

Terms And Conditions

Last Revised: July 4, 2023

This Master Services Agreement (“Agreement”) is a legal agreement between Web Wonks (US) Inc. (“Web Wonks”, “We”, or “Our”) and Customer (also referred to as “You” or “Your”), governing Customer’s access to and use of the Web Wonks’ Services (also referred to as “Services”). If Customer is using the Services , then “Customer” includes Customer, and Customer represents and warrants that the individual accepting this Agreement is an authorized representative of Customer with the authority to bind the Customer to this Agreement.

By accepting this Agreement by executing a Quote, Customer acknowledges that: (a) Customer has read and understood this Agreement and (b) Customer is legally competent to enter into and agree to this Agreement. If Customer does not execute a Quote, Customer may not access or use the Services. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION AND A CLASS ACTION WAIVER. BY ACCESSING OR USING ANY OF THE SERVICES, CUSTOMER AGREES TO THESE PROVISIONS.

1. DEFINITIONS

- a. “Additional Fees” means any amounts payable pursuant to Sections 5b, 5c, and 5d.
- b. “Business Day” means any day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the United States of America.
- c. “Confidential Information” means any information that is treated as confidential by a Party, including but not limited to all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential". Confidential Information shall not include

information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

- d. "Connected Services" means the Services and such other tasks agreed to be provided between You and Web Wonks on an ongoing basis until terminated by either Party.
- e. "Customer Materials" any documents, data, know-how, methodologies, software, and other materials provided to Web Wonks by Customer or to which Customer provides Web Wonks has access.
- f. "Deliverables" means all documents, work product, and other materials that are delivered to Customer hereunder or prepared by or on behalf of Web Wonks in the course of performing the Services under the Agreement (including, but not limited to, under any Quote and/or Project Plan). Deliverables do not include Reserved Agency Material or Third-Party Materials.
- g. "DHK Services" means a data health kit package provided by Web Wonks as part of the Services.
- h. "Disclosing Party" means a party that discloses Confidential Information under this Agreement.
- i. "Fees" means the fees payable by You to Web Wonks for providing the Services as set out in one or more Quotes.

- j. "Intellectual Property Rights" means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how, and other Confidential Information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- k. "Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.
- l. "Material Issue" means an issue in relation to the Services, which requires Web Wonks to spend four or more hours to resolve, remedy or fix.
- m. "Parties" means Customer and Web Wonks and Party means either the Customer or Web Wonks.
- n. "Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.
- o. "Project Services" means Services that are to be provided within a six-month period or such other period agreed to in writing between the Parties.
- p. "Project Plan" means the project plan provided to You by Web Wonks.

- q. "Quote" means the written quote provided by Web Wonks and accepted, by a wet or digital signature, by You.
- r. "Receiving Party" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.
- s. "Reserved Agency Material" means:
 - i. all documents, data, know-how, methodologies, software, and other materials, including computer programs, reports, and specifications, provided by or used by Web Wonks in connection with performing the Services, in each case developed or acquired by the Web Wonks prior to the commencement of this Agreement; and
 - ii. any documents, data, know-how, methodologies, software, and other materials, including computer programs, reports, and/or specification that is, during the period of time that We provide Services to You, independently created or developed without the use of any of Your Confidential Information.
- t. "Retainer Services" means Services and such other tasks as are agreed between You and Web Wonks that are to be provided for a 12-month period or such other period agreed to in writing between the Parties.
- u. "Services" means the services set out in the Project Plan and/or Quote to be provided by Web Wonks to You, which may be amended from time to time provided that such amendments are in writing and agreed to by the Parties. The Services may include, but are not limited to, Connected Services, DHK Services, Project Services, Retainer Services, and Website Build Services.

- v. "Third-Party Materials" means materials and information, in any form or medium, including any software, documents, data, content, specifications, or products that are not proprietary to Web Wonks.
- w. "Website Build Services" means the services set out in Section 6.

