

MASTER SERVICES AGREEMENT

Please Read Carefully

Updated: September 28, 2021

This Master Services Agreement (the “**Agreement**”) is made and entered into between Darkhorse Tech, Inc., a New York corporation (“**Company**”) and the client that has entered into and executed a quotation (“**Quote**”) with Company (“**Client**”). This Agreement shall govern the information technology services and related services provided by Company to Client (the “**Services**”) as described herein and in the applicable Quotes.

BY SIGNING THE APPLICABLE QUOTE, CLIENT EXPRESSLY ACCEPTS AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AS OF THE EFFECTIVE DATE SET FORTH IN THE QUOTE (“**EFFECTIVE DATE**”). CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS WELL AS ALL OTHER APPLICABLE RULES OR POLICIES, TERMS AND CONDITIONS AND/OR AGREEMENTS THAT ARE AND/OR MAY BE ESTABLISHED BY COMPANY FROM TIME TO TIME AND THE FOREGOING SHALL BE INCORPORATED HEREIN BY REFERENCE. IF CLIENT IS AN INDIVIDUAL AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF CLIENT’S LEGAL ENTITY, CLIENT REPRESENTS THAT SUCH INDIVIDUAL HAS THE LEGAL AUTHORITY TO BIND SUCH ENTITY. IF CLIENT DOES NOT AGREE WITH THIS AGREEMENT, CLIENT MUST NOT EXECUTE THE QUOTE.

ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 17.6, CLIENT AGREES THAT DISPUTES BETWEEN CLIENT AND COMPANY WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION AND CLIENT WAIVES ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT AND/OR CLASS-WIDE ARBITRATION. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PARTIES ARE WAIVING THEIR RIGHT TO A TRIAL BY JURY IN THE EVENT OF ARBITRATION.

1. SERVICES.

1.1. **Services Under Quotes.** Client is engaging Company to provide Services as described in duly executed Quotes under this Agreement provided by Company hereunder. Neither party will have any obligation with respect to any draft Quote unless and until it is executed by both parties. Except as otherwise provided herein, if any of the terms or conditions of this Agreement conflict with any of the terms or conditions of any Quote, the terms or conditions of such Quote will control solely with respect to the Services covered under such Quote.

1.2. Third Party Products.

(a) Except as expressly set forth in any Quote, Company has not provided an estimate for, and is not responsible for, the selection or procurement of any hardware, devices or equipment, operating system software, database software, or other third party software, connectivity, data transport, or other intellectual property rights required to perform the Services (“**Third Party Products**”). Client is solely responsible for the selection, procurement, costs, and expenses of acquiring the same, and any other infrastructure required to support Client’s use of the Services. Client acknowledges and agrees that Company is not liable for the performance of any Third Party Products, such Third Party Products may impact the performance of the Services provided hereunder, and Company shall have no liability related thereto. All Third Party Products shall be subject to the manufacturer’s warranty, license terms and terms of use, as applicable.

(b) Client agrees to provide a suitable operating environment for the Third Party Products and promptly report any faults in or damage to the Third Party Products, any alteration in their performance, or

any change in the operating environment that will affect their operation. Client further agrees not to misuse the Third Party Products. Client acknowledges that certain Third Party Products are the property of Company, of the lessors, and the Client will not obscure or remove any labels or markings from such Third Party Products. Risk in any Third Party Products sold to Client shall pass to Client upon payment. Client undertakes to effect and maintain adequate security measures to safeguard the Third Party Products from access and/or use by any unauthorized person. In the case of damage to or destruction or loss of the Third Party Products, Client shall reinstate the same (or its equivalent) unless otherwise agreed by the parties and Company shall not be liable under this Agreement until such Third Party Products are reinstated.

