

TERMS AND CONDITIONS

Achievelt provides a suite of online web-based applications that allow organizations to automate creation, execution, and monitoring of plans, initiatives, and projects. The parties are desirous that Client be provided the right to access specific applications for its own use, subject to the terms and conditions below. In consideration of the premises and of the mutual covenants and obligations hereafter set forth, the parties agree as follows:

1. **SERVICES:** Achievelt agrees to provide the services set forth on the Signature Page to Client (the "Services") solely for Client's own internal business purposes subject to the terms of this Agreement. All rights not expressly granted to Client are reserved by Achievelt and its licensors.

2. **RESTRICTIONS; OWNERSHIP:** Client is permitted to store, manipulate, analyze, reformat, print, and display the content, data and information included as part of the Services ("Content") only for Client's internal business use. Unauthorized use, resale, or commercial exploitation of the Services or the Content in any way is expressly prohibited. Client agrees not to reverse engineer the Services, or access the Services in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of the Services, or (iii) copy any ideas, features, functions, or graphics of the Services. Client shall not copy, license, sell, transfer, make available, distribute, or assign the Services, this Agreement or the Content to any third-party. Client shall not create Internet "links" to the Services or "frame" or "mirror" any Content contained on, or accessible from, the Services on any other server or Internet-based device. Achievelt alone (and its licensors, where applicable) shall own all right, title, and interest, including all related intellectual property rights, in and to the Services, Content, and any suggestions, ideas, enhancement requests, feedback, or other information provided by Client relating to the Services or the Content. The Achievelt name and logo are trademarks of Achievelt, and no right or license is granted to use them.

3. **FEES; EXPENSES; LATE PAYMENT; BILLING:** The licensing fees, as well as any other up-front fee, are detailed on the Signature Page and begin on the date of this fully executed agreement. Reasonable and necessary out-of-pocket expenses associated with the delivery of on-site services, if any, including transportation to/from airports, to/from Client's locations (such as taxis, trains, rental cars, and air travel costs), business meals, and hotel expenses will be invoiced within 30 days that such

expenses are incurred. Payment is due within 30 days after the due date. Achievelt charges and collects in advance for the use of the Services, payable annually by check or credit card. Client will be invoiced and billed upon each renewal of the Agreement.

4. **TERM; TERMINATION:** Unless earlier terminated as set forth below, the term of this Agreement shall continue for the "Initial Term" set forth on the Signature Page. The Agreement will automatically renew for consecutive one year terms unless either party gives 90 days' advance written notice of its intent not to renew. Either party may terminate this Agreement by providing 30 days' written notice upon the material breach of this Agreement by the other party if such breach or violation is not cured during such notice period. In the event of such a termination, Achievelt shall not be liable to Client nor any third-party for any termination of Client's account or access to the Services. Upon expiration or termination of the Agreement, all rights to access or use the Services terminate, and, so long as Client is not in breach of this Agreement, Achievelt will make available to Client a file of the Client Data within 30 days of termination notice if Client so requests. All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement.

5. **PRIVACY; SECURITY:** The privacy policy applicable to the Services can be found online at www.Achievelt.com and is hereby incorporated into this Agreement by reference. Achievelt reserves the right to modify this privacy policy in its reasonable discretion from time to time. Achievelt shall use reasonable measures available to protect the security of Client's data, including data encryption and virus protection, but does not warrant or guarantee that the Services are free from the vulnerability of Internet attacks.

6. **CONFIDENTIAL INFORMATION:** Each party may disclose to the other party certain Trade Secrets and Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or

customers. For purposes of this Agreement, "Trade Secrets" means information that is a trade secret under law; "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "Proprietary Information" means Trade Secrets and Confidential Information; the "Disclosing Party" refers to the party disclosing Proprietary Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "Recipient" refers to the party receiving any Proprietary Information hereunder, whether such disclosure is received directly or through Recipient's employees, providers or agents. Recipient agrees to hold the Proprietary Information disclosed by Disclosing Party in confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Disclosing Party to any third party, or utilize the Proprietary Information disclosed by Disclosing Party for any purpose whatsoever other than as expressly contemplated by this Agreement. Client acknowledges that the Services and Content are the Proprietary Information of Achievelt or its licensors and other providers. The obligations in this Section shall continue for so long as such information constitutes Proprietary Information. The foregoing obligations shall not apply if and to the extent that Recipient establishes that the information communicated was publicly known at the time of Recipient's receipt or has become publicly known other than by a breach of this Agreement. Client acknowledges and agrees that Achievelt may have to provide Client's Proprietary Information or other data or information if Achievelt or its licensors or providers are ordered by an administrative agency or other governmental body of competent jurisdiction to disclose such information.

