Last Updated: June 12, 2025

<u>**Master Services Agreement**</u>

This Master Services Agreement (the "**MSA**") is between PropulsionTech, LLC, a Delaware limited liability company ("**Provider**") and the client executing an order or quote ("**Client**") referencing this MSA (a "**Quote**", and together with this MSA, the "**Agreement**"). Provider and Client are each a "**Party**" and collectively the "**Parties**". Defined terms in this MSA have the meaning given to such terms in the section in which such terms are first defined or are set forth in <u>Section 29</u> (Definitions).

1. **Quotes; Acceptance.** Client may only obtain the Services by executing a Quote provided by or on behalf of Provider. By executing a Quote, Client accepts all of the terms of this MSA. Each Quote will set forth the specific services provided by Provider to Client (the "**Services**"), the fees to be paid to Provider by Client (the "**Fees**"), and the Quote's effective date (the "**Effective Date**"). Following execution of a Quote, Client may submit a purchase order to Provider. However, acceptance of a Quote is expressly limited to and conditioned on the terms contained in the Quote, including any reference to this MSA. Provider objects to any terms in Client's acceptance or confirmation of any Quote (including any terms contained or referenced in any purchase order) that are additional to or different from the terms of the Quote and this MSA. Any such additional or different terms, whether received prior to or after the date of a Quote, will be disregarded by the Parties unless such terms are specifically agreed to in a writing signed by Provider. In the event of a conflict between a Quote and this MSA, the terms of this MSA will control, unless the Quote identifies the sections of this MSA to be modified.

2. **Modifications.** Provider may update this MSA from time to time by: (A) posting the revised version at <u>www.propulsiontech.com/legal</u>; and (B) sending Client notice to its email address on record pursuant to <u>Section 23</u> (Notices). Such revised MSA will become effective 30 days after the date of notice; provided, that no Material Change to the MSA will take effect without Client's express written consent. Except as set out in this <u>Section 2</u>, any amendment to this MSA must be in a written instrument signed by the Parties. For the avoidance of doubt, a Quote may only be amended in a written instrument signed by the Parties.

3. **The Services.**

    3.1. **Scope and Exclusions.**

        A. **Services.** Subject to the terms and conditions of this MSA and the applicable Quote, Provider will use commercially reasonable efforts to provide the Services expressly set forth in such Quote. At the discretion of Provider, Services may be provided remotely or onsite by staff employed or contracted by Provider. Client hereby grants Provider a non-exclusive right during the Term (as defined in <u>Section 9</u>) to access, use, reproduce, and distribute Client Data (as defined in <u>Section 29</u> (Definitions)) to provide the Services or to facilitate the Third-Party Services (as defined in <u>Section 3.1(B)</u>).

        B. **Third-Party Services.** Client acknowledges and agrees that the Services exclude any third-party software (including SaaS offerings) and/or hardware that may be licensed, accessed, or used in connection with the Services (collectively, "**Third-Party Services**").

    3.2. **Change Orders**. If Client wishes to expand the scope of the Services, then Client must submit a request for a change order to Provider. Provider will then notify Client of any additional Fees associated with such change order. If Client agrees to the Fees, and if Provider accepts the change order request, then Provider will issue a change order for the Parties to execute. No modifications to the Services may be made without a change order signed by the Parties.

    3.3. **Deliverables.** If Provider creates any technical, usage or other reports for Client ("**Deliverables**"), such Deliverables will be considered accepted by Client ("**Acceptance**") 15 days after delivery, if Client has not first provided Provider with written notice of rejection. Client may reject a Deliverable only in the event that it materially deviates from its specifications and requirements listed in the applicable Quote and only via written notice setting forth the nature of such deviation. In the event of such rejection, Provider will

correct the deviation and redeliver the Deliverable within 15 days. After redelivery pursuant to the previous sentence, the Parties will again follow the acceptance procedures set forth in this Section 3.3. Effective upon Acceptance of a Deliverable, Provider grants Client a non-exclusive, non-transferable, non-sublicensable, royalty-free license to copy, modify, and use such Deliverable as necessary for Client's internal business purposes. Client receives no right, title, or interest in or to Deliverables except as set forth in this Section 3.3.

