



## SPARKOL INC. VIDEO PRODUCTIONS SERVICES AGREEMENT

This Services Agreement entered into between Sparkol Studio clients and SPARKOL INC, a corporation formed and existing under the laws of New York ("Company") with offices at 68 3rd Street, Brooklyn, NY, 11231, United States.

The parties agree as follows:

### 1. SERVICES, WORK ORDERS, AND CHANGE ORDERS

1.1. Services. Subject to the terms and conditions of this Agreement and at Client's request and direction, Company will perform for Client the services described in one or more Work Orders (as defined below) (the "Services").

1.2. Work Orders. The specific details of the Services to be performed will be determined on a per-project basis, and the details for each project will be described in a written work order, substantially in the form of the work order set forth in Schedule 1 hereto, that is executed by both parties (each, a "Work Order"). Once executed by both parties, each Work Order will be a unique agreement that incorporates the terms of this Agreement and stands alone with respect to all other Work Orders. If there is a conflict between the terms of this Agreement and the terms of a Work Order, the terms of this Agreement will control unless the Work Order states that a specific provision of this Agreement will be superseded by a specific provision of the Work Order. Each Work Order shall constitute a separate contract for which payment shall be due from Client, independently of whether other payment for work orders is disputed. No set-off shall be permitted under this Agreement or with respect to work orders pursuant hereto.

1.3. Change Orders. Unless otherwise specified in a Work Order, Client may reasonably request in writing that revisions be made with respect to the Services or deliverables set forth in that Work Order (each, a "Change Order"). If a Change Order recites revisions that (a) changes Client's personnel allocated to such Work Order pursuant to Section 2.1; (b) materially increase the scope of the Services or the effort required to deliver deliverables under the applicable Work Order; or (c) changes the script and resulting voice over of the Work Order, then within 5 business days after Company's receipt of such Change Order, Company will deliver to Client a written, revised Work Order reflecting Company's reasonable determination of the revised Services, deliverables, delivery schedule, and payment schedule, if any, that will apply to the implementation of the revisions. If Client approves the revised Work Order, then the parties will execute it, and upon execution by Client and delivery to Company, the revised Work Order will supersede the then-existing Work Order. If Client does not approve, execute and deliver the revised Work Order within 5 business days after its receipt by Client, the then-existing Work Order will remain in full force and effect, and Company will have no further obligation with respect to the applicable Change Order.

1.4. Intention to Instruct Change Order. Notwithstanding the foregoing, where Company has requested that an agreement to change an order be reflected in a signed and written agreement and where in addition the parties' correspondence and actions indicate a reasonably clear intention on the parts of both parties to effect the agreed change order but such change order has not received signed, written authority, Company shall be entitled to rely upon such correspondence and actions to effect the change order and charge Client in accordance with the foregoing provisions of this Section 1 as though the change order had received signed and written authority from the Client.

1.5 Company Change Order for Voice Over. While Company shall provide its best reasonable estimate and or quotation, as determined in the Work Order, for a project, Client understands and accepts that until such time as a Voice Over is complete and accepted by Client, the length of a video produced pursuant to a work order cannot be determined with accuracy. Client therefore accepts that Company may unilaterally adjust the fee within certain reasonable parameters detailed in Schedule 1 hereto so as to reflect the actual fee of the deliverable.

1.6 Project Delay. Company shall inform Client as soon as practical of any anticipated delays in the delivery of any deliverable or any item specifically set forth in any Work Order and of the actions being taken to assure completion of the such item. In the event that such delay is the result of any action or omission by Client, Company will provide Client with written notice that such a delay is anticipated or has occurred, and the reason(s) for the delay relative to the action or omission of Client. Work on the Work Order shall not resume until the reason for the delay has been resolved by Client and notice of its resolution has been provided to Company. If Client fails to cure the delay within 30 calendar days, Company may, at its sole option, declare a default under this Agreement and may pursue all remedies and collect all amounts owed pursuant to Section 6.2(c). Notwithstanding any delay on the part of Client, Company shall make commercially reasonable efforts to continue work on Work Order, and shall halt work only to the extent that work cannot reasonably continue without corrective action on the part of the Client or significant loss to Company. In the event that work on the Work Order is halted in accordance with this Section 1.4, absent a declaration of default by Company pursuant to this Section 1.4, work shall resume as soon as commercially reasonable after Client has taken such corrective action on its part as is necessary and has provided written notice of such corrective action to Company.

