This Master Subscription and Services Agreement (this “Agreement”) is made and entered into as of the date that this Agreement is executed online by “CUSTOMER’s” click-through acceptance of these terms (the “Effective Date”) by and between Impact Tech, Inc., a Delaware corporation with its principal place of business at 223 East De La Guerra Street, Santa Barbara, CA 93101 (“IMPACT”), and Customer, the entity on whose behalf this Agreement is executed (“CUSTOMER”). IMPACT and CUSTOMER may be referred to separately as “Party” or collectively as the “Parties”.

1. Definitions. Capitalized terms used, but not otherwise defined herein, have the following meanings:

1.1 “Account” means the password protected area within the Products ordered by CUSTOMER, that contains CUSTOMER’s contact information (including for notifications, that is required to be kept updated, and that, for some Products, contains a ledger account with balance information for CUSTOMER’s payment obligations.

1.2 “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. Control in this context (including its correlative meanings) means direct or indirect possession of the power to direct or cause the direction of the management and policies of such entity, whether through ownership or control of more than 50% of the voting interests of the subject entity, by contract or otherwise.

1.3 “Applicable Privacy and Data Security Laws” shall mean: (i) all privacy, security, and data protection laws, rules and regulations of any applicable jurisdiction, and all then-current industry standards, guidelines and practices with respect to privacy, security, and data protection, including the collection, processing, storage, protection and disclosure of Personal Data. For the avoidance of doubt, if the European Union’s General Data Protection Regulation (“GDPR”) is applicable to a Data Subject, then the GDPR is an Applicable Privacy and Data Security Law.

1.4 “Claims” means all third party alleged or actual actions, causes of action (of any nature or type), personal injury, claims, damages, demands, disbursements, judgments, legal proceedings, liability, losses, property damage, settlement payments, costs or expenses (including attorneys’ fees and costs).

1.5 “Confidential Information” means all information or material, whether past, present or future, and whether in oral, written, digital, electronic or other form, that is of or concerning a “Disclosing Party” (Party providing the information or whom the information is about) which is disclosed to or learned by a “Receiving Party” (Party receiving or learning the information), that relates in any way to, or is about, the Disclosing Party, its financial data, business plans, pricing, methods, methodologies, processes, lists, intellectual property rights, customer information, products, services, information technology, software user interfaces, programs, research, development and/or marketing strategies, whether or not such information and materials are marked or identified as “confidential”; provided that “Confidential Information” shall not include information which is: (i) approved for release or released by the Disclosing Party for public disclosure; (ii) becomes known publicly through no fault of the Receiving Party; (iii) is lawfully obtained from a third-party free of restrictions on disclosure; (iv) is already known to the Receiving Party; or (v) is developed by or for the Receiving Party independent of the Disclosing Party’s Confidential Information; or (vi) is released without restriction by the Disclosing Party.

1.6 “CUSTOMER” means the entity listed above, which may be an agency acting as agent for its advertiser client(s), in which case the the “CUSTOMER Content” and “CUSTOMER Data” refer to that of the client, although the agency remains responsible therefore, including all “Users” (whether employees, directors, officers and/or consultants).

1.7 “CUSTOMER Content” means all visual, written or audible communications, files, documents, videos, recordings, and any other material displayed, posted, uploaded, stored, exchanged or transmitted on or through the IMPACT Technology.

1.8 “CUSTOMER Data” means confidential or proprietary data supplied by Customer (including but not limited to by CUSTOMER’s Personnel) or end users that visit or use CUSTOMER’s website(s) (each such entity or persons are referred to as “Data Subjects”) and excludes IMPACT Non-Personal Data.

1.9 “CUSTOMER Partner” means each entity that CUSTOMER enters into a Partner Contract to promote CUSTOMER or CUSTOMER Content.

1.10 “Documentation” means information in written or electronic form about IMPACT’s Products and/or Services that are distributed or made available to IMPACT’s customers.

1.11 “Fees” means, generically, any amounts due to IMPACT, such as those listed on an Order.

1.12 “Force Majeure” means a delay, failure in performance, loss or damage due to any cause(s) beyond the Party’s reasonable control; however, although an affected Party shall not be deemed in breach due to a Force Majeure, a Party’s payment obligations prior to the Force Majeure may be delayed but not excused.

1.13 “IMPACT” means Impact Tech, Inc., or an Affiliate of Impact Tech, Inc., which may enter into an Order with CUSTOMER by referencing and incorporating this AGREEMENT; however, this Agreement and the Order is enforceable against the IMPACT entity CUSTOMER contracts with.

1.14 “IMPACT Non-Personal Data” means statistical information and metrics derived from the performance of the IMPACT Technology, that is anonymous, anonymized or non-personally identifiable information; and is Confidential Information of IMPACT.

1.15 “IMPACT Technology” means the Products, Services, platform, documents, software, works of authorship, inventions, technology, hardware, processes, algorithms, user interfaces, know-how, trade secrets, techniques, designs, and other tangible or intangible technical material or information of IMPACT that CUSTOMER has access to during this Agreement.

