**MASTER SERVICES AGREEMENT**

This **MASTER SERVICE AGREEMENT** (the “**Agreement**”) is entered into as of “{{effective\_date}}”, 2024 (the “**Effective Date**”) by and between “{{company\_name}}”, a company organized and existing under the laws of the State of Delaware, with its principal place of business at “{{company\_principal\_place\_of\_business}}”, **Company**, and “{{client\_name}}”, a company incorporated and existing under the laws of “{{client\_jurisdiction}}”, having its principal place of business at “{{client\_principal\_place\_of\_business}}” (the “**Client**”). Company and the Client may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

**DEFINITIONS**

**2.SERVICES**

**2.1** **Access and Use**. Subject to and conditioned on Client’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, and any statement of work issued hereunder (**“SOW”**), Company hereby grants Client a non-exclusive, non-transferable right to access and use the Services during the Term (defined below), solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Client’s internal use. Company shall provide to Client the Access Credentials as of the Effective Date.

**2.2 Accounts**. In order to use and access the Service, Client must establish an account with Access Credentials, which shall be used only by an Authorized User. Client understands and acknowledges that Access Credentials are Confidential Information (as defined below), and Client shall maintain the confidentiality of the Access Credentials in accordance with this Agreement. Client agrees: (a) that Client shall not authorize a third party to access the services via the Access Credentials or other means; (b) to immediately notify Company of any actual or suspected unauthorized use of the Services and Access Credentials. Company reserves the right to terminate, on notice to Client, any Access Credential that Company reasonably determines may have been used by an unauthorized third party. Client shall be solely responsible for all access to and use of the Services by its Authorized Users, and all access and use of the Services or Dashboard through the Access Credentials, which result in a breach of the terms of this Agreement.

**2.2 Documentation License**. Company hereby grants to Client a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for Client’s internal business purposes in connection with its use of the Services.

**2.3 Service and System Control**. Except as otherwise expressly provided in this Agreement, as between the Parties: (a)  Company has and will retain sole ownership and control over the operation, provision, maintenance, and management of the Company Materials; and (b)  Client has and will retain sole ownership and control over the operation, maintenance, and management of, and all access to and use of, the Client Systems, and sole responsibility for all access to and use of the Company Materials by any Person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Company; (ii) results obtained from any use of the Services or Company Materials; and (iii) conclusions, decisions, or actions based on such use.

**2.4 Reservation of Rights**. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Company Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Company Materials, and the Third-Party Materials are and will remain with Company and the respective rights holders in the Third-Party Materials.

**2.6 Changes**. Company reserves the right, in its sole discretion, to make any changes to the Services and Company Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of the Services to its Clients; (ii) the competitive strength of or market for Company’s Services; or (iii) the Services’ cost efficiency or performance

; or (b) to comply with applicable Law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such requested changes in accordance with an agreed upon change procedure. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties.

**2.7  Subcontractors**. Company may from time to time in its discretion engage third parties to perform Services (each, a “**Subcontractor**”).

**2.8  Suspension or Termination of Services**. Company may, suspend, terminate, or otherwise deny Client’s, any Authorized User’s, or any other Person’s access to or use of all or any part of the Services or Company Materials, without incurring any resulting obligation or liability, if: (a) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (b) Company believes, in its sole discretion, that: (i) Client or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of any statement of work; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement expires or is terminated. This Section does not limit any of Companys other rights or remedies, whether at law, in equity, or under this Agreement.

1. **RESTRICTIONS**

**3.1 Use Restrictions.** Client shall not, and shall not permit any other Person to, access or use the Services or Company Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. Without limiting the generality of the foregoing, Client shall not: (a)  copy, modify, or create derivative works or improvements of the Services or Company Materials; (b)  rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Company Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c)  reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Company Materials, in whole or in part; (d)  bypass or breach any security device or protection used by the Services or Company Materials or access or use the Services or Company Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e)  input, upload, transmit, or otherwise provide to or through the Services or Company Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (f)  damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Company Systems, or Company’s provision of services to any third party, in whole or in part; (g)  remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Company Materials, including any copy thereof; (h)  access or use the Services or Company Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; (i)  access or use the Services or Company Materials for purposes of competitive analysis of the Services or Company Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Company’s detriment or commercial disadvantage; or (j)  otherwise access or use the Services or Company’s Materials beyond the scope of the authorization granted under this Agreement.

