



MASTER SERVICES AGREEMENT


THIS MASTER SERVICES AGREEMENT is dated as of September 10, 2021 by and between the client listed below on this cover page ("Client") and Thrive Operations, LLC ("Thrive") (Client and Thrive are each referred to as a "Party" and collectively as the "Parties").

CONTENTS OF AGREEMENT. This Master Services Agreement (this "Agreement") is comprised of and includes the terms and conditions set forth in this cover sheet, the General Terms and Conditions set forth below, and the terms and conditions of any Service Orders as may hereafter be made part hereof as provided herein.

Each Party has caused this Agreement to be executed by its duly authorized representative as of the day and year first written above.

CLIENT: Denham Capital Management LP

THRIVE OPERATIONS, LLC

By:  *John P. Collins*

By: _____

Name: John P. Collins

Name: _____

Title: Authorized Signatory

Title: _____

Address for Notices	
Denham Capital Management LP 185 Dartmouth Street Boston, Massachusetts 02116 ATTN: John Collins Email: john.collins@denhamcapital.com	Thrive Operations, LLC 25 Forbes Blvd, Suite 3 Foxborough, MA 02035 ATTN: Contract Operations Email: contract.operations@thrivenetworks.com



THRIVE

GENERAL TERMS AND CONDITIONS

Part of
Master Services Agreement
Between Thrive Operations, LLC and Denham Capital Management LP

Definitions: The following capitalized terms are used with the meaning set forth below:

Products: means products and other goods, including hardware, software and other tangible and intangible items, and other deliverables provided to Client by Thrive as contemplated by this Agreement.

Service(s): means, services (including maintenance, support, security, hosting, procurement, development, integration, administrative and other services), including those to be provided on a one-time basis and those to be provided on a recurring monthly basis.

Service Order: means a "Service Order" signed by the Parties referencing this Agreement and describing the Products and Services to be provided to Client by Thrive and setting forth the price and other terms and conditions on which such Products and Services are to be provided.

"Service Provisioning Date" means for each recurring monthly Service to be provided under a Service Order the date as of which Thrive makes such Service available for use by Client.

"Service Provisioning Completion Date" means for each Service Order the Service Provisioning Date for the last of the recurring monthly Services to be provisioned and made available for use by Client under such Service Order.

1. SERVICES.

(a) **General.** This Agreement governs Products and Services Thrive or its affiliates may provide or sell to Client. Products and Services will only be delivered to Client pursuant to one or more Service Orders. Once executed by both Parties, a Service Order becomes part of this Agreement, although the terms of a Service Order will govern only the Services described in that Service Order. The terms and conditions set forth in a Service Order will control any discrepancy between that Service Order and these General Terms and Conditions.

(b) Procurement of Products.

(i) All purchases of Products by Client from Thrive under a Service Order will be final at the time the order therefor is placed by Thrive with a third-party supplier. Each purchase of Products from Thrive will be considered an independent and separate transaction from the purchase of Services from Thrive, even if both Products and Services are included in the same Service Order.

(ii) Thrive shall not be liable for any damages, costs, or delays in the provision of Services by Thrive under any Service Order arising in connection with Client's procurement of Products from a party other than Thrive (such procurement by Client referred to as a "**Client Third Party Procurement**"). Client will reimburse Thrive for the out-of-pocket expenses Thrive incurs and will pay Thrive (at the hourly rates specified in the applicable Service Order) for the additional time Thrive devotes to the provision of Services as a result of or arising in connection with any Client Third Party Procurement.

(c) Price Changes. Pricing for Services are subject to change as follows:

(i) Thrive may pass on to Client the actual amount of any increase in the cost to Thrive of goods and services included in or among the Products and Services that are sourced by Thrive from a Third-Party Provider (as referenced in Section 4 below). Thrive will notify Client at least 30 days in advance of any such increases and provide Client supporting documentation for any such increases upon request.

(ii) All prices for Services provided in accordance with any Service Order will increase by three percent (3%) upon each renewal of such Service Order in accordance with the terms thereof.



(d) Minimum Hardware, Operating System and Software Standards.

