



## ALLHANDS SERVICES AGREEMENT

WHEN YOU CLICK A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT OR WHEN YOU EXECUTE AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU, THE COMPANY ENTERING THIS AGREEMENT (“CLIENT”), AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.

This Allhands Services Agreement (“Agreement”) constitutes a binding agreement between Brandlive, Inc. DBA Allhands (“Allhands”) and the Client identified in an order document that references this Agreement (“Order Form”) or the Client who accepts the terms of this Agreement via click-through acceptance. Client agrees that the terms of this Agreement will govern Client’s use of the Services (as defined in Section 1).

This Agreement includes four parts: (1) the legal terms included in this Agreement, (2) the Service Level Agreement, (3) the description each service in “Service Descriptions” and (4) the Acceptable Use Policy (“AUP”) each of the foregoing is available at [www.allhands.com/legal](http://www.allhands.com/legal).

### 1. Services.

**1.1. Allhands Services.** Allhands provides an event production software as a service platform which is designed to allow Client to produce single or recurring shows or events (each and “Event”) and certain production or other related services, as further described in each Order Form and in this Section 1.1 (“Services”). The Services may consist of the following elements:

- a. **Allhands Software.** The Allhands Software is Allhands’ proprietary software as a service platform that allows Client to host virtual events, which are made available via the Events, Showrooms, or Greenroom product (“Software”);
- b. **Allhands Production.** Allhands may provide video production or other content creation services which is created exclusively for Client in connection with an Event, according to Client’s specifications (each a “Deliverable”), if production services are identified in an Order Form;
- c. **Allhands Event Support, Premium Support or Analytics.** Allhands may provide in-person or remote Event support prior to and during an Event, if such Services are identified in an Order Form (“Event Support”). Support may include standard or

premium support. Analytics includes Event-specific reports related to participant activity within an Event or across series of Events; or

- d. **Allhands Presenter Kits.** If presenter kits are indicated in the Order Form, Allhands will provide Client with a kit including a web camera, microphone and light equipment (“Presenter Kit”). The Presenter Kit is leased to Client and not sold. Client is responsible for reimbursing Allhands for the cost of the Presenter Kit if it is not returned within 30 days of the completion of the applicable Event or if the Presenter Kit is damaged. Allhands reserves the right to require a refundable deposit for Presenter Kits.

**1.2. Allhands’ Limited License to Event Platform.** During the Term (as defined in Section 5.1), Allhands hereby grants Client a revocable, non-exclusive, non-transferable, limited license to access and use the Event Platform to host Events, subject to the restrictions and limitations set forth in this Agreement, the Order Form, Service Descriptions, Service Level Agreement and the AUP.

**1.3. Ownership of Content Created under this Agreement.** Allhands grants to Client all right, title and interest in and to the Deliverables upon payment in full of the Fees (as defined in Section 6) pertaining to the Deliverables. Upon final payment for the Deliverables, the Deliverables will be considered a “work made for hire” under 17 U.S.C. Section 101, et. Seq. To the extent that the Deliverables contain any material which may be subject to any rights that are not effectively assigned to, or the free and unrestricted use of any of the Deliverables is subject to any rights that are not effectively assigned to Client, Allhands grants to Client, upon full and final payment of the Fees pertaining to a Deliverable, a perpetual, irrevocable, royalty-free, fully paid-up, transferable, worldwide license to (a) make, use, sell, sublicense, execute, reproduce, distribute, and modify the Deliverables, (b) create derivatives of the Deliverables, (c) publicly display and publicly perform the Deliverables, (d) make, have made, use, sell, import, and export products and services that include the Deliverables, and (e) otherwise commercially exploit the Deliverables by all means and in any medium or format, now known or later developed. Allhands will obtain, at its expense, such assignments to Client from Allhands’ employees, agents, contractors, or third parties as are necessary to effectuate the purposes of this Section 1.3.

**1.4. Client’s License to Allhands.** During the Term, Client hereby grants to Allhands a worldwide, non-exclusive, non-sublicensable, royalty-free license to use, reproduce, store, perform, publish, display, transmit, translate, and prepare derivatives of Client Content solely in order to provide the Services to Client. “Client Content” means the documents, video, logos, trademarks, presentations, assets or other content that is

provided by or on behalf of Client to Allhands, including the Deliverables, for publication to Event attendees via the Event Platform.