2. CONSTRUCTION.

- a. This Agreement applies to the Services. The Parties will enter into one or more Quotes that contain certain additional terms and conditions applicable to the provision of the Services. Upon execution by the Parties, each Quote will be incorporated into this Agreement.
- b. The following words will be interpreted as described: (a) "or" denotes any combination of all or any of the items listed; (ii) where "including" is used to refer to an example or begins a list of items, such example or items will not be exclusive; (iii) "specified" requires that an express statement is contained in the relevant document; (iv) "will" is, unless the context requires otherwise, an expression of command, not merely an expression of future intent or expectation; and (v) "may" is, unless the context requires otherwise, an expression of permission, but not an obligation.
- c. We can amend this Agreement (excluding any Quotes) by writing to You and/or by placing new terms on our website (www.webwonks.com). Any such amendments to the Agreement will apply to the Services We provide You after the earlier of:
 - i. 30 days from when We notify You in writing, or
 - ii. 30 days from when We post the amended Agreement on Our website.
- d. To the extent that there is a conflict between the terms in this Agreement and the terms in any Quote or Project Plan (incorporated therein), the terms of this Agreement will govern the issue.

- e. Quotes may only be amended in writing and such amendments are only effective if both Parties agree, in writing, to such amendments.

3. SERVICES.

- a. Web Wonks will provide the Services in accordance with the Agreement (which includes one or more Quotes).
- b. You acknowledge that the Services may be impacted by many factors, which are outside Web Wonks' control. Web Wonks will use commercially reasonable efforts help You achieve Your desired result. However, Web Wonks does not guarantee any specific results from the use of the Services or that You will achieve Your desired result.
- c. If a task specified in a Project Plan cannot be completed, as determined by Web Wonks in its sole discretion, Web Wonks may replace that task with a task that it considers to achieve at least a substantially similar outcome.
- d. In its performance of the Services, Web Wonks will provide You with monthly activity reports.
- e. While Web Wonks will endeavor to meet all time frames specified in any Quote or Project Plan, it reserves the right (at its sole discretion) to extend these time frames. For example, the time frames may be extended if You do not meet Your obligations under the Agreement or if there is a change in Your requirements or expectations. You agree that Web Wonks is be liable for any delay outside its sole control.
- f. Web Wonks may request instructions from You within a reasonable period prior to providing any Services (or portions thereof) and may defer taking action pending receipt of those instructions. You shall promptly respond to any such request. Actions taken by Web Wonks in accordance with Your instructions shall constitute proper conduct within the scope of Web Wonks' authority under the Agreement.

4. YOUR OBLIGATIONS

- a. To assist Web Wonks in providing the Services, You shall provide Web Wonks with:
 - i. accurate, true, complete and up to date information about You to enable it to perform the Services;
 - ii. administrative/backend access to relevant websites for analysis of content and structure;
 - iii. access to existing traffic statistics of the relevant website
 - iv. permission to make changes to Your website, Your marketing material, and any tools that You use for the purpose of optimization, and to communicate directly with any third parties with respect to any of the foregoing; and
 - v. such other information that Web Wonks may reasonably request from You to enable it to comply with its obligations under the Agreement, including source code, diagnostic information and statistical information.

5. Payment for our Services.

- a. In consideration for its provision of the Services and the rights granted to Customer under this Agreement, You will pay to Web Wonks the Fees.
- b. Web Wonks' Fees only cover its provision of the Services. All third-party costs (also referred to as expenses) will be charged and invoiced separately to You unless specifically otherwise provided for in the Quote.
- c. Any additional services provided by Web Wonks to You that are not included in the Services shall be charged and invoiced separately and in addition to the Fees. Non-limiting examples of such additional services include Google Ads, Facebook Ads, automation software, electronic data management software, etc.
- d. If a Material Issue arises in relation to the provision of the Services that did not arise as a result of an act or omission of Web Wonks, Web Wonks reserves the right to charge You for all time spent by Web Wonks in connection with resolving or remedying the Material Issue.
- e. Web Wonks will send invoices to the email you listed on the Quote (or otherwise provided to Us in writing) for the Fees and any Additional Fees. For all Services, Web

Wonks will issue an invoice following acceptance of the Quote. The first invoice being due within 7 days of signing the contract, with all further Project Service invoices being due on the 1st of the month, ahead of the Services to be provided. Projects are for six months in length and are a binding contract once approved and signed for.

- f. Unless a different invoice and payment structure is agreed up on by the Parties, the following Section outlines the standard invoice and payment structure for DHK Services, Project Services, Retainer Services, Connected Services, and Website Build Services:
- i. for DHK Services, payment is due within seven days following the date on the invoice provided to You under Section 5.e;
 - ii. for Project Services, six equal payments on or before the 1st day of the month before the date of the Services provided to You under clause 5.e;
 - iii. for Retainer Services:
 1. payment of 30% of the Fees for the Retainer Services within two Business Days of acceptance of the Quote; and
 2. twelve equal payments of the remaining 70% of the Fees on or before the 1st day of the month before the date of Services of the quote provided to You under clause 5.e; and
 - iv. for Connected Services, on or before the 1st day of the month before the date on the Services provided to You under clause 5.e.
 - v. for Website Build Services:
 1. payment of 30% of the Fees for the Website Build Services within two Business Days of acceptance of the Quote, Web Wonks will not commence any related work until the payment is received.
 2. two equal payments of the remaining 70% of the Fees on or before the 1st day of the month following the date of receipt of the invoice provided to You under clause 5.e regardless of go-live date.
- g. Any Additional Fees will be paid by You on or before the 1st of the month following the date of receipt of the invoice provided to You under clause 5.e
- h. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local

governmental entity on any amounts payable by Customer hereunder; and to the extent Web Wonks is required to pay any such sales, use, excise, or other taxes or other duties or charges, Customer shall reimburse Web Wonks in connection with its payment of fees and expenses as set forth in Section 5. Notwithstanding the previous sentence, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Web Wonks' income, revenues, gross receipts, personnel, or real or personal property, or other assets.

- i. If You dispute all or part of an invoice, You must notify Web Wonks in writing of this fact within five Business Days of receipt of the invoice, setting out in reasonable detail the reasons for the dispute. You must pay any undisputed balance of an invoice. If You do not dispute an invoice within five Business Days of receipt, You will be deemed to have accepted the invoice in full.
- j. Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of (a) the rate of 10% per month and (b) the highest rate permissible under Texas law, calculated daily and compounded monthly. Customer shall also reimburse Web Wonks for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Web Wonks does not waive by the exercise of any rights hereunder), Web Wonks shall be entitled to suspend the provision of any Services if the Customer fails to pay any Fees or any Additional Fees when due hereunder and such failure continues for five Business Days following written notice thereof.

6. Website Build SERVICES.

a. Website Build / Hosting / SSL

- i. Web Wonks builds websites in the most current version of WordPress, which includes a core install, base module build, theme install, backup schedule and, includes the creation of five pages that represent the basic content requirement for a go-live – Home | About | Contact | Services | FAQ.

- ii. You must select Your own host and pay the host directly for hosting services. Web Wonks may offer recommendations on a host for You; however, this should not be interpreted as an endorsement of the host. You agree that Web Wonks is in no way responsible for any act or omission of the host You select regardless of whether Web Wonks recommended the host You selected.
 - iii. Web Wonks strongly recommends You encrypt Your website. Web Wonks will apply a free SSL certificate; however, this does not carry strong security and Web Wonks recommends that You buy a 256-bit or higher encryption certificate, which will be charged by Your host.
- b. Content Loading / Copywriting
- i. Content loading is typically the most difficult part of any website build and Web Wonks recommends that You get started on this as soon as You get the base build of Your website. Unless otherwise agreed upon in a Quote, the website build process includes five hours of content framework strategy. As part of the content framework strategy, Web Wonks will either:
 - 1. put together a basic framework from scratch if You don't have a website; or
 - 2. port over the base minimum for the site to be viable if You already have content.
 - ii. You are responsible for the generation of new content on Your website and Web Wonks is in no way responsible for the quality of editing or copywriting of Your website. If necessary, Web Wonks can offer copywriting services for a fee. We recommend that You use a specialist copywriter if You have trouble generating content for your website.
- c. Finished Build / Go-Live
- i. Web Wonks deems the website build finished after all tasks of work are completed as per Web Wonks' project plan provided to you along with the quote.
 - ii. Unless otherwise agreed upon in a Quote, Web Wonks will allot four hours of time to assist with the go-live of Your website. This includes, but is not limited to

