

**DVINCI INC.**  
**STANDARD TERMS & CONDITIONS**  
**FOR**  
**DVINCI'S PLATFORM SERVICES**

Dvinci Energy, Inc., (“**Dvinci**,” “**us**” or “**we**”) is providing you (the legal entity or individual registering with Dvinci, “**You**” and its derivatives) certain rights and services subject to the terms of this Agreement (the “**Agreement**,” including any orders incorporating these terms and conditions). By clicking on the “I Agree” (or any similar) button, signing (electronically or otherwise) an order or document referencing this Agreement, or exercising rights relating to this Agreement, you are entering into this Agreement as of the first date you first click that button, sign such order, or exercise such rights (the “**Effective Date**”).

**IMPORTANT – PLEASE READ CAREFULLY**

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND DVINCI. YOU REPRESENT AND WARRANT THAT YOU: (I) HAVE READ THIS AGREEMENT AND UNDERSTAND IT; (II) ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT AND BIND YOURSELF AND/OR ANY ENTITY REGISTERED TO USE THE PLATFORM OR RECEIVE LEADS & APPOINTMENTS (AS DEFINED BELOW); AND (III) AGREE TO PAY THE FEES AND OTHER AMOUNTS DUE TO DVINCI AS INDICATED IN THIS AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOLLOWING TERMS AND AGREE TO BE BOUND TO THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, OR YOU ARE NOT AUTHORIZED TO BIND YOURSELF AND/OR THE DESIGNATED ENTITY TO THIS AGREEMENT, THEN DVINCI IS UNWILLING TO GRANT YOU ANY RIGHTS OR PROVIDE YOU ACCESS TO THE LEADS & APPOINTMENTS OR PLATFORM (AS EACH IS DEFINED BELOW) AND YOU SHOULD CLICK ON THE "I DO NOT ACCEPT THE AGREEMENT" BUTTON AND NOT ACCESS OR USE SUCH LEADS & APPOINTMENTS OR THE PLATFORM IN ANY WAY. THIS AGREEMENT INCLUDES AN **AUTO-RENEWAL AND ARBITRATION PROVISION**.

**1. Introduction.**

1.1 **Dvinci Source®: Lead & Appointments and Platform.** Dvinci generates lists of potential clean energy customers (collectively, “**Leads & Appointments**” or a “**Lead**” or “**Appointment**”) and makes those Leads & Appointments available to one or more users or partners based on proprietary algorithms and technology, which may include artificial intelligence designed to facilitate matches and increase sales. Dvinci also hosts, maintains, supports, and promotes a software-as-a-service platform (the “**Platform**” and which may also be referred to as Colossus®) designed to assist users or partners in making and managing appointments and closing clean energy transactions with Leads & Appointments (“**Closed Appointments**”). Dvinci’s lead generation and matching services, the Platform, and related services and technology are further described in Dvinci’s documentation for Colossus® and Dvinci Source® and may be collectively referred to as “**Origination Services**” or “**Dvinci Source®**”. Subscriptions to the Origination Services also include access to “Dvinci U” as generally made available by Dvinci to similarly situated users and partners on the Platform. For clarity, Origination Services do not include fulfillment or installation of a particular clean energy project.

1.2 **Membership Subscription.** By entering into this Agreement or any order referencing this Agreement, You are subscribing to the Origination Services and entitled to receive Leads & Appointments and use the Platform in accordance with Dvinci’s then current documentation and procedures and this Agreement during Term (as defined in Section 7). The number of Leads & Appointments You will receive each month will be dependent on the level of Your membership subscription. Membership subscription levels and corresponding fees are further identified on the Platform and/or applicable order and subject to change on 60 days’ advance notice by Dvinci.

**2. Access and Use; Intellectual Property.**

2.1 **Authorized Use.** You may only access and use the Origination Services as expressly authorized and made available by Dvinci during the Term for Your internal use and as otherwise expressly agreed in this Agreement. Access to and use of the Origination Services will be subject to Dvinci’s then current generally applicable documentation and this Agreement.

