

# RHIZE TECH LLC

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is between **Rhize Tech LLC**, a Colorado limited liability company “**Rhize Tech**”), and you (“**Client**”), (individually, “**Party**”), (together, “**Parties**”), and limits our liabilities for any services or products that we provide to you. Please read these terms carefully and keep a copy for your records.

1.

1) **SCOPE OF SERVICES; SOW.** This Agreement governs all services that Rhize Tech performs or provides to Client (collectively, the “**Services**”). The Services will be described in one or more proposals or statements of work (each, an “**SOW**”). Once an SOW is agreed upon by the Parties (either by signing it or by electronic acceptance), the SOW will become a part of, and governed under, the terms of this Agreement. If there is a material difference between the language in an SOW and the language in this Agreement, then the language of the SOW will control, except as it relates to warranties, limitations of liability, or termination of this Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement.

2) **GENERAL REQUIREMENTS.**

a) *System.* For the purposes of this Agreement, “*System*” means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW Client agrees to refrain from modifying or moving the System, or installing software on the System, unless Rhize Tech expressly authorizes such activity.

b) *Requirements.* At all times, all software on the System must be genuine and licensed, and Client agrees to provide Rhize Tech with proof of such licensing upon request. If Rhize Tech requires implementation of certain minimum hardware or software requirements in a SOW (“*Minimum Requirements*”), Client shall agree to do so as an ongoing requirement of the provision of Rhize Tech’s Services.

c) *Maintenance; Updates.* If patches and other software-related maintenance updates (“*Updates*”) are provided under a SOW, Rhize Tech will install the Updates only if Rhize Tech has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. Rhize Tech will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer’s or applicable vendor’s instructions.

d) *Third Party Support.* If, in Rhize Tech’s discretion, a hardware or software issue requires vendor or OEM support, Rhize Tech may contact the vendor or OEM (as applicable) on Client’s behalf and pass through to Client, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance to, or do exceed \$100, Rhize Tech will obtain Client’s permission before incurring such expenses on Client’s behalf unless exigent circumstances require otherwise.

e) *Advice; Instructions.* From time to time, Rhize Tech may provide Client with specific advice and directions related to the provision of Services or the maintenance or administration of the System. (For example, advice or directions may include increasing the System’s server or hard drive capacity or replacing obsolete equipment). Client agrees to promptly follow and implement any directions provided to Client related to the Services which, depending on the situation, may require Client to make additional purchases or investments in the System in which the System is maintained, at Client’s sole cost. Rhize Tech is not be responsible for any problems or issues (such as System downtime or security-related issues) caused by Client’s failure to promptly follow Rhize Tech’s advice or directions. If Client’s failure to follow or implement Rhize Tech’s advice renders part or all of the Services economically or technically unreasonable to provide in Rhize Tech’s discretion, then Rhize Tech may terminate the applicable SOW for cause by providing notice of termination to Client. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by Client’s failure to follow Rhize Tech’s advice or directions, or Client’s unauthorized modification of the System, as well as any services required to bring the System up to or maintain the Minimum Requirements, are not covered under any SOW and will be out-of-scope.

f) *Prioritization.* Unless otherwise stated in a SOW, all Services will be performed on a schedule, and in a prioritized manner, as determined by Rhize Tech.

g) *Authorized Contact(s).* Rhize Tech will be entitled to rely on any directions or consent provided by Client’s personnel or representatives who are authorized in a SOW to provide such directions or consent (“*Authorized Contacts*”). If no Authorized Contact is identified in an applicable SOW, then the Authorized Contact will be the person(s): (i) who signed this Agreement; and/or (ii) who signed the applicable SOW. If Client desires to change its Authorized Contact(s), please notify Rhize Tech of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

h) *Insurance*. If Client is supplied with Rhize Tech Equipment (defined below), Client agrees to acquire and maintain, at Client's sole cost, insurance for the full replacement value of that equipment. Rhize Tech must be listed as an additional insured on any policy acquired and maintained by Client under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to Rhize Tech. Upon Rhize Tech's request, Client agrees to provide proof of insurance to Rhize Tech, including proof of payment of any applicable premiums or other amounts due under the insurance policy.

