



**Effective Date: April 6, 2024**

**GLOBAL FAMILY PLANNING VISIBILITY and ANALYTICS NETWORK PLATFORM**  
**TERMS of USE**

(Please note DATA PRIVACY NOTICE AND CONSENT in Section 1.C below)

**PREAMBLE**

A. These terms of use (“**TOU**”) are entered into by and between PATH (“**PATH**”), a charitable nonprofit corporation under the laws of Washington State, USA, and you as an individual or, if acting on behalf of your employer or another entity, the entity for which you act as agent (“**Member Organization**”) when accessing the Platform (defined below) (“**you**” or “**your**”). If you are not authorized to enter into a binding contract on behalf of the party for which you are accessing the Platform, you are not authorized to access the Platform unless such party has provided separate written authorization to PATH. PATH and you may be referred to herein by name or individually, as a “**Party**,” and collectively, as the “**Parties**.”

B. The Global Family Planning Visibility and Analytics Network (“**GFPVAN**”) initiative envisions a world where more people are reached with the right healthcare product at the right time. The GFPVAN platform (the “**Platform**”) supports this vision through a cloud-based software service that allows participating supply chain players to enter and access relevant data based on their specific role in the ecosystem to better plan and execute their own supply chain actions and avert disruption in the flow of products. Your data access and business role will be determined using the Data Use Rights Table available at <https://www.rhsupplies.org/activities-resources/global-fp-van/platform/5678/> (“**Data Use Rights Table**”).

C. You may use the Platform in accordance with the Platform functionality made available to you, and with the instructions specified for your User role type(s) (“**Platform User Role Type**”) in the Data Use Rights Table, which is a part of this TOU, solely to align country family planning product demand with production, procurement, and funding to improve availability of family planning products in developing countries (the “**Purpose**”). The goal of using the Platform is to strive for: (a) more timely and cost-effective delivery of products to countries; (b) more women reached with the right product at the right time; and (c) better coordination in allocating limited health resources.

D. PATH will use best business practices to prevent any User having access to data outside their role as defined in the Data Use Rights Table. For this purpose, PATH uses a Platform owned by E2open, to rely on role-based security measures to provide each User of the GFPVAN with role-specific access to appropriate data as delineated in the Data Use Rights Table. This Platform and any related documentation and materials shared with you in relation to your access and use of the Platform are subject to the TOU. The TOU is comprised of this document, the documents referenced to or linked to in the TOU, any amendments or updates to the TOU or those documents, additional provisions contained in the Platform for particular activities or content, and PATH’s disclosures and your consents provided on or in connection with the Platform. For documents linked to in the TOU, PATH may communicate to you a new URL as needed. You and other individual representatives of Member Organizations who access the Platform are collectively referred to herein as “**Users**.”

E. Among others, the United Nations Population Fund, a subsidiary organ of the United Nations established by the General Assembly pursuant to resolution 3019 (XXVII) of 18 December 1972 (the “**UNFPA**”) will use/access the Platform through personnel authorized to access the Platform for and on behalf of UNFPA. UNFPA, as a subsidiary organ of the United Nations, enjoys a specific status and privileges and immunities under, *inter alia*, the Charter of the United Nations (“**UN Charter**”) and the



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Convention on the Privileges and Immunities of the United Nations, adopted by the UN General Assembly on 13 February 1946 (the “**General Convention**”).

**F.** PATH, in its role as the manager of the Reproductive Health Supplies Coalition (“**RHSC**”) Secretariat, is facilitating the Platform on behalf of RHSC. PATH is an international nonprofit organization that transforms global health through innovation. RHSC is a global partnership of organizations dedicated to ensuring that all people in low- and middle-income countries can access and use affordable, high-quality supplies to ensure their better reproductive health. RHSC’s mission is to bring together a diversity of partners and mobilize their collective strengths to increase access to a full range of affordable, quality reproductive health supplies in low- and middle-income countries.

**G.** As facilitator of the Platform, PATH has contracted with E2open, LLC (“**E2open**”) as its platform provider, to use the Platform through E2open’s cloud-based software-as-a-service (the “**Subscription Services**”). Pursuant to the Master Services Agreement with E2open (the “**MSA**”), PATH is authorized by E2open, which owns or has the rights necessary to provide the Subscription Services, to make the Platform available for your use subject to certain terms and conditions which are included in the TOU. In the MSA, E2open, inter alia, agrees to comply with (a) confidentiality obligations substantially similar to, and no less protective than, the provisions of Section 3 (User Data and Confidential Information) below, and (b) the Bill & Melinda Gates Foundation’s Information Security Requirements, the most current version of which is available at [https://docs.gatesfoundation.org/Documents/Information\\_Security\\_Requirements\\_gforg.pdf](https://docs.gatesfoundation.org/Documents/Information_Security_Requirements_gforg.pdf) Furthermore, the MSA prohibits E2open from using Your Content (as defined in Section 2.B (Your Content) below) except for the purpose of providing the Platform.

