

# Mission Pathways Solutions Agreement

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This Mission Pathways Solutions Agreement is entered by You and Mission Pathways and each party agrees as follows:

## 1. Welcome to Mission Pathways

This agreement sets forth the terms and conditions that govern Your access to and use of Our Solutions. Please contact Mission Pathways if You have any questions about this agreement.

## 2. Ordering Procedures

We will provide You access to Our Solutions and deliver the Services detailed in the applicable Order Form. The Order Form, along with its attachments, which may include statements of work for Services (each an “SOW”), constitutes the complete and entire agreement, and supersedes all other agreements between Us concerning Our Solutions. In the event of a conflict between this agreement, an Order Form, or a SOW, the following order of precedence shall apply: (1) Order Form; (2) this agreement; (3) SOW.

## 3. Subscription Access and Use

- a. Access. You and Your employees may access and use Subscriptions and Documentation for Your internal business purposes during the term set forth in the Order Form.
- b. Suspension; Acceptable Use Policy. We may suspend access to any Solution upon written notice if You fail to pay fees when due, violate this agreement, or violate Mission Pathways’ AUP (Acceptable Use Policy). Suspensions are rare and exercised in a manner proportionate to the severity of the violation. We agree to work with You in good faith to address any violations in a reasonable manner, to prevent similar violations, and to reinstate the affected Solutions as quickly as possible.

## 4. Fees, Expenses, And Payment

The financial terms for the Solutions are set forth in the applicable Order Form.

## 5. Confidential Information

- a. Definitions. “Confidential Information” means (i) all information disclosed by one of Us (“Owner”) to the other (“Recipient”) electronically, visually, orally or in a tangible form which is either (a) marked as “confidential” (or with a similar legend), (b) is identified at the time of disclosure as being confidential, or (c) should be reasonably

understood to be confidential or proprietary; (ii) the terms and/or existence of this agreement and the relationship between the parties, Our architecture, software, data, and technology that comprise the Solutions, Order Form(s), SOW(s), and any proposals or other documents that preceded this agreement; and (iii) donor, student, prospect and financial information. Recipient shall not obtain any rights, title, or interest in any Confidential Information of Owner. The obligations in (b) below shall not apply to: information generally known to the public; information independently developed by Recipient without access to Confidential Information; information in the possession of Recipient without an obligation of confidentiality; or information required to be disclosed by court order or applicable law after Owner has been notified.

- b. Treatment of Confidential Information. Recipient may only (i) use Owner's Confidential Information to carry out the purposes of this agreement; and (ii) disclose Owner's Confidential Information to those third parties operating under non-disclosure provisions no less restrictive than those set forth in this agreement and who have a justified business "need to know." Recipient is responsible for any mistreatment of Confidential Information by such third parties. Recipient must protect Owner's Confidential Information using the same degree of care it uses to protect its own confidential and proprietary information, but in any case, not less than reasonable care, and protect such information in accordance with applicable laws. Upon termination of this agreement, Recipient must return or destroy all Owner Confidential Information in its possession or control, if feasible. If not destroyed, Recipient will continue to protect such information as required above.

## 6. Security

- a. It takes both of Us to protect Your Data and Our Solutions. We have implemented and will maintain administrative, physical, and technical safeguards designed to: (i) protect against anticipated threats or hazards to the security of Your Confidential Information, and (ii) protect against unauthorized access to or use of Confidential Information that could materially harm You. Our technical safeguards include firewalls, virus and intrusion detection, and authentication protocols. In order to continually improve our safeguards, Mission Pathways reserves the right to make changes to the physical and technical safeguards, policies, and data security programs at any time, provided We will at all times maintain commercially reasonable information security procedures and standards. You and Mission Pathways acknowledge that Solutions may include sending email and publishing web pages over the public Internet using SMTP or HTTP protocols, and that these standard protocols do not support many enhanced data security protections. In no case will the use of the public Internet in this manner be deemed to violate Our obligations under this Agreement. You commit to take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Your Data and Our Solutions. Upon request and no more than once per year, You may obtain a copy of our most recent third party security audit summary report for the applicable Mission Pathways Solutions from Support.

- b. We have implemented commercially reasonable, written policies and procedures addressing potential Security Breaches and have a breach response plan in place.
- c. Within seventy-two (72) hours of discovery, We will report to You any Security Breach affecting Your Confidential Information. “Security Breach” means unauthorized access, use, disclosure, modification, or destruction of Confidential Information. Security Breaches shall not include: (a) “pings” on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Your Confidential Information.
- d. In the event of a Security Breach, We will use commercially reasonable efforts to mitigate any negative consequences resulting directly from the Security Breach and will use commercially reasonable efforts to implement procedures to prevent the recurrence of a similar Security Breach.
- e. We will use industry standard methods for the destruction of Your Confidential Information in accordance with Section 15(c) (Effect of Termination).