1. **CLIENT OBLIGATIONS**

**4.1 Client Systems and Cooperation**. Client shall at all times during the Term: (a) set up, maintain, and operate in good repair and all Client Systems on or through which the Services are accessed or used; (b) provide Company Personnel with such access to Client Systems as is necessary for Company to perform the Services in accordance with statement of work annexed hereto as Exhibit A; and (c) provide all cooperation and assistance as Company may reasonably request to enable Company to exercise its rights and perform its obligations under and in connection with this Agreement.

**4.2 Effect of Client Failure or Delay**. Company is not responsible or liable for any delay or failure of performance caused in whole or in part by Client’s delay in performing, or failure to perform, any of its obligations under this Agreement (each, a “**Client Failure**”).

**4.3 Corrective Action and Notice.** If Client becomes aware of any actual or threatened activity prohibited by Section 3.1of this Agreement, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Company Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Company of any such actual or threatened activity.

**4.4 Client Control and Responsibility**. Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the Services; (c) Client’s information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services (”**Client Systems**”); (d) the security and use of Client’s and its Authorized Users’ Access Credentials; and (e) all access to and use of the Services and Company Materials directly or indirectly by or through the Client Systems or its or its Authorized Users’ Access Credentials, with or without Client’s knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

**4.5 Access and Security**. Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Client Data, including the uploading or other provision of Client Data for Processing by the Services.

1. **SERVICE LEVELS & SUPPORT**

**5.1 Service Levels**. Subject to the terms and conditions of this Agreement, and the service level agreement annexed hereto as Exhibit “B” (**“Service Level Agreement”**), Company will use commercially reasonable efforts to make the Services Available at least ninety-nine point nine percent (99.9%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a “**Service Period**”), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the “**Availability Requirement**”). “**Service Level Failure**” means a material failure of the Services to meet the Availability Requirement. “**Available**” means the Services are available for access and use by Client and its Authorized Users over the internet and operating in material accordance with the statement of work annexed as Exhibit A. For purposes of calculating the Availability Requirement, the following are “**Exceptions**” to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Client or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Client or any Authorized User/access to or use of the Services by Client or any Authorized User, or using Client’s or an Authorized User’s Access Credentials, that does not strictly comply with this Agreement and the statement of work annexed as Exhibit A (or any further statement of work issued subject to this Agreement); (b) Client Failure; (c) Client’s or its Authorized User’s internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Company pursuant to this Agreement; (f) Scheduled Downtime (defined below); (g) emergency maintenance, which Company will use commercially reasonable efforts to complete as soon as practically possible, or (h) disabling, suspension, or termination of the Services pursuant to Section 2.8 of this Agreement.

**5.2 Service Level Failures and Remedies.** In the event of a Service Level Failure, Company shall issue a credit to Client in the amount of \_\_\_\_ percent (\_\_\_ %) of the monthly Fees for the Services due for the Service Period the Service Level Failure occurred in (each a “**Service Credit**”), subject to the following: (a)  Company has no obligation to issue any Service Credit unless: (i) Client reports the Service Failure to Company immediately upon its occurrence; and (ii) requests such Service Credit in writing within five (5) days of the Service Level Failure; and (b)  in no event will a Service Level Credit for any Service Period exceed \_\_\_ percent of the total Fees that would be payable for that Service Period if a Service Level Failure had not occurred. Any Service Credit payable to Client under this Agreement will be issued to Client in the calendar month following the Service Period in which the Service Level Failure occurred. This Section 5.2 sets forth Company’s sole obligation and liability, and Client’s sole remedy for any Service Level Failure.

**5.3 Scheduled Downtime.** Company will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services during non-business hours; and (b) give Client at least twenty four (24 ) hours prior notice of all scheduled outages of the Services (”**Scheduled Downtime**”).

**5.4 Service Support.** Company will use commercially reasonable efforts to provide routine support by e-mail and phone during weekdays from 9:00am to 6:00pm Eastern Standard Time (**“Standard Support Hours”**). All responses to requests for support shall be made as soon as practically possible, subject to Standard Support Hours and the Service Level Agreement.

‌

**5.5 Data Backup.** The Services do not replace the need for Client to maintain regular data backups or redundant data archives. COMPANY HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CLIENT DATA.

