

Terms and Conditions

The Customer Agreement/Statement of Work, these Terms and Conditions, and the Privacy Policy together form the agreement between Customer and Tech 2 Success LLC (collectively, the "Agreement"), and shall be effective as of the Effective Date defined in the Customer Agreement. The Agreement constitutes an agreement between You and Tech 2 Success governing Your use of the Service.

By using the Services, You agree to all the terms of the Agreement. You are advised to check the Privacy Policy and the Terms and Conditions from time to time for any updates or changes that may impact You. Your continued use of the Services, following changes to the Privacy Policy and the Terms and Conditions, constitutes your agreement to any such changes.

Violation of any of the terms of the Agreement may result in the suspension or termination of Your Account or License to use the Service.

1. DEFINITIONS.

1.1 "Account" means Customer's account with Tech 2 Success for use of the Services by Customer.

1.2 "Additional Fees" means the monies due from Customer to Tech 2 Success for (i) Customer's use of the Services outside of the scope of the Agreement, (ii) any additional work requested by Customer beyond the scope set forth in the Agreement, (iii) any additional work which is the subject of a written addendum signed by both Tech 2 Success and Customer, (iv) direct third-party pass-through fees, and (v) a 5% fee for any late payment, non-payment, failed or returned payments.

1.3 "Additional Service(s)" means any services which are not included in the Customer Agreement, which are subject to Additional Fees.

1.4. "Customer" means the party authorized under the Agreement to use the Services.

1.5 "Customer Agreement" means the documents entitled Project Assessment and Statement of Work.

1.6 "Customer Data" means any and all information, data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, stored, transferred, transmitted, or otherwise provided or made available by or on behalf

of Customer for processing by or through the Services, or (b) collected, downloaded, or otherwise received by Tech 2 Success for Customer pursuant to this Agreement or at the written request or instruction of Customer, including, without limitation, all personally identifiable information of Customer's customers. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Customer Data are themselves also Customer Data. For the avoidance of doubt, Customer Data includes all User data and personal information but does not include any Technology.

1.7 "Documentation" means all materials, including drawings, diagrams, specifications, product descriptions, manuals and instructions that Tech 2 Success provides (either in digital or hard copy form) to assist and define Customer's use of the Services.

1.8 "Fees" means the monies due from Customer to Tech 2 Success as consideration for the Services and Licenses in the Agreement in connection with the Services and also means Additional Fees.

1.9 "Initial Term" is the term as provided in the Customer Agreement.

1.10 "Intellectual Property Rights" means patents, patentable rights, copyright, design rights, utility models, trademarks (including Marks), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information as described herein, and all other intellectual property and all pending applications for any of the foregoing and including all renewals, extensions, revivals and all accrued rights of action.

1.11 "Insolvency Event" means, in relation to either party, any of the following events: (a) the company commences a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws; (b) anyone commences an involuntary case against the company under title 11 of the United States Code or the corresponding provisions of any successor laws and either (i) the case is not dismissed by midnight at the end of the 60th day after commencement or (ii) the court before which the case is pending issues an order for relief or similar order approving the case; (c) a court of competent jurisdiction appoints, or the company makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for the company or all or substantially all of its assets; or (d) the company fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

1.12 “License” means the licenses expressly granted herein by Tech 2 Success to Customer to use the Services.

1.13 “Marks” means any word, symbol or device, or any combination thereof, used or intended to be used by a party to identify and distinguish the party’s or its third-party licensor’s products or services from the products or services of others, including without limitation trade names, trademarks, service marks and logos. “Customer Marks” refer to any Marks of Customer and includes third party marks Customer may provide to Tech 2 Success. “Tech 2 Success Marks” refers to Marks of Tech 2 Success and includes third-party marks Tech 2 Success may provide to Customer.

1.14 “Representatives” collectively means the affiliates, directors, officers, shareholders, members, employees, subcontractors, permitted assigns and agents of a party.

1.15 “Renewal Term” means a period of the same length as the Initial Term.

1.16 “Security Obligation” means responsibility for maintaining the security of account login information (username and password).

1.17 “Service” or “Services” means the services to be provided by Tech 2 Success, including without limitation any licensed software, Website, platforms, code, integration, API, or functionality. Services shall also include updates and upgrades subsequently provided to the Tech 2 Success or the Technology. Services shall also include any Additional Services, which are subject to Additional Fees.

1.18 “Tech 2 Success” means Tech 2 Success LLC, or any successor or assignee or subcontractor of Tech 2 Success.