**H.** By registering for or logging in to use the Platform, you agree to comply with and be bound by the TOU, which constitutes an agreement between you and PATH and governs your access to and use of the Platform, including Your Content that you provide for the Platform (if any) and User Data (defined in Section 3 (User Data and Confidential Information) below) that you access through the Platform. If you disagree with any part of the TOU, or if the jurisdiction in which you are located does not recognize any of the terms of the TOU, then you are not authorized to use the Platform and must not access or use it. The TOU may be amended from time to time. You and, if designated, the Member Contact (defined below) will receive prior written notice of the proposed non-editorial changes, with not less than 40 days to provide feedback for consideration, before PATH finalizes the changes. Using the Platform after any such notified amendments are effective means that you agree to the amendments to the TOU. You can further identify updates by the Effective Date indicated at the top of the TOU. If you do not agree with the TOU as amended, you are not authorized to use the Platform and must stop using the Platform. In addition, in the event you do not agree with the TOU as amended, you, or in case you are part of a Member Organization, the Member Contact, may terminate the TOU as specified below.

## **SECTION 1 – GEPVAN PLATFORM**

**A. Your Account:** You agree not to use any false, inaccurate or misleading information when you register to use the Platform by creating a User account. If you create a User account on behalf of an entity, such as your business or employer, you represent that you have the legal authority to bind that entity to the TOU unless such entity has provided separate written authorization to PATH. Each User account is personal to the registered individual, so you may not share or transfer your account to any other user or entity. You must keep your account details and password confidential and not share them with any third parties, including other employees or representatives of the entity you represent if you register an account on behalf of an entity. If other individuals associated with the entity you represent



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require access to the Platform, such individuals must be authorized by PATH and register their own individual User accounts with E2open. You are responsible for all activity that occurs under your account(s) and agree to make every reasonable effort to prevent unauthorized access to the Platform. You are responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Your Content, Feedback (defined in Section 1.D (Feedback for E2open Technology) below) and all other data of any kind contained within emails or otherwise entered electronically through the Platform or under your account. “**Electronic Communications**” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Platform. PATH and E2open will act as though any Electronic Communications they receive under your password, Username, or account number will have been sent by you. You agree to notify PATH if you become aware of any loss, theft or unauthorized use of any of your passwords, user names, and/or account number or any other known or suspected breach of security, including any known or suspected unauthorized distribution of User Data or unauthorized use of the Platform. You must use your individual account for the Platform at least once in a six (6) month period to keep your account to access the Platform active. If you do not log in during any six (6) month period, your account will be deactivated. In the event your account is deactivated, an email will be sent to you, containing a link, whereby you may request reactivation, which will remain valid for ninety (90) days. PATH or E2open may restore access or reject the reactivation request. If PATH or E2open reasonably suspect that (a) you have provided any information that is inaccurate, not current, or incomplete when registering your account; (b) your account is being used by a third party fraudulently (for example, as a result of an account compromise); (c) your account or Your Content infringe upon any intellectual property or other rights; or (d) your access to the Platform is a threat to the security or functionality of the Platform or any component thereof, PATH or E2open may refuse registration or deactivate your account and terminate the TOU. If you are having trouble accessing your account or the Platform, please see the E2open Support Services Site at <https://www.e2open.com/support/> for information about the support available from E2open for the Subscription Service. You may request deactivation of your account to access the Platform at any time and for any reason. To deactivate your account to access the Platform, please review the instructions on the E2open Support Services Site at <https://www.e2open.com/support/>. If your account to access the Platform is deactivated, your rights as an individual to access the Platform under the TOU immediately terminate. If you wish to reactivate your account to access the Platform at a later time, you must re-register and accept the TOU.

**B. Transmission of Data:**

1. You acknowledge that the technical processing and transmission of your Electronic Communications is fundamentally necessary to your use of the Platform. You expressly consent to your Electronic Communications and/or Your Content being intercepted and stored by the Platform, and you acknowledge and understand that your Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by E2open. You acknowledge and understand that changes to your Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. You further understand that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. You agree that neither PATH nor E2open are responsible for any Electronic Communications and/or Your Content which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by E2open, except to



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the extent that such loss or unauthorized alteration, interception or storage is the result of grossly negligent acts or willful misconduct of E2open in its capacity as owner or operator of the network.

2. Your Content and Usage Data (as defined in Section 1.C.1 (Data Privacy Notice And Consent) below) will be maintained and/or stored exclusively in member State(s) that have recognized the privileges and immunities of the UN pursuant to the General Convention without relevant reservation.

3. Within forty-five (45) days of a written request submitted to PATH by a representative of your organization's information security, compliance or legal department, PATH will provide the latest System and Organization Control ("SOC") 2 audit report for the Subscription Services that is in E2open's possession.