1.16 “Intellectual Property” means any product of the human intellect that the law protects from unauthorized use by others, and “Intellectual Property Rights” means any and all right, title and interest in Intellectual Property existing as of the Effective Date or at any time thereafter, worldwide, including all patent, patent application, copyright, trademark, trade name, service
mark, service name, trade secret or other proprietary right arising or enforceable under any applicable law, rule, or regulation.

1.17 “Order” means each written order form for IMPACT Products and/or Services. This Agreement incorporates each mutually executed Order, such that each Order and this Agreement are one, fully integrated document and agreement.

1.18 “Partner Contract(s)" means the terms and conditions entered into with a CUSTOMER Partner with respect to promotion of CUSTOMER or CUSTOMER Content, including compensation and other details (such as permitted use, prohibited use, etc.), that are implemented through a Product.

1.19 “Personal Data” has the meaning given to it in applicable privacy and/or data protection legislation, or that is personally identifiable information (PII) or other information relating to an identified or identifiable natural person, regardless of that person’s domicile, and excludes anonymous or anonymized information.

1.20 “Personnel” may include but are not limited to a Party’s employees, consultants, contractors, &/or agents.

1.21 “Process[ing]” means any operation or set of operations that is performed by IMPACT and/or IMPACT Technology, whether by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, performance, disclosure by transmission, dissemination or making available (including making available to view), transfer, alignment or combination, blocking, erasure or destruction.

1.22 “Products” means a suite of online, Web-based applications owned and/or hosted by IMPACT.

1.23 “Services” means services ancillary or supplemental to CUSTOMER’s use of the Products that IMPACT agrees to perform for CUSTOMER, whether or not subject to separate Fees.

1.24 “Subscription Term” means the period identified on an Order for a Product and/or Services, which may be a renewal of the originally subscribed to period.

1.25 “Term” means the commencement of this Agreement on the Effective Date through the earlier of (a) ninety (90) days after all Orders have expired, or (b) the Agreement is terminated in accordance with the terms and conditions set forth in this Agreement.

1.26 “Users” means individuals who are Personnel of CUSTOMER or an agent (subject to Section 2.3) that are: (a) authorized by CUSTOMER to use the Products or receive Services on behalf of CUSTOMER; (b) subject to the terms of this Agreement; and (c) set up user identifications and passwords. A “User” may not be a competitor of or compete with IMPACT. If CUSTOMER is permitted to authorize an entity as a “User” (such as an agency), each individual is a “User” and must have its own unique log-in and password.

2. Permitted Uses of Products and Restrictions

2.1 Provision of Products/Services. Pursuant to each Order, IMPACT will make available Products and provide Services to CUSTOMER or a CUSTOMER Affiliate (as applicable pursuant to the Order). References in this Agreement to “CUSTOMER” apply to CUSTOMER’s Affiliate for Orders entered into between IMPACT and such CUSTOMER Affiliate. An Order applies only to those Product versions ordered and any change must be through written mutual agreement of the Parties. IMPACT’s obligations under this Agreement may be performed by an IMPACT Affiliate.

2.2 Use. Subject to the terms of this Agreement, IMPACT licenses to CUSTOMER access and use the Products and its corresponding IMPACT Technology on a non-exclusive, revocable, time-limited basis (e.g. per each Subscription Term). Products ordered may be used: (a) by an unlimited number of Users; (b) in accordance with the applicable Order and Product Documentation; and (c) only as permitted pursuant to the Agreement. As between IMPACT and CUSTOMER, CUSTOMER is responsible for access by each User and use of any IMPACT Technology by Users.

2.3 Restrictions. CUSTOMER, its Affiliates and their Users shall not: (a) share, rent or use the IMPACT Technology for the benefit of any other person or entity other than as specified in an Order; (b) modify, copy, reverse compile, disassemble, reverse engineer, decompile, prepare derivative works based on, the IMPACT Technology, or attempt in any manner to derive its source code; (c) hack, abuse, adversely interfere with the IMPACT Technology, or infect the IMPACT Technology with viruses, worms or other malicious or destructive code; and (d) authorize Users that are not employees, directors or officers of CUSTOMER or its Affiliate, as applicable without (i) having in place written obligations applicable to IMPACT’s Confidential Information and IMPACT Technology concerning confidentiality, use and disclosure; and (ii) if the “User” is an agent/entity that is an entity (and for the first individual of an entity), obtaining IMPACT’s prior written consent.

2.4 Responsibility. CUSTOMER shall remove User permission and access rights for each User no longer authorized by USER to access CUSTOMER’s Account. IMPACT must be notified in writing immediately if CUSTOMER becomes aware of any unauthorized access or use of the IMPACT Technology. CUSTOMER represents and warrants that it will use the IMPACT Technology only in accordance with applicable laws, rules and regulations, including but not limited to Applicable Privacy and Data Security Laws. In no event will IMPACT be responsible or liable for defects, problems, or failures of products and/or software not provided by IMPACT or its agents; defects, problems or failure of the Internet; or due to any act, error or omission of any CUSTOMER Partner and/or User.

