

GENERAL TERMS AND CONDITIONS

THE TERMS AND CONDITIONS OF PRODUCT SALES AND THE PERFORMANCE OF SERVICES (INCLUDING PROJECTS, IF AND AS APPLICABLE) ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CLIENT OR ANY THIRD PARTY ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

As of September 13, 2023

Important Information About These Terms and Conditions

These General Terms and Conditions ("Agreement") govern the provision of sale of Products and the provision of Services ("Products" and "Services," each as defined herein) by Dalechek Technology Group, LLC and/or one or more of its Affiliates (collectively, "DALECHEK") to the other party identified in the Service Agreement ("Client"). All Products and Services will be provided pursuant to a Quote, Statement of Work, Managed Services Agreement (each a "Service Agreement") by and between DALECHEK and Client into which this Agreement is incorporated by reference. Capitalized terms used but not otherwise defined herein have the meaning(s) ascribed to such terms in the Basic Terms or on the face of the Service Agreement. In the event of any inconsistencies, the order of precedence shall be as follows: i) this Agreement, ii) the Service Agreement, and iii) any accompanying Exhibits. Unless expressly agreed to in writing by DALECHEK, DALECHEK rejects any terms and conditions contained in Client's documents.

Client consents to receiving electronic records, which may be provided via a Web browser or email application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non- electronic form by contacting DALECHEK. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

1. Definitions.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Service Agreement, unless the language or context requires otherwise. Service Agreement-specific definitions, if any, shall be included in the applicable Service Agreement, and shall apply only with respect to such Service Agreement.

1.1 **"Affiliate"** means, with respect to any person or entity, any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

1.2 **"Applicable Laws"** means, collectively, all federal, state or other governmental statutes, codes, ordinances, laws, regulations, rules, guidance, written directives, orders and decrees applicable to the Services.

1.3 **"Client Components"** means the hardware, software, other products, and other Content including, without limitation, those specified in a Service Agreement as being provided by Client.

1.4 **"Client Data"** means all data and information about Client's business(es), customers, employees, operations, facilities, products, markets, assets or finances that DALECHEK obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in any Client device or on the Client network.

1.5 **"Confidential Information"** means all nonpublic information revealed by or through a party (the "Discloser") to the other party (the "Recipient"), including: (a) information marked or disclosed as confidential; (b) any customer information furnished or disclosed, in whatever form or medium; (c) information traditionally recognized as proprietary trade secrets; (d) all forms and types of financial, business, and economic information (including, without limitation, contract terms, financial information, ideas, discoveries, inventions, developments, records, product designs, source codes, product planning, material samples, business records and plans, technical and marketing data, trade information, customer lists and data, supplier information and marketing plans) in whatever form or medium; (e) any information disclosed orally regarding the parties' business relationship; and (f) PHI, as applicable.

1.6 **"Content"** means information, software, Client Data and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Client or any of its Users create, install, upload or transfer in or through a Client device or Client's network.

1.7 **"Hosting Services"** means the services delivered by DALECHEK under this agreement consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in a

Master Solutions Agreement. Hosting Services are governed by this Agreement and Addendum B, "Terms Specific to Hosting Services" attached hereto and incorporated herein by reference.

1.8 **"Products"** means any order for software, hardware, or Resold Services ("Products") made by Client pursuant to a quotation issued by DALECHEK ("Quotation"). Orders for Products are governed by this Agreement and Addendum A, "Terms Specific to Product Sales Only" attached hereto and incorporated herein by reference.

1.9 **"Protected Health Information" or "PHI"** has the meaning ascribed to it in the HIPPA Privacy Rule (45 CFR Part 160, Subparts A and E of Part 164, as may be amended or supplemented).

1.10 **"Required Consents"** means any consents, licenses, or approvals required to give DALECHEK, or any person or entity acting for DALECHEK under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, the Client Components and Content, without infringing the ownership or intellectual property rights of the providers, DALECHEK, or owners of such Client Components and Content.

1.11 **"Services"** means the information technology services provided by DALECHEK to Client as more particularly set forth on Exhibit A attached hereto. Services may include Hosting Services where included in a Service Agreement.

1.12 **"Third Party Services"** means the information technology services to be delivered by a third party under this Agreement as specified in any Service Agreement.

1.13 **"User"** means any entity or individual that receives or uses the Services, or the results or products of the Services, through Client.

2. Client Responsibilities.

2.1 **Designated Contact Person.** Client shall designate an individual who will be a primary point of contact and will have the authority to act and make decisions in all aspects of the Services, including change orders. Client shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by DALECHEK. Client may change its designated contact person by written notice to DALECHEK.

2.2 **Content.** Client is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services.

2.3 **Required Consents.** Client shall obtain and keep in effect all Required Consents necessary for DALECHEK to perform all of its obligations as set forth in this Agreement. Upon request, Client will provide to DALECHEK evidence of any Required Consent. DALECHEK will be relieved of its obligations to the extent that they are affected by Client's failure to promptly obtain and provide to DALECHEK any Required Consents. DALECHEK will adhere to reasonable terms and conditions pertaining to Content as notified in writing to DALECHEK. DALECHEK agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Client's consent.