### **C. DATA PRIVACY NOTICE AND CONSENT:**

1. By accepting the TOU, you agree that E2open's Privacy Policy, available at <https://www.e2open.com/privacy-policy/>, and this Data Privacy Notice and Consent apply to your use of the Platform. Furthermore, you agree that the Data Processing Addendum available at <https://www.rhsupplies.org/activities-resources/tools/global-fp-van/platform/9123/> governs personal data that you provide in connection with your use of the Platform, as applicable. PATH is responsible for ensuring compliance with applicable data privacy laws, including the European Union's General Data Protection Regulation 2016/679 ("GDPR"). For more information about the Platform's compliance with GDPR, please see E2open's compliance statement available at <https://www.e2open.com/gdpr/>. PATH receives information that you provide when you set up an account and register to use the Platform (which includes your name and contact information, such as your email address, address, country of residence and/or phone number) and information that is recorded from your interactions with the Platform, including cookies, error reports, activity data, type of browser and operating system you use, device information such as device identifier, hardware model, mobile network information, access times, pages viewed, and your IP address (collectively, "Usage Data"). UNFPA's compliance with E2open's Privacy Policy is subject to UNFPA's privileges and immunities. Further, PATH acknowledges that UNFPA is not subject to the GDPR and that, consequently, the provisions of the Data Processing Addendum do not apply to UNFPA.

2. PATH will use the same care and discretion to avoid public disclosure, publication or dissemination of your Usage Data as it uses with its own similar data that it does not wish to publicly disclose, publish or disseminate, including complying with restrictions on sharing Usage Data with third parties at least as restrictive as those identified in E2Open's Privacy Policy. Notwithstanding the foregoing, PATH may use your Usage Data only to provide and operate the Platform, including complying with legal requirements, investigating harmful activities, auditing and analyzing Platform usage, using the Usage Data to improve the Platform and to communicate with you, including informing you about your account, Platform updates and other related information. PATH may share your Usage Data with third parties working on behalf of PATH for the same purposes. PATH may disclose your Usage Data to the extent required by law, provided that, subject to the privileges and immunities of UNFPA, PATH will give you sufficient prior notice (as permitted and practically feasible) of a request for the disclosure of your Usage Data in order to allow you to have a reasonable opportunity to take protective measures, or such other action as may be appropriate, before any such disclosure is made. Your Usage Data may be processed outside of your home country and the data privacy laws in the countries to which your Usage Data is transferred may not be equivalent to or as protective as the laws in your home country. PATH will maintain your Usage Data for the period required by law and where needed in connection with legal action or investigation. Otherwise, your Usage Data will be kept for as



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long as needed to provide you with access to the Platform or to respond to your request or question. PATH will not sell contact lists or personal User information to third parties. You may view or edit your personal information by accessing your User account for the Platform. You may also withdraw your consent to the use of your Usage Data by the Platform, PATH and/or E2open by contacting E2open at [corpcomm@e2open.com](mailto:corpcomm@e2open.com). PATH and E2open will, however, retain and use your Usage Data as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

**D. Feedback for E2open Technology:** From time to time, you may choose to submit comments, information, questions, data, ideas, description of processes, or other information to E2open or PATH specifically about E2open's technology, including during support, excluding any Usage Data and Your Content ("**Feedback**"). Such Feedback is provided on an as-is basis, with all faults available, and without any warranties, guarantees or conditions, expressed or implied, including, without limitation, completeness, accuracy, fitness for a particular purpose or usefulness of the Feedback.

E2open may freely use, copy, disclose, license, distribute and exploit any Feedback without any obligation, royalty, or restriction based on Intellectual Property Rights or otherwise ("**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world), but may not disclose the identity of the submitter without prior approval. Feedback is considered E2open's confidential information, and as such, you must keep Feedback confidential and not share it with any third parties, except to the extent disclosure of the Feedback is compelled by law, or, in the case of UNFPA, disclosure of Feedback is required pursuant to the UN Charter, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder, and in each case you will provide prior written notice to PATH (to the extent legally permitted). Nothing in the TOU limits E2open's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

**E. Platform Availability:** The Platform may be unavailable from time to time or may be available only for a limited time. While PATH will try to maintain the availability of the Platform, web-based platforms are subject to service interruptions and outages, required maintenance, and PATH is not liable for any disruption or loss that you may suffer as a result. If there is an outage, you may not be able to retrieve Your Content. PATH recommends that you make copies of Your Content regularly.

**F. Platform Updates:** PATH may change the Platform from time to time. PATH is not obligated to provide or maintain any particular features or functionality provided, however, changes to data access shall not be less secure than the existing functionality.

**G. Use Rights:** If you comply with the TOU, you may use the Platform in accordance with the Platform functionality made available to you, and with the instructions specified for your User role type(s) ("**Platform User Role Type**") in the Data Use Rights Table, and solely in connection with the Purpose. To seek support from E2open about your User account and the Platform, please refer to instructions on the E2open Support Services Site at <https://www.e2open.com/support/>.

**H. Proprietary Rights and Use Restrictions:** The Platform is licensed, not sold. You acknowledge and agree that the Platform contains proprietary information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that PATH and its licensors own all right, title and interest in and to the intellectual property rights in the Platform and any suggestions, enhancement requests, or Feedback related to the Platform that are provided by you. PATH



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and its licensors reserve all rights to the Platform not expressly granted by PATH in the TOU.

