

CLOUDVOID LLC

Master Services Agreement

This Master Services Agreement (“MSA”) and the Service Order (“SO”) signed by or accepted online by Client are combined together by reference and create one integrated contract (the “Agreement”) between Cloudvoid (“we,” or “us,” including “our,” and “Cloudvoid”) and Client (“Client”). Client and Cloudvoid shall each be referred to herein as a “Party” and, collectively, as the “Parties.” Service Orders and all the applicable documents included in the Service Order (“Included Agreements”) are legally integrated as if fully set forth as one Agreement. Upon each Service Order renewal, including automatic renewals, this Agreement will be superseded by the terms and conditions set forth in the then currently published version of the MSA and the applicable Included Agreements available online as of the date on which Client’s services are renewed (the “Renewal Terms”). If Client does not agree to the Renewal Terms, Client may decline to renew services.

WHEREAS, Cloudvoid provides managed cloud services (the “Services”);
WHEREAS, Cloudvoid provides the Services on a subscription basis (“**Subscription**”); and
WHEREAS, Client desires to engage Cloudvoid to provide the Services and to purchase a Subscription.
THEREFORE, the Parties agree as follows:

1) DEFINITIONS

In addition to such definitions as are included in this Agreement, the following terms shall have the meanings provided herein.

- a) “**Affiliate**” means (1) any corporation, partnership, trust or other entity controlling, controlled by or under common control with such Party; or (2) any executive officer, director, trustee or general partner of any Party described in (1) above. For purposes of this definition, the term “control” shall mean the control or ownership of fifty percent (50%) or more of the voting securities in the Party referred to.
- b) “**Commencement Date**” means the agreed start date referenced in the Service Order.
- c) “**Documentation**” means any manuals, documentation, and other supporting materials related to the Services that Cloudvoid provides to Client or that Client can access under this Agreement. Documentation is considered part of the Services.

2) SERVICES

- a) Hourly Service Plans includes the following:

Service Plan	Work Hours Per Month ^{1a 1b}
Silver	20
Gold	40

^{1a} One half of any unused hours shall roll over to the following month.

^{1b} If all allotted Work hours are used in a month, additional hours will be billed at \$125 per hour, will be deducted from the upcoming month or Client may upgrade to a different Subscription Plan (unless Client already has the Platinum Plan). Cloudvoid will notify Client at such time as the number of Work hours exceeds those included in Client's plan and Client may elect an option. If Client does not elect an option within Five (5) business days after such notice from Cloudvoid, Client will be billed for the excess hours.

All amounts in excess of or not included in Client's Subscription Plan shall be billed to Client monthly. Failure of Client to pay such invoices within 15 days of the invoice date may, in the discretion of Cloudvoid, result in suspension of the Services or termination of this Agreement.

- b) Hardware as a Service (HaaS) includes the following:
- a Hardware as a Service. Cloudvoid shall lease the hardware equipment and provide required licensing ("Hardware") to Customer for the term of this Agreement.
 - b Full Term Buyout. When the term of the Sales Order is fulfilled, the client has the option to purchase the hardware for \$1.
 - c Maintenance and Support. Provider shall provide maintenance and support services for the Hardware during the term of this Agreement.
 - d Warranties. Cloudvoid warrants that the Hardware shall be free from defects in material and workmanship for the term of the agreement, from the date of delivery to Customer. If any Hardware fails to conform to this warranty during the warranty period, Cloudvoid shall, at its sole option, either repair or replace the Hardware.
 - e Limitation of Liability. Cloudvoid's liability under this Agreement shall be limited to the fees paid by Customer for the Service during the Subscription period immediately preceding the event giving rise to the liability.
 - f Early Termination. Customer is responsible to pay the amount equal to the remaining months of the agreement at the rate agreed, plus \$1 to keep the hardware. Licensing required for operation will only be provided for the remainder of the term of the initial agreement.
- c) Remote Monitoring and Management Services includes the following:
- a Cloudvoid will provide and deploy the necessary software to acquire critical configuration and utilization information from monitored devices.
 - b Cloudvoid will provide hardware and software maintenance on all monitored devices.
 - c Cloudvoid will apply updates and patches to software, drivers, and firmware to protect against vulnerabilities.
 - d Cloudvoid will notify the client on alerts that require action to remedy the health of the managed device.
- d) Endpoint Security Services includes the following:
- a Cloudvoid will provide and deploy managed security software on all covered devices.
 - b Cloudvoid will respond to and attempt to remedy all alerts generated by the managed security software.
 - c Cloudvoid will notify the client on alerts that require interruption of service or client action to remedy the health of the managed device.