## 7. Your Obligations

Solutions may only be used or accessed from Your devices and systems that meet the System Requirements. You agree to administer and monitor the use of Your login IDs, passwords, and all accesses to the Solutions by Your employees pursuant to the instructions You will receive when Your Solutions are activated.

## 8. Indemnity

Each party shall indemnify and defend the other party against any third party claims to the extent arising from the indemnifying party’s gross negligence or willful misconduct. You shall indemnify and defend Mission Pathways against any third party claims to the extent arising from Your breach of the AUP or Your obligations under Section 7 above. The indemnified party shall give the indemnifying party prompt written notice of any claims for indemnification and the indemnified party agrees to relinquish control of defending any such claim to the indemnifying party, including the right to settle; provided however, that the indemnifying party will not settle any such suit or claim without the indemnified party’s prior written consent if such settlement would be adverse to the indemnified party’s interests. This section states the entire liability of each party with respect to any type of third party claim.

## 9. Representations, Warranties, And Disclaimer

- a. Mutual Representations and Warranties. Each party represents and warrants that (i) it has the right and power to enter into this agreement, (ii) an authorized

representative has accepted this agreement, and (iii) it will comply with all applicable laws and regulations pertaining to this agreement.

- b. Mission Pathways Limited Warranties. Solutions will materially perform pursuant to their then-current Documentation. All Services will be performed in a professional manner in accordance with industry standards. If You believe that a Solution fails to perform as described in the Documentation, You must notify Mission Pathways in writing within thirty (30) days of the occurrence of the problem, and Mission Pathways will use reasonable efforts to repair or replace the Solution without charge. If a Service has been improperly performed, You must notify Mission Pathways in writing within thirty (30) days of the occurrence of the problem, and Mission Pathways will reperform the Service without charge. The foregoing provides Your sole remedy for Solutions or Services that do not comply with the foregoing promise.
- c. Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 9, MISSION PATHWAYS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER MISSION PATHWAYS EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

## 10. Limitation of Liability

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8 AND YOUR PAYMENT OBLIGATIONS, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE GREATER OF (X) \$25,000 OR (Y) THE AMOUNT OF FEES PAID OR PAYABLE BY YOU FOR THE SOLUTION FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AND MISSION PATHWAYS AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

## 11. Ownership

- a. Your Ownership and License. You own Your data, Your Confidential Information and any artwork, logos, trade names, and trademarks that You provide to Mission Pathways ("Your Data"). In order for Mission Pathways to provide the Solutions, You grant to Mission Pathways and its suppliers a nonexclusive, fully paid-up license to use, reproduce, store, modify, and display Your Data. Mission Pathways may aggregate information from Your use of Solutions with information from other customers' use, and use and disclose such results on an aggregated and anonymized basis for any purpose provided We do not individually identify You, Your Confidential Information, or Your use of Solutions.

- b. Mission Pathways Ownership and License. Subject to Your rights to Your Data set forth above, Mission Pathways has all right, title, and interest in and to any expressions and results of Solutions, the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, other technical information, and all derivatives of the foregoing created in connection with this agreement (“Work Product”). Mission Pathways grants to You a nonexclusive, fully paid-up license to use Work Product, solely to the extent necessary for You and Your end users to use Solutions in accordance with this agreement. If You provide any feedback, comments, suggestions, ideas, requests, or recommendations for modifications or improvements to Mission Pathways, You hereby assign all right, title, and interest in any such feedback to Mission Pathways to be used for any purpose. All rights not expressly granted to You hereunder are reserved by Mission Pathways.

## 12. Notice

All notices or other communications sent pursuant to or in connection with this agreement shall be made in writing and sent to the applicable address set forth in the Order Form, or as designated from time to time in writing by either of Us. All notices shall be deemed given if delivered receipt confirmed using registered or certified first-class mail, postage prepaid, or recognized courier delivery.

## 13. Force Majeure

Neither party shall be liable for any failure to perform its obligations under this agreement if prevented from doing so by a cause beyond such party’s reasonable control.