You may not do any of the following:

- (i) circumvent any restrictions on access to, use of, or availability of the Platform;
- (ii) disassemble, decompile, decrypt, emulate, reverse engineer, or attempt to discover the source code of any aspect of the Platform;
- (iii) publish, copy, rent, lease, license, sell, distribute, or host any component of the Platform;
- (iv) lend, transfer, assign, or otherwise grant any rights in the Platform in any form to any third party, including commercial time-sharing, rental or service bureau use, or otherwise commercially exploit, or enable unauthorized access to or use of, the Platform;
- (v) use the Platform in any unauthorized manner, including any manner that would interfere with others' access to or use of the Platform;
- (vi) copy, modify, or create derivative works based on the Platform; or
- (vii) remove or alter any notices of Intellectual Property Rights or confidentiality or similar legends appearing in or on any aspect of the Platform.

**I. Limited Warranty:** PATH warrants and represents that (a) it is authorized by E2open to make the Platform available to Users for their use in accordance with the terms of the TOU and that (b) the Platform is in compliance with applicable law and free from software viruses or any other harmful computer code, files, or programs, including any designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment (“**Malicious Code**”) and (c) the provision of the Platform does not conflict with any other agreement to which E2open is a party. As your sole remedy for breach of the preceding warranties (a) to (c), PATH shall use reasonable efforts to enforce E2open’s obligations regarding compliance with applicable laws and its contractual obligations, and regarding Malicious Code under the MSA PATH has entered into with E2open. EXCEPT FOR THE EXPRESS LIMITED WARRANTY IN THIS SECTION 1.I, THE PLATFORM, CONFIDENTIAL DOCUMENTATION (DEFINED IN SECTION 3.B (CONFIDENTIAL INFORMATION) BELOW) AND THE USER DATA ARE PROVIDED AS-IS, WITH ALL FAULTS AND AS AVAILABLE, WITHOUT ANY FURTHER WARRANTY, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED. Neither PATH nor E2open guarantee the accuracy or timeliness of the User Data or any other information available from the Platform. You acknowledge that computers, software and networks are not fault-free and occasional periods of downtime occur. Neither PATH, as facilitator of the Platform, nor E2open guarantee that the Platform or User Data will be uninterrupted, secure, free of error, that all defects will be corrected, or that content loss will not occur. E2open does not make, and PATH hereby disclaims, any and all other expressed and/or implied warranties related to the Platform and the User Data, including without limitation any warranty of merchantability, satisfactory quality, fitness for a particular purpose, workmanlike effort, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. You agree that you will obtain and use any User Data entirely at your own risk.

**J. Other Websites:** Neither PATH nor E2open have reviewed, nor will review, all of the User Data made available through the Platform and webpages to which the Platform or User Data links, and that link to the Platform. Neither PATH nor E2open has any control over such non-Platform websites and webpages or is responsible for their contents or their use. By linking to, or permitting Users to link to, a non-Platform website or webpage, neither PATH nor E2open represent or imply that they endorse such website or webpage. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content.



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PATH and E2open disclaim any responsibility for any harm resulting from your use of non-Platform websites and webpages.

**K. Limitation of Liability:** You agree that PATH shall not be liable to you under any contract, tort (including negligence), strict liability, or other legal or equitable theory for any damages or losses, including without limitation, lost business, loss of use or data, delay or interruption of business, lost goodwill, lost profits, loss of privacy or security, loss of reputation, or any other similar damages whatsoever, or for any incidental, indirect, consequential or punitive damages, that arise out of or are related to any aspect of the Platform, Your Content, the User Data or to any User's breach of the TOU; provided, however, that the foregoing limitations will not apply to PATH's liability for its breach of confidentiality, gross negligence or willful misconduct. The limitations and exclusions of liability set forth in this clause apply to any claim related to the Platform or the TOU to the maximum extent permitted by applicable law or principles of law as referred to in Section 1.O (Dispute Resolution), paragraph 2 below, even if PATH knew or should have known about the possibility of the damages.