1.3. **Service Exclusions.** Unless otherwise set forth in any Quote, Services shall not include the diagnosis and rectification of any fault arising from: (a) use of versions of Third Party Products including the operating system software on Client's desktops, other than those specified by Company in writing; (b) inadequate training by Client of its personnel on the use of the Services and/or Third Party Products; (c) any use of the Services and/or Third Party Products not in accordance with the documentation or the operating environment recommended by Company, or otherwise contrary to Company's instructions; (d) modifications or enhancements to the Services and/or Third Party Products made without Company's prior written consent; and/or (e) failure by Client to implement Company's recommendations or solutions. Any services provided by Company outside of the scope of the Services set forth in the applicable Quote shall be provided at Company's then-current rates. The Services do not include any legal, regulatory, accounting, or tax advice and Client will rely solely upon its own advisors with respect to any such advice. Company makes no warranty that the Services will comply with the laws or regulations of Client's jurisdiction.

1.4. **Data Security.** Client acknowledges and agrees that Company may utilize third-party providers to provide various services, including but not limited to cloud-based functions such as the hosting and storage of Client data. The protection of such data will be in accordance with such third party's safeguards for the protection of the security, confidentiality and integrity of Client's data. Client is responsible for taking appropriate steps to maintain security, protection and backup of any Client data and/or Client Content (as defined in Section 7.3). Client agrees that Company will not, and is not required to, monitor or in any way check the content of any data being transmitted by Client or any third party via the Services provided by Company. Without prejudice to the foregoing, if Company discovers the transmission of data or other matter relating to data or the use of the Services that is in contravention of any law, regulation, order or other similar rule of any competent authority, Company may (without any liability or penalty whatsoever) take all action required to ensure compliance with such laws, regulations, orders or rules. Client shall pay for any costs and charges associated with such action. In performance of the Services, it is possible that data files may be destroyed. Company will use commercially reasonable precautions to avoid destruction of data, but will not be held responsible in the event that such destruction occurs. Except as otherwise expressly set forth in a Quote, it will be Client's responsibility to ensure that back-up copies are made on a regular basis and available to Company in the event of a required reload.

1.5. **Personnel.** Company shall provide qualified, competent Representatives (as defined in Section 6.2) to perform the Services. No Company Representative shall be required to perform Services exclusively for Client during the term of this Agreement and/or any Quote. Company shall supervise the performance of the Services and shall be entitled to control the manner and means by which the Services are performed, subject to the terms of this Agreement and/or the applicable Quote. Client acknowledges and agrees that Company may subcontract any of its obligations hereunder.

2. CLIENT OBLIGATIONS.

2.1. **General.** During the term of this Agreement, Client shall: (i) provide a suitable operating environment (including without limitation a suitable electrical power supply) and safe workplace for Company's Representatives providing Services; (ii) ensure, unless specifically requested by Company, that no person other than Company and its authorized Representatives removes, adjusts, repairs, maintains and/or otherwise interferes with any part of the Services; (iii) ensure that no third party uses the Services other than those third parties with whom the Client has a relationship in the ordinary course of its business,

and in any event ensuring that any third parties comply with the relevant provisions of this Agreement relating to the Services and their use; (iv) ensure that its network and systems comply with the relevant specifications provided by Company from time to time, and provide Company with information as may be required by Company in order to render the Services; and (v) provide to Company such information as Company reasonably requires in order to perform its obligations under this Agreement. Client further agrees to that it shall be fully responsible for the acts and/or omissions of all of its employees, consultants, contractors, subcontractors, agents and other representatives.

2.2. **Cooperation.** At all times during the term of this Agreement, Client and its personnel will behave in a professional and workmanlike manner, shall promptly and fully cooperate with Company, and shall promptly make competent, qualified personnel available to assist and answer questions of Company, as necessary and appropriate and as reasonably requested by Company. Client shall make available to Company, free of charge, all information, facilities and services reasonably required by Company to enable it to perform the Services. Company shall bear no liability or otherwise be responsible for delays in the provision of the Services or any portion thereof caused by Client's failure to timely provide information requested by Company.

