

BROKEN ARROW  PUBLIC SCHOOLS  
 Educating Today Leading Tomorrow

Contract Committee Review Request  
 MUST BE COMPLETED IN FULL

Date: 8/28/23

Contract/Agreement Vendor:   
Name of Vendor & Contact Person  
  
Vendor Email Address

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

Reason/Audience to benefit

BOE Date

Amount of agreement

Person Submitting Contract/Agreement for Review:

**PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK**

Principal &/or Director or Administrator:

Does this Contract/Agreement utilize technology? YES  NO   
 If yes, Technology Admin: \_\_\_\_\_

Cabinet Team Member:

Funding Source:    
Fund/Project OCAS Coding

- Consent**
- Action**

Accept and approve the NEW agreement between Broken Arrow Public Schools and 15five. 15five will provide professional development for 10 Support Services senior and mid-level leaders in the B&A Connections, Child Nutrition, and Transportation departments. The training will occurred monthly throughout the 2023-2024 school year and will be complete for this agreement by 9/30/2024. The training includes strategies to engage employees in an effort to improve departmental culture and is part of an overall retention strategy. The training outcomes include but are not limited to increasing engagement, improving manager effectiveness, and people development. The total cost to the district was \$26,400.00 and was paid in the 2023-24SY.

**Summary** This area must be complete with full explanation of contract

*The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.*



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Envelope ID: C4A2525C-49CD-44ED-8594-E0F0B2DC9306

**Order For:** Broken Arrow Public Schools  
**Order Number:** Q010036  
**Pricing Valid Through:** 09/12/2023  
**Prepared By:** Fabian Pantoja  
fabian.pantoja@15five.com

**Contact and Billing Details**

**Primary Contact:** Rosalyn Vann-Jackson  
**Email:** rvannjackson@baschools.org  
**Address:** 701 South Main Street  
Broken Arrow, Oklahoma 74012 United States

**Billing Contact:** Accounting Department  
**Email:** accounting@baschools.org  
**Address:** 701 South Main Street  
Broken Arrow, Oklahoma 74012 United States

**Service Terms**

**Order Type:** New Subscription  
**Term Start Date:** 10/01/2023  
**Term End Date:** 10/01/2024

**Company Name:** Broken Arrow Public Schools  
**15Five Customer ID:**  
**Payment Terms:** Net 30  
**Billing Frequency:** Annual

Product Name	Product Type	Charge Structure	Quantity	Price
Transform Accelerator	Subscription	\$2,640.00 / Seat / Annual	10	\$26,400.00
<b>Subtotal</b>				<b>\$26,400.00</b>
<b>Tax</b>				<b>\$ 0.00</b>
<b>Total</b>				<b>\$26,400.00</b>



DocuSign  
Pasadena, CA 91101-1500

**Order For:** Broken Arrow Public Schools  
**Order Number:** Q010036  
**Pricing Valid Through:** 09/12/2023  
**Prepared By:** Fabian Pantoja  
fabian.pantoja@15five.com

**Governing Master Subscription Agreement**

This Order Form is subject to the negotiated Master Subscription Agreement attached to this order form and with an Effective Date equal to the date signed by the school board or its agent (the "MSA").

**Signatures**

<p>By Customer:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>Signature: _____</p>	<p>By 15Five:</p> <p>Name: Jim Morrisroe</p> <p>Title: President</p> <p>Date: 9/6/2023   8:23 PM PDT</p> <p>Signature: _____</p> <p><small>DocuSigned by: 58BF3AAS0C144AD</small></p>
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MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (the "Agreement") is effective as of this 10/1/2023 ("Effective Date") and is hereby entered into by and between 15Five, Inc., a Delaware corporation (the "Company"), and Broken Arrow Public Schools (the "Entity"). As used herein, the term "Receiving Party" means (a) the Company if Confidential Information (as defined below) is disclosed by Entity and (b) the Entity if Confidential Information is disclosed by the Company. The term "Disclosing Party" means (a) Entity if Entity discloses Confidential Information and (b) the Company if the Company discloses Confidential Information.

1. Purpose. Entity and Company wish to explore a business opportunity of mutual interest and in connection with this opportunity wherein either party may disclose to the other party certain confidential technical, financial, and business information which the parties desire to treat as confidential. Nothing herein is intended to nor shall it in any way obligate either party to enter into a contract of any kind with the other party, to continue discussions hereunder with the other party, or to pay any expenses incurred by the other party in preparing for these discussions, or preparing a bid, as a result of the discussions governed by this Agreement.
2. Term. This Agreement shall be valid from the Effective Date until December 31, 2023. Notwithstanding anything to the contrary in this Agreement or otherwise, the obligations of the Receiving Party hereunder shall survive until such time as all Confidential Information of the Disclosing Party hereunder becomes publicly known and made generally available through no action of the Receiving Party.
3. "Confidential Information" refers to any information disclosed to the Receiving Party, either directly or indirectly, in writing, orally, or by inspection of tangible or intangible objects, any information which is proprietary and confidential to the Disclosing Party; including, without limitation, (i) techniques, technology, sketches, models, inventions, know-how, processes, apparatus, and services; or (ii) non-technical product information; including, without limitation, pricing, margins, merchandise plans, strategies, finances, financial/accounting data or information, suppliers, customer lists, purchasing data, sales/marketing plans, and future business plan, whether or not such information is marked as "confidential". Confidential Information shall not include information which is: (i) proven to have been known to the Receiving Party prior to its receipt pursuant to this Agreement; (ii) in the public domain at the time of disclosure to the Receiving Party or thereafter enters the public domain without breach of the terms of this Agreement; (iii) was or is received from a third party with no obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by or at the direction of Receiving Party without any use of the Confidential Information.
  - 3.1. All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under Disclosing Party patents, copyrights, trademarks, or trade secret information.