Client agrees to maintain the minimum hardware, operating system and software standards (and licenses therefor) set forth in each Service Order or otherwise necessary to receive the Services, which may include, among other matters, versions of operating systems and hardware, security, data protection and environmental (HVAC, and electrical power) controls and network bandwidth requirements (such minimum standards, as the same may be changed or supplemented by Thrive from time-to-time being referred to as “Minimum Standards”). Unless otherwise contemplated by a Service Order, Thrive has no duty to assure or assess whether or not Client’s network meets Minimum Standards and disclaims responsibility for any loss, damages, costs or delays Client incurs or realizes as a result of or in connection with the failure or malfunction of any part of Client’s network or systems that do not meet Minimum Standards. Client will reimburse Thrive for the out-of-pocket expenses Thrive incurs and will pay Thrive (at the hourly rates specified in the applicable Service Order) for the additional time Thrive devotes to the provision of Services as a result of or arising in connection with Client’s network components managed by Thrive not adhering to the Minimum Standards. Client will also adhere to any Acceptable Use Policies that may be in effect from time to time and applicable to all Thrive customers, which will be communicated or made available by Thrive on its website, and which will be deemed incorporated by reference herein.

(e) Access to Client Facilities. Client will provide Thrive access to and right to use all Client’s facilities, including all hardware and software owned, leased or licensed by Client, to the extent reasonably necessary to enable Thrive to provide Services to Client in accordance with these General Terms and Conditions and any Service Order.

(f) Service Reduction. Client will have the right to reduce or cancel the recurring monthly end-user and subscription based Services (excluding Services on account of which Thrive has purchased equipment, licenses or other property that is dedicated to its provisioning) delivered pursuant to one or more of the Service Orders upon not less than 30 days’ prior written notice to Thrive; provided that the resulting aggregate reduction in the recurring monthly charges payable by Client as a result of all such reductions or cancellations of such Services shall in no event exceed ten percent (10%) of the aggregate recurring monthly charges for such Services as originally set forth in the Service Orders in accordance with which such Services are provided. Notwithstanding the forgoing, Client may reduce or cancel Services up to 30% of the recurring monthly Services (excluding Services on account of which Thrive has purchased equipment, licenses or other property that is dedicated to its provisioning) up to 30% due to a documented downturn in its business and/or adverse change in its financial condition

(g) Thrive Equipment. Client will maintain and protect the equipment and other hardware and tangible goods placed by Thrive in the Client’s possession or control (and that is not Client’s property) in connection with the provision of Services (collectively, “Thrive Hardware”) in good working condition, reasonable wear and tear excepted, and will not modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or copy such Thrive Hardware (including any software or firmware that is part of, incorporated into or running on the same). Client assumes all risk of compliance with any government regulation relating to the operation of Thrive Hardware, as well as the loss, damage, theft, or destruction thereof, while it is in the Client’s possession or control or that of its agents, including any carrier (except any carrier transporting Thrive Hardware from Thrive to Client), and Client will reimburse Thrive for any costs of necessary repair or replacement (including shipping costs). Client will keep Thrive Hardware free of all security interests, liens, and other encumbrances.

2. TERM. This Agreement is effective as of the date hereof and, unless earlier terminated as permitted herein, will continue in effect during the Term of any Service Order (as defined therein) entered in connection herewith and thereafter in accordance with Section 9(e) below.

3. PAYMENTS.

(a) Fees and Charges. Client agrees to pay Thrive the fees, charges, expenses and other amounts for the Products and each Service specified in a Service Order during the Term of and as provided in such Service Order and in these General Terms and Conditions. In addition, Client will be responsible for payment of all applicable sales and other taxes, and all surcharges and handling fees levied by third party suppliers, on Products and Services provided by Thrive.

(b) Commencement of Billing. Thrive will, subject to Section 3(f) below, bill Client for Products included in a Service Order five (5) business days after Thrive notifies Client that the same is ready for shipment to Client’s site (without regard to delays in Client’s acceptance thereof). Thrive will begin billing for one-time Services included in a Service Order upon commencement of such one-time Services. Thrive will begin billing for each



recurring monthly Service included in a Service Order beginning (60) sixty days from the date of Client's execution of such Service Order or, if earlier, beginning on the Service Provisioning Date of such Service, and continuing through the end of the Term of such Service Order as set forth therein.