3) **FEES; PAYMENT**. Client agrees to pay the fees described in each SOW. If the SOW does not include a fee schedule, then Client agrees to pay us on an hourly basis pursuant to our then-current standard hourly rate schedule.

a) *Schedule*. Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the provision of the Services. If applicable, payments made by ACH will be deducted from Client's designated bank account on the first business day of the month in which the Services are to be provided.

b) *Nonpayment*. Fees that remain unpaid for more than fifteen (15) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. Rhize Tech reserves the right, but not the obligation, to suspend part or all of the Services without prior notice to Client in the event that any portion of undisputed fees are not timely received by Rhize Tech. Notice of disputes related to fees must be received by Rhize Tech within sixty (60) days after the applicable Service is rendered or the date on which Client pays an invoice, whichever is later; otherwise, Client waives its right to dispute the fee thereafter. A reconnection fee may be charged to Client if Rhize Tech suspends Services due to nonpayment. Time is of the essence in the performance of all payment obligations by Client.

4) **ACCESS**. Client hereby grants to Rhize Tech the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the System, on a 24x7x365 basis, for the purpose of enabling the provision of Services. It is Client's responsibility to secure, at Client's own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for Rhize Tech to provide Services to the System and, if applicable, at Client's designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by Client at all times. Rhize Tech shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.

5) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY**.

a) *Hardware / Software Purchased Through Rhize Tech*. Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through Rhize Tech ("Third Party Products") are nonrefundable once the applicable purchase order is placed in Rhize Tech's queue for delivery. Rhize Tech will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to Client, but shall have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and Rhize Tech shall not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third Party Products are provided "as is" and without any warranty whatsoever as between Rhize Tech and Client (including but not limited to implied warranties).

b) *Warranty Application*. Notwithstanding any provision to the contrary in this Agreement, any warranty offered and provided directly by Rhize Tech for any product shall be deemed null and void if the applicable product is: (i) altered, modified or repaired by persons other than Rhize Tech, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by Rhize Tech; (ii) misused, abused, or not operated in accordance with the specifications of the applicable manufacturer or creator of the hardware or product; or, (iii) subjected to improper site preparation or maintenance by persons other than Rhize Tech or persons approved or designated by Rhize Tech.

c) *Liability Limitations*. **THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT.** CLIENT ACKNOWLEDGES AND AGREES THAT RHIZE TECH WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS LOST REVENUE, LOSS OF PROFITS (EXCEPT FOR FEES DUE AND OWING TO RHIZE TECH), SAVINGS, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, OR FOR ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY SOW, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; HOWEVER,

REASONABLE ATTORNEYS' FEES AWARDED TO A PREVAILING PARTY (AS DESCRIBED BELOW) SHALL NOT BE LIMITED BY THE FOREGOING LIMITATION. EXCEPT FOR CLIENT'S PAYMENT OBLIGATIONS AND CLIENT'S INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS AGREEMENT, A RESPONSIBLE PARTY'S ("RESPONSIBLE PARTY'S") AGGREGATE LIABILITY TO THE OTHER PARTY ("AGGRIEVED PARTY") FOR DAMAGES FROM ANY AND ALL CLAIMS OR CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY SUCH ACTION(S), THAT ARISE FROM OR RELATE TO THIS AGREEMENT (COLLECTIVELY, "CLAIMS"), WHETHER IN CONTRACT, TORT, INDEMNIFICATION, OR NEGLIGENCE, SHALL BE LIMITED SOLELY TO THE AMOUNT OF THE AGGRIEVED PARTY'S ACTUAL AND DIRECT DAMAGES, NOT TO EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO RHIZE TECH FOR THE SPECIFIC SERVICE UPON WHICH THE APPLICABLE CLAIM(S) IS/ARE BASED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT THAT THE CLAIMS ARE CAUSED BY A RESPONSIBLE PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE. SIMILARLY, A RESPONSIBLE PARTY'S LIABILITY OBLIGATION SHALL BE REDUCED TO THE EXTENT THAT A CLAIM IS CAUSED BY, OR THE RESULT OF, THE AGGRIEVED PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR THE CRIMINAL ACTIONS OF THIRD PARTIES.

- 6) **INDEMNIFICATION.** Each Party (an "Indemnifying Party") agrees to indemnify, defend and hold the other Party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.
- 7) **TERM; TERMINATION.** This Agreement begins on the Effective Date and continues until terminated as described in this Agreement. Each SOW will have its own term and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other SOW between the Parties.
- a) *Termination Without Cause.* Unless otherwise agreed by the Parties in writing or otherwise permitted under this Agreement, no Party shall be capable of terminating this Agreement without cause if, on the date of termination, a SOW is in progress. In addition, no Party shall be capable of terminating an SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if Rhize Tech decides to cease providing a service to all of its customers generally, then Rhize Tech may terminate an applicable SOW without cause by providing no less than one hundred and twenty (120) days prior written notice to Client. If Client terminates a SOW without cause and without Rhize Tech's consent, Client shall be responsible for paying the termination fee described in Section 7(b), below. If no SOW is in progress, then either Party may terminate this Agreement without cause by providing the other Party with five (5) days prior written notice.
- b) *Termination For Cause.* In the event that one Party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that: (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing; and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If Rhize Tech terminates this Agreement or any SOW For Cause, or if Client terminates any SOW without cause prior to such SOW's expiration date, then Rhize Tech shall be entitled to receive, and Client hereby agree to pay to Rhize Tech: (i) all amounts that would have been payable to Rhize Tech had this Agreement or SOW (as applicable) remained in effect; and (ii) all expenses incurred by Rhize Tech in its preparation and provision of the Services to Client, e.g., licensing fees incurred by Rhize Tech, non-mitigatable hard costs, etc. If Client terminates this Agreement or a SOW For Cause, then Client will be responsible for paying only for those Services that were properly delivered and accepted by Client up to the effective date of termination.
- c) *Client Activity As A Basis for Termination.* In the event that: (i) any Client-supplied equipment, hardware or software, or any action undertaken by Client, causes the System or any part of the System to malfunction consequently requiring remediation by Rhize Tech on three (3) occasions or more ("System Malfunction"), and if under those circumstances, Client fails to remedy, repair or replace the System Malfunction as directed by Rhize Tech (or Client fails to cease the activity causing the System Malfunction, as applicable); or (ii) Client or any of its staff, personnel, contractors, or representatives engage in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the

Services to Client, then Rhize Tech will have the right, upon ten (10) days prior written notice to Client, to terminate this Agreement or the applicable SOW For Cause or, at Rhize Tech's discretion and if applicable, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

- d) *Consent.* The Parties may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- e) *Equipment / Software Removal.* Upon termination of this Agreement or applicable SOW for any reason, Client will provide Rhize Tech with access, during normal business hours, to Client's premises or any other locations at which Rhize Tech-owned equipment or software (collectively, "Rhize Tech Equipment") is located to enable removal of all Rhize Tech Equipment from the premises. If Client fails or refuses to grant Rhize Tech access as described herein, or if any of the Rhize Tech Equipment is missing, broken or damaged (normal wear and tear excepted) or any Rhize Tech-supplied software is missing, Rhize Tech may, in its sole discretion, invoice Client for, and Client hereby agrees to pay immediately, the full replacement value of any and all missing or damaged items.
- f) *Repayment of Discounted Fees.* If Rhize Tech provides Client with a discount under a SOW based on Client's commitment to retain Rhize Tech's Services for a minimum term and, under that scenario, Rhize Tech terminates the SOW For Cause or Client terminates the SOW without cause, then in addition to any other remedy available to Rhize Tech, Client agrees to immediately pay Rhize Tech the difference between the discounted rates and the non-discounted rates under that SOW, calculated from the effective date of the SOW through the date of termination.
- g) *Transition; Deletion of Data.* In the event that Client requests Rhize Tech's assistance to transition away from its Services, Rhize Tech shall provide such assistance if: (i) all fees due and owing to Rhize Tech are paid to Rhize Tech in full prior to Rhize Tech providing its assistance to Client; and (ii) Client agrees to pay Rhize Tech's then-current hourly rate for such assistance, with up-front amounts to be paid to us as circumstances dictate. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, Rhize Tech will have no obligation to store or maintain any Client data in its possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** Rhize Tech shall be held harmless for, and indemnified by Client against, any and all claims, costs, fees, or expenses incurred by either Party that arise from, or are related to, Rhize Tech's deletion of Client data beyond the time frames described in this Section 7(g).
- h) *License Fees.* Client acknowledges and agrees that licenses obtained by Rhize Tech for Client are subject to third-party terms and conditions, such as those of Microsoft or the vendor of such licenses. As such, Client is obligated to pay for any licenses for the duration of the license term, as third-party vendors do not permit cancellation or termination prior to the end of the license term.

## 8) RESPONSE; REPORTING.

- a) *Response.* Rhize Tech warrants and represents that it will provide the Services, and respond to any notification received by Rhize Tech of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for: (i) those periods of time covered under the Onboarding Exception (defined below); (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below); (iii) periods in which Rhize Tech is required to suspend the Services to protect the security or integrity of Client's System or Rhize Tech's equipment or network; or (iv) delays caused by a Force Majeure event.
  - i) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by Rhize Tech but which will not occur between the hours of 8:00 AM and 5:00 PM MST (or local to Client's time zone, as applicable), Monday through Friday without Client's authorization or unless exigent circumstances exist, during which time Rhize Tech will perform scheduled maintenance or adjustments to its network. Rhize Tech will use best efforts to provide Client with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
  - ii) Client-Side Downtime. Rhize Tech shall not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by Client's actions or omissions ("Client-Side Downtime").
  - iii) Vendor-Side Downtime. Rhize Tech shall not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or "upstream" service or product vendors.
  - iv) Remedies; Limitations. Except for the Onboarding Exception, if Rhize Tech fails to meet its service level commitment in a given calendar month and if, under such circumstances, Rhize Tech's failure is not due to Client's activities, omissions, or inactivity, then upon receiving Client's written request for credit, Rhize Tech shall issue Client a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by Client no later than forty-five (45) days after Client either: (i) reports the outage or service failure to Rhize Tech; or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this

paragraph and in Section 7(b) are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to Client for our failure to meet any service level commitment during the term of this Agreement.

b) *Onboarding Exception.* Client acknowledges and agrees that for the first thirty (30) days following the commencement date of a SOW, the Response Time commitments described in this Agreement will not apply to Rhize Tech, it being understood that there may be unanticipated downtime or delays due to Rhize Tech's initial startup activities with Client (the "Onboarding Exception").

#### 9) **CONFIDENTIALITY.**

a) *Defined.* For the purposes of this Agreement, Confidential Information means any and all non-public information provided to Rhize Tech by Client, including but not limited to customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of Rhize Tech; (ii) was developed independently by Rhize Tech; or (iii) is or was lawfully and independently provided to Rhize Tech prior to disclosure by Client, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

b) *Use.* Rhize Tech shall keep Client's Confidential Information confidential and will not use or disclose such information to any third party for any purpose except: (i) as expressly authorized by you in writing; or (ii) as needed to fulfill Rhize Tech's obligations under this Agreement. If Rhize Tech is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then Rhize Tech shall ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section 9.

c) *Due Care.* Rhize Tech shall exercise the same degree of care with respect to the Confidential Information Rhize Tech receives from Client as we normally take to safeguard and preserve Rhize Tech's own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

d) *Compelled Disclosure.* If Rhize Tech is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, Rhize Tech shall immediately notify Client in writing of such requirement so that Client may seek a protective order or other appropriate remedy and/or waive our compliance with the provisions of this Section 9. Rhize Tech will use its best efforts, at Client's expense, to obtain or assist Client in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Rhize Tech may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that Rhize Tech has been advised, by written opinion from its counsel, that Rhize Tech is legally compelled to disclose.