- e) Managed Backup, Continuity and Disaster Recovery includes the following:
 - a) Cloudvoid will provide and deploy a physical or virtual BCDR device that is capable of running local backup jobs and recovery services.
 - b) Cloudvoid will provide and configure an offsite/cloud location with capacity to store backup data and the ability to quickly recover and restore data and services offsite.
 - c) Cloudvoid will monitor all hardware, backup jobs, and required services for onsite and offsite protection.

- f) Full Managed IT Services (per unit) includes the following:
 - a) Unlimited support by phone, chat, and email correspondence. Remote and Onsite Support is included.
 - b) Vendor Support and Management. Cloudvoid will provide support for all Hardware, Software and Service Providers utilizing client support agreements with each vendor.
 - c) Cloudvoid will provide Service Management Software for issue tracking and workflow management for support issues.
 - d) Remote Monitoring and Management Services as describe in section 2 c.
 - e) Endpoint Security Services as described in section 2 d.

- g) Service Level Agreement:
 - a) Downtime incidents are included in the plan and will be billed at the same plan rate, as part of the support plan.
 - b) Issues marked as Critical or Urgent will have a response time of up to 30 minutes from the time of the first notice of such an issue.
 - c) Issued marked as Non-Critical or Regular will have a response time of up to 120 minutes from the time of the first notice of such an issue.

3) SUBSCRIPTION TERM AND TERMINATION

- a) The Subscription shall commence on the Commencement Date and continue until the end of the period for which Client has subscribed (the “**Subscription Term**”), as indicated by the Service Order (a “**Subscription Plan**”).
- b) Cloudvoid reserves the right to change its prices by giving Client written notice of such change prior to expiration of the then-current Subscription Term and such change shall become effective for the renewal Subscription Term in the absence of cancellation by Client.
- c) Cloudvoid may terminate this Agreement upon a Client Default subject to 30 days’ prior written notice to Client. Cloudvoid may, either additionally or in the alternative, elect to terminate one or more of the Services for which a Client Default has occurred.
- d) Cloudvoid will give Client at least 60 days’ notice of intent to terminate any Service Order if Cloudvoid wishes to terminate Services at the end of any current Term.
- e) Client will give Cloudvoid 60 days’ notice, but no more than 120 days’ notice, of Client’s intent to terminate any Service Order at the end of any current Term.
- f) If Client cancels any Services ordered under this Agreement before the expiration of the Term specified on the applicable Service Order for any reason other than Cloudvoid Default, or if Cloudvoid terminates this Agreement due to Client’s default, Client will within 5 days of notice pay Cloudvoid, as liquidated damages and not as a penalty, an amount equal to seventy-five percent of the average monthly amounts invoiced in the preceding four months, multiplied by the number of months remaining in the current term.

- g) The Parties acknowledge that actual damages would be difficult to calculate with reasonable certainty. These damages will be in addition to all other obligations or amounts owed by Client to Cloudvoid.
- h) Upon expiration of Client's Subscription, the Subscription Term shall automatically renew (each, a "Subscription Renewal Term") on the same terms and conditions as contained herein (the initial Subscription Term and all renewal Subscription Terms shall be referred to herein, collectively, as the "Subscription Term") unless Client terminates Client's Subscription by providing written notice of non-renewal to Cloudvoid prior to expiration of the then-current Subscription Term. Upon renewal, the method of payment provided by Client shall be charged the Subscription Fee for the same Subscription Plan as Client's expiring Subscription Plan.
- i) In the case of a termination by Client for any reason, there shall be no refunds or discounts of the Subscription Fee paid.
- j) Upon termination, Client must promptly pay any amounts due and owing to Cloudvoid.
- k) All Client Data, including but not limited to data backups, maintained by Cloudvoid, may be deleted.

4) PAYMENTS.