1. **FEES**

**6.1 Fees.** Client shall pay Company the fees set forth in **Exhibit A** (“**Fees**”) in accordance with this Section 6.

**6.2 Taxes.** All Fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Company’s income.

**‌****6.3 Payment.** Client shall pay all Fees within thirty (30) days after the date of the invoice therefor. Client shall make all payments hereunder in US dollars by in accordance with the method set forth in Exhibit A.

**6.4 Late Payment.** If Client fails to make any payment when due then, in addition to all other remedies that may be available to Company: (a)  Company may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b)  Client shall reimburse Company for all reasonable costs incurred by Company in collecting any late payments or interest, including attorneys’ fees and court costs; and (c)  if such failure continues for twenty (20) days following written notice thereof, Company may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other Person by reason of such suspension.

**‌****6.5 No Deductions or Setoffs.** All amounts payable to Company under this Agreement shall be paid by Client to Company in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5.2 or any deduction or withholding of tax as may be required by applicable Law.

**6.6 Fee Increases.** Company may increase Fees after the first contract year of the Term by providing written notice to Client at least sixty (60) calendar days prior to the commencement of such increase.

1. **CONFIDENTIALITY**

**7.1 Confidentiality**.For the purposes of this Agreement “**Confidential Information**” means any and all information disclosed, provided or made accessible by, or on behalf of, one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) and/or any of its key persons, whether in writing, orally or in any other form which is not in the public domain, or regarding past, present, or future marketing and business plans, technical, financial or other proprietary or confidential information of the Disclosing Party, or which, given the nature of the information or material, or the circumstances surrounding the disclosure or provision, reasonably should be understood to be confidential or proprietary, as well as improvements, derivatives, upgrades, updates, and know-how related thereto. Confidential Information does not include information that: (i) is already or becomes generally known or available to the general public through no act or omission by the Receiving Party in breach of this Agreement; (ii) is already known to the Receiving Party at the time of disclosure without breaching any confidentiality obligation, as such may be evidenced in the Receiving Party’s written records; (iii) is rightfully disclosed to the Receiving Party by a third party, who is not, to the knowledge of the Receiving Party, in breach of an obligation of confidentiality; (iv) is independently developed by the Receiving Party without use of, reference to, any of the Confidential Information of the Disclosing Party, as such may be evidenced in the Receiving Party’s written records; (v) is released and disclosed pursuant to a binding order of a government agency or a court, provided that the Receiving Party (a) if legally permissible, notifies the Disclosing Party of such release or disclosure with as much notice as reasonably possible so that the other Party may seek a protective order or other appropriate remedy; and (b) uses reasonable efforts to limit such release or disclosure only to the extent required. Neither Party shall disclose any Confidential Information to any third party; provided, however, that a Party may disclose Confidential Information to its employees, agents and/or independent contractors to whom disclosure is reasonably required provided that such individuals and entities have agreed to keep such information confidential in the same or a substantially similar manner as provided for in this Agreement. Neither Party will use any Confidential Information except as expressly permitted by, or as required to achieve the purposes of, this Agreement. Each Party will take reasonable security precautions to protect and safeguard the Confidential Information against any unauthorized use, disclosure, transfer or publication, with at least the same degree of care and precaution as it uses to protect its own Confidential Information of a similar nature, but in no event with less than reasonable care. Either Party shall notify the other Party upon discovery of any unauthorized use or disclosure of the Confidential Information and shall take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement. The Parties agree that in the event of a breach of this Section 7, substantial injury could result to either Party and money damages may not be a sufficient remedy for such breach. Therefore, in the event that a Party engages in, or threatens to engage in any act which violates any provision of this Agreement, the Parties agree that the non-breaching Party shall have no adequate remedy in money or damages and, accordingly, shall be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions), and specific enforcement of the terms of this Agreement. The non-breaching Party shall not be required to post a bond or other security in connection with the granting of any such relief. The provisions of this Section 7.1 shall survive expiration or other termination of this Agreement.

1. **INTELLECTUAL PROPERTY RIGHTS**

**8.1 Company Materials.** All right, title, and interest in and to the Company Materials, including all Intellectual Property Rights therein, are and will remain with Company and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Client has no right, license, or authorization with respect to any of the Company Materials except as expressly set forth in Section 2.1 of this Agreement, or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Company Materials are expressly reserved by Company. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Company an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

**8.2 Client Data**. As between Client and Company, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 8.3 of this Agreement.