(c) **Payment of Invoices.** Invoices for fees, charges and other amounts charged hereunder, whether for Products, Services or otherwise, will be due and payable in full within thirty (30) days of the date of invoice therefor. Thrive may charge Client a finance charge of one and one-half percent (1.50%) per month on balances (other than those disputed pursuant to Section 3(d) below) for which payment has not been received within thirty (30) days of the date of such invoice.

(d) **Disputes.** If Client in good faith disputes any portion of an invoice, Client will promptly pay the undisputed portion of the invoice and submit to Thrive a written claim within thirty (30) days of the due date thereof as provided in Section 3(c) above describing in reasonable detail the basis of the dispute and including any relevant supporting documentation. After receipt of such claim, Thrive will undertake an investigation of the disputed charges, and, subject to Thrive's rights under Section 9 below, both Parties agree to make a good faith attempt to resolve the dispute promptly. Any failure by Client to submit a written dispute of charges with the information specified above within such thirty-day period will be deemed final agreement by Client without defense or counterclaim with all charges on the invoice for all purposes. Client will be liable to Thrive for all reasonable fees and expenses, including reasonable attorney's fees and litigation costs, that Thrive incurs to collect amounts due to Thrive from Client under or in connection with this Agreement or any Service Order.

(e) **Expenses.** Client agrees to reimburse Thrive for all reasonable and ordinary out-of-pocket expenses incurred by Thrive in delivering Products and Services to Client, such as parking, out-of-area travel expenses, international phone calls, and pay-per-incident third party support calls. Thrive will itemize such expenses on Client's invoices and will not incur any single expense greater than \$250 without Client's prior written approval.

(f) **Timing of Products Orders.** Thrive reserves the right to delay procuring Products from third party suppliers pending Thrive's receipt from Client of payment of all or any portion (as determined by Thrive in its discretion) of the price therefor set forth in the Service Order providing for such Products. Thrive will notify Client of any requirement that Thrive receive payment for Products in advance of Thrive's ordering the same from third party suppliers and Thrive will not be responsible thereafter for any damages, costs or delays Client experiences as a result of the timing of the delivery of such Products to Client under any Service Order.

4. THIRD PARTY GOODS & SERVICES.

(a) **Third Party Providers.** Client acknowledges that Services may include or incorporate goods or services manufactured, produced and/or delivered by third parties ("Third-Party Providers"). Thrive hereby assigns to Client any warranties provided by Third Party Providers of goods and services that are resold by Thrive (to the extent permitted to be so assigned or passed through) and Client agrees to pursue all defective product, quality, breach of warranty and other claims directly against such Third-Party Providers and not against Thrive. Thrive will not be responsible for any such claims; however, Thrive will reasonably assist Client in resolving any performance, quality, breach of warranty or other claims of Client with the applicable Third-Party Providers of such goods or services. Client acknowledges that some Products cannot be returned or cancelled once ordered. At the request of Client, Thrive will make a reasonable attempt to return Products to the Third-Party Provider and Client agrees to reimburse Thrive for any restocking fees and other out-of-pocket expenses Thrive may incur in connection therewith. However, Client agrees that Thrive is under no obligation to take back from Client any Products ordered from Thrive if Thrive is unable to return those same Products to the Third-Party Provider. Risk of loss or damage for Products purchased from Third-Party Providers will pass to Client when such Products are delivered to Client, unless otherwise agreed in advance in writing by Client and Thrive.

(b) **Software Licensing.** Thrive may use its own third-party software licenses in provisioning Services under a Service Order, including among others, antivirus, antispyware and monitoring software (the "Software"). Thrive's licenses to use such Software are and will remain Thrive's property exclusively, and except as provided herein, Client will obtain no right to such licenses or the source code of the Software licensed thereby. Thrive hereby grants to Client a non-exclusive, worldwide, royalty-free, non-assignable and non-sublicensable license to use the Software solely in connection with Services for which such Software is utilized (a "License"), which License will terminate immediately upon termination of such Services. Thrive may terminate such License and any Services for which such License is utilized if it determines that Client has breached the terms of the License. Upon termination of the License, Client will immediately cease to use the Software and related documentation and certify to Thrive within ten (10) days after



termination that Client has, at Thrive's option, either destroyed or returned to Thrive the Software and all documentation and related information, and all copies thereof, whether or not modified or merged into other materials.