## 14. Dispute Resolution; Governing Law

The parties agree to submit all unresolved disputes between them to arbitration administered by the American Arbitration Association (“AAA”) and governed by the AAA Commercial Arbitration Rules then in effect, except that (a) either party may (i) seek injunctive relief for infringement of intellectual property rights or other proprietary rights in court or (ii) seek a determination as to whether a claim is arbitrable in court (the arbitrator may not rule on his or her own jurisdiction); and (b) Mission Pathways may sue in court to collect unpaid amounts under this or any other agreement between Us. For all arbitrated matters, one arbitrator will be appointed under the AAA Commercial Rules, and the locale of arbitration will be Ann Arbor, Michigan, unless the parties mutually agree to another locale before appointment of the arbitrator. YOU AND MISSION PATHWAYS EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING UNDER OR RELATED TO THIS AGREEMENT. This agreement is governed by the laws of the State of Michigan, excluding choice of law principles.

## 15. Term and Termination

- a. Term. The term of this agreement commences on the Effective Date and continues until terminated pursuant to this Section 15 or until the expiration of the current term if cancelled in accordance with an Order Form.
- b. Default. Either party may terminate this agreement if the other party materially defaults in performing its obligations under this agreement and the default remains uncured for at least thirty (30) days following receipt of written notice from the party requesting termination, and immediately by Mission Pathways upon written notice for Your failure to pay undisputed invoices when due. In addition, this agreement may be terminated by Mission Pathways upon written notice if You make an assignment for the benefit of creditors by You or dissolve Your entity.
- c. Effect of Termination. Upon termination of this agreement or termination of a Solution, Mission Pathways may immediately cease providing the terminated Solution(s). If Mission Pathways has Your Data in its possession upon termination, to the extent technologically feasible, Mission Pathways will provide You with a copy of Your Data in its then-standard database format. If Mission Pathways creates archive copies of Your Data during the course of performing its obligations under this agreement, You agree that Mission Pathways may retain such copies following termination subject to Mission Pathways' internal practices for record destruction. All earned and unpaid fees and expenses are due upon termination.

## 16. Statutory Exception

If You are a qualified public educational or government institution, any part of this agreement which may be invalid or unenforceable against You because of applicable state or federal law (example: all or part of the Indemnity section) shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law. If required by law this agreement will be governed by applicable state or federal law.

## 17. General

Except as specifically stated herein, remedies are cumulative. No failure or delay in enforcing any term or exercising any option shall be construed as a waiver unless agreed to in writing by Us. If any provision of this agreement is held to be unenforceable, the other provisions shall remain in full force and effect. No purchase order or other ordering document that purports to modify or supplement the printed text of this agreement or any attached or referenced document shall add to or vary the terms of this agreement. All proposed modifications to this agreement, Order Form(s) or SOW(s) are objected to and deemed material unless otherwise mutually agreed to in writing. Order Forms may be executed electronically, and in counterparts, which together form one legal instrument. A copy of an executed Order Form and any purchases within a Solution and made by reliable means, including electronic acceptance, shall be considered an original. You may not assign Your rights or obligations under this agreement without Our

written consent. Mission Pathways performs its obligations under this agreement as an independent contractor, not as Your employee, partner, or agent. Sections 3(b), 4, 5, 8, 9, 10, 11, 12, 14, 15.c, 17 and 18 survive the termination of this Agreement. You have accepted this agreement by the signing of an Order Form by Your duly authorized officer or officer representative.

## 18. Definitions

- “AUP” means Mission Pathways’ acceptable use policy located at <https://www.MissionPathways.com> under the Customer Documentation footer menu and is updated from time to time by Mission Pathways.
- “Mission Pathways”, “Our”, and “We” mean Mission Pathways, LLC. and its affiliates and subsidiaries.
- “Documentation” means applicable manuals and documentation that Mission Pathways generally provides or makes available for Solutions.
- “Effective Date” means the date of Your signature on the Order Form.
- “Order Form” means the Mission Pathways order form signed by You (electronically or otherwise) and accepted by Mission Pathways setting forth the Solutions You have ordered.
- “Services” means services provided by Mission Pathways other than Subscriptions that are pursuant to an Order Form (and SOW if applicable) and may include professional, consulting, or training services.
- “Solutions” means Subscriptions and Services collectively.
- “Subscription” means any Mission Pathways subscriptions, including maintenance, support, application services and payment services provided by Mission Pathways pursuant to an Order Form.
- “System Requirements” means the requirements set forth at <https://www.MissionPathways.com> under the Customer Documentation footer menu and is updated from time to time by Mission Pathways.
- “Us” means Mission Pathways and You collectively.
- “You” and “Your” mean the client set forth on the Order Form.