No Subscription shall commence until an approved payment method is established as between Client and Cloudvoid. All payments will be made by a charge to Client's credit card or other approved form of payment (including ACH and wire transfer) on the first day of each Subscription Renewal Term or, if such date is a national or bank holiday, then on the next business day. In the event payment is declined, Cloudvoid will provide notice to Client and if Client does not cure such non-payment within Three (3) business days after notice, Cloudvoid reserves the right to either, in its sole and absolute discretion, suspend the Services or terminate this Agreement.

5) CLIENT OBLIGATIONS

In addition to all other obligations stated in this Agreement:

- a) Client will (a) be responsible for Client's compliance with this Agreement, (b) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify Cloudvoid promptly of any such unauthorized access or use, and (c) use the Services only in accordance with the Documentation and all applicable laws and regulations, including, without limitation, applicable export control laws and regulations of the United States and other jurisdictions (as provided in more detail below).
- b) Client is solely and exclusively responsible for the security of the usernames and passwords issued to Client. Cloudvoid shall be entitled to rely on the authority of any person using the username and password in providing information to and taking all actions that the authorized user would be entitled to take or direct.
- c) Client will not (a) make the Services available to, or use the Services for the benefit of, anyone other than Client, (b) sell, resell, license, sublicense, distribute, rent, or lease the Services, or include the Services in a service bureau or outsourcing offering, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Services or any third-party data contained therein, (f) attempt to gain unauthorized access to the Services or any related systems or

networks, (g) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit, (h) copy the Services or any part, feature, function, or user interface thereof, (i) frame or mirror any part of the Services, other than as permitted in the Documentation, (j) access the Services in order to build a competitive product or service, or (k) reverse engineer, disassemble or decompile the Services.

6) RELATIONSHIP OF THE PARTIES

- a) Cloudvoid shall at all times be an independent contractor with respect to Client.
- b) This Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between Cloudvoid and the Client for any purpose. Neither has any authority (and shall not hold itself out as having authority) to bind the other for any purpose and neither shall make any agreements or representations on the other's behalf.

7) REPRESENTATIONS AND WARRANTIES

- a) Cloudvoid represents and warrants:
 - i) It is authorized and licensed to conduct its business as described herein.
 - ii) It is authorized to enter into this Agreement.
 - iii) Neither entering into nor granting the rights or performing its obligations as provided hereunder will conflict with any other agreement or cause Cloudvoid to be in violation of any other agreement.
- b) Client represents and warrants:
 - i) It is authorized and licensed to conduct its business as described herein.
 - ii) It is authorized to enter into this Agreement.
 - iii) Neither entering into nor granting the rights or performing its obligations as provided hereunder will conflict with any other agreement or cause Client to be in violation of any other agreement.

8) DISCLAIMER.

CLOUDVOID PROVIDES THE SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE EXTENT PERMITTED BY LAW, CLOUDVOID DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND THOSE ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE.

9) WAIVER.

Client expressly and unconditionally waives any and all claims against Cloudvoid, regardless the bases upon which such claim(s) may be made, that may be based on, arise in connection with or be related to any of the following acts, circumstances or conditions:

- a) viruses or other malicious software are transferred to Client’s computer(s) or other device(s) by using the Services;
- b) third-party content, actions or inactions on or with respect to the Services;
- c) a suspension or other action taken with respect to Client’s account by Cloudvoid; or
- d) deletion, corruption or destruction of any Client data.

No waiver by Cloudvoid of any breach by Client of any condition or provision of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by Cloudvoid in exercising any right, power, or privilege under this Agreement operate as a waiver to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

For purposes of this section, any reference to Cloudvoid shall include Cloudvoid’s Affiliates, shareholders, directors, officers, employees, agents and contractors.