**8.3 Consent to Use Client Data.** Client hereby irrevocably grants all such rights and permissions in or relating to Client Data as are necessary or useful to Company, its Subcontractors, and the Company Personnel to enforce this Agreement and exercise Company’s, its Subcontractors’, and the Company Personnel’s rights and perform Company’s, its Subcontractors’, and the Company Personnel’s obligations hereunder.

1. **RESPONSIBLE DATA HANDLING & PRIVACY**

**9.1** **Responsible Data Handling.** Each Party represents and warrants that it will comply with all applicable laws, rules, regulations, directives and guidelines regarding the collection, use and disclosure of data collected from or about end users or specific devices which apply to the Services utilized hereunder (collectively, the “**Rules”**). The term “Rules” shall include, without limitation, (a) all United States Federal Trade Commission rules and guidelines regarding the collection, use and disclosure of data from or about end users and/or specific devices; (b) all United States federal and state laws regarding data collection and data privacy; (c) the Self-Regulatory Principles and guidance of the Interactive Advertising Bureau (“**IAB”**), and solely if applicable, the European Principles and guidance of the European Interactive Digital Advertising Alliance (“**EDAA**”), as each set of principles and guidance may be amended or supplemented, or as replaced or superseded, from time to time by the IAB and EDAA, or their respective successor entity; (d) best practice guidance provided to Client by Company, as amended from time to time; and (e) if applicable, the Rules of any other jurisdiction, including European Union General Data Protection Regulation (EU) 2016/679 (**“GDPR”**) and all amendments and updates to them or as replaced or superseded from time to time.

**9.2** **Transfer of Device Level Data**.Client represents and warrants that, where required by the Rules, Client, or the entity that collected any data, including device level data, if Client did not itself collect such data, has obtained legally compliant consent to the collection, use and disclosure of such information to allow Company to further process such data in connection with the Services from each end user or specific device the device level data pertains to.

Client shall not, under any circumstances, pass to Company any precise location-based data or personally identifiable information, personal data or any similar concept as defined in the Rules that is attributed to a specific and identifiable end user or device, including but not limited to: name, address, email address, user name, phone number, social security number or other government-issued identification number, cell site data or GPS data. Without limiting the generality of the foregoing, Client represents and warrants that it will: (i) modify any data that it passes to Company in a manner that ensures that the data is neither attributed to a specific and identifiable end user nor reasonably capable of being reverse-engineered taking into account currently available technology; and (ii) follow any direction from Company to ensure that Client has complied with this section 9.2.

To the extent the provision of the Services involves the transfer or disclosure of personal data from the European Economic Area (“**EEA**”) to outside the EEA (either directly or via onward transfer) to any country or recipient which has not been recognized as ensuring an "adequate level of protection" under applicable Rules and such transfer or disclosure is not permitted through alternative means approved by the European Commission (e.g., the EU-US Privacy Shield), the parties shall enter into the European Commission standard contractual clauses containedin Decision 2004/915/EC (for transfers or disclosure from an EEA controller to a non-EEA controller) and / or Decision 2010/87/EU (for transfers or disclosure from an EEA controller to a non-EEA processor). For the purposes of this Clause 9.2, the terms "personal data", "controller" and "processor" shall bear the meanings given to them in the GDPR.

**9.3 Data Security.** The Parties shall exercise commercially reasonably efforts to prevent unauthorized exposure or disclosure of Client Data and Company Materials. Without limiting the generality of the preceding sentence, the Parties shall maintain, implement, and comply with a written data security program (the **“Data Security Program”**) that requires commercially reasonable policies and procedures to ensure compliance with this Section 9.3 (Data Security). The Data Security Program’s policies and procedures shall contain administrative, technical, and physical safeguards, including without limitation: (i) guidelines on the proper disposal of Client Data and Company Materials after it is no longer needed to carry out the purposes of the Agreement; (ii) access controls on electronic systems used to maintain, access, or transmit Client Data and Company Materials; (iii) access restrictions at physical locations containing Client Data and Company Materials; (iv) encryption of electronic Client Data and Customer Materials; (v) dual control procedures; (vi) testing and monitoring of electronic systems; and (vii) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Client Data and Company Materials. The Parties shall review their respective Security Programs and all other security precautions regularly, but no less than annually, and update and maintain them to comply with applicable laws, regulations, technology changes, and best practices.