**L. Indemnification:**

1. You agree to indemnify, defend, and hold harmless PATH, and its directors, officers, employees, agents, and assignees (each an "**Indemnitee**") from any and all liabilities, claims, actions, damages, demands, costs and expenses (including reasonable attorneys' fees), and losses ("**Liabilities**") which may be asserted against any Indemnitee arising, directly or indirectly, in whole or in part, from the following: (a) your fraud, negligence, or willful misconduct with regard to your use of the Platform or any User Data; (b) any Indemnitee's use of your Usage Data or Your Content in accordance with the TOU for the purpose of providing the Platform in accordance with the TOU; (c) any User's use of Your Content; (d) any unauthorized use of the Platform with your User account that occurs as a direct result of your negligence or willful misconduct; or (e) any breach by you of the terms of the TOU, except in each of the foregoing cases to the extent that the Liabilities arose as a result of Indemnitees' breach of the TOU, breach of confidentiality, privacy, or data protection obligations, infringement of third party intellectual property rights, or gross negligence or willful misconduct. You agree to cooperate fully in the defense of any of the foregoing. PATH reserves the right, at its own expense, to control exclusively the defense of any matter otherwise subject to indemnification by you, and you will not settle any matter in a manner that imputes culpability or liability to PATH, or otherwise detrimentally affects Users' rights to use, or PATH's rights to facilitate, the Platform without PATH's prior written consent. Your obligation to indemnify, defend, and hold harmless shall be limited to the extent that you are afforded sovereign immunity under applicable federal, state, or local laws. In such cases where your obligation to indemnify may be limited due to the requirements of federal, state, or local laws, you shall be responsible for the negligent acts and omissions of yourself and your agents and employees causing harm to persons not a party to the TOU. This Section 1.L shall not apply to the U.S. Government or in the event it is prohibited by law.

2. Paragraph 1 of Section 1. L (Indemnification) of the TOU shall not apply to UNFPA due to UNFPA's status, as a subsidiary organ of the United Nations, under the General Convention.

**M. Compliance:**

1. Use of the Platform, including information and User Data that it provides, is subject to United States and other jurisdictions' export and technology laws. You agree to comply with all applicable local, state, national, and international laws, treaties, conventions, and regulations in connection with



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your use, including without limitation those related to data privacy, international communications, antitrust and competition, and the exportation of technical or personal data.

You acknowledge that the Platform is subject to the U.S. Export Administration Laws and Regulations. The Platform, including information and User Data that it provides, may not be acquired for, provided to, or used or accessed within or by, or otherwise exported to: (a) any United States embargoed or proscribed country or its nationals; or (b) anyone on the United States Treasury Department's list of Specially Designated Nations, the United States Department of Commerce's Table of Denial Orders, or other similar list. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and you must comply with the list as it exists in fact. You certify that you are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. The Platform may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. You are solely responsible for obtaining all licenses and permissions necessary related to Your Content.

PATH is committed to full compliance with the letter and spirit of all laws that apply to the Platform, in particular the antitrust and competition laws. These laws prohibit collusion among competitors and market practices that impair the ability of others to compete. PATH believes in a market free of collusion and anticompetitive practices and fully supports enforcement of the antitrust laws. By using the Platform, you agree that you and your organization also support compliance with the antitrust laws, e.g., maintain compliance programs and policies, and are using the Platform for lawful purposes only.

You further agree that you will fully comply at all times with all applicable anti-corruption laws, including, but not limited to, the Foreign Corrupt Practices Act of 1977 of the United States, as amended, and the United Kingdom Bribery Act of 2010. Further, you agree that you will:

- (i) use the Platform in compliance with E2open's Acceptable Use Policy located at <http://www.e2open.com/company/acceptable-use-policy/>, which is hereby incorporated herein by this reference; and
- (ii) comply with E2open's Security Guidelines Policy located at <http://www.e2open.com/company/customer-security-policy/>, which is hereby incorporated herein by this reference.

2. Paragraph 1 of Section 1. M (Compliance) of the TOU shall not apply to UNFPA. Rather, the following applies to UNFPA:

You are solely responsible for obtaining all licenses and permissions necessary related to Your Content. You agree that you will not participate in any discussion, decision or act in connection with the Platform or the User Data that is understood under general principles of international commercial law to constitute collusion or unlawful impairment of competition. You take note and agree that E2open may immediately suspend or terminate your use of the Platform, or remove any of Your Content or restrict or terminate your use of the Platform without any prior notice for activities or content that, in E2open's reasonable judgment, violate E2open's Acceptable Use Policy located at <http://www.e2open.com/company/acceptable-use-policy/>. You further take note and agree that E2open reserves the right to remove any of Your Content or restrict or terminate your use of the Platform for activities or content if you knowingly violate E2open's Security Guidelines Policy located at





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<http://www.e2open.com/company/customer-security-policy/>. Without prejudice to the foregoing, UNFPA will undertake best efforts, subject to UNFPA's privileges and immunities, to comply with the two above mentioned E2open policies.

**N. Choice of Law:** The TOU and your use of the Platform are governed by the laws of the state of Washington, USA, without regard to its choice of law provisions, provided that where the U.S. Government is a User, the Federal Laws of the United States shall apply to the TOU and the U.S. Government's use of the Platform. This Section 1. N (Choice of Law) shall not apply to UNFPA.