7. HIPAA COMPLIANCE FOR HEALTHCARE ORGANIZATIONS: Achievelt shall respect the confidentiality of all patient information and records and shall comply with all applicable laws and regulations concerning their maintenance and protection, including the Health Insurance Portability and Accountability Act ("HIPAA") and any regulations promulgated thereunder relating to patient information and records, including HIPAA-compliant software, websites, and data bases. "Patient information and records" shall be defined consistent with applicable law and shall include, without limitation, any and all "protected health information," as that term is defined by HIPAA, any and all individually identifying information concerning patients, and any and all records generated by Achievelt or Client.

8. ACCOUNT INFORMATION AND DATA: All data submitted by Client to Achievelt ("Client Data"), whether posted by Client or by third parties, shall remain the sole property of Client or such third parties, as applicable, unless specifically notified in advance. Client grants to Achievelt the non-exclusive, worldwide, right to use, copy, store, transmit and display Client Data solely to the extent necessary to provide the Services. Client, not Achievelt, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Client Data, and Achievelt shall not be responsible or liable for any action taken by the Client that results in the deletion, correction, destruction, damage, loss, or failure to store any data.

9. MUTUAL INDEMNIFICATION: Each party shall indemnify and hold the other party, its licensors, and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that use of the Client Data (in the case of Client as the indemnifying party) or use of the Services (in the case of Achievelt as the indemnifying party) infringes the rights of, or has caused harm to, a third party; provided that the indemnified party (i) gives written notice of the claim promptly to the indemnifying party (ii) gives the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not settle or defend any claim unless it unconditionally releases the indemnified party of all liability and such settlement does not affect the indemnified party's business); (iii) provides to the indemnifying party all available information and assistance; and (iv) has not compromised or settled such claim. Achievelt shall have no indemnification obligation, and Client shall indemnify Achievelt pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Services with any of Client's products, service, hardware, or business process(s).

10. WARRANTY; DISCLAIMER OF WARRANTIES: Achievelt warrants that the Services will perform substantially in accordance with their sales and marketing materials and existing user guides and documents with a minimum of 98% uptime availability. EXCEPT FOR THE FOREGOING WARRANTY, ACHIEVEIT AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, INTERNET AVAILABILITY, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR

COMPLETENESS OF ACHIEVEIT OR ANY CONTENT; ACHIEVEIT AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT THROUGH ACHIEVEIT WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS, OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (III) THE SERVICE AND ALL CONTENT IS PROVIDED TO CLIENT STRICTLY ON AN "AS IS" BASIS; AND (IV) ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ACHIEVEIT AND ITS LICENSORS. The Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Achieveit is not responsible for and delays, delivery failures, or other damage resulting from such problems.

11. **LIMITATION OF LIABILITY:** EXCEPT ARISING OUT OF A BREACH OF SECTION 2, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNT PAID BY OR DUE FROM CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. EXCEPT ARISING OUT OF A BREACH OS SECTION 2, IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE

SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **ADDITIONAL RIGHTS:** Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Client.

13. **GENERAL:** Client agrees to provide Achieveit with complete and accurate billing and contact information on the Signature Page. Client agrees to update this information within 30 days of any change to it. Client grants Achieveit the right to use the Client's name and logo in Achieveit promotional and advertising material. This Agreement shall be governed by Georgia law, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts located in Atlanta, Georgia. No text or information set forth on any other purchase order, preprinted form, or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, 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. No joint venture, partnership, employment, or agency relationship exists between Client and Achieveit as a result of this agreement or use of the Services. The failure of Achieveit to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Achieveit in writing. This Agreement comprises the entire agreement between Client and Achieveit and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

achieveit

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