

These APTTUS Terms of Use ("**Terms**" or "**Agreement**"), including any applicable Addendums, Annexes, Exhibits, etc., constitute a legal agreement between you or your employer or other entity on whose behalf you enter into this Agreement (the "**Customer**") and Apttus Corporation ("**APTTUS**").

YOU MUST READ AND AGREE TO THESE TERMS PRIOR TO DOWNLOADING AND/OR USING THE SERVICE. BY CLICKING ON THE "ACCEPT" BUTTON, SIGNING AN ASSOCIATED ORDER FORM, OR DOWNLOADING, INSTALLING AND/OR USING THE SERVICE, YOU ARE AGREEING TO BE BOUND BY THE TERMS ON BEHALF OF CUSTOMER.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER OR ANOTHER LEGAL ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY AS THE CUSTOMER.

**YOU MAY NOT ACCESS THE SERVICE IF YOU ARE AN APTTUS COMPETITOR, EXCEPT WITH THE PRIOR WRITTEN CONSENT OF APTTUS.**

If you register for a Free Trial, the Terms will also govern your use of the Service during the trial period. Other Apttus subscription modules are available, subject to separate terms and conditions.

APTTUS may amend these Terms from time to time by posting an amended version at its website and sending Customer notice thereof (an email to Customer's project sponsor shall be deemed sufficient in this case). Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless Customer first gives APTTUS written notice of rejection of the amendment. In the event of such rejection, these Terms will continue under their original provisions, and the amendment will become effective at the start of Customer's next Subscription Term following the Proposed Amendment Date. Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. These Terms may not be amended in any other way except through a written agreement by authorized representatives of each party.

## 1. Definitions.

1.1. "**Affiliate**" means any legal entity in which Customer, directly or indirectly controls more than 50% of the voting rights or shares. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

1.2. "**APTTUS Database Field**" refers to and means a designated storage area within the Service

1.3. "**Customer Data**" means all electronic data or information submitted by Customer to the Service.

1.4. "**Effective Date**" means the date that Customer signed the applicable Order Form.

1.5. "**Free Trial**" means a no-cost trial or evaluation of the Service for which Customer may register with APTTUS via Order Form or through any relevant application marketplace (such as Salesforce.com AppExchange, <https://appexchange.salesforce.com/>). Additional terms and

conditions applicable to a Free Trial may appear on the trial registration web page, which are incorporated into this Agreement by reference and are legally binding.

1.6. **“Order Form”** means the ordering documents (including those associated with online commerce) representing a purchase of the Service that are executed hereunder and that specify, among other things, the number of subscriptions ordered, the Subscription Term, applicable fees, and applicable level of Technical Support.

1.7. **“Purchased Service”** means Service that Customer purchases under an Order Form, as distinguished from that provided pursuant to a Free Trial.

1.8. **“Service”** means the online, Web-based service, including associated offline components, provided or managed by APTTUS under an Order Form pursuant to a Free Trial or a Purchased Service.

1.9. **“Service Attributes”** means Service usage data related to Customer’s account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics.

1.10. **“Subscription Term”** means the period of time between the applicable Subscription Start Date and Subscription End Date as set forth in an Order Form. The Subscription Term for Free Trials is the earlier of (a) 30 days from the date of Service installation, or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service.

1.11. **“Technical Support”** means the trouble handling and break/fix support services provided by APTTUS, as such services are further described at: <http://legal.apttus.com/legal.html#apttus-technical-support>.

1.12. **“User Guide”** means the online user guide for the Service, accessible via the APTTUS Customer Success Portal, as updated from time to time.

1.13. **“Users”** means Customer’s and its Affiliates employees, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by APTTUS at Customer’s request).

1.14. **“X-Author”** means an APTTUS offering that, if purchased by Customer, is part of the Service and enables Users to add and update CRM records from certain spreadsheet applications.

## 2. Service.

2.1. **Provision of Service.** APTTUS shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement and all Order Forms executed hereunder. During the term of this Agreement, (i) the Service shall perform in accordance with the User Guide, and (ii) the functionality of the Service will not be decreased from that available as of the Effective Date. Customer agrees that its purchase of subscriptions is not contingent upon the delivery of any future functionality or features nor is it dependent upon any oral or written public comments made by APTTUS with respect to future functionality or features.