**O. Dispute Resolution:**

1. If a dispute arises out of or relates to this TOU or your use of the Platform, and if the dispute cannot be settled through negotiation within sixty (60) days, you or PATH may submit the dispute for final, binding arbitration with written notice to the other party, unless otherwise prohibited by law. The arbitration shall be conducted by a single, neutral arbitrator in Seattle, Washington, USA, and in accordance with the rules of the American Arbitration Association ("AAA Rules"). The arbitration will be conducted in the English language. The arbitrator shall be experienced in the field of the dispute and shall have no ongoing business relationship with the parties of the dispute or PATH. The arbitrator shall be selected by mutual agreement of the parties of the dispute and PATH, or in the absence of such mutual agreement shall be appointed within thirty (30) days of the referral of the dispute for arbitration and in accordance with the AAA Rules. You and PATH agree to accept the arbitrator's decision as final and binding. In the event you or PATH fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party shall be entitled to costs of suit including reasonable attorneys' fees for having to compel arbitration or defend or enforce the award. By agreeing to arbitrate, you and PATH give up their legal right to bring a court action and have a jury trial. Notwithstanding anything herein seemingly to the contrary, you or PATH may seek injunctive relief from a court of competent jurisdiction to prevent or limit damage arising from unauthorized disclosure of Confidential Information.

2. Paragraph 1 of Section 1. O (Dispute Resolution) of the TOU shall not apply to UNFPA. Rather, the following applies to UNFPA:

a. You and PATH shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of this TOU or the breach, termination, or invalidity thereof. Where you and PATH wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between you and PATH in writing.

b. Any dispute, controversy, or claim between you and PATH arising out of this TOU or the breach, termination, or invalidity thereof, unless settled amicably under the above sub-paragraph a. of this paragraph 2 of Section O (Dispute Resolution) of this TOU, within sixty (60) days after receipt by one party of the other party's written request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under this TOU, order the termination of this TOU, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under this



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TOU, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this TOU, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. You and PATH shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

3. For the avoidance of any doubt, you and PATH agree that, for purposes of paragraph 1 and paragraph 2 of this Section O (Dispute Resolution) of the TOU, you can address, vis-à-vis PATH, disputes relating to E2open’s acts or omissions that constitute an alleged breach of the TOU. To address such disputes, PATH will use reasonable efforts to enforce E2open’s obligations pursuant to the MSA.

**P. Privileges and Immunities:**

1. Nothing in, or relating to, the TOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNFPA.

2. Furthermore, the terms of the TOU shall not waive national government entity or intergovernmental organization privileges or immunities required under applicable national law or international treaty.

**Q. Notices:**

1. Notice to you: PATH may give any notice to you regarding the TOU or your use of the Platform by posting notice on the Platform or by sending an email to you at the email address you provide when you register for your account to use the Platform. You agree to check for notices posted on the Platform. You may, however, request, by written notice, that PATH shall give notices via email to designated contacts whom you have appointed to act as an authorized representative of the Member Organization under the TOU (“**Member Contact**”) for specific purposes under the TOU, as specified in the written notice. PATH will not unreasonably deny authorization of such requests.

2. Notice to PATH: You agree to send PATH notices or requests for authorization/approval under this TOU to the following addresses. PATH will notify you in writing of any change to this notice contact information.

For requests for authorization and/or approvals: [GlobalFPVAN@rhsupplies.org](mailto:GlobalFPVAN@rhsupplies.org)

For legal notices:

PATH  
General Counsel  
2201 Westlake Avenue, Suite 200, Seattle, WA 98121, USA

3. A notice sent via email, as permitted above, shall be deemed received as of the first business day following the date sent, and a legal notice sent to PATH shall be deemed received as of the second business day following the date on which such notice is sent via overnight air courier.

**R. Termination:** You may use the Platform for as long as PATH makes it available to you; you



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have no continuing right to use the Platform. You, or in case you are part of a Member Organization, the Member Contact or PATH may terminate the TOU with or without cause and at any time upon written notice. Upon any termination of the TOU, all of your rights to access or otherwise use the Platform are thereby terminated. Termination of the TOU will not eliminate the following surviving provisions of the TOU (and you, PATH and E2open, as applicable, will still be liable for obligations incurred before termination of the TOU): Section 1.C (DATA PRIVACY NOTICE AND CONSENT), Section 1.D (Feedback for E2open Technology), Section 1.H (Proprietary Rights and Use Restrictions), Section 1.I (Limited Warranty), Section 1.J (Other Websites), Section 1.K (Limitation of Liability), Section 1.L (Indemnification), Section 1.N (Choice of Law), Section 1.O (Dispute Resolution), Section 1.P (Privileges and Immunities), Section 1.Q (Notices), Section 1.R (Termination), Section 1.S (General Provisions), Section 1.T (Translations), Section 2.B (Your Content), Section 2.C (Your Representations and Warranties), Section 3.B (Confidential Information), Section 3.C (Exceptions), and Section 3.D (Legal Requirement to Disclose).

**S. General Provisions:** The TOU constitutes the entire agreement between you and PATH regarding the Platform, the User Data and Your Content. However, the TOU does not modify any existing legal obligations between PATH or E2open and any User or User's organization regarding the subject matter thereof. If any provision of the TOU is found by a competent tribunal 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. Either Party's failure to act on a breach does not waive its right to act on subsequent or similar breaches. You may print or make an electronic copy of the TOU for your records. You may not assign or transfer the TOU or any of your rights or obligations under the TOU without PATH's prior written consent.