3.4. **Third-Party Software.** If Provider offers, resells, distributes, makes available, or provides access to any third-party software to Client or if any third-party software is installed on hardware resold by Provider (as applicable, the "**Software**"), then Client acknowledges that: (A) Software is a subset of Third-Party Services; (B) Software is not a Deliverable; (C) the Agreement does not transfer any right, title, or interest in Software to Client; and (D) Client's use of Software is subject to the terms of service or end user license agreement relating to such Software (each, a "**EULA**"). Client must comply with the terms and conditions of all EULAs.

4. **Client Obligations.**

4.1. **Cooperation.** Client will provide all assistance and cooperation (including but not limited to access to applicable personnel) necessary or convenient to facilitate the Services or as called for in a Quote.

4.2. **Consents, Approvals, and Licenses.** Client will secure all consents, approvals, leases, and licenses necessary or convenient for Provider to perform the Services, including but not limited to, those relating to Client Data (as defined in Section 29 (Definitions)) and those from any internet service providers, network providers, SaaS providers, software licensors, device manufacturers, and lessors.

4.3. **Notifications.** Client will notify Provider immediately upon learning of any material problem with the performance of its servers, network equipment, applications, or workstations. Client will not interfere with or disable remote support tools accessed by Provider on any servers, network equipment, applications, or workstations. Client will, subject to Client's discretion, from time to time, purchase such software and hardware as may be reasonably necessary for the effective operation of its network. Client will notify Provider within a commercially reasonable time regarding any change in the identity of client's internal IT staff.

4.4. **Warranties.** To ensure appropriate support is provided, Client must maintain warranties and/or support contracts on all of its hardware, equipment, and workstations. Client acknowledges that hardware, equipment, and workstations not maintained under warranty may result in unpredictable outages and additional hourly service charges in the event of failure.

4.5. **Limitations.** Client acknowledges that Provider is not liable for any failure to perform, or any delay in performing, the Services if such failure or delay relates to Client's breach of one or more of its obligations in Section 4.1 through Section 4.4.

5. **Ownership.**

5.1. **Client Materials.** As between Client and Provider, Client is the sole and exclusive owner of all right, title and interest in and to all business methods and processes, know-how, trade secrets, Client Data, Client Assets, and other materials owned by Client (or licensed to Client by a third party) that Client provides or makes available to Provider in connection with the Services (the "**Client Materials**"), including all intellectual property rights therein and all derivatives, modifications, improvements, or enhancements thereto. Client hereby grants Provider a non-exclusive, non-transferable, royalty-free license to access and use the Client Materials during the Term to the extent necessary to provide the Services and any Deliverables to Client. All rights in and to the Client Materials not granted to Provider hereunder are expressly reserved by Client.

5.2. **Provider Materials.** As between Client and Provider, Provider is the sole and exclusive owner of all right, title and interest in and to the Services and to all business methods and processes, software applications,

databases, AI-generated work product (including all prompts entered thereto), know-how, and trade secrets existing or in development on the Effective Date, whether owned, used, or licensed by Provider ("**Provider Materials**"), including all intellectual property rights therein, and all derivatives, modifications, improvements, or enhancements ("**Improvements**") thereto. No Provider Materials or Improvements thereto will be considered a "work made for hire" as such term is defined in the United States Copyright Act or applicable state law. Except to the limited extent set forth in this MSA for Deliverables, all rights in and to the Provider Materials are expressly reserved by Provider.

5.3. **Feedback.** Nothing in the Agreement or in the Parties' dealings arising out of or related to the Agreement will restrict Provider's right to use, profit from, disclose, publish, or otherwise exploit Feedback (as defined in Section 29 (Definitions)), without compensating or crediting Client or the individual providing such Feedback, except to the extent that such Feedback constitutes Client's Confidential Information as set forth in Section 7 (Confidentiality). Notwithstanding the provisions of Section 7 (Confidentiality), Client may not designate Feedback as its Confidential Information to the extent that such Feedback relates to Provider, the Provider Materials, or the Services.