**2.2. Additional Users.** Additional User licenses may be provisioned subject to execution of add on Order Form(s). Unless otherwise specified in the relevant Order Form, the term of the additional User subscriptions shall be coterminous with the expiration of the then current Subscription Term.

**2.3. Minimum System Requirements and Third Party Components.** Customer recognizes and agrees that in order to utilize the Service (i) certain minimum system requirements exist; and (ii) certain other third-party software or applications (e.g. CRM application) may need to be acquired and/or licensed directly by Customer or from APTTUS. APTTUS is not responsible for, nor does it warrant the performance of such third-party components.

**2.4 Service Level Agreement.** APTTUS warrants the availability of the Service in accordance with the relevant Service Level Agreement, which is found at: <http://legal.apttus.com/legal.html#apttus-service-level-agreement>.

**2.5 Professional Services.** Any professional services to be provided to Customer by APTTUS will be governed by the APTTUS Professional Services Terms of Use, which are found at: <http://legal.apttus.com/legal.html#apttus-professional-services-terms-of-use>.

**2.6 X-Author.** Customer may not use X-Author in conjunction with third-party products that are competitive with the Service without prior written consent of APTTUS. X-Author may not function in conjunction with such third-party products. If Customer purchases X-Author on a standalone basis, no license or other access to the salesforce.com or Microsoft Azure platform will be included with the X-Author license purchased from APTTUS. Customer must in that case have an appropriate API-enabled license to the objects that are intended to be accessed with X-Author. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IF CUSTOMER CHOOSES TO USE X-AUTHOR APPLICATION TEMPLATES CREATED BY A THIRD PARTY, IN NO EVENT SHALL APTTUS HAVE ANY LIABILITY TO CUSTOMER OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**2.7 Free Trial.** Free Trials may only be installed in sandbox environments and used solely for evaluation purposes and not for the maintenance or processing of any data on which Customer would typically rely in a production capable environment. Customer Data, and any customizations made to the Service by or for Customer during a Free Trial will be lost at the end of the Free Trial. Customer engages in a Free Trial at its discretion. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, (I) APTTUS DISCLAIMS ANY LIABILITY FOR ISSUES THAT MAY ARISE DURING OR AS A RESULT OF CUSTOMER'S USE OF THE SERVICE DURING A FREE TRIAL, and (ii) either party may terminate a Free Trial at any time.

### **3. Use of the Service.**

**3.1. APTTUS Responsibilities.** APTTUS shall use commercially reasonable efforts to make the Service generally available 24 hours a day, 7 days a week, as further set forth and described in the

applicable Service Level Agreement. As part of the Service, APTTUS agrees to provide Customer with Technical Support consistent with such support level purchased by Customer.

**3.2. Customer Responsibilities.** Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify APTTUS promptly of any such unauthorized use; and (iii) comply with all applicable local, state, federal, and foreign laws in using the Service.

**3.3. Use Guidelines.** Subject to Customer's compliance with all the terms and conditions of the Agreement, and subject to the termination provisions of the Agreement, APTTUS grants to Customer a non-exclusive, non-transferable right during the Subscription Term to use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) knowingly send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) knowingly send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights; (iv) knowingly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (vi) attempt to gain unauthorized access to the Service or its related systems or networks; or (vii) use the Service in excess of the licensed quantity as set forth in the applicable Order Form. User subscriptions are for named Users and cannot be shared or used by more than one User but may be reassigned from time to time to new Users replacing former Users who have terminated an employment or some other prior relationship with Customer, or no longer require ongoing use of the Service. At all times Customer remains responsible for Affiliates' use of the Service and related User Guide. A breach of the Agreement by a Customer Affiliate shall be considered a breach by Customer hereunder.

**3.4. Third-Party Providers.** Certain third-party providers, some of which may be listed on pages within APTTUS' website, offer products and services related to the Service, including implementation, customization and other consulting services related to customers' use of the Service and applications (both offline and online) that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality within the user interface of the Service through use of the Service's application programming interface. APTTUS does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by APTTUS as "certified," "validated" or otherwise. Any exchange of data or other interaction between Customer and a third-party provider, and any purchase by Customer of any product or service offered by such third-party provider, is solely between Customer and such third-party provider.

**4. Security and Data Privacy.**

**4.1. Protection of Customer Data.** APTTUS has adopted and will maintain industry-standard administrative, physical, and technical safeguards designed to protect the security, privacy and integrity of Customer Data. APTTUS shall not be responsible for loss of data transmitted on networks not owned or operated by APTTUS, including the Internet.