5. WARRANTIES, DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNIFICATION.

(a) Services. Thrive warrants that Services, including without limitation, those provided by Third-Party Providers, will be performed in a professional manner conforming in all material respects to prevailing industry standards and practices, applicable law, and the specifications set forth in the Service Orders relating thereto. Client acknowledges that no network, system, device, hardware, software, or component can be made fully secure and, accordingly, agrees that Thrive shall not be liable for damages arising from or in connection with loss of data or breach of privacy of Client's systems except to the extent that Thrive's gross negligence or fraud (and not, e.g., equipment failure, software failure, "phishing" attacks or other fraudulent acts of third parties, or Client's failure to follow Thrive's advice) is the direct and primary cause of such loss or breach.

(b) Warranty Disclaimer.

OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 5, THRIVE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS OR SERVICES AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

(c) Limitation of Liability.

(i) IN NO EVENT SHALL THRIVE BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH HEREOF, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, COST OF REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF INFORMATION OR DATA (WHETHER VIA PRIVACY BREACH OR OTHERWISE), OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF THRIVE HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

(ii) EXCEPT IN THE CASE OF THRIVE'S GROSS NEGLIGENCE OR FRAUD THRIVE SHALL IN NO EVENT BE LIABLE FOR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES FOR SERVICES PAID BY CLIENT TO THRIVE DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH LIABILITY OCCURED.

(d) Mutual Indemnification. Subject to the terms and conditions hereof, each Party (an "Indemnifying Party") shall defend at its own expense the other Party, including the other Party's directors, officers, employees, agents and affiliates (collectively, the "Indemnified Party"), from and against any and all third-party claims, demands, suits or actions to the extent resulting from or arising out of the Indemnifying Party's (i) grossly negligent acts or omissions or fraud in connection with this Agreement, (ii) violation of any statute, law, ordinance or regulation, or (iii) infringement of any patent, copyright, trademark, trade secret or other intellectual property or other rights of a third party (collectively, an "Indemnifiable Claim"). With respect to each Indemnifiable Claim, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against any and all damages, judgments, awards, expenses, and costs (including without limitation those of the type described in Section 5(c)(i) above) that are awarded and payable to the third party by a court of competent jurisdiction or that are payable pursuant to a settlement made or approved by the Indemnifying Party. The Indemnifying Party shall have right to defend any Indemnifiable Claim with counsel of its choosing.

6. INTELLECTUAL PROPERTY RIGHTS.

(a) Thrive Intellectual Property. Thrive retains right, title and interest in and to the Services, all intellectual property rights contained therein, and all modifications, alterations, derivative works and enhancements made thereto (collectively, "Thrive IP"). Client may not modify or create derivative works from or copy any ideas, Features, functions or graphics of the Services or Thrive IP or modify or make derivative works based thereon, or offer



the Services on a timeshare or service bureau (including software-as-a-service) basis. Client may use Thrive IP in accordance herewith and any Service Order solely as necessary to utilize Services for its own account and otherwise will not disclose or use Thrive IP for any purpose.

(b) Client Intellectual Property. Client retains all right, title and interest in and to all of Client's intellectual property rights transmitted by or on behalf of Client to Thrive in connection with the Services (collectively, "Client IP"). Thrive may not modify or create derivative works from or copy any ideas, features, functions or graphics of the Client IP or modify or make derivative works based thereon. Thrive may use Client IP in accordance herewith and any Service Order in connection with providing Services to Client and otherwise will not disclose or use Client IP for any purpose.