1.19 “Technology” means, collectively, the Tech 2 Success Services, Documentation, functionality, URLs and integrations that enable Customer access to the Services, any Additional Services, analytics, transaction information, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports that are provided or used by Tech 2 Success in connection with the Services and any software or technology incorporated in or made available by Tech 2 Success through the Tech 2 Success Services, expressly excluding Customer Data and Customer Marks unless otherwise stated in a writing signed by the parties.

1.20 “Term” means the Initial Term and any applicable Renewal Term.

1.21 “Us” means Tech 2 Success.

1.22 “User” or “Users” means the individuals for whom Customer has procured subscriptions to the Services, as identified to Tech 2 Success, and may include, but are not limited to, individuals employed by You or otherwise working for You at Your direction, and who are authorized by You to access and use the Service, including You.

1.23 “You” or “Your” refers to the Customer.

1.24 “We” or “Our” refers to Tech 2 Success.

1.25 “Website” means Tech2Success.com or such other website, portal, domain, or subdomain or mobile access point from which Tech 2 Success may make the Service available, such as a website or ecommerce site that points to Your domain or any subdomain.

2. LICENSE / RESTRICTIONS / INTELLECTUAL PROPERTY / DATA.

2.1. License. Tech 2 Success grants the Customer a limited, non-transferrable, non-exclusive license to use and access the Service solely for Customer’s business purposes subject to the terms, obligations, restrictions and limitations set forth in the Agreement. All rights not expressly granted to You in the Agreement are reserved and retained by Tech 2 Success.

2.2 License Limitations and Restrictions.

(a) Prohibited Actions. Customer shall not:

- (i) except as expressly permitted by this Agreement, copy, reproduce, distribute, publish, display post or transmit, the Service, or the Technology, in whole or in part;
- (ii) license, sub-license, sell, resell, rent, lease, transfer, assign, distribute or otherwise exploit the terms of this License or make the Service available for access or use by any person(s) other than the Users;
- (iii) use the Service to process any data unlawfully, in violation of the Agreement, or for any third party;
- (iv) allow any unauthorized access to, or use of, the Service;
- (v) copy, translate, transmit, post, create a derivative work of, modify, adapt, download, sell, publish, decipher, decompile, reverse engineer, reverse

- assemble, disassemble, decompile, or otherwise attempt to determine any programming or the source code associated with the Service or the Technology;
- (vi) use data mining, robots, crawlers, or spiders, or similar data gathering and extraction tools;
 - (vii) frame or utilize framing techniques to enclose any Tech 2 Success Marks or other Intellectual Property (including images, text, page layout, or form) of Tech 2 Success;
 - (viii) use any meta tags or any other "hidden text" utilizing Tech 2 Success's name or Marks;
 - (ix) use the Service in an unlawful manner including, but not limited to, the infringement of any third party or Tech 2 Success Intellectual Property or use the Service in breach of any third party's privacy rights;
 - (x) use the Service for spamming or sending any unsolicited emails or information to any person or entity;
 - (xi) use the Service in a manner that interferes with or disrupts the provision of the Service by Tech 2 Success to third parties;
 - (xii) access or use the Service to circumvent or exceed the Services account limitations or requirements, or access or use the Service by any means other than through the interfaces that are provided by Tech 2 Success;
 - (xiii) use the Service to upload, store or transmit any malicious code or other similar harmful software such as viruses, malware or trojan horses;
 - (xiv) use the Service to make any transmission, display or publication of any material which is of a defamatory, offensive, abusive or menacing character to any other person;
 - (xv) engage in or permit any unauthorized distribution of any software or programming associated with the Service including, without limitation, placing Tech 2 Success's software or programming on any physical or virtual servers or mediums;
 - (xvi) use the Service for any transmission, display or publication of any material in breach of any law dealing with privacy or data protection in any jurisdiction;
 - (xvii) remove or obscure any copyright, patent, trademark, trade secret or similar proprietary notice affixed to any Technology, or the Service;
 - (xviii) use the Service or Technology for the purpose of developing a product or service, or helping another develop a product or service, which would obviate the need for the Service by You or others, or which would be similar to the Service or Technology;
 - (xix) use the Service or Technology for the purpose of bringing an Intellectual Property claim against Tech 2 Success;
 - (xx) cause the breach of, or interfere with, Tech 2 Success's agreements with third parties; or

(xxi) use or allow others to use the Technology or the Service for any purpose not expressly authorized in the Agreement

(b) Notification of Unauthorized or Breaching Use. You must notify Us immediately in the event that You become aware of any actual or attempted unauthorized access to or use of the Service or Technology in breach of this Agreement.