**9.4. Audits & Testing**. The Parties, or such third party as the Parties may designate, shall perform an annual audit of the Services’ data protection features and to provide a SOC 2 Type II report, upon a written request from a Party. In addition, the Parties shall annually conduct their own internal security audit and address security gaps in compliance with their security policies and procedures, including without limitation the Security Program. Any report or other result generated through the tests or audits required by this Section 9.4 will be Confidential Information pursuant to Section 7 (Confidentiality) The Parties shall exercise reasonable efforts promptly to address such identified deficiencies and suggested changes, including without limitation by revising the Data Security Program.

**9.5.** [**Security Breach Notification**](https://www.lawinsider.com/clause/security-breach-notification).  In the event of any actual, probable or reasonably suspected breach of security of Client Systems, Client Data, Company Systems, and/or Company Materials (collectively **“Party Systems and Data”**), or any unauthorized access to or acquisition, use, loss, destruction, compromise, alteration or disclosure of any information maintained in any affected Party Systems and Data (each, a **“Security Breach”**) and an affected Party actually is, or reasonably should be, aware that such Security Breach concerns the other Party’s Systems and Data, then such affected Party shall: (a) notify the other Party immediately of such Security Breach (but in no event later than twenty-four (24) hours after identifying such Security Breach); (b) designate a single individual employed by the affected Party who must be available to the other Party twenty-four (24) hours per day, seven (7) days per week as a contact regarding the affected Party’s obligations under this Section 9.5; (c) not provide any other notification or provide any disclosure to the public regarding such Security Breach without the prior written consent of the other Party, unless required to provide such notification or to make such disclosure pursuant to any applicable law, regulation, rule, order, ordinance, mandate or other request or requirement now or hereafter in effect, of any applicable governmental authority or law enforcement agency in any jurisdiction worldwide (**“Law”**) (in which case the Parties shall consult and reasonably cooperate with to prevent any notification or disclosure concerning any Personal Information or other Confidential Information); (d) assist the other Party in investigating, remedying and taking any other action the other Party deems necessary regarding any Security Breach and any dispute, inquiry or claim that concerns the Security Breach; (e) follow all reasonable instructions provided by the Party relating to the Confidential Information affected or potentially affected by the Security Breach; (f) take such actions as necessary to prevent future Security Breaches; and (g) unless prohibited by an applicable statute or court order notify the Party of any third-party legal process relating to any Security Breach, including, but not limited to, any legal process initiated by any governmental entity (foreign or domestic).

1. **REPRESENTATIONS & WARRANTIES**

**10.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (a)  it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b)  it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c)  the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d)  when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**10.2 Additional Company Representations, Warranties, and Covenants**. Company represents, warrants, and covenants to Client that Company will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

**10.3 Additional Client Representations, Warranties, and Covenants**. Client represents, warrants, and covenants to Company that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Company and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

**10.4 DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2, ALL SERVICES AND COMPANY MATERIALS ARE PROVIDED “AS IS.” COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR COMPANY MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

1. **INDEMNIFICATION**

**11.1 Company Indemnification.** Company shall indemnify, defend, and hold harmless Client and Client’s officers, directors, employees, agents, successors, and assigns (each, a “**Client Indemnitee**”) from and against any and all Losses incurred by Client/Client Indemnitee resulting from any Action by a third party (other than an Affiliate of Client that Client’s or an Authorized User’s use of the Services (excluding Client Data and Third-Party Materials) in accordance with this Agreement) infringes or misappropriates such third party’s Intellectual Property Rights/US patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a)  Third-Party Materials or Client Data; (b)  access to or use of the Company Materials in combination with any hardware, system, software, network, or other materials or service not provided by Company or specified for Client’s use in the Documentation; (c)  modification of the Company Materials other than: (i) by or on behalf of Company; or (ii) with Company’s written approval in accordance with Company’s written specification; (d)  failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of Company; or (e)  act, omission, or other matter described in Section 11.2(a), Section 10.2(b), Section 11.2(c), or Section 11.2(d), whether or not the same results in any Action against or Losses by any Company Indemnitee.

