

STANDARD TERMS AND CONDITIONS

BYJAKE, LLC

These Standard Terms and Conditions (the “**T&C**”) are entered into by and between byJake, LLC, a New York limited liability company (“**byJake**”) and the Party identified as the client in the Application Services Agreement (the “**Agreement**”) to which this document is attached (the “**Client**”). In return for being provided with access to the Dynamism Services (the “**Services**”), the Client agrees to be bound by the undertakings in the Agreement and all its attachments and addenda, if any, and including these Terms and Conditions..

CLIENT ACKNOWLEDGES, AGREES AND UNDERSTANDS THAT THE DYNAMISM SERVICES ARE PROVIDED SOLELY FOR AND WORK ONLY IN CONNECTION WITH SPEKTRIX, INC. (“**SPEKTRIX**”) SYSTEMS AND NO OTHER SYSTEM, PLATFORM, SERVICE, PRODUCT OR SOFTWARE.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Products and Services.** Subject to Client’s compliance with these Terms & Conditions (“**T&C**”), byJake, itself and through certain contractors and subcontractors agrees to provide Client, and Client agrees to obtain from byJake the Dynamism Services described in the “Application Services Agreement” (the “**Agreement**”) to which these T&C are attached. Client accepts, accesses and uses the Dynamism Services “as is” and at Client’s own risk and expense.
2. **Term of Agreement/Access/Use.**
 - a. The term of Client’s rights to use the Dynamism Services shall commence on the Commencement Date and shall continue until terminated in accordance herewith and otherwise upon subscription payment failure. byJake may terminate the Agreement (a) at any time upon giving Client at least 60 days’ email notice, (b) immediately in the event that the contract between byJake and Spektrix or any of Spektrix’ affiliates (collectively, “**Spektrix**”) or the contract between Client and Spektrix terminates, (c) immediately in the event of any breach or threatened breach of an obligation, representation or warranty of Client or Spektrix, or (d) immediately in the event of (i) Force Majeure, (ii) emergency, or (iii) that byJake suspects or becomes aware of any unlawful or improper access or use of the Dynamism Services, or any potential security issue or crashing of the Dynamism Services, or any tampering, disrupting, copying, distributing, disseminating, modifying, commercializing, reverse engineering, diverting, decompiling, disassembling, infecting, disabling, erasing, or otherwise harming or circumventing, or attempting to do any of the same by any person or entity (the items in clause (iii) collectively, “**Tampering**” or referred to as a “**Tamper**”).
 - b. Upon any termination of the Agreement, access and use by Client of the Dynamism Services shall also be terminated. byJake may terminate, suspend, or restrict the Dynamism Services or any access or use thereof without terminating the Agreement in the event of any circumstances under which byJake has the right to terminate the Agreement or in the event that byJake determines to make changes as set forth in Section 4a.
3. **Fees for Dynamism Services.**
 - a. **General.** Client shall pay byJake the Service Fees for the Dynamism Services specified in the Agreement. byJake may modify or increase the Service Fees on an annual basis and otherwise upon 60 days’ email notice to Client.

- b. **Additional Charges.** Service Fees do not include out-of-pocket expenses incurred by byJake, if any, in providing any Dynamism Service to Client. byJake will notify the client by email of any out of pocket expenses. Amounts for pass-through expenses shall be charged to Client at cost.
- c. **Taxes.** byJake shall add to its charged fees, and Client shall pay, any sales, use, excise, value added, property, and other taxes and duties however designated that are levied by any taxing authority relating to the Products or Services.
- d. **Payment Terms.** Service Fees shall begin accruing on the Commencement Date and be due and payable by Client as defined in the Agreement. Client shall notify byJake by e-mail within 5 business days after payment due date if Client has any dispute or disagreement with any charged amount or any amount due. Client shall specify so in writing to byJake the nature of the disagreement prior to the 5th day of the applicable calendar month; provided that any such notice or dispute shall not alter the payment terms therein or permit Client to abate, modify or delay payment. Failure to so timely notify byJake of any such disagreement or dispute shall be deemed a waiver and release by Client of any such claim or dispute. In the event any amounts due remain unpaid beyond the 10th day after the payment due date, Client shall pay a late charge of 0.4% per month on the amount of the unpaid balance. Client shall, upon request by byJake, reimburse byJake for expenses byJake may incur, including reasonable attorneys' fees, in taking any action to collect any unpaid balances or to otherwise enforce or defend the Agreement, whether or not any suit is filed.