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2.2. **Restrictions.** The rights granted to You under this Agreement do not include any rights not expressly granted. In particular, You may not (and will not permit Your end users, employees, representatives, contractors, or other third parties to): (i) copy, retain, archive, distribute, sublicense, transfer, or create any derivative work of or from the Leads & Appointments, Platform or other components of the Origination Services or other technology, deliverables, content, information, or data provided by Dvinci (all of the foregoing, the “**Dvinci Materials and Technology**”), unless expressly authorized by Dvinci in writing; (ii) use Dvinci Materials and Technology in violation of any laws or regulations, including, without limitation, privacy laws and regulations, marketing laws and regulations, and the Fair Credit Reporting Act; (iii) use the Dvinci Materials and Technology as a factor in determining whether to offer credit to any consumer; (iv) use or access the Dvinci Materials and Technology in any way that threatens the reputation, integrity, performance, or availability of the Dvinci Materials and Technology; (v) violate any applicable U.S. export related law or regulation; (vi) reverse engineer, decompile, or disassemble the Dvinci Materials and Technology; (vii) provide third parties access to the Dvinci Materials and Technology through a service bureau or otherwise, unless expressly authorized by Dvinci in writing; or (viii) use or access the Dvinci Materials and Technology for the purpose of creating a similar or competing platform, product, service or tool. You will at all times comply with all applicable laws and regulations in connection with the use of the Dvinci Materials and Technology.

2.3 **Dvinci Rights and Ownership.** All right, title, and interest in and to the Dvinci Materials and Technology are and will remain the sole and exclusive property of Dvinci (or its licensors). Any derivative works, modifications, or enhancements relating to the Dvinci Materials and Technology (whether created alone by either party or jointly by or on behalf of both parties or their representatives) will be solely and exclusively owned by Dvinci. You hereby assigns to Dvinci all rights, title and interest, including, without limitation, all intellectual property rights in any feedback, suggestions, ideas, derivative works, modifications, enhancements, or improvements related to the Dvinci Materials and Technology that You or any of its representatives provide, propose, create, conceive, author or develop relating to this Agreement or their use of the Dvinci Materials and Technology. You will execute and deliver (or cause Your representatives to execute and deliver) to Dvinci any additional documents deemed reasonably necessary or appropriate to perfect, maintain, protect, or enforce Dvinci’s rights described above and the intent of this Section. Your representatives (“**Representatives**”) include, without limitation, end users, employees, partners and contractors.

2.4 **Acknowledgements.** You acknowledge that Dvinci Materials and Technology are copyrighted under federal copyright law and/or embody valuable confidential and/or secret information of Dvinci, the development of which required the expenditure of considerable time and money by Dvinci. You will not permit or authorize any person or entity to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Dvinci and any copies or derivative works. You agree to maintain any and all of Dvinci’s copyright and other notices on the Dvinci Materials and Technology provided under this Agreement and will reproduce such notices on any and all permitted copies or derivatives. Dvinci Materials and Technology may also include or reference third party data or other intellectual property that may be subject to other restrictions or acknowledgements. You acknowledge and agree that Dvinci may analyze and monitor Your usage of the Original Services to improve the Origination Services for You and other users and the efficacy of Dvinci’s matching algorithms.

2.5 **Open Source.** Certain items provided with the Origination Services may be subject to “open source” or “free software” licenses (“**Third Party Code**”), a list of which is available on Dvinci’s website and/or in the Platform documentation as necessary. The Third Party Code is not subject to the terms and conditions of this Agreement, except for the Sections pertaining to open source, warranty disclaimers, or limitations of liability. Instead, each item of Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this document limits Your rights under, or grants You rights that supersede, the terms and conditions of any applicable license for the Third Party Code, including any rights to copy, modify, or distribute Third Party Code under the applicable license. If Dvinci makes modifications to such Third Party Code and if the applicable license requires that such modifications be made available and Dvinci does not already publish such modifications via the applicable Third Party Code community, then Dvinci will make its modifications available on its website.

## 4. Warranties and Disclaimers.

4.1 Each party represents and warrants that: this Agreement constitutes the legal, valid and binding obligation, enforceable against it in accordance with its terms; it has the right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and such actions have been duly authorized by all necessary corporate action by such party; and it will comply with applicable laws and regulations in connection with the exercise of its rights and performance relating to this Agreement.