10) CONFIDENTIAL INFORMATION

- a) Confidential Information. Each Party (“Receiving Party”) acknowledges that, in connection with this Agreement, the Receiving Party will have access to and/or be given by or on behalf of the other Party (“Disclosing Party”) information which is expressly designated “Confidential” or would be understood by a reasonable person to be confidential (collectively, “Confidential Information”). Confidential Information means any and all information which is possessed by or developed for a Party and which relates to such Party’s existing or potential business or technology, which information is generally not known to the public, and which information such Party seeks to protect from disclosure to its existing or potential competitors or others, and includes, without limitation, business plans, business strategies, business know-how and techniques, marketing plans, and the identities and business preferences of current or prospective customers or vendors. Confidential Information also includes information received by a Party from others that such Party has an obligation to treat as confidential. Confidential Information includes information and documents whether or not they are marked “confidential” or carry any other marks or designations including but not limited to Trade Secrets “Trade Secrets” means all information possessed by or developed for a Party, including, without limitation, a compilation, program, device, method, system, technique, formula, pattern, or process to which all of the following apply: (i) the information derives independent economic value, actual or potential, from not being generally

known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) the information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

- b) Ownership of Confidential Information. Confidential Information shall remain the sole and exclusive property of the Disclosing Party except as to Confidential Information which, by its nature and usage, is or becomes the joint Confidential Information of both Parties. The Parties agree that even if not so marked, all client lists, work product, know-how and methodologies are Confidential Information of the respective Party.
- c) Non-Disclosure of Confidential Information. The Receiving Party agrees not to use, disclose, distribute or disseminate, or allow others to use, disclose, distribute or disseminate Confidential Information of the Disclosing Party except as expressly permitted under this Agreement. The Receiving Party shall use at least the same procedures and degree of care that it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information, but in no event less than reasonable care. The Receiving Party agrees to restrict access to such Confidential Information to only those employees or contractors who need such Confidential Information in order for the Receiving Party to exercise its rights or perform its obligations hereunder.
- d) Exceptions to Confidential Information. The foregoing restrictions will not apply to information that the Receiving Party can demonstrate: (i) was known to the Receiving Party, without restriction, at the time of disclosure to the Receiving Party by the Disclosing Party as shown by the files of the Receiving Party in existence at the time of disclosure; (ii) has become publicly known through no wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party authorized by the Disclosing Party to make such disclosure without restriction; (iv) has been approved for release by written authorization of the Disclosing Party; or (v) has been independently developed by the Receiving Party without any use of Confidential Information and by employees or other agents of the Receiving Party who have not been exposed to the Confidential Information. Furthermore, each Party shall be entitled to disclose the other Party's Confidential Information to the extent such disclosure is requested by the order or requirement of a court, administrative agency or other governmental body provided that the Party required to make the disclosure shall provide prompt, advance notice thereof to enable the other Party to seek a protective order or otherwise prevent such disclosure.
- e) Return of Confidential Information. All Confidential Information shall be surrendered to the Disclosing Party upon the request of the Disclosing Party; provided, however, that Confidential Information may be retained by the Receiving Party to the extent that retention of such Confidential Information is necessary to comply with the Receiving Party's internal document retention policies aimed at legal, corporate governance or regulatory compliance and any such retained Confidential Information shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination of this Agreement. The Receiving Party shall not be deemed to have retained or failed to return or destroy any Confidential Information if Confidential Information received or stored in digital format is deleted from local hard drives and/or off-site storage so long as no attempt is made to recover such Confidential Information from servers or back-up sources, provided that any such retained Confidential Information shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination of this Agreement.

11) TITLE

In addition to Cloudvoid's Confidential Information, Cloudvoid owns all rights, title, and interest in and to the Cloudvoid software and Services, as well as any trademarks, copyrights trade secrets and inventions, whether or not any of the foregoing are registered, and any ideas, suggestions, proposals, research or test results obtained through, from or as a result of Client's use of the Services and/or feedback provided by Client regarding the Services (collectively, "**Cloudvoid Assets**"). Client's rights to the Services are limited to the rights expressly granted to Client in this Agreement. Cloudvoid reserves all rights not expressly granted in this Agreement. Client agree that Client shall not attempt to claim, register or protect any interest in or to the Cloudvoid Assets.