**‌****11.2 Client Indemnification.** Client shall indemnify, defend, and hold harmless Company and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a “**Company Indemnitee**”) from and against any and all Losses incurred by such Company Indemnitee resulting from any Action by a third party (other than an Affiliate of a Company Indemnitee) to the extent that such Losses arise out of or result from, or are alleged to arise out of or result from: (a)  Client Data, including any Processing of Client Data by or on behalf of Company in accordance with this Agreement; (b)  any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including Company’s compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by Company; (c)  allegation of facts that, if true, would constitute Client’s breach of any of its representations, warranties, covenants, or obligations under this Agreement; or (d)  gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with this Agreement.

**‌****11.3 Indemnification Procedure.** Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The Party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other Party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee’s failure to perform any obligations under this Section 10.3 will not relieve the Indemnitor of its obligations under this Section 10, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

**‌****11.4 Mitigation**. If any of the Services or Company Materials are, or in Company’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client’s or any Authorized User’s use of the Services or Company Materials is enjoined or threatened to be enjoined, Company may, at its option and sole cost and expense: (a)  obtain the right for Client to continue to use the Services and Company Materials as contemplated by this Agreement; (b)  modify or replace the Services and Company Materials, in whole or in part, to seek to make the Services and Company Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Company Materials, as applicable, under this Agreement; or (c)  by written notice to Client, terminate this Agreement with respect to all or part of the Services and Company Materials, and require Client to immediately cease any use of the Services and Company Materials, provided that if such termination occurs prior to one (1) year after the Effective Date, subject to Client’s compliance with its post-termination obligations set forth in this Agreement, Client will be entitled to a refund of \_\_\_\_\_\_\_\_\_\_\_.

**11.5  Sole Remedy**. THIS SECTION 11 SETS FORTH CLIENT’S SOLE REMEDIES AND COMPANY’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND COMPANY MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

1. **LIMITATION OF LIABILITY**

**12.1 EXCLUSION OF DAMAGES**. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL COMPANY OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**‌****12.2 CAP ON MONETARY LIABILITY**. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO COMPANY UNDER THIS AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**12.3 Exceptions**. The exclusions and limitations in Section 12.1 and Section 12.2 do not apply to Company’s obligations under Section 11 or liability for Company’s gross negligence or willful misconduct.

**13.1.TERM & TERMINATION**

**13.1 Pilot Period.** This Term of this Agreement shall be preceded by a pilot period commencing upon the Effective Date and concluding thirty (30) days thereafter (**“Pilot Period”**). The Pilot Period shall be subject to all terms and conditions of this Agreement, with the exception that Client may terminate the Agreement during the Pilot Period upon seven (7) days written notice to Company. No access or usage fees shall apply during the Pilot Period. Upon conclusion of the Pilot Period, the Term of this Agreement shall immediately commence in accordance with Section 13.2 of this Agreement.

**13.2 Term.** The term of this Agreement commences upon the conclusion of the Pilot Period and, unless terminated earlier pursuant any of the Agreement’s express provisions, will continue in effect for twelve (12) months thereafter such date (the “**Term**”). This Agreement shall automatically renew for successive twelve (12) month periods, unless earlier terminated pursuant to this Agreement’s express provisions or either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a “**Renewal Term**” and, collectively, with the Initial Term, the “**Term**”).

**‌****13.3 Termination**. In addition to any other express termination right set forth elsewhere in this Agreement: (a) Company may terminate this Agreement, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Company’s delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1 (Use Restrictions) or Section 7 (Confidentiality); (b)  either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and (c)  either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**‌****13.4 Effect of Termination or Expiration**. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a)  all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate; (b)  Company shall immediately cease all use of any Client Data or Client’s Confidential Information and (i) promptly return to Client, or at Client’s written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client Data or Client’s Confidential Information; and (ii) permanently erase all Client Data and Client’s Confidential Information from all systems Company directly or indirectly control, provided that, Company’s obligations under this Section 13.4 do not apply to any Resultant Data; (c)  Client shall immediately cease all use of any Services or Company Materials and (i) promptly return to Company, or at Company’s written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Company Materials or Company’s Confidential Information and (ii) permanently erase all Company Materials and Company’s Confidential Information from all systems Client directly or indirectly controls; and (iii) certify to Company in a signed writing that it has complied with the requirements of this Section 13.4(c); (d)  notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) Company may retain Client Data and Client may retain Company Materials, in its then current state and solely to the extent and for so long as required by applicable Law; (ii) Company may also retain Client Data in its backups, archives, and disaster recovery systems until such Client Data is deleted in the ordinary course of business; and (iii) all information and materials described in this Section 13.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement.

