

Dakota Trial User Agreement

This Trial User Agreement (this “**Agreement**”) is entered into as of the effective date (“**Effective Date**”) that Customer selects “I Accept” after reviewing this document and is entered into by and between Dakota Live! LLC (“**Dakota**”) and the Customer (“**Customer**”).

1. Services.

1.1 **Grant of Access.** Subject to the terms of this Agreement, during the Subscription Term (defined below), Dakota or its affiliates will make available to Customer, solely for Customer’s internal use, the services (the “**Services**”). Dakota reserves the right, from time to time and in its sole discretion, to add to or remove functionality or features of the Services; provided, that Dakota shall use commercially reasonable efforts to provide advance notice of such removal. If a third party ceases to make available services or applications that interoperate with features of the Services, Dakota may cease providing such features as part of the Services without entitling the Customer to any refund, credit, or compensation.

1.2 **Authorized Users.** Customer will exclusively use the Services through its Authorized Users. Dakota will assign Customer one or more user IDs and passwords that will enable Customer’s Authorized Users to access the Service. Customer agrees that it will use, and will cause its Authorized Users to use, the Services only for lawful purposes and in accordance with this Agreement and the Terms of Service applicable to use of the Services that are made available by Dakota from time to time in connection with the Services. Customer shall be solely responsible for maintaining and securing the confidentiality of such user IDs and passwords.

1.3 **Restrictions.** Customer will not (a) make the Services available to, or use the Services for the benefit of, anyone other than Customer, (b) sell, resell, license, sublicense, distribute, rent, lease, commercialize or otherwise transfer rights or usage in the Services, or include the Services in a service bureau or outsourcing offering, (c) disclose, distribute or otherwise share any data, content, materials, or other information (“**Data**”) or any manuals, documentation, and other supporting materials related to the Services (“**Documentation**”) that Dakota provides or makes available through the Services with any third party; (d) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, Trojan horses or other malicious code, (f) interfere with or disrupt the integrity or performance of the Services or any Data contained therein, (g) attempt to gain unauthorized access to the Services or any related systems or networks or modify, remove, or disable any portion of the security or access controls or any other mechanism that would circumvent, prevent, or impact the integrity of data and usage of the Services, (h) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit, (i) copy the Services or any part, feature, function, or user interface thereof, (j) frame or mirror any part of the Services, other than framing on Customer’s own intranets or otherwise for Customer’s own internal business purposes or as permitted in the Documentation, (k) access the Services in order to build a competitive product or service, (l) reverse engineer, disassemble, decompile, modify or create derivative works of the Services or any portion thereof, (m) remove, alter or obscure any copyright, trademark or any other proprietary notices available in the Services, Data, or the Documentation, or (n) use the Services for illegal activities or junk mail, chain letters, pyramid schemes, “spam” or distribution to any person who has not given specific permission to be included in such a process. A breach of this Section 1.3 shall be a material breach of this Agreement.

2. **Intellectual Property Rights.** Dakota and its licensors own all rights, title, and interest in and to the Services, including, for the avoidance of doubt, all Data and Documentation. Customer’s rights

to the Services are limited to the rights expressly granted to Customer in Section 1 of this Agreement. Dakota and its licensors may also collect, use, process and store diagnostic and usage, system or service performance-related data from the computer or mobile or other device Customer and its Authorized Users use to access the Services (collectively, “Usage Data”). Usage Data may include IP addresses and other information such as internet service, location, browser type and modules used or accessed. Customer agrees that Dakota and its licensors may process the Usage Data regarding the Services in order to: (a) maintain and improve the performance, integrity, and features of Dakota’s and its licensors products and services and (b) comply with all applicable law; provided, that, in each case, that all Usage Data will be maintained in aggregated and anonymized forms.

3. **Customer’s Obligations, Representations and Warranties.**

3.1 **Compliance with Laws; Authorized Use; Access Requirements.** Customer agrees that its and its Authorized Users’ use of the Services shall at all times be in compliance with all applicable laws and regulations. Customer is solely responsible for any and all improper use of the Services by Customer. Customer will notify Dakota immediately of any unauthorized use of the Services or any Data or any Authorized User’s account. Customer must have the required equipment, software, and Internet access to be able to use the Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely Customer’s responsibility, except as otherwise expressly provided in an Order Form.

3.2 **Feedback.** Customer acknowledges and agrees that the Services may permit Customer and its users to provide suggestions, enhancements, recommendations, modifications, updates, revisions or other changes to the Services, including to any Data included therewith, whether through the Services or by direct submission to Customer (collectively, “Feedback”). Customer agrees that all such Feedback and any enhancements, modifications, updates, revisions or changes made to the Services, including the Data, in connection therewith shall be the sole property of Dakota and that Dakota can use all such Feedback for any purposes, including the improvement of the Services and the Data.

3.3 **Representations and Warranties.** Customer represents, warrants, and covenants that (a) it has the right to enter into this Agreement and doing so will not violate any other agreement; and (b) it is in compliance with all applicable laws, rules, and regulations and has all approvals and licenses necessary to receive and use the Services;

4. **Payment.** No payment is due under Trial User Agreement.

5. **Term and Termination.**

5.1 **Term.** This Agreement is effective as of the Effective Date and will continue in force for an agreed upon period usually not to exceed 30 days or until terminated as provided herein (“**Subscription Term**”).

5.2 **Termination.** Either party can immediately terminate this Agreement if the other party breaches any material term of this Agreement and, if such breach is capable of cure, the breaching party fails to cure such breach within twenty (20) days of written notice thereof.

5.3 **Suspension.** Dakota may, without prior notice, immediately suspend Customer’s and its Authorized User’s use and access to the Services if Dakota becomes aware of any violation or breach of Sections 1.3 by Customer or its Authorized Users. Dakota may also take any self-help remedies necessary to prevent continued violations of such section. Dakota will act in good faith and use reasonable efforts to notify Customer via phone or email before initiating self-help measures, or suspending or

restricting Services. Dakota may, without prior notice, immediately suspend access to the Services if Dakota believes, in its sole discretion, that the software, equipment or network systems owned or controlled by Dakota are being currently used for criminal activity, in a manner that violates the legal rights of Dakota, its customers, any user or other third party, or is experiencing an actual data loss or data misappropriation, or that the continued operation of the Services places the Services or Dakota's software, equipment or network in potential danger of data loss or breach, or catastrophic failure.

5.4 **Effect of Termination.** Upon termination or expiration of this Agreement, (a) the Subscription Term shall end; and (b) all rights to use the Services granted to Customer hereunder shall immediately terminate. Those provisions of this Agreement that by their terms or sense are intended to survive termination or expiration of this Agreement will survive and remain in full force and effect.

6. **Confidentiality.** For the purposes of this Agreement, "**Confidential Information**" means any business or technical information that either party discloses to the other party that should reasonably have been understood by the receiving party to be proprietary and confidential to the other party. The existence and terms of this Agreement and the relationship of the parties shall constitute Confidential Information of both parties. Confidential Information of Dakota shall also include the Data and Feedback. Neither party will use the other party's Confidential Information, except as permitted under this Agreement. Each party agrees to maintain in confidence and protect the other party's Confidential Information using at least the same degree of care as such party uses for its own information of a similar nature, but in all events at least a reasonable degree of care. Each party may disclose Confidential Information of the other party to such party's employees, independent contractors, consultants and legal and financial advisors (collectively, "**Representatives**") (a) with a need to know such information, (b) who are parties to appropriate agreements sufficient to comply with this Section 6, and (c) who are informed of the nondisclosure obligations imposed by this Section 6. Each party will be responsible for all acts and omissions of its Representatives. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party pursuant to the court order or other legal requirement, provided that the party required to make such disclosure gives reasonable notice to the other party to enable them to contest such order or requirement and only discloses such information as is actually required to be disclosed. The restrictions set forth in this Section 6 shall remain in effect during the Subscription Term, and for five (5) years thereafter. The restrictions set forth in Section 6 will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other party's Confidential Information.

7. **Indemnification.**

7.1 **Dakota's Indemnification Obligation.** Dakota will defend or settle, at its option and expense, any third-party claim brought against Customer to the extent that it is based on an allegation that Customer's use of the Services as permitted under this Agreement infringes a patent, copyright, or trademark or misappropriates a trade secret of any third party (each, a "**Claim**"), and, subject to Section 9, Dakota will pay all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to such a Claim.

7.2 **Exclusions.** Customer understands that Dakota has no obligation to indemnify Customer for any Claim that is based on (a) modification of the Services by any party other than Dakota; (b) Customer's use of the Services other than as authorized by this Agreement and the Documentation; (c) Customer's failure to use updated or modified Services that Dakota makes available to Customer that would

have avoided or mitigated the Claim; (d) Customer's failure to stop using the Services after receiving written notice to do so from Dakota in order to avoid further infringement or misappropriation; or (e) the combination, operation, or use of the Services with equipment, devices, software, systems, or data that Dakota did not supply.

7.3 **Right to Ameliorate Damages.** If Customer's use of the Services is, or in Dakota's reasonable opinion is likely to be, subject to a Claim under Section 7.1, Dakota may, at its sole option and at no charge to Customer (and in addition to Dakota's indemnity obligation to Customer in Section 7.1): (a) procure for Customer the right to continue using the Services; (b) replace or modify the Services so that it is non-infringing and substantially equivalent in function to the original Services; or (c) if options (a) and (b) above are not commercially practicable in Dakota's reasonable estimation, Dakota can terminate this Agreement and all licenses granted hereunder (in which event, Customer will immediately stop using the Services) and refund the Subscription Fees that Customer paid for the then-current Subscription Term on a pro rata basis.

7.4 **Customer's Indemnification Obligation.** Customer will defend, indemnify, and hold Dakota harmless from and against any claims that may arise out of, be related to or connected with the Customer's or its Authorized Users' violation or breach of Sections 1.3 of this Agreement, or any claim that Customer's or its Authorized Users' use of the Services in violation of this Agreement infringes or violates the intellectual property rights of a third party.

7.5 **Indemnification Process.** If any claim shall be brought against a party (the "**Indemnified Party**") in respect to which indemnity may be sought from the other party (the "**Indemnifying Party**") pursuant to this Section 7, the Indemnified Party shall promptly notify the Indemnifying Party in writing, specifying the nature of the claim and such relief as is sought therein. The Indemnifying Party may, at its sole discretion, at any time upon written notice thereof to the Indemnified Party undertake to control the claim and the defense or settlement thereof and all proceedings or negotiations relating thereto, including the employment of counsel. In such an event, the Indemnified Party shall cooperate with the Indemnifying Party in all reasonable respects in connection with the defense of any such action. The Indemnified Party shall have the right to employ separate counsel and participate in the defense thereof at its own expense.

7.6 **Sole Remedy.** THIS SECTION 7 SETS FORTH DAKOTA'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

8. **Disclaimers.** NOTWITHSTANDING ANY REPRESENTATIONS OR WARRANTIES PROVIDED HEREIN, DAKOTA PROVIDES THE SERVICES, INCLUDING THE DATA AND DOCUMENTATION INCLUDED THEREIN, ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE EXTENT PERMITTED BY LAW, DAKOTA AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, NO WARRANTY IS MADE THAT THE SERVICES, INCLUDING THE DATA OR DOCUMENTATION, WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES' FUNCTIONALITY AND OUTPUT WILL MEET THE CUSTOMER'S REQUIREMENTS OR AS TO THE DATA'S ACCURACY, VALIDITY, OR INTEGRITY. DAKOTA MAKES NO REPRESENTATION OR WARRANTY REGARDING THE RESULTS OBTAINED FROM USE OF THE SERVICES OR DATA. CUSTOMER AGREES THAT

THE USE OF THE SERVICES AND DATA AND ANY RESULTS OBTAINED THEREFROM IS AT CUSTOMER'S SOLE RISK. CUSTOMER UNDERSTAND AND AGREES THAT DAKOTA DOES NOT HAVE ANY DUTY TO UPDATE, MODIFY OR CORRECT ANY DATA.

9. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DAKOTA OR ANY OF ITS SUPPLIERS OR LICENSORS HAVE ANY LIABILITY TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFIT, REVENUE, OR DATA) ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE, OR OTHER TORT THEORY OF LIABILITY) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, DAKOTA'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED \$100 (ONE HUNDRED US DOLLARS).

10. **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any principles of conflict of laws. Except as otherwise required by applicable law or regulation or in connection with any disputes relating to a party's intellectual property rights or for equitable remedies, any legal action or proceeding arising under this Agreement will be resolved by binding arbitration in accordance with the rules of the American Arbitration Association then in effect. Such arbitration shall be conducted exclusively in Philadelphia, Pennsylvania, and the parties irrevocably consent to such arbitration in such location. Judgment upon the award or decision rendered by the arbitrator may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be. This agreement to arbitrate shall be specifically enforceable by the parties, and, except as provided herein, they confirm that they intend that all disputes, controversies or claims of any kind shall be arbitrated.

11. **Miscellaneous.** Dakota and Customer are, and will be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary, or other similar relationship between Dakota and Customer. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld); provided, however, that Dakota may assign this Agreement (including by operation of law) without the consent of Customer to an affiliate of Dakota or in connection with any merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or equity. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing that is signed by Customer and Dakota. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure, and power failures. All notices between the parties shall be in writing and shall be deemed to have been given if personally delivered or sent by certified mail (return receipt requested), electronic mail or facsimile, to the other party's current or last known address. Notices shall be deemed effective upon receipt if personally delivered, three (3) business days after it was sent if by certified mail, or one (1) business days after it was sent if by electronic mail or facsimile. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to

law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior understandings and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.