2.4 **Software.** Client authorizes DALECHEK to determine whether or not software specified in any Service Agreement is currently in place, operational and maintained, and supported at the level required for DALECHEK to perform the Services required under this Agreement. Client grants DALECHEK, at no charge, the right to use any Client-owned or developed application software systems required by DALECHEK to provide the Services specified in any Service Agreement to Client.

2.5 **Client Components.** Client is solely responsible for the selection, operation and maintenance of all Client Components.

2.6 **Encryption.** Client shall encrypt at the application level Confidential Information, Client Data, and all data that is considered sensitive data or that must be treated as confidential under state or federal law or under Client's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

3. Term and Termination of Agreement.

3.1 **Term/Termination This Agreement.** This Agreement is effective upon the date the first Service Agreement is signed by Client and shall remain in force and effect unless terminated in accordance herewith. Either party may terminate this Agreement for convenience by providing written notice. Any such termination shall be effective upon the natural expiration of all Master Service Agreements or 30 days after receipt of notice, whichever is later. Either Party may terminate this Agreement or any individual Master

Service Agreement if the other party breaches any material provision of the Agreement or any Service Agreement. If such breach is able to be cured, the non-breaching party shall provide notice that shall specify the basis on which this Agreement or any Service Agreement is being terminated, including a description of the breach and how the breach can be cured within 30 days (the "Cure Period"). If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party. If any representation or warranty is inaccurate, incomplete, false, or misleading in any material aspect or the breach is of a type or nature that is not capable of being cured within the Cure Period (such as, by way of example and not limitation, an obligation relating to Confidential Information), the non-breaching party can terminate this Agreement and any Service Agreement upon notice. The notice from the non-breaching Party shall specify the basis on which this Agreement is being terminated, including a description of any breach.

3.2 Services Transfer Assistance. Prior to expiration or termination of a Service Agreement, Client may request DALECHEK to cooperate with Client to assist with the orderly transfer of the Services, functions, and operations provided by DALECHEK hereunder to another system provider or services provider (or to Client itself) ("**Services Transfer Assistance**"). Upon such timely request, DALECHEK shall provide Services Transfer Assistance until the effective date of expiration or termination of the Service Agreement and for up to one (1) additional month thereafter. If the Services Transfer Assistance requires DALECHEK to incur expenses in addition to the expenses that DALECHEK would otherwise incur in performance of the Service Agreement, then: (a) DALECHEK shall notify Client of any additional expenses associated with the performance of any additional services pursuant to this Section prior to performing such services; (b) upon Client's authorization, DALECHEK shall perform the additional services and invoice Client for such services; and (c) Client shall pay DALECHEK for such additional expenses within thirty (30) days of the receipt of the invoice.

3.3 Actions Upon Termination. Except for Service Transfer Assistance, upon termination of the Agreement, DALECHEK shall immediately cease to have access to and use of Client's network, hardware, and software ("**System**").

3.4 Effects of Termination. Upon the expiration or termination of the Agreement, all amounts owed by Client to DALECHEK shall become immediately due and payable. DALECHEK will, within thirty (30) days thereafter, provide Client with an accounting of all Services performed prior to such expiration or termination, including the cost of all hardware purchased in respect thereof and all contracts or agreements between DALECHEK and any third-party vendors entered into with respect thereto. Client shall pay any undisputed amounts set forth in such accounting that are due and owing to DALECHEK within thirty (30) days thereafter.

4. Statements of Service; Fees and Payments; Taxes.

4.1 Payment Terms. Payment for monthly services is due within thirty (30) days of the invoice date, regardless of the date of receipt. Product invoices are excluded from any early payment discounts. Payment of (a) 100% of all Products (including project hardware) is required in advance for orders over \$1,000 (whether pertaining to a project or otherwise), and (b) least fifty percent (50%) of project labor is required prior to the commencement of any project (in addition to any lead times or delays agreed upon by the parties in any with respect to any such project).

4.2 Availability of Service. DALECHEK agrees that the Services will be operable and available to materially perform the functions set forth in the Statements of Service twenty-four (24) hours per day, seven (7) days per week, subject to the terms further set forth in the Agreement. DALECHEK shall provide ninety-nine point nine-nine percent (99.99%) uptime monthly, with the exception of Scheduled Downtime (as defined in the Statements of Service attached hereto and incorporated by reference). DALECHEK shall provide Client with five (5) days' notice prior to any Scheduled Downtime and represents that any interruption of Services for Scheduled Downtime shall not exceed the time reasonably necessary to complete such maintenance. In the event of an unplanned interruption, reduction in the quality, or the failure of a configuration item of the Services, DALECHEK shall use its best efforts to restore Services and follow its IT Incident Management Policy. If DALECHEK fails to provide ninety-nine point nine-nine percent (99.99%) in the course of any two consecutive months, or fails to achieve such uptime in three (3) months during any twelve (12) month period, DALECHEK agrees to escalate such failure to its senior management and work in good faith to resolve such service level failures.

4.3 Taxes. The fees under the Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. It is understood that any applicable federal, state, or local taxes shall be added to each invoice for Services or materials rendered under this Agreement and shall be the obligation of Client. Client shall pay all such taxes unless a valid exemption state certificate is furnished to DALECHEK.

4.4 Payment Methods. Payment shall be made by check, credit card, or recurring ACH withdrawal processed on the 15th of the month. There shall be a 2% discount applied to all payments made via check or recurring ACH withdrawal. DALECHEK may, in its sole discretion, make exceptions and accept alternative payment methods on a case-by-case basis. Once ACH authorization forms

have been received, payment can be scheduled within two (2) business days. All payments are subject to the fees outlined in Section 4.5 below.