(c) Technology; Source Code. Except as expressly stated in the Agreement, no licenses or rights are granted by Tech 2 Success and nothing in the Agreement implies any license to Customer in the Technology, including, without limitation, the source code. The source code will not be accessible to any Customers or Users. Customer agrees that the underlying structure, sequence, organization and source code of the Technology are valuable trade secrets of Tech 2 Success, are confidential information, and shall remain strictly confidential.

2.3. Intellectual Property Ownership.

(a) Customer's Rights. Customer owns all right, title and interest in the Customer Data, and Customer Marks. Customer acknowledges and agrees that, in connection with the provision of the Services, Tech 2 Success may store and maintain Customer Data for a period of time consistent with Tech 2 Success's standard business processes for the Services. Customer grants Tech 2 Success a limited, revocable, non-exclusive, non-transferable (except in connection with an assignment of this Agreement), sublicensable license to use, access, store and process the Customer Data to the extent necessary to provide the Services and otherwise fulfill its rights and obligations under this Agreement. Customer grants Tech 2 Success a royalty-free, worldwide, perpetual, irrevocable, right to use, modify, distribute, publish, display, and incorporate into the Services any suggestions or feedback provided by Customer or any Users related to the operation or functionality of the Service. Following expiration or termination of this Agreement or Customer's account, Tech 2 Success may deactivate the applicable Customer's account and delete any data, including Customer Data, associated therewith. Prior to such deactivation, Customer may export the Customer Data. Upon such deactivation, Customer will no longer have rights to access or use the Services;

(b) Tech 2 Success's Rights. All rights, title and interest in and to the Technology, Service, Tech 2 Success Marks, (including without limitation all Intellectual Property rights in the Technology, Service, Tech 2 Success Marks, and all modifications, extensions, customizations, scripts or other derivative works thereof provided or developed by Tech 2 Success) are owned exclusively by Tech 2 Success. Except as provided in this Agreement, the rights granted to Customer do not convey any rights, express or implied, or ownership to the Technology, Service, Tech 2 Success Marks, or

any Intellectual Property rights thereto.

2.4 Documentation Licenses. Tech 2 Success grants Customer the non-exclusive right to use the Documentation solely in conjunction with Customer's use of the Service and Technology during the Term. Tech 2 Success and any applicable third parties reserve all rights in their respective Documentation.

2.5. Marks Licenses. Customer hereby grants to Tech 2 Success a limited, non-exclusive, non-assignable, non-transferable license, without right to sublicense, to use its Marks in connection with the Services, and for publicity, advertising, and marketing. Tech 2 Success may not alter Customer Marks in any manner, or use Customer Marks in any manner that may dilute, diminish, or otherwise damage Customer's rights and goodwill in its Marks. Any usage of Customer Marks by Tech 2 Success will be a reproduction of exact copies and all use of the Marks is subject to Customer's usage guidelines as revised from time to time and available from the Customer.

3. TERMS OF SERVICE

3.1. Access, Monitoring, Removal. Tech 2 Success may access, monitor, remove content within, or disable Customer access to the Technology, and/or Services if: (a) Tech 2 Success, in its reasonable discretion, believes it may incur liability because of Customer Data, (b) Tech 2 Success is required to do so by law, government order or other legal process, (c) Tech 2 Success determines in its sole discretion that it is necessary to enforce the terms of the Agreement, (d) Tech 2 Success, in its reasonable discretion, believes it is necessary to do so to support, manage, improve and protect the integrity of the Service, (e) Tech 2 Success, in its reasonable discretion, believes it is necessary to prevent illegal activity, uploading of virus infected files or questionable material, or (f) Customer breaches the Agreement. Tech 2 Success shall have no liability to Customer nor to any third party for any disabling of Customer's access or removal of Customer Data, and Customer shall remain liable for Fees and Additional Fees even during such disabling. Customer acknowledges that Tech 2 Success's right to access or monitor shall in no way be construed as an obligation by Tech 2 Success to monitor any Customer Data or to pre-screen Customer Data.