7. CONFIDENTIALITY. The Parties acknowledge that in connection with this Agreement each may receive from the other certain non-public information regarding the other Party's financial condition, suppliers, clients, business plans and other information not generally known to the public, including, without limitation, the terms and conditions of this Agreement r ("Confidential Information"). The Party receiving Confidential Information of the other Party will not except as is required by law or legal process disclose such Confidential Information (i) to any person known by the receiving Party to be competitor of the other Party or (ii) to other third parties other than the receiving Party's employees, representatives and contractors who are bound by confidentiality obligations comparable to those set forth herein and who need to know such Confidential Information for purposes of the receiving Party's performance or receipt of the benefits of this Agreement, and will not use Confidential Information except in connection therewith. A Party that has received tangible embodiments of Confidential Information shall promptly return to the disclosing Party or destroy such Confidential Information upon the disclosing Party's request; provided that the receiving Party is not obligated to delete, purge or expunge Confidential Information maintained on its backup servers and similar devices in the ordinary course of its business (but nevertheless remains obligated under this Section 7 with respect to any such retained Confidential Information). The obligation to maintain the confidentiality of Confidential Information shall continue for so long as this Agreement shall remain in effect and for a period of two (2) years after the termination hereof, except that the obligation to maintain the confidentiality of trade secrets shall continue in perpetuity. If the Parties have entered into a separate non-disclosure or other agreement regulating the use or disclosure of the Parties' respective information, then the terms of such separate agreement will control in the event of a conflict between such separate agreement and this Section 7.

8. HIRING OF REPRESENTATIVES. For so long as this Agreement remains in effect and for a period of one (1) year thereafter, neither Party will employ, hire, contract with, or otherwise engage, or seek to employ, hire, contract with, or otherwise engage, any individual who at any time in the preceding twelve (12) months was an employee of the other Party involved in the provisioning or receiving of Services under any Service Order. The Parties agree that any breach of this Section 8 will result in irreparable injury to the other Party for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of this Section 8 by the other Party, the non-breaching Party will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach without the necessity proving the inadequacy of money damages or of posting a bond or other security.

9. TERMINATION.

(a) Termination of Agreement and Service Orders for Breach of Terms.

(i) Breach of terms of General Terms & Conditions. Each Party may notify the other Party if the other Party breaches the terms of these General Terms and Conditions, which notice will describe in reasonable detail the nature of such breach and including relevant supporting documentation. Unless the breaching Party within thirty (30) days of its receipt of such notice either cures or remedies the breach described in such notice in all material respects or provides the other Party with a reasonable written plan for doing so, the other Party may, without limitation of its other rights and remedies under applicable law, terminate this Agreement by providing written notice of termination to the breaching Party.

(ii) Breach of terms of a Service Order. Each Party may notify the other Party if the other Party breaches the terms of any Service Order, which notice will describe in reasonable detail the nature of such breach and including relevant supporting documentation; including but not limited to Thrive non-compliance with Service Level Agreements expressly stated in a Service Order Unless the breaching Party within thirty (30) days of its receipt of such notice either cures or remedies the breach described in such notice in all material respects or provides the



other Party with a reasonable written plan for doing so, the other Party may, without limitation of its other rights and remedies under applicable law, terminate those Services under such Service Order as to which such breach relates (and not this Agreement, other Services provided under such Service Order or any other Service Order as may then be in effect) by providing written notice of termination to the breaching Party.

(b) Suspension or Termination of Services by Thrive for Failure to Pay. Notwithstanding the provisions of Section 9(a) above, in the event Client does not timely make payments under this Agreement (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes) and such payment(s) is (are) not made by Client within ten (10) days of receiving written notice thereof from Thrive, (which notice may be delivered to Client in the same manner as Thrive sends invoices to Client in the ordinary course) Thrive may, without limitation of its other rights and remedies under applicable law, suspend or terminate providing Services to Client under any Service Order as may then be in effect, and Thrive will have no liability for any damages incurred or realized by Client as a result of such suspension or termination of any such Services. No such suspension or termination of Service under a Service Order due to Client's non-payment will relieve Client of its obligations to pay all charges and other amounts and otherwise comply with and fulfill its obligations under this Agreement, including under that or any other Service Order as may be in effect. If Services are suspended for non-payment, lapse in service will not count towards completion of the Term of such Services.