2.3. **Use of the Services.** Client is responsible for obtaining, maintaining, and supporting all access, computer hardware, telecommunications capabilities and other equipment and services needed for it to access the Services, including without limitation 'Internet' access. Client will determine the access controls for its authorized users and will be responsible for the activities of such users, including without limitation compliance with the terms and conditions set forth in this Agreement and applicable Quote(s). Client shall ensure that its network and systems comply with the relevant specifications provided by Company from time to time. Client understands and agrees that there may be interruptions to the Services due to circumstances both within Company's control (e.g., routine maintenance) and outside of Company's control.

2.4. **Acceptable Use.** Client acknowledges and agrees that Client and its users will abide by the terms and conditions set forth herein. Client is responsible for any and all content, which is displayed, downloaded, uploaded and/or transmitted, through Client's systems. Content includes without limitation, home pages, web pages, domain names, e-mail, stored data and any other data stored and/or transmitted through Client's systems. Client further agrees not to: (a) seek or attempt to seek access to, test the vulnerability of, breach the security of or wrongly challenge the authenticator of, any system, software, data or network without prior written consent of Company; (b) use monitoring and/or crawling technology to impair and/or disrupt any host, system, software, data and/or network; (c) use the Services to violate, exploit, or harm (or attempt any of the foregoing) the legal rights (including the rights of publicity and privacy) of any person or third party; (d) promote any illegal activity, or advocate or assist any unlawful act; (e) stalk, harass, intimidate, or harm any person or third party; (f) track any person or third party without their explicit consent; or (g) act in a manner that could give rise to any civil or criminal liability under any applicable local, state, national or international laws, statutes, ordinances, rules, regulations or ethical codes governing Client's jurisdiction, including confidentiality, data protection, and intellectual property laws.

2.5. **Compliance with Laws.** Client shall be solely responsible for Client's compliance with all applicable laws, rules and governmental regulations affecting the operation of the business of Client or use of the Services, including without limitation HIPAA and all data privacy laws, rules and regulations. Client may not use the Services other than for Client's own legitimate and lawful business purposes and in a manner that complies with this Agreement and all applicable laws, rules and regulations.

3. Charges.

3.1. **Charges.** In consideration of the provision of the Services described herein and/or in any Quote, Client agrees to pay Company the charges set forth in the duly executed Quote. All charges due and payable by the Client to Company under this Agreement must be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law. The charges reflected in such Quote(s) shall be in U.S. dollars. Notwithstanding anything herein to the contrary, (i) Company may change its rates from time to time upon thirty (30) days' prior notice to Client, and (ii) in the event third party providers increase their charges for Third Party Products, Company shall pass on such increase in charges to Client,

and Client shall pay such charges in accordance with the terms and conditions of this Agreement. Any services provided outside of the scope of Services set forth herein and/or in the applicable Quote shall be provided at Company's then-current rate for such out-of-scope services and shall be due and payable in accordance with the terms and conditions set forth herein.

3.2. **Taxes.** All charges due and payable under this Agreement are exclusive of taxes, which will be added at the prevailing rate from time to time.

3.3. **Expenses.** Third Party Product charges, reasonable travel and out-of-pocket expenses are not included in the charges set forth in the relevant Quotes and will be invoiced separately.

3.4. **Invoices.** Unless otherwise set forth herein or in the applicable Quote, Company will provide Client with an invoice for charges that become due hereunder and such invoices shall be due and payable upon receipt of such invoice. Invoices submitted by Company to Client are deemed accepted and approved unless disputed by Client in accordance with the terms and conditions contained herein.

