

CLIENTSUITE

TERMS AND CONDITIONS

The following terms and conditions are applicable to the provision by Dataquest, Inc. (“Licensor”) of certain products and services pursuant to a ClientSuite Services Agreement to the Licensee identified therein (“Licensee”).

1. **Definitions.** Capitalized terms used herein shall have the following meanings.

1.1 “Documentation” means the user and operating documentation relating to the Service provided by Licensor to Licensee as more particularly described in the ClientSuite Services Agreement.

1.2 “Related Expenses” shall mean any out-of-pocket expenses incurred by Licensor in the performance of its obligations hereunder as set forth in the ClientSuite Services Agreement, at the rates set forth therein.

1.3 “Service” means the service identified in the ClientSuite Services Agreement that Licensor desires to make available to Licensee via the internet and in accordance with the terms and conditions set forth in the ClientSuite Services Agreement and these Terms and Conditions.

2. **Provision of Products and Services.**

2.1 Products and Services. Licensor agrees to provide Licensee with the Service, and/or all related products and services described herein and in the ClientSuite Services Agreement. All products and services shall be provided pursuant to the terms and conditions applicable to such products and services as set forth in the ClientSuite Services Agreement and these Terms and Conditions.

2.2 Training. Licensor shall provide the training services for Licensee described herein and in the ClientSuite Services Agreement, for the fees set forth therein. Training shall take place at Licensor’s or Licensee’s premises as specified in the ClientSuite Services Agreement. Licensee shall provide adequate personnel for training. Licensee may obtain additional training with reasonable notice to Licensor at Licensor’s then current rates for such services, which training shall continue to be subject to the terms and conditions set forth herein.

2.3 Telephone and Other Support. Licensor shall provide reasonable telephone support and/or consultation concerning the Service for Licensee’s Authorized Users (as defined in Section 6.1(a) herein) as set forth on Exhibit A hereto. Licensor shall provide any additional support described in the ClientSuite Services Agreement at the rates set forth therein.

2.4 Backup Services. Licensor will, on no less than a daily basis, make a complete save (“Backup”) of all data, information and material entered into and stored on the Service by Licensee.

3. **Payment and Terms.**

3.1 Fees. Licensee agrees to pay all fees, charges and Related Expenses for products and services as set forth in the ClientSuite Services Agreement.

3.2 Taxes. Licensee shall pay all taxes based on or in any way measured by the ClientSuite Services Agreement or these Terms and Conditions or any services related hereto (except those taxes

measured by the income or capital of Licensor). Licensee shall promptly reimburse and shall indemnify Licensor for all such taxes which Licensor is required by any taxing authority to pay.

3.3 Fee Adjustments. Licensor reserves the right to adjust its prices once per year subject to thirty (30) days advanced written notice by providing to Licensee a revised fee schedule. Licensor shall not increase Licensee's fees or charges by a greater percentage than it increases its customers' fees in general for the same or similar products or services.

3.4 Suspension of Services. In the event that Licensee fails to pay any amount when due, in addition to other rights and remedies provided herein or otherwise available at law or in equity, Licensor will have the right, in its sole discretion, to immediately suspend the license granted pursuant to Section 6.1 herein and Licensee's and its Authorized Users' access to and use of the Services. Licensee shall continue to be responsible to pay all applicable fees for the license during any period of suspension.

4. **Default and Termination.**

4.1 Termination by Either Party. Following the first anniversary of the effective date of the ClientSuite Services Agreement, either Licensee or Licensor may terminate the ClientSuite Services Agreement without cause upon ninety (90) days written notice to the other Party. In the case of termination hereunder by Licensee, such notice shall be accompanied by payment for all previously invoiced and overdue amounts. Upon termination as provided herein, Licensor will use its best efforts to provide to Licensee a reasonable summary of high level data stored by Licensee on the Service, provided, however, that Licensor shall not be responsible for conversion of any Licensee data to an alternate product or system and in no event shall Licensor be responsible for any costs associated with the identification, selection, engagement, conversion to or implementation of a replacement service or vendor.

4.2 Termination by Licensee. Licensee may terminate the ClientSuite Services Agreement upon the occurrence of any of the following: (i) Licensor's material breach of any provision of these Terms and Conditions if Licensor has not cured or initiated adequate steps to cure such breach or failure within thirty (30) days following written notice of such breach or failure to Licensor or within ten (10) days if any breach or failure materially affects Licensee's ability to conduct its operations; or (ii) Licensor ceases to do business, makes an assignment for the benefit of creditors, becomes bankrupt or insolvent, or is found subject to any provisions of the bankruptcy code concerning involuntary bankruptcy or similar proceedings. Upon termination by Licensee as provided herein, Licensor will use its best efforts to provide to Licensee a reasonable summary of high level data stored by Licensee on the Service, provided, however, that Licensor shall not be responsible for conversion of any Licensee data to an alternate product or system and in no event shall Licensor be responsible for any costs associated with the identification, selection, engagement, conversion to or implementation of a replacement service or vendor.