6. **Information Security.** Each Party must maintain a reasonable information security program that contains administrative, technical, and physical controls designed to safeguard Personal Information (as defined in Section 29 (Definitions)). Such program must be designed to: (A) ensure the security and confidentiality of Personal Information; (B) protect against any reasonably anticipated threats or hazards to the security or integrity of Personal Information; and (C) protect against unauthorized access to or use of such Personal Information. Notwithstanding the foregoing, each Party acknowledges that no information security program can guarantee protection from Malicious Attacks (as defined in Section 29 (Definitions)). For purposes of this Section 6 only, "**reasonable**" means reasonable and appropriate to: (1) the size, scope, inherent risk, and complexity of a Party's business; (2) the nature of Personal Information being accessed; and (3) applicable laws and regulations for the privacy, confidentiality, and security of Personal Information; "**reasonably**" has a correlative meaning.

7. **Confidentiality.**

7.1. **Nondisclosure.** The Recipient must not use Confidential Information for any purpose other than to facilitate the Services or exercise Recipient's rights under the Agreement (the "**Purpose**"). The Recipient will limit access to the Confidential Information of the Discloser to only those of its Representatives having a need to know such Confidential Information to engage in the Purpose and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein. Without limiting the generality of the foregoing, Recipient must protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient must promptly notify Discloser upon becoming aware of any misuse or misappropriation of Confidential Information.

7.2. **Disclosures Required by Law.** If any proceeding is brought to compel the Recipient to disclose Confidential Information, or if the Recipient is otherwise required by law or regulation to disclose any Confidential Information, then the Recipient must do the following: (A) unless by doing so the Recipient would violate any law or regulation or an order of a Government Body (as defined in Section 29 (Definitions)), notify the Discloser of that proceeding or that requirement, as the case may be, promptly after learning of it, taking into account for purposes of determining the Recipient's promptness any time constraints that the Discloser would face in bringing a proceeding to prevent that disclosure or to protect the confidentiality of any information that is disclosed; and (B) at the Discloser's expense reasonably cooperate with the Discloser in any proceeding the Discloser brings to prevent that disclosure or to protect the confidentiality of any information that is disclosed.

7.3. **Retention of Rights.** The Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Discloser will retain all right, title, and interest in and to all of its Confidential Information.

7.4. **Destruction of Confidential Information.** Unless Provider is providing transition services, each Party must cease using the other's Confidential Information upon expiration or termination of the Agreement.

Recipient will, following the Discloser's written request, destroy copies of Discloser's Confidential Information in the Recipient's possession relating to the Agreement. Notwithstanding the foregoing: (A) each Party will be permitted to retain copies of Confidential Information for the purposes of and for so long as required by law or its legitimate internal compliance requirements; and (B) neither Party will be required to destroy copies of any computer records or files containing Confidential Information that were created pursuant to automatic archiving or back-up procedures on secured storage servers and that cannot reasonably be deleted; provided, that such Confidential Information must continue to be protected pursuant to this Section 7.

8. **Fees and Payment.**

   8.1. **Fees.** Client is responsible for paying Provider the Fees without setoff or deduction. The Fees are not refundable. Fees are subject to an increase of up to five percent (5%) every twelve months in Provider's discretion.

   8.2. **Timing.** Unless otherwise stated in a Quote, Provider will invoice Client: (A) in advance for recurring or managed services; and (B) in arrears for professional services, transition services, or reimbursable expenses; and/or (C) on or around the time a Quote for hardware or Software is placed. Unless otherwise stated in a Quote, Client must pay Provider the Fees within 30 days of the date of Provider's invoice.

   8.3. **Invoice Disputes.** Client must notify Provider in writing of any invoice dispute within 30 days from the date of such invoice. Invoices for which no such timely notification is received will be deemed accepted by Client as true and correct. The Parties will seek to resolve any such disputes expeditiously and in good faith. To the extent that Client provides timely notice of a dispute with respect to only a portion of the fees and expenses of any particular invoice, Client must pay the undisputed portion of the fees and expenses in accordance with Section 8.2 (Timing).

   8.4. **Interest.** Except for invoiced payments that Client has disputed pursuant to Section 8.3 (Invoice Disputes), all late payments will bear interest at the rate of 1.0% per month (or the maximum amount allowed by law, if less), calculated daily and compounded monthly. Client must not under any circumstance withhold payment of any amounts due and payable under a Quote by reason of any set-off or alleged set-off of any claim or dispute with Provider. Client must reimburse Provider for all of its fees and costs incurred in collecting any late payments, including, without limitation, all attorneys' fees (including contingent fees) and court costs.

   8.5. **Taxes.** The Fees exclude taxes. Client is responsible for payment of all taxes applicable to the Services, including without limitation all federal, state, and local sales, use, excise, and value-added taxes, except for those taxes based solely on Provider's net income. Client will make all payments of Fees to Provider free and clear of, and without reduction for, any withholding taxes. Client must reimburse Provider for any interest or penalties assessed on Provider as a result of Client's failure to pay taxes in accordance with this Section 8.5 (Taxes), and for all of Provider's fees and costs incurred in enforcing this Section 8.5 (Taxes), including, without limitation, all attorneys' fees and court costs.

9. **Term**. For each Quote, this MSA begins on the Effective Date of such Quote and continues for the term set forth in such Quote (the "**Term**"). A Term may include an initial Term and a renewal Term.

10. **Termination**.

    10.1. **Quote and MSA.** Expiration or termination of a Quote will automatically terminate this MSA with respect to that Quote.

    10.2. **Termination for Convenience.** A Party may terminate a Quote for convenience only if the terms of that Quote state that termination for convenience is permitted and outline the conditions for such

termination. If a Quote does not contain such provisions, it may not be terminated for convenience by either Party.

10.3.   **Termination for Cause.** Either Party may terminate a Quote for the other's material breach by providing written notice that specifies the nature of the breach in detail. Termination becomes effective in 30 days unless the other Party first cures such breach, or immediately if the breach is not subject to cure. Failure to pay Fees when due is a material breach.

10.4.   **Suspension and Termination**. In addition to its rights in Section 10.3 (Termination for Cause), Provider may suspend or terminate the Services without incurring any resulting obligation or liability, if: (A) Provider receives a judicial or other governmental demand, order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (B) Client has failed to pay an undisputed invoice and such invoice remains unpaid for 30 days or more past the due date. This Section 10.4 (Suspension and Termination) does not limit any of Provider's other rights or remedies, whether at law, in equity, or under the Agreement. If Provider terminates Client's use of the Services pursuant to this Section, the Agreement will automatically terminate. Suspension will not automatically terminate the Agreement.

10.5.   **Transition Services.** Following expiration or termination of the Agreement, Provider may in its discretion facilitate Client's transition to an alternate vendor or to in-house operations; provided, that Client must pay Provider's then-current transition or professional services rates for such services. No transition services will be provided if Provider is in material breach of the Agreement. Notwithstanding Section 10.6, all rights granted to Provider under the Agreement will continue to apply while Provider is providing the transition Services.

10.6.   **Survival**. The following Sections of this MSA survive termination or expiration of the Agreement: 5 (Ownership), 7 (Confidentiality), 8 (Fees and Payment), 10.5 (Transition Services), 10.6 (Survival), 11.4 (Disclaimers), 12 (Indemnification), 13 (Limitation of Liability), 14 (Non-Solicitation), 20 (Construction), 22 (Severability), 23 (Notices), 24 (Assignment), 25 (Equitable Relief), 26 (Governing Law), 27 (Dispute Resolution), 28 (Entire Agreement), and 29 (Definitions). Notwithstanding the foregoing, an Indemnitor's obligation to indemnify an Indemnified Party under Section 12 (Indemnification) will only survive termination or expiration of the Agreement for one year.

11. **Representations and Warranties.**

11.1. **Mutual.** Each Party represents and warrants to the other Party that it has the full right and authority to enter into, execute, and perform its obligations under the Agreement.

11.2. **Client.** Client represents and warrants throughout the Term that it owns or is the licensee of all Client Data and Client Assets and has the right to grant Provider access to Client Data and Client Assets for Provider's performance of the Services.

11.3. **By Provider**. Provider warrants that the Services will be performed in a professional and workmanlike manner. In the event of a breach of the foregoing warranty, Provider, at its own expense, will promptly re-perform the Services. The preceding sentence, in conjunction with Client's right to terminate the Agreement for breach where applicable, states Client's sole remedy and Provider's entire liability for breach of the warranty in this Section 11.3.

11.4. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN A QUOTE OR AS SET FORTH ABOVE IN SECTION 11.1 AND SECTION 11.3, PROVIDER PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (A) PROVIDER DOES NOT REPRESENT OR WARRANT

THAT THE DELIVERABLES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (B) PROVIDER DOES NOT REPRESENT OR WARRANT THAT CLIENT'S SAAS OR SOFTWARE APPLICATIONS, HARDWARE, NETWORKS, ENDPOINTS, DATA, DATABASES, OR SYSTEMS WILL BE SECURE FROM MALICIOUS ATTACKS OR OTHER UNAUTHORIZED INTRUSIONS. PROVIDER HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING ANY THIRD-PARTY SERVICES.