(c) Suspension. Notwithstanding the provisions of Section 9(a) above, Thrive may suspend the Services immediately upon notice to Client if: (i) Client materially violates (or Thrive believes in good faith that Client has materially violated) any provision of this Agreement or any provision of the applicable Thrive Acceptable Use Policy (<https://thrivenextgen.com/acceptable-use-policy/>); (ii) there is an unusual and material spike or increase in Client's use of the Services and Thrive believes, in good faith, that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the Services; or (iii) Thrive determines in good faith that its provision of the Services is prohibited by applicable Law; or (iv) Thrive determines in good faith that Client is using the Products or Services in violation of applicable law or for an otherwise unlawful purpose. Notwithstanding the foregoing, Thrive will use commercially reasonable efforts to (x) provide Client as much prior notice as possible of any situation that it is aware of that could lead to a right to suspend described in this subsection, and (y) work with Client to remedy any situation that could lead to a right to suspend described in this subsection if such situation can be remedied.

(d) Duties Upon Termination or Expiration.

(i) Payment of Obligations/Return of Property. Upon the expiration or termination of this Agreement or any Service Order, Client will pay the full amount of all unpaid invoices issued under any outstanding Service Order and any other payment obligations specified in each outstanding Service Order (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes). In addition, excluding any software and hardware that is the Client's property, Client will return all software and hardware provided to Client by Thrive in good working condition and free from all liens, charges and encumbrances within thirty days of termination of this Agreement or the applicable Service Order(s).

(ii) Termination Status Reporting; Further Services. Thrive will upon expiration or termination of any Service under any Service Order and receipt of all amounts then due and payable to Thrive under this Agreement as relates to such expired or terminated Service (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes) provide Client a written report on the status of the Service in a form and level of detail reasonably satisfactory to Client. If requested by Client, Thrive will assist Client in winding down or transferring the terminated or expired Service to Client or its designee (such assistance being referred to as "Migration Services") in accordance with a mutually agreed separate Service Order signed by the Parties setting forth the terms and conditions thereof, which will include, among other terms to which Parties may agree, Client agreeing to pay Thrive for such Migration Services, if applicable, at the hourly rates set forth in the Service Order under which such Service was provided (and if no such rates are set forth in such Service Order, then at hourly rates agreed to by the Parties). Except as set forth above in this Section 9(d)(ii) and, if applicable, any Service Order providing for the provision of Migration Services, Thrive will have no duty or obligation to provide any Products or Service or any other service or assistance to Client following the expiration or termination of a Service in accordance herewith.

(e) Survival. The following provisions will survive any expiration or termination of this Agreement: Section 3 (Payments), Section 4 (Third Party Products & Services), Section 5 (Warranties, Disclaimer and Limitation of Liability), Section 6 (Intellectual Property Rights), Section 7 (Confidentiality), Section 8 (Hiring of Representatives), this Section 9 (Termination), Section 10 (Force Majeure), and Section 12 (General Terms).



10. FORCE MAJEURE. Except for payment obligations, neither Party will be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances or causes beyond its reasonable control, including, without limitation, fire, pandemics or other casualty, acts of God, fiber cuts or Internet delays, delay or failure of Third-Party Providers, war, terrorism, or other violence or criminal acts, any law, order, requirement or act of any government or governmental agency or authority or other causes beyond the reasonable control of such Party, provided that such Party has informed the other Party of such *force majeure* event promptly upon the occurrence thereof (including a reasonable estimate of the additional time required for resumed performance to the extent determinable) and such Party uses reasonable commercial efforts to resume performance hereunder as soon as reasonably practicable.

11. INSURANCE. Thrive will maintain insurance providing at least \$1,000,000 commercial general liability coverage, as well as statutory workers compensation coverage. Upon Client's request, Thrive will deliver to Client promptly a certificate of insurance made out by the applicable insurer(s) or their authorized agents as evidence of the insurance required under this Section and for any material policy amendments thereto. At Client's request, Client will be identified as an additional insured ATIMA (as their interests may appear) on such certificate of insurance.

12. GENERAL TERMS.

(a) Governing Law; Jurisdiction; Venue. This Agreement will be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, without regard to the conflicts or choice of law provisions thereof that would give rise to the application of the domestic substantive laws of any other jurisdiction. The Parties agree that any proceeding arising out of or relating to this Agreement will be brought only in, and hereby submit to the jurisdiction of, the state or federal courts sitting in the Commonwealth of Massachusetts and hereby waive any objections to the jurisdiction, venue or convenience of any such courts. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(b) Assignment. Neither Party may assign its rights or delegate its duties hereunder without the prior written consent of the other Party; provided that either Party may assign its rights hereunder to, and cause its obligations hereunder to be assumed by, a successor to substantially all of the assets or business of such Party. If there is any assignment or delegation in violation of any of the foregoing restrictions, the non-breaching Party may terminate this Agreement and all Service Orders as may then be in effect upon written notice within ninety (90) days after notice or discovery of such assignment.