4.5 **Fees.** A \$35.00 fee will be assessed on any checks not honored by our bank. A \$20.00 late fee will be assessed against invoices seven (7) days overdue, and finance charges (16% APR or the highest rate permitted by applicable law) will be imposed on balances thirty (30) days past due and each month thereafter until the past due balance is paid in full. After an invoice has gone over 30 days past due and no payment arrangements have been made, the account is subject to be placed on a credit hold, where Dalechek reserves the right to stop services until the account is brought current or other arrangements are made.

4.6 **Credits.** Credit memos will be communicated via email. Credits may be applied using one of the following methods: (1) reduction of subsequent invoice payments until the full credit balance has been used; or (2) request for full reimbursement by check.

4.7 **Pricing Information; Availability Disclaimer.** DALECHEK reserves the right to make adjustments upon notice to Client to all pricing (including all fees/costs set forth in the Basic Terms), Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. DALECHEK reserves the right to adjust charges should Client reduce, limit, or eliminate Client technology support resources and/or employee positions existing at the time of execution of this Agreement. All orders are subject to Product availability and the availability of personnel to perform the Services. If Services are performed on a time and materials basis, any estimates provided by DALECHEK are for planning purposes only, provided that DALECHEK shall receive prior written consent from Client prior to exceeding such estimate.

4.8 **Third-Party Agreements.** Client acknowledges and agrees that DALECHEK may enter into contracts or agreements in respect of its performance of the Services with various third-party vendors, and that DALECHEK shall pass through to Client, and Client shall be obligated to pay, all costs, fees or other payment obligations under or deriving from any such contracts or agreements, notwithstanding any pricing adjustment(s) that any third-party vendor may implement thereunder. Any pricing adjustments implemented under any such third-party contracts or agreements are solely at the discretion of the applicable third-party vendor.

5. **Coverage.**

5.1 All contracted services will be provided to Client by DALECHEK between the hours of 6:30 am and 10:00 pm Monday through Friday, Central Standard Time, excluding holidays observed by the United State federal government. DALECHEK will make reasonable efforts to respond to emergency requests.

6. **Nondisclosure.**

6.1 **Use of Confidential Information.** DALECHEK and Client shall only use Confidential Information for the purpose of performing Services under the Agreement, and shall make no use of the Confidential Information, in whole or in part, for any other purpose. Recipient shall not disclose the Confidential Information to third parties, unless Discloser has given its prior written authorization. The parties further agree to keep the confidential and safeguard such Confidential Information against unauthorized disclosure to others with at least the same degree of care as it exercises with its own information of a similar nature, but in no event less than reasonable care. In the event that Client provides written consent to DALECHEK permitting disclosure of Client's Confidential Information to DALECHEK' subcontractors performing services in connection with the Agreement, DALECHEK' will ensure (a) the extent of such disclosure is reasonably necessary for such subcontractor to perform such services, and (b) such subcontractors comply with confidentiality, security, and privacy obligations no less protective of Client's Confidential Information than set forth in this Agreement and required by Applicable Law.

6.2 **Required Disclosure.** If the Recipient is required by subpoena or other court order to disclose any of the Confidential Information, it shall provide immediate notice of such request to the Discloser and shall use reasonable efforts to resist disclosure. If, in the absence of a protective order or the receipt of a waiver under this Agreement, the Recipient is legally required to disclose any Confidential Information, then Recipient may disclose such information without liability under this Agreement.

6.3 **Exceptions.** The obligations set forth in Section 6.1 shall not apply to Confidential Information that: (a) before the time of its disclosure was already in the lawful possession of the Recipient; or (b) at the time of its disclosure to Recipient is available to the general public or after disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of the Agreement.

6.4 **Remedies for Breach of Confidentiality.** The Confidential Information protected by the Agreement is of a special character, such that money damages, although available, may not be sufficient to award or compensate for any unauthorized use or

disclosure of the Confidential Information. The parties agree that injunctive and other equitable relief would be appropriate to prevent any such actual or threatened unauthorized use or disclosure.

6.5 **Return or Destruction of Confidential Information.** Upon expiration or termination of the Agreement, Recipient will cease its use and within thirty (30) days and use commercially reasonable efforts to either (at the option of receiving party) return or destroy (and certify in a timely manner as to such destruction) all Confidential Information of the other party, including any copies thereof. Notwithstanding the foregoing, Recipient will be entitled to retain copies of Confidential Information to the extent required by law or regulation; provided, that for so long as it retains any Confidential Information, Recipient shall employ reasonable security measures and shall exercise reasonable care in protecting the confidentiality of such information as it does in protecting its own information similarly recorded or saved and will continue to be bound by the obligations under the Agreement in regards to all such Confidential Information. The parties' obligations under this Section regarding Confidential Information shall survive the expiration or termination of the Agreement.

7. **Ownership.**

7.1 **General.** All intellectual property rights associated with any ideas, concepts, techniques, processes, or other work product created by DALECHEK during the course of performing Services shall belong exclusively to DALECHEK, and Client shall have no right or interest therein.

7.2 **Managed Services Tools.** Notwithstanding anything to the contrary in this Agreement, DALECHEK will retain all right, title, and interest in and to all software development tools, know-how, methodologies, processes, technologies, or algorithms used in providing the managed services which are based on trade secrets or proprietary information of DALECHEK or are otherwise owned or licensed by DALECHEK. Licenses will not be deemed to have been granted by either party to any of its patents, trade secrets, trademarks, or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require DALECHEK or Client to violate the proprietary rights of any third party in any software or otherwise.

7.3 **Title to Products.** In performance of the Services, DALECHEK may purchase hardware, software, and/or software licenses ("Products"), and act as reseller with respect to such Products to Client. Client agrees that ownership of any Products will pass from DALECHEK to Client upon receipt and identification (set aside, marked, and labeled) of any such Products by DALECHEK.

7.4 **DALECHEK Equipment.** DALECHEK may provide equipment owned by DALECHEK to be housed at Client's premises. Such equipment may include, but is not limited to routers, desktops, servers, software, and remote backup devices. Such equipment shall be treated with the same care and security as similar equipment owned by Client. Client shall be held liable for any damage or loss of any such equipment less routine wear and tear. If such loss or damage occurs, Client will be invoiced the current replacement cost of the equipment plus shipping and handling and related installation charges.

8. **Data Security.**

8.1 **Security.** Dalechek represents and warrants that its policies, business practices, and methodologies are in material compliance with Applicable Law. Dalechek will comply with any additional procedures and processes respecting Client's Confidential Information that Client (a) believes to be reasonably necessary for the Client to comply with any Applicable Laws and (b) provides to DALECHEK in writing before the commencement of Services.

8.2 **Unauthorized Disclosure of Confidential Information.** Any actual loss, theft, unauthorized disclosure, or other compromise to the confidentiality, security, or integrity of any Client Confidential Information, shall be deemed a "business interruption" as defined in DALECHEK' Business Continuity Management Policy and triggers said policy. DALECHEK shall notify Client of any actual loss, theft, unauthorized disclosure, or other compromise to the confidentiality, security, or integrity of any Client Confidential Information, as soon as reasonably practicable after DALECHEK' discovery thereof with complete information regarding the incident and measures taken to control or reduce the harm occasioned thereby and, at DALECHEK' cost and expense (except only to the extent the unauthorized disclosure results solely from a security breach on Client's internal data systems, in which case it shall be at Client's cost and expense) shall take such actions required under Applicable Law in response to such incident which may include notifying the Client, law enforcement officials, other regulatory authorities, or affected Client Clients.

8.3 **Security; Access Rights.** DALECHEK shall maintain reasonable and appropriate security policies, procedures, and systems to protect PHI or Confidential Information that DALECHEK manages, processes, stores, or transmits (the "Security Program"). The Services will conform to the provisions of Applicable Law related to the privacy, security, and data protection and destruction of PHI and will include administrative, technical, and physical safeguards that are commensurate with the scope of DALECHEK' activities and the sensitivity of Client's Confidential Information that DALECHEK receives. DALECHEK will ensure that the Services are designed

to (i) protect the security, confidentiality and integrity of PHI and Client's Confidential Information, (ii) protect against any anticipated threats or hazards to the security and integrity of PHI and Client's Confidential Information, and (iii) protect against unauthorized access to such information or associated records which could result in substantial harm or inconvenience to any consumer. DALECHEK shall regularly review all of the key controls, processes and procedures of the Security Program and update the Security Program to best protect against new threats and risks.

8.4 **Access Controls.** As a part of its Security Program, DALECHEK shall provide for the following access controls: (i) access rights and privileges to information resources containing Confidential Information or PHI shall be granted only on a need-to-know basis and consistent with the level of access required, and (ii) immediately terminate access rights and privileges of DALECHEK personnel when such personnel no longer provide services to Client, or otherwise do not require access rights and privileges.

8.5 **Security Practices; Audit.** DALECHEK represents and warrants that it has up-to-date policies and procedures with respect to its internal controls, including proper controls to maintain in compliance with Applicable Laws and industry standards, and shall provide Client a copy of a summary of such policies and procedures as requested. To the extent such policies and procedures are materially amended thereafter, DALECHEK will provide Client a copy of a summary of such amendment if such policy has, prior to the amendment, been requested by Client.

8.6 **Audit.** Annually during the term of this Agreement, DALECHEK shall conduct a review of its internal controls related to the Security Program. The review shall assess compliance with the Security Program, where the findings and recommendations of which shall be set forth in a report (the "Report"). If requested, DALECHEK shall deliver a copy of the Report to the Client promptly upon completion of each Report. If the Report contains any recommendations, DALECHEK shall, at its sole cost and expense, promptly take all actions necessary to comply with such recommendations. If, at any time during the term of this Agreement, Client has reasonable material concerns regarding DALECHEK' operational controls and such concerns are not addressed in the Report or in DALECHEK' response to any recommendations therein, to the Client's reasonable satisfaction, Client shall so notify DALECHEK and the parties shall promptly meet in an effort to resolve the stated concerns.

8.7 **Cooperation.** DALECHEK agrees to, within ten (10) days of Client's written request, make available all records, books, agreements, policies, and procedures relating to Client's Confidential Information for the purpose of allowing Client or its agents or auditors to determine DALECHEK' compliance with this Agreement. DALECHEK further agrees to use its best efforts in any examination which may be requested by any governmental authority with audit and examination over Client, and provide any information that may be reasonably requested by any governmental authority in connection with their examination or review of Client.