12) INDEMNIFICATION

- a) Cloudvoid and its Affiliates, owners, principals, officers, employees and agents shall be referred to, collectively, as "Cloudvoid Indemnitees."
- b) Client agrees to and shall indemnify, defend (with legal counsel reasonably acceptable to Cloudvoid Indemnitees) and hold Cloudvoid Indemnitees harmless from and against any and all actions, suits, claims, demands, debts, liabilities, obligations, losses, damages, costs, expenses, penalties or injury (including reasonable attorneys' fees and costs of any suit related thereto) suffered or incurred by any of them arising from (a) any misrepresentation by, or breach of any covenant or warranty of Client contained in this Agreement or any exhibit, certificate, or other agreement or instrument furnished or to be furnished by Client hereunder; or (b) any acts or omission by Client and its Affiliates, owners, principals, officers, employees and agents. The foregoing indemnification shall expressly include damage or loss resulting from Client Data stored in connection with the Services (e.g., viruses or bugs).
- c) If any lawsuit, enforcement action or any attempt to collect on an alleged liability is filed against any Indemnitees, written notice thereof shall be given by the Indemnitees to the indemnifying Party within ten (10) business days after receipt of notice or other date by which action must be taken; provided, however, that the failure of any indemnitees to give timely notice shall not affect its rights to indemnification hereunder except to the extent that the indemnifying Party demonstrates damage caused by such failure. After such notice, the indemnifying Party shall be entitled, if it so elects, to take control of the defense and investigation of such lawsuit or action and to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying Party's reasonable cost and expense. The Indemnitees shall cooperate in all reasonable respects, at the indemnifying Party's cost and expense, with the indemnifying Party and such attorneys in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The indemnifying Party shall not, without the prior written consent of the respective Indemnitee(s), effect any settlement of any proceeding in respect of which the indemnitee(s) is/are a party and indemnity has been sought hereunder unless such settlement of a claim, investigation, suit, or other proceeding only involves a remedy for the payment of money by the indemnifying Party and includes an unconditional release of the indemnitees from all liability on claims that are the subject matter of such proceeding.

13) LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement,

- a) neither Party shall be liable to the other for any indirect or consequential losses, loss of profits or punitive damages howsoever arising whether the same arise in contract, tort (including negligence) or otherwise, even if the Party against which liability is sought had been advised of the possibility of such damages; and

- b) Cloudvoid shall not be liable to Client, whether for indemnification, remediation, breach of warranty, other breach or otherwise for a cumulative amount in excess of the net payments by Client to Cloudvoid during the Twelve (12) months preceding the claim by Client.

14) ASSIGNMENT

This Agreement may not be assigned, sublet or otherwise transferred by Client. This Agreement may be assigned by Cloudvoid upon written notice by Cloudvoid to Client.

15) BINDING EFFECT

This Agreement is binding upon and shall inure to the benefit of the respective Parties and their Affiliates, permitted assigns and successors.

16) NOTICES

All notices or correspondence arising from or pertaining to this Agreement must be in writing and delivered in person, or electronically, or sent by registered or certified mail or nationally or internationally recognized overnight courier, with all fees prepaid to Cloudvoid or to Client's contact as indicated herein. For a notice to be valid, an email copy shall accompany each of the foregoing modes of noticing a Party. Either Party may, at any time, change its mail or delivery address by giving the other Party ten (10) calendar days prior written notice. The effective date of any written notice delivered or mailed pursuant to this Agreement shall be the date of receipt, if delivered, or the postmark date if mailed. If the receiving Party rejects or otherwise refuses to accept one or more notice(s), or if any such notice(s) cannot be delivered because of a change in address for which no notice was given, then such notice(s) as was/were refused or unable to be delivered will be deemed given upon that rejection, refusal or inability to deliver. An email notice shall suffice as notice at such time as the sender receives a receipt acknowledgment or the recipient replies, directly or indirectly, to such notice.

To Cloudvoid: 165 Broadway, 23rd Floor New York, NY 10006
Email: info@cloudvoid.com

To Client at: _____
Email: _____

17) SEVERABILITY

If any part, term, or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby and the offending portion shall be modified so as to be legal and enforceable in a manner that, as closely as possible, reflects the Parties' original intent.

18) GOVERNING LAW; DISPUTE RESOLUTION

- a) Amicable Dispute Resolution.

