

Terms & Conditions of Use

These terms and conditions, together with the Order Form (defined below) and any other schedules or exhibits attached hereto, shall form the complete agreement (hereinafter the "Agreement") between the applicable Daruma Tech entity as referenced in Section 9 below (hereinafter "DT") and the entity/individual identified on the Order Form (hereinafter the "Customer") and shall govern Daruma Tech's licensing of the software-as-a-service offerings identified on the Order Form, along with their related software (altogether the "Services," and each a "Service"), to the Customer. As used herein, the "Order Form" shall mean Customer's written order form and/or electronic order (including but not limited to e-quote and online shopping cart) for Services referencing this Agreement. By signing or electronically submitting the Order Form, Customer represents and warrants that (i) Customer has read, understands and agrees to be bound by the terms of this Agreement (including the disclaimer of warranty and limitation of liability sections set forth below) to the exclusion of any other rights and obligations, such as any rights, obligations or other terms listed on any purchase order or the like that Customer may provide DT; (ii) Customer hereby agrees that any rights, obligations or other terms listed on such a purchase order or the like are hereby null and void; and (iii) that the Services, software and websites are provided via equipment and other resources located in the United States and other locations throughout the world and that Customer hereby consents to having personal data processed by DT in the United States and other locations throughout the world.

1. License Terms and Restrictions

- 1.1. License Grant. DT hereby grants Customer a royalty-free, nonexclusive, worldwide, nontransferable, right and license to access, use, execute and deploy the Service and its related software for the applicable subscription term subject to the restrictions set forth in this Agreement. The Service is owned and operated by DT and provided to Customer on a subscription basis; DT is not transferring ownership or title to the Service to Customer. The Service is made available for download solely for use by Customer and only according to this Agreement. Any reproduction, resale or redistribution of the Service that is not in accordance with this Agreement is expressly prohibited, and may result in civil and criminal penalties. Violators will be prosecuted to the maximum extent possible. Except as otherwise provided for herein, the license granted hereunder may not be transferred by Customer to any third party and is non-exclusive.
- 1.2. Reservation of Intellectual Property Rights. Customer acknowledges that the Services and their related software are proprietary to DT and/or its suppliers and are protected by copyrights, trademarks, service marks, patents and/or other proprietary rights and laws. Customer may not remove any proprietary notices or labels from any of the Services. Customer may not alter, modify, redistribute, sell, auction, decompile, reverse engineer, disassemble or otherwise reduce any of the Services to a human-readable form. Customer may not reproduce, distribute or create any derivative works based on the Services without expressly being authorized in writing to do so by DT. Further, Customer may not rent, lease, grant a security interest in or otherwise transfer any rights to the Services. Any and all content on the websites, software and computer programs used to provide the Services are protected by copyright and other intellectual property laws. Except as specifically permitted herein, no portion of the

information or content on such websites, software and computer programs may be reproduced in any form, or by any means, without prior written permission from DT. All intellectual property rights not expressly granted in this Agreement are reserved to DT and its suppliers. "Daruma Tech," associated logos, and other names, logos, icons and marks identifying DT's Services are trademarks or service marks of DT (collectively the "Trademarks") and may not be used without the prior written permission of DT. All other product names mentioned are used for identification purposes only and may be trademarks or service marks of their respective holders. Nothing should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark without the written permission of DT. Customer's use of the Trademarks except as provided in this Agreement is strictly prohibited.

- 1.3. Right to Updates and Upgrades. This license entitles Customer to receive any and all standard patches, fixes, and modifications ("Updates") made to the Service during Customers subscription term free of charge, so long as DT, in its sole discretion, includes such Updates in a release provided to all users of the Service. Notwithstanding the previous sentence, DT reserves the right to charge fees before granting Customer access to any new versions of the Service, or premium (i.e., paid for) feature improvements, enhancements or add-ons to the Services ("Upgrades"). Customer understands that DT may make Updates to the Services and their related software at any time, in its sole discretion, but is under no obligation to inform Customer of any such Updates. To the extent that DT supplies any Updates or Upgrades to Customer, they will be deemed to be subject to this Agreement, unless DT indicates otherwise.
- 1.4. End User Conduct. Customer is solely responsible for the content of its computer(s), its DT account and any transmissions Customer may make when using the Services. Customer's use of the Services are subject to the terms of this Agreement and all applicable laws, rules and regulations, including local, state, national and international laws, rules and regulations. When using the Services Customer shall not: (i) post, distribute, or otherwise make available or transmit any software or other computer files that contain a virus, trojan horse, worm or other harmful or destructive component; (ii) use the Service for any illegal purposes; (iii) delete from the Service or its related software, documentation or any DT website used in connection with the Service, any legal notices, disclaimers, or proprietary notices such as copyright or trademark notices, or modify any logos that Customer does not own or have express permission to modify; (iv) use the Service under false pretenses to attempt to gain unauthorized access to computer systems or devices that Customer does not have permission to access or otherwise interfere or disrupt any other networks connected to the Service; (v) use the Service to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy or use the Service to share copyrighted material that Customer does not own or have permission to share or distribute; and (vi) distribute any unlawful, harassing, libelous, defamatory, racist, indecent, abusive, violent, threatening, intimidating, harmful, vulgar, obscene, offensive or otherwise objectionable material of any kind or nature. Customer agrees that it is responsible for all actions and inactions of its employees and consultants and will use commercially reasonable efforts to monitor its employees and consultants. DT reserves the right to suspend or disable Customer's account or take any other action that DT in its sole discretion deems necessary or appropriate in the event that DT has reason to believe that Customer's conduct while using any of the Services has violated the terms of this Section 1.4.

- 1.5. Account Passwords. Certain Services provided by DT hereunder require Customer to use an email address to create a username and choose a password for access to Customer's Daruma Tech/Abinko account (for security purposes, DT recommends choosing a password for the Service that is different from the username and password to your computer). DT does not send emails asking for a user's Daruma Tech/Abinko username and/or password or any other username or password. To keep the Service secure, Customer should keep all usernames and passwords confidential. Access to, and use of, password-protected and/or secure aspects of the Services are restricted to authorized users only. Customer shall not access or use someone else's Daruma Tech/Abinko account at any time, without first obtaining the permission of the account holder and unauthorized individuals attempting to use any of the Services may be subject to prosecution. Customer agrees to carefully safeguard all of its passwords. DT does not maintain a database of user passwords so Customer is solely responsible if it does not maintain the confidentiality of its passwords and account information. Furthermore, Customer is solely responsible for any and all activity that occurs under its account. DT is not liable for any loss incurred by Customer resulting from another's use of Customer's password, account, or public/private key, as may be applicable, either with or without Customer's knowledge. However, Customer may be held liable for losses incurred by DT or another party due to another's use of its password, account, or public/private key, as may be applicable, either with or without Customer's knowledge. Customer agrees to immediately notify DT of any unauthorized use of its account or any other suspected breach of security known to Customer, including if Customer believes that its password and/or account information has been stolen or otherwise compromised.
- 1.6. Feedback. DT shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, recommendations or other information provided by Customer relating to the operation of the Service.
- 1.7. Creative Materials. All programs, manuals, designs, texts, graphics, source code, layout or other creative materials (the "materials") provided by DT to Purchaser in connection with or arising from the performance of services remain the property of DT including, but not limited to, all copyright and trademark rights. The Customer is granted a limited license to such materials for the specific and personal use by Customer and not for reproduction, subcontracting, assignment, or resale. This Agreement is not a work for hire or assignment of all rights in the materials other than as set forth herein. All modifications and improvements to materials shall be deemed licensed to DT on a prepaid royalty-free basis.