creating redirects, verifying backups, installing tags, updating search console, updating search engine marketing (SEM) accounts and updating Google Analytics (GA).

- iii. You do not need to go-live once Web Wonks has deemed the website build completed per Section 6.c.i; Web Wonks will complete the go-live process when You are ready.

d. Backups

- i. To mitigate the potential for issues to arise, Web Wonks holds a local backup of the website build process.
- ii. At the completion of the base build phase of Your website, Web Wonks will create a local backup of Your website.

e. Post Go-Live Services

- i. After the go-live of Your website, unless Web Wonks is providing You with Project Services or Retainer Services, Web Wonks will not actively monitor Your website. In such cases, We recommend that You perform a minimum of two hours per month of website management, which should at least include monitoring of Your website, performing updates on Your website, and reviewing and correcting faults on Your website.
- ii. Web Wonks does offer a Service Level Agreement (SLA), which we recommended all clients engage – this is a minimum of one hour per month for a 12 month commitment.

7. Intellectual Property Rights; Ownership.

- a. Web Wonks (or its licensors as the case may be) is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Reserved Agency Material, which are provided to You pursuant to the Services, including all Intellectual Property Rights therein.
- b. Web Wonks hereby grants Customer a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable, worldwide license to use the Deliverables.

- c. Web Wonks hereby grants Customer a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable, worldwide license to use the Reserved Agency Material to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables.
- d. All other rights in and to the Deliverables and Reserved Agency Material are expressly reserved by Web Wonks.
- e. All Third-Party Materials that are provided with the Deliverables are provided pursuant to the terms and conditions of the applicable third-party license agreement. Customer shall comply with all such third-party license agreements and any breach by Customer thereof will be deemed a breach of this Agreement.
- f. Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Web Wonks shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.
- g. Without prior written consent each Party may not use the name, brand, or logo of the other Party in any website, brochure, press release, other public relations materials or other promotional materials.

8. CONFIDENTIALITY.

- a. The Receiving Party agrees:
 - i. not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors who have a "need to know", who have been

- apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 8;
- ii. to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and
 - iii. to promptly, and not to exceed ten days, notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.
- b. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:
- i. prompt, and not to exceed ten days, written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
 - ii. reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.
 - iii. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

9. TERM; TERMINATION.

- a. This Agreement shall commence as of the date the first Quote is signed and shall continue thereafter until the completion of the Services under all Quotes, unless sooner terminated pursuant to this Section 9 (the "Term"). For Projects, this is six months.

- b. Web Wonks may terminate this Agreement or any Quote, effective upon written notice to Customer, if the Customer:
- i. materially breaches this Agreement, and such breach is incapable of cure or, with respect to a material breach capable of cure, the Customer does not cure such breach within ten days after receipt of written notice of such breach or, if not capable of cure within such ten day period, the parties have not agreed upon a new time period for curing such breach; or
 - ii. becomes insolvent or admits its inability to pay its debts generally as they become due; or
 - iii. becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or
 - iv. is dissolved or liquidated or takes any corporate action for such purpose; or
 - v. makes a general assignment for the benefit of creditors; or
 - vi. has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- c. Upon termination of the this Agreement, Customer shall:
- i. within five Business Days, pay to Web Wonks all sums due and owing to Web Wonks under all Quotes;
- d. Upon expiration or termination of this Agreement for any reason, each Party shall:
- i. return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information,
 - ii. permanently delete all of the other Party's Confidential Information from its computer systems, and
 - iii. certify in writing to the other Party that it has complied with the requirements of this clause; provided, however, that Customer may retain copies of any Confidential Information of Web Wonks incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and any Deliverables.