### 2. PERFORMANCE OF SERVICES

2.1. Project Management. For each Work Order, each party will designate a single point of contact within its organization to manage the projects described in such Work Order (each, a "Project Leader"). In addition, all personnel of Client who will contribute to the projects described in such Work Order shall be identified in writing (via e-mail or other such method mutually agreeable amongst the Parties) to Company at the time of commencement of the Services associated with such Work. Except as otherwise specified in a Work Order, Company's Project Leader will only receive direct instructions from Client's Project Leader, but shall reasonably work with the Client's other personnel in connection with performing the Services set forth in the applicable Work Order. Any request by Client to add any new personnel to any projects described in any Work Order following the time of commencement of the Services associated with such Work Order or request to replace Client's Project Leader shall be considered a Change Order pursuant to the terms of Section 1.3 hereof. The Project

Leaders will meet or otherwise correspond as necessary to manage the Services to be performed under a Work Order. Company's Project Leader will provide Client's Project Leader with periodic reports on the status of the Services.

2.2. Release. On behalf of all personnel of Client who will contribute to the projects described in any Work Order as well as any other parties participating in such project at the direction of or by the request of Client, Client hereby grant the following rights and permissions to Company:

(a) Company has the absolute right and permission to use, reuse, publish, and republish Client logos for the sole purpose of marketing Company's services (in any media whether electronic, digital, recorded or otherwise)

(b) Client releases, discharges, and agrees to hold harmless and defend Company, its legal representatives or assigns, and all persons acting under its permission or authority or those for whom Company is acting, from any liability by virtue of any reason in connection with the use of Client logos including without limitation any claims for libel or violation of any right of publicity or privacy.

(c) This release contained in this Section 2.2 shall be binding upon the Client, and Client's respective heirs, legal representatives, and assigns.

2.3. Personnel. The Services shall be performed in a competent, professional, and workmanlike manner in accordance with applicable laws.

2.4. Subcontractors. Company may utilize independent contractors to perform all or part of the Services. Company will remain solely responsible for the performance of all of the Services that are subcontracted.

2.5. Exclusive Representation. Except as expressly set forth to the contrary in a Work Order, Client agrees that during the term of this Agreement Company shall be the exclusive provider of Services pursuant to any Work Order and Client shall not, without Company's prior written consent, engage any other party to provide services related to any project described in any Work Order. In the event of any engagement in violation of this Section 2.5, Company shall be entitled to terminate this Agreement pursuant to Section 6.2(c).

2.6. Materials. Except for Client Materials (as defined in Section 2.7 hereof) and as otherwise specified in a Work Order, Company will be responsible for and supply all necessary equipment, materials, and other resources required to perform the Services.

2.7. Client Materials; License. Any materials provided by Client to Company are to be used solely to perform the Services ("Client Materials"). Company will treat the Client Materials as Client's Confidential Information (as defined below). Client hereby grants to Company a non-exclusive, worldwide, royalty-free license in and to any deliverables under the applicable Work Order and Client Materials, under all of Client's intellectual property rights therein, solely for the purpose of performing the Services contemplated by any Work Order in accordance with the terms of this Agreement and obtaining payment therefor. Client also hereby grants to Company a non-exclusive, worldwide, royalty-free license to use any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by Client (the "Client Brand") solely for the purpose of performing the Services contemplated by any Work Order in accordance with the terms of this Agreement and obtaining payment therefor.

### **3. DELIVERABLES; ACCEPTANCE OF DELIVERABLES**

3.1. Initial Delivery. Company will notify Client when it believes that it has appropriately completed a deliverable and will deliver the deliverable to Client in the format specified in the applicable Work Order for Client's acceptance in accordance with the terms of this Section 3.

3.2. Inspection. After Company's delivery of each deliverable, Client will have two (2) business days to inspect the deliverable to verify that it conforms in all respects to the applicable specifications of the applicable Work Order. Upon expiration of such two (2) business day period, if Client has not delivered a Rejection Notice (as defined below) such deliverable shall be automatically and irrevocably deemed accepted by the Client.

3.3. Rejection Notice. If Client reasonably determines in good faith that the deliverable does not conform to the applicable specifications or does not otherwise pass the applicable acceptance criteria set forth in the applicable Work Order, if any, Client will notify Company promptly and in all events not later than four (4) business days after delivery of the Deliverable to Client, in writing of its determination, setting forth a detailed description of the nonconformities exhibited by the deliverable ("Rejection Notice").