**13.5 Surviving Terms**. The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.1(Use Restrictions), Section 7 (Confidentiality), Section 9.4 (Disclaimer of Warranties), Section 10 (Indemnification), Section 11 (Limitation of Liability), Section 12.3 (Effect of Termination), this Section 12.4 (Surviving Terms), and Section 13 (General Provisions).

**14.1. GENERAL PROVISION**

**14.1 Headings.** The section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement.

**14.2** **Counterparts.** This Agreement may be executed in counterparts (which may be exchanged via electronic mail, PDF, and/or facsimile), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**14.3 Waiver.** No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof.

**14.4  Further Assurances**. On a Party’s reasonable request, the other Party shall, at the requesting Party’s sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

**14.5 Remedies Not Exclusive.** Except as expressly set forth herein, no remedy hereunder is intended to be exclusive of any other remedy available hereunder or at law or in equity.

**14.6 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall apply only to such provision. The illegality, invalidity, or unenforceability of such provision shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and that provision, and this Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the Parties as expressed in this Agreement. The fact that any provision of this Agreement is held to be illegal, invalid or unenforceable in a particular jurisdiction shall have no effect upon the legality, validity, or enforceability of such provision in any other jurisdiction.

**14.7 Non-Exclusivity.** This Agreement is non-exclusive.

**14.8 No Strict Construction.** If an ambiguity or question arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.

**14.9 Assignment.** Neither this Agreement, any Exhibit or any rights or licenses granted hereunder may be assigned, delegated or subcontracted by Client without the prior written consent of Company, and any attempt to assign any rights, duties or obligations which arise under this Agreement without such consent shall be null and void *ab initio*. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective permitted successors and assignees. Notwithstanding the foregoing, a Party may assign its rights, duties or obligations under this Agreement without the consent of the other Party in the event of a merger, acquisition or other change in control of its ownership.

**14.10 Independent Contractor Relationship.** The Parties are independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between the Parties. Each Party has sole responsibility for its activities and its personnel, and shall have no authority and shall not represent to any third party that it has the authority to bind or otherwise obligate the other Party in any manner.

**14.11 Force Majeure**. Neither Party shall be liable for any failure or delay in the performance of any of their respective obligations if prevented from doing so by a Force Majeure Event. “Force Majeure Event” means (i) floods, earthquakes, or other similar elements of nature or acts of God; (ii) riots, civil disorders, rebellions or revolutions in any country; or (iii) any other cause beyond the reasonable control of the non-performing Party, provided the non-performing Party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing Party through the reasonable use of alternate sources, workaround plans or other reasonable precautions.

**14.12 Notices.** All notices and other communications required or permitted to be given to a Party pursuant to this Agreement shall be in writing, and shall be deemed duly given (i) on the date delivered if personally delivered; or (ii) on the business day after being sent by Federal Express or another recognized overnight courier service which utilizes a written form of receipt for next day or next business day delivery in each case addressed to the applicable Party at the address set forth on the first page of this Agreement; provided that a Party hereto may change its address for receiving notice by the proper giving of notice hereunder. A copy of any notice to Company shall be sent to Rosenberg Fortuna & Laitman, LLP, attention: Arthur S. Laitman, Esq., 666 Old Country Road, Suite 810, Garden City, New York, 11530, facsimile: (516) 228-6672.

**14.13 Governing Law/Jurisdiction/Venue/Legal Fees.** This Agreement, and all matters arising directly or indirectly from this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws rules applicable to contracts to be performed entirely within the State of New York. For all such matters, each Party irrevocably submits to the exclusivejurisdiction ofthe state and federal courts located in the County of New York, State of New York and waives any jurisdictional, venue, or inconvenient forum objections to such courts. The prevailing Party in any litigation shall be entitled to recovery of its reasonably attorneys' fees from the other Party in addition to any other award of damages from the court.

**14.14 Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all existing or prior agreements and communications, whether written or oral, relating to the subject matter hereof. No modification of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each Party

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement, effective as of the Effective Date.

|  |  |
| --- | --- |
| **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | [CLIENT]  **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Print:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |