



TERMS AND CONDITIONS

Effective 11/21/2019

1. **Definitions.** As used in this Agreement:
 - a. "Authorized User" means: (a) the employees, consultants, healthcare professionals, agents and subcontractors of Customer that are authorized by Customer to access the Software; and (b) Patients of Customer.
 - b. "Company Data" means any information, data, content and materials made available to Customer pursuant to the Agreement, excluding any Customer Data.
 - c. "Company Services" or "Services" means, collectively, the set-up services and Support Services provided to Customer under this Agreement.
 - d. "Customer Data" means any information, data, materials and content owned or licensed by Customer provided to Company on or after the Effective Date, including Patient data.
 - e. "Documentation" means the user instructions, help files, and Software and Services specifications made available by Company for use with the Services and Software, as may be updated from time to time by Company.
 - f. "Intellectual Property Rights" means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.
 - g. "Patient" means an individual who is a patient of Customer's healthcare practice.
 - h. "Patient Data" means any electronic data, information or material about a Patient that is entered or uploaded into the Software.
 - i. "Software" means the Company software application offering identified in the applicable Order Form.
 - j. "Support Services" means the support services related to the Software, as described in the applicable Order Form and Service Level Agreement.
2. **Software and Services.** Company shall provide to Customer the Software and Services as described in the Order Form for the fees and in accordance with any other terms described on Order Forms as are executed from time to time by both Parties (collectively the "Services"). Should the Terms and Conditions conflict with the terms of any Order Form, the terms of the Terms and Conditions will control. Any change to an Order Form will be set forth in a change order that is mutually agreed upon and signed by the Parties (a "Change Order").
 - a.



License Grant. Company hereby grants to Customer and its Authorized Users, during the Service Term of the Order Form, a limited, revocable, non-exclusive, non-transferable right and license to access, use and display the Software in accordance with the Documentation subject to any applicable terms and conditions for the Software, solely for the Business Purpose set forth in the Order Form.

- b. Restrictions. Customer will not: (a) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (b) provide, lease or lend the Software or Services to any third party; (c) remove any proprietary notices or labels displayed on the Software; (d) create a derivative work of any part of the Software; (e) intentionally use the Software for any unlawful purpose or any purpose not contemplated by this Agreement; or (f) create Internet "links" to or from the Software, or "frame" or "mirror" any of Company's content which forms part of the Software.
- c. Monitoring Software Use. Company is not obligated to and does not continually monitor Customer's use of the Software or information Customer may communicate through the Software, provided however, that Company may monitor Customer's use of the Software to ensure compliance with the Agreement, and to respond to law enforcement or other government agencies if and when required. Company is not responsible for Customer's conduct while using the Software or the information posted or communicated by any Authorized Users. Customer must promptly notify Company of any inappropriate or illegal conduct or content Customer or Customer's Authorized Users encounter on the Software. Company may suspend or terminate Customer's access to the Software without notice to Customer if Customer or Customer's Authorized Users partake in any of the prohibited uses described in this Agreement.
- d. Support and Set-Up Services. Company will provide reasonable support, updates and maintenance for the Software. Company will use commercially reasonable efforts to perform the set-up Services as set forth in or referenced by the applicable Order Form.
- e. Acceptance of Services. In the event the set up or Support Services are not performed in accordance with this Agreement, Customer will notify Company in writing no later than thirty (30) calendar days after performance of the relevant Services. Customer's notice will specify the basis for non-compliance with the Agreement and if Company agrees with the basis for non-compliance, then at Company's sole option, Company will re-perform the set up or Support Services at no additional charge to Customer or refund to Customer the applicable fees for such Services. THE FOREGOING CONSTITUTES CUSTOMERS' SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO PERFORMANCE OR NONPERFORMANCE OF THE SET UP AND SUPPORT SERVICES.
- f. Customer Data License Grant. Customer hereby grants to Company a limited, non-exclusive, royalty-free, worldwide license to use, reproduce, aggregate and modify the Customer Data and to perform all acts with respect to the Customer Data as may be necessary for Company to provide the Software and Services to Customer. Customer Data will be included in and treated as Customer's Confidential Information under this Agreement.
- g. Company Developments. Except as otherwise set forth in this Agreement, all inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of Company, whether solely or jointly, including without limitation, in connection with the Company Services and Software hereunder, ("Company Developments") and all Intellectual Property Rights therein, shall be the sole and exclusive property of Company.
- h. Service Interruption. Company may on occasion need to interrupt Customer's access to the Software, with or without prior notice, to protect the integrity or functionality of the Software or for maintenance purposes. Company will not be liable for any interruption of the Software



(whether intentional or not), and Customer will not be entitled to any refunds of fees or other compensation for interruption of the Software.

3. **Customer Obligations**

- a. Customer Systems. Customer is responsible for (a) obtaining, deploying and maintaining the Customer's system, and all computer hardware, software, mobile devices, modems, routers and other communications equipment necessary for Customer's Authorized Users to access and use the Software via the Internet; (b) contracting with third party ISP, telecommunications and other service providers to access and use the Software via the Internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Company will not be responsible for supplying any hardware, software or other equipment to Customer under this Agreement.
- b. Consents. Customer will obtain all necessary consents and authorizations, including from Patients, to enable Company to use, upload, process and store Customer Data using the Software.
- c. Signatures. Certain functionality of the Software allows you to generate documents including information in the Software that require a signature. The Software does not collect or store signatures, and Customer is responsible for collecting and storing Customer's authorized and Patients' legally binding signatures for the applicable documents.
- d. Terms and Conditions. Customer will and will ensure all of its employee and healthcare provider Authorized Users accept and abide by the [Terms and Conditions](#) applicable to the Software. Such Terms and Conditions are incorporated into and made part of this Agreement.
- e. Exporting Information from the Software. Customer is solely responsible for any health-related information exported or downloaded from the Software by Customer or any Authorized User. Customer represents and warrants that Customer will export and subsequently use health information only as permitted by HIPAA (if applicable) and applicable federal and state laws.
- f. Employee Training. Customer will train all employees on the use of the Software, on applicable HIPAA or health privacy obligations, and on the requirements of this Agreement and the Terms and Conditions for the Software and will ensure that such employees comply with all such requirements.

4. **Proprietary Rights**

- a. Company Intellectual Property. As between the Parties, Company shall own all right, title and interest, including all Intellectual Property Rights, in and to the Software, Services, Company Data, Company Developments, Documentation, and any other Company property or materials furnished or made available hereunder, and all modification and enhancements thereof, belong to and are retained solely by Company.
- b. Trademarks. Nothing in this Agreement shall grant any Party any ownership interest, license or other right to any other party's trade names, trademarks or service marks.
- c. Customer Data. As between the Parties, Customer shall own all right, title and interest, including all Intellectual Property Rights, in and to the Customer Data.
- d. Feedback License. Customer hereby grants Company a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Software any



suggestion, enhancement, request, recommendation, or other feedback related to the Software provided by Customer (any "Feedback"). Feedback shall not be considered Customer's Confidential Information pursuant to this Agreement.

5. **Fees and Payment.**

- a. Late Payments; Taxes. If applicable, if payment is not made within the time set forth in the Order Form or within thirty (30) days of receipt of the invoice, whichever is applicable, then (a) Company may suspend Customer's access to the Software and Services until Customer is current on payments. Customer is solely responsible for payment of any federal, state or local excise, sales, use or similar taxes assessed with respect to this Agreement. Company is not responsible for collecting any such taxes with respect to the Services or Software.

6. **Confidentiality**

- a. Definition. In connection with this Agreement, each Party (a "Disclosing Party") may disclose its confidential or proprietary information to the other Party (a "Receiving Party"). Subject to the exceptions listed below, a Disclosing Party's "Confidential Information" shall be defined as such information disclosed by or on behalf of the Disclosing Party to the Receiving Party under this Agreement and during its term that is actually treated by the Disclosing Party as confidential and either: (i) is clearly marked or otherwise clearly designated as confidential or proprietary; (ii) is described in this Section 6.1; or (iii) should be reasonably understood by the Receiving Party to be the confidential or proprietary information of the Disclosing Party. Company's Confidential Information includes the Software, Services, Documentation, and Company Data. Customer's Confidential Information includes Customer Data.
- b. Obligations of Confidentiality. During the term of this Agreement and after its expiration or termination, each Party shall keep the Confidential Information of the other Party in strict confidence and neither Party may use or otherwise disclose the other Party's Confidential Information to any third Party without the prior written consent of the Disclosing Party. Each Party may use and disclose the Confidential Information of the other Party to its employees or subcontractors to the limited extent necessary to permit such Party to perform its obligations under the Agreement, provided that each third Party to whom Receiving Party discloses such Confidential Information is bound by obligations of confidentiality with respect to such Confidential Information that are consistent with this Section. In the case of subcontractors all such obligations of confidentiality shall be in a written agreement prior to the disclosure. Each Party shall be responsible for the actions and omissions of employees and subcontractors to whom they disclose the other Party's Confidential Information to the same extent as if such actions or omissions were their own. Upon the termination of this Agreement, each Party shall return to the other Party or destroy all Confidential Information of such other Party in its possession, custody or control.
- c. Exceptions. Confidential Information shall not include any information that: (i) is or becomes publicly available through no wrongful act of the Receiving Party; (ii) the Receiving Party can demonstrate was in the Receiving Party's possession free of any obligation of confidentiality at the time of the Disclosing Party's communication thereof to the Receiving Party; (iii) becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality; or (iv) is developed by the Receiving Party completely independent from the Confidential Information of the Disclosing Party. Notwithstanding any provision in this Section to the contrary, in the event that Receiving Party becomes obligated by mandatory applicable law, regulatory rule or judicial or administrative order to disclose Disclosing Party's Confidential Information, or any portion thereof, Receiving Party shall notify Disclosing Party thereof, so that the Disclosing Party may seek an appropriate protective order or other, similar remedy or relief with respect to resisting or narrowing the scope of such disclosure. In the absence of such a protective order or other remedy or relief, Receiving Party may disclose such Confidential Information, provided that Receiving Party furnishes only such portion of the Confidential Information as it is legally required to disclose.
- d.



Equitable Relief. Both Parties agree that any breach of the confidentiality obligations under this Section may result in irreparable damage for which there is no adequate remedy at law. Therefore, it is agreed that the non-breaching Party shall be entitled to equitable relief, without the necessity of posting a bond or other undertaking, including permanent injunctive relief enjoining such breach, by a court of competent jurisdiction, in addition to whatever remedies it may have at law.

- e. HIPAA Applicability. If You are a healthcare provider covered by the Health Insurance Portability and Accountability Act ("HIPAA") who also receives Federal Reimbursement, We can execute a Business Associate Agreement ("BAA") with You which will govern the use and disclosure of Your Patient's personal health information. If there is a conflict between the terms of the BAA and these Terms and Conditions, the terms of the BAA will govern. You may reach out to info@dynabliss.com to request a copy of our form BAA.

7. **Warranty and Limitations**

- a. Company's Warranty. Company represents and warrants to Customer that (i) it has the power and authority to enter into and perform this Agreement; (ii) the execution, delivery and performance of this Agreement will not violate any applicable law, rule or regulation by which Company is bound; and (iii) during the Service Term of the Order Form, the Software will perform substantially in compliance with the Documentation.
- b. Customer's Warranty. Customer represents and warrants to Company that: (i) Customer has the power and authority to enter into and perform this Agreement; (ii) the execution, delivery and performance of this Agreement and Customer's provision of the Customer Data will not violate any applicable contract, law, rule or regulation to which Customer is bound; and (iii) the Patient Authorized Users are patients of Customer.
- c. Practice of Medicine. CUSTOMER HEREBY AGREES AND ACKNOWLEDGES THAT COMPANY IS IN NO WAY ACTING AS A MEDICAL PROVIDER WITH RESPECT TO ANY PATIENT OR ANY OF YOUR RELATED PARTIES AND PROVIDERS AND IS NOT PROVIDING MEDICAL ADVICE OR HEALTHCARE SERVICES. THE INFORMATION, PROCESSES, PRODUCTS, WORKFLOW AND OTHER ITEMS REFERENCED BY COMPANY OR ITS SOFTWARE ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, PROCEDURE, INFORMATION, PRODUCT OR MEDICATION. CUSTOMER IS RESPONSIBLE FOR ITS EMPLOYEES AND HEALTHCARE PROFESSIONALS WITH RESPECT TO WORKING WITHIN THEIR PERMITTED SCOPE OF PRACTICE, AND COMPANY DISCLAIMS ALL LIABILITY FOR SUCH EMPLOYEE OR HEALTHCARE PROFESSIONAL PERFORMING ANY SERVICES OR OFFERING ANY ADVICE WITHOUT A PROPER LICENSE OR OUTSIDE OF THE SCOPE OF SUCH LICENSE. COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED - AND SHALL HAVE NO LIABILITY OR RESPONSIBILITY - IN CONNECTION WITH ANY HEALTHCARE SERVICES, MEDICAL ADVICE, PRESCRIPTIONS OR MEDICATION RECOMMENDATIONS DELIVERED THROUGH THE SOFTWARE, AND THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE HEALTHCARE PROVIDERS TREATING SUCH PATIENT.
- d. Warranty Disclaimers. ALL SERVICES, INFORMATION AND DATA ARE PROVIDED "AS IS," AND EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 7, COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, NON-INFRINGEMENT OR ACCURACY.

THE ENTIRE RISK ARISING OUT OF USE OF THE COMPANY SERVICES AND SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION, DATA, PRODUCTS, PROCESSES, AND OTHER MATTERS REFERENCED BY THE COMPANY SERVICES AND SOFTWARE, REMAINS WITH THE CUSTOMER. COMPANY DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING (A) THE USE OR THE RESULTS OF THE USE OF ITS SERVICES AND SOFTWARE IN TERMS OF



CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, (B) THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF PROCESSES, IMAGES, INFORMATION, CONTENT OR OTHER DATA PROVIDED BY THE SERVICES AND SOFTWARE, AND (C) QUALITY OF ANY SERVICES OR MATERIALS PURCHASED OR OBTAINED THROUGH THE SOFTWARE. THE INFORMATION AND CONTENT PROVIDED BY OR THROUGH THE SERVICES OR SOFTWARE, IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, SKILL AND JUDGMENT OF HEALTHCARE PROFESSIONALS.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO THE SOFTWARE. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY THE INTERACTION OF THE SOFTWARE WITH ANY DEVICE OR ANY INFORMATION TECHNOLOGY INFRASTRUCTURE OF CUSTOMER.

- e. Limitation of Liability. IN NO EVENT WILL COMPANY, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS, BE LIABLE TO CUSTOMER, PATIENT, OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL COMPANY BE LIABLE IN THE AGGREGATE FOR ANY CLAIMS OR DAMAGES ARISING OUT OF THIS AGREEMENT IN ANY AMOUNT EXCEEDING THE AMOUNTS CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE MONTHS PRECEDING SUCH CLAIM OR DAMAGES.
- f. Third Party Services. The Software contains links to third-party websites and services that Company does not own or control ("Third-Party Websites") (for example, Vimeo.com for training videos and Dymo.com to access printer drivers for an approved label printer). Company disclaims all responsibility for the content and performance of Third-Party Websites and does not represent, warrant or endorse any Third-Party Websites or the accuracy, currency, content, fitness, lawfulness or quality of the information, material, goods or services available through Third-Party Websites.
- g. Third Party Services. Company provides certain features, aspects, products and services offered through the Software (including the payment portal, Stripe), in whole or in part, through third parties ("Third-Party Services" as provided by "Third-Party Service Providers"). Use of Third-Party Services may be subject to additional terms and conditions and privacy policies to which Customer must agree in order to utilize the Third Party Services. The Software makes available to Customer third-party vendor lists of products sold by acupuncturists and other medical providers. COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY OF SUCH CONTENT, INCLUDING, BUT NOT LIMITED TO, THE INGREDIENTS, DESCRIPTION OF PRODUCTS, PRICING, CONTRAINDICATIONS, DOSAGE, CORRELATION TO MATERIA MEDICA HERB, AND SAFETY OF SUCH PRODUCTS. Company also provides an herbal resource to help practitioners build and prescribe formulas. COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY OF HERBS/FORMULA INFORMATION PROVIDED WITHIN THE SOFTWARE; PRACTITIONERS ARE RESPONSIBLE TO KNOW THE INGREDIENTS AND THE SAFE DOSAGE OF EACH MEDICINAL THEY PRESCRIBE.

8. **Indemnification**

- a. Customer Indemnification. Customer shall defend, indemnify and hold Company and its directors, officers, employees, agents and successors harmless from and against any and all losses, claims, actions, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) (collectively, "Losses"), or portions thereof, arising out of or resulting directly or indirectly from (i) Customer's use of the Software, Services, or Company Data other than as permitted under this Agreement; (ii) Customer's breach of this Agreement;



(iii) violation of any applicable law, rule or regulation by Customer; and (iv) any services provided by Customer's employees or healthcare professionals.

- b. Company Indemnification. Subject to the limitations of liability set forth in Section 7(e), Company shall defend Customer and its directors, officers, employees, agents and successors against any claims, actions or proceedings (each, a "Claim") brought by a third party resulting from or arising out of an allegation that Customer's use of the Software or Services provided to Customer under this Agreement and used as authorized by Company infringes or misappropriates any Intellectual Property Rights of a third party. Company will pay any Losses finally awarded against Customer or agreed to as part of a settlement in connection with any such Claims.
- c. Indemnification Process. If any action will be brought against either Party in respect to any allegation for which indemnity may be sought from the Indemnifying Party, the Indemnitee will promptly notify the Indemnifying Party of any such claim of which it becomes aware and will: (i) provide reasonable cooperation to the Indemnifying Party at that Party's expense in connection with the defense or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defense of any such claim. The Indemnifying Party will have sole and exclusive control over the defense and settlement of any such claim. However, Indemnitee will not acquiesce to any judgment or enter into any settlement that adversely affects its rights or interests without its prior written consent, which such consent shall not be unreasonably withheld.

9. **Termination**

- a. Termination. Either Party may terminate this Agreement (i) upon written notice to the other Party, if the other Party is in breach of any material obligation under this Agreement and fails to cure such breach within thirty (30) business days after written notice thereof from the terminating Party or (ii) upon 30 days written notice to the other Party.
- b. Effect of Termination.
 - i. Unless otherwise stated below, upon expiration or termination of this Agreement for any reason, (a) the license to the Software shall terminate and the Customer and its Patients shall not use or access, directly or indirectly, the Software or any Documentation; (b) Company's obligation to perform Support Services shall cease; and (c) all fees and other amounts owed to Company will be immediately due and payable by Customer up through the effective date of termination for any Support Services or set up Services completed. Customer shall pay the pro-rated portion of the fees for any partially completed set up Services.
 - ii. If Customer has made any copies of any Software, Documentation, or any other Company property or materials furnished or made available hereunder, Customer shall either destroy or return to Company all such copies along with a certificate signed by Customer that all such copies have been either destroyed or returned, respectively, and that no copy or any part of the Software, data or materials has been retained by Customer in any form.

10. **Miscellaneous**

- a. Relationship of the Parties. Company is an independent contractor of Customer hereunder, and nothing herein shall be deemed to create a partnership, joint venture, employment, or similar relationship.
- b.



Assignment. This Agreement shall be binding upon and inure to the benefit only of the Parties hereto and their respective successors and permitted assigns. Company may subcontract its obligations hereunder to a third party or affiliate and may assign to a successor in interest. Customer may not assign this Agreement nor any of its rights, duties or obligations hereunder without the prior written consent of Company.

