



NGENX GENERAL TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. IT IS ESPECIALLY IMPORTANT FOR YOU TO READ SECTION 15 (DISPUTE RESOLUTION) CAREFULLY, AS THAT SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A PANEL OF ARBITRATORS INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION LAWSUIT.

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN YOU AND NGENX REGARDING THE SUBJECT MATTER ADDRESSED HEREIN, AND SUPERSEDES AND REPLACES ANY PRIOR AGREEMENT, UNDERSTANDING, OR COMMUNICATION, WHETHER WRITTEN OR ORAL.

1. Definitions. Any term defined in this section shall be assumed to have the meaning ascribed, regardless of whether the first letter is capitalized, unless context clearly calls for a different meaning. The singular shall include the plural, and the plural shall include the singular, unless context clearly calls for a different meaning.

(a) **“Actual In-Service Date”** means the earlier of (1) the date the Services are provisioned in the nFinity Control Panel, or (2) the date the Services are initially made available.

(b) **“Agreement”** means the terms and conditions set forth in this document, along with any documents incorporated herein by reference, including without limitation any Service Order, any applicable product specific terms and conditions, any relevant click-through agreement, our Privacy Policy, our Acceptable Use Policy, and our Service Level Agreement.

(c) **“Bona Fide Billing Dispute”** means a billing dispute that can be clearly substantiated through objective records, data and materials, or where a miscalculation or misstatement of fees is clearly evident on an invoice.

(d) **“nFinity Control Panel”** means the account management tool provided by nGenx that allows you to add, delete, remove and otherwise modify your Services, without going through the traditional Service Order process.

(e) **“Seat”** means each end-user account allocated to you.

(f) **“Service”** or **“Services”** refer to any products or services you have agreed to obtain from us.

(g) **“Service Order”** means the form (whether paper or electronic, including on-line order forms), if any, in which you apply for or make changes to your Services, and may include the length of time you will subscribe to a Service, rate plans, access charges, fees, taxes and surcharges, among other items.

(h) **“Terms”** means the terms and conditions set forth in this document.

(i) **“You”** or **“your”** means the person or entity that subscribes to our Services and anyone who accesses the Services provided to you.

(j) **“We”, “us”, “our”, and “nGenx”** refer to both nGenx Corporation and any of its affiliates that are providing Services to you.

2. Agreement and Acceptance: This Agreement incorporates by reference and you agree to be bound by the following, in this order of priority, including any changes or amendments thereto:

(a) These Terms;

(b) Any applicable product specific terms and conditions;

(c) Any applicable Service Orders;

(d) Any relevant click-through agreement for the Services;

(e) The Service Level Agreement posted at www.ngenx.com/legal/Service-Level.pdf;

(f) The Acceptable Use Policy posted at www.ngenx.com/legal/Acceptable-Use.pdf; and

(g) The Privacy Policy posted at www.ngenx.com/legal/Privacy-Policy.pdf.

You accept this Agreement when you do any of the following: (a) give us your written or electronic signature, (b) tell us orally or electronically that you accept (i.e., by clicking the “I Accept” button), (c) give us your written or electronic signature on another agreement that incorporates these Terms, or (d) use any of the Services. If you have never used the Services before and do not wish to be bound by this Agreement, do not begin using them and notify us immediately.

3. Term. This Agreement shall remain in full force and effect throughout the term of any and all Service Orders issued incorporating it or the last day the Services were made available to you, whichever is later.

Unless otherwise specified, the term of any Service Order entered into between the parties shall be three (3) years measured from the Actual In-Service Date, with automatic renewals for successive one (1) year terms unless the terminating party provides written notice of termination at least thirty (30) days prior to the end of the then current term.

4. Charges for Services and Taxes, Fees and Surcharges:

You are responsible for paying all charges applicable to Services provided to you including, but not limited to, monthly recurring charges ("MRCs"), equipment fees, training fees, consulting fees, regulatory compliance fees, professional service fees, service restoration fees, feature fees, change fees and alteration fees for any Services, installation charges, billing charges, non-recurring charges ("NRCs"), supplemental power charges, and any other fees or usage based charges. In addition to the quoted monthly recurring and usage-based charges, you will also be billed for taxes, fees, surcharges, assessments and any other charges that apply to your Services. We may charge an additional monthly fee for paper invoices sent to you at our then published rates.

To determine whether certain taxes, fees and surcharges are applicable to the Services provided, we are required to obtain a valid street address for you. You represent and warrant that the address provided to obtain Service is correct, and you acknowledge that we are relying on this information to determine which taxes, fees or surcharges are applicable to your Service. You agree to notify us if your address changes. In the

event you do not provide us with a valid address or address change, you may be responsible for additional taxes, fees or surcharges and penalties associated with the failure to pay taxes based on the proper address and we may terminate your Services.

5. Billing and Payment; Collections; Rate Increase:

We will invoice you for all monies owed under the terms of this Agreement. The initial invoice shall include all non-recurring charges for installation and setup, a prorated amount for the initial month of service, and an amount for the first full month of service. Thereafter, all recurring charges will be billed one month in advance. Other than the prorated initial month, Services are provided in minimum increments of one (1) month and shall not be prorated upon termination, suspension, or disconnection. Billing of Services will begin as of the Actual In-Service Date. Unless special arrangements are made, bills are sent to the email address provided for the Billing Contact specified on the Master Service Agreement.

We reserve the right to back-bill you for Services actually provided but not previously billed.

Payment in full is due no later than the due date indicated on your bill. Should you fail to tender your payment in full by the due date specified, we may impose an interest charge of 0.05% per day (or the maximum amount permitted by law, if lower) on any unpaid sums owed. Returned checks, payment by phone, paper bills and other fees due to your choice of payment method or billing receipt may also be subject to fees. Should a payment tendered or authorized by you be declined by your financial institution, you agree to pay all costs and fees associated with that transaction, including but not limited to a service charge imposed by us not to exceed the highest amount authorized by law, and any attorney fees and court costs we incur: (a) for overdraft/non-sufficient funds charges imposed on us because of you, and (b) to collect any unpaid balance owed by you.

Payments shall be made via ACH or check. ACH customer accounts will be debited fifteen (15) days following the

submission of a bill, and no additional notice or consent is required before the account is debited for all amounts due to us for any reason.

NOTWITHSTANDING anything herein to the contrary, we may seek recourse for any unpaid monies owed in the Johnson County District Court, Johnson County, Kansas (the "Court"). You irrevocably submit to venue and jurisdiction, both personal and subject matter, in that Court, for that purpose.

6. Credit and Deposits: Our agreement to provide Services is subject to Credit approval and, as such, you authorize us to ask credit-reporting agencies for credit information about you. We may, in our discretion, require you to submit a deposit as security for payment of charges. In the future, an additional deposit may be required if either the amount or number of Services is increased or your credit rating changes. No interest will accumulate or be owed on any deposit held by us. Your deposit will be returned if, in our sole discretion, satisfactory credit has been established or upon the termination of all your Services (if no balance is due). We reserve the right to apply the deposit to any amount due and unpaid but the payment of a deposit in no way relieves you of paying your bills in a timely manner.

7. Termination by You:

(a) **Pre-Provisioning:** If you terminate an order prior to the Actual In-Service Date, you may be required to pay a cancellation charge equal to three (3) months of MRCs (or greater if our costs are greater than this amount). You agree that this charge is a reasonable measure of the administrative costs and other fees incurred by us to prepare for the provisioning of the Services.

(b) **Post-Provisioning:** If you cancel your Services or a portion thereof after the Actual In-Service Date, you remain liable for payment of all outstanding charges for all Services you used from us prior to termination, plus you shall pay to us as liquidated damages for each canceled Service, to the extent a Service is cancelled, an amount equal to 60% of the then current monthly recurring charge for the cancelled Services multiplied by the number of months remaining in the then current term. You agree that in the event of termination by you, the actual damage to us is difficult to ascertain and that this termination fee represents liquidated damages and not a penalty and is a reasonable estimate of the actual reduction in the value of this agreement that we will sustain. By way of example, and not as a limitation, you agree that reducing your user count for a particular Service shall be considered a partial termination of that Service, and you will be liable on a pro-rata basis for the early termination fee contemplated above for those terminated users.

(c) **Bundled Services:** If you receive bundled Services and you subsequently unbundle, terminate, or disconnect any of these Services, or we disconnect any of the Services, we may automatically and without notice adjust the rates for the remaining Service(s) to the then current price.

(d) **Change in Location:** A change in your service address or the location to which any Service is provided to you may constitute, at our sole discretion, termination of the Services or result in an increase in the prices you must pay for the Services.

8. Termination by Us: We may limit, interrupt, terminate or refuse to provide a Service to you: (a) if you do not honor any provision of any agreement with us, including without limitation this Agreement; (b) if you use a Service in a manner that adversely affects other customers or harasses them; (c) if you use Services to engage in fraud or unlawful conduct or are suspected of doing so; (d) if you use a service in a manner that is excessive or unreasonable when compared to the predominant usage patterns of other customers (and we may also implement charges or change you to the appropriate rate plan consistent with such use); (e) if you resell any Service; (f) for nonpayment of any amount owed by you to us or billed by us on behalf of others, at your request, including disputed amounts that we determine are valid charges on your bill. We may restore such interrupted or terminated Service, in our sole discretion, following your correction of the violation and payment of any amounts due, including any restoration charge we assess for restoring your Services. If your account is suspended for non-payment, you will also have to remit a deposit, pursuant to paragraph 6, as a requirement for the restoration of your Services.

9. Disputed Bills: You must review bills in a timely manner. To dispute a bill, you must comply with the dispute resolution provisions in paragraph 15 and submit your Bona Fide Billing Dispute, in writing with all supporting documentation, within 60 days after the date on the bill. You shall not withhold payment of any undisputed amounts simply because you have a Bona Fide Billing Dispute. You accept all charges on your bill not disputed within the period provided above, and irrevocably waive any right to dispute or otherwise disclaim your liability for those charges.

10. Administrators. You may appoint up to three (3) people (the "Administrator(s)" whom you are designating as your agent) with the authority to perform certain administrative functions, including making technical change requests or other technical inquires, and whose instructions we may rely on. All activities initiated by you within the Control Panel will be deemed as actions taken by an Administrator.

Your Administrators will perform certain administrative functions related to the Services herein, including but not limited to (a) controlling the creation and deletion of Seats and domain names, (b) managing changes to Seat information, (c) serving as our authorized technical contact for the Services, (d) setting certain business rules/policies and/or filters on the Services that may terminate emails sent to or by end-users without delivering them, and (e) monitoring complaints against end-users.

Your Administrator(s) will participate, prior to the Actual In-Service Date, in one (1) or more Administrator training sessions specific to the Services at no charge. Additional training sessions, or sessions required after the Actual In-Service Date, may be purchased for a fee.

11. Ownership of Customer Data. We acknowledge your data is your exclusive property and we make no claim of ownership therein. In the event of the expiration or proper termination of this Agreement, subject to paragraph 12, we agree to return your applications and data in a commercially reasonable manner, at your sole cost. In the event we become insolvent or bankrupt, you will be granted access to

your licensed software and data. You are solely responsible for all hardware, software and IT support necessary for the return of your applications and data, setup of such applications and data, and the continued maintenance thereof. We shall not be liable for any lost data or interruption of service.

12. Lien. You hereby grant us a lien on any data stored on our network, such that we are under no obligation to provide a copy of such data until all outstanding and owed sums have been paid to us, including any monies owed as liquidated damages.

13. Representations & Warranties. You represent and warrant the following to us:

(a) You are 18 years of age, or older, and have the right and authority to enter into this Agreement on your own behalf, or if you are entering into this Agreement on behalf of your company, organization or educational institution, and that you have the right to legally bind said entity; and

(b) You will comply with all federal, state, and local laws, ordinances, regulations and rules now or hereafter in effect, relating to your acts of commission and omission.

14. Moves, Adds, Changes, and Disconnects. There will be no administrative charge for Services provisioned or de-provisioned via the nFinity Control Panel. All moves, adds, changes, and disconnects provisioned via the nFinity Control Panel shall be effectively immediately. Any request you make for a change of service that affects an end-user that is initiated by phone, chat or email, and completed by our staff, shall be subject to a \$25.00 administrative charge, including without limitation: (a) to move a Service; (b) add or expand an existing Service; (c) to change an existing Service; or (d) the disconnection of a Service. In the event of a partial or complete disconnection, an early termination charge may apply pursuant to paragraph 7 above. Additional and new Services will incur the standard installation charge for the specific service or feature.

15. Dispute Resolution: By utilizing the Services and agreeing to these Terms, you agree to the following dispute resolution procedures. **Both parties, you and us, agree to waive any right to a trial by jury in a court of general jurisdiction and any right to participate in a class action or consolidated action regarding a dispute as defined below. Specifically both parties, you and us, agree to waive any right to pursue a dispute by joining a disputed claim with the disputed claim of any other person or entity or to assert a disputed claim in a representative capacity on behalf of anyone else in any lawsuit, arbitration or other proceeding.**

Instead, if the parties have a dispute, we agree to use due diligence and use our best efforts to work together to implement this Agreement and amicably resolve any differences. However, both of us understand that issues and conflicts may arise where we reach an impasse. We both acknowledge a desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following

process, which either of us may start by delivering to the other a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of both parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either of us may start binding arbitration in Overland Park, Kansas. Both parties will use their best efforts to conclude the arbitration as expeditiously as possible but in no event later than 60 days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the parties from resolving the Dispute within such 60 day period. If such interim relief or court action is sought, then both parties will use their best efforts to conclude the arbitration within 60 days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator

may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators fail to select an impartial arbitrator, either of us may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in the arbitration or any other hearing. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. No interest shall be applied to any arbitration award. It is the intent of the parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the parties.

Notwithstanding the foregoing, either of us may resort to a court by applying for interim relief, with the requirement to post a bond or security, if such party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party.

IN THE EVENT ANY OF THE PROVISIONS HEREIN ARE DEEMED UNENFORCEABLE OR VOID AS A MATTER OF LAW, BOTH PARTIES IRREVOCABLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR THE SERVICES PROVIDED BY US.

16. Acknowledgments. You acknowledge (a) our Services operate over a broadband internet connection. The speed and stability of that underlying connection, the processing speed of the hardware used to access them, and the local software and operating system may all affect the

performance of the Services; (b) that we accept no responsibility for your LAN, PCs, tablets, phones, broadband connection, or any other hardware or software required for you to use or access the Services; (c) that we do not protect your network or systems from viruses, spyware, cookies, or other items which may impair or otherwise be detrimental to you and/or the performance of your network and computing devices; (d) that we, in our sole discretion, may reject any Service Order or request for Services you may tender; (e) that we will not support your hardware, equipment or software; (f) that, because our Services are web-based, idiosyncratic reasons (i.e. firewall rules, corrupted JVM software, etc.) may exist outside of our control and knowledge that prevent the Services from operating as intended; (g) that we have no obligation to store or avoid the destruction of data pursuant to the Federal Rules of Civil Procedure, including but not limited to Rule 26 thereof, or any other similar state law, rule or regulation. Should you feel a hold is necessary, you shall submit a request for such service pursuant to paragraph 22. If we deem your data preservation request to be too burdensome, we shall have the right to terminate this Agreement immediately without liability to you; (h) THAT OUR SERVICES MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE; (i) that the rights granted under any Service Order are at all times contingent upon us having the underlying right to grant them, and should we lose those underlying rights, the applicable Service Order shall automatically terminate with us having no liability to you; (j) that the internet is a volatile environment and we are not liable for confidential information stored on or traversing our network or the internet. You must take all appropriate precautions to secure confidential information including encrypting data, if you deem security to be necessary; (k) that you will comply with all applicable international and national export laws that apply to the Services, including the U.S. Export Administration, and/or Israeli Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments; and (l) that, unless otherwise authorized by applicable law, you are not permitted to: (1) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code incorporated into our Services, or its individual components; (ii) sell, resell, rent, lease, or distribute the Services, or its individual components; (iii) remove, obscure, or obfuscate any copyright, trademark or other proprietary notice, label or marking on the Services, or its individual components; or (iv) modify, translate, or sublicense the Services, or its individual components.

17. Services Provided by Third Parties: The Services will be provided either by us or by third party vendors or contractors. We reserve the right to change or modify the source of any Services provided to you without notice.

18. Privacy: You authorize us to monitor and record any communication with us regarding your Services or account, regardless of who initiated the communication, for purposes of quality assurance or otherwise.

19. Limitation of Liability:

YOU AGREE THAT THE PRICING OF OUR SERVICES REFLECTS THE INTENT OF BOTH YOU AND US TO LIMIT OUR LIABILITY AS PROVIDED HEREIN.

ACCORDINGLY, YOU AGREE THAT IN NO EVENT SHALL NGENX, ITS OFFICERS, ITS DIRECTORS, ITS AFFILIATES, ITS CONTRACTORS, ITS EMPLOYEES, ITS AGENTS, ITS VENDORS, OR ITS PARTNERS BE LIABLE FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR OR ANYBODY ELSE'S USE OF, OR INABILITY TO USE, OUR SERVICES OR PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES, OR LOST PROFITS RESULTING FROM LOST DATA, DELAY, OR INTERRUPTION IN SERVICES OR DAMAGES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE, WHETHER OR NOT NGENX HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. YOUR EXCLUSIVE REMEDY FOR ANY BREACH OF THIS AGREEMENT IS LIMITED TO SERVICE OUTAGE CREDITS AS OUTLINED IN THE APPLICABLE SERVICE LEVEL AGREEMENT ("SLA").

20. Disclaimer of Warranties: SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY NGENX'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.

21. Indemnification. You shall indemnify and hold us, and our affiliates, subsidiaries, owners, officers, directors, partners, vendors, contractors, agents and employees (collectively "Indemnitees") harmless from and against any and all claims, losses, liabilities, damages, costs and expenses, including without limitation, attorney's fees, to which such Indemnitees may be subject to that arise out of or relate in any way to the following: (i) any misrepresentation or breach of this Agreement by you; or (ii) your use of the Services.

22. Special Requests. You may request any additional services you desire. If, in our sole discretion, we elect to provide the specific services requested, we will do so on the terms and rates communicated to you at that time. We are under no obligation to perform or honor any additional service requests tendered by you.

23. Changes to these Terms and Conditions: We may change these Terms, including any change in any charge or

fee, or the imposition of a new charge or fee, at any time if we give you notice of the change. If we make a change to these Terms and Conditions that is material and you do not wish to accept such material change, you may terminate the affected Service by giving us thirty (30) days' prior notice, measured from the date you first receive notice of the proposed change, in which case you will not be subject to an early termination fee, as contemplated in paragraph 7 above. You will, however, still be responsible for all charges for Services provided before you terminated your Agreement. A material change is ONLY a change that (a) terminates or substantially reduces the availability of a Service for you, or (b) results in the increase of any charge by more than 10% of the MRCs for that Service. Material changes in your Service DO NOT include an increase in, or imposition of: (1) any charge required to be collected by any governmental authority, such as taxes or surcharges, or (2) any charge not prohibited by any governmental authority to recoup our expense incurred to comply with a governmental requirement.

24. Survival. The following paragraphs shall survive the termination of this Agreement: 5, 7, 9, 11, 12, 13, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 30, and 32.

25. Statute of Limitations. All claims or actions arising from or in any way relating to this Agreement or your use of the Services, other than those arising from the paragraphs identified in paragraph 24 above, shall be brought within twelve (12) months of the event giving rise to the claim, or said claim shall forever be barred.

26. Applicable Law: This Agreement and our provision of Services to you shall be subject to and governed by (a) the laws of the State of Kansas, without regard to any conflicts of law provisions therein, and (b) any applicable federal laws including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* In the event of an inconsistency between any governmental requirement and these Terms regarding the provision of a Service that is subject to the governmental requirement, the governmental requirement will apply to the extent necessary to avoid the inconsistency.

27. Assignment: We may assign this Agreement to another entity without any advance consent from or notice to you. You may not assign this Agreement without our prior written consent.

28. No Waiver, Severability: If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in force.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter hereof, whether oral or in writing. This Agreement may not be modified or amended except by a written instrument executed by the parties.

30. Agreement Drafted by Both Parties. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by the parties

such that any ambiguities in this Agreement shall not be construed against either party.

31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as both parties have accepted a counterpart hereof.

32. Force Majeure. Except for the payment of monies owed, neither party shall be liable for any delay or failure in performance of any part of this Agreement resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any

such excused delay in the performance of a party's obligations under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay or by an extended time period mutually agreed to by the parties if more time is needed to complete the work.

33. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

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