8.8 **Client Data External Service Provider and Geolocation Policy.** Dalechek does not transfer data provided by Customers to external parties (contractors, vendors, or service providers) unless those external parties provide the data the equivalent level of protection that Five Nines provides. To ensure the external parties provide the appropriate level of protection, Dalechek conducts regular due diligence in accordance with internal policies and procedures. As a company operating strictly within the United States of America, Five Nines only uses delivery centers located inside the continental USA.

9. **Indemnity.**

9.1 **Indemnification of Client.** DALECHEK agrees to indemnify, defend, and hold harmless Client, its Affiliates, and each of their respective directors, officers, employees, and agents, from and against any and all judgments, settlements, penalties, costs and expenses (including reasonable attorney's fees) paid or incurred in connection with any third-party claim(s) relating to: the infringement or misappropriation of any valid third-party intellectual property rights by DALECHEK in connection with its performance of the Services; provided, however, that in the event any such claim is made by any third party pursuant to the foregoing, DALECHEK shall have the right, at its sole option and as Client's sole matter of recourse in respect thereof, to either (a) modify the Services to make them non-infringing or (b) procure the right for Client to continue receiving the Services as provided in the Agreement, provided further that such modified Services provide substantially similar functionality and otherwise comply with the terms of this Agreement. If DALECHEK deems (a) or (b) not feasible or not commercially reasonable, DALECHEK has the right to terminate the applicable Service Agreement. In the event of any such termination, DALECHEK will refund to Client the unused portion of any amounts paid by Client for the affected Service. In addition, upon any such termination, Client shall cease the use of the applicable Service. Notwithstanding any language to the contrary, DALECHEK shall have no obligation with respect to any claims of infringement that arise from: (i) modifications to the Services (other than by or on behalf of DALECHEK); (ii) combinations of the Services with other software or products not provided or authorized by DALECHEK; (iii) any modifications to the Services made at Client's request if such claim would not have occurred but for the requested modification; (iv) any unauthorized use of the Services by Client or otherwise

under Client's account; (v) any Products; (vi) Client's breach of, or failure to perform under, the Agreement; or (vii) Client's gross negligence or willful misconduct.

9.2 **Indemnification of DALECHEK.** Client agrees to indemnify, defend, and hold harmless DALECHEK, its Affiliates, and each of their respective directors, officers, employees, and agents, from against any and all judgments, settlements, penalties, claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to (a) actions taken by DALECHEK in accordance with Client's instructions, (b) Client's breach of the terms of this Agreement, or (c) bodily injury, death of any person, or damage to personal property (real or tangible) resulting from the negligent or willful acts or omissions of Client.

9.3 **Procedures.** The indemnities in this Section 9 are contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any claim which may give rise to a claim for indemnification (provided, however, that failure to provide such prompt notice to the indemnifying party shall not affect indemnification obligations thereunder in the absence of actual prejudice to the indemnifying party); (ii) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (iii) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party is not liable for attorney's fees and costs incurred by the indemnified party.

10. Representation and Warranties.

10.1 Each party represents and warrants to the other party that: (a) it has full power and authority to enter into the Agreement; (b) it is in compliance, and will continue to comply during the term of the Agreement, with all laws and regulations governing its possession and use of Client Data and its provision or use of the Services; and (c) it has the requisite corporate power and authority to execute, deliver, and perform its obligations under the Agreement.

10.2 DALECHEK represents and warrants that it (a) owns or has acquired the requisite rights from third parties to the DALECHEK property; and (b) shall not knowingly or negligently introduce undisclosed operational limiting routines, viruses, malicious code (a.k.a. "Trojans"), date bugs or copy protection devices, administrative interfaces (a.k.a. "Backdoors"), keystroke or data capture/transmission facilities (a.k.a. "Spyware") embedded in the Systems DALECHEK uses to perform the Services and that it makes available to Client and its customers.

10.3 The Services shall be performed in a good, workmanlike, professional, and conscientious manner by experienced and qualified employees of DALECHEK according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Client if not rejected in a reasonably detailed writing within five (5) days of submission to Client, or as otherwise identified in the applicable Service Agreement. In the event the Services provided by DALECHEK are not in conformance with this warranty, Client must provide written notice to DALECHEK within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, DALECHEK will use commercially reasonable efforts to take the steps necessary to correct the deficiency at no charge to Client. This is Client's sole and exclusive remedy for breach of this warranty.

10.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF DALECHEK IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF DALECHEK. CLIENT IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH DALECHEK CANNOT BE HELD LIABLE.

11. Limitation of Damages.

11.1 **TO THE GREATEST EXTENT PERMITTED BY LAW AND EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SECTION 9, DALECHEK AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL,**

SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST DATA, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION ARISING FROM OR RELATING TO THIS AGREEMENT OR ARISING FROM OR RELATING TO THE USE OF THE SOFTWARE WHICH HAS BEEN MODIFIED BY ANYONE OTHER THAN DALECHEK, LOSS OF PROGRAMS, AND THE LIKE, THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, LOSS OF DATA, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE. THIS LIMITATION SHALL APPLY HOWEVER CLAIMS ARE CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR OTHER TORTS), EVEN IF (A) DALECHEK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

11.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DALECHEK'S TOTAL CUMULATIVE LIABILITY UNDER OR RELATING TO THE AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CLIENT TO DALECHEK DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SERVICE AGREEMENT.