- i. In the event of a dispute between the Parties hereunder (each, a “Dispute”), then, prior to commencing other legal proceedings (other than an action for interim injunctive relief pending final resolution of the Dispute), each Party will refer the Dispute to its designated representative to work in good faith to attempt to resolve the Dispute amicably for a period of forty-five (45) calendar days from the date of written notice of such Dispute from one Party to the other; provided, however, that all Amounts Due not in dispute shall be promptly paid by Client.
- ii. Disputes that cannot be settled amicably shall be resolved by arbitration, as provided hereinbelow. Notwithstanding the foregoing, nothing in this section shall prevent a Party from seeking interim injunctive or other equitable relief in any court of competent jurisdiction to preserve the status quo or to prevent irreparable harm pending resolution of any Dispute. b) Arbitration.
 - i. Procedure. Any claim, dispute or controversy arising out of or relating to this Agreement and not resolved amicably shall be submitted by the Parties to binding arbitration in New York, New York, by a single arbitrator selected in accordance with the rules of the American Arbitration Association (“AAA”), governed by the laws of the State of New York without regard to conflicts of laws principles.
 - ii. Decision Final. The Parties agree to exercise their respective rights under AAA Rules to cause any arbitration proceeding under this section to be finalized and a decision rendered by the arbitrators as soon as reasonably practicable, but in no event more than six (6) months after commencement of such arbitration proceeding.
 - iii. Confidentiality. Except as otherwise required by law, the Parties and arbitrator(s) shall maintain as confidential all information and documents obtained during the arbitration process, including the resolution of the dispute.
 - iv. Costs. The non-prevailing Party in any arbitration shall pay the other Party’s costs and expenses (including reasonable attorneys’ fees) and reimburse the other Party for its portion of the arbitration costs. In the event that neither Party wins totally, reimbursement shall be made proportionally in accordance with the AAA Rules. Any award rendered by the arbitrator(s) shall be final and binding upon the Parties. Judgment upon the award may be entered in any court of competent jurisdiction. If a Party fails to proceed with arbitration, unsuccessfully challenges the arbitration award, or fails to comply with the arbitration award, the other Party shall be entitled to costs, including reasonable attorneys’ fees and disbursements, for having to compel arbitration or defend or enforce the award.
 - v. Jurisdiction. Each Party irrevocably and unconditionally (i) consents to the jurisdiction of any such proceeding and waives any objection that it may have to personal jurisdiction or the laying of venue of any such proceeding; and (ii) knowingly and voluntarily waives its rights to have disputes tried and adjudicated by a judge and jury except as otherwise expressly provided herein.
- c) Equitable Relief. Notwithstanding the foregoing or anything to the contrary in this Agreement, a breach of this Agreement may cause irreparable harm to the affected Party for which monetary damages are not a sufficient remedy. In such event, the affected Party may, without waiving any other rights or remedies and without posting a bond or other security, seek an injunction, specific performance or other equitable remedy.

In the event of a request to a court of competent jurisdiction for equitable relief, THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS

AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO CONSENTS TO SERVICE OF PROCESS BY CERTIFIED MAIL AT ITS ADDRESS LISTED HEREIN.

19) INTERPRETATION

- a) The recitals are an integral part of this Agreement.
- b) No party shall be deemed the drafter of this Agreement. Each party acknowledges that it had sufficient time and opportunity to have this Agreement reviewed by legal counsel and that this Agreement will be deemed to have been jointly prepared by the parties. If this Agreement is ever construed, whether by a court or arbitrator, such court or arbitrator will not construe this Agreement, or any provision hereof, against any party as drafter.
- c) The section headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provision hereof.
- d) As used herein, all words in gender shall be deemed to include the masculine, feminine or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

20) COUNTERPARTS

This Agreement may be executed by the parties in one or more counterparts, and each of which when so executed will be an original, but all such counterparts will constitute one and the same instrument.

21) AMENDMENT; WAIVER

- a) Neither this Agreement nor any provision hereof may be amended, modified or supplemented unless in writing and executed by both Parties hereto.
- b) Except as otherwise expressly provided herein, no waiver with respect to this Agreement shall be enforceable unless in writing and signed by the Party against whom enforcement is sought. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by any Party, and no course of dealing between or among any of the Parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

22) FORCE MAJEURE

Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, communication line failure, governmental orders (including but not limited to quarantines and business closures) and power failures.

23) SURVIVAL

The provisions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of performance or termination of this Agreement shall so survive. Without limiting the foregoing, Sections 1, 3, 4-13, 15-21 and 23-24 expressly survive termination. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement.

24) ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding of the Parties hereto. No other agreements, statements or promises have been entered into or made by the Parties. No modification of this Agreement shall be binding upon the Parties unless it is in writing and executed by both Parties.