**4.2. Use of Service Attributes and Anonymized Data.** APTTUS may process, use and share certain Service Attributes for internal business purposes, for example, to support proper functioning of the Service, to provide Customer with support services and to investigate fraud, abuse or violations of this Agreement. APTTUS may also process, share, reproduce, or otherwise use Service Attributes and Customer Data in the form of Anonymized Data in any way, in APTTUS' sole discretion. **"Anonymized Data"** means Service Attributes and/or Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users or customers.

## **5. Fees & Payment.**

**5.1. User Fees.** Customer shall pay all fees specified in all executed Order Forms hereunder. Except as otherwise provided, all fees are quoted in United States dollars. Fees are based on the number of User subscriptions purchased in the relevant Order Form, not the extent of actual usage. Except as otherwise provided, fees are non-refundable, and the number of subscriptions purchased cannot be decreased during the relevant Subscription Term stated on the Order Form.

**5.2. Invoicing & Payment.** License fees for the term of the Service will be invoiced annually in advance and otherwise in accordance with the terms set forth in the relevant Order Form. Unless otherwise stated in the Order Form, charges are due net 30 days from the invoice date. Unless otherwise stated in the Order Form, all payments made under this Agreement shall be in United States dollars. Invoices submitted via email should be sent in individual attachments (one invoice per attachment) in either PDF or TIFF formats to an email address provided by Customer.

**5.3. Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at APTTUS' discretion, late charges at the rate of 1% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**5.4. Suspension of Service.** If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, APTTUS reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

**5.5 Taxes.** Unless otherwise stated, APTTUS' fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on APTTUS' income. If APTTUS has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides APTTUS with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. Proprietary Rights.

**6.1. Reservation of Rights.** Customer acknowledges (a) that in providing the Service, APTTUS utilizes (i) the apttus.com name, the apttus.com logo, the apttus.com domain name, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**APTTUS Technology**") and (b) that the APTTUS Technology is covered by intellectual property rights owned or licensed by APTTUS (collectively, "**APTTUS IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in or to the APTTUS Technology or APTTUS IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

**6.2. License Grant.** APTTUS grants Customer and its Users a worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the Service in accordance with the terms of this Agreement. APTTUS reserves the right, with reasonable notice to Customer, to audit Customer's use of the Service no more than once each calendar year to ensure compliance with the terms of the Agreement.

**6.3. Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Service or APTTUS Technology; (ii) allow non-Users to access information contained inside an APTTUS Database Field without sufficient APTTUS licenses; (iii) access the Service via any sort of 'bot' or 'script'; or (iv) disassemble, reverse engineer, or decompile the Service or APTTUS Technology, or access it in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service.

**6.4. Customer Data.** As between APTTUS and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement.

## 7. Confidentiality.

**7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, the APTTUS Technology, business and marketing plans, technology and technical information, screen and product designs interoperability of the Service with third-party products and software, and business processes. Confidential Information (except for Customer Data) shall not include any information



that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**7.2. Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

**7.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. The Receiving Party shall, except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein for the protection of Confidential Information. The Receiving Party shall be responsible for any use or disclosure of Confidential Information by any of its, and its Affiliates', employees, contractors and/or agents.

**7.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**7.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **8. Warranties & Disclaimers.**

**8.1. Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. APTTUS represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) it owns or otherwise has sufficient rights to the Service and the APTTUS Technology to grant the rights and licenses granted herein; and (iii) the Service and APTTUS Technology do not infringe any intellectual property rights of any third party.

**8.2. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, APTTUS MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. APTTUS HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9. Mutual Indemnification.

9.1. **Indemnification by APTTUS.** Subject to this Agreement, APTTUS shall (a) defend, or at its option settle, any claim, demand, action or legal proceeding ("Claim") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party, and (b) pay (i) any final judgment or award directly resulting from such Claim to the extent such judgment or award is based upon such alleged infringement or (ii) those damages agreed to by APTTUS in a monetary settlement of such Claim; provided, that Customer (a) promptly gives written notice of the Claim to APTTUS; (b) gives APTTUS sole control of the defense and settlement of the Claim (provided that APTTUS may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to APTTUS, at APTTUS' cost, all reasonable assistance. Customer will have the right to participate in the defense, including retention of and/or advice of separate counsel, at