3.4. Correction of Nonconformities. After Company receives a Rejection Notice, the Parties will confer to agree in good faith upon (a) whether a nonconformity exists; (b) if so, the timing schedule by which Company will perform additional Services to remedy the nonconformities set forth in the Rejection Notice; and (c) the applicable additional charges associated therewith, if any. When Company remedies the nonconformities, Company will redeliver the Deliverable to Client and Client will again review the Deliverable for acceptance or rejection in accordance with this Section 3 and the time periods contained in Sections 3.2 and 3.3.

3.5. Remedies. If the Parties agree that nonconformities exist and if Client further reasonably determines in good faith that Company will be unable to correct all nonconformities in a Deliverable, Client will have the option, by delivering written notice to such effect to Company, to (a) terminate the Work Order only with respect to the nonconforming Deliverable; (b) terminate the entire Work Order where the nonconformities render the entire Work Order nonconforming; or (c) accept the nonconforming Deliverable. In the event of any termination of all or a portion of any Work Order pursuant to this Section 3.5, Client shall be obligated to pay any undisputed amount set forth in any invoices delivered pursuant to Section 5 and any and all related out of pocket costs and expenses specified in the applicable Work Order(s) (including, but not limited to, any upfront costs paid by Company related to any third party independent contractor specified in any applicable Work Order) related to such undisputed amounts that had actually been incurred by Company prior to delivery of the written notice of termination by Client pursuant to this Section 3.5.

#### **4. THIRD PARTY MATERIALS**

4.1. Sublicense from Company. If a Work Order requires Company to obtain, for use in connection with the Services or incorporation into an Invention (as defined in Section 8.1), any material from a third party from whom Company has been granted an appropriate right of sublicense, then, with prior Client approval, Company will duly sublicense the third party materials to Client to the extent necessary for Client to fully utilize the Invention; Company will grant the sublicense to Client subject to the terms and conditions of any applicable sublicense agreements required by the third party; and the sublicense agreement will be executed by the parties and attached as part of the applicable Work Order.

4.2. Company's Obligation to Seek a License. If a Work Order requires Company to obtain, for use in connection with the Services or incorporation into an Invention, any material from a third party from whom Company or Client has not acquired the necessary right or license for the use or incorporation, then Company will both make good faith and diligent efforts to license the third party material from the third party on Client's behalf; and forward to Client all communications and invoices received from the third party by Company. Unless otherwise specified in a Work Order, Client will be responsible for costs associated with Company performing its obligations under this Section 4.2.

4.3. Client's Obligation to Seek a License. If a Work Order requires Client to obtain, for use in connection with the Services or incorporation into an Invention, any material from a third party from whom Company or Client has not acquired the necessary right or license for the use or incorporation, then Client will, at its sole expense, acquire the necessary right or license to the third party material on behalf of itself and Company.

#### **5. COMPENSATION**

5.1. Fees. Client will pay the fees as set out in each Work Order ("Service Fees"). Client will not reimburse Company for any costs or expenses unless the nature of the costs and expenses to be reimbursed are specified in the Work Order and Company receives approval before incurring a specific cost or expense. All fees payable under this Agreement are exclusive of taxes and similar charges.

5.2. Payment. Unless otherwise specified in a Work Order: Company will issue monthly invoices for Service Fees for Services that have been performed in the month; and Client will pay any undisputed amount set forth in such invoices no later than 14 days after receipt of Company's invoice. Payment for undisputed amounts under this Agreement shall, if not paid within 14 days of receipt of the applicable invoice, bear simple interest at the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law.

5.3. Audit by Client. Company will, after reasonable prior written notice from Client, provide Client with reasonable access to Company's premises, records, and personnel so that Client may confirm, at Client's sole cost, that Company has properly invoiced Client under this Agreement. Client may not remove any Company books, records, information of materials from Company premises or make copies of same without express written permission from Company.

#### **6. TERM AND TERMINATION**

6.1. Term. This Agreement will commence on the Effective Date and continue for 12 months from the Effective Date, after which time the term of this Agreement shall automatically renew for successive 12 month periods unless either party delivers written notice to the other party of its desire to terminate this Agreement at least 30 days prior to any such renewal. Notwithstanding the foregoing, in the event that any Work Order has not been completed as of the date that this Agreement terminates, this Agreement, along with any such Work Order shall continue to be effective until the completion of such Work Order unless specifically terminated in accordance with the terms of this Agreement or the terms of such Work Order.