- c. Governing Law. The validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, United States of America, without regard to its conflicts of laws rules.
- d. Disputes/Arbitration. In case of disputes in connection with the negotiation, execution, interpretation, performance or non-performance of this Agreement, Parties agree to seek non-binding mediation, which shall be conducted remotely by a single mediator selected by the Parties. The mediator shall conduct the proceedings pursuant to the rules of the American Arbitration Association, as now or hereafter amended. In the event that any such mediation does not produce a settlement, unless the dispute is otherwise settled, the dispute shall be determined by binding and final arbitration in California, by three (3) arbitrators selected by the Parties (or by the American Arbitration Association if the Parties cannot agree) in accordance with the law of the State of California and the rules of the American Arbitration Association. If the Parties fail to agree on the mediator within thirty (30) days of the date one of them invokes this mediation provision, either Party may apply to the American Arbitration Association to make the appointment.
- e. Force Majeure. Neither Party shall be liable for any default or delay in the performance of any of its obligations under this Agreement if such default or delay is caused, directly or indirectly, by fire, flood, earthquake, the elements, or other such occurrences; labor disputes, strikes or lockouts; wars (declared or undeclared), rebellions or revolutions in any country; riots or civil disorder; accidents or unavoidable casualties; interruptions of transportation or communications facilities or delays in transit or communication; supply shortages; laws, treaties, agreements, embargoes, actions, inactions, rulings, regulations, decisions or requirements, whether valid, invalid, formal or informal, of any government, tribunal or governmental agency, board or official; litigation to which either Party may be a party relating to any rights of such Party in any patents, licenses, trademarks, service marks, or trade names; or any other cause, whether similar or dissimilar to those enumerated herein, beyond that Party's reasonable control. The Party experiencing a default or delay caused by any of the above circumstances shall notify the other Party of any such contingency within a reasonable period of time.
- f. Waiver. Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both Parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Agreement will remain in full force.
- g. Notices. All notices and other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by pre-paid, first class, certified or registered mail, return receipt requested, or by facsimile transmission addressed to the intended recipient thereof at the address appearing on the Order Form. Any such notice or communication shall be deemed to have been duly given immediately (if given or if made by confirmed facsimile), or five days after mailing. Any Party may change the address or facsimile number to which notices, demands or other communications shall be mailed or sent by giving notice to the other Party in the manner provided herein.
- h.



Headings. The headings describing the contents of sections are inserted only for convenience and shall not be construed as a part of this Agreement or as a limitation on or enlargement of the scope of any of the terms or provisions of this Agreement.

- i. Severability. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any term of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the Parties that the remaining terms shall constitute their agreement with respect to the subject matter of this Agreement, and all such remaining terms shall remain in full force and effect.
- j. No Third-Party Beneficiaries. The Parties hereto do not intend to, and do not, by executing this Agreement, confer any benefit upon any person other than the Parties hereto and their permitted successors and assigns.
- k. Publicity. Neither Party may make any public statement about this Agreement or the subject matter thereof, including without limitation a press release, without the prior written consent of the other Party. Notwithstanding the foregoing, upon the execution of this Agreement, Company may include Customer's name and logo among the list of customers on Company's website and in its marketing materials; provided, however, that Company will not, without Customer's consent, present such name in a manner that appears to constitute an endorsement.
- l. Compliance with Laws. Customer shall comply with all applicable Laws in connection with its performance under this Agreement.
- m. Survival. The following provisions will survive any termination or expiration of this Agreement: Sections 2(b) (Restrictions), 2(f) (Company Developments), 4 (Proprietary Rights), 5 (Fees and Payments), 6 (Confidentiality), 7(d) (Warranty Disclaimer), 7(e) (Limitation of Liability), 11 (Miscellaneous), and any other provision of this Agreement that must survive to fulfill its essential purpose.
- n. Entire Agreement. This Agreement including its exhibits and any amendments supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof, and this Agreement contains the sole and entire agreement between the Parties with respect to the matters covered hereby. Should the terms of the body of this Agreement conflict with the terms of any attachment or exhibit to this Agreement, the terms of the body of this Agreement will control. Any future exhibits or attachments shall be deemed incorporated into this Agreement when signed by both Parties.