4.2 EXCEPT AS EXPRESSLY PROVIDED OTHERWISE, ALL DVINCI MATERIALS AND TECHNOLOGY, INCLUDING THE LEADS & APPOINTMENTS AND PLATFORM, ARE PROVIDED ON AN "AS IS" AND “AS AVAILABLE” BASIS ONLY, AND NO LEADS & APPOINTMENTS ARE GUARANTEED TO BECOME CLOSED APPOINTMENTS; YOUR

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EXCLUSIVE REMEDY FOR A DEFECTIVE OR INACCURATE LEADS & APPOINTMENT IS A NEW LEAD & APPOINTMENT OR A REFUND OF THE FEES PAID TO DVINCI FOR THAT SPECIFIC LEAD & APPOINTMENT IF YOU IDENTIFY THAT DEFECTIVE OR INACCURATE LEAD & APPOINTMENT TO DVINCI WITHIN 48 HOURS OF RECEIPT. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

### 5.0 Indemnification; Limitation of Liability.

5.1 **Indemnification by Dvinci.** Dvinci will indemnify, defend and hold You harmless from and against any thirty party claim, suit or proceeding which alleges that the Dvinci Materials and Technology, when used in accordance with this Agreement, infringes any United States patent, copyright, or trade secret. You will give Dvinci prompt written notice of any such claim, suit, or proceeding, and reasonable assistance and information to defend or settle the claim, suit, or proceeding. Dvinci will be entitled to solely direct and control such defense and to settle or otherwise dispose of any such claim, suit, or proceeding in its discretion. No costs or expenses incurred by You without Dvinci's prior written consent will be subject to indemnification, unless Dvinci has failed to respond to Your notice of a claim, suit or proceeding within a reasonable period after receiving the notice. If any Dvinci Materials and Technology becomes or, in Dvinci's opinion, is likely to become the subject of any injunction, Dvinci may, at its option, (1) procure for You the right to continue using such Dvinci Materials and Technology, (2) replace or modify such Dvinci Materials and Technology so that it becomes non-infringing without substantially compromising its functionality, or (3) cease providing such Dvinci Materials and Technology and terminate the applicable portions of this Agreement without further liability to You. Notwithstanding anything to the contrary, Dvinci will have no liability for infringement or any other claims or damages arising from (i) any modifications made to the Dvinci Materials and Technology that are not made by or behalf of Dvinci; (ii) Dvinci's compliance with Yours or Your Representatives' designs, specifications, or instructions; (iii) use of the Dvinci Materials and Technology in combination with products, services, data, information, or other technology provided by or on behalf of You, Your Representatives, or any third party; (iv) use of the Dvinci Materials and Technology in a manner not contemplated by Dvinci's documentation; or (v) claims arising from Your breach of this Agreement or failure to comply with applicable law and regulations. THIS SECTION SETS FORTH THE ENTIRE OBLIGATION OF DVINCI WITH RESPECT TO INFRINGEMENT OF THIRD PARTY PATENTS, COPYRIGHTS, AND OTHER PROPRIETARY RIGHTS.

5.2 **Indemnification by You.** You will indemnify, defend, and hold Dvinci harmless from and against any third party claim, suit, proceeding (including, but not limited to, any defense costs or expenses) arising from or related to: (i) any of the exceptions outlined above in Section 5.1(i) – (v) above, (ii) Your (or Your Representatives') use of the Dvinci Materials and Technology (but not the Dvinci Materials and Technology itself) or breach of this Agreement, or (iii) products or services not provided or fulfilled by or on behalf of Dvinci.

### 5.3 LIMITATION OF LIABILITY.

EXCEPT WITH RESPECT TO THIRD PARTY INDEMNIFICATION OBLIGATIONS, INFRINGEMENT OF DVINCI'S INTELLECTUAL PROPERTY RIGHTS, A BREACH OF SECTION 2.2 (RESTRICTIONS), A BREACH OF CONFIDENTIALITY OBLIGATIONS, AND NON-PAYMENT OF AMOUNTS DUE UNDER SECTION 3 (FEES AND PAYMENT), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF REVENUE, SAVINGS, EARNINGS, INVESTMENTS, OR DATA) ARISING IN CONNECTION WITH THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE ORIGINATION SERVICES) BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT WITH RESPECT TO THIRD PARTY INDEMNIFICATION OBLIGATIONS, INFRINGEMENT OF DVINCI'S INTELLECTUAL PROPERTY RIGHTS, A BREACH OF SECTION 2.2 (RESTRICTIONS), A BREACH OF CONFIDENTIALITY OBLIGATIONS, AND NON-PAYMENT OF AMOUNTS DUE UNDER SECTION 3 (FEES AND PAYMENT), EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS WILL NOT EXCEED THE SUBSCRIPTION MEMBERSHIP FEES DURING THE PRIOR TWELVE MONTHS OF THE LAST EVENT GIVING RISE TO LIABILITY. THESE LIMITATIONS OF LIABILITY APPLY IN THE AGGREGATE (NOT ON A PER CLAIM BASIS) AND SURVIVE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR WARRANTY. THIS ALLOCATION OF RISK IS REFLECTED IN THE FEES.