2. Payment Terms and Fees

- 2.1. Accepted Payment Methods: Payments for subscriptions to DT's Services may generally be made by preauthorized credit card charge, direct debit, check, bank draft, wire transfer or other online payment services (such as PayPal®) as described further below. Please note that when Customer selects PayPal to make payments, the transaction is re-directed from DT's site to PayPal's payment site and Customer's financial information is not shared with DT.
- Month-to-Month Subscriptions. In the event that Customer's subscription to a Service is on a monthly basis, payment of the subscription fee must be by preauthorized credit

card charge, direct debit or other online payment services accepted by DT (such as PayPal®) only, and Customer's subscription will automatically renew each calendar month unless Customer provides DT with written notice of non-renewal during the prior calendar month. Customer will automatically be charged the applicable monthly subscription fee for each month or partial month that Customer's month-to-month subscription is in effect. ○ **Annual Subscriptions by Payment Card.** customer may elect to purchase annual subscriptions to the service by credit card, direct debit or other online payment services accepted by DT (such as PayPal®). in the event that customer cancels the payment card provided to DT to pay for the service or the card expires or is otherwise terminated, customer must promptly provide DT with a new valid card number in order to maintain its subscription to the service and avoid any disruptions to its subscription renewal. customer authorizes DT, from time-to-time, to undertake steps to determine whether the card number provided to DT is a valid card number and authorizes DT to automatically update customer's credit card information using software designed for updating purposes.

- **Annual Subscriptions by Invoice.** In the event that Customer's subscription to the Service is for a year and the initial payment is by check or bank draft against an invoice from DT, payment shall be due within thirty (30) days of the date of invoice. Additionally, Customer's subscription will automatically renew at the beginning of each subsequent anniversary year unless Customer or DT gives prior written notice of nonrenewal at least thirty (30) days prior to the expiration of the current year subscription.

2.2. **Use of Free Subscriptions.** Unless stated otherwise, Customer's subscription to any of DT's free Services do not require the payment of a subscription fee. For the avoidance of doubt, Customer's right and license to access, use, execute and deploy any of DT's free Services are not guaranteed for any period of time and DT reserves the right, in its sole and absolute discretion, to restrict, limit or terminate the use of "free" or "basic" versions of any of the Services by any individual, entity or group of entities.

2.3. **Late Payments.** DT reserves the right to suspend, terminate or disable Customer's access to any of the Services in the event that any fees owed hereunder to DT are not received on or before the applicable payment due date.

2.4. **Taxes.** Customer agrees to be responsible for and to pay any applicable sales, personal property, use, VAT, excise, withholding, or any other applicable taxes that may be imposed, based on this license, or the use or possession of a Service, or any software or other product provided under this Agreement, excluding any taxes based on net income payable by DT. If Customer is exempt from paying any sales, use or other taxes, Customer must provide DT with appropriate evidence of tax exemption for all relevant jurisdictions.

2.5. **No Cancellations.** Except as otherwise provided for herein, Customer may not cancel, terminate or rescind a subscription during its term. Any and all payments by Customer to DT for access to the Services are final.

- 2.6. Account Audit. DT reserves the right to audit and review Customer's Daruma Tech/Abinko account(s) at any time to confirm that Customer's usage of the Service is in accordance with the terms of this Agreement and any applicable Order Form(s) placed hereunder. DT shall invoice Customer for any usage of the Services that exceeds the agreed upon usage set forth in the applicable Order Form(s)
- 2.7. Sales, Promotional Offers, Coupons and Pricing. Sales, promotions and other special discounted pricing offers are temporary and, upon the renewal of Customer's subscription, any such discounted pricing offers may expire. DT reserves the right to update its pricing and/or discontinue or modify any coupons, credits, sales and special promotional offers at its sole discretion.