- 1.5. Allhands' Intellectual Property.** Notwithstanding any other provision of this Agreement, Allhands shall retain all right, title and interest in and to (a) the Event Platform and all of the features and components of the Event Platform, (b) the source code, object code, inventions, know-how, business intelligence, software elements, materials, or information created or owned by Allhands prior to the date of this Agreement, (c) any source code, object code, inventions, business intelligence, software elements, know-how, software elements materials, or information created by Allhands in connection with the Services (or partially in connection with the Services) which modify, improve or otherwise relate to the Services (excluding the Deliverables), (d) the know-how, business intelligence, software elements, or methods which are utilized by Allhands in performing the Services, and (e) any know how, methodologies, frameworks, tools or other materials that Allhands uses in connection with performing the Services, or creating the Deliverables, which are not incorporated into a Deliverable.
- 1.6. Third Party Software.** Certain Services may require a license to third-party software. In such case, Allhands will provide the third-party license terms in the applicable Order Form. Such third-party software is provided to Client directly by the third-party provider and Allhands acts as a payment processing agent with respect to such third-party provider. The intellectual property rights for such third-party software tools are specified in the license made available by such third-party provider. Allhands will notify Client in advance if any third-party software tools are recommended or required.
- 1.7. Client Feedback.** Allhands may solicit, or Client may provide, feedback, comments or suggestions which relates to the performance, functionality, operation, or enhancement of the Services ("Feedback"). Feedback will be the sole and exclusive property of Allhands and Client hereby irrevocably assigns to Allhands all right, title, and interest in and to all Feedback. Allhands will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such Feedback without obligation or restriction of any kind.
- 1.8. Aggregate Data and Performance Metrics.** Allhands monitors, stores, analyzes, and reports various datasets and performance metrics for clients and for its own internal performance monitoring. Client acknowledges and agrees that such data is an integral component of the Service, and that Allhands retains all right, title and interest in and to such data. No right or license in or to such data is granted to Client except as provided in this Section 1.8. Upon the provision of such data to Client, Allhands grants to Client a limited, nonexclusive, royalty-free license to use such data included

in any reports or analysis solely in connection with Client's Event for internal business purposes.

- 1.9. Client Account Creation; Users.** In order to access and use the Services, Client must create an account within the Event Platform ("Account"). When creating an Account, Client will be required to provide personal information about users who are authorized to access and use the Services on behalf of Client ("Authorized Users"). Client may invite Event attendees to register and attend the Event ("Attendees"). Client determines the type of registration information required from Attendees and the purpose and manner in which such information is collected. Client is responsible for the acts or omissions of Client's Authorized Users and Attendees, including any breach of this Agreement. Each Authorized User and Attendee will be provided a unique login ID and password ("Registration Information"). Registration Information is unique to each individual and is not transferable to any other person or entity. Client is responsible for ensuring that Registration Information remains confidential.
- 1.10. Technical Specifications.** Client agrees to comply with the technical specifications provided by Allhands in connection with the Services, including without limitation, any technical information that relates to JavaScript, HTML, or other programming provided by Allhands. Client and its Authorized Users will not modify the JavaScript, HTML, or other programming provided by Allhands, unless directed to do so by Allhands.
- 2. Trial Services.** If a trial period is indicated on an Order Form, Allhands will provide Client with a temporary account to access the Event Platform ("Trial Account"). The Trial Account will be accessible beginning on the Activation Date (as defined in Section 6) and for the trial period set forth in the Order Form, or if no trial period is stated, the Trial Account period will be thirty (30) days from the Activation Date. DURING THE TRIAL PERIOD, THE TRIAL ACCOUNT, THE EVENT PLATFORM AND ASSOCIATED SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT REPRESENTATION, WARRANTY OR INDEMNITIES OF ANY KIND.
- 3. Client Obligations.**

  - 3.1. Client Responsibilities.** Client is solely responsible for Client Content and any other information or data provided to Allhands or otherwise uploaded or used in conjunction with an Event (collectively, the "Client Data"). Client is responsible for the accuracy, quality, and legality of Client Data, and for the means by which Client created or acquired Client Data. Client represents and warrants that Client Data will not: (a) infringe any third party right, including third party rights in patent, trademark, copyright, or trade secret, (b) constitute a breach of any other right of any third party, including any right that may exist under data protection laws, contract, or tort theories, (c) Client will comply with all applicable local, state, national, and foreign laws, rules, regulations, or treaties in connection with Client's use of the Services, including those

related to data privacy, data protection, communications, SPAM, or the transmission, recording, or storage of data, personal data, or sensitive information, and (c) Client will comply with the Acceptable Use Policy available at [www.allhands.com/legal](http://www.allhands.com/legal). Allhands may update the Acceptable Use Policy from time to time and will post updates to the Acceptable Use Policy at [www.allhands.com/legal](http://www.allhands.com/legal).

- 3.2. Sensitive Information.** Client acknowledges that the Services are not designed to process, transmit, store or display sensitive information, including without limitation, personally identifiable health information or financial information relating to any individual (such as social security numbers, credit card numbers or pins) or other information which may be deemed sensitive information by applicable law. As such, Client agrees that Client will not use the Services to collect, process, transmit, store or display sensitive information. Client will not, and will prohibit its Authorized Users from, uploading material to the Services in violation of the intellectual property rights of any party or entity and shall maintain and enforce a policy that complies with the Digital Millennium Copyright Act ("DMCA"). Client agrees to promptly to remove any infringing material from the Services if Client or Allhands receive a notice qualifying under the DMCA ("Take-Down Notice").
- 3.3. Client Restrictions.** Client agrees not to: (a) use any robot, spider, scraper, or other similar automated data gathering or extraction tools, program, algorithm or methodology to search, access, acquire, copy or monitor any portion of the Services, (b) run mail list, listserv, any form of auto-responder, or "spam" processes via the Services, or use any processes that run or are activated while a user is not logged in, (c) attempt to decipher, decompile, disassemble, or reverse-engineer or otherwise attempt to discover or determine the source code of any software or any proprietary algorithm used, comprising or in any way making up a part of the Services, (d) attempt to probe, scan or test the vulnerability the Services or any system or network related to the Services, or breach or impair or circumvent any security or authentication measures protecting the Services, (e) frame or mirror the Services, (f) use any device, software, or routine that interferes with any application, function, or use of the Services, or is intended to damage, create undue load, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication, (g) resell, sublicense, timeshare, or otherwise share the Services, or data extracted from the Services, (h) access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or (i) resell the Services unless Client is an authorized reseller of the Services.

- 3.4. Reporting Misuse.** Client will report any suspected misuse or unauthorized access of the Service, or any other violation of this Agreement. To report suspected misuse of the Services, or violation of the Agreement, Client may send written notice to Allhands via [info@allhands.com](mailto:info@allhands.com) and CC to the Allhands account representative who is Client's primary point of contact for support and service. Failure to timely report such misuse of the Service or violation of the Agreement is a material breach of this Agreement.
- 3.5. Laws, Rules and Regulations.** Client represents and warrants that Client will comply with applicable laws, rules or regulations in Client's use of the Services. Client is solely responsible for any fines, fees, or obligations which may be incurred due to Client's use or misuse of the Services in violation of applicable laws, rules or regulations.
- 4. Third Party Providers.** The Services may operate in connection with, integrate with, or send Client Data to, or receive data from third party sources, including social media ("Third Party Services"). Third Party Services are not offered, controlled or provided by Allhands. A Third Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Allhands. The availability of the Third Party Service may depend on Client's compliance with the Third Party Service terms. Client is solely responsible for ensuring Client complies with the Third Party Service terms and conditions. Allhands does not control and is not responsible or liable for how the Third Party Services transmit, access, process, store, use, or provide data to Allhands. Allhands expressly disclaims all liability related to or arising from (a) any Third Party Services, including Client's use thereof, or (b) any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client's account by the Third Party Service.
- 5. Term & Termination.**
- 5.1. Term.** The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order Form or, if no term is specified, for 12 months ("Initial Term"). Unless otherwise specified in the Order Form, the Initial Term will renew automatically for additional, successive 12-month terms (each a "Renewal Term") unless Allhands or Client provide the other party with written notice of non-renewal at least 60 days prior to the end of the Initial Term or the applicable Renewal Term, or either party terminates the Agreement in accordance with section 5.2 or Section 5.3 below. The Initial Term plus any Renewal Term are, collectively, the "Term." Any Order Form executed after the Effective Date will co-terminate with Client's then-current Term.
- 5.2. Termination for Breach.** Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains

uncured for a period of 30 days following the non-breaching party's written notice thereof. Allhands may suspend Client's access to the Services in the event of a breach of this Agreement and will not be liable for any damages resulting from such suspension.

- 5.3. Termination for Bankruptcy.** This Agreement will terminate immediately, upon written notice, if (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction, or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within 60 days.
- 5.4. Effect of Termination.** Upon any termination or expiration of the Agreement: (a) all rights and licenses to the Services granted to Client by Allhands will immediately terminate, (b) Client will pay any Fees due and payable, and (c) upon request, each party will return to the other or delete the Confidential Information of the other party.
- 5.5. No Refunds; Payment Upon Termination.** Unless otherwise agreed by the parties in a written amendment referencing this Agreement or as provided in this Section 5.5, the Fees paid or payable are non-refundable. Allhands will not refund any prepaid Fees to Client in connection with any termination or expiration of this Agreement, except for termination of the Agreement for Allhands' breach pursuant to Section 5.2. In no event will termination relieve Client of Client's obligation to pay any Fees owed to Allhands.
- 5.6. Survival.** Any provisions that by their sense and context are intended to survive such suspension or termination will survive the termination of this Agreement including : Sections 8, 9, 11, and 12.

**6. Fees & Payment.**

- 6.1. Fees.** Client will pay the fees for the Services as set forth in the Order Form ("Fees") and will reimburse Allhands for any travel expenses which are pre-approved by Client and incurred by Allhands in connection with the Services. If Client has committed to a minimum number of Events in the Order Form, such commitment represents Client's minimum Fee commitment during the Term. Client will provide Allhands with valid and updated credit card or ACH information or alternative document reasonably acceptable to Allhands and Client authorizes Allhands to charge such credit card or ACH payments for all Services listed in an Order Form for the duration of this Agreement. If an Order Form specifies that payment will be by a method other than a credit card or ACH, Allhands will invoice Client in advance, in accordance with the billing frequency stated on the applicable Order Form, and unless otherwise stated on

the Order Form, Client shall pay all amounts invoiced within thirty (30) days of the date of invoice. Client will provide complete and accurate billing and contact information to Allhands and notify Allhands of any changes to such information.

**6.2. Disputes.** If Client disputes any Fees, Client must notify Allhands within 120 days of the date of invoice. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. Allhands may charge a late fee of 1.5% per month on any Fees not paid when due. Allhands may suspend Client's access to the Services, or postpone or terminate an Event, if Client fails to pay the Fees when due. Allhands may increase Fees upon sixty (60) days' prior written notice of any such increase in Fees.

**6.3. Overdue Payments.** If any amount due by Client under this Agreement, or any other agreement for Allhands' services, is thirty (30) or more days overdue, or 10 or more days overdue in the case of amounts Client has authorized Allhands to charge to Client's credit card or ACH payment, Allhands may, without limiting any other rights and remedies available to Allhands, accelerate Client's Fee obligations such that all Fees become immediately due and payable, and Allhands may suspend Services to Client until such amounts are paid in full.

**6.4. Cancellations.** If Client cancels an Event, Client will reimburse Allhands for all travel costs and expenses which were approved and actually incurred by Allhands prior to Client's termination of such Event. Client will not owe Allhands for any travel costs or expenses not incurred by Allhands due to Client's termination of an Event.

**7. Taxes.** All Fees payable by Client are exclusive of taxes or similar assessments. Client is responsible for all sales, service, use and excise taxes, taxes assessed on the use of software or any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Allhands' income.

**8. Confidentiality.**

**8.1. Confidential Information.** "Confidential Information" means (a) the non-public information of either party, including but not limited to, information relating to either party's product plans, present or future developments, customers, designs, costs, prices, finances, marketing plans, business opportunities, software, software manuals, personnel, research, development or know-how, (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential, (c) the terms of this Agreement, and (d) non-public Client Data. "Confidential Information" does not



include information that: (i) is in, or enters, the public domain through no breach of this Agreement by the party receiving such information, (ii) the receiving party lawfully receives from a third party without restriction on use or disclosure, (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party's records, or (iv) the receiving party develops independently without reference to the Confidential Information.

**8.2. Obligations with Respect to Confidential Information.** Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement, and (b) that it will use the same degree of care as it uses to protect its own Confidential Information of a like nature, but not less than a reasonable degree of care, to protect the confidentiality of Confidential Information of the other party in its possession or control. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement, or (ii) to the parties' agents, representatives, subcontractors or service providers who have a need to know such information; provided that, such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement. Each party will promptly notify the other party, in writing, upon becoming aware of any unauthorized use or disclosure of the other party's Confidential Information.

**8.3. Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section 8 by the receiving party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and in the event of any breach or threatened breach of this Section 8, the disclosing party will be entitled to seek equitable relief, including injunction or specific performance.

**9. Intellectual Property.** As between Allhands and Client, Client acknowledges that Allhands owns and retains all right, title and interest in and to the Event Platform and the information technology infrastructure including the software, hardware, databases, electronic systems, networks, and all applications, APIs or client-side software required to support or deliver the Event Platform, and the documents, assets or information made available or accessible to Client via the Services by Allhands, including all documentation regarding the use or operation of the Services (collectively "Intellectual Property"). Except for the limited licenses herein, nothing in this Agreement will serve to transfer to Client any right in or to the Intellectual Property. As between Allhands and Client, Client Data is the sole and exclusive

property of Client and other than the limited license to Client Data granted hereunder, nothing in this Agreement will serve to transfer to Allhands any intellectual property rights in Client Data.

#### **10. Allhands Representations and Warranties; Warranty Disclaimer.**

**10.1. Performance Warranty.** Allhands represents and warrants that it will provide the Services in accordance with generally accepted industry standards.

**10.2. Authority.** Allhands represents and warrants that it has the right and authority to enter into this Agreement and that the performance of its obligations under this Agreement will not breach or conflict with any other agreement to which Allhands is a party.

**10.3. Compliance with Laws.** Allhands represents and warrants that it will comply with the laws and regulations applicable to Allhands in its performance of the Services.

**10.4. Warranty Disclaimer; No Guarantee.** EXCEPT AS SET FORTH ABOVE, ALLHANDS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY ALLHANDS. THE SERVICES ARE PROVIDED "AS IS". ALLHANDS HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ALLHANDS DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE AVAILABLE OR ERROR-FREE. ALLHANDS WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF ALLHANDS. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO ANY APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE.

#### **11. Indemnification.**

**11.1. Client Indemnification.** Client will defend, indemnify and hold harmless Allhands, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, or reasonable attorneys' fees), arising from or related to Client Data or Client's breach of Section 3 or Section 8 of this Agreement. Allhands will (a) provide Client with prompt written notice upon becoming aware of any such claim, except that Client will not be relieved of its obligation for indemnification if Allhands fails to provide such notice unless Client is

actually prejudiced in defending a claim due to Allhands' failure to provide such notice, (b) allow Client sole and exclusive control over the defense and settlement of any such claim; provided that, Client will not enter into any settlement agreement with respect to an indemnity claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Client or imposes on Client any obligation (other than the obligation to stop using the Services that are subject to the indemnity claim), unless Client has first consented in writing to the applicable terms of such settlement agreement, and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.

**11.2. Allhands Indemnification.** Allhands will defend, indemnify and hold Client harmless from third party claims arising from a claim that the Services infringe any United States patent, trademark or copyright; provided that, Client shall (a) provide Allhands with prompt written notice upon becoming aware of any such claim, (b) allow Allhands sole and exclusive control over the defense and settlement of any such claim, and (c) reasonably cooperate with Allhands in the defense of such claim. Notwithstanding the foregoing, Allhands will not be liable for any claim that relates to or arises from: (i) custom functionality provided to Client based on Client's requirements; (ii) any modification of the Services by Client or any third party, (iii) the combination of the Services with any technology or other services, software, or technology not provided by Allhands, or (iv) Client's failure to use updated or modified versions of the Services made available by Allhands. Except as set forth in 12.1(c) below, the indemnification obligation contained in this Section 11.2 is Client's sole remedy, and Allhands' sole obligation, with respect to claims of infringement.

## **12. Remedies and Limitation of Liability.**

### **12.1. Remedies.**

- a. In the event of a breach of any warranty under Section 10, Allhands will use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity. The foregoing remedy is Client's sole and exclusive remedy for a breach of Section 10.
- b. In the event of a breach of the applicable Service Level Agreement, Allhands will provide Client with the credit stated in the Service Level Agreement. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable Service Level Agreement.

- c. If the Services are subject to a claim of infringement under Section 11.2, Allhands may, in its sole discretion, either (a) procure for Client the right to continue to use the Services, (b) modify the Services such that they are non-infringing, or (c) if in the reasonable opinion of Allhands, neither (a) nor (b) is commercially feasible, then Allhands may, upon thirty (30) days' prior written notice to Client, terminate the applicable Service.

## **12.2. Limitation of Liability.**

- a. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS), ARISING FROM OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALLHANDS WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL OR OTHERWISE, ARISING FROM OR RELATED TO CLIENT'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.
- b. EXCEPT WITH RESPECT TO SECTION 12.1 (CLIENT INDEMNIFICATION) OR SECTION 12.2 (ALLHANDS INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY ALLHANDS FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.
- c. WITH RESPECT TO SECTION 12.1 (CLIENT INDEMNIFICATION) OR SECTION 12.2 (ALLHANDS INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED \$1,000,000.
- d. THE LIMITATION OF LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES WILL BE AGGREGATED TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

## **13. General Terms.**

- 13.1. Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the connection with a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its stock or assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.
- 13.2. Force Majeure.** A failure of party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following (each a "Force Majeure Event"): (a) acts of God, (b) acts or omissions of any governmental entity, (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof, (d) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts, or (e) utility or telecommunication failures; so long as such party uses reasonable efforts to resume performance after any such Force Majeure Event.
- 13.3. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of or choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Multnomah County, in the State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.
- 13.4. Relationship of the Parties.** The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.
- 13.5. Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Allhands. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Allhands at the following address: Allhands Inc., Attention: Legal, 3303 N Mississippi Ave #200, Portland, OR 97227, or in the case of email, to [legal@yourAllhands.com](mailto:legal@yourAllhands.com).

- 13.6. Publicity.** The parties may use the other party's name or trademark(s) in advertising, written sales promotion, press release(s) and/or other publicity matters, in a truthful and non-derogatory manner, unless a party specifies in writing that it does not consent to such use. Allhands may disclose that Client is a customer of Allhands.
- 13.7. Severability; Waiver.** If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.
- 13.8. Entire Agreement; Electronic Signatures.** This Agreement and all agreements and orders referenced herein or posted at [www.Allhands.com/legal](http://www.Allhands.com/legal), including without limitation the Order Form, Service Descriptions, AUP, and any amendments to such agreements and terms is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Allhands expressly rejects all terms contained in Client's purchase order documents, or in electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or Client's click-through acceptance of this Agreement, or any amendment of this Agreement, give rise to a valid and enforceable agreement.
- 13.9. Amendments.** Allhands may amend this Agreement by posting a revised version to [www.Allhands.com/legal](http://www.Allhands.com/legal) or at the Services log-in prompt. Client accepts the revised version of this Agreement by either (a) click-through acceptance at the Services log-in prompt, (b) execution of an Order Form incorporating the revised version, or (c) continued use of the Services for 30 days following the earliest notice of such revised version provided to an Authorized User at the Services log-in prompt.