



AAPlanner® and PayStat SaaS

Terms and Conditions

1. Learning Technologies Group Inc., through its division, AFFIRMITY ("we", "us" or "AFFIRMITY") uses reasonable commercial efforts to test its software application AAPlanner and/or PayStat SaaS ("AAPlanner and PayStat"). Those tests indicate that our current release of AAPlanner and PayStat as made available through the SaaS Subscription Services, complies with OFCCP regulations on Affirmative Action Plans ("AAPs") and OFCCP Compensation Studies in effect on the Order Form Term Start Date.
2. If AAPlanner and PayStat or any other software provided by us hereunder does not perform in accordance with our AAPlanner and PayStat Training Guide(s), AAPlanner and PayStat help system or other relevant documentation made available by us (collectively, "Documentation") and You are using it in accordance with the Documentation, and You notify us within ninety (90) days after You first receive and/or obtain access to AAPlanner and PayStat or any other software provided by us hereunder, outlining the area that does not perform in accordance with the Documentation, we will use reasonable commercial efforts to fix it or provide a reasonable workaround. If we cannot fix it or provide a reasonable workaround within a reasonable amount of time, you are entitled to promptly terminate this Agreement, in which case we will refund Your purchase price and this shall be Your sole and exclusive remedy.
3. If You are a new AAPlanner and PayStat customer, we will, upon commencement of the SaaS Subscription Services, provide You with an administration ID in AAPlanner and PayStat providing You with administration rights in AAPlanner and PayStat.
4. We are not responsible for, and disclaims any liability resulting from non-compliant affirmative action plans or compensation studies or other erroneous results produced using the Services based on inaccurate information, Your misuse of the Services, or Your failure to comply with any of the terms of the Documentation.
5. "Customer Data" means all permitted electronic data stored by Customer or processed through use of the Subscription Services, Customer Data does not include Prohibited Information.
6. "Prohibited Information" means credit or debit card numbers, passwords, protected health information as well as personal identifiable information as defined in HIPAA (45 C.F.R. § 160.103), and information relating to a customer or consumer of a financial institution under GLBA (15 U.S.C. §§ 6801–6809).

General Terms

7. The duration of the Services will be as set out in the relevant Order Form. Either party may terminate the Services for the other party's material breach not cured within thirty (30) days following written notice of such breach to the breaching party, or immediately upon written notice if the other party files for bankruptcy, becomes the subject of any bankruptcy proceeding or becomes insolvent. If You terminate this Agreement for our material breach, we will refund to You any prepaid fees for Services that You have not yet received. Should we terminate this Agreement for Your uncured material breach, You will remain responsible for payment of all amounts set forth in the applicable Order Form.
8. We are supplying access to a software-as-a-service, subscription-based solution. Access to the Services is provided on an 'as is' basis with the express understanding that we and our licensors are not in the business of providing legal, financial, accounting or other professional services or advice. Consult the services of a competent professional when You need this type of assistance. Our representatives or employees are not authorized to provide such services or advice on our behalf. The users of our Services are assumed to be experienced professionals, competent to judge the scope and limits of the Services in meeting Your needs, whatever those needs might be. In the end, any conclusions the user draws from the formulas and reports provided as part of our Services are Your own, and we cannot be responsible for them.
9. Services not listed in the Order Form shall be outside of the scope of the Services to be provided by us under this Agreement.
10. All payments hereunder are to be made in full and net of any and all taxes, tariffs, bank fees and set offs of any kind.
11. Any Services provided as part of the Implementation, Training & Consulting Package or any other professional services,

such as AWA Services, performed by us in connection with the SaaS Subscription Services ("Professional Services") assume Your prompt feedback and availability. Any delays caused by you may result in us incurring additional costs in the Professional Services delivery, which You shall be held to pay to us on our first demand. Where any of these Professional Services are cancelled or suspended by You other than for reasons of our breach of this Agreement, You shall be required to promptly pay us any monies due and for such other additional work we may have performed or committed to up to the date of termination, or resulting from such suspension on our first demand. We shall not be liable for any delays caused by You. Professional Services may be further defined in a statement of work ("SOW") attached to, or referencing this Agreement. Any such SOW is subject to the relevant provisions of this Agreement. In case of any conflicts between these terms and conditions and the SOW, these terms and conditions shall take priority.