6.2. Termination; Termination Fee.

(a) Where Client has given notice to Company that Company is in breach of any material provision of this Agreement and such breach remains uncured for 10 days following receipt of such notice, then Client may terminate this Agreement upon a further 10 day written notice to Company of such termination.

(b) Client may terminate this Agreement for convenience at any time by giving 30 calendar days prior written notice to Company.

(c) In the event of any termination of this Agreement by Company pursuant to Section 1.4 above, Section 2.6 above, Section 6.2(a) or by Client pursuant to any other section of this Agreement other than pursuant to Section 6.2(a) above, Client shall pay to Company within 5 business days of the effective date of such termination (i) in consideration of Company forgoing other business opportunities in anticipation of the Services that otherwise would have been provided to Client pursuant to this Agreement, a termination fee equal to 15% of the total unpaid amounts of any Service Fees associated with any then outstanding Work Order, (ii) any undisputed amount set forth in any invoices delivered pursuant to Section 5 and (iii) any and all other out of pocket costs and expenses specified in any then outstanding Work Order (including, but not limited to, any upfront costs paid by Company related to any third party independent contractor specified in any applicable Work Order) that had actually been incurred by Company or irrevocably committed to by Company in anticipation of fulfillment of any then outstanding Work Order prior to delivery of the written notice of termination by Client pursuant to this Section 6.2(c), an invoice for which will be delivered by Company to Client prior to the effective date of the termination.

6.3. Survival. Upon termination, all rights and duties of the parties toward each other cease except that Sections 2.2, 2.7, 5.3, 6.2, 6.3, 6.4, 7, 8, 10, and 11 will survive termination or expiration of this Agreement.

6.4. Return of Materials. Upon the termination of this Agreement, or upon Client's earlier request, Company will deliver to Client all Client Materials and Confidential Information (as defined below) that are in Company's possession or control.

## **7. CONFIDENTIALITY**

7.1. Definition. "Confidential Information" means any non-public information that relates to the actual or anticipated business, research, or development of Client and any proprietary information, trade secrets, and know-how of Client that are disclosed to Company by Client or its agents, directly or indirectly, in writing, orally, or by inspection or observation of tangible items. Confidential Information includes research, development, and commercialization plans, processes, techniques, formulas, prototypes, and all information generated by Company in the performance of the Services. Confidential Information includes information that is defined as "Confidential Information" under any other agreement between the parties. Confidential Information also includes the confidential information of third parties that has been provided to Client. Confidential Information is the sole property of Client.

7.2. Exceptions. Confidential Information does not include any information that Company can reasonably demonstrate: (a) was publicly known and made generally available in the public domain before Client disclosed the information to Company; (b) became publicly known and made generally available, after disclosure to Company by Client, through no wrongful action or inaction of Company or others who were under confidentiality obligations; (c) was in Company's possession, without confidentiality restrictions, at the time of disclosure by Client, as shown by Company's files and records; or (d) was independently developed without use of or reference to the Confidential Information.

7.3. Nondisclosure and Non-use. Except in connection with any Confidential Information contained in any Final Edit Version of any deliverable for which Client has granted Company a limited license to use pursuant to Section 8.4, Company will not, during and after the term of this Agreement, disclose the Confidential Information to any third party or use the Confidential Information for any purpose other than the performance of the Services on behalf of Client. Company will take all reasonable precautions to prevent any unauthorized disclosure of the Confidential Information including, but not limited to, requiring each employee and independent contractor with access to Confidential Information to execute a nondisclosure agreement containing terms that are substantially similar to the terms contained in this Agreement. Company will not, during and after the term of this Agreement, reverse engineer the Confidential Information.

7.4. Supersede Existing Obligations. The obligations in this Section 7 replaces and supersedes in full each party's obligations of confidentiality and nondisclosure under the terms of any confidentiality or nondisclosure agreement between the parties.

