the items of the service managed exclusively by RightAnswers, that outage will be used to calculate Server unavailability. A server shall be deemed to be unavailable if the server is not responding to HTTP requests issued by RightAnswers monitoring software. RightAnswers will thoroughly research and investigate client input and third party evidence regarding outages, however, RightAnswers records and data shall be the final basis for all service availability calculations and determinations. Scheduled Maintenance shall not be deemed to be Server unavailability. Unavailability of site due to any of the excluded causes listed above shall not be deemed Server unavailability for the purpose of this Commitment.

Backing Up and Storage:

Backup services offer comprehensive management and administration of the Content. Current backup frequency calls for daily and weekly full backups.

Proprietary Content Security

Content security is managed through user profiles and content separation (logical and physical). Each client receives one or more user profiles which are authenticated against the content repository. Content itself is separated logically into libraries and channels, which are used to manage the access and the level of data encryption. Physically the content is stored on shared servers, but with a dedicated database for each client's proprietary content. Furthermore, the hosted facility is physically secured with perimeter security and monitoring.