4. **Procedures, Use and Access of Dynamism Services.**

- a. Client shall comply with all operating and access instructions and procedures established by byJake for Client's access and use of the Dynamism Services, including the User Guide and any Terms of Service specified in the Agreement. byJake may review and modify the Product, Services, functionality, systems, hardware, software, terms of service, policies, and procedures it uses, and byJake reserves the right to make any changes it deems appropriate. Continued access or use of the Dynamism Services signifies acceptance of all changes.
- b. Client acknowledges, understands, and agrees that: (i) byJake does not provide auditing, attestation, or other assurance services in connection with the Dynamism Services; (ii) byJake does not, and will not, render any audit opinions of any nature whatsoever with respect to, or otherwise conduct a non-audit review of any data or transactions; and (iii) byJake does not, and will not, make any accounting or financial assessment or decision of any nature whatsoever on behalf of Client. Client is not relying and shall not rely upon byJake for any such services or advice.

5. **Further Client Obligations**

- a. **Accuracy of Primary Data.** To the best of Client's knowledge, all Primary Data (defined below in Section 5i) provided by Client to byJake (i) shall be accurate and complete in all material respects and (ii) shall accurately represent the substance of all transactions reflected in such Primary Data.
- b. **Compliance with Law.** Client shall comply with, and shall be solely responsible for complying with, all applicable legal, regulatory, and administrative requirements in the United States and all applicable foreign jurisdictions for access and use of the Dynamism Services and otherwise.
- c. **Input of Information.** Client shall be solely responsible for any and all hardware, systems and software that Client has or uses. Client shall be solely responsible for the input, transmission, or delivery to byJake of all Primary Data and other information to provide and perform the Dynamism Services, including making sure the Primary Data is entered in a manner that makes the Primary Data function properly in, on and with the Dynamism Services. Such Primary Data and other information shall be provided by Client in a format and

manner approved by byJake. Client shall use its own equipment, computer hardware, third-party computer software, communication lines, and interface devices required to access and use the Dynamism Services. The risk of Primary Data or other information not being furnished to byJake by Client is on the Client. Client shall not input, upload or download any information or material that is illegal, pornographic, or discriminatory.

- d. **Primary Data; Results.** Client shall be solely responsible for any failure of the Primary Data provided by Client to byJake to be accurate and complete. The results of the Dynamism Services are intended for use exclusively by Client. byJake shall not be responsible or liable for any inaccurate results produced by the Dynamism Services. To the extent permitted by applicable law, if Primary Data submitted by Client to byJake is lost or damaged by byJake due to gross negligence or willful misconduct or is lost as a result of communication error attributable to gross negligence or willful misconduct by byJake, in addition to the limitations of liability herein, the liability of byJake on account of such loss or damage shall not exceed the actual reasonable cost of reproducing such Primary Data from exact duplicates thereof in Client's possession.
- e. **Client Personnel.** Client shall designate appropriate and knowledgeable Client personnel in the access and use of the Dynamism Services, and such personnel shall cooperate with byJake and its personnel in their provision and performance of the Dynamism Services.
- f. **Insurance.** Client shall maintain general and liability insurance as is customary and advisable for its business including statutory minimum workers' compensation coverage regarding its employees and errors and omissions insurance. Client shall, upon request, deliver to byJake certificates of insurance evidencing the same. All insurance carriers must maintain AM Best ratings of A VI or higher, or the affected policies shall be considered to be a default under the Agreement.
- g. **Decisions.** Client shall make timely decisions and obtain management and other approvals in connection with the provision, access and use of Dynamism Services. byJake shall be entitled to rely on all Client decisions and approvals, whether made before or after the date of the Agreement.
- h. **Security.** Client shall have and maintain in place appropriate security measures, policies and procedures to ensure that the Dynamism Services, including usernames and passwords, are not subject to or susceptible to hack, breach, unauthorized access or use, or other Tampering on the equipment and systems used by Client or its personnel.
- i. For purposes of the Agreement, "**Primary Data**" means transaction level data provided by Client (or a representative or agent of Client) to byJake or entered in connection with the Dynamism Services, as well as key supporting setup data required to make logical use of the transaction data. Except as otherwise provided for herein, all Primary Data shall remain the property of Client. The contents of any reports, records, documents, or materials produced by the Dynamism Services and derived from Primary Data shall not, in and of themselves, be considered Primary Data.