3. Term and Termination

- 3.1. Term; Renewal of Subscription Terms. Unless terminated earlier pursuant to Section 3.2 below, Customer's subscription term(s) shall commence on the effective date of the Order Form placed hereunder and shall continue for the period of time set forth on the Order Form. Upon the expiration of this initial subscription term, Customer's subscription shall automatically renew for successive one (1) year subscription terms unless Customer gives DT prior written notice of non-renewal at least thirty (30) days prior to the expiration of Customer's then-current subscription term.
- 3.2. Right to Terminate. DT may, in its sole discretion, immediately terminate this Agreement and Customer's subscription, license and right to use the Service if (i) Customer fails to make timely payments of subscription fees as required for access to its account or Customer declares bankruptcy, is involved in any bankruptcy proceedings or is otherwise insolvent; (ii) Customer breaches the material terms of this Agreement; (iii) Customer is found to have falsified its registration information or DT is otherwise unable to verify or authenticate information Customer provided to DT upon registration; or (iv) DT decides, in its sole discretion, to discontinue offering the Service to its users. In the event of discontinuance by DT, Customer shall be entitled to reimbursement of a pro rata portion of any unused prepaid fees paid hereunder to DT.
- 3.3. Effect of Termination. When Customer's access to the Service is terminated and/or Customer's subscription is canceled, Customer may be reverted to a "free" or "basic" version of the Service or may no longer have access to data and other material that Customer may have stored in connection with the Service and that material may be deleted by DT. DT shall not be liable to Customer or any third party for termination of the Service, deletion of data, or Customer's use of the Service. All disclaimers and limitations of warranties and damages, and confidential commitments set forth in this Agreement or otherwise existing at law shall survive any termination, expiration or rescission of this Agreement

4. Warranties. DT WARRANTS THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED

IN A PROFESSIONAL AND WORKMANLIKE MANNER AND IN ACCORDANCE WITH ANY WRITTEN DOCUMENTATION OR PRODUCT DESCRIPTIONS PROVIDED BY DT OR OTHERWISE MADE

AVAILABLE ON DT'S WEBSITE. CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT THE SOLE DISCRETION OF DT, THE RESTORATION OF THE SERVICE IN A MANNER THAT CONFORMS TO THESE WARRANTIES OR THE TERMINATION OF THE SERVICE AND THIS AGREEMENT AND A PRO RATA REFUND OF ANY PRE-PAID SUBSCRIPTION FEES PAID BY CUSTOMER FOR THE NON-CONFORMING SERVICES FOR THE PERIOD OF NON-CONFORMANCE. EXCEPT AS PROVIDED ABOVE, ALL INFORMATION, DOCUMENTATION AND SERVICES PROVIDED BY DT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND CUSTOMER EXPRESSLY AGREES THAT ITS USE OF THE SERVICE IS AT ITS OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. DT MAKES NO WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE. NOR DOES DT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICES, WHETHER MADE BY EMPLOYEES OF DT OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY DT FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF DT WHATSOEVER. MENTION OF ANY NON-DT PRODUCTS OR SERVICES IS FOR INFORMATION PURPOSES ONLY AND CONSTITUTES NEITHER AN ENDORSEMENT NOR A RECOMMENDATION. IN THE EVENT THAT APPLICABLE LAW LIMITS THE EXCLUSION OF IMPLIED WARRANTIES ABOVE, THE MAXIMUM AMOUNT OF EXCLUSIONS ALLOWED UNDER APPLICABLE LAW SHALL BE APPLIED.

5. Limitation of Liability.

5.1. Limitation of Liability. IN NO EVENT SHALL DT'S TOTAL LIABILITY FROM ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT CUSTOMER PAID TO DT, IF ANY, FOR THE SERVICE DURING THE 12 MONTHS IMMEDIATELY BEFORE THE CLAIM AROSE.