- 3.2. The Parties agree that any Confidential Information is made available "as is" and no warranties are given or liabilities of any kind are assumed with respect to the quality of such Confidential Information; including, but not limited, to its fitness for the purpose, non-infringement of third party rights, accuracy, completeness, or correctness.
4. Non-Use and Non-Disclosure. Receiving Party will maintain in strict confidence and will not disclose, disseminate, or use any Confidential Information belonging to Disclosing Party, whether or not in written form. Receiving Party agrees that Receiving Party shall disclose Confidential Information to employees, contractors, and consultants (collectively, the "Representatives"), only on a need-to-know basis, and who are bound by a confidentiality agreement. Receiving Party will have executed or shall execute written agreements with its Representatives, sufficient to enable compliance with this Agreement. Receiving Party shall not remove or modify any copyright or proprietary notice attached to or included in any Confidential Information furnished by the Disclosing Party. However, Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order, provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The Receiving Party shall not use Confidential Information for any purpose or in any manner which would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States.
5. Return or Destruction. On the Disclosing Party's request or on termination of the Agreement, the Receiving Party must return or destroy all Confidential Information of the Disclosing Party which has been supplied to or acquired by the Receiving Party.
6. Retention. Notwithstanding the foregoing, the Receiving Party may retain disclosing party Confidential Information if necessary to comply with any obligations under applicable law or reasonable corporate governance requirements. The parties also acknowledge that the nature of electronic record systems (email, IM, backup systems, etc.) makes complete expungement of all electronic copies impractical or impossible. The Receiving Party shall: (a) continue to follow the measures in Section 4 for so long as Disclosing Party Confidential Information is retained, and (b) comply with the preceding paragraph as soon as permitted under applicable laws or the Receiving Party's electronic record retention policies.
7. Rights and Remedies. Upon discovery of unauthorized use or disclosure of Confidential Information, or any breach of this Agreement by Receiving Party, Receiving Party shall notify Disclosing Party immediately and will cooperate in every reasonable way to regain possession of Confidential Information and prevent its further unauthorized use. Receiving Party shall return, within two (2) business days, all originals, copies, reproductions, and summaries of Confidential Information at Disclosing Party's request; or at Disclosing Party's option, certify destruction of the same. It is further understood, by signing this Agreement, except for pre-established relationships outside this Agreement, neither party shall make any attempt to enter negotiations, contractual obligations, or communications with any vendor, client, or business contact of the other party without express written consent of the other party. Receiving Party acknowledges breach of this Agreement will cause immediate and irreparable injury to Disclosing Party; whereby, monetary damages may not be a sufficient remedy. Thus, Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as deemed proper by a court of competent jurisdiction.

8. Miscellaneous. This Agreement constitutes the entire agreement with respect to the subject matter hereof and shall not be modified, except by written agreement, signed by both parties. No provision herein shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of the Disclosing Party. No waiver of any provision herein shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Subject to the limitations set forth herein, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns. If any provision herein shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. All obligations created herein shall survive change or termination of the Parties' business relationship.
9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A, without application of its principles of conflicts of laws. Both parties submit to Jurisdiction in the State of California and stipulate to venue in San Francisco County, California; provided however that any action in the nature of injunction or any other equitable remedy may be brought in any court having jurisdiction over the matter.
10. Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this):

If to Company:	15Five, Inc. Attn: Legal 3053 Fillmore St #279, San Francisco CA 94123 Email: <a href="mailto:legal@15five.com">legal@15five.com</a>
If to Entity:	To the information listed below their signature line.

Notice is effective only if the party giving the Notice has complied with this section.

11. Rules of Construction. The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

- 12. Captions. The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
  
- 13. Assignment. This Agreement is personal and shall not be assigned by either party without the prior written consent of the other party.
  
- 14. Counterparts. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the Parties hereby agree to the foregoing as of the date set forth above.

15Five, Inc. DocuSigned by:  
  
By: \_\_\_\_\_  
Name: James Morrisroe  
Title: COO & President

ENTITY:  
By: \_\_\_\_\_  
Name:  
Title:  
Address:  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

# Master Subscription Agreement

*Effective date: May 3, 2023*

This Master Subscription Agreement (“Agreement”; as defined below) is between 15Five, Inc. (“15Five”, “Us”, “We” or “Our”) and You (“Customer”, “You” or “Your”) and governs Your use of the 15Five Materials. The exact 15Five Materials are described in Your Order Form, which is also part of the MSA (defined below) and subject to the terms and conditions set forth herein. 15Five reserves the right to modify this MSA at any time in its sole discretion by posting changes on the Website. Any revisions to this MSA will be posted on this Page.

If You do not have an Order Form because You purchased the 15Five Materials directly online, the terms of this Agreement also apply to You. In this instance, “Order Form” will mean the 15Five Services You selected via the Website as evidenced in your most recent invoice available in the admin console of your 15Five account.

If you are a User of the 15Five Materials, then to the extent applicable as referenced in the EULA, the terms of this MSA also apply to you.

Please read the terms of this MSA carefully as they provide that You and 15Five will arbitrate certain claims instead of going to court and that you will not bring class action claims against 15Five.