## 6. Term and Termination

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6.1 **Term.** This Agreement commences as of the Effective Date and continues for six (6) months thereafter. After the initial six (6) month term and each renewal term thereafter, this Agreement is automatically renewed for an additional six (6) month period, unless either party provides the other party at least ninety (90) days prior written notice of its intent to not renew. The “**Term**” means the initial term and each renewal term.

6.2 **Termination.** Either party may terminate this Agreement for an uncured material breach (including, without limitation, non-payment of fees and expenses due under this Agreement or any breach of Section 2.2 (Restrictions)) if the breaching party fails to cure such breach after thirty (30) days prior written notice. Dvinci may immediately suspend your rights and access if You have not paid amounts due to Dvinci, Dvinci believes that You are breaching this Agreement or are a credit risk, or Dvinci believes that your business and other relationships conflict with Dvinci’s business interest, unless such issue is promptly cured and addressed to Dvinci’s satisfaction. Dvinci may also terminate this Agreement if You have not closed any Leads & Appointments in the prior three (3) months in which Dvinci directly or indirectly fulfilled the installation of the clean energy system.

6.3 **Action Upon and Following Termination; Survival.** Your use, access, and other rights, if any, to the Dvinci Materials and Technology will immediately cease upon termination or expiration. The provisions which by their nature would extend beyond the term of this Agreement will survive the termination or expiration of this Agreement, including disclaimers, limitations of liability, dispute resolution, notice, and applicable payment obligations for Closed Appointments occurring before or within 12 months after termination or expiration.

7. **Confidentiality.** Each party agrees that they will not use, disclose, divulge, disseminate or otherwise make available to any third party any Confidential Information or otherwise make use of any Confidential Information, without the prior written consent of the disclosing party, except as expressly authorized under this Agreement. The parties will use the highest commercially reasonable degree of care to protect the other’s Confidential Information. The parties will ensure that their employees or contractors with access to such Confidential Information have agreed in writing not to disclose the Confidential Information. Each party will bear responsibility for any breaches of confidentiality by their respective employees or contractors. Nothing in this Agreement will prevent a party from disclosing all or part of the Confidential Information of the other as necessary pursuant to the lawful requirement of a governmental agency or when disclosure is required by operation of law; provided that prior to any such disclosure, the party will use commercially reasonable efforts to (i) promptly notify the disclosing party in writing of such requirement to disclose, and (ii) cooperate with the disclosing party in protecting against any such disclosure or obtaining a protective order. “**Confidential Information**” will mean this Agreement, Dvinci Materials and Technology, pricing, business plans, Leads, customer lists, and any other information reasonably identified as confidential in writing. Except as otherwise provided below, Confidential Information will not include information received from the disclosing party for which the receiving party establishes: (i) the information communicated was already known to without obligation to keep it confidential, at the time of its receipt directly or indirectly from the disclosing party; (ii) the information communicated was received in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (iii) the information is independently developed without use of any Confidential Information received from the disclosing party; or (iv) the information communicated was publicly known at the time of its receipt or has become publicly known other than by a breach of this Agreement. Even though portions of the Leads & Appointments and Dvinci Materials and Technology may be derived, in whole or in part, from publicly available sources, the Leads & Appointments and Dvinci Materials and Technology are proprietary, copyrighted and trade secrets of Dvinci (and/or its licensors) and Dvinci’s Confidential Information notwithstanding anything to the contrary in clause (iv) above.

## 8. General Provisions.

8.1 **Reports and Data.** Periodically, You will provide or Dvinci may collect information regarding Your use of the Platform and the status of Leads & Appointments and Closed Appointments. Dvinci may aggregate and anonymize such data and incorporate such data to improve or expand Dvinci’s commercial offerings notwithstanding anything to the contrary. As between Dvinci and You, any such aggregated or anonymized data provided or processed by Dvinci is owned by Dvinci and may be incorporated by Dvinci in Dvinci Materials and Technology as an improvement to, or expansion of, Dvinci Materials and Technology.

8.2 **Independent Parties.** The parties acknowledge that You and Dvinci are independent contractors. This Agreement does not in any way create or constitute a relationship of employment, partnership, franchisee-franchisor, or a joint venture between the parties.