4.3 Termination by Licensor. Licensor may terminate the ClientSuite Services Agreement upon the occurrence of any of the following: (i) Licensee's material breach of any provision of these Terms and Conditions if Licensee has not cured or initiated adequate steps to cure such breach or failure within thirty (30) days following written notice of such breach or failure to Licensee; (ii) Licensee fails to pay any fee or charge within 30 days of the date of any invoice; or (iii) Licensee ceases to do business, makes an assignment for the benefit of creditors, becomes bankrupt or insolvent, or is found subject to any provisions of the bankruptcy code concerning involuntary bankruptcy or similar proceeding. In the event of termination, all fees and amounts due with respect to such product or service shall accelerate and become due and payable immediately.

4.4 Return of Materials. Upon any termination of the ClientSuite Services Agreement, Licensee shall promptly return to Licensor or destroy all copies of all materials relating to the products or services provided by Licensor hereunder or containing any confidential information of Licensor, including all copies of all Documentation.

4.5 Survival. All rights and obligations under the ClientSuite Services Agreement and these Terms and Conditions with respect to restrictions on the use of products and services, protection of intellectual property rights, payment of fees, confidentiality, and indemnification shall survive the expiration or termination of the ClientSuite Services Agreement.

5. **Licensee Obligations.**

5.1 Hardware and Software. Licensee agrees to obtain, install, operate, and maintain the hardware, software, and general operating environment required for the proper use and operation of the products and services to be provided by Licensor hereunder (excluding that which is to be provided by Licensor hereunder), including, but not limited to, all hardware, software, and networks; telecommunications lines, equipment, and service; power lines, outlets, sources and conditioners; and environmental conditioning equipment (collectively, the "Operating Environment"). Licensor shall be responsible for components of the Operating Environment which Licensor has been contracted to provide. The Operating Environment shall comply with specifications provided by Licensor, and must be certified by Licensor as meeting such specifications prior to implementation by Licensor of any products or services which rely on such Operating Environment. The initial requirements for the Operating Environment are set forth on Exhibit A hereto. Licensee shall in the future acquire all such additional hardware, software, and equipment as may be requested by Licensor to support additional products or services ordered from Licensor, as necessary to keep its technology reasonably current and competitive, or as required to support any upgrade to any Licensor product or service which Licensee desires to implement.

5.2 Support. Licensee shall provide Licensor with all data, documents, reports, access to personnel, and other assistance as may be reasonably required or necessary for Licensor to provide and train all personnel reasonably required for the proper use and operation of the products and services provided by Licensor hereunder.

5.3 Personnel. Following completion of any training to be provided by Licensor under the ClientSuite Services Agreement Licensee shall thereafter provide and train all personnel reasonably required for the proper use and operation of the products and services provided by Licensor hereunder.

5.4 Data Protection. Licensee shall establish proper procedures to verify the correctness and integrity of the data stored or produced by Licensor's products or services. Licensee shall own and retain all right, title, and interest in and to all Licensee data provided by Licensee to Licensor. Licensee shall be solely responsible for all data and the maintenance thereof to ensure that no data or other information is lost as a result of any failure of the Service and/or the Operating Environment. Licensor shall not be responsible for or liable to Licensee for any loss of data resulting from or related to Licensee's use of the Service.

5.5 Security. Licensee shall maintain the security and confidentiality of all user names and passwords assigned to Authorized Users. Licensee agrees to notify Licensor immediately if Licensee becomes aware of any unauthorized use of the Service. Licensor shall not be responsible for any unauthorized access to the Service obtained through the use or misuse of otherwise valid user names and passwords.

6. **Terms and Conditions Applicable to the Service.**

6.1 License Grant. Subject to the restrictions and limitations of these Terms and Conditions and to payment of the fees set forth in the ClientSuite Services Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable right and license during the term of to ClientSuite Services Agreement to:

(a) access through the Licensor's web site and use the Service only by employees of Licensee for whom Licensee has established a user account by obtaining a user name and password for such employee to access the service (each such employee, an "Authorized User"), for the Permitted Use identified in the ClientSuite Services Agreement; and

(b) use the Documentation in support of Licensee's authorized use of the Service.