(c) Headings. The section headings herein are for ease of reference and convenience only and are not to be considered in the interpretation of this Agreement.

(d) Interpretation. Neither Party shall be considered the drafter of this Agreement or any schedule, addendum or exhibit as may be made part thereof so as to give rise to any presumption or convention regarding construction hereof or any such other writing.

(e) Integration; Severability. Except as provided in Section 7 above with respect to separate nondisclosure or confidentiality agreements between the Parties, this Agreement, including any Service Orders, sets forth the entire agreement and understandings between the Parties hereto with respect to the subject matter hereof, and merges all previous and contemporaneous discussions and negotiations between the Parties and supersedes and replaces any other agreement that may be in effect as of the date hereof between the Parties or their respective subsidiaries or other affiliates with respect to the subject matter hereof. Without limitation of the foregoing, this Agreement supersedes and replaces in its entirety any "Master Services Agreement" or similar document as may be in effect as of the date hereof between the Parties or their respective subsidiaries or other affiliates (any such agreement being referred to as the "Original Agreement"). The parties agree that any "statements of work", "service orders" and similar writings as may be outstanding and in effect under the Original Agreement (the "Outstanding SOs") are, from and after the date hereof, Service Orders for all purposes of these General Terms and Conditions and the "Master Service Agreement" or similar agreement referenced in the Outstanding SOs shall from and after the date hereof be a reference instead to this Agreement. Notwithstanding the foregoing, all amounts due to Thrive under the terms of the Original Agreement or Outstanding SOs remain due in accordance with the terms of the Original Agreement or Outstanding SOs, and unless otherwise specified herein, no such amounts are settled, released or compromised hereby. This Agreement will be interpreted in such a manner as to be effective and valid



under applicable law, but if any provision hereof will be prohibited or invalid under any such law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. If any one or more of the provisions of these General Terms and Conditions or any Service Order will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provisions will be construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by applicable law.

(f) **No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement or any schedule, addendum or exhibit as may be made part hereof.

(g) **Residual Knowledge.** Nothing herein shall be construed to prevent or in any way limit Thrive from using general knowledge, skill and expertise acquired in the performance of this Agreement in any current or subsequent engagement or business. Client shall have no interest in such engagements or business.

(h) **Signatures, Amendments and Waivers and Exercise of Rights.**

(i) **Signatures.** This Agreement and amendments or modifications hereof and consents and waivers relating hereto may be executed, issued and accepted electronically (via authenticated digital or similar electronic means) and will be effective when transmitted bearing a copy of a manual, digital or electronic signature.

(ii) **Amendments and Waivers.** Amendments to and waivers of the provisions of this Agreement must be in writing (including in a digital format) and signed as provided in Section 12(h)(i) above.

(iii) **Exercise of Rights.** Except as otherwise provided herein, no failure to exercise or delay in exercising any right, power or remedy will operate as a waiver thereof; nor will any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

(i) **Notices.** Notices required or permitted to be provided hereunder will be in writing and, except as otherwise provided herein, will be valid and sufficient if delivered in person or sent by nationally recognized overnight courier or by email addressed to the Parties at the addresses listed on the cover page of this Agreement. Notices will be deemed received by the Party to whom notice is addressed on the date delivered, if delivered in person or by email, or on the next business day after being provided to a nationally recognized overnight courier service, delivery charges prepaid, for next day delivery.

(j) **Publicity.** Each Party may use the other Party's name and logo on its website and printed materials to identify Thrive as a service provider to Client.

(k) **Independent Contractor.** Each of the Parties is an independent contractor and neither Party is, nor will be considered to be, an agent, distributor or representative of the other. All personnel supplied or used by each Party will be its employees or subcontractors and each Party assumes full responsibility for the actions of such personnel and for the payment of their compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like to the extent applicable.

END OF GENERAL TERMS AND CONDITIONS