3.2 Changes to Service. Tech 2 Success may discontinue any non-material part of the Service, or Technology, in whole or in part, or modify any design, layout, features, functionality, tools or content of the Service, and/or Technology, at any time, for any reason or no reason, with or without notice to You (although Tech 2 Success has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such

modifications, discontinuance or deletions). Tech 2 Success will provide sixty (60) days' notice to you prior to discontinuing any material part of the Service, or Technology, in whole or in part, or modify any design, layout, features, functionality, tools or content of the Service, and/or Technology (although Tech 2 Success has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions). If any discontinuance or modification of a material part of the Services, and/or Technology materially reduces functionality and materially and adversely impacts Customer's substantive use of the Technology, or Services, as determined by Tech 2 Success, in its sole discretion, Customer's sole and exclusive remedy is to terminate the Agreement by providing at least thirty (30) days' prior written notice to Tech 2 Success. Any new features provided by Tech 2 Success which augment or enhance the current Service, and/or Technology, including the release of new tools or resources, updates and upgrades by Tech 2 Success, may result in Additional Fees.

3.3 Maintenance. Tech 2 Success may temporarily suspend the Technology, or any Services, for maintenance from time to time. Tech 2 Success will advise Customer (via email) in advance of maintenance, unless, in Tech 2 Success's sole discretion, it is impossible or impractical to do so.

3.4 Individual Account Holders. In order for a Customer to subscribe to the Service, each account must be assigned to an individual person or employee at a Customer. Tech 2 Success cannot and will not accept any subscriptions where accounts are registered or run through automated methods, unless explicitly authorized in advance by Tech 2 Success.

3.5. Signup. Customers must provide their full legal name, address, and a valid email address in order to complete the signup process.

3.6. Customer Responsibility for Users. Customers are responsible for ensuring that their Users comply with the terms of this Agreement and Customer is liable for breaches of the Agreement by the User.

3.7. Service Control. Except as otherwise expressly provided in this Agreement, Tech 2 Success has and will retain sole control over the operation, provision, maintenance, and management of the Technology, and the Service.

3.8 Transmission. Customer acknowledges that, by virtue of Customer's location or third parties acting on behalf of others aside from Tech 2 Success, Customer's

information and Customer's Data (personal or otherwise) may be transmitted to, from, and/or outside the United States.

4. CUSTOMER OBLIGATIONS.

4.1. Customer Data. Customer is responsible for providing all Customer Data in local languages and for providing buyer support in those local languages, unless expressly stated in a writing signed by the parties.

4.2. Load Restrictions. Customer acknowledges that load restrictions are prescribed in the Customer Agreement.

4.3 Customer's Privacy. As a condition to use the Service, Technology, and/or Tech 2 Success Services, Customer must:

- (a) have and enforce a privacy policy that complies with all applicable laws, rules and regulations, foreign law, treaties, and conventions, including without limitation the treatment of all personal information in accordance with Federal and state laws of the United States, and European and non-U.S. governing authorities to the extent that Customer sells into international marketplaces or otherwise is subject to the laws of those authorities;
- (b) secure Customer Data and not allow Customer Data to be disclosed except in accordance with Customer's privacy policy and all applicable laws, rules and regulations, foreign law, treaties, and conventions, and at least as restrictive as industry standards, but no less than reasonable care; and
- (c) ensure that Customer's privacy statement discloses the use of "cookies" or similar technologies that may be used by Customer or a third party (including Tech 2 Success) to track browsing and purchasing habits, and such use of "cookies" complies with all applicable laws, rules and regulations, foreign law, treaties, and conventions, including any opt in and opt out requirement.

4.4 Security Obligations. Customer is responsible for maintaining its Security Obligation. Customer must notify Tech 2 Success immediately in the event of loss of Customer's username or password. Customer must report any security breaches promptly to Tech 2 Success.

4.6. Customer Usage. Customer shall use commercially reasonable efforts to perform all acts and to make, execute and deliver all documents, data, and access credentials that Customer needs to perform or provide in order for Tech 2 Success to provide the Services.

5. FEES

5.1 Fee Payment. Fees and Additional Fees are due and payable per the terms of the Customer Agreement. If an automatic payment processing fails, Tech 2 Success may demand payment of the Fees, Additional Fees which are due, and any failed/returned payment fees, and temporarily disable the Customer's access to the Technology and/or Service until full payment is made.

5.2 Fee Changes. In its sole discretion, Tech 2 Success reserves the right to modify its Fees in any manner (Customer to be advised by electronic communication, such as email, upon thirty (30) days' notice except for direct third-party pass-through fees), to be effective at the start of a Renewal Term. To avoid liability for any such modified Fees during a Renewal Term, Customer must timely terminate the Agreement prior to the commencement of the next Renewal Term in accordance with the procedures set forth Section 12.8 of these Terms and Conditions. Any changes to third-party pass-through fees may be made at any time during the Initial Term or Renewal Term and the Customer shall pay such changed fees.

5.3 Effect of Breach. A failure to pay any Fees or Additional Fees when due is a material breach of this Agreement. If Customer fails to pay any Fees when due, then one hundred (100%) of the remaining balance due for the total of all Fees, including Additional Fees, under the remaining Term of the Agreement shall immediately become due. This section shall survive termination of the Agreement.

6. TERM AND TERMINATION

6.1 Term. The Effective Date and Term of the Agreement is set forth in the Customer Agreement.

6.2 Termination for Cause.

(a) Termination by Customer for Cause. Customer may terminate this Agreement other than at the end of a Term upon written notice (which shall expressly state all of the reasons for the termination under this provision in adequate detail) to Tech 2 Success as follows: (a) if Tech 2 Success has materially breached the Agreement and Tech 2 Success has not cured the breach within thirty (30) days after written notice of the breach (provided, however, that where Tech 2 Success is diligently pursuing the cure but cannot practicably cure within thirty (30) days, the foregoing will not apply so long as Tech 2 Success has commenced pursuing the cure within thirty (30) days of such

notice), (b) as may be stated in a writing signed by both of the parties, and (c) to the extent permitted by law, if Tech 2 Success suffers an Insolvency Event.

(b) Termination by Tech 2 Success for Cause. Tech 2 Success may terminate this Agreement other than at the end of a Term upon written notice to the Customer (a) upon Customer's failure to pay Fees or Additional Fees when due, (b) upon Customer's breach of Sections 2.2, 4, 7.2, 11.1, or 12 of these Terms and Conditions, or (c) upon Customer's material breach of any other provision of this Agreement.

6.3. Effect of Expiration or Termination. Upon expiration or termination of the Agreement, the License granted to Customer under this Agreement shall terminate immediately. The following sections of the Terms and Conditions survive its expiration or termination: 1, 2.3, 5 (solely to the extent that Fees are owed), 7 through 12 and any other provision or partial provision which by its nature would reasonably survive the termination of the Agreement.

7. PARTIES' REPRESENTATIONS AND WARRANTIES.

7.1 Tech 2 Success's Warranty and Limitations. Tech 2 Success represents and warrants that: it has the right to provide the Service as contemplated under this Agreement and that the provision of the Service in accordance with the terms of this Agreement, does not and will not infringe any Intellectual Property rights of third parties in locations where the Services are provided. Upon Tech 2 Success's determination, in its sole discretion, that the use of the Service infringes upon the rights of any third party, Tech 2 Success may, at its sole discretion and own cost and expense and without further liability or obligation to Customer, either: (i) procure the right for Customer to continue to license the Service, (ii) modify the Service in such a way that the use thereof does not infringe on the rights of third parties, or (iii) terminate the Agreement by notice to Customer and refund any Fees paid in advance for the license to use the Service during the remaining (on a pro rata basis) unused portion of the Term after the termination date, if any. Tech 2 Success shall have no liability or obligation with respect to any infringement claim if the infringement is caused by: (i) a modification made by Customer to an item, software, or Service supplied by Tech 2 Success or a modification made by Tech 2 Success at Customer's request, (ii) use of the Service, in an application or environment, or other than as intended under the Agreement, (iii) Customer's unauthorized use of the Services, (iv) Tech 2 Success acting in accordance with Customer's specifications or guidelines, or (v) the combination, operation or use of the Service, with other third party product(s) not supplied by Tech 2 Success.