- iv. The above notwithstanding, the Receiving Party may retain an archival copy of the Confidential Information, to the extent necessary to comply with the Law or archival policies. The Receiving Party will continue to hold any Confidential Information retained under this exception in confidence as required under this Agreement and shall not use any such retained Confidential Information for any purpose.
- e. The rights and obligations of the Parties set forth in Section 1 and 8-15 and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

10. Disclaimer of Warranties

- a. ALL SERVICES, DELIVERABLES, AND RESERVED AGENCY MATERIAL ARE PROVIDED "AS IS" AND WEB WONKS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND WEB WONKS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, WEB WONKS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, DELIVERABLES, OR RESERVED AGENCY MATERIALS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. Limitation on Liability.

- a. IN NO EVENT WILL WEB WONKS OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS

SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT , OR LOSS OF DATA OR DIMINUTION IN VALUE, OR (b) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- b. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF WEB WONKS AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE Aggregate Fees received by Web Wonks from You in the three month period immediately prior TO THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Indemnification.

- a. You agree to defend, indemnify and hold harmless Web Wonks, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to:
- your violation of this Agreement,
 - Web Wonks' use of Customer Materials to provide Services to you, and/or
 - your use of the Deliverables or Reserved Agency Material other than as expressly authorized in this Agreement.

13. Force Majeure.

- a. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including without limitation the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, Law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency. The Impacted Party shall give notice within ten days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue.
- b. During the Force Majeure Event, the non-affected Party may similarly suspend its performance obligations until such time as the affected Party resumes performance.
- c. The affected Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected Party's failure or delay remains uncured for a period of thirty days following written notice given by it under this Section 11, the other Party may thereafter terminate this Agreement upon ten days' written notice.

14. DISPUTE RESOLUTION

a. MEDIATION; ARBITRATION

- i. If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The Parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment

on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- ii. Within 15 days after the commencement of arbitration, each Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association.
- iii. The place of arbitration shall be Houston, Texas.
- iv. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrators shall agree to these limits prior to accepting appointment.
- v. The arbitrators shall not award consequential damages in any arbitration initiated under this section. The award of the arbitrators shall be accompanied by a reasoned opinion.
- vi. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- vii. The Parties agree that failure or refusal of a Party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that Party to present evidence or cross-examine witness. In such event, the other Party shall be required to present evidence and legal argument as the arbitrators may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying Party in the absence of evidence presented as provided for above.

b. CLASS ACTION WAIVER

- i. Any claim under this Agreement must be brought in the respective Party's individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). The Parties expressly waive any ability to maintain any Class Action in any forum. If the claim is subject to arbitration, the arbitrator will not have

authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration.

- ii. If this class action waiver is found to be unenforceable, then the entirety of the Section 14, if otherwise effective, will be null and void.
- iii. If for any reason a claim proceeds in court rather than in arbitration, Customer and Web Wonks each waive any right to a jury trial.

15. Miscellaneous.

- a. Each Party shall, upon the reasonable request of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
- b. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- c. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement have binding legal effect only if in writing and addressed to a Party at the contact information specified in a Quote (or to such other address or such other person that such Party may designate from time to time in accordance with this Section 15.c). Notices sent in accordance with this Section shall be deemed effectively given:
 - i. when received, if delivered by hand, with signed confirmation of receipt;
 - ii. when received, if sent by a nationally recognized overnight courier, signature required;
 - iii. when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next Business Day, if sent after the addressee's normal business hours; and
 - iv. on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

- d. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- e. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- f. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Web Wonks' prior written consent.
- g. This Agreement is for the sole benefit of the Parties hereto and their respective permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
- h. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.
- i. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- j. This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. In the event that Section 14 is null and void, the any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses

granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in the city of Houston and Harris County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such court.

- k. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 9 or, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- l. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.