6. Confidentiality and Ownership.

- a. **Client Confidential Information.** byJake agrees to hold as confidential, and not disclose to any other party, except as permitted herein and otherwise to provide and operate the Dynamism Services, Primary Data received from Client and the confidential financial, personnel and customer information belonging to Client (collectively, the “**Client Confidential Information**”). byJake will use the same care and discretion to avoid disclosure of Client Confidential Information as it uses with its own similar information that it does not wish to be disclosed, but in no event less than a reasonable standard of care. byJake shall not use Client Confidential Information except in connection with the Dynamism Services under the Agreement. byJake may disclose Client Confidential Information to: (i) byJake’s advisors, employees and contractors who have a reasonable need to know such information, (ii) to a potential acquirer of byJake or Dynamism, and (iii) any other party with Client’s consent. byJake may also retain and disclose Client Confidential Information to the extent required or advisable by law, legal process, or insurance. In addition, and notwithstanding any contrary provision herein, no obligation of confidentiality applies to any Client Confidential Information that (i) byJake develops independently of Client’s Confidential Information or has previously developed independently prior to receipt from Client, (ii) byJake receives or has previously received from a third party who was not under any obligation of confidentiality to Client at the time of receipt by byJake and such obligation was known to byJake, or (iii) is or becomes publicly available without a breach by byJake of the Agreement. byJake may also retain Client Confidential Information that it may reasonably require for archive purposes or in accordance with its standard backup or recordkeeping procedures.
- b. **byJake Confidential Information.** Client agrees to hold as confidential, and not disclose to any other party, except as permitted herein, the Agreement and its Terms and Conditions, byJake pricing, costs, and all Dynamism Services access information, research, development, trade secrets, plans, business affairs, operating policies, methods and procedures, and any other proprietary, confidential, competitive, or sensitive information or materials received or accessed by Client from byJake or on behalf of byJake or for the Dynamism Services (collectively, the “**byJake Confidential Information**”). “byJake Confidential Information” shall also be deemed to include byJake’s computer and software programs, software modifications, documentation and training aids, and all data, code, techniques, algorithms, methods, logic, architecture, and designs embodied or incorporated therein. All byJake Confidential Information shall remain the sole and exclusive property of byJake. Client will use the same care and discretion to avoid disclosure of byJake Confidential Information as it uses with its own similar information that it does not wish to be disclosed, but in no event less than a reasonable standard of care. Client shall not use byJake Confidential Information except in connection with its access and use of the Dynamism Services in compliance with the Agreement. Client may disclose byJake Confidential Information to: (i) Client’s employees who have a need to know such information in connection with the use of the Dynamism Services and who are bound by confidentiality; (ii) Client’s legal advisors, accountants, and network integrator who have a need to know and are also bound by confidentiality; and (iii) any other party with byJake’s express prior written consent. Before disclosure to any of the above referenced parties, Client will cause any such party to agree to treat byJake Confidential Information as strictly confidential in accordance with the Agreement. Notwithstanding any contrary provision herein, Client may disclose byJake Confidential Information to the extent required by law or legal process; *provided that*, Client shall provide byJake with notice by email and one of the mail options herein of any such compelled disclosure, no later than three business days after receipt of notice requiring such disclosure, to enable byJake a reasonable effort to obtain a protective order. In addition, and notwithstanding any contrary provision herein, no obligation of confidentiality applies to any byJake Confidential Information that (i) Client receives or has previously received from a third party who was not under any obligation of confidentiality to byJake at the time of receipt by Client or (ii) is or becomes publicly available without a breach of the Agreement.

- c. **byJake Property.** With respect to reports, records and documents produced by the Dynamism Services: (1) any Primary Data in such reports, records and documents shall be owned by Client; (2) Dynamism byJake, the Dynamism Services, the code, source code, technology, background technology, design, layout, processes, methods, methodologies, specifications, content, output, look and feel, components, materials, manuals, and all other property and intellectual property (including registered and unregistered copyright, trademarks, trade secrets, service marks, and patents) related to the Dynamism Services are the sole and exclusive property of byJake; and (3) the production, form, layout, look and feel, and design of reports, records and documents are the sole and exclusive property of byJake. Notwithstanding byJake's ownership of the production, intellectual property in the form, layout and design of reports, records and documents, Client may utilize and retain solely in the ordinary course of its business (but may not license or otherwise commercialize) any specific report, record or document provided to Client by byJake. Client shall not assign or license any report, record, or other document. The Dynamism Services is, and contains information, computer software, and other intellectual property that are, proprietary and confidential to byJake, its suppliers, contractors, licensors and licensees. byJake reserves all right, title and interest in and to its property. Client shall not and shall not attempt to, and shall not aid, encourage or ask any other party to, Tamper with or license or sublicense the Dynamism Services or any computer, systems, software or other property related thereto or any other property owned by or employed by byJake. Any and all customization, comments, suggestions, notes, or other feedback (and any intellectual property, including copyright therein) provided to byJake by or on behalf of Client shall be the sole and exclusive property of byJake and Client hereby assigns all of such rights, title and interest therein, if any, to byJake. Client will not earn or acquire any rights or licenses in the Dynamism Services or in any byJake property.