#### 10) **ADDITIONAL TERMS; THIRD PARTY SERVICES.**

a) *EULAs.* Portions of the Services may require Client to accept the terms of one or more third party end user license agreements ("EULAs"). If the acceptance of a EULA is required in order to provide the Services to Client, Client hereby grants Rhize Tech permission to accept the EULA on Client's behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. Client agrees to be bound by the terms of such EULAs, and will look only to the applicable third party provider for the enforcement of the terms of such EULAs. If, while providing the Services, Rhize Tech is required to comply with a third-party EULA and the third party EULA is modified or amended, Rhize Tech reserves the right to modify or amend any applicable SOW to ensure Rhize Tech's continued compliance with the terms of the third party EULA.

b) *Third Party Services.* Portions of the Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as data hosting services, domain registration services, and data backup/recovery services ("Third Party Service"). Not all Third Party Services may be expressly identified as such in a SOW, and at all times Rhize Tech reserves the right to utilize the services of any third party provider or to change third party providers in its sole discretion so long as the change does not materially diminish the Services to be provided to Client under a SOW. Rhize Tech will not be responsible, and will be held harmless by Client, for the failure of any third-party provider or manufacturer to provide Third Party Services to Rhize Tech or to Client.

c) *Data Loss.* Under no circumstances will Rhize Tech be responsible for any data lost, corrupted or rendered unreadable due to: (i) communication and/or transmissions errors or related failures; (ii) equipment failures (including but not limited to silent hardware corruption-related issues); or (iii) our failure to backup or secure data from portions of the System that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, Rhize Tech does not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.

d) *BYOD.* Client hereby represents and warrants that Rhize Tech is authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that

are connected to the System, regardless of whether such device(s) are owned, leased or otherwise controlled by Client. Rhize Tech will not be obligated to provide the Services to any mobile device or temporarily connected device unless that obligation is specifically stated in an applicable SOW. Further, unless otherwise stated in a SOW, devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the System.

- 11) **OWNERSHIP.** Each Party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such Party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party.
- 12) **ARBITRATION.** Any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration before one arbitrator to be mutually agreed upon by the Parties. The arbitration shall be administered and conducted by JAMS pursuant to its Streamlined Arbitration Rules and Procedures (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the Parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in the venue described in Section 13, below. The arbitrator shall determine the scope of discovery in the matter, however, it is the intent of the Parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the Parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.
- 13) **MISCELLANEOUS.**
- a) *Disclosure.* Client warrants and represents that Client knows of no law or regulation governing its business that would impede or restrict Rhize Tech’s provision of Services, or that would require Rhize Tech to register with, or report its provision of the Services (or the results thereof), to any government or regulatory authority. Similarly, Client represents that its business is not subject to the provisions of the Federal Acquisition Regulation (FAR), or any similar regulatory acquisition process or procedure. Client agrees to promptly notify Rhize Tech if Client becomes subject to any of the foregoing which, in Rhize Tech’s reasonable discretion, may require a modification to the scope or pricing of the Services.
- b) *Assignment.* Neither this Agreement nor any SOW may be assigned or transferred by a Party without the prior written consent of the other Party. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, Rhize Tech may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of its business, or any other transaction in which ownership of more than fifty percent (50%) of Rhize Tech’s voting securities are transferred; provided, however, that such assignee expressly assumes Rhize Tech’s obligations hereunder.
- c) *Amendment.* Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the Parties unless such amendment or modification is originated in writing by Rhize Tech, specifically refers to this Agreement, and is accepted in writing by one of Client’s Authorized Contacts.
- d) *Time Limitations.* The Parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- e) *Severability.* If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.
- f) *Other Terms.* Rhize Tech shall not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by Client unless such terms or conditions are incorporated into a duly executed SOW, or unless Rhize Tech has expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.
- g) *No Waiver.* The failure of either Party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.