12. **Indemnification.**

12.1. **By Provider.** Provider will indemnify and hold harmless Client and Client's Related Parties (as defined in Section 29 (Definitions)) against any Losses (as defined in Section 29 (Definitions)) incurred by Client and/or Client's Related Parties arising out of an "**Indemnified Claim**", meaning any third-party claim, suit, or proceeding to the extent arising out of an injury to any individual or loss of or damage to real property or tangible personal property caused by the negligent acts or omissions of Provider in the course of performing the Services during the Term.

12.2. **By Client.** Client will indemnify and hold harmless Provider and/or Provider's Related Parties against any Losses incurred by Provider and/or Provider's Related Parties arising out of an "**Indemnified Claim**", meaning any third-party claim, suit, or proceeding to the extent arising out of any breach or failure of any representation and warranty made by Client under the Agreement to be true and correct during the Term.

12.3. **Additional Terms.**

A. **Indemnity Obligations.** The obligations of an indemnifying party ("**Indemnitor**") pursuant to Section 12.1 (By Provider) or Section 12.2 (By Client) above include, without limitation: (1) reimbursement of settlement costs and judgments finally awarded by a court of competent jurisdiction, as well as reimbursement of court costs and other reasonable expenses; and (2) reimbursement of reasonable attorneys' fees incurred by the other Party ("**Indemnified Party**"); provided, that Indemnitor must obtain Indemnified Party's consent, not to be exercised unreasonably, before settling any Indemnified Claim.

B. **Notice.** Indemnified Party must provide prompt notice of any Indemnified Claim and provide documentation of all Losses to Indemnifying Party.

C. **Sole Remedy.** THIS SECTION 12 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF AN INDEMNITOR AND WILL BE THE SOLE AND EXCLUSIVE REMEDY FOR AN INDEMNIFIED PARTY FOR ANY INDEMNIFIED CLAIM.

13. **Limitation of Liability.**

13.1. **DOLLAR CAP.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT (INCLUDING IN RESPECT OF ANY AND ALL QUOTES), EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO PROVIDER BY CLIENT PURSUANT TO THE AGREEMENT IN THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE APPLICABLE CLAIM. THE LIMITS OF LIABILITY IN THE PRECEDING SENTENCE ARE CUMULATIVE AND NOT PER-INCIDENT. THE LIMITS OF LIABILITY IN THIS SECTION 13.1 DO NOT APPLY TO PROVIDER'S FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

13.2. **EXCLUDED DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER BE LIABLE FOR LOST PROFITS, LOST BUSINESS, LOSS OF GOODWILL OR REPUTATION, OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES OR THE AGREEMENT.

13.3. **CLARIFICATIONS & DISCLAIMERS.** THE LIABILITIES LIMITED BY SECTION 13

(LIMITATION OF LIABILITY) APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; (D) EVEN IF CLIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE; AND (E) TO PROVIDER'S OBLIGATIONS IN SECTION 12 (INDEMNIFICATION). IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 13 (LIMITATION OF LIABILITY), PROVIDER'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE. FOR THE AVOIDANCE OF DOUBT, PROVIDER'S LIABILITY LIMITS AND OTHER RIGHTS SET FORTH IN THIS SECTION 13 (LIMITATION OF LIABILITY) APPLY TO PROVIDER, PROVIDER'S RELATED PARTIES, AND PROVIDER'S AFFILIATES AND TO PROVIDER'S AND ITS AFFILIATES' LICENSORS, SUPPLIERS, AGENTS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, CONSULTANTS, AND OTHER REPRESENTATIVES. CLIENT ACKNOWLEDGES THAT NO CYBERSECURITY SOLUTIONS, INCLUDING ANY DEPLOYED, CONFIGURED, OR MAINTAINED BY PROVIDER, CAN GUARANTEE ABSOLUTE PROTECTION FROM MALICIOUS ATTACKS.

14. **Non-Solicitation.** During the Term, and for one year thereafter, Client must not solicit, recruit, or hire any employee or contractor of Provider's to whom it is introduced as a result of the Services.