**1. Definitions.** Capitalized words have special meaning and are defined below in Exhibit “A”.

**2. Content Ownership & License to 15Five Materials.**



2.1. 15Five's Ownership. 15Five owns all legal rights, title, and interest in and to the 15Five Materials or 15Five Content, including any intellectual property rights, whether those rights are registered or not, and wherever in the world those rights may exist, subject to the rights of third-parties from whom 15Five licenses 15Five Content.

2.2. License to You and Your Users.

2.2.1. Subject to Your strict compliance with this MSA and Your payment of any applicable Subscription Fees, We grant You and Your Users a limited, non-exclusive, non-sublicensable, non-transferable revocable, and non-assignable license for the number of User seats reflected in your order form (or in the case of an online subscription, as reflected on the invoice) to access and use the 15Five Materials ("License") during the Term. The License does not give You or Your Users any ownership or interest in any intellectual property of the 15Five Materials or 15Five Content and You or Your Users cannot otherwise use the 15Five Content or 15Five Materials, without Our express, prior, written consent. For the avoidance of doubt, this license allows You to reassign a User seat to another named individual, in the event that an individual leaves employment with You. You may not transfer and/or assign the right to the agreement to a third-party.

2.2.2. 15Five and/or Our licensors hereby reserve all rights in and to the 15Five Materials, Services, or 15Five Content (as the context may require) not expressly granted in this Agreement. For the avoidance of doubt, We are not expressly or implicitly granting You or Your Users any other rights, license, release, covenant, or immunities, including by estoppel to the 15Five Materials and 15Five Content.

2.3. Your and Your Users' Responsibilities. We will host the 15Five Materials, which You or Your Users may access via the Internet. You are responsible for (i) internet connectivity needed to access the 15Five Materials; (ii) your compliance with this MSA; and (iii) any Customer Data. You are also responsible for keeping secure and confidential any authentication credentials associated with Your use of the Services. Each User is also responsible for their compliance with this MSA, the EULA, and for keeping

secure and confidential any authentication credentials associated with their use of the Services.

2.4. Restrictions. You and Your Users may use the 15Five Materials only in accordance with this MSA. You and Your Users will not and will not attempt to: (i) license, sublicense, copy, duplicate, distribute, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, reproduce, sell, trade, or resell the 15Five Materials or 15Five Content without Our prior written agreement; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the 15Five Materials are compiled or interpreted, and you acknowledge that nothing in this Agreement will be construed to grant you any right to obtain or use such code; (iii) scan our systems without written authorization; (iv) create any derivative product from of the foregoing, without Our prior consent; (v) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, or pledge as security or otherwise encumber, Your rights under this Agreement; (vi) remove any title, trademark, copyright, or restricted rights notices or labels from the 15Five Materials or related documentation; (vii) share accounts; (viii) use the 15Five Materials in any manner that in Our sole discretion could damage, disable, overburden, impair or interfere with any other party's use of them; (ix) obtain or attempt to obtain any materials or information through any means not intentionally made available through the 15Five Materials; (x) scrape or otherwise use automated means to access or gather information from the 15Five Materials, and agree not to bypass any robot exclusion measures We may put in place; or (xi) use false or misleading information in connection with Your user account, and acknowledge that We reserve the right to disable any user account with a profile which We believe (in our sole discretion) is false or misleading (including a profile that impersonates a third party).

2.5. Your and Your Users' License to Us. You own Your Customer Data, and as part of Your Subscription, You grant us a non-exclusive, royalty-free, worldwide license during the Term to use, store, edit, re-format, Your Customer Data in order for the 15Five Materials to function. Additionally, You and Your Users grant us a perpetual, irrevocable, worldwide, sub-licensable,

royalty-free, and transferable right and license to (i) collect and analyze anonymized usage data and related information about the provision, use, and performance of the Services and to combine it with data from other customers into a new aggregated dataset, and (ii) use such anonymized usage data and related information as a component of such new aggregated dataset, for the creation of internal benchmarking, statistical, research and marketing analyses, surveys, reports and studies. "Anonymized" means the removal of any personal identifiers to render any personal data from being related to an identified or identifiable natural person and any information reasonably likely to identify a company or other business entity, including any customer. Such revised data does not include and is not subject to any key, code, or other mechanism that could be used to restore such information.

## 2.6. Who May Use the 15Five Materials.

2.6.1. User Access. Your and Your Users' access start on the date shown in Your Order Form (or on the date you license the 15Five Materials directly from the Website). Access will be for all the 15Five Materials in Your Order Form (or that You self-selected online) and will run through the end of the Term. Because We need to protect ourselves (and You and Your Users), We may stop Your (or one or more of Your Users') access, if We see a threat from a hacker, virus, or other cyber-attack.

2.6.2. User Capacity. The maximum number of Users seats enabled for use of the 15Five Materials during the Term is identified in Your Order Form. You may increase that number, during the Term, at an additional cost by contacting us. Alternatively, We may provide You with the functionality within the 15Five Materials to add additional Users, on an as-needed basis (at an additional charge), on Your own via the admin portal. User Seats may only be increased during the Term. Reductions in User seats can only be made with at least 30 days' prior notice (in accordance with Section 13) for any subsequent Renewal Term (defined below). Time is of the essence. You cannot reduce the number of User seats during the current Term. This is regardless of whether or not the User seats are assigned to a specific User.

2.7. Transform. 15Five offers a subscription model coaching and training service for an additional cost (“Transform”). Like Your subscriptions to other 15Five Materials, a Transform Subscription will be reflected on an Order Form (or via Your 15Five account, if you purchase it directly online), and any special terms and conditions will be set out in Exhibit B of this MSA and shall be incorporated herein.