## **8. OWNERSHIP**

Except as expressly set forth to the contrary in a Work Order, prior to payment in full by Client to Company of the applicable Service Fee related to any Work Order, ownership of Inventions (as defined in Section 8.1) and related intellectual property rights associated with the Final Edit Versions (as defined below) of any deliverable delivered pursuant to such Work Order will be and remain vested in the Company. Upon payment by Client to Company in full of the applicable Service Fee related to any Final Edit Versions of any deliverable delivered pursuant to any Work Order, ownership of Inventions and related intellectual property rights associated with such Final Edit Version of such deliverable delivered pursuant to such Work Order will be allocated as follows:

8.1. Inventions. All works of authorship, inventions, discoveries, improvements and information conceived, discovered, developed or otherwise made (as necessary to establish authorship, inventorship, or ownership) by Company, solely or in collaboration with others, solely as they relate to Final Edit Version of a deliverable delivered pursuant to such Work Order; that reflect or contain Client's Confidential Information; or that form all or part of a Final Edit Version of a deliverable provided as part of the Services; in each case of (a), (b), or (c) of this sentence whether developed as part of the Services or separately, but excluding Pre-Existing Works (as defined in Section 8.2) or Company Work Product (as defined in Section 8.3)(collectively, "Inventions") will be the sole property of Client. Inventions that constitute copyrightable subject matter will be considered "works made for hire" to the extent permitted under the United States Copyright Act. To the extent that ownership of the Inventions does not by operation of law vest in Client, Company will assign (or shall use reasonable efforts to cause to be assigned) and does hereby assign fully and irrevocably to Client all right, title, and interest in and to the Inventions, including all related intellectual property rights.

8.2. Pre Existing Works. If in the course of performing the Services, Company incorporates into any deliverable or Invention any other work of authorship, invention, discovery, improvement or information existing before the Effective Date that is owned or controlled by Company (a "Pre- Existing Work") or Company Work Product (as defined in Section 8.3), Company will grant to Client a nonexclusive, royalty free, perpetual, irrevocable, worldwide license to reproduce, manufacture, modify, distribute, use, import, and otherwise exploit the Pre-Existing Work or Company Work Product, as applicable, as part of or in connection with the deliverable or Invention.

8.3. Final Edit Versions. Unless otherwise specified in a Work Order, all deliverables set forth in any Work Order, subject to acceptance of such deliverable by Client pursuant to the terms of this Section 3, shall be delivered to Client containing all edits and adjustments deemed necessary by Company to satisfy the applicable acceptance criteria set forth in the applicable Work Order, if any (each such deliverable accepted by Client pursuant to the terms of this Section 3, a "Final Edit Version"). Notwithstanding anything contained herein to the contrary and unless otherwise specified in a Work Order, in connection with the performance of the Services associated with any Work Order Company shall only deliver to Client, and Client shall only retain ownership in, the Final Edit Version of any deliverable and ownership of all other intellectual property and work product (including, but not limited to any and all processes, techniques, formulas, analysis, strategies, tactics, methods, procedures, material(s) and footages created but not used in any deliverables such as outtakes and B-roll, and other operational instructions whether or not protectable under applicable law, that are created for Client by Company and whether they be created by independent contractors, employees or subcontractors of Company) associated with such deliverables (the "Company Work Product") shall be retained by Company.

8.4. Limited Publicity License. Unless otherwise specified in a Work Order, Client hereby grants to Company a non-revocable, non-exclusive, worldwide, royalty-free license to use the Client Brand and any Final Edit Version of any deliverable solely for the purpose of use in connection with the Company's physical or electronic portfolio and/or website that Company shows to other potential clients in the ordinary course of Company's business.

## **9. WARRANTIES**

As an inducement to entering into and consummating this Agreement, Company and Client each represents, warrants, and covenants to the other as follows:

### **9.1. Organization Representations; Enforceability.**

(a) Company is duly organized, validly existing, and in good standing in the jurisdiction stated in the preamble to this Agreement. The execution and delivery of this Agreement by Company and the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Company. This Agreement constitutes a valid and binding obligation of Company that is enforceable in accordance with its terms.

(b) Client is duly organized, validly existing, and in good standing in the jurisdiction stated in the preamble to this Agreement. The execution and delivery of this Agreement by Client and the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Client. This Agreement constitutes a valid and binding obligation of Client that is enforceable in accordance with its terms.

### **9.2. No Conflict.**

(a) The entering into and performance of this Agreement by Company does not and will not violate, conflict with, or result in a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien, or encumbrance to which Company is a party or by which it or any of Company's property is or may become subject or bound. Company will not grant any rights under any future agreement, nor will it permit or suffer any lien, obligation, or encumbrances that will conflict with the full enjoyment by Client of its rights under this Agreement.