5.2. Exclusion of Consequential Damages. CUSTOMER AGREES THAT THE CONSIDERATION WHICH DT IS RECEIVING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY DT OF THE RISK OF CUSTOMER'S SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES. DT AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, COSTS OF REPLACEMENT PRODUCTS OR SERVICES OR LOSS OR DAMAGE TO INFORMATION OR DATA ARISING OUT OF THE USE OR INABILITY TO USE

THE SERVICE. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL DT BE LIABLE FOR SUCH DAMAGES RESULTING FROM USE OF THE SERVICE, OR RELIANCE ON THE INFORMATION PRESENTED IN CONNECTION WITH THE SERVICE, EVEN IF DT OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES NOT TO ASSERT ANY SUCH CLAIM AGAINST DT OR ITS SUBSIDIARIES OR AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES.

5.3. Survival of Limitations. IN THE EVENT THAT APPLICABLE LAW LIMITS THE ABOVE LIMITATIONS OF LIABILITY, THE MAXIMUM AMOUNT OF LIMITATIONS ALLOWED UNDER APPLICABLE LAW SHALL BE APPLIED. ALL DISCLAIMERS, LIMITATIONS OF WARRANTIES AND DAMAGES AND CONFIDENTIAL COMMITMENTS SET FORTH IN THIS AGREEMENT OR OTHERWISE EXISTING AT LAW (1) ARE OF THE ESSENCE OF THE AGREEMENT OF THE PARTIES, AND (2) SURVIVE ANY TERMINATION, EXPIRATION OR RESCISSION OF THIS AGREEMENT.

6. **Indemnification.** Customer hereby agrees to indemnify, defend and hold DT and its affiliates, employees, officers, directors, owners, information providers, agents, licensees and licensors (the "Indemnified Parties") harmless from and against any and all liabilities, claims and costs, including reasonable attorneys' fees, incurred by the Indemnified Parties in connection with any third party demand, claims, action, suit, or loss arising as a result of (a) any breach by Customer of this Agreement; (b) any fraud or manipulation by Customer; or (c) any third-party claim, action or allegation of infringement based on information, data, files or other content submitted by Customer. Customer shall not enter into any settlement agreement which assigns liability to or admits liability by DT without DT's consent. DT reserves the right to assume the exclusive defense of any matter subject to indemnification by Customer at DT's own expense.
7. **Confidentiality.** Unless expressly authorized by law (after providing DT with reasonable notice), Customer shall not disclose to any third party any information or materials of DT, including without limitation website materials and pages, software, technical documentation, or any discussion and written communications between the parties, which materials and information are either marked or identified as "confidential" or "proprietary," or which by their nature are "proprietary" and/or "confidential" (referred to in this Agreement as "Confidential Information"). This restriction does not apply to any information that is in the public domain, or in Customer's possession prior to disclosure by DT, in each case other than by a breach of a duty of confidentiality. This obligation to keep items confidential shall remain in effect for a period of five (5) years after the termination of this Agreement (except for confidentiality obligations related to source code, which obligations shall be perpetual).
8. **Data Privacy and Processing.**
- 8.1. Processing Data. Each party agrees to comply with all applicable data protection and privacy laws while performing under this Agreement. The parties agree that while performing under this Agreement, Customer serves as the data controller and retains full responsibility for any data processed on its behalf through the Services by DT, who acts as the data processor. To the extent that DT receives or is otherwise granted access to any Customer personal data while providing the Services, DT agrees to (i) use such personal data solely for the purposes of

providing the Services to Customer; (ii) process the personal data only in accordance with Customer's instructions, which, unless expressly stated otherwise in a mutually agreed upon amendment to this Agreement, are represented in the form of this Agreement; and (iii) implement and maintain technical and organizational controls designed to prevent the unauthorized access or processing of personal data. Customer understands and agrees that DT's Services, software and websites are provided via equipment and other resources located in the United States and other locations throughout the world and that by agreeing to these terms and conditions Customer is consenting to having personal data processed by DT in the United States and other locations throughout the world.