2.8. Third-Party Services. The 15Five Materials may access third-party services through API’s or links to third-party providers (“Third-Party Services”). You acknowledge and agree that We are not responsible and shall have no liability for such third-party sites and services, products or services made available through- them, or Your use of or interaction with them. Whether the third-party content appears within our Services, or you leave Our Services to view the content on another website, the third-party is in control of and independently produces, maintains, and monitors the content and third-party sites. When You access such third-party sites, You become subject to the third party’s terms of use and privacy policies. You should review the privacy policies of these third-party sites for their policies and practices regarding the collection and use of your information as their policies may differ from Ours. We do not accept any responsibility or liability for the privacy practices of third parties.

### **3. Consulting Services.**

3.1. Implementation Services. If reflected in Your Order Form, 15Five-provided professional services will be governed by the terms of this MSA, including Exhibit C. For the avoidance of doubt, a Transform Subscription is a different Service and does not constitute Implementation Services.

3.2. Deliverables and Ownership. We own all Deliverables created as part of the Implementation Services. However, you may use all Deliverables during the Term. Your and Your Users’ use is non-transferable, non-sublicensable, and non-exclusive.

**4. Wireless Features.** Use of 15Five's mobile applications may require usage of data and messaging services provided by Your (or Your Users') wireless service carrier. You acknowledge and agree that Your (or Your Users') are solely responsible for data usage fees, messaging fees and any other fees that Your (or Your Users') wireless service carrier may charge in connection with Your (or Your Users') use of the 15Five Materials.

## **5. Fees**

5.1. Payments. You agree to pay us the amount in the Order Form –or as reflected in the Website for self-service customers – (“Fees”) within 30 days of our invoice unless We agree in advance to alternate payment terms. In the event that You license the 15Five Materials directly online, via a credit card, You will automatically be charged the amount due for access to the 15Five Materials You selected during the Initial Term and for every Renewal thereafter. All payments shall be made in US dollars in immediately available funds . Amounts not paid within that time (and, not subject to a good faith dispute), bear interest from the time payment was due until the time paid, at the higher rate of (i) 1.5% per month compounded monthly, or (ii) the highest rate allowed by applicable law. In the event that You use purchase orders to effect the purchase of the licenses to the 15Five Materials, You also agree that no terms or conditions in Your purchase order (or other documentation) form override the terms of this Section 5. If You do not pay Your Fees, You are materially breaching this MSA and Your access to the 15Five Materials will end.

5.2. Taxes. You will pay any and all applicable sales, use and other taxes and similar charges based on or arising from Services provided or performed under this Agreement (other than taxes based on 15Five's net income).

5.3. International customers. In the event that you are located outside of the United States and any purchases are subject to withholding or other foreign fees and/or taxes. You are responsible for those additional fees. 15Five will be paid the full amount shown on the applicable Order Form.

5.4. On-site appearances. In the event that We agree to do any on-site appearance at Your location of choice pursuant to this MSA and/or the Order Form, You agree to reimburse Us for any and all out of pocket expenses we incur as a result of our travel. These expenses include but are not limited to: flights, transportation, lodging, and food. In the event that we are required to abide by a travel and/or expense policy, You will provide Us with a copy of that policy within ten (10) days of signing this MSA and/or requesting an on-site appearance, whichever, is later.

## **6. Term & Termination.**

6.1. Term. This Agreement will commence on September 11, 2023. The subscription start date will be reflected on the order form. At the expiration of the Initial Term (or any subsequent Renewal Term (as defined herein), this Agreement will for additional renewal periods of one (1) year (each a "Renewal Term"), by mutual agreement. Notice must be provided in accordance with Section 13 of this Agreement. The Initial Term and any Renewal Terms are collectively referred to as the "Term." All renewed Services will be subject to the MSA and subject to the current pricing provided by 15Five as of the renewal date. Time is of the essence.

6.1.1. Monthly Subscriptions. Notwithstanding anything to the contrary in this MSA or otherwise, in the event that You license the 15Five Materials directly online via the self-service option and select a monthly subscription, then this Agreement will start on the date you sign up for the 15Five Materials and will continue on a monthly basis, unless you cancel. You are free to cancel the renewal of any monthly subscription by giving us at least 30 days prior notice prior to your next billing (renewal) date. For the avoidance of doubt, all fees paid are non-cancelable and non-refundable, but you will continue to have access to the 15Five Materials for the rest of the period in which you provided notice. Notice must be provided in accordance with Section 13 of this Agreement. All renewed Services will be displayed in your admin portal if purchased directly online and subject to the MSA.

6.2. Termination.

6.2.1. Termination for Breach. A party that receives written notice of a material breach has 30 days to cure the breach. If the breach is not cured, the notifying party may terminate this MSA by giving written notice. If We terminate this MSA due to an uncured material breach from You, You will still be liable to pay Us any outstanding Fees that are reflected in Your Order Form (or are due and owing from an online purchase).

### 6.3. Effect of Expiration or Termination Survival.

6.3.1. Access. Once Your Term (including any renewals thereof) is over, You and Your Users' access to Your Services will terminate.

6.3.2. Survival. Upon termination or expiration of this Agreement, all rights granted to either party shall immediately terminate, except that the following shall survive termination: Sections 2, 5, 6, 7, 12, 13, 14, 15, 19, and 20 and any other sections, that by their terms are intended to survive expiration and/or termination.

**7. Confidentiality.** 15Five and You agree to keep all Confidential Information secret, not to use the Confidential Information in a way that violates this MSA and not share the Confidential Information with anyone who does not work for either party and who is also required to keep the Confidential Information secret. Each of us will treat the other's Confidential Information as if it were our own and use at least reasonable care when handling it.