7.1.2 DISCLAIMER OF WARRANTIES BY TECH 2 SUCCESS. EXCEPT AS EXPLICITLY PROVIDED IN THE AGREEMENT, THE SERVICE (INCLUDING ANY SOFTWARE AND DOCUMENTATION AND ANY ADDITIONAL SERVICES), AND THE TECHNOLOGY ARE PROVIDED HEREUNDER "AS IS" and "AS AVAILABLE." TECH 2 SUCCESS MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE TECHNOLOGY, SERVICE, ADDITIONAL SERVICES OR TECH 2 SUCCESS MARKS. EXCEPT AS EXPLICITLY PROVIDED IN THE AGREEMENT, TECH 2 SUCCESS DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE TECHNOLOGY, SERVICE, , ADDITIONAL SERVICES OR TECH 2 SUCCESS MARKS INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT THE TECHNOLOGY, SERVICE, OR ADDITIONAL SERVICES, WILL OPERATE SECURELY, TIMELY, UNINTERRUPTED, DEFECT-FREE OR ERROR-FREE OR THAT THE TECHNOLOGY, SERVICE, OR ADDITIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE TECHNOLOGY, SERVICE, DOCUMENTATION AND/OR ADDITIONAL SERVICES WILL BE CORRECTED OR THAT CUSTOMER'S USE OF THE TECHNOLOGY, SERVICE, OR ADDITIONAL SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS, RULES AND REGULATIONS, FOREIGN LAW, TREATIES, AND CONVENTIONS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE TECHNOLOGY, SERVICE, OR ADDITIONAL SERVICES ARE SUFFICIENT FOR CUSTOMER'S PURPOSES. TECH 2 SUCCESS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE TECHNOLOGY'S, OR SERVICE'S,'S LOCALIZATION TO A PARTICULAR MARKET INCLUDING WITHOUT LIMITATION LOCAL LANGUAGE, LOCAL SUPPORT OF TAXES, PAYMENT OR SHIPPING CARRIERS. TECH 2 SUCCESS MAKES NO WARRANTY REGARDING THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT OBTAINED THROUGH ANY MODULE OR FROM ANY NETWORK SITE, FLEX FEED DESTINATION, OR THIRD-PARTY INTERFACE.

7.2 Customer represents and warrants that:

(a) the Customer Data (i) is owned (or validly licensed for all uses required under the Agreement) by Customer or is in the public domain, (ii) does not constitute defamation, libel, or obscenity, (iii) does not result in any consumer fraud, product liability, or breach of contract, or cause injury to any third party and (iv) does not contain, and will not introduce into the Technology, and/or Service, any viruses, Trojan horses, worms, spyware, time bombs or other forms of malware, malicious code or computer

programming routines which may interfere with or disrupt the Services; (v) does not menace or harass any person or cause damage or injury to any person or property; (vi) does not involve the publication of any material that is false, (vii) does not violate privacy rights or promote bigotry, racism, hatred or harm; does not constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (viii) does not constitute an infringement of intellectual property or other proprietary rights; and (ix) does not otherwise violate applicable laws, ordinances or regulations;

(b) it will comply with all applicable laws, rules and regulations, foreign law, treaties, and conventions as updated from time to time related to Customer's performance of its obligations under the Agreement and activities that Customer undertakes in connection with its use of the Technology and/or Services including without limitation those governing the online sale of goods and services, those governing anti-bribery and anti-corruption, including without limitation the U.K. Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), respectively, and U.S. export controls and trade sanctions and economic embargoes; and

(c) it will not engage in the activities prohibited in this Agreement.

8. CUSTOMER LIABILITY, ASSUMED RISKS, AND TECH 2 SUCCESS LIABILITY

8.1 Except as otherwise expressly stated in this Agreement, Customer agrees to use the Service (including Additional Services), and the Technology at Customer's own risk. Tech 2 Success shall not be liable for any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, unless expressly stated otherwise in the Agreement.

8.2 Tech 2 Success is not responsible for acts, services or content posted or provided by persons or entities other than Tech 2 Success, for Customer's exposure to such content, or for actions Customer takes in reliance on that content. Tech 2 Success has no liability to Customer for failures based on services not provided by Tech 2 Success.

8.3 Customer is solely responsible for all selection of parties with whom Customer does business, and for terms and conditions of Customer's agreements with those parties and with network sites and flex feed destinations.

8.4 Tech 2 Success has no responsibility for the quality or availability of goods or services provided by Customer, any of Customer's customers' ability to pay, any third

party's compliance with the terms of a transaction, or for any injury, loss or damage caused or alleged to have been caused by the goods or services sold by Customer through use of the Services or Technology. Where the Tech 2 Success provides links to other sites and resources provided by third parties, these links are provided for information only and such links should not be interpreted as approval by Us of those linked websites, and Tech 2 Success shall have no responsibility for any use of such links.

8.5 Tech 2 Success shall not, under any circumstances, be liable for any loss, delay, or interception of Customer Data which is caused by third parties or Customer, whether that be through general use, hacking or server failure, or any loss, corruption, hacking or failure of the daily backups, disabling or removal of Customer Data or otherwise. Customer acknowledges that: (a) the technical processing and transmission of Customer Data is fundamentally necessary to use of the Service; (b) Customer Data will be subject to transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Tech 2 Success; and (c) Customer acknowledges that Customer Data may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means.

8.6 Tech 2 Success shall not be liable for any loss or damage caused by Customer's failure to comply with the Security Obligation.

8.7 Customer is responsible for any breaches of its Security Obligations or of security that occur through Customer's access or login credentials including as a result of Customer's sharing such access or login credentials, or failure by Customer to adequately safeguard the same.