8.2. Service Data. DT does not own and specifically disclaims any responsibility for any data that Customer may submit, transmit, collect, post, store or produce while using the Service ("Service Data"). Customer has sole responsibility for the accuracy, integrity, reliability, appropriateness and right to use any and all Service Data. DT has no obligation to monitor any information stored or shared through the Services and is not responsible for the accuracy, appropriateness or legality of any files, posts, links or other information Customer may be able to view, share or access while using the Services. DT shall not view, access, edit or process any Service Data except as necessary to provide the Services to Customer, as agreed in this Agreement between Customer and DT or as required by applicable law. Customer shall apply adequate technical and organizational measures to keep its own Service Data secure.

9. **DT Contracting Entity**. The DT contracting entity providing the Services under this Agreement is dependent upon the country where the Customer is domiciled. When ordering, purchasing or accessing Services from DT under this Agreement, Customer understands and agrees that the applicable DT contracting entity shall be as follows:

DT Contracting Entity*

Daruma Tech, LLC
3651 FAU Blvd, Suite 400
Boca Raton, FL 33431

Address for Notices

Daruma Tech, LLC
Attn.: Legal Department
3651 FAU Blvd, Suite 400
Boca Raton, FL 33431

* If the Services purchased hereunder have been purchased via credit card, debit card, or other payment card, this legal entity will provide recourse to the Customer cardholder in case of a refund or chargeback.

10. Miscellaneous Terms.

10.1. Governing Law & Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the laws of the United States, without giving effect to any principles of conflict of law. Customer agrees that any action at law or in

equity arising out of or relating to this Agreement shall be filed only in the state or federal courts located in Palm Beach County, Florida, U.S.A., and consents and submits to the personal jurisdiction of such courts for the purposes of litigating any such action. Each party hereby waives any and all right to a trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The parties specifically disclaim applicability of (i) the United Nations Convention on the Sale of Goods and (ii) any Incoterms.

- 10.2. Compliance with Laws. The Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations (including applicable export laws and regulations) while performing under this Agreement and accessing and/or using the Services under this Agreement. Should DT determine that Customer is not in compliance with applicable laws, including applicable export laws and regulations or applicable privacy or data protection laws, DT shall have the right to immediately terminate this Agreement and any Services provided hereunder. The Service and its related software are subject to the United States Export Administration Regulations. No software or Service may be downloaded, used or exported (i) into or to a national or resident of any country to which the United States has embargoed goods; or (ii) any person or entity on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List or Entity List, or otherwise designated as prohibited from receiving U.S. exports. By subscribing to the Service or using any of the related software, Customer represents and warrants that it is not- and is not controlled by - any such person or entity and is not controlled by a national or resident of any such country.
- 10.3. Disclaimer of High Risk Activities. The Services are not fault-tolerant and are not designed, manufactured or intended for use or resale as or with on-line control equipment in hazardous environments requiring fail-safe performance, including, but not limited to, equipment used to operate nuclear facilities, aircraft navigation or aircraft communication systems or air traffic control, direct life support machines or weapon systems, in which the failure of the Services could lead directly to death, personal injury or severe physical or environmental damage ("High Risk Activities"). Accordingly, DT and its suppliers specifically disclaim any express or implied warranty of fitness for such High Risk Activities.
- 10.4. Force Majeure. No party shall be liable for any performance failure, delay in performance or lost data under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by: (i) failures of software or other computer programming (other than the Service purchased hereunder); (ii) natural weather events; or (iii) any other causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors and carriers; provided that in any such event, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

- 10.5. Use of Conference Line. Certain Services allow for the use of a conference line which is licensed by DT from a third-party telecommunications provider who grants Customer access to

the conference line directly. For the avoidance of doubt, DT is not itself a telecommunications provider and does not itself provide any telecommunications-related services. The conference line is free to use, but it is not a toll-free number. While DT does not charge Customer for the use of the conference line, applicable roaming, data and other operator or carrier charges/fees may apply.