6.2 Restrictions. Notwithstanding the above, Licensee may not, without the prior written consent of the Licensor:

(a) decompile, reverse engineer, disassemble or create derivative works from the Service;

(b) take any action to produce an inaccurate count of Authorized Users or otherwise interfere with the operation of the Service;

(c) upload, post, e-mail, transmit, publish, re-publish, distribute, display, re-sell, lease, license, or otherwise make the Service available to any third parties;

(d) permit access to or use of the Service by any person other than an Authorized User; or

(e) interrupt or attempt to interrupt operation of the Licensor's web site or the Service in any way.

6.3 Use of Service. Licensee agrees to comply with any operating instructions for the Service in accordance with its Documentation.

6.4 Performance Standards. As provided for by Licensor's agreement with InfoQuest Technologies, Inc., Licensor's IP network provider, the Service shall generally be available for access 99.9% of the time each calendar month.

6.5 Performance Standards Remedy. Licensor shall not be responsible for or liable to Licensee for any inability of Licensee to access the Service relating to the failure of InfoQuest Technologies, Inc. to meet the percentage up-time standard specified above. If the Service fails to meet the percentage up-time standard specified above and such failure is not the result of Licensee's error or omission, Licensee shall notify Licensor immediately in writing specifying the nature of the deficiency. Licensor shall promptly notify its IP network provider of the deficiency and pursue such remedies available to it under its service agreement with such provider. **THIS SECTION STATES THE LICENSOR'S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO MAINTAINING ANY PERFORMANCE STANDARD.**

6.6 Problem Reporting and Resolution. Licensee is responsible for reporting problems to Licensor's customer service or operations staff at the contact numbers or address provided by Licensor from time to time. Licensor shall respond to each reported problem promptly based on the severity of the problem and its effect on Licensee's operations. Licensor shall use commercially reasonable efforts to either resolve each problem or provide Licensee with information to allow Licensee's personnel to address the problem.

7. **Warranties.**

7.1 Negation of Warranty. EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR DOES NOT WARRANT THE SERVICES AND/OR SOFTWARE PROVIDED UNDER THE CLIENTSUITE SERVICES AGREEMENT OR THESE TERMS AND CONDITIONS, OR THAT THE SERVICE WILL MEET OR CONTINUE TO MEET THE SPECIFICATIONS AND PROGRAM DESCRIPTIONS THEREFOR, OR THAT ANY OR ALL ERRORS, MALFUNCTIONS AND DEFECTS CAN OR WILL BE CORRECTED. ALL CORRECTIONS, MODIFICATIONS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OF THE SOFTWARE, OR FITNESS FOR LICENSEE'S PURPOSES.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Limitation of Liability. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE, OR INABILITY TO USE, ANY PRODUCTS OR SERVICES PROVIDED OR LICENSED TO LICENSEE HEREUNDER, FOR ANY FAILURE TO PROVIDE SERVICES, FOR ANY ERROR IN THE PROVISION OF PRODUCTS OR SERVICES TO LICENSEE, OR ARISING OUT OF ANY OTHER CIRCUMSTANCES ASSOCIATED WITH THE SUBJECT MATTER OF THE CLIENTSUITE SERVICES AGREEMENT OR THESE TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF PROFIT, LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME, OR ALTERATION OR ERRONEOUS TRANSMISSION OF DATA, EVEN IF LICENSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

7.4 Liability Cap. LICENSOR'S TOTAL LIABILITY TO LICENSEE UNDER ANY PROVISION OF THE CLIENTSUITE SERVICES AGREEMENT OR THESE TERMS AND CONDITIONS (WHETHER BASED ON TORT, CONTRACT, OR ANY OTHER THEORY), OTHER THAN CLAIMS BASED UPON THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY. WITH RESPECT TO PRODUCTS AND SERVICES FOR WHICH LICENSEE PAYS MONTHLY OR PERIODICALLY, LICENSOR'S LIABILITY SHALL BE LIMITED TO THE AMOUNT PAID BY LICENSEE FOR SUCH PRODUCTS OR SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FACT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT EACH OF THEM RELIED UPON THE INCLUSION OF THIS LIMITATION IN CONSIDERATION OF ENTERING INTO THE CLIENTSUITE SERVICES AGREEMENT.

7.5 Third Party Products and Services. Licensor shall not be responsible for, does not warrant, and no warranties made hereunder shall apply to, any product or service, including, but not limited to, hardware, software, or equipment, manufactured or provided by any third party. The provision of all such third party products and services shall be subject to the terms and conditions provided by such third party to Licensee, if any. Licensor shall not under any circumstances be responsible for any products or services provided by any third party, including but not limited to transmission or communication errors, use or failure of hardware or equipment, use or failure of software, or for any act, error, omission, or circumstance beyond Licensor's reasonable control.