12. We may monitor Your use of the SaaS Subscription Services to ascertain compliance with the terms of this Agreement. If Your number of employees, plans, named users, or other applicable metric as set forth on the applicable Order Form ("Quantity") increases, You shall, upon receipt of our invoice, pay additional fees on a proportionate basis for the excess use in accordance with our then-current rates, for prior excess use and for the remainder of the term of the relevant Order Form. If any undisputed invoice is not paid when due, we will send You written notice of non-payment, and if the invoice is not paid in full within ten (10) days of this notice, we may terminate this Agreement or suspend the provision of (any part of) the Services, which will not relieve You of Your obligation to pay all fees and expenses due under this Agreement. We will also be entitled to collect our reasonable expenses, including attorneys' fees, incurred in collecting amounts not subject to a good faith dispute. All quoted prices and fees are exclusive of sales, value added and similar taxes, which we will invoice as applicable, and You agree to pay any such taxes applicable to Your use of the Services (but not taxes based on our net income). If You are a tax exempt organization, please check the box on the Order Form and provide us with a copy of Your tax exemption certificate. You agree to reimburse us for all reasonable costs and expenses, including without limitation, attorneys' fees, travel, and hourly time, in connection with compliance with and response to any subpoena or other court order arising out of or related to the work done pursuant to this Order form.
13. Customer retains all rights to its Customer Data, and Affirmity may use the Customer Data only to provide the Subscription Services and as permitted by this Agreement, and not for any other purpose. Customer is the owner and data controller for its Customer Data. Customer is responsible for the accuracy, integrity, and for obtaining all legally-required consents for, and complying with all data protection laws applicable to the use of Customer Data in the Subscription Services, for examining and confirming results before use, and adopting procedures for identifying and preventing errors in the Customer Data. Each party will use diligence in the protection of Customer Data and in preventing any unauthorized person(s) from gaining access thereto
14. We will keep confidential all employee data and non-public information You provide to us under this Agreement, and You will keep confidential all non-public information we provide to You, such as our pricing and passwords for the use of the SaaS Subscription Services. Neither party will use confidential information of the other for any other purpose or disclose it to any person (other than employees, consultants or agents under confidentiality agreements who have a need to know) without the other's written permission. However, if a party is required by law, regulation or court order to disclose confidential information, it may do so but it will provide prompt notice to the other party of such disclosure. We may combine information about Your use of the Services with similar information about other customers to compile anonymized, aggregate statistical analysis data and reports, but we will not include any information that would identify You or any of Your users. You agree not to upload to the SaaS Subscription Services, or otherwise send us, social security numbers or other governmental IDs for Your employees or any other individual, and we will not be liable for any such information.
15. Neither Affirmity nor its affiliates will knowingly introduce any time bomb, virus or other harmful or malicious code designed to disrupt the use of the Subscription Services or Software. Affirmity hereby warrants that it will provide Subscription Services: (a) with reasonable skill and care, (b) using appropriately qualified and experienced personnel, (c) in accordance with generally accepted industry standards. Affirmity has the authority to enter into the agreement and perform its obligations in accordance with the terms of this Agreement.
16. OUR RESPONSIBILITIES TO YOU ARE AS DEFINED IN THIS AGREEMENT. OTHER THAN THOSE SPECIFIC PROMISES AND REMEDIES SET FORTH IN THIS AGREEMENT, ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, ARE EXPRESSLY DENIED.
17. REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, THE AGGREGATE



LIABILITY OF AFFIRMITY, LEARNING TECHNOLOGIES GROUP INC., AND/OR ANY OF OUR THIRD PARTY SUPPLIERS OR LICENSORS, UNDER OR IN CONNECTION WITH THIS AGREEMENT TO YOU OR TO ANY OTHER PARTY SHALL NOT EXCEED AN AMOUNT EQUAL TO THE YEAR 1 ANNUAL RECURRING SUBSCRIPTION FEES FOR THE SAAS SUBSCRIPTION SERVICES PURCHASED HEREUNDER. IN NO EVENT SHALL AFFIRMITY, LEARNING TECHNOLOGIES GROUP INC., OR ANY OF OUR THIRD PARTY SUPPLIERS OR LICENSORS BE RESPONSIBLE FOR ANY LOSS, INJURY, DAMAGE OR LOST PROFITS, EITHER DIRECT OR INDIRECT OR CONSEQUENTIAL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

18. Upon any termination, except termination by Customer under Section 7 above, Customer shall promptly pay all unpaid fees due through the end of the term of any applicable Order Form or SOW. Upon expiration or any termination, Customer shall immediately cease use of the Subscription Services and remove Customer Data using the existing functionality in the Subscription Services. If Customer requires Affirmity's assistance, the parties will agree to the fees, format and timeline for delivery of such data. Affirmity will disable access to the applicable Subscription Services upon termination or expiration of the related Order Form or Agreement. Affirmity will destroy all Customer Data within thirty (30) days after the expiration or termination of the related Order Form; provided, that Affirmity may retain backup copies of Customer Data for a limited period of time in accordance with Affirmity's then-current backup policy.
19. This Agreement will be governed by the laws of the State of Delaware without regard to its conflicts of laws principles. However, if You are a State Agency or Entity, this Agreement will be governed by the laws of Your state without regard to its conflicts of laws principles. This Agreement constitutes the complete and exclusive statement of our agreement in regard to the subject matter hereof and supersedes all prior agreements or understandings (including, without limitation, verbal or electronic communications) between the parties concerning the subject matter of this Agreement. No amendment, waiver or other alteration of this Agreement may be made except by mutual agreement in writing. Any purchase orders issued by You, including any terms therein, even if acknowledged us, shall be deemed to be for Your convenience only and shall in no way change or add to the terms and conditions of this Agreement. If a particular term included in this Agreement is not enforceable, the remaining terms will continue to be enforceable. Any notices required under this Agreement must be in writing and delivered personally, or by registered, certified or overnight mail and addressed as follows, or to such other address as each party may designate in writing: if to us: AFFIRMITY, 11511 Luna Road, Suite 525, Farmers Branch, TX 75234 USA, USA, and if to You: At the address set forth at the top of page one of the applicable Order Form. This Agreement may be executed in separate counterparts, all of which, when taken together, will constitute one and the same instrument.