15. **Trademark License.** Client hereby grants Provider a trademark license during the Term to include Client's name and its logo in any customer list or press release announcing the Services provided to Client.

16. **Force Majeure.** No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of the Agreement to the extent caused by hurricanes, earthquakes, epidemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, acts of war, terrorism, acts of governments such as expropriation, condemnation, embargo, changes in laws, and shelter-in-place or similar orders, internet outages, or other causes beyond the performing Party's reasonable control.

17. **Independent Contractors.** Client's relationship to Provider is that of a customer, and neither Party is an agent or partner of the other. Client does not and will not have, and will not represent to any third party that Client has, any authority to act on behalf of Provider.

18. **U.S. Government Clients Only.** For U.S. government end-users only, any Software provided by Provider is a "commercial item" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government Clients acquire the Software with only those rights set forth therein.

19. **Export Controls.** Client represents and warrants that it does and will comply with all applicable U.S. export control and economic sanctions laws and regulations. Client will not: (A) permit any third party to access or use any Software provided or made available to Client by Provider in violation of any such U.S. law or regulation; or (B) export, re-export, or transfer any such Software or otherwise remove it from the United States except in compliance with its EULA and all applicable U.S. laws and regulations, including but not limited to the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS) and the economic sanctions regulations administered by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC). Without limiting the generality of the foregoing, Client specifically agrees that it will not permit any third party to access or use the Software in, or export, re-export, or transfer the Software to, any destination, entity, or person prohibited or restricted under such U.S. laws and regulations. Client acknowledges that such prohibited or restricted destinations, entities, and persons are subject to change, but that as of the "Last Updated" date indicated at the beginning of this MSA, countries subject to comprehensive U.S. embargoes or sanctions included destinations such as the Crimea, Donetsk, and Luhansk regions of Ukraine, Cuba, Iran, North Korea, and Syria. Client is solely responsible for identifying and complying with the current U.S. export controls and sanctions applicable to the Software and its use.

20. **Construction.** The Parties agree that the terms of the Agreement result from negotiations between them and intend that the Agreement should not be construed by any mediator, arbitrator, or court in favor of or against either Party by reason of authorship.

21. **Execution in Counterparts.** A Quote may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

22. **Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of the Agreement invalid or otherwise unenforceable in any respect. If a provision of the Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to achieve its original effect to the maximum extent permitted by applicable law, and the remaining provisions of the Agreement will continue in full force and effect.

23. **Notices.**

    23.1. **Validity.** For a notice or other communication under the Agreement to be valid, it must be: (A) in writing and delivered by registered or certified mail (return receipt requested and postage prepaid) or by email; and (B) addressed using the information in the applicable Quote.

    23.2. **Receipt.** A valid notice or other communication under the Agreement will be effective when received by the Party to which it is addressed. It will be deemed to have been received as follows: (A) if it is delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; or (B) if it is delivered by email, upon the earliest of the following: (1) when the recipient acknowledges receipt of the email, which acknowledgment may be evidenced by an automated "read receipt" generated by the recipient's email system or by a non-automated email reply from the recipient confirming receipt; or (2) two (2) business days (meaning Monday through Friday, excluding federal holidays in the United States) following the time the email was sent, provided that the sender has not received, within that two (2) business day period, any system message indicating that the email delivery failed (such as a non-delivery report or "bounce-back" message). For notices delivered by email to be valid, they must be sent to the email address(es) specified in the applicable Quote.

24. **Assignment.** Neither Party may assign the Agreement or any of its rights or obligations under the Agreement without the other's express written consent, except that either Party may without consent of the other Party assign the Agreement in connection with a change of control, including but not limited to any merger, or in an acquisition of all or substantially all of its assets. Provider may also assign its rights and obligations under the Agreement to an Affiliate without Client's consent. Any assignment in violation of this Section 24 is void.

25. **Equitable Relief.** Each Party acknowledges that breach of one or more of its obligations under Section 6 (Information Security) or Section 7 (Confidentiality), and, for Client, Section 14 (Non-Solicitation), will cause the other Party to suffer immediate and irreparable harm for which money damages would be an inadequate remedy. Therefore, each Party agrees that if it breaches one or more of those obligations, the other Party will be entitled to equitable relief as well as any additional relief that may be appropriate.