h) *Merger*. This Agreement, together with any and all SOWs, sets forth the entire understanding of the Parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided and will not modify this Agreement or provide binding contractual language between the Parties. Rhize Tech shall not be bound by any of its agents' or employees' representations, promises or inducements if they are not explicitly set forth in this Agreement.

i) *Force Majeure*. Neither Party will be liable to the other Party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, epidemics, pandemics, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God (each, a "Force Majeure" event).

j) *Non-Solicitation*. Client acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, Client will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any Rhize Tech employees or subcontractors to discontinue or reduce the scope of their business relationship with Rhize Tech, or recruit, solicit or otherwise influence any employee or agent of Rhize Tech to discontinue such employment or agency relationship with Rhize Tech. In the event that Client violates the terms of the restrictive covenants in this Section 13(j), Client acknowledges and agrees that the damages to Rhize Tech would be difficult or impracticable to determine, and Client agrees that in such event, as Rhize Tech's sole and exclusive remedy therefore, Client shall pay Rhize Tech, as liquidated damages and not as a penalty, an amount equal to fifty percent (50%) percent of that employee or subcontractor's first year of base salary with Client (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to any Rhize Tech employees by Client will be deemed to be a material breach of this Agreement, in which event Rhize Tech shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.

k) *Survival*. The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.

l) *Insurance*. Rhize Tech and Client shall each maintain, at each Party's own expense, all insurance reasonably required in connection with this Agreement or any SOW, including but not limited to, workers' compensation and general liability. Rhize Tech agrees to maintain a general liability policy with a limit not less than \$1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party by certified mail.

m) *Governing Law; Venue*. This Agreement and any SOW shall be governed by, and construed according to, the laws of the state of Colorado. Client hereby irrevocably consents to the exclusive jurisdiction and venue of the state courts in Eagle County, Colorado, for any and all claims and causes of action arising from or related to this Agreement.

n) *No Third Party Beneficiaries*. The Parties have entered into this Agreement solely for their own benefit. The Parties intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

o) *Usage in Trade*. It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

p) *Business Day*. If any time period set forth in this Agreement expires on a day other than a business day in Eagle County, Colorado, such period will be extended to and through the next succeeding business day in Eagle County, Colorado.

q) *Notices; Writing Requirement*. Where notice is required to be provided to a Party under this Agreement, such notice may be sent by U.S. mail, overnight courier, fax or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the "cc" portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from Client to Rhize Tech regarding: (a) any alleged breach of this Agreement by Rhize Tech;(b) any request for indemnification; or (c) any notice of termination of this Agreement or any SOW, must be delivered to us either by U.S. mail or fax, unless such

requirement is expressly and specifically waived by Rhize Tech. All electronic documents and communications between the Parties satisfies any "writing" requirement under this Agreement.

r) *Independent Contractor.* Rhize Tech is an independent contractor, and is not Client's employer, employee, partner, joint venturer, or affiliate.

s) *Subcontractors.* Generally, Rhize Tech does not utilize subcontractors; however, should Rhize Tech elect to subcontract a portion of the Services, Rhize Tech shall guarantee all work performed by any designated subcontractor as if Rhize Tech performed the subcontracted work.

t) *Data Access/Storage.* Depending on the Service provided, a portion of Client's data may occasionally be accessed or stored on secure servers located outside of the United States. Client agrees to notify Rhize Tech if its company requires us to modify our standard access or storage procedures.

u) *Counterparts.* The Parties intend to sign and deliver this Agreement and any SOW in any number of counterparts, and each of which shall be deemed an original and all of which, when taken together, are to be deemed one agreement. Each Party may sign and deliver this Agreement (or any SOW) electronically (*e.g.*, by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party's signature for all purposes.

Last Updated: February 2024