7. Warranties.

a. No byJake Warranties or Indemnity.

The dynamism services are provided "as-is." Client enters into the Agreement and accesses and uses the Dynamism services at client's own risk. Byjake shall not be liable or responsible for the acts or omissions of any third party.

To the maximum extent permitted by applicable law, byjake makes no warranty, representation, or promise regarding the Agreement, the Dynamism services, or any of its property, including any warranties for fitness or purposes, or that any product or service will be free from error, interruption or defect, or that any product or service will conform to any specifications, integrate with or into any other product or system, provide any benefit, or yield any particular results (financial, operational or otherwise). Any and all warranties and representations are expressly disclaimed.

To the maximum extent permitted by applicable law, byjake makes no representations or warranties hereunder, and all conditions, warranties, and representations, express or implied, are excluded and disclaimed, including any conditions or warranties relating to merchantability or fitness for a particular purpose.

- b. **Client Warranties.** Client represents and warrants that (i) no contractual obligations currently exist that would prevent Client from entering into the Agreement or impair Client's ability to comply with the Agreement, (ii) Client has all requisite authority to execute, deliver, and perform the Agreement, and (iii) Client has or has the personnel who have the knowledge, skill and ability to properly access and use the Dynamism Services.

- c. **Client Indemnification.** Client shall indemnify, defend and hold harmless byJake and its affiliates and their members, managers, officers, directors, employees, agents, and representatives from and against any claims or actions (third party and first party) relating to or arising out of any breach of any Client representation, warranty or obligation, any act or omission of Client or any affiliate of Client or any of their members, managers, officers, directors, employees, agents, and representatives, or the access or use of the Dynamism Services in any other manner other than as expressly permitted and provided in the Agreement or in the operating instructions. byJake shall have control of the defense of any third party claim and the settlement or compromise thereof and Client shall pay for the cost of the defense. byJake shall have the right to participate in such defense through counsel of its own choosing at its own expense. This indemnification shall also apply to any hack, breach, unauthorized access or use, or other Tampering by Client or any affiliate of Client or any of their members, managers, officers, directors, employees, agents, or representatives. This indemnification shall also apply with respect to Client's responsibility for data protection and compliance with any applicable law (U.S. or foreign) that may apply due to the identity or location of Client's customer(s), as a result of where any data is, or is considered to be, stored, or otherwise.
8. **Limitation of Liability.** To the maximum extent permitted by applicable law, byjake shall not be liable for any special, incidental, indirect, punitive or consequential damages, including lost profits, lost revenues, lost opportunities, or the use or loss of data, even if byjake has been advised of the possibility of such loss. To the maximum extent permitted by applicable law, the cumulative liability of byjake for all claims, including direct damages, whatsoever relating to or arising out of the Agreement, including any cause of action sounding in contract, warranty, tort, or strict liability, shall not exceed the amount of service fees paid to byjake by client under the Agreement during the 12 months immediately preceding the claimed loss. The limitations of liability set forth in the Agreement reflect the allocation of risk negotiated and agreed to by the parties. Byjake would not enter into the Agreement without these limitations on its liability. These limitations will apply notwithstanding the failure of the essential purpose of any remedy.
9. **Termination.** In addition to the terms of Section 2, the Agreement may be terminated upon the occurrence of any of the events.
- a. **Material Breach.** Client may terminate the Agreement in the event of a material breach of any of the material terms of the Agreement by byJake if such breach is not cured within twenty (20) days following Client's providing written email notice to byJake stating, with particularity and in reasonable detail, the nature of the claimed breach. Payments of all Service Fees and costs through the last day of the calendar month of the termination date even in the event of a termination for breach by byJake must be paid by Client.
- b. **Without Cause.** This Agreement may be terminated by Client with 24 hours prior written notice by email to byJake at dynamism_support@appsbyjake.com provided that payments of all Service Fees and costs through the last day of the calendar month in which the termination is effective are paid by Client. If Client has elected to pay Service Fees in advance for an annual term, in exchange for which a discounted annual rate was paid, all such prepaid Service Fees are non-refundable, and Client shall not be entitled to any refund or prorated credit for any unused portion of the annual term following termination. Note that this clause (b) is subject to the terms governing termination by byJake and to the terms governing Client breach.
- c. **Illegal or Fraudulent Conduct by Client.** If byJake receives information from law enforcement, regulatory or administrative authorities that Client or any of Client's affiliates officers, directors, managers, shareholders, members, partners, employees, or agents, has engaged in, or is suspected to have engaged in, illegal or fraudulent activities, byJake shall have the right to immediately terminate the Agreement and to retain all