11.3 Except as expressly provided in the Agreement, Client acknowledges that (a) DALECHEK is in no manner responsible for any action or inaction of any third party not engaged by it or under its control; (b) DALECHEK has not represented that the services shall be uninterrupted, error-free, or without delay; and (c) DALECHEK does not and cannot control the flow of data through the Internet, and such flow depends in large part on the performance of third parties whose actions or inactions can, at times, produce situations in which connections to the Internet (or portions thereof) may be impaired or disrupted. **ACCORDINGLY, CLIENT ACKNOWLEDGES THAT DALECHEK DISCLAIMS ALL LIABILITY RELATED TO EVENTS OUTSIDE OF ITS CONTROL AND/OR IN THE CONTROL OF THIRD PARTIES, AND CLIENT SHALL HAVE NO RIGHT TO RELY UPON ANY REPRESENTATION OR WARRANTY OF ANY THIRD PARTY IN RESPECT OF THE SERVICES PROVIDED HEREUNDER.** Further, Client acknowledges that, in providing the services, DALECHEK shall necessarily rely upon information, instructions, and services from Client, its administrator, employees and agents, and other third parties providing computer and communications hardware, software, and Internet services. Except as expressly provided in the Agreement, Client fully and expressly assumes the risk associated with errors in such information, instructions, and services.

11.4 EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CLIENT FOR THE SERVICES WOULD HAVE BEEN HIGHER.

12. Non-Solicitation of Employees.

12.1 Each party acknowledges that the other has a substantial investment in its employees. In consideration of this investment, each party agrees not to solicit, hire, employ, retain, or contract with any employee (or former employee) of the other directly involved in the performance of this Agreement, without first receiving written consent. If any employee of a party is employed by the other (or any affiliate or subsidiary) in any capacity either during the term of this Agreement or within a 12 month period thereafter, the hiring party shall immediately pay the other an amount equal to 100% of the then current yearly salary or wage of such employee. This amount is intended by the parties to be a reasonable calculation of the projected costs to identify, recruit, hire and train suitable replacement personnel and not as a penalty. This Section does not apply to job opportunities posted on recruiting websites or in other publications in which one party seeks to find candidates for open positions (absent direct solicitation and/or recruitment).

13. Miscellaneous.

13.1 **Equipment & Facilities.** Client agrees that DALECHEK may utilize certain items of Client's equipment and may gain access to Client facilities. Client retains title and ownership in all of Client's equipment owned by Client and utilized by DALECHEK. Facility access may be denied for any reason at any time, however if access to facilities is denied, Client understands that DALECHEK may be unable to perform their duties adequately and if such a situation should exist, DALECHEK will be held harmless.

13.2 **Passwords.** Client acknowledges that DALECHEK may need access to any and all systems and resources to perform their duties under this contract. As such, Client will provide access to any and all passwords necessary to perform duties under the Agreement.

13.3 **Waiver.** The failure or forbearance of DALECHEK or Client to enforce any right or claim against the other party shall not be deemed to be a waiver by DALECHEK or Client of such right or claim or any other right or claim hereunder. The waiver by DALECHEK or Client of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.

13.4 **Entire Agreement.** This Agreement including all Addenda, Service Agreements, and all schedules, attachments and/or other documents attached hereto or incorporated by reference constitutes the entire agreement between the parties with respect to the subject hereof and supersedes all prior proposals, agreements, negotiations, correspondence, demonstrations, and other communications, whether written or oral, between DALECHEK and Client. No modification or waiver of any provision hereof shall be effective unless made in writing signed by both DALECHEK and Client.

13.5 **Severability.** If any provision hereof is determined in any proceeding binding upon the parties hereto to be invalid or unenforceable, that provision shall be deemed severed from the remainder of the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect.

13.6 **Force Majeure.** Neither party shall be liable to the other party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying party.

13.7 **Applicable Law and Venue.** The Agreement shall be governed and construed in all respects in accordance with the laws of the State of Nebraska. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in the District of Nebraska or state courts located in Lancaster County, Nebraska and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

13.8 **Notices.** Except where provided otherwise, notices hereunder shall be in writing and shall be deemed to have been fully given and received when mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the offices of the respective parties set forth beneath the parties' respective signatures to the Agreement, or at such address as the parties may later specify in writing for such purposes. The foregoing shall apply regardless of whether such mail is accepted or unclaimed.

13.9 **Successors and Assignment.** This Agreement shall inure to the benefit of, and be binding upon, any successor to or purchaser of DALECHEK whether by contract, merger, or operation of law. Except for this limited right of assignment, neither party shall assign the Agreement or any right or interest under the Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent. Any attempted assignment or delegation in contravention of this provision shall be void and ineffective.