8.3 **Assignment.** Your rights and obligations under this Agreement may not be assigned or transferred without the prior written consent of Dvinci and any unauthorized assignment or transfer will be null and void. Dvinci may assign this Agreement in connection with a reorganization, merger, acquisition or sale of all or substantially all of its assets or stock. In the case of any permitted

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assignment or transfer of rights or duties under this Agreement, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors, executors, heirs, representatives, administrators and permitted assigns.

8.4 **Force Majeure.** Dvinci is not liable for any losses, damages, delays or failures to perform resulting from causes beyond the control of Dvinci.

8.5 **Notices.** All notices required by or relating to this Agreement will be in writing and will be sent and addressed as described in this Section. Notices to You will be sent to the primary address set forth on Your account records with Dvinci, as may be updated by You. Notices to Dvinci will be sent to the address identified for Dvinci on its website and the attention of its CEO (or as may be otherwise identified by Dvinci in writing). All notices shall be deemed to have been duly given (i) when receipt is electronically confirmed, if transmitted by facsimile or email, (ii) the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and (iii) upon receipt, if sent by certified or registered mail, return receipt requested.

8.6 **Severability.** If any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, (i) such unenforceable portion of the provision will be deemed severed from this Agreement, (ii) the validity and enforceability of the remaining portion of the provision and the other provisions of this Agreement will not be affected or impaired, and (iii) this Agreement will be amended in order to effect, to the maximum extent allowable by law, the original intent of such provision.

8.7 **Governing Law; Disputes.** If any dispute between the parties arises hereunder, the parties will negotiate in good faith and attempt to resolve such dispute within thirty (30) days after the date that any party gives written notice of such dispute to the other party. In the event that the parties are unable to resolve such dispute within such thirty (30) day period (or such longer period as the parties may agree) then either party may initiate formal proceedings as described below. Formal proceedings for the resolution of a dispute may not be commenced until the earlier of: (i) either party concluding that resolution through continued negotiation does not appear likely; or (ii) the passage of thirty (30) calendar days since the initial request to negotiate the dispute was made; provided, however, that a party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief. If such dispute remains unsettled for more than thirty (30) days after either party gives the other written notice thereof, then such dispute shall be submitted to the American Arbitration Association (“AAA”) in the Boston Massachusetts area for expedited arbitration pursuant to the AAA’s then-current rules for expedited commercial arbitration. THE PARTIES AGREE THAT ANY SUCH ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If the arbitration provision in this section is found to be unenforceable or not to apply for a given dispute, then the proceeding must be brought exclusively in a court of competent jurisdiction in the State of Delaware. Notwithstanding the foregoing, either party may go directly to court to file for interim, equitable, or other relief in connection with confidentiality or intellectual property matters. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Delaware. THE PARTIES AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST COMMENCE WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

8.8 **Waiver.** No waiver of any breach or default will be considered valid unless in writing and signed by the party giving such waiver, and no such waiver will be deemed a waiver of any subsequent breach or default of the same or similar nature.

8.9 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended, or will be construed, to confer upon or give any party other than the parties indicated below and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

8.10 **Integration and Amendment.** This Agreement (including its orders, attachments and addendums, if any) sets forth the entire agreement between the parties and supersedes prior proposals, agreements and representations between them related to the subject matter of this Agreement, whether written or oral. No modifications or amendments to this Agreement will be binding upon the parties unless made in writing and duly executed by duly authorized representatives of each party.

8.11 **Public Relations.** Subject to the other terms of this Agreement and Your prior written approval (not to be unreasonably withheld), You agree to provide Dvinci the right to use Your name, logo, and a brief description of Your business operations, for Dvinci’s use in marketing and public relations’ materials, such as press releases, advertising, printed collateral, case studies and/or Web site copy.

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8.12 **Non-Solicitation.** Neither party will, directly or indirectly, solicit for employment (other than by general advertising or similar means), employ, or otherwise retain or contract with, any employees or representatives of the other party made known to it in connection with the Agreement during the Term or for 12 months thereafter. For each breach of this provision, the breaching party will pay the other party 50% of the annual base salary and other compensation of such individual or entity.

8.13 **Construction.** This Agreement will be construed simply according to its fair meaning and not strictly for or against any party. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement.

8.14 **Electronic Communication.** You hereby agree to the use of electronic communications in order to enter into this Agreement, orders, to create other records, and to the electronic delivery of notices, documents, policies and records of transactions with respect to the Platform and this Agreement. You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law.