written and electronic documentation relating to Client, including copies of Primary Data, in order to defend any actions and to respond to requests for information and production from authorities and to comply with law and any legal process.

- d. **Survival.** Sections 2, 3, and 5 through 13 shall survive the expiration or termination of the Agreement.
- e. **Survival of Claims.** Claims arising prior to termination shall survive termination for their applicable statute of limitation; provided, however, that, to the fullest extent permitted by applicable law, any claims by Client against or involving byJake or any of its affiliates or any of its or their members, managers, shareholders, directors, officers, employees, agents, or representatives must be brought by Client within 360 days after the first occurrence of the event that gave rise to the claim or the claim is hereby deemed to be forever waived and released by Client.

10. Obligations Upon Breach or Termination.

- a. **Payment.** No termination of the Agreement or breach by byJake shall modify Client's obligations to pay any fees or other sums to byJake.
- b. **Deletion of Primary Data.** Upon the expiration or the termination of the Agreement, byJake may delete all Primary Data. Notwithstanding the foregoing, Client consents and agrees that byJake may retain all Primary Data, until byJake has been paid in full for all amounts due and, if applicable and requested by byJake, Client has returned to byJake all byJake Confidential Information.

11. **Applicable Law; Jurisdiction; Arbitration.** The Agreement shall be governed by the internal laws of the State of New York, without reference to conflicts of law principles thereof. Each party consents to the exclusive jurisdiction of the federal and state courts located in Orange County, New York in connection with any action or proceeding relating to the Agreement, and the parties agree that venue will be proper in such court in any such matter. Except with respect to the seeking and obtaining of equitable relief, which may be brought in court, the parties agree to submit controversies which may arise in connection with the Agreement to arbitration, and any such arbitration shall be in accordance with the rules and procedures then in effect of the American Arbitration Association in front of one arbitrator; *provided that*, (a) the arbitrator shall be experienced in the matters under dispute, (b) the authority of the arbitrator shall be limited to construing and enforcing the terms and conditions of the Agreement as expressly set forth therein, (c) the arbitrator shall state the reasons for the award in a written opinion, and (d) the arbitration shall be held in Orange County, New York. The parties agree that the Commercial Arbitration Rules shall apply and that the International Dispute Resolution Procedures of the International Centre for Dispute Resolution shall not apply. The award of the arbitrator shall be final, and judgment upon the award may be confirmed and entered in any court in the United States, state or Federal, having jurisdiction over the matter. Notwithstanding the foregoing, the parties agree that they are not required to submit any claims for injunctive relief, such as a claim for the entry of a temporary restraining order or a preliminary injunction, to arbitration, but that any such claims that are not submitted to arbitration may only be submitted to a court of competent jurisdiction located in Orange County, New York, which courts, the parties agree, shall have exclusive jurisdiction over such matters. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. EACH PARTY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES RELATING TO THE AGREEMENT.

12. **Equitable Relief.** A breach of a covenant, representation or warranty of Client may cause byJake immediate and irreparable harm, for which an award of damages would not be adequate compensation and, therefore, Client agrees that, in the event of such breach or threatened breach, byJake will be entitled to equitable relief, including in the form of orders for preliminary or permanent injunction, specific performance, and any other relief that

may be available from any court, without the posting of bond or security. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available under the Agreement, at law or in equity.

13. **Miscellaneous.**

- a. **Notices.** Any notice required or permitted to be given under the Agreement to Client may be in writing and may be given by: (i) registered or certified mail, return receipt requested, postage prepaid; (ii) e-mail; (iii) nationally recognized overnight courier service, or (iv) hand delivery, to Client at the address and to the attention of Client name provided to byJake in the document to which these Terms & Conditions are attached, or to such other address as Client may designate in writing.