(b) The entering into and performance of this Agreement by Client does not and will not violate, conflict with, or result in a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien, or encumbrance to which Client is a party or by which it or any of Client's property is or may become subject or bound. Company will not grant any rights under any future agreement, nor will it permit or suffer any lien, obligation, or encumbrances that will conflict with the full enjoyment by Company of its rights under this Agreement.

**9.3. Right to Make Full Grant.** Company has and will have all requisite ownership, rights, and licenses to fully perform its obligations under this Agreement and to grant to Client all rights with respect to the deliverables and Inventions and related intellectual property rights to be granted under this Agreement, free and clear of any and all agreements, liens, adverse claims, encumbrances, and interests of any person or entity, including, without limitation, Company's employees, agents, artists, and contractors and their contractors' employees, agents, and artists, who have provided, are providing, or will provide services with respect to the development of the Inventions.

**9.4. Third Party Materials.** Unless otherwise specified in a Work Order, Company will not, without Client's prior written consent, incorporate any third party materials not otherwise provided by Client, into the Inventions.

**9.5. Noninfringement.** Except in connection with any violation or claimed violation of a third party's rights that Client was obligated to obtain a right or license from pursuant to the terms of this Agreement, (a) nothing contained in a deliverable or Invention (including Pre-Existing Works and Company Work Product) or required in order for Company to create and deliver a deliverable or Invention under this Agreement does or will infringe, violate, or misappropriate any intellectual property rights of any third party and (b) no characteristic of any deliverable or Invention does or will cause manufacturing, using, maintaining, or selling the Invention to infringe, violate, or misappropriate the intellectual property rights of any third party.

**9.6. No Pending or Current Litigation.** Company is not involved in litigation, arbitration, or any other claim and knows of no pending litigation, arbitration, other claim, or fact that may be the basis of any claim regarding any of the materials Company has used or will use to develop or has incorporated or will incorporate into the deliverables and Inventions to be delivered under this Agreement.

## **10. INDEMNIFICATION**

### **10.1. Indemnification.**

(a) Company will indemnify, defend, and hold harmless Client and its directors, officers, agents, successors, and assigns from and against all taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: any negligent, reckless, or intentionally wrongful act of Company or Company's directors, employees or agents; any breach by Company or Company's directors, employees or agents of any of the covenants, warranties, or representations contained in this Agreement; any failure of Company to perform the Services in accordance with all applicable laws, rules, and regulations; any violation or claimed violation of a third party's rights resulting in whole or in part from Client's use of the work product of Company or deliverables under this Agreement (except in connection with any violation or claimed violation of a third party's rights that Client was obligated to obtain a right or license from pursuant to the terms of this Agreement); or injuries to persons that occur on Company's premises or premises under Company's control.

(b) Client will indemnify, defend, and hold harmless Company and its directors, officers, agents, successors, and assigns from and against all taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: any negligent, reckless, or intentionally wrongful act of Client or Client's directors, employees or agents; any breach by Client or Client's directors, employees or agents of any of the covenants, warranties, or representations contained in this Agreement; any

failure of Client to comply with all applicable laws, rules, and regulations; any violation or claimed violation of a third party's rights resulting in whole or in part from any violation or claimed violation of a third party's rights that

Client was obligated to obtain a right or license from pursuant to the terms of this Agreement; or injuries to persons that occur on Client's premises or premises under Client's control.

10.2. Intellectual Property Infringement. In the event of any claim concerning the intellectual property rights of a third party that would prevent or limit Client's use of the Inventions (except in connection with any violation or claimed violation of a third party's rights that Client was obligated to obtain a right or license from pursuant to the terms of this Agreement), Company will, in addition to its obligations under Section 10.1, take one of the following actions at its sole expense:

1. (a) procure for Client the right to continue use of the Invention or infringing part thereof; or
2. (b) modify or amend the Invention or infringing part thereof, or replace the Invention or infringing part thereof with another Invention having substantially the same or better capabilities.

## 11. MISCELLANEOUS

11.1. Services and Information Prior to Effective Date. All services performed by Company and all information and other materials disclosed between the parties prior to the Effective Date will be governed by the terms of this Agreement, except where the services are covered by a separate agreement between Company and Client.