8. **Confidentiality.** Licensee acknowledges that in the course of Licensor's provision of the services pursuant to the ClientSuite Services Agreement, Licensee may come into possession of certain business, marketing or technical information, or technology, business processes or procedures, including the Service, the Documentation or other proprietary materials or information of Licensor, and that all such information is confidential. Licensee agrees to maintain the confidentiality of such information and not to disclose or permit disclosure of such information to any third parties or otherwise use or permit the use of such information in any manner other than expressly permitted hereunder. The terms and conditions of the ClientSuite Services Agreement may not be disclosed or made public to any third parties without the prior written consent of the Licensor and the Licensee.

9. **Title.** The Service and all user manuals and Documentation supplied by Licensor and not identified as third party works are (i) copyrighted works of Licensor protected by copyright laws, treaties, and conventions of the United States and (ii) contain trade secrets and confidential information of Licensor protected under applicable law of the United States. Licensor retains all right, title and interest in and to all such products, and all copyright, trade secret, patent, and other intellectual property rights contained therein, subject only to the limited license granted to Licensee in accordance with the ClientSuite Services Agreement. Licensor shall also exclusively own all intellectual property rights in and to any changes, modifications, and additions to all such products, whether made by or on behalf of Licensor, Licensee, or their employees, agents or otherwise. To the extent that changes, including all associated intellectual property rights, are not owned in their entirety by Licensor immediately upon their creation, Licensee agrees to assign (and hereby automatically assigns) all right, title, and interest therein to Licensor, without any requirement of consideration or further documentation.

10. **Copyright Indemnity.**

10.1 Warranty. Licensor warrants that it owns or has all necessary rights in all intellectual property necessary to grant Licensee the right to use any products or services provided by Licensor to Licensee.

10.2 Infringement Claims. If a third party claims that any product or service provided by Licensor to Licensee infringes upon any patent, copyright, trade secret, or similar intellectual property right of any third party, and such claim would impair Licensee's right to use such product or service in accordance with the ClientSuite Services Agreement and these Terms and Conditions, Licensor shall (as long as Licensee is not a default hereunder or any other agreement with Licensor) defend and hold Licensee harmless against that claim at Licensor's expense and, to the extent permitted by applicable law, indemnify Licensee from any and all liabilities, losses or damages, including reasonable attorneys fees, incurred as a result of or in any way relating to such a claim, provided that Licensee promptly notifies Licensor in writing of any such claim and cooperates fully with Licensor in the defense of such claim.

10.3 Remedies. If such a claim is made or appears possible, Licensor shall, at its option, either (i) secure for Licensee the right to continue to use the product or service in question, or (ii) modify or replace the product or service so it is non-infringing, but continues to provide the functionality which Licensee contracted for. If Licensor cannot do either of the foregoing after reasonable effort, Licensor may refund a pro-rata portion of the fees paid for the infringing material.

10.4 Exclusions. Licensor shall have no liability or obligation hereunder to the extent that any infringement is caused by or attributable to any modification, addition, or change to any product or service by anyone other than Licensor, or the combination, operation, or use of any software or other product or service with any hardware or software not approved in writing by Licensor. **THIS SECTION STATES LICENSOR'S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO MATTERS OF TITLE OR ANY CLAIM OF INFRINGEMENT THEREOF.**

11 **General.**

11.1 Assignment. Neither party may assign, transfer, or delegate its rights or obligations hereunder without the other party's prior written consent, except that the ClientSuite Services Agreement may be assigned without consent to any successor in interest to all or substantially all of the business or assets of the assigning party.

11.2 Choice of Law. **THE CLIENTSUITE SERVICES AGREEMENT AND THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA WITHOUT REGARD TO ITS CHOICE OF LAW RULES.**

11.3 Force Majeure. Neither party shall be in default for failing to perform hereunder (other than a failure to make payment when due or to comply with restrictions upon the use of the products and services) if such failure arises out of any act, event, or circumstance beyond the reasonable control of such party, whether or not predicted or foreseeable. The party so affected will resume performance as soon as reasonably possible.

11.4 Entire Agreement. The ClientSuite Services Agreement and these Terms and Conditions constitute the entire agreement between the parties. All exhibits hereto are incorporated into and made part hereof and are subject to the general terms and conditions herein.

11.5 Modification of Terms. Licensor reserves the right to modify these Terms and Conditions at any time by posting an updated version of these Terms and Conditions on Licensor's website. Licensee is responsible for regularly reviewing the current version of these Terms and Conditions. Continued use of the Service after such modifications shall constitute Licensee's consent to be bound by the Terms and Conditions, as revised.

[End of Terms and Conditions]