**T. Translations:** In the event the TOU is translated into a language other than English, you agree that the TOU in the English language shall be the binding and controlling agreement between you and PATH and that the translation is for your future reference convenience only.

## **SECTION 2 – YOUR CONTENT**

**A. Data Sharing:** Based on your Platform User Role Type, the Platform may allow you to store and/or share family planning product order, shipment, inventory, and supply plan information and/or data with other Users, PATH and E2open, as specified in the Data Use Rights Table. If you provide any such information for the Platform, this Section 2 applies to you.

**B. Your Content:** All data, files (including hypertext markup language files), documents, audio and visual information, graphics, scripts, programs, applets or servlets, including your Confidential Information (as defined in Section 3 (User Data and Confidential Information) below) and master data (for purposes of the TOU, “**master data**” is defined as non-transactional reference data for products and organizations used to configure the Platform) provided by you for the Platform, excluding identification and other information provided by you when you apply for an account, is referred to in the TOU as “**Your Content.**” When you submit or otherwise make available to the Platform Your Content, you agree that Users, PATH, and E2open may, on a worldwide basis and free of charge, access and use Your Content in accordance with the TOU and as specified in the Data Use Rights Table for the respective, applicable Platform User Role Type. Neither PATH nor E2open shall access or use, nor are Users permitted to access or use, Your Content in any manner other than as provided in the TOU. You further acknowledge and agree that Your Content may be (a) accessed, used and processed by PATH, E2open and their respective third party vendors to provide the Platform to the Users as described in the TOU (b) transferred outside of the country or other jurisdiction where you are located and (c) exclusive of



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Confidential Information, published or otherwise made publicly available by PATH solely for the purpose of improving the availability of family planning products. In addition, you acknowledge and agree that it is your obligation to inform the sources of Your Content of the processing of Your Content pursuant to the TOU and to ensure that sources have given any necessary consent to such processing as required by all applicable data protection legislation. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Your Content. If you do not want Users, PATH, or E2open to use Your Content as described in the Data Use Rights Table or the TOU, do not submit Your Content to the Platform. The Data Use Rights Table may be amended from time to time, with prior written notice of the changes, and maintaining Your Content on the Platform after any such amendments are effective means that you agree to the amendments to the Data Use Rights Table. You can identify updates by the Effective Date indicated at the top of Data Use Rights Table. If you do not agree with the Data Use Rights Table as amended, you must stop using the Platform. PATH and E2open may remove Your Content at any time. Users, PATH and E2open do not acquire any right, title or interest in Your Content by accessing it in the Platform, except the rights specified in the TOU. If you or PATH terminate the TOU, pursuant to Section 1.R (Termination), Your Content will remain accessible to PATH, E2open, and other Users via the Platform in accordance with the terms of the TOU. If you, or in case you are part of a Member Organization, the Member Contact, elect to discontinue use of Your Content by PATH, E2open, and other Users, you must contact the “Control Tower Admin” (as defined in the Data Use Rights Table) at [GlobalFPVAN@rhesupplies.org](mailto:GlobalFPVAN@rhesupplies.org). Your Content will be irretrievably erased from the Platform within seventy-five (75) days of a written request submitted to PATH by a duly authorized representative of your organization.

**C. Your Representations and Warranties:**

1. When you provide Your Content for use on the Platform, you represent and warrant that (a) you have all necessary right, title, interest, and licenses to upload it and make it available to PATH, E2open and other Users for their use in accordance with the terms of the TOU; and (b) you will undertake best efforts not to upload, post, or otherwise transmit through the Platform any content or any other materials whatsoever that: (i) are defamatory, obscene, invasive to another person’s privacy or protected data, or tortious; (ii) infringe upon any intellectual property rights, including any patent, trademark, trade secret, copyright, or right of publicity; (iii) contain any software viruses or any other harmful computer code, files, or programs, including any designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; or (iv) violate any applicable license, law, or contractual or fiduciary duty or provision, including by exercise of the rights you grant to PATH, E2open, and Users in the TOU.

2. Except for Paragraph 1 of this Section 2.C (Your Representations and Warranties) of the TOU, Your Content is provided “as is” and you do not make any warranty or representation as to the completeness, accuracy, fitness for use, or otherwise in relation to any of Your Content shared by you under the TOU.

**SECTION 3 – USER DATA and CONFIDENTIAL INFORMATION**

**A. User Data:** Your use of the Platform provides you with access to data owned or controlled by other Users (“**User Data**”). You agree to use the User Data solely for the Purpose in accordance with the rights specified for your applicable User Role Type in the Data Use Rights Table and subject to the terms and conditions of the TOU, including but not limited to the confidentiality obligations in this Section 3. By allowing access to the User Data, PATH does not grant you any express or implied rights to the User Data other than what is described in the TOU.