### **8. Data Protection, Privacy & Security.**

8.1. Data You Need to Avoid. The 15Five Materials are not meant for data not related to performance management and engagement. Therefore, You agree that You (and You will not require Your Users to) provide Us any social security numbers, financial account numbers, protected health information, driver's license information, passport or visa number, or credit card information.

8.2. Data Protection. The privacy and security of Your Customer Data is important to us. Therefore, 15Five will perform all Services in accordance

with these published Security measures, available at: <https://www.15five.com/security/>.

The privacy of Your Customer Data is governed by our Privacy Policy, which can be found at: <https://www.15five.com/privacy/>, and any other terms that You and We may separately agree to, including, but not limited to our Data Processing Agreement

(<https://www.15five.com/terms/data-processing-addendum/>) , where applicable, or as required by applicable data protection laws. We may need to access Your or Your Users' account in the event that You or Your Users submit a support request. Any such access will be governed by Our Privacy Policy.

## **9. Indemnification.**

9.1. 15Five Indemnification. 15Five will defend You against any claims, suit, or arbitration made by an unaffiliated third party ("Claim") that our Services infringe that third party's United States copyright, trademark, or patent. You agree that Our indemnification will be limited to paying the amount stated in a final non-appealable judgment or mutually acceptable settlement agreement, subject to the limitations set forth in §10, below. You also agree that Our obligation to defend You in any Claim will not apply to: (i) modification of 15Five Materials made by, or directed by, You; (ii) Your continued alleged infringement after being notified; (iii) any third-party software or services; or (iv) Your use of the 15Five Materials in violation of this MSA. If the 15Five Materials are enjoined from use, in a final non-appealable decision, we may in our sole discretion: (i) obtain the right for you to keep using the 15Five Materials; (ii) modify the 15Five Materials to avoid and eliminate such infringement; or (iii) terminate Your access to the 15Five Materials. In the event we terminate Your rights under subsection (iii) of the preceding sentence, We will refund to You a prorated portion of paid Subscription fees calculated as of the date that the Services are terminated. We also reserve the right to preemptively modify the 15Five Materials to avoid potential infringement.



9.2. Your Indemnification. You will defend, indemnify, and hold Us harmless against any Claim that any Customer Data infringes that third party's intellectual property rights. You will also defend, indemnify, and hold Us harmless against any Claim arising from your violation of this MSA.

9.3. Indemnification Procedure. Each party must notify the other promptly of any Claim. The indemnified party must (i) give the indemnifying party sole control and discretion over the defense and settlement authority of the Claim (including choice of counsel); (ii) give reasonable help in defending the Claim; and (iii) refrain from agreeing or acknowledging (a) liability regarding the 15Five Materials and/or (b) validity, enforceability or infringement of any IP Rights asserted against the 15Five Materials. The party providing the defense will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help.

9.4. Sole Remedy. Notwithstanding anything to the contrary in this MSA or otherwise, the indemnity provided in this Section shall be Your sole and exclusive remedy regarding Claims based on third-party IP Rights.

## **10. Limitation of Liability & Disclaimer of Warranties.**

10.1. Disclaimer of Warranties. THE SERVICES AND ALL RELATED DOCUMENTATION PROVIDED BY OR ON BEHALF OF 15FIVE ARE PROVIDED "AS IS", "AS AVAILABLE", AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, AND 15FIVE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF 15FIVE IS ADVISED OF THE PURPOSE), ACCURACY, AND/OR NON-INFRINGEMENT, TITLE, OR ANY COURSE OF DEALING OR PERFORMANCE. IN ADDITION, 15FIVE DOES NOT GUARANTEE THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE, THAT THE APPLICATIONS WILL MEET CUSTOMER'S NEEDS (EVEN IF 15FIVE IS ADVISED OF THE PURPOSE), OR THAT DATA WILL NOT BE LOST. WITHOUT LIMITING THE FOREGOING, 15FIVE DOES NOT WARRANT THAT THE SERVICES WILL BE FREE OF VIRUSES OR OTHER

HARMFUL COMPONENTS. ADDITIONALLY, 15FIVE DOES NOT WARRANT THAT ANY POSSIBLE DEFECTS WILL BE CORRECTED.

10.2. Limitation of Liability. To the maximum extent permitted by applicable law, You agree:

10.2.1. 15Five's aggregate liability for all claims under this Agreement is limited to direct damages; IN NO EVENT, EVEN IF 15FIVE OR A 15FIVE-AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WILL 15FIVE OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SERVICE PROVIDERS BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS MSA (INCLUDING YOUR INTERACTIONS WITH OTHER USERS) UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; (II) THE COST OF PROCUREMENT FOR SUBSTITUTE PRODUCTS OR SERVICES; (III) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA;

10.2.2. With the exception for IP claims made by third-parties, for which the sole remedy is listed above in §9, Our aggregate liability arising out of this MSA for all Subscriptions is capped up to the amount paid under this Agreement for all Subscriptions during the 12 months immediately prior to the cause of action arising;

10.2.3. That the limit of liability does not apply to claims based on breach of confidentiality, or breach of Our obligations under the DPA, for which the limits of liability are capped at Five Hundred Thousand Dollars (\$500,000.00) in United States currency;

10.2.4. We have no responsibility for Third-Party Services;

10.2.5. The maximum liability related to Our Implementation Services or Deliverables is limited to correction of such Implementation Services or

Deliverables. If correction is impractical, We will refund You the pertinent Fees; and

10.2.6. That the fees and rights granted to each party, along with the allocation of risk in this MSA reflect the economic basis of the parties' relationship. Absent the economic basis, this MSA and the Fees for the 15Five Materials would be substantially different.

**11. Force Majeure.** Neither party will be liable to the other for any failure to perform as a result of causes beyond that party's reasonable control (such as power blackout, fire, explosion, war, terrorism, (including cyber terrorism), earthquake, flood, severe storms, strike, embargo, labor disputes, riots, military authority, acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including laws or regulations that impact the delivery of Services). This Section will not apply to your payment obligations under this Agreement.

## **12. Arbitration.**

12.1 This Section is referred to herein as the "Arbitration Agreement" and applies to Customers and Users of the 15Five Materials, as context may require. The parties that any and all controversies, claims, or disputes between You and 15Five arising out of, relating to, or resulting from this MSA, shall be subject to binding arbitration pursuant to the terms and conditions of this Arbitration Agreement, and not any court action (other than a small claims court action to the extent the claim qualifies). The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

12.2. THIS PARAGRAPH IS REFERRED TO AS THE "CLASS ACTION WAIVER." THE PARTIES AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH PARTIES AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED,

REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S).

12.3. Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures (the "AAA Rules"), as modified by this Arbitration Agreement. If there is any inconsistency between the AAA Rules and this Arbitration Agreement, the terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of this MSA as a court would, including without limitation, the limitation of liability provisions above. You may visit <http://www.adr.org> for information on the AAA and <http://www.adr.org/fileacase> for information on how to file a claim against 15Five.

12.4. The arbitration shall be held in San Francisco County, California. If the value of the relief sought is \$10,000 or less, You or 15Five may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on each party, but subject to the arbitrator's discretion to require an in-person hearing if the circumstances warrant. Attendance at any in-person hearing may be made by telephone by either or both parties unless the arbitrator requires otherwise.

12.5. The arbitrator will decide the substance of all claims in accordance with the laws of the state of California, without regard to its conflicts of laws rules, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different 15Five Materials users, but is bound by rulings in prior arbitrations involving You to the extent required by applicable law.

12.6. Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA's Rules. Each party will be

responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees.

12.7. All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties.

12.8 If a court decides that any term or provision of this Arbitration Agreement other than the Class Action Waiver is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court decides that any of the provisions of the Class Action Waiver is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of this MSA will continue to apply.

### **13. Miscellaneous.**

13.1. Compliance with Applicable Laws. You agree to comply with all applicable laws in connection with Your use of the 15Five Materials.

13.2. Entire Agreement. This Agreement, together with the Order Form, and any/all addenda, amendments, and exhibits attached to this Agreement or referenced herein, comprises the entire agreement between the parties, superseding any prior or concurrent communications between the parties. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or different kind.

13.3. Severability. If any provisions of this MSA are held unenforceable, the remaining provisions shall remain in full force and effect. You and We agree to substitute a valid provision, most closely approximating the intent of the severed provision.

13.4. Waiver. The failure of any party at any time to require performance of any provision of this MSA shall in no manner affect such party's right at a later time to enforce the same. A waiver of any breach of any provision of this

MSA shall not be construed as a continuing waiver of other breaches of the same or other provisions of this MSA.

13.5. Working Through Issues and Governing Law. If 15Five and You have a misunderstanding or disagreement, You agree to meet with Us to try and work it out in good faith. While We hope We can work it out between ourselves, in the event we cannot, then You agree that the laws of the State of California will apply without regard to any conflict of laws principles. Additionally, You agree that any action at law or in equity arising out of or relating to this MSA or the 15Five Materials that is not subject to arbitration under the Arbitration Section (§12) shall be filed only in the state or federal courts in San Francisco County, California (or a small claims court of the above-referenced jurisdiction) and You hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.

13.6. Representations. Each party represents that: (i) such party is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was incorporated or organized, and has the full power and authority to enter into and perform its obligations under this Agreement; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any other agreement to which such party is a party or by which it is otherwise bound; (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and (iii) such party acknowledges that the other party makes no representations, warranties, or agreements related to the subject matter of this Agreement that are not expressly provided for in this Agreement.

13.7. Notices. Notices of any kind must be in writing (electronic mail, postal mail, and courier mail are all acceptable) and will be deemed delivered as of the email transmission date (provided no notice of failure to deliver is received), the date received at the physical address, or the date on the courier confirmation of delivery. Notices to 15Five must be sent to the following: **15Five, Inc. | Attn: Legal Department | 3053 Fillmore St., #279,**

**San Francisco, CA 94123| With a copy to: [legal@15five.com](mailto:legal@15five.com).** Notices sent by 15Five to You will be sent to the postal address and/or email address you identify on the Order Form.

13.8. Relationship of the Parties. The parties are independent contractors, having no other business affiliation. Neither party may assume or create any obligation nor make any representation or warrant on behalf of the other party. There are no third-party beneficiaries to this Agreement.

13.9. Publicity. We may advertise, publicly announce, or provide to any other person, information relating to the existence of this MSA or use Your name or logo, in any format for any promotion, publicity, or marketing of the 15Five Materials.

13.10. Assignment. Neither Party will assign or transfer any subscriptions, obligations or benefits under this Agreement without the prior written consent of the other party, which may not be unreasonably withheld or delayed, except that We reserve the right to assign without restriction to a successor in interest by way of merger, reorganization, asset sale, or the like. Any other purported transfer or assignment is deemed void. Upon valid transfer, this Agreement inures to the benefit of, and binds, the successors, assigns, heirs, executors and administrators of the parties.

13.11. Limitation of Action. Any action by you in connection with this MSA must be brought (i) within one year after the cause of action arose or (ii) a longer period of time as may be required by applicable law.