Any notice required or permitted to be given under the Agreement to byJake shall be in writing and shall be given by confirmed e-mail to byJake at dynamism_support@appsbyjake.com with Subject Line: **Notice Required by Agreement**

Notices will be deemed given upon receipt or transmission on a business day (not any federal or New York State holiday) during the hours of 9am to 5pm EST if by email. Refusal to accept notice shall be deemed receipt of notice.

- b. **Correspondence.** Client acknowledges and agrees that: (i) byJake may correspond or convey documentation via e-mail or other Internet mediums; (ii) byJake does not have ultimate control over the performance, reliability, availability, or security of e-mail or other Internet mediums; and (iii) byJake shall not be held liable for any loss, damage, expense, harm, or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any e-mail or other Internet messaging.
- c. **Entire Agreement.** The Agreement, including its Attachments and Addenda, if any, and including these Terms and Conditions, which are expressly incorporated by reference therein, constitutes the complete and exclusive statement of the agreement between the parties as to the subject matter thereof and supersedes all previous agreements with respect thereto. Client acknowledges and agrees that it has not entered into the Agreement in reliance upon any representation, warranty, promise or statement made by byJake. In the event that any of the provisions of the Terms and Conditions or Addendum, if any, are in conflict with any of the provisions of the Agreement, the terms and provisions of the Agreement shall control, unless the Addendum in question expressly provides that its terms and provisions shall control.
- d. **No Partnership.** The Agreement shall not be construed to make either party an agent or representative of the other party, and does not, and shall not be construed to, create a partnership or joint venture between the parties thereto. Both parties are independent contractors and principals for their own accounts.
- e. **Amendments.** The Agreement may be amended or modified only pursuant to a written instrument signed by the party against whom the amendment is to be enforced. Notwithstanding the foregoing, byJake may amend the terms of the Agreement to provide or account for any changes in the Dynamism Services.
- f. **Binding Agreement; Assignment.** The Agreement is binding upon the parties and their respective successors and permitted assigns. Client may not assign the Agreement or any rights or obligations hereunder without the prior written consent of byJake and any such assignment or attempt thereof shall be null and void. For purposes of the preceding sentence, the Agreement shall be deemed to have been "assigned" in violation thereof upon the occurrence of any of the following: (i) any merger of Client with another entity pursuant to which Client is not the surviving entity; (ii) any sale or transfer of a majority of the equity ownership of Client; or (iii) any sale of all or substantially all of the assets of Client.

- g. **Headings; Interpretation.** The headings in these T&C are used for convenience of reference and shall not be deemed to modify or affect the interpretation of these T&C. “Including” and “includes” are inclusive and mean “including without limitation.” “Or” shall mean “and/or.”
- h. **Construction.** No course of dealing between the parties or any other person or entity shall operate as a waiver of or affect any right or remedy of byJake. The Agreement shall not be construed to the disadvantage of byJake by reason of it being the party who drafted the Agreement.
- i. **Severability.** If any provision of the Agreement is held to be unenforceable or invalid, the other provisions shall continue in full force and effect and the subject provision shall be modified to the extent necessary to be enforceable and to reflect the purpose and intent of the Agreement.
- j. **No Waiver.** The failure or delay of byJake to insist on strict performance of any of the provisions hereunder or to exercise any right shall not be construed as a waiver of any such performance or any subsequent default of a similar nature or of any such right. Any and all waivers must be in writing and signed by the party to be charged with the waiver.
- k. **Force Majeure.** byJake shall be excused from performance if such party is prevented from performing any of its obligations thereunder, in whole or in part, due to failures, errors or delays caused by other parties, acts of God, war, terrorism, civil disturbance, power outages, pandemic, disruption of internet service, casualty, strikes or work stoppages (each a “**Force Majeure**”). The time for performance will be extended for a period equal to the duration of the Force Majeure. In the event that a Force Majeure prevents access to and use of the Dynamism Services for a period of ten (10) consecutive days, then Client may terminate the Agreement; provided that payment of Service Fees shall be made through the last day of the calendar month in which the termination is made.
- l. **Use of Name, Logos, Etc.** Neither party shall use the other party’s name, trademarks, service marks, logos, trade names, or branding for any purpose without the prior written consent of the other party. Neither party shall disclose the other in a press release or listing of clientele. Notwithstanding the foregoing, byJake may include the name of Client on its website for promotional purposes identifying Client as its client.
- m. **Counterparts.** These Terms and Conditions and the Application Services Agreement to which it is attached may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A copy of the Agreement’s executed signature page delivered by confirmed e-mail or an electronic signature, shall be considered the equivalent to, and enforceable as, an original signature.