3.5. **Payments.** Unless otherwise set forth in a Quote, charges may be paid by Client (i) by check, (ii) by deduction through automated clearing house ("ACH") transfers from Client's designated payment account, (iii) by credit card, or (iv) by such other method as is mutually agreed upon by the parties. If payment is by ACH or credit card, Client authorizes Company to automatically charge the ACH and/or credit card account for the charges (plus applicable sales tax) in advance or as otherwise agreed to by the parties in writing without any further authorization from Client. Client acknowledges that the authorization will remain in effect until Client cancels such authorization by providing written notice to Company. If Client's account on file is closed or the account information is changed, or if, for any reason, a charge is rejected, Client shall immediately update Client's account or supply a new payment account, as appropriate. Company charges twenty-five dollars (\$25.00) for any returned or NSF checks or ACH payments. Client hereby agrees to undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by Company in order to effectuate the requirements of this Section 3.5. In addition, Client permanently and irrevocably waives any and all rights to enact a 'chargeback' (that is, a disputed, reversed or contested charge with the applicable credit card or bank) against such payments for any reason whatsoever against Company.

3.6. **Late Payments.** In the event payment for charges is not made on or before the date such payments are due, Company may, in its sole discretion, suspend Services until payment is made in full, without incurring any liability. Company will give Client five (5) business days' prior notice of its intention to exercise its rights to suspend Services under this Section 3.6. If Client does not make payment on or before thirty (30) days from the date on which such payment is due to be paid, Company reserves the right, in its sole and absolute discretion, to apply a late fee in an amount equal to the greater of (i) twenty-five dollars (\$25.00), or (ii) five percent (5%) of the charges due.

3.7. **Invoice Dispute Process.**

(a) If Client has a bona fide dispute in relation to any portion of the charges invoiced, Client must pay all invoiced charges and shall provide notice to Company in writing within thirty (30) days from the date of the invoice. Such notice shall set forth the details surrounding the dispute. The parties shall discuss the disputed charges and negotiate in good faith to resolve the dispute.

(b) When the dispute is resolved, (i) if a payment is owed to Company, such payment shall be made within five (5) business days of the resolution of such dispute, or (ii) if an amount is owed to Client, Company shall credit such amount to Client's account on Client's next billing cycle (or within such other timeframe as mutually agreed upon by the parties in writing).

(c) For avoidance of doubt, all negotiations pursuant to this Section 3.7 shall be treated as confidential compromise and settlement negotiations. Nothing said or disclosed, nor any document produced, in the course of such negotiations which is not otherwise independently discoverable shall be disclosed to any third party nor offered or received as evidence or used for impeachment or for any other purpose in any current or future litigation.

(d) Client waives the right to dispute any charges not disputed within thirty (30) calendar days after the date of the applicable invoice.

4. TERM.

4.1. **Term.** This Agreement is effective as of the Effective Date and will continue until terminated in accordance with Article 5.

4.2. **Quotes.** The Services will commence on the date set forth in an Quote and continue thereafter as set forth in such, unless otherwise terminated earlier in accordance with the terms of such Quote or this Agreement.

5. TERMINATION.

5.1. **Termination for Breach.** If a party materially breaches this Agreement and/or any Quote (the “**Defaulting Party**”), and the Defaulting Party does not cure such breach within thirty (30) calendar days after its receipt of written notice of material breach, the non-defaulting party may terminate this Agreement and/or the relevant Quote upon written notice to the Defaulting Party. Termination of a Quote and/or this Agreement will be without prejudice to any other rights and remedies that the non-defaulting party may have under this Agreement and/or at law and/or in equity.

5.2. **Termination for Convenience.** Either party may terminate this Agreement and/or any Quote hereunder at any time for convenience upon thirty (30) days’ advance written notice to the other party.

5.3. **Termination for Insolvency.** Either party may terminate this Agreement and Quote(s) in the event the other party becomes Insolvent. For purposes of this Section 5.3, “**Insolvent**” or “**Insolvency**” shall mean a party that makes an assignment for the benefit of creditors, has a receiver, trustee, custodian (or similar party) appointed or designated to administer its affairs or otherwise take control of its assets or business operations, becomes a debtor in a voluntary proceeding under any chapter of the United States Bankruptcy Code or any law or statutory scheme relating to insolvency, reorganization or liquidation, or an involuntary petition in bankruptcy, or other insolvency proceeding is filed against a party and is not dismissed within sixty (60) days thereafter.

5.4. Effect of Termination.

(a) Upon notice of termination of this Agreement and/or a Quote, the parties will discuss and determine whether Client requires any transition Services to Client or a third party and, if so, Company may work with Client or a third party for a period of up to thirty (30) days (or other timeframe as mutually agreed to by the parties in writing) to provide such transition services at such rates as Company shall designate, which shall be due and payable by Client in advance.

(b) In the event of any termination under this Agreement and/or any Quote, upon termination (i) Company will cease providing Services, and (ii) Client will pay all outstanding charges, charges, Third Party Product charges and expenses incurred through the termination date. Notwithstanding anything to the contrary contained herein, Company shall not be liable for any loss, cost, damage or expense whatsoever resulting from the cessation of Company’s Services.

6. CONFIDENTIALITY.

6.1. **Confidential Information.** “**Confidential Information**” includes all information related to the business of one party (“**Disclosing Party**”) and any of its affiliates, clients and other third parties, to which the other party (“**Receiving Party**”) has access, whether in oral, written, graphic or machine-readable form, in the course of or in connection with the Services, including without limitation: its business, legal, and operational practices, financial, technical, commercial, marketing, competitive advantage or other information concerning the business and affairs, partnerships and potential partnerships, business model, fee structures, personally identifiable customer or employee information, funding opportunities, metrics, know-how, systems, procedures and techniques that has been or may hereafter be provided or shown to the other party, regardless of the form of the communication and the terms and conditions of this Agreement. The party disclosing Confidential Information shall be referred to herein as the “**Disclosing Party**” and the party receiving Confidential Information shall be referred to herein as the “**Receiving Party**.”

6.2. **Representatives.** The Receiving Party will keep the Confidential Information confidential, and may disclose the Confidential Information to its officers, directors, employees, agents and subcontractors (and their employees) (“**Representatives**”) who have a need to know such Confidential Information solely

in connection with this Agreement. The Receiving Party will cause such Representatives to comply with this Agreement and will assume full responsibility for any failure to comply with the terms of this Agreement. The Receiving Party will not transfer or disclose any Confidential Information to any third party without the Disclosing Party's prior written permission and without such third party having a contractual obligation (consistent with this Article 6) to keep such Confidential Information confidential. The Receiving Party will not use any Confidential Information for any purpose other than to perform its obligations under this Agreement.

6.3. **Exclusions.** Confidential Information does not include information that: (i) is obtained by the Receiving Party from the public domain without breach of this Agreement and independently of the Receiving Party's knowledge of any Confidential Information; (ii) was lawfully and demonstrably in the possession of the Receiving Party prior to its receipt from the Disclosing Party; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (iv) becomes known by the Receiving Party from a third party independently of the Receiving Party's knowledge of the Confidential Information and is not subject to an obligation of confidentiality.

6.4. **Legal Requirements.** If the Receiving Party is requested or required to disclose any of the Disclosing Party's Confidential Information under a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "**Legal Requirement**"), the Receiving Party will, if lawfully permitted to do so, provide prompt notice of such Legal Requirement to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the Disclosing Party is not successful in obtaining a protective order or other appropriate remedy and the Receiving Party is legally compelled to disclose such Confidential Information, or if the Disclosing Party waives compliance with the provisions of this Agreement in writing, the Receiving Party may disclose, without liability hereunder, such Confidential Information solely to the extent necessary to comply with the Legal Requirement.

6.5. **Disclosure.** In the event that the Receiving Party learns or has reason to believe that Confidential Information has been disclosed or accessed by an unauthorized party, the Receiving Party will immediately give notice of such event to the Disclosing Party.

6.6. **Disposition of Confidential Information on Termination.** Upon termination of this Agreement or upon the Disclosing Party's written request, the Receiving Party will return to the Disclosing Party all copies of Confidential Information already in the Receiving Party's possession or within its control. Alternatively, with Disclosing Party's prior written consent, the Receiving Party may destroy such Confidential Information; provided that the Confidential Information is (i) destroyed in accordance with applicable law, rule or regulation, and (ii) is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case an officer of the Receiving Party will certify in writing to the Disclosing Party that all such Confidential Information has been so destroyed.

6.7. **Equitable Relief.** Each party acknowledges that a breach of this Article 6 may result in irreparable and continuing damage to the Disclosing Party for which monetary damages may not be sufficient, and agrees that the Disclosing Party will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

7. INTELLECTUAL PROPERTY; CLIENT CONTENT.

7.1. **Intellectual Property.** "IP" means all intellectual property including without limitation all patents, inventions, trademarks, service marks, trade names and trade dress, copyrights and copyrightable works, trade secrets, know-how, design rights and database rights.

7.2. Company Trademarks; Ownership.

a. Company retains all right, title and interest in and to all trademarks, service marks, and trade names owned or licensed by Company, and no right, title or interest in or to Company's trademarks, service marks, or trade names is granted to Client hereunder. All uses of Company's trademarks, service marks, or trade names shall inure solely to the benefit of Company or its licensors.

b. Unless otherwise set forth in a Quote, Company retains all right, title, interest and ownership of, any and all IP and proprietary rights with respect to the Services, and any other materials provided or made available to Client by Company hereunder. Except for the rights expressly granted to Client in this Agreement, all such Services and other materials that are provided or made available, and all work product that is developed, under this Agreement, all modifications, compilations, and derivative works thereof, and all IP rights pertaining thereto, are and shall remain the property of Company and its respective licensors (and to the extent any rights of ownership in any such materials, works, or rights might, for any reason, otherwise vest in Client, Client hereby assigns such ownership rights to Company). Company confirms that it has all the rights necessary to provide the Services described herein and has the ability to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

7.3. **Client Content.** “**Client Content**” means any elements of text, graphics, images, photos, designs, artwork, logos, trademarks, service marks, data, software, and other information, materials and/or content which Client provides in connection with the Services. Client Content excludes any content available in the public domain, and any content owned or licensed by Company, whether in connection with providing Services or otherwise. Client hereby grants Company a worldwide, non-exclusive right and license to reproduce, distribute and display the Client Content solely as necessary to provide the Services. In addition, Company may use Client’s names, trademarks, service marks, logos or symbols on any website, in any press release, in any marketing or promotional materials. Client represents to Company and guarantees that all Client Content is owned by Client, or that Client has permission from the rightful owner to use each of the elements of Client Content, and that Client has all rights necessary for Company to use the Client Content in connection with the Services. Client and its licensors retain title, all ownership rights, and all IP rights, in and to the Client Content, and reserve all rights not expressly granted to Company hereunder. Company has no knowledge of the value of Client’s Content or of the financial or other consequences of the Client’s Content being lost or not properly processed and/or transmitted, and it is Client’s responsibility to store and back-up at all relevant times and whenever possible and keep a permanent record of such Client Content processed and/or transmitted via any network.

8. REPRESENTATIONS & WARRANTIES.

8.1. **Client Warranties.** Client represents and warrants that it (i) is a duly organized, validly existing and in good standing under the laws of its state of organization; (ii) has the power and authority to enter into this Agreement and Order Form(s); (iii) is in compliance and will remain in compliance with all applicable laws, rules and regulations; and (iv) has not and will not enter into any agreement or perform any act which might contravene the purposes and/or effects of this Agreement.

8.2. **Company Warranties.** Company represents and warrants that it (i) is a duly organized, validly existing and in good standing under the laws of its state of organization; and (ii) has the power and authority to enter into this Agreement and Quote(s).

