

Flow Through Sublicense Terms

1. Customer Hosted Training

- (a) **License Grant.** Subject to the payment of the applicable License fees (“License Fees”) and taxes, and compliance with the terms and conditions of this Agreement, Distributor grants Customer a personal, limited, nonexclusive, nontransferable, nonsublicensable license during the term indicated on the Order (“License Term”) to:
 - (i) Host, perform, display and use the Licensed Programs as AICC/SCORM-compliant packages suitable for hosting by Customer on a standards-compliant learning management system (“LMS”), solely for the purpose of delivering Training to Customer’s own employees (and third-party service providers or agents subject to training requirements) (collectively “Authorized Personnel”);
 - (ii) use the Tools solely for the purpose of configuring, provisioning and administering the Licensed Programs; and
 - (iii) allow Authorized Personnel to have unlimited access to the Training, provided that the number of individual Authorized Personnel accessing the Training may not exceed the total number of Authorized Personnel indicated on the Order.
- (b) **License Restrictions.** Except as expressly permitted in this Agreement, Customer shall not (and shall not allow any third party to):
 - (i) modify, translate or create “Derivative Works” (as defined at 17 U.S.C. § 101) of the Licensed Programs other than the limited right to integrate the Licensed Programs (“Integration”) and customize the training content in the Licensed Programs (“Customization”);
 - (ii) reproduce or distribute the Licensed Programs (other than as required to provide Training to Authorized Personnel);
 - (iii) sublicense the Licensed Programs, or provide access to the Training either directly or as a service to any third party;
 - (iv) use the Licensed Programs in connection with developing or offering any competing service or otherwise in connection with or in furtherance of a service that competes or aims to compete with Traliant;
 - (v) allow the removal, alteration, covering or obscuring of any copyright notice or any other notice or mark that appears on the Licensed Programs, on any copies, or any media;
 - (vi) reverse engineer or interfere with the operation of the Licensed Programs; and
 - (vii) except for the limited rights granted herein, Distributor (or its third-party licensor) retains all right, title, and interest in and to the Licensed Programs, Tools and Training, including without limitation all software and content included in and used to provide the Licensed Programs and all logos and trademarks reproduced through the Training.
- (c) **Post-Integration Support.** Distributor will use reasonable business efforts to:
 - (i) apply software corrections, patches, fixes, updates, improvements or enhancements;
 - (ii) apply content updates to reflect the then current state of the relevant law and associated regulations;
 - (iii) provide access to customer support by telephone during business hours Monday through Friday, 9:00 AM to 8:00 PM ET (typical response time during business hours is two (2) hours).

2. Warranty; Disclaimer

- (a) **Warranty.** Distributor warrants that Licensed Programs will materially conform to [SCORM] or [AICC] specifications as it functions in Rustici ScormCloud documentation; and
- (b) **Exclusive Remedy.** Distributor’s exclusive obligation, and Customer’s sole remedy, for breach of this warranties shall be
 - (i) to repair or replace non-conforming Licensed Programs (which shall not extend the warranty); or
 - (ii) at Distributor’s option, to refund the fees paid by Customer for such non-conformance.
- (c) **Restrictions.** The Licensed Programs’ warranty shall not apply to any Licensed Program that is:
 - (i) modified or altered in any way;

- (ii) not updated with the corrections, patches, fixes, updates, improvements or enhancements that Distributor may make available from time to time; or
- (iii) used in any manner or for any purpose not specifically permitted by this Agreement or the documentation.

(d) **Disclaimer; No Legal Advice.**

- (i) EXCEPT AS PROVIDED HEREIN, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED PROGRAMS, TRAINING AND SERVICE ARE PROVIDED "AS IS." DISTRIBUTOR AND ITS THIRD-PARTY LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF THE TRADE.
- (ii) CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TRAINING IS PROVIDED FOR EDUCATIONAL PURPOSES ONLY AND MAY NOT BE RELIED UPON AS LEGAL ADVICE AND THAT THE TRAINING MAY CONTAIN ERRORS OR OMISSIONS. NEITHER DISTRIBUTOR NOR ITS THIRD-PARTY LICENSORS WILL BE LIABLE FOR ANY DECISIONS MADE BY YOU IN RELIANCE ON THE ACCURACY OR COMPLETENESS OF THE LICENSED PROGRAMS, TRAINING OR SERVICE.

3. Limitation of Liability. IN NO EVENT SHALL:

- (a) DISTRIBUTOR OR ITS THIRD-PARTY LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING CLAIMS FOR LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION, HOWEVER CAUSED, EVEN IF TRALIAN WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES; AND
- (b) DISTRIBUTOR'S AND ITS THIRD-PARTY LICENSOR'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY YOU FOR THE PROGRAMS OR SERVICES GIVING RISE TO THE CLAIM, DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS THAT GAVE RISE TO THE CLAIM.

4. Customer Indemnification. Customer shall defend, indemnify, and hold Distributor and its third-party licensors harmless from and against any liabilities, losses, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) arising out any third-party claims related to the use of Licensed Programs.