11.2. Independent Contractor. It is the express intention of the parties that Company perform the Services as an independent contractor. Without limiting the generality of the foregoing, Company is not authorized to bind Client to any liability or obligation or to represent that Company has any authority. Company will indemnify and hold Client harmless to the extent of any obligation imposed on Client resulting from a determination that Company is not an independent contractor.

11.3. Force Majeure. Company shall not be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of any acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Company's possession or reasonable control (including, but not limited to, delays or destruction of electronic data or information resulting from failures of hard drives, storage disks, thumb drives or other such digital media memory cards on which such information was held), denial of service attacks, incompatibility of Client's equipment or software with Company's equipment or software, acts or omissions of vendors or suppliers, transportation and telecommunications difficulties.

11.4. Limitation of liability. Except for breaches of section 7 or section 10, each party will not, under any circumstances, be liable to the other party for consequential, incidental, special, punitive, or exemplary damages arising out of or related to the transaction contemplated under this agreement, including but not limited to lost profits or loss of business, even if a party is apprised of the likelihood of such damages occurring. This limitation will apply even if the remedies available in this agreement have failed of their essential purpose.

11.5. Limitation of damages. Notwithstanding anything to the contrary in this agreement, in no event shall company's total aggregate liability arising out of or related to this agreement, whether incurred with respect to one claim, or cumulatively incurred from multiple related or unrelated claims arising under this agreement from time to time, and whether in contract, tort or under any other theory of liability, exceed an amount equal to the total amounts paid by client to company during the twelve (12) month period prior to the event giving rise to the first claim brought hereunder.

11.6. Legal Fees. Client shall pay all Company costs of collection and enforcement of this Agreement when incurred, including, without limitation, reasonable attorneys' fees, costs and expenses incurred before, after or in connection with any failure by Client to pay any undisputed amounts due pursuant to this Agreement. Notwithstanding the foregoing, in the event that of any dispute between the parties, the non-prevailing party shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by the prevailing party both before and after judgment.

11.7. Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of England, without reference to its choice of law rules. The parties agree that any action arising out of or in connection with this Agreement will be heard in the federal, state, or local courts in England and each party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

11.8. Non-assignment; Subcontractors. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Company, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Client; provided, however, that this Agreement and the rights under this Agreement may be assigned or otherwise transferred by Company without the consent of Client (a) in connection with a sale of all or substantially all of the assets of the portion of Company's business related to the provision of Services under this Agreement or (b) in connection with a merger, conversion or other similar action of Company for the purpose of changing Company's state of formation or corporate form. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void. For the avoidance of doubt, nothing in this Paragraph 11.8 shall prevent, hinder or qualify the right of Company to engage subcontractors for part or all of any work order or contract.

11.9. Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by one party to the other party are, and will otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(56) of the United States Bankruptcy Code. Client or Company, as applicable, as a licensee of the rights under this Agreement, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code. If a bankruptcy proceeding is commenced by or

against either party under the Bankruptcy Code, the other party will be entitled to a complete duplicate of (or complete access to, as appropriate) any licensed intellectual property and all embodiments of the intellectual property.

11.10. Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be either: (a) delivered in person; (b) sent by first class registered mail, or air mail, as appropriate; (c) sent by overnight air courier, signature required, in each case properly posted and fully prepaid to the appropriate address as set forth below; or (d) by email to the Project Leader of the other Party, provided an electronic automatic delivery receipt is produced. Either party may change its address for notices by notice to the other party given in accordance with this Section 11.10. Notices will be deemed given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

11.11. Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the party of any other right or remedy under this Agreement or that the party is entitled by law to enforce.

11.12. Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the parties will endeavour in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may be executed and delivered electronically or by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

11.14. Headings. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.

11.15. Integration. This Agreement and all exhibits contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions, or conditions of any purchase order, acknowledgement, or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to these terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties.

11.16 Waiver of Jury Trial. Each party hereto hereby irrevocably and unconditionally waives the right to a trial by jury in any action, suit, counterclaim or other proceeding (whether based on contract, tort or otherwise) arising out of, connected with or relating to this Agreement, the transactions contemplated hereby, or the actions of the Parties in the negotiation, administration, performance or enforcement hereof.

11.17 Injunction and Equitable Relief. Client acknowledges that Company will have no adequate remedy at law in the event Client uses the deliverables in any way not permitted hereunder, and hereby agrees that Company shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.



**SPARKOL INC**  
**68 3rd Street, Brooklyn, NY, 11231, United States**