8.8 Tech 2 Success shall not be liable for the functionality, availability, security or use, and/or any losses in connection with the use of third-party applications, websites and services, whether in connection with the Integration or otherwise. Customer uses such third-party applications, websites, and/or services at its own risk.

8.9 In addition to any other rights afforded to us under this Agreement, Tech 2 Success shall not be liable for any breach of this Agreement by Customer.

9. LIABILITY LIMITATIONS

UNDER NO CIRCUMSTANCES WILL TECH 2 SUCCESS BE LIABLE FOR: LOSS OF REVENUE; LOSS OF DATA; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS

OF CONTRACTS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, OR CONSEQUENTIAL OR INDIRECT LOSS OR SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING, FOR THE AVOIDANCE OF DOUBT, WHERE SUCH LOSS OR DAMAGE IS ALSO OF A CATEGORY OF LOSS OR DAMAGE ALREADY LISTED), WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY ARISING OUT OF ANY BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY CONDITIONS OR OTHER TERM, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OTHER LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. TECH 2 SUCCESS IS NOT LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR THE FAILURE OF A PERSON TO ENTER INTO A TRANSACTION BY MEANS OF CUSTOMER'S USE OF THE SERVICES, TECHNOLOGY, ANY MODULE (OR OTHER SOFTWARE LICENSED) OR THE SERVICES.

10. LIABILITY CAP

NOTWITHSTANDING THE FORM OR NATURE (E.G., CONTRACT, TORT, STATUTORY, COMMON LAW, DIRECT LIABILITY OR INDEMNIFICATION, INFRINGEMENT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT BY CUSTOMER OR THIRD PARTY, IN NO EVENT WILL TECH 2 SUCCESS BE LIABLE FOR DAMAGES, EXPENSES, COSTS, LIABILITIES, SUITS, CLAIMS, RESTITUTION OR LOSSES TO CUSTOMER AND/OR THIRD PARTIES, THAT EXCEED, IN THE AGGREGATE, ONE MILLION DOLLARS (\$1,000,000) ("LIABILITY CAP"). Such Liability Cap is a maximum and shall not be used, control or be considered if: (i) Tech 2 Success's liability or obligations are in amounts which would be or are below the Liability Cap either pursuant to this Agreement or otherwise or (ii) if Tech 2 Success has no liability either otherwise or pursuant to disclaimers in this Agreement including, but not limited to, sections 7.1.2, 8 and 9.

11. INDEMNIFICATION.

11.1. Customer's Indemnification. Subject to Section 11.3 (Requirements of Indemnification), Customer shall indemnify, defend and hold harmless Tech 2 Success and its Representatives from and against all obligations, actions, suits, claims, demands, settlements, judgments, damages, losses, liabilities, costs and expenses (including reasonable attorney's fees), of whatever type or nature incurred by Tech 2 Success by reason of a third party claim or assertion brought against Tech 2 Success

or its Representatives arising out of or related to: (a) Customer's failure to comply with or breach of the Agreement, (b) Customer Data, Customer Marks, Customer's products or services, including without limitation Intellectual Property infringement claims and product liability claims, and/or (c) any negligence or willful misconduct of Customer or its Representatives.

11.2. Tech 2 Success Indemnification. Subject to Section 11.3 (Requirements of Indemnification), Tech 2 Success shall indemnify, defend and hold harmless Customer and its Representatives in the aggregate lesser amount of (i) the Liability Cap, (ii) Tech 2 Success' liability or obligations which are in amounts which would be or are below the Liability Cap either pursuant to this Agreement or otherwise, or (iii) if Tech 2 Success has no liability either otherwise or pursuant to disclaimers in this Agreement including, but not limited to, sections 7.1.2, 8 and 9, from and against all obligations, actions, suits, claims, demands, settlements, judgments, damages, losses, liabilities, costs and expenses (including reasonable attorney's fees) of whatever type or nature which are incurred by Customer by reason of a third party claim or assertion brought against Customer and/or its Representatives, directly caused by any gross negligence or willful misconduct of Tech 2 Success or its Representatives in the course of providing the Services to Customer.