13.12. Beta Subscriptions. From time to time, 15Five may invite Customer to try certain new services, features, or functionality at no additional charge (the "Beta Services"). Customer may accept or decline any such trial in Customer's sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional or different terms. Unless otherwise set forth in writing, any Beta Services trial period will expire upon

the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. 15Five may discontinue Beta Services at any time in 15Five's sole discretion and may never make them generally available. Customer agrees 15Five will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### 13.13 Free Trial.

13.13.1. By registering for a free trial, you are also accepting the terms of, and are subject to, this MSA.

13.13.2. You may only register as an individual for the 14-day Free Trial Offer once.

13.13.3. Customers may request one or more trial periods as needed to evaluate 15Five Materials, which will be granted in our sole discretion.

13.13.4. By registering for a free trial, you consent to our contacting you to follow up on your experience with the 15Five Materials and potential purchase of a paid license.

13.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Authorized electronic signatures are valid. Digitized copies of an original copy of this MSA shall be treated as an original for all purposes.

13.15. Drafting. You agree that this MSA will not be construed against us because we drafted them.

13.16. Export Law Assurances. You may not use or export (or re-export) the 15Five Materials except as authorized by US law. In particular, You agree not to export the 15Five Materials (i) into (or to a national or resident of) any US embargoed country; (ii) to anyone on the US Treasury Department's list of Specially Designated Nationals; or (iii) the US Department of Commerce's Table of Denial Orders. By using the 15Five Materials, You represent and



warrant that You are not located in, under the control of, or a national resident of any such country or any such list.

13.18. Demographic Data. You may choose to enable or disable capturing of demographic data by way of an on/off toggle within the 15Five Materials. If You are subject to GDPR compliance, then You represent and warrant that You have a valid legal basis to obtain the voluntary demographic data of data subjects you seek to collect and obtained prior explicit consent of those data subjects whose demographic data You seeks to collect before enabling the demographic data toggle, and before 15Five and its sub-processors can safely process such demographic data on Your behalf.

13.18.1. You acknowledge and understand that demographic data is deemed “sensitive data” in accordance with GDPR.

13.19. Equitable Rights. Each party acknowledges that a breach (or threatened breach) of Section 2 (Content Ownership & License to 15Five Materials) or Section 7 (Confidentiality) may cause the non-breaching party irreparable damage, entitling it to seek equitable relief, in addition to any other remedies available, without posting bond.

13.20. Not a sale. All references to the “sale” or “purchase” of the Services or 15Five Materials, means the sale or purchase of a license to use such materials by Customer (and their Users) as intended and licensed. Under no circumstances shall these terms be deemed to involve the sale or transfer of intellectual property or other proprietary rights of 15Five or its licensors.

13.21. Number and Gender. As used in this Agreement, the singular number shall include the plural and the plural shall include the singular, and the use of any gender shall be applicable to all genders, unless the context would clearly not admit such construction. All capitalized terms defined in this Agreement shall have the same meanings when used in the Exhibits attached hereto.

13.22. Priority of Agreements. While all documents that comprise the MSA are meant to be read together, to the extent of a conflict between the

documents that comprise the MSA, preference shall be given in the following order:

1. The terms of this Master Subscription Agreement;
2. End-User License Agreement;
3. Data Processing Agreement (to the extent applicable); and
4. Privacy Policy.

### **Exhibit “A” – Definitions**

**“15Five Content”** means all information, data, images, graphics, tags, video, music, sound, user interfaces, visual interfaces, photographs, logos, artwork, activities, assessments, printables, pictures, animation, characters, audio clips, trademarks, trade names, service marks, text, messages, and/or computer code displayed on or available through the 15Five Materials; the design, layout, look, appearance, structure, selection, coordination, expression, arrangement and graphics of such materials, all materials and other items relating to the 15Five Materials, the Subscriptions and the 15Five products; and any and all other forms of intellectual property.

**“15Five Materials”** means the 15Five website, 15Five mobile application(s), or any other websites, applications, online services that link to this MSA (including Transform), and any and all 15Five Content, wherever they may be found, and any other services provided by 15Five, including but not limited to Implementation Services.

**“Agreement”** or **“Master Service Agreement”** or **“MSA”** means this Master Subscription Agreement, including all addenda, exhibits, amendments, and materials referred or linked to herein, including this Exhibit “A” (Definitions); Exhibit “B” (Transform Addendum – *as applicable*); Exhibit “C” (Consulting Services Addendum – *as applicable*); Exhibit “D” (Order Form); Data Processing Addendum (*as applicable*), and the Website EULA and Privacy Policy.

**“Confidential Information”** means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing. Confidential Information excludes 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, or (iii) is received from a third party without breach of any obligation owed to the Disclosing Party. Subject to the foregoing exclusions, Customer Data will be considered Confidential Information under this Agreement.

**“Implementation Services”** means any professional services separately purchased by you and provided to you by us, including but not limited to: implementation, training, integration or other consulting services. Implementation Services do not include Transform. Any Implementation Services you separately purchase will be detailed in the Order Form and are subject to the additional terms found in Exhibit “C”.

**“Customer”, “You”, “Your”** means the company, entity, or institution identified in the Order Form; or, in the event of an online purchase of a license to the 15Five Materials, Customer refers to the company, entity, or institution that is adopting the 15Five Materials into their employment program.

**“Customer Data”** means User Content, and any Confidential Information of Customer other than User Content.

**“Data Processing Addendum”** or **“DPA”** means the 15Five Data Processing Agreement incorporated herein by reference.

**“Data Protection Laws”** means all laws that may be applicable to this MSA as more particularly referenced in the DPA.

**“Deliverables”** means any work product, handouts, or materials to be developed or delivered by Us in connection with the Implementation Services.