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**B. Confidential Information:** Any information about the Platform that you receive or access, including but not limited to User guides, training materials and other informational documentation (“**Confidential Documentation**”), as well as User Data and Your Content that are defined as “Confidential Data” in the Data Use Rights Table, is “**Confidential Information.**” PATH, E2open and you (each an “**Accessing Party**” and collectively the “**Accessing Parties**”) may access and use Confidential Information of another Accessing Party or User only as specified in the TOU and the Data Use Rights Table according to the Accessing Party’s User Role Type and solely while fulfilling that User Role Type. To the extent that an Accessing Party is permitted to access Confidential Information, the Accessing Party agrees to: (a) use the Confidential Information only for the Purpose in accordance with the TOU; (b) maintain all Confidential Information in confidence and take all necessary precautions to protect the Confidential Information, including, without limitation, all precautions the Accessing Party normally employs with respect to its own confidential or proprietary information for a period of five (5) years from the date the Confidential Information is made available in the Platform; (c) except as expressly provided in Section 3.E (Discussion of Confidential Information with Other Users) below, not disclose Confidential Information to any third party except to the Accessing Party’s, and its affiliates’, directors, employees, subcontractors, and consultants who have a need to know such Confidential Information for purposes of using the Platform in accordance with the TOU and exercising the Accessing Party’s rights in accordance with its User Role Type in the Data Use Rights Table and who are bound by restrictions on disclosure and use of such Confidential Information at least as restrictive as those set forth in the TOU.

**C. Exceptions:** The foregoing obligations of confidentiality shall not apply with respect to Confidential Information that: (i) is publicly available at the time of disclosure or which thereafter becomes publicly available, through no improper action or inaction by the Accessing Party; or (ii) was known by or was in the possession of the Accessing Party prior to access of such Confidential Information via the Platform, without the Accessing Party having a confidentiality obligation for the Confidential Information, as evidenced by written records; (iii) was independently developed by the Accessing Party without reference to the Confidential Information accessed via the Platform as shown by written records contemporaneous with the time of development; (iv) was rightfully disclosed to the Accessing Party by a third party without restriction; (v) is Confidential Data about a specific country that is accessed by a “**Full Viewer**,” “**Planner**” or “**Basic Viewer**” (as defined in the Data Use Rights Table) who are of the same country of which the Confidential Data relates to, and such Full Viewer, Planner or Basic Viewer only uses such Confidential Data in accordance with its respective User Role Type rights identified in the Data Use Rights Table; or (vi) is Confidential Data about a specific country that is accessed by a country-level “**Full Viewer**,” “**Planner**” or “**Basic Viewer**” (as defined in the Data Use Rights Table) who are of a different country of which the Confidential Data relates to and provided that the provider of such Confidential Data notifies PATH in writing in advance of approval for any Accessing Party from a different country to regularly receive or access such Confidential Data via the Platform, and such country-level Full Viewer, Planner or Basic Viewer only uses such Confidential Data in accordance with its respective User Role Type rights and the rights authorized by the provider of such Confidential Data.

**D. Legal Requirement to Disclose:** In the event that an Accessing Party is legally compelled, either by court, or by any other regulatory authority including bodies of the United Nations, to disclose any Confidential Information, the Accessing Party may disclose such Confidential Information, provided that, subject to the privileges and immunities of UNFPA, the Accessing Party notifies PATH (or in the case of PATH being compelled to disclose, PATH notifies the User(s) which provided the Confidential Information) of the disclosure requirement with sufficient prior notice to allow PATH to notify the



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User(s) which provided the requested Confidential Information and to provide such User(s) with a reasonable opportunity to protect its Confidential Information. The relevant Accessing Party will use reasonable efforts to obtain reliable assurance that such Confidential Information will be treated confidentially. Nothing set forth in this provision shall delay the Accessing Party from meeting any deadline for disclosure set by a court or established by law or regulation. However, any disclosure permitted under this section must be limited to that portion of the Confidential Information that the Accessing Party is legally required to disclose, and the Accessing Party must continue to treat any Confidential Information so disclosed pursuant to this section subject to the obligations in the TOU in all other instances.

**E. Discussion of Confidential Information with Other Users:** Notwithstanding the foregoing obligations of confidentiality, the Accessing Party may disclose Confidential Information to a third party, provided that the third party is a User who has permission to access the same Confidential Information in accordance with the Data Use Rights Table and only for the Purpose in accordance with the TOU.

**F. Non-Use Upon Termination or Other Request:** Upon the earlier of (a) deactivation of the Accessing Party's account; (b) termination of the TOU, as provided in Section 1.R (Termination); or (c) at any time upon request by PATH or the User which provided the Confidential Information, the Accessing Party must stop using all Confidential Information.

**G. E2Open Confidentiality Obligations:** For the avoidance of doubt, E2open is contractually obligated to confidentiality obligations substantially similar to the provisions of this Section 3.

**H. Confidential Documentation:** As the owner of the Confidential Documentation, the obligations of this Section 3 shall not apply to PATH in relation to Confidential Documentation.