11.3. Requirements of Indemnification. In order for the indemnification obligations of the indemnifying parties to apply, the indemnified parties must promptly provide the indemnifying party with notice in writing of any claim, promptly tender the control of the defense and settlement of any claim to the indemnifying party (at the indemnifying party's expense and with indemnifying party's choice of counsel), and cooperate fully with the indemnifying party (at the indemnifying party's request and expense) in defending or settling the claim including without limitation providing any information or materials necessary for the defense. The indemnifying party shall only be liable to the indemnified party for the amount of damages as determined in a final, non-appealable order of a court of competent jurisdiction or paid by way of settlement, but the indemnifying party shall have no liability for any settlement made by an indemnified party without the indemnifying party's prior written consent, which may not be unreasonably withheld. The indemnifying party will not enter into any settlement or compromise of any claim without the indemnified party's prior consent if the settlement would require admission of fault or payment by the indemnified party.

12 GENERAL PROVISIONS.

12.1 Assignment. Customer may not assign the Agreement without Tech 2 Success's prior written consent, which shall not be unreasonably withheld.

12.2 Relationship of the Parties. The parties are independent contractors. This Agreement does not create any joint venture, partnership, agency or employment relationship between the parties.

12.3 Entire Agreement. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or collateral negotiations, proposals, agreements and understandings, whether oral or written, relating to the subject matter of the Agreement. Any representation, warranty, course of dealing or trade usage not expressly stated in the Agreement shall not be binding. Except as otherwise stated in the Agreement, any amendments to the Agreement must be in writing and executed by the parties. To the extent the terms of a subsequent writing signed by the parties' conflict with the terms of the Agreement, the terms of the subsequent writing control.

12.4 Severance. If any provision of the Agreement is held or made invalid or unenforceable for any reason, the invalidity will not affect the remainder of the Agreement and the severed provision shall be interpreted to be consistent with the Agreement.

12.5 No Waiver. The failure of either party at any time to enforce or require performance of any provision shall not waive or affect such party's right to enforce any such provision at a later time.

12.6 Exhibits. All Exhibits, Schedules and other addenda referenced in the Agreement are incorporated into the Agreement by reference.

12.7 No Reliance. Each party represents and warrants to the other party that it is NOT relying on any promises, guarantees and/or assurances of the other party that are NOT otherwise expressly contained in the Agreement.

12.8 Notice. Except as otherwise explicitly provided in the Agreement, any notice required or permitted by the Agreement shall be in writing and deemed delivered if delivered (a) by personal delivery when delivered, (b) by overnight courier upon written verification of receipt, (c) by certified or registered mail, return receipt requested, upon verification of receipt, or (d) upon transmission via email to a properly addressed email address as provided in the Customer Agreement. Notices must be sent to the contacts and address in the Agreement, or any new address provided by the permitted notice methods.

12.9. Governing Law, **Jury Trial Waiver** and Dispute Resolution. The laws of the State of New York, without regard to its conflicts of laws provisions, govern the Agreement. Each party irrevocably and unconditionally consents and submits to the exclusive jurisdiction of the applicable courts located in Queens, New York, for purposes of any action, suit or proceeding arising out of or relating to the Agreement **THE CUSTOMER HEREBY WAIVES, AND COVENANTS THAT THE CUSTOMER WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE SUBJECT MATTER HEREOF OR ANY DOCUMENT RELATING HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING OR WHETHER IN CONTRACT OR IN TORT OR OTHERWISE.** THE CUSTOMER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING ALL THE TERMS OF THIS AGREEMENT, INCLUDING THIS SECTION, THAT IT FULLY UNDERSTANDS THE TERMS HEREOF, THE CONTENT AND EFFECT, AND THAT IT VOLUNTARILY AND KNOWINGLY AGREES TO THE TERMS HEREOF, AND THAT IN THE EVENT OF ANY AMBIGUITY IN THIS AGREEMENT, ANY PRESUMPTION THAT SUCH AMBIGUITY SHALL BE CONSTRUED AGAINST THE DRAFTER OF THE AGREEMENT SHALL NOT APPLY TO THIS AGREEMENT.

12.10. Force Majeure. Neither party shall be liable for failure to perform, or the delay in performance of, any of its obligations under the Agreement other than payment if, and to the extent that, the failure or delay is caused by events beyond its reasonable control including without limitation acts of the public enemy or governmental body in its sovereign or contractual capacity, war, fire, floods, strikes, epidemics, pandemics, quarantine restrictions, unavailability of the Internet, civil unrest or riots, acts of terrorism, transportation delays, freight embargoes or unusually severe weather. The affected party shall use commercially reasonable efforts to avoid or remove the causes of non-performance or delay, and shall continue performance whenever the causes are removed.

12.11 Captions. Section headings are for reference purposes only and in no way affect the meaning or interpretation of the Agreement.