What You May Do

20. You may solely access the SaaS Subscription Services in accordance with the terms of this Agreement for Your legitimate internal business purposes and to process information about Your, Your affiliates', and, where so agreed by us in writing, Your clients' own employees, candidates, clients, and contractors. For purposes hereof, "affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty percent (50%) of the voting power to elect directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company. You shall be fully responsible and liable for each of your employees, candidates, clients, and contractors' compliance with the terms and conditions of this Agreement.

What You May Not Do

21. Except as otherwise expressly stated herein, You may not provide access to (any part of) the SaaS Subscription Services or the Documentation, of any kind or for any reason, to any person or entity outside of Your company. Except as permitted above in "What You May Do," You will not, directly or indirectly, use the SaaS Subscription Services to process information about or for any other person. In using the SaaS Subscription Services, You will: (i) not permit unauthorized use of the SaaS Subscription Services, (ii) not infringe or violate the intellectual property rights, privacy, or any other rights of any third party, or any applicable law, (iii) ensure that each user uses a unique user ID and password. Unless otherwise expressly permitted in an Order Form, in no event may You use the SaaS Subscription Services to process information or records of any third party other than as permitted herein, or allow resale, timesharing, rental or use of the SaaS Subscription Services in a service bureau or as a provider of outsourced services, or allow a competitor of AFFIRMITY and Learning Technologies Group Inc. to use or have access to the SaaS Subscription Services.
22. AFFIRMITY and Learning Technologies Group Inc. retain all rights in the SaaS Subscription Services and the Documentation, and in all work product from related professional services, which You may use only in connection with the SaaS Subscription Services. AFFIRMITY may use and incorporate into the SaaS Subscription Services any changes suggested by You and Your personnel, without payment, and any and all related intellectual property rights shall vest in



AFFIRMITY and Learning Technologies Group Inc..

23. You may not transfer or assign any of Your rights under this Agreement in any form to any person or organization without our prior written consent.

Security

24. AFFIRMITY and Learning Technologies Group Inc. will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect the SaaS Subscription Services and to secure and defend the SaaS Subscription Services against "hackers" and others who may seek to access the SaaS Subscription Services without authorization. We will test our systems for potential security vulnerabilities at least annually. AFFIRMITY and Learning Technologies Group Inc. will use commercially reasonable efforts to remedy any breach of security or unauthorized access impacting the SaaS Subscription Services. We reserve the right to suspend access to the SaaS Subscription Services in the event of a suspected or actual security breach. Notwithstanding any other provision, this section sets forth AFFIRMITY's and Learning Technologies Group Inc.'s entire obligation to protect Your data as processed through the SaaS Subscription Services. You will maintain and enforce commercially reasonable security methods and procedures to prevent misuse of the SaaS Subscription Services log-in information of Your employees and other users. AFFIRMITY and Learning Technologies Group Inc. shall not be liable for any damages incurred by You or any third party in connection with any unauthorized access resulting from the actions of You or any of Your representatives.

Indemnity

25. Your use of the SaaS Subscription Services and human resources policies and procedures shall at all times comply with applicable laws and regulations. You shall indemnify, defend and hold AFFIRMITY, Learning Technologies Group Inc. and any of its licensors, affiliates and subcontractors harmless from and against all losses (including reasonable attorney fees) arising out of any third party suit or claim alleging that (i) Your unauthorized use of the SaaS Subscription Services hereunder has harmed such third party claimant, or (ii) Your human resources policies or practices have violated the legal or contractual rights of such third party, including any employee or potential employee of Yours. We shall: (i) give You prompt written notice of such suit or claim, (ii) grant You sole control of the defense or settlement of such suit or claim and (iii) reasonably cooperate with You, at Your expense, in its defense or settlement of the suit or claim.

Service Level Terms

26. The SaaS Subscription Services set forth in the relevant Order Form shall be subject to Affirmity SaaS Subscription Service Level Terms referenced in the order form and incorporated into this agreement. Service Level Terms state Your full and exclusive right and remedy, and AFFIRMITY's only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.