- 10.6. Use of Recording Features. Certain Services allow for a recording feature whereby the Customer can record audio and visual data shared amongst meeting participants. Customer understands that use of this recording feature may subject Customer to laws or regulations regarding the recording of telephone calls and other electronic communications, and that it is thus Customer's responsibility to properly notify all participants in a recorded meeting that the meeting is being recorded. DT will not be held liable for Customer's failure to do so. Although features may exist in the Service to alert participants that a meeting is being recorded, such notice may not be relied upon as definitive disclosure for Customer's compliance with applicable laws.
- 10.7. Relationship. Customer and DT are independent contractors. Customer shall be solely responsible for managing its employees, officers, directors or representatives using the Service and for any and all compensation, taxes, benefits and liabilities of those individuals. Neither Customer nor its employees, officers, directors or representatives shall make any representations, warranties or guarantees with respect to DT or the Service (including, without limitation, that DT is a warrantor or co-seller of any of Customer's products or services) other than as expressly authorized by DT.
- 10.8. Publicity. DT shall have the right to identify Customer as a user of the Service. Customer agrees that DT may use any logo and/or name associated with Customer on DT's website or other materials in order to identify Customer as a Daruma Tech/Abinko user.
- 10.9. Notices. Notices by DT to Customer regarding the Service may be sent to the email address Customer provides upon registration. All notices sent by DT to Customer in connection with this Agreement shall be in writing and sent by first class mail or certified mail (receipt being deemed 72 hours after postage and return receipt requested) or personally delivered at the address of the Customer as specified on its applicable Order Form. All notices sent by Customer to DT in connection with this Agreement shall be in writing and sent by first class mail or certified mail (receipt being deemed 72 hours after postage and return receipt requested) or personally delivered at the address of the DT contracting entity as specified in the table in Section 9 above.
- 10.10. Waiver. Customer agrees not to bring or participate in any class action lawsuit against DT or any of its employees or affiliates. Customer agrees not to bring a claim under this Agreement more than two years after the expiration of this Agreement. The failure of DT to partially or fully exercise any right shall not prevent the subsequent exercise of such right. The waiver by DT of any breach shall not be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. No remedy made available to DT by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and

every remedy shall be cumulative and in addition to every other remedy available at law or in equity.

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- 10.11. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted assigns. Except as otherwise provided for below, neither party may assign this Agreement, or assign its rights or delegate its duties hereunder (whether directly or indirectly, in whole or in part, by operation of law or otherwise), without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. However, DT may freely assign all or any part of this Agreement, without Customer's consent, in connection with a merger, acquisition, corporate reorganization, change of control or sale or disposition of substantially all of its assets (or any substantially similar transaction). Additionally, DT may assign all or any part of this Agreement to an Affiliate Entity without Customer's consent. For the purposes of this section, the term "Affiliate Entity" shall mean any entity that now or in the future controls, is controlled by, or is under common control with DT.
- 10.12. Entire Agreement. This Agreement and any Order Forms placed hereunder represent the complete agreement concerning the Service, Customer's subscription to use the Services and the license granted hereunder. DT may amend the terms of this Agreement at any time by (i) posting revised terms on or accessible through DT's website(s) and providing Customer with reasonable notice of such changes and/or (ii) sending information regarding the amended terms to the email address Customer has provided to DT upon registration. Customer is responsible for regularly reviewing DT's website(s) to obtain timely notice of any such amendments. Customer manifests intent to accept any amended terms if Customer continues to use the Service after such amended terms have been posted or sent to Customer. If Customer does not agree with any such amended terms Customer must notify DT within thirty (30) days after such amended terms have been posted. Otherwise, the terms of this Agreement may not be amended except in writing signed by both parties.
- 10.13. Severability. If any of the provisions of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.
- 10.14. Authority & Counterparts. Each party and its signatory hereby represents and warrants to the other party that it and such signatory has all the necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any obligation or duty to any third party. This Agreement may be executed in two or more counterparts and by facsimile or electronic signature, each of which shall be deemed an original and all of which, taken together, shall constitute one instrument.
- 10.15. Third Party Software. Certain Services may contain open source software or utilize software provided by third parties.