2.5 Consequences. Breach of these Section 2 license and use terms may result in suspension of a User’s access and use of the Products. IMPACT may terminate such User’s access and use of the Products or this Agreement unless such breach is cured within ten (10) days, except if such breach is incurable IMPACT may terminate such access and use or this Agreement.
immediately upon notice to CUSTOMER.

2.6 Feedback. Any solicited or unsolicited suggestions, ideas, recommendations, bug fixes, corrections, or other feedback ("Feedback") regarding the IMPACT Technology, are the sole property of IMPACT and IMPACT is free to reproduce, make, use, create derivative works of, publicly perform, display, import, transmit, distribute, license, sell, offer to sell, or otherwise dispose of such Feedback without payment of compensation or any other obligation of any kind to CUSTOMER, its Affiliates or any User.

3. Ownership & Reservation of Rights.

3.1 Impact Radius Intellectual Property. IMPACT reserves all rights, title and interest in and to, as well as all Intellectual Property Rights in, the IMPACT Technology, and IMPACT Non-Personal Data, subject to the limited, non-exclusive, revocable, access and use rights expressly provided for herein. All derivatives of, improvements to, or modification to the IMPACT Technology are owned exclusively by IMPACT. CUSTOMER, on behalf of itself, Users and its Affiliates, acknowledges that the IMPACT Technology is covered by or subject to Intellectual Property Rights owned or licensed by IMPACT (collectively, “IMPACT IP Rights”). Except for the license granted pursuant to Section 2, no license or other rights in or to the IMPACT Technology or IMPACT IP Rights, even if developed, invented, delivered, or authored by IMPACT under or in connection with this Agreement, are granted, assigned, licensed or conveyed to CUSTOMER, its Users and/or its Affiliates, and all such IMPACT Technology and IMPACT IP Rights are hereby expressly reserved exclusively by IMPACT. Except as expressly provided for below in Section 11.4, all licenses in and to the IMPACT Technology are non-transferable. No rights or licenses in or to the IMPACT Technology are made or implied, except as expressly granted herein. CUSTOMER may not encumber, assert a claim to or ownership of, or adverse interest in, the IMPACT Technology or any IMPACT IP Rights or any goodwill associated therewith.

3.2 CUSTOMER Data. During CUSTOMER’s use and access of the IMPACT Technology, IMPACT requires use of CUSTOMER Data solely for the provision of the Products and Services. CUSTOMER authorizes IMPACT to Process CUSTOMER Data during the Term of this Agreement and thereafter, in accordance with Applicable Privacy and Data Security Laws. Further CUSTOMER represents and warrants that it has the necessary rights and authority to grant IMPACT permission to Process such CUSTOMER Data. While each Order is in force, CUSTOMER Data will be accessible and downloadable by CUSTOMER though the Products.

3.3 CUSTOMER Content & Partner Relationships. CUSTOMER acknowledges and agrees that it is solely responsible and liable for CUSTOMER Content, and that IMPACT will not be liable for any loss or Claim: (a) arising from any content of CUSTOMER Content, or errors or omissions in CUSTOMER Content; or (b) incurred as a result of CUSTOMER, its Users, CUSTOMER Affiliates’ or third parties use of, access to, or denial of access to the CUSTOMER Content by, through or on the IMPACT Technology. IMPACT may without notice or liability investigate (or not investigate) any complaints or suspected violations by CUSTOMER Content of applicable laws, rules or regulations, and may take any action that it believes, in its reasonable discretion, is appropriate, including, but not limited to, rejecting, refusing to host, or removing any CUSTOMER Content, or CUSTOMER Data, or restricting, suspending, or terminating CUSTOMER’s or any User’s access to or use of the IMPACT Technology; however, IMPACT also reserves the right not to take any action. If reasonable, practical and not prohibited by law, rule, court or regulation, IMPACT may provide CUSTOMER with prior written notice to suspend or terminate CUSTOMER’s access to IMPACT Technology. CUSTOMER is solely responsible for its selection of, contracting with (including contracting method), and/or authorization of third parties (including Users and CUSTOMER Partners).

4. Payment of Fees & Taxes

4.1 Fees/Rates. Fixed Fees and Fees’ rates are identified on each Order. CUSTOMER is responsible for all Fees on each mutually-signed Order. Except as explicitly provided for herein, THERE ARE NO CANCELLATIONS OR REFUNDS. ONCE AN ORDER IS PLACED, CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER MAY NOT CANCEL ITS PAYMENT OBLIGATIONS FOR IMPACT FEES (WHICH ARE ENFORCEABLE FOR THE ENTIRE AMOUNT IDENTIFIED IN THE ORDER), OR RECEIVE A REFUND, AS IMPACT IMMEDIATELY INCURS COSTS AND FINANCIAL OBLIGATIONS UPON MUTUAL EXECUTION OF AN ORDER, EVEN IF CUSTOMER CHOSES AT ANY POINT NOT TO UTILIZE THE PRODUCTS AND/OR RECEIVE SERVICES FROM IMPACT. CUSTOMER agrees that it may not dispute any amounts paid to IMPACT by credit card by CUSTOMER (if any), except in the circumstances of manifest error. If CUSTOMER discovers an error on an invoice, CUSTOMER must notify IMPACT Customer Support (through CUSTOMER’s Account or via email to support@impactradius.com) as soon as possible, and no request for adjustment will be processed if notification is received by IMPACT after ninety (90) days from the date of the invoice.