13.10 **Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, Preliminary Injunction, or other equitable relief to preserve the status quo or prevent irreparable harm DALECHEK and Client understand and agree that the implementation of this Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such parties. Each party hereto agrees to use its best efforts to cause any disputes or disagreements between such parties to be considered, negotiated in good faith, and resolved as soon as possible. In the event that any dispute or disagreement between the parties cannot be resolved to the satisfaction of DALECHEK' Director of Service and the representative of the Client who signs this Agreement within ten (10) days after either organization has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to the President of DALECHEK and the President of Client (or their respective successors) for consideration. In the event that such officers of DALECHEK and Client cannot resolve such dispute or disagreement to their mutual satisfaction within ten (10) days after the latter person has received written notice of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred to in writing to the CEO of Dalechek and the CEO of the Client (or their respective successors) for consideration. No resolution or attempted resolution of any dispute or disagreement pursuant to this Section shall be deemed to be a waiver of any term or provision of the Agreement or consent

to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

13.11 **Arbitration.** Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, Preliminary Injunction, or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator, any and all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof which the parties are unable to resolve pursuant to the Dispute Resolution process contained in paragraph 12.11 of this Agreement shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association (AAA) then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties or in accordance with AAA rules. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration. This Section shall not apply to routine collections actions.

13.12 **Export Compliance.** Client agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Client shall be solely responsible for such compliance with respect to Client Data and the Content that it provides to DALECHEK.

13.13 **Insurance.** Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

13.14 **Relationship of Parties.** The Parties hereto are independent contractors and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, DALECHEK may, from time to time, request that the Client execute such instruments and documents appointing DALECHEK an agent of the Client for a specific limited purpose. An officer of Client shall, in a timely manner, execute and deliver to DALECHEK or the third party requiring the same, such instruments designating DALECHEK as Client's agent to the extent required by DALECHEK to manage and perform the Services provided by it under this Agreement.

13.15 **Subcontractors.** DALECHEK may engage subcontractors to perform services under any Service Agreement. Except as provided herein, DALECHEK shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.

13.16 **Captions.** The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

13.17 **Amendments.** No waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed by the Party to be charged.

13.18 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.

13.19 **No Third Party Beneficiaries.** Except as provided in Section 9 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

13.20 **Publicity.** Nothing contained in this Agreement shall be interpreted so as to permit DALECHEK or Client to publicize its business relationship with the other Party or the nature of the Services performed for Client, without the other Party's prior written consent.

13.21 **Survival.** Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, Sections 7 (Ownership Rights); 9 (Indemnification); 10 (Representations and Warranties); and 11 (Limitation of Liability) shall survive any termination of this Agreement.

ADDENDUM A:
TERMS SPECIFIC TO PRODUCT SALES ONLY

This Addendum A: Terms Specific to Product Sales Only ("Addendum A") applies to any order for software, hardware, or Resold Services ("Products") made by Client, for its own internal use and not for resale, pursuant to a quotation issued by DALECHEK ("Quotation"). As used in this Addendum A, the term "Resold Services" refers to services, which although ordered from DALECHEK, are procured from and supplied by a third party (i.e., DALECHEK does not directly perform or control the work) and are therefore considered Product. Any such orders shall be subject to the terms and conditions of this Addendum A.

1. **Product Returns and Warranty Assistance.**

(a) Client acknowledges that DALECHEK is reselling all Products purchased by Client and that Products are manufactured and/or delivered by a third party.

(b) To the extent available, DALECHEK shall pass through to Client the manufacturer's warranties for each Product and agrees to facilitate the manufacturer's return policies. In no event will DALECHEK provide return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

(c) Client acknowledges that the terms and conditions governing the use of Products shall be solely between Client and the manufacturer of such Products.

2. **Product Use and Product Warranty Disclaimer.** Client will not use the Products for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Client agrees that DALECHEK is not liable for any claim or damage arising from such use.

DALECHEK MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PRODUCTS. DALECHEK DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

3. **Shipment and Risk of Loss for Product Sales.** All shipments of Products to Client will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Client's identified point of delivery will be the responsibility of Client. Risk of loss will pass to Client upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or Client's representative at the point of shipment.

4. **Product Security Interest.** Client grants DALECHEK a security interest in the Products detailed in each Quotation, as security for payment in full. Client authorizes DALECHEK to file and/or record any documents it deems necessary to perfect this security interest.

5. **Permitting Compliance for Product Sales.** Client will obtain all licenses, permits, and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

6. **Price and Payment.** The prices set forth in any Quotation are exclusive of all taxes, duties, licenses, and tariffs, payment of which shall be Client's obligation. Prices quoted are firm for thirty (30) days unless otherwise specified in the Quotation. Payment is due at the time of order. In the event Client chooses to finance its purchase using a third party, Client remains liable for payment to DALECHEK until DALECHEK receives complete payment from such third party. All payments will be made in US currency. Client will pay interest in the amount of one and one-half percent (1.5%) per month, or the maximum allowed by law whichever is lower, on any outstanding balance owed.

7. **Export.** Client agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Client covenants that it will not, either directly or indirectly, sell, (re)export (including, without limitation, any deemed (re)export as defined by applicable law), transfer, divert, or otherwise dispose of any Product, or related software or technology, to: (i) any country or region of a country (or nationals thereof) subject to antiterrorism controls, or a U.S. embargo, (ii) any destination prohibited (without a valid export license or other authorization) by the laws or regulations of the United States, or (iii) any person, entity, vessel, or aircraft identified on the Consolidated Screening List, a downloadable file of which is accessible at http://export.gov/ecr/eg_main_023148.asp (or utilize any such person, entity, vessel, or aircraft in connection with the activities listed above), without obtaining prior authorization from the

competent government authorities, as required by the above-mentioned laws and regulations. Client certifies, represents and warrants that no Product shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. Notwithstanding any sale of Products by DALECHEK, Client acknowledges that it is not relying on DALECHEK for any advice or counseling on export control requirements. Client agrees to indemnify, to the fullest extent permitted by law, DALECHEK from and against any fines, penalties and reasonable attorney fees that may arise as a result of Client's breach of this Section.