**“Documentation”** means all information available to Customer in the 15Five Help Center, available at: <https://success.15five.com/hc/en-us>.

**“Effective Date”** is the date as of which the Order Form has been signed by the Customer.

**“Fee”** means the amount you pay for the license to the 15Five Materials and/or Implementation Services.

**“IP Rights”** or **“Intellectual Property Rights”** means worldwide intangible assets including (i) patents (design, utility, or other), patent disclosures, products and inventions (patentable or not); (ii) trade and service marks, trade dress, trade names, and domain names, including associated goodwill; (iii) original expressions in any fixed medium (registered or unregistered) copyrights and copyrightable works (including the 15Five Materials) and rights in data and databases; (iv) trade secrets, know-how, and other confidential information; (v) other intangible assets (registered or unregistered); and (vi) products for, and renewals or extensions of (i) – (v), above.

**“Order Form”** means the order form setting out Subscriptions, Implementation Services, Term, pricing, and any special terms and conditions. In the event the 15Five Materials are licensed directly online, the Order Form refers to the most recent invoice found in the admin portal of your 15Five account.

**“Personal Data”** means any information relating to an identified or identifiable individual where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws.

**“Privacy Policy”** refers to the 15Five Privacy Policy available at: <https://www.15five.com/privacy/>.

**“Sensitive Data”** means demographic data, biometric information, personal health information (or other information protected under any applicable health data protection laws), financial account numbers or wire instructions, government issued identification numbers (such as Social Security numbers, passport numbers), credit or debit card numbers, personal information of

children protected under any child data protection laws, and any other information or combinations of information that falls within the definition of “special categories of data” under GDPR or any other applicable law relating to privacy and data protection, and that is contained within Personal Data.

“**Services**” means any Subscriptions licensed by Customer or any Consulting Services selected by Customer.

“**Subscription**” means the subscriptions purchased by Customer and set forth in the Order Form (or as found in the admin portal), including Transform.

“**User Content**” means any content uploaded or made available by Customer or Customer’s users. User Content is considered Confidential Information of Customer.

“**Term**” means the initial term of your subscription, as specified in the Order Form, and each subsequent renewal term (if any). For any free Trial or Beta Services, the Subscription Term will be the period during which you have an account to access the free Trial or Beta Services.

“**EULA**” or “**End User License Agreement**” refers to the 15Five End User License Agreement available at: <https://www.15five.com/terms/terms-of-use/>. The Terms apply to both Customers and Users.

“**Transform**” is a subscription model coaching and training service. If purchased, it will be reflected in the Order Form and special terms and conditions will be set out in Exhibit “B” to this MSA.

“**Website**” means <https://www.15Five.com/> and all of its subpages, and subdomains.

### **Exhibit “B” – Transform Addendum**

“**Transform**” is 15Five’s subscription-based monthly live coaching and training Service opportunity (“Scheduled Training Session”) together with a specially curated and designatated on-demand repository of training videos

that can be viewed at Your and Your Users' convenience via the 15Five Materials during the Term ("On Demand Videos").

If purchased, the Transform Subscription will be reflected in the Order Form (or via Your 15Five account, if you purchase it directly online) and the special terms and conditions set out in this Exhibit "B" to the MSA will apply.

While the On Demand Videos are available at any time, via the platform, during the licensed Term, the Scheduled Training Sessions are offered to Customer once a month during the Subscription Term, and will not carryover for any unused months.

You must use any of the Scheduled Training Sessions within the Transform Services within the month in which they're allotted; otherwise, You risk losing those Services;

**Non-Solicitation.** Customer may not solicit, seek to entice or persuade, contract with, or make an offer of employment to any Transform coaches during the Term of this Agreement (including any renewal thereof) and for a period of twelve (12) months following the Term. Any such solicitation of coaches by Customer, during the period shall be deemed a material breach of this Agreement.

### **Exhibit "C" – Implementation Services Addendum**

From time to time You may choose to purchase additional Implementation Services from Us. "Implementation **Services**" means any professional services separately purchased by You and provided to You by Us, including but not limited to: implementation, training, integration or other consulting services. Implementation Services do not include Transform. Any Implementation Services you separately purchase will be detailed in the Order Form (or via Your 15Five account, if you purchase it directly online) and are subject to the additional terms found in this Exhibit "C".

You agree to the following for any Implementation Services made available to You either remotely or on-site:

1. To provide facilities that are conducive to adult learning, including a computer, broadband Internet connection and two-way sound for each of Your participants;
2. To participate in a pre-planning meeting with Us before the Implementation Services, allowing us to tailor the Implementation Services content to the specific needs of Your participants. We will focus our Implementation Services on learning outcomes agreed to during the pre-planning meeting. We will also strive to adapt our Implementation Services to meet needs raised at the training;
3. To absorb actual out-of-pocket travel expenses incurred due to Your last-minute rescheduling or cancellation of the Implementation Services and to pay a one-time cancellation fee equal up to the amount of the Implementation Services session agreed upon in the Order Form;
4. To use any Implementation Services within the Subscription Period. Otherwise, You risk losing those services;
5. To our using third parties to assist with Implementation Services (we will be responsible for ensuring their integrity and compliance with these Terms, as well as their compensation and expenses in excess of what You and We agree upon);
6. To refrain, without our written consent, from recording the Implementation Services and from copying any materials or Deliverables.

#### **Exhibit "D" – Order Form**