26. **Governing Law**. The Agreement is governed solely by the internal laws of Colorado, without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties.

27. **Dispute Resolution.**

    27.1. **Mediation.** If the Parties cannot themselves resolve a dispute arising out of or related to the Agreement, then they must attempt to resolve such dispute through mediation under the auspices of JAMS, in the State of Colorado, City and County of Denver. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither Party must file an action for arbitration until 30 days after the first mediation conference, unless the other Party has materially breached its obligations in the preceding sentence. Any requirement in the Agreement to pay or reimburse court costs or attorneys' fees includes, without limitation, a requirement to reimburse costs and fees related to such mediation.

27.2. **Arbitration.** Subject to <u>Section 27.1</u> (Mediation), any claim arising out of or related to the Services or the Agreement, including without limitation claims related to the Parties' negotiations and inducements to enter into the Agreement, must be submitted to mandatory, binding arbitration under the auspices of JAMS, and conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures or the JAMS Streamlined Arbitration Rules and Procedures, as applicable. Such arbitration must take place in Denver, Colorado. This <u>Section 27.2</u> (Arbitration) does not limit either Party's right to provisional or ancillary remedies from a court of competent jurisdiction before, during, or after arbitration, and the exercise of any such remedy does not waive either Party's right to arbitration; provided, that the exclusive venue for seeking such remedies must be in the state and federal courts sitting in the State of Colorado, City and County of Denver. Judgment on an arbitration award may be entered by any court with competent jurisdiction. Any requirement in the Agreement to pay or reimburse court costs or attorneys' fees includes, without limitation, a requirement to reimburse costs and fees related to such arbitration.

28. **Entire Agreement.** The Agreement constitutes the entire understanding between the Parties as to the subject matter of the Agreement and supersedes all other agreements, whether written or oral, between the Parties regarding such subject matter.

29. **Definitions.** Definitions denoting the singular have a comparable meaning when used in the plural and vice versa.

    29.1. "**Affiliate**" means an entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a Party.

    29.2. "**Confidential Information**" refers to the following items one Party discloses ("**Discloser**") to the other ("**Recipient**"): (A) any document Discloser marks "confidential"; (B) any information Discloser orally designates as "confidential" at the time of disclosure, provided Discloser confirms such designation in writing within thirty days; and (C) any other information Recipient should reasonably consider confidential. Confidential Information does not include information that: (1) is in Recipient's possession at the time of disclosure; (2) is independently developed by Recipient without use of or reference to Confidential Information; (3) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (4) is approved for release in writing by Discloser. Client Data may be Confidential Information if it meets the foregoing definition.

    29.3. "**Client Assets**" means any of Client's SaaS applications, software applications, databases, networks, systems, devices, hardware, and physical offices.

    29.4. "**Client Data**" means all data provided to Provider by or at the direction of Client, or that Provider accesses by or at the direction of Client, for purposes of the Services.

    29.5. "**Feedback**" refers to any suggestion or idea for improving or otherwise modifying any of the Provider Materials or the Services.

    29.6. "**Government Body**" means: (A) the government of a country or of a political subdivision of a country; (B) an instrumentality of any such government; (C) any other individual, entity, or organization authorized by law to perform any executive, legislative, judicial, regulatory, administrative, military, or police functions of any such government; or (D) an intergovernmental organization.

    29.7. "**Losses**" mean losses, damages, liabilities, deficiencies, interest, awards, costs or expenses of whatever kind.

    29.8. "**Malicious Attacks**" means malware, viruses, phishing or spear-phishing attempts, network intrusions, ransomware, data breaches, or other malicious or unauthorized activities.

    29.9. "**Material Change**" means any change that Provider in its reasonable discretion determines materially reduces Client's rights or materially increases Client's obligations under this MSA.

29.10. "**Personal Information**" means information that relates to an identified or identifiable natural person, where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to that natural person. For purposes of the Agreement, "**Personal Information**" is limited to such information provided to Provider by or at the direction of Client, or that Provider accesses by or at the direction of Client, for purposes of the Services.

29.11. "**Related Parties**" means a Party's Affiliates and its and their officers, directors, shareholders, members, employees, agents, successors, and assigns.

29.12. "**Representative**" means, as to a Party or its Affiliates, any of that Party's or its Affiliates' directors, officers, employees, agents, consultants, advisors, and other representatives.