4.2 Taxes. IMPACT Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). CUSTOMER is responsible for paying all Taxes associated with the purchases hereunder. If IMPACT has a legal obligation to pay or collect Taxes for which CUSTOMER is responsible under this Section 4.2, IMPACT will invoice CUSTOMER and CUSTOMER will pay that amount unless CUSTOMER provides IMPACT with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, IMPACT is solely responsible for taxes assessable against IMPACT based on IMPACT’s income, property and employees. Taxes may be invoiced separately. All late charges, penalties or interest due to
CUSTOMER’s late payment of Taxes are solely the responsibility of CUSTOMER.

4.3 Payment. All payments for Fees shall be made in US Dollars, unless specified otherwise on the Order (which shall be the exclusive currency for that Order). Payment is due net 30 days from invoice date (unless specified otherwise on the Order), and as directed by IMPACT. IMPACT, in its sole discretion, may approve (or require) CUSTOMER to use a credit card to make payments hereunder. Interest is due for late payments of Fees (at the lesser of 1.5% per month or highest rate permitted by law), and CUSTOMER is responsible for IMPACT’s costs and expenses (including attorney fees) to collect past due amounts. CUSTOMER is solely responsible for amounts due and payable to CUSTOMER Partners (if any) due to CUSTOMER’s use of the Products and/or Services. If IMPACT processes payments to third parties on CUSTOMER’s behalf, CUSTOMER is solely responsible for such amounts and IMPACT will in no event be liable to CUSTOMER or such third parties to process such payment unless and until full payment of all amounts due to such third parties is received. For third party payments in currencies other than in funds received from CUSTOMER are subject to processing (including associated costs and charges) via foreign exchange. If CUSTOMER is repeatedly or grossly delinquent in payment of Fees or CUSTOMER Partner payment amounts, IMPACT in its sole discretion may suspend CUSTOMER’s access to IMPACT Technology until CUSTOMER brings its account current, and/or require advance payment for the Fees for the remainder of the Subscription Term.

5. Term & Termination

5.1 General. This Agreement shall commence on the Effective Date and shall continue until the earlier of (a) ninety (90) days after all Orders have expired or been terminated, or (b) the Agreement is terminated in accordance with the terms and conditions set forth in this Agreement.

5.2 Termination for Cause or Force Majeure. Either Party may terminate this Agreement by providing the other Party with written notice: (a) for thirty (30) days (“Notice Period”) due to a material breach of this Agreement by the other Party, and such breach is not cured prior to the end of the Notice Period (unless incurable or repeated breach or grossly delinquent in payment of Fees, then no Notice Period is required); or (b) for a Force Majeure, as notified in writing to the other Party by the Party affected, that continues for at least thirty (30) days. In either case termination shall be effective as of the end of the Notice Period, unless cured or the Force Majeure ceases to affect such Party or upon Notice if no cure is available or permitted.

5.3 Effect of Termination. Upon the effective date of termination of the Order or this Agreement (as applicable), IMPACT shall cease providing access to and CUSTOMER shall cease all use of the Products and/or Services. Except if this Agreement is terminated due to IMPACT’s uncured breach or Force Majeure (pursuant to Section 5.2(b)), CUSTOMER shall remain responsible for all Fees payable during the Term, including Fees calculated and invoiced following termination or expiration of this Agreement. If this Agreement is terminated due to IMPACT’s uncured material breach or a Force Majeure affecting IMPACT, IMPACT will credit to CUSTOMER’s Account a pro rata portion of any pre-paid and unused Fees (if any), and make payment to CUSTOMER any positive Account balance less deductions for CUSTOMER Partner compensation or other pass-through payments (e.g. third party vendors engaged on CUSTOMER’s behalf, if any). Section 7.5 obligations shall apply to CUSTOMER Data retained after the date of expiration or termination of this Agreement, and post-termination/expiration obligations in Section 7.3 shall apply to each Party’s Confidential Information.

6. Representations and Warranties

6.1 Continuing Warranties/Disclaimers. Each Party represents and warrants to that the statements contained in this Section 6 are true and correct as of the Effective Date and shall continue to be true and correct through the date of termination of this Agreement (unless stated otherwise). EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, IMPACT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE. IMPACT DOES NOT WARRANT THAT THE PRODUCTS WILL RUN UNINTERRUPTED OR BE ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE PRODUCTS OR AS TO ANY RETENTION, USE OR AVAILABILITY OF CUSTOMER DATA PROCESSED BY IMPACT. IN NO EVENT WILL IMPACT BE LIABLE FOR ACTS, ERRORS OR OMISSIONS OF THIRD PARTIES.

6.2 Warranties:
(a) IMPACT. IMPACT represents and warrants that: (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement, and will do so without conflict with any obligation, contract, lease, license third party’s rights, applicable law or agreement to which IMPACT is a party or by which IMPACT is bound; (ii) in performance of this Agreement, IMPACT will comply with all applicable laws (including but not limited to Applicable Privacy and Data Security Laws); (iii) the Products and Services will conform in all material respects with the Documentation; and (iv) IMPACT’s Personnel have the proper skill, training, and background to perform IMPACT’s obligations under this Agreement in a competent and professional manner.

(b) CUSTOMER. CUSTOMER represents and warrants that: (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement, and will do so without conflict with any obligation, contract, lease, license, third party’s rights, applicable law or agreement to which CUSTOMER is a party or by which CUSTOMER is bound; (ii) in performance of this Agreement and its use of the Products and Services, CUSTOMER will comply with all applicable laws (including but not limited to Applicable Privacy and Data Security Laws); (iii) it has the right to transmit all CUSTOMER Content through the IMPACT Technology; (iv) CUSTOMER Content, as provided to IMPACT by CUSTOMER or as uploaded onto the IMPACT Technology, will not
infringe or misappropriate any third party’s Intellectual Property Rights; and (v) it has secured or will secure from each “Visitor” (as defined in Section 7.5 below), the appropriate consents for IMPACT, as a service provider of CUSTOMER, to Process, and transfer out of the jurisdiction in which such individuals reside, their Personal Data (if any).

7. Confidentiality & Personal Data

7.1 Scope. The Receiving Party shall prevent disclosure of the Disclosing Party’s Confidential Information to anyone (including employees, contractors and agents) other than those with a need to know such Confidential Information for the purposes of this Agreement, and who are contractually obligated to keep Disclosing Party’s Confidential Information confidential. The Receiving Party may use the Disclosing Party’s Confidential Information only for the purposes permitted under this Agreement. Disclosure to third parties may be made only to those that the Disclosing Party has authorized such disclosure (such as agents or entities with whom CUSTOMER has a business relationship through CUSTOMER’s use of the IMPACT Technology). The Receiving Party must use reasonable efforts to maintain the confidentiality of the Confidential Information, including steps to protect it as the Receiving Party takes to protect its own similarly valuable confidential and proprietary information, and in no event less than a reasonable standard of care.

7.2 Compliance with Law. The Receiving Party may disclose Confidential Information that it is obligated to produce by law or other similar requirement of a governmental agency or a subpoena for the limited purpose required by a court or government agency, so long as the Receiving Party provides the Disclosing Party with written notice in advance of any such disclosure (unless prohibited by law or order), and complies with any applicable protective order or equivalent designed to protect the confidentiality of the Confidential Information.

7.3 Continuing Obligations. Upon termination or expiration of this Agreement, the Receiving Party shall destroy the Disclosing Party’s Confidential Information, unless return of Confidential Information is requested in writing by the Disclosing Party’s within sixty (60) days after termination or expiration of the Agreement. Notwithstanding foregoing, the Receiving Party shall not be obligated to purge any Disclosing Party Confidential Information archived pursuant to the Receiving Party’s normal document retention practices, subject to the continuing obligations of Section 7.1 with respect to such not-readily accessible, archived Confidential Information. CUSTOMER Data Processed by IMPACT that concerns CUSTOMER Partners may be used by IMPACT to perform its obligations to CUSTOMER and such CUSTOMER Partners, and retained by IMPACT for as long as necessary to comply with such obligations and as permitted by this Agreement. The obligations of confidentiality, non-use and non-disclosure of Confidential Information shall survive the expiration or termination of this Agreement.

7.4 Ownership. All Confidential Information, including, without limitation, all copies of Confidential Information exchanged under the Agreement, is and will remain the property of the Disclosing Party and/or Disclosing Party’s licensors.

7.5 Personal Data.

(a) General. In performance of this Agreement, IMPACT will Process Personal Data of Users and of CUSTOMER’s visitors to their Websites and other properties or media accessed through Advertiser Content (“Visitors’”). With respect to Users, IMPACT will Process business contact information and the Users’ access and use of the Products (including their IP addresses). For Visitors, IP addresses, email address, and other indirect identifiers will be Processed by IMPACT and Processed in de-identified form or that will be de-identified by IMPACT. IMPACT Affiliates may Process Personal Data on behalf of IMPACT, pursuant to agreements between IMPACT and such Affiliate. For any subcontractor or agent that performs services for IMPACT and Processes any Personal Data, such subcontractor or agent will be contractually obligated to comply with all Applicable Privacy and Data Security Laws. IMPACT shall remain liable for any liability arising from or relating to IMPACT Affiliates and each such subcontractor’s or agent’s compliance with this Section 7.5.

(b) Compliance with Applicable Privacy and Data Security Laws. Each Party represents and warrant that it shall comply at all times during the Term of the Agreement and thereafter with all Applicable Privacy and Data Security Laws. IMPACT Processes Visitor Personal Data as a data processor and will not utilize the User or Visitor Personal Data for any other purpose than for performance of this Agreement.

(c) Security & Retention/Disposal. IMPACT shall implement and maintain a comprehensive written data security policy and reasonable security practices and procedures appropriate to the nature of the Personal Data, which policies, practices and procedures shall comply with all Applicable Privacy and Data Security Laws. IMPACT shall limit access to its Personnel on a need-to-know basis only and shall treat all User and Visitor Personal Data as Confidential Information subject to Section 7.1 hereof. IMPACT shall comply with all data retention and erasure (or destruction) requirements under all Applicable Privacy and Data Security Laws, including without limitation irretrievably erase or destroy Personal Data or other Confidential Information with undue delay when it is no longer needed by IMPACT to fulfill its obligations hereunder or as such retention is permitted under the Agreement or pursuant to Applicable Privacy and Data Security Laws.

(d) Notification and Audit. If IMPACT learns or has reason to believe that there has been unauthorized access to or use of, or any security breach relating to or affecting User or Visitor Personal Data, IMPACT shall inform CUSTOMER and comply with all Applicable Privacy and Data Security Laws, including with respect to notification requirements. CUSTOMER shall have the right, upon request, to audit IMPACT’s policies, procedures and practices used to maintain the privacy, security and confidentiality of Personal Data. Such audit response shall consist of written documentation in relation thereto, including information regarding any independent, third-party audit of IMPACT’s systems, processes, policies, practices and procedures.
8. Indemnity

8.1 IMPACT Indemnity. IMPACT (as an “Indemnifying Party”) agrees to indemnify, hold harmless, and defend ("Indemnify") CUSTOMER, its officers, directors, employees, agents, successors and assignees of each (each a “CUSTOMER Indemnified Party”), from and against all Claims because of: (a) IMPACT’s violation of or failure to comply with any applicable law, ordinance, regulation, rule or order (including but not limited to Applicable Privacy and Data Security Laws); (b) a breach by IMPACT of any of its representations and warranties in this Agreement; or (c) IMPACT’s breach of Section 7 (Confidentiality). IMPACT’s indemnification obligations are subject to Section 9, and limited to the extent and percentage a Claim arises from CUSTOMER’s (i) breach of this Agreement, (ii) negligence, (iii) illegal conduct, (iv) willful misconduct, and (v) with respect to indemnification for infringement or misappropriation of a third party’s Intellectual Property Rights, combination of the IMPACT Technology with a third party’s software or technology, such that the IMPACT Technology is not the source of the infringement or misappropriation.

8.2 CUSTOMER Indemnity. CUSTOMER agrees to Indemnify IMPACT, its officers, directors, employees, agents, third party service providers (for products & services resold by IMPACT), successors and assignees of each (each an “IMPACT Indemnified Party”), from and against all Claims because of: (a) CUSTOMER’s violation of or failure to comply with any applicable law, ordinance, regulation, rule or order (including but not limited to Applicable Privacy and Data Security Laws); (b) IMPACT’s Processing CUSTOMER Content and CUSTOMER Data, as authorized hereunder; (c) CUSTOMER’s breach of Section 7 (Confidentiality); and (d) CUSTOMER’s breach of any of its representations and warranties and/or terms in this Agreement. CUSTOMER’s indemnification obligations are subject to Section 9, and limited to the extent and percentage a Claim arises from IMPACT’s (i) breach of this Agreement, (ii) negligence, (iii) illegal conduct, or (iv) willful misconduct.

8.3 Requirements. A Party’s obligation to indemnify pursuant to this Section 8 is subject to (a) the Indemnifying Party providing the Indemnifying Party with timely written notice of the Claim, (b) the Indemnified Party giving the Indemnifying Party the sole right to defend, compromise, and settle any such Claim (except where settlement would impose any cost or limitation on the Indemnified Party, or would admit fault by the Indemnified Party without the Indemnified Party’s consent), and (c) the Indemnified Party providing reasonable cooperation and assistance to the Indemnifying Party, at the Indemnified Party’s sole expense. Notwithstanding the foregoing, the Indemnified Party shall be entitled to participate in its own defense at the Indemnified Party’s own expense, although such participation does not reduce or relieve the Indemnifying Party’s obligations under this Section 8.

9. Limitations of Liability

9.1 Disclaimers. IMPACT shall not be liable for: (a) CUSTOMER’s use of the IMPACT Technology in breach of this Agreement (including but not limited to Section 2); (b) Users and CUSTOMER Partners’ acts, errors and omissions; (c) defects, problems, or failures of products, services and/or software not provided by IMPACT; and/or (d) defects, problems or failure of the Internet. CUSTOMER shall be fully responsible and liable to the fullest extent permitted under law for CUSTOMER’s misappropriation or breach of IMPACT’s Intellectual Property Rights or Confidential Information, and for all Fees incurred, or owed pursuant to the terms of each Order and/or this Agreement, during applicable Subscription Terms, whether invoiced prior to or after termination or expiration of such Orders and/or this Agreement. For the avoidance of doubt, CUSTOMER’s obligation to pay Fees under each Order and Agreement shall survive each of their termination or expiration.

9.2 LIMITS. IMPACT’s AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL NOT EXCEED THE GREATERT OF THE FEES PAID OR PAYABLE TO IMPACT IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT CREATING LIABILITY OR TWENTY-FIVE THOUSAND US DOLLARS ($25,000). IN NO CIRCUMSTANCE WILL IMPACT HAVE ANY LIABILITY TO CUSTOMER, ITS AFFILIATES OR ANY THIRD PARTY FOR ANY LOST PROFITS ON REVENUES OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT IMPACT IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. THIS SECTION 9.2 DISCLAIMER DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, OR TO IMPACT’S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF IMPACT.

9.3 ALLOCATION OF RISK. THE ABOVE LIMITATIONS ON LIABILITY REFLECT THE PARTIES’ AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION 9 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

10. Miscellaneous

10.1 Independent Contractor: IMPACT is and shall remain an independent contractor of CUSTOMER and nothing herein shall be deemed or construed to create an employer/employee, joint venture or partnership relationship between the Parties. Neither Party shall have any authority to incur any obligations on behalf of the other Party or to make any promise, representation or contract of any nature on behalf of the other Party.

10.2 Governing Law: The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of California without reference to its choice of law doctrine. Each Party shall be entitled to pursue
any and all remedies that are available to it at law or equity in state or federal court in Los Angeles County, California. Each Party agrees that it shall not raise, and waives, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction.

10.3 **Entire Agreement:** This Agreement, Attachment No. 1, and all Orders (including any agreements specifically referenced and linked to therein via URL) that are mutually agreed in writing and that specifically reference this Agreement, represent the entire understanding and agreement between the Parties that related to the subject matter hereof (“Integrated Agreement”), and such Integrated Agreement supersedes any and all prior contracts, agreements, understandings or representations, whether written or oral. The Parties expressly agree that all confidentiality and non-disclosure agreements executed between the Parties prior to the date of this Agreement are terminated and such terms are superseded by the terms of this Agreement. Each of the Parties acknowledges that there are no other promises, representations, or warranties whatsoever, whether by a Party, its Affiliate, employee, contractor, officer director, agent or attorney of such Party, and acknowledges that it has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty, that is not expressly contained in the Integrated Agreement.

10.4 **Third Party Beneficiaries:** This Agreement is made solely for the benefit of the Parties to this Agreement, their Affiliates (as applicable) and their respective permitted successors and assigns. Other than pursuant to a Party’s indemnification obligations (as applicable) and Affiliates, no other person or entity shall have or acquire any right, power or privilege by virtue of this Agreement, or have any benefit or interest, arising out of this Agreement. Any obligation of IMPACT may be performed by an IMPACT Affiliate, and the terms of this Agreement may be enforced by an IMPACT Affiliate. IMPACT may amend this Integrated Agreement (or any part thereof) upon written notice to CUSTOMER at CUSTOMER’s email address on its Account. Except as specifically provided for in the preceding sentence or elsewhere in this Agreement, no alteration, amendment, waiver, cancellation or any other change in any term or condition of this Integrated Agreement shall be valid or binding on either Party except by written mutual agreement.

10.5 **Assignment:** CUSTOMER may not assign this Agreement or delegate its duties to any third party without the prior written consent of IMPACT. For transfers to any successor in interest (such as in a merger, consolidation or sale of all or substantially all of the Party’s stock or assets), such transfer may not be made to a competitor of IMPACT, requires prior written notice to and approval by IMPACT (in its sole discretion), and written acceptance and acknowledgement by the transferee of all pre-existing obligations of the CUSTOMER (including payment obligations that accrued prior to the date of transfer) and the terms and conditions of this Agreement. IMPACT may freely assign and transfer this Agreement and delegate its duties. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns.

10.6 **Notice:** No notice required or permitted hereunder shall be valid unless given in writing and shall be deemed to have been validly given only if delivered as follows: (a) by IMPACT to CUSTOMER - within the messaging functionality of the Product or at the email address listed on CUSTOMER’s Account (which CUSTOMER must keep up-to-date); and (b) by CUSTOMER to IMPACT - by registered or certified mail, postage prepaid, return receipt requested, facsimile or commercial courier to: Impact Tech, Inc., 223 East De La Guerra Street, Santa Barbara, CA 93101, Attention: Legal Dept. Notice is effective upon receipt (or refusal to accept receipt), and, in the case of email notice, upon delivery.

10.7 **Survival/Severability:** Except as otherwise provided herein, warranties and obligations contained herein shall survive termination or cancellation of this Agreement, regardless of the reason for such termination or cancellation, and shall continue in full force and effect. The provisions of this Agreement are severable, and if any clause or provisions hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Agreement in any jurisdiction. Any such clause or provision held invalid or unenforceable, in whole or in part, to the extent permitted by law, shall be restricted in applicability or reformed to the minimum extent required for such clause or provision to be enforceable.

10.8 **Headings/Remedies/Waiver:** The subject headings in this Agreement are for convenience only and are not determinative of the substance of the subject clause. Except where this Agreement specifies exclusive remedies, each Party’s rights and remedies whether in contract, law or equity, are cumulative. Any waiver by either Party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing and signed by the Parties. Delay in the enforcement of any remedy in the event of a breach of any term or condition, or in the exercise by either Party of any right, shall not be construed as a waiver of such remedy or right, unless the Agreement provides for a specific period of time for notice of breach or exercise of a right.

10.9 **Electronic Signatures/Interpretation.** The Parties acknowledge that they have participated jointly in the negotiation and drafting of this Integrated Agreement, and that any amendments to these online terms are contained in each Order. In the event an ambiguity or question of intent or interpretation arises, this Integrated Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the
authorship of any of the provisions of this Integrated Agreement. In the event of conflict between terms in this Agreement and the terms on a mutually executed Order, the terms on the Order shall control. CUSTOMER acknowledges and agrees that by clicking-through acceptance of this Agreement, and any other click-through offers made and accepted through the Products, CUSTOMER is submitting a legally binding electronic signature and entering into a legally binding contract. CUSTOMER HEREBY AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE PRODUCTS. Further, CUSTOMER hereby waives any rights or requirements under any applicable statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means.

10.10 Counterparts: This Integrated Agreement may be executed in counterparts, each of which will be deemed to be an original and taken together shall be considered as one document.

THE PERSON CLICKING-THROUGH THIS INTEGRATED AGREEMENT REPRESENTS AND WARRANTS THAT SUCH INDIVIDUAL IS AUTHORIZED TO ACCEPT THIS INTEGRATED AGREEMENT ON BEHALF OF THE CUSTOMER.
ATTACHMENT NO. 1

DATA PROTECTION AGREEMENT

This Attachment No. 1 ("Data Protection Agreement") is applicable to the Master Subscription and Services Agreement ("MSA") between Impact Tech, Inc. ("IMPACT") and CUSTOMER (as defined in the MSA) and is attached thereto. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the MSA and in the GDPR. References to “Article(s)” means an Article of the GDPR. This Data Protection Agreement concerns Personal Data of Visitors that is Processed by IMPACT and IMPACT Affiliates.

As a processor (and Affiliates as sub-processors, as applicable, and references below to “IMPACT” refer to such Affiliates), and pursuant to Article 28 (Processor), IMPACT shall:

(a) Process the Personal Data only on CUSTOMER's documented instructions (e.g. this Agreement), including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by EU or Member State law to which the IMPACT is subject; in such a case, the IMPACT shall inform CUSTOMER of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

(b) ensure that Personnel authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(c) takes all measures required pursuant to Article 32 (Security of Processing);

(d) respects the conditions referred to in paragraphs 2 and 4 of Article 28 for engaging another processor;

(e) taking into account the nature of the Processing, assist CUSTOMER by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the CUSTOMER’s obligation to respond to requests for exercising the data subject’s rights laid down in Chapter III of the GDPR;

(f) assist CUSTOMER in ensuring compliance with the obligations pursuant to Articles 32 to 36 (in Section 2 Security of Personal Data) taking into account the nature of Processing and the information available to IMPACT;

(g) delete the Personal Data (as the choice of CUSTOMER) after the end of the provision of services relating to Processing, including existing copies - unless EU or Member State law requires storage of the personal data;

(h) make available to CUSTOMER all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the CUSTOMER or another auditor mandated by the CUSTOMER.

IMPACT shall immediately inform CUSTOMER if, in its opinion, a CUSTOMER instruction infringes the GDPR or other EU or Member State data protection provisions.

For the avoidance of doubt, Affiliates shall have implemented appropriate technical and organisational measures and be subject to the same data protection obligations as IMPACT, although IMPACT shall remain fully liable to CUSTOMER for the performance of Affiliates’ obligations.

CUSTOMER expressly agrees to the transfer of Personal Data to the following geographic locations of IMPACT and IMPACT Affiliates: United Kingdom, South Africa, United States, and Australia. Such Processing includes Processing by IMPACT’s Affiliate in South Africa for the purposes of verifying transactions pursuant to Partner Contracts and for providing support services to CUSTOMER Partners and CUSTOMER.

The servers used by IMPACT are located in the United States.

Additionally, to the extent that the GDPR is applicable to a Member State of the EEA, references in this Attachment No. 1 apply with respect to Visitors and Users from such Member State.

[END]