8. **Cancelation.** The purchase of Products may be canceled by Client only upon written approval of DALECHEK and upon terms that indemnify DALECHEK against all losses related to such cancelation.

9. **Limitation of Liability.** NO MONETARY RECOVERY IS AVAILABLE FROM DALECHEK FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL DALECHEK'S LIABILITY TO CLIENT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. DALECHEK WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, OR IN ANY WAY CONNECTED TO THIS ADDENDUM A, EVEN IF DALECHEK HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.

10. **Survival.** Those provisions that by their nature should survive termination of this Addendum A, will survive termination. Without limiting the generality of the foregoing statement, Sections 1, 2, 6, 7, and 9 shall survive any termination of the Agreement.

ADDENDUM B: **TERMS SPECIFIC TO HOSTING SERVICES ONLY**

This Addendum B: Terms Specific to Hosting Services Only ("Addendum B") applies to any order services consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in a Managed Services Agreement ("Hosting Services"). Any such orders shall be subject to the terms and conditions of this Addendum B.

1. Definitions.

1.1. "Hosted Data" is Client Data including all data and information about Client's business(es), customers, employees, operations, facilities, products, markets, assets or finances that DALECHEK obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in the Hosting Environment.

1.2. "Hosting Environment" means DALECHEK's application hosting environment for the delivery of Hosting Services.

2. Information Security.

2.1. **Security Measures.** DALECHEK will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Hosted Data stored by DALECHEK in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Hosted Data stored by DALECHEK in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Hosted Data as stored by DALECHEK in the Hosting Environment.

2.2. **Notification and Prevention Obligations.** Upon becoming aware, DALECHEK shall promptly notify Client of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Hosted Data. This notification will state in reasonable detail the Hosted Data at risk. DALECHEK agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information.

DALECHEK further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Client to address the breach. DALECHEK shall not be responsible or liable for any security breach caused by Client.

2.3. **Audits by DALECHEK.** DALECHEK will conduct an annual Statement on Standards for Attestation Engagements, No. 16 (SSAE No. 16) or equivalent audit of its security measures. Upon Client's written request, DALECHEK shall provide a copy of its most recent audit report. The report is to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of DALECHEK.

2.4. **Audits by Client.** Client shall have the right to review DALECHEK's security measures prior to the commencement of the Services and thereafter on an annual basis during the term of this Agreement. Such annual review may include an onsite audit, conducted by qualified personnel, of DALECHEK's data centers in order to inspect the Hosting Environment to verify DALECHEK's compliance with this Agreement. The dates of any onsite audit shall be mutually agreed upon by the Parties. Client shall be responsible for the entire cost of any onsite audit. DALECHEK may charge Client on a time-and-materials basis at the then-current standard time and materials rate for Client audits and requests for information based on the length and detail of the audit/information requested. No such audit may include activities that might result in "downtime" or unavailability for the Hosting Environment. Any "downtime" or unavailability as a result of any audit by Client shall not count as downtime for purposes of any Managed Services Agreement and shall not be a breach of this Agreement or any Managed Services Agreement by DALECHEK.

3. **Client Responsibilities**

3.1. **Acceptable Use.** Client is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Client agrees, and will ensure its Users agree, to act responsibly and not use the DALECHEK Hosting Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. DALECHEK has the right to investigate potential violations of this Section. If DALECHEK determines that a breach has occurred, then DALECHEK may, in its sole discretion: (a) restrict Client's and Users' access to the Hosting Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, DALECHEK will attempt to notify Client by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Client will promptly notify DALECHEK of any event or circumstance related to this Agreement, Client's or any User's use of the Hosting Services, or Content of which Client becomes aware, that could lead to a claim or demand against DALECHEK, and Client will provide all relevant information relating to such event or circumstance to DALECHEK at DALECHEK's request. DALECHEK agrees to allow Client complete and unrestricted access at all times to Client's software applications, devices, equipment, hardware, and all Services-related license files so that Client can audit its Users' compliance with the terms of this Agreement. Client agrees to indemnify, to the fullest extent permitted by law, DALECHEK from and against any damages, costs, expenses, fines, penalties, and reasonable attorney fees that may arise as a result of Client's breach of this Section.

3.2. **Access.** Client agrees not to access the Hosting Environment by any means other than through the interface that is provided by DALECHEK for use in accessing the Hosting Environment.

3.3. **Capacity Planning.** Client is solely responsible for determining whether the services, Hosting Environment, and related Content meet Client's capacity, performance, or scalability needs. Client is responsible for planning for and requesting changes to the Hosting Environment and services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

4. **Indemnification.** Client will indemnify, defend and hold harmless DALECHEK and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against DALECHEK or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Client of its obligations under Section 2.1 and Section 3.1 of this Addendum B and (f) any claim that DALECHEK's possession, storage, or transmission of the Content or possession or use of the Client Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

5. Survival. Those provisions that by their nature should survive termination of this Addendum B, will survive termination. Without limiting the generality of the foregoing statement, Section 3.1 shall survive any termination of this Addendum B