8.3. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND ANY MATERIALS ARE PROVIDED BY COMPANY ON AN “AS-IS” BASIS. COMPANY DOES NOT REPRESENT, WARRANT, AND/OR COVENANT THAT THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY REPORTS, ADVICE AND RECOMMENDATIONS, IN ANY FORM) PROVIDED BY COMPANY IN CONNECTION WITH THIS AGREEMENT AND/OR ANY ORDER FORM, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. COMPANY DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICE WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY) WILL BE CORRECTED. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, BREACH OF DATA AND/OR OTHER LOSS AND/OR DAMAGE RESULTING FROM TRANSFER OF DATA

OVER COMMUNICATION NETWORKS SUCH AS THE INTERNET AND/OR INABILITY TO ACCESS AND/OR GET ACCURATE DATA FROM THIRD-PARTY SYSTEMS AND/OR APPLICATIONS THAT THE SERVICES ARE DEPENDENT ON AND/OR OTHERWISE.

9. LIMITATION OF LIABILITY.

COMPANY'S TOTAL AND CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY ORDER FORM SHALL IN NO EVENT EXCEED THE CHARGES PAID BY CLIENT TO COMPANY UNDER THE APPLICABLE ORDER FORM THAT GAVE RISE TO SUCH CLAIM DURING THE ONE (1) MONTH PERIOD PRECEDING THE DATE OF SUCH CLAIM. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. INDEMNIFICATION.

10.1. **Client Indemnification.** Client shall indemnify, defend and hold harmless Company and its Representatives from and against any liabilities, losses, costs, damages, demands and expenses, including reasonable attorneys' fees ("**Claims**"), arising out of, and/or relating to (i) Client's and/or its Representatives' use of the Services, including but not limited to any breach of confidentiality or data in connection with such use; (ii) Client's and/or its Representatives' acts and/or omissions; (iii) any allegation that Company's use of the Client Content constitutes infringement, violation, trespass, contravention or breach in the United States of any patent, copyright, trademark, license or other property or proprietary right of any third party, or constitutes the unauthorized use or misappropriation of any trade secret of any third party; (iv) Client's and/or its Representatives' breach of the terms of this Agreement and/or any Quote; (v) the violation of any law, rule or regulation by Client or any of its Representatives; and/or (vi) Client's and/or its Representatives' failure to use the Services in accordance with the terms and conditions set forth herein and in the applicable Quote.

10.2. **Procedure.** Company shall (i) give notice to Client of any Claim promptly upon becoming aware of the same; (ii) give Client the sole right to conduct the defense of any action, or the negotiation of any settlement, in respect of a Claim; and (iii) act in accordance with the reasonable instructions of Client. Company may reasonably participate in such defense, at its sole expense.

11. FORCE MAJEURE.

Notwithstanding any other provision of this Agreement, neither party is liable for any failure to perform, or delay in performing, any particular obligations under this Agreement where the failure or delay arises from any cause or causes beyond its reasonable control, including without limitation fire, flood, earthquake, elements of nature, acts of God, epidemics, pandemics, communications or computer (software and hardware) services, prevention by restrictions of a legal or regulatory nature from supplying the Services, acts of war, terrorism, strikes (or other labor unrest), riots, civil disorders or rebellions ("**Force Majeure Event**"). In the event of a Force Majeure Event, the parties agree to meet and discuss how to resolve the issue; it being understood that the impacted party shall use commercially reasonable efforts to resume performance as soon as practicable under the circumstances.

12. INDEPENDENT CONTRACTOR.

Company is an independent contractor and will determine the method, details and means of performing the Services. No party shall have the authority to bind, represent or commit the other. Nothing in this Agreement shall be deemed or construed to create a joint venture or agency relationship between the parties for any purpose. Nothing contained herein shall give or is intended to give any rights of any kind to any third persons.

13. GOVERNING LAW AND CHOICE OF FORUM.

This Agreement will be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to its choice of laws principles. Subject to Section 17.6, any action related to and/or arising from this Agreement shall take place exclusively in Tomkins County, New York and the parties hereby submit to such venue. Excluding any third party claims, claims under this Agreement must be initiated no later than two (2) years after the claim arose.

14. NON-SOLICITATION.

During the term of this Agreement, and for a period of six (6) months thereafter, Client will not solicit for employment any employees or contractors of Company or its affiliates who, within six (6) months prior to such solicitation: (a) performed Services under this Agreement, (b) had substantial contact with Client in relation to this Agreement, or (c) Client became aware of due to, or derived from information learned through the performance of, this Agreement. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee or contractor. In the event of a breach of this Article 14, Client's sole and exclusive liability and Company's sole and exclusive remedy shall be for Client to pay Company one hundred percent (100%) of the individual's then-current annual salary and/or engagement fees.

15. ASSIGNMENT.

Client may not assign this Agreement, by Change of Control or otherwise, without the prior written consent of Company. "**Change of Control**" means the direct or indirect change in the ownership, operation or control of a party, whether resulting from merger, acquisition (including an acquisition of substantially all of the assets of a party), consolidation or otherwise. This Agreement will be binding upon the parties and their respective legal successors and permitted assigns.

16. NOTICES.

All notices and other communications given or made pursuant to this Agreement must be in writing, sent to the persons designated herein or to such other persons and addresses as the parties may designate from time to time and will be deemed to have been given upon the earlier of actual receipt or (a) personal delivery to the party to be notified, (b) when sent, if sent by facsimile or electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.

17. GENERAL.

17.1. No Waiver by Conduct. No waiver of any of the terms of this Agreement or any Quote will be valid unless in writing and designated as such. Any forbearance or delay on the part of either party in enforcing any of its rights under this Agreement will not be construed as a waiver of such right to enforce same for such occurrence or any other occurrence.

17.2. Severability. If any one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.

17.3. Counterparts; Method of Amendment. Each Quote and any amendments thereto may be executed in counterparts and will not be effective or enforceable unless and until it is executed with the signature of an authorized representative of each of the relevant entities. Company may, at any time, for any reason, in its sole and absolute discretion make changes to this Agreement and any changes to this Agreement will become effective upon Client's execution of a new or additional Quote in which the new terms of this Agreement will be incorporated.

17.4. Headings; Recitals. The headings and titles of the paragraphs of this Agreement are not part of this Agreement, but are for convenience only and are not intended to define, limit or construe the contents

of the provisions contained herein. The recitals are hereby incorporated into the body of this Agreement for all intents and purposes as if fully set forth herein.

17.5. **Survival.** Any provision of this Agreement which, by its nature, would survive termination of this Agreement will survive any such termination of this Agreement.

17.6. **Arbitration.** Except as it relates to Company's IP, its Confidential Information or unless otherwise set forth in this Agreement, in the event of a dispute arising out of or under this Agreement, the parties shall meet to discuss such dispute for resolution within thirty (30) days thereafter. If the parties are unable to resolve the dispute, then the parties may bring an action pursuant which shall be settled by binding arbitration. The arbitration proceedings shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration. The decision of the arbitrators, including determination of the amount of damages suffered, if any, shall be final and binding on all parties, their executors, administrators, successors and assigns and judgment with respect to such decision may be entered in any court of applicable jurisdiction. Each party shall bear its own expenses in the arbitration, for attorneys' fees, and for fees with respect to its witnesses; provided that, the prevailing party will be entitled to recover such fees in accordance with Section 17.7 herein. Other arbitration costs, including arbitrators' fees and administrative fees, and fees for records or transcripts, shall be paid equally by the parties. The location of such arbitration shall be in Tomkins County, New York.

17.7. **Attorneys' Fees.** Notwithstanding anything herein to the contrary, if either party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover all fees, costs and expenses (including without limitation reasonable attorneys' fees) incurred in connection with the action.

17.8. **Entire Agreement.** This Agreement, including all Quotes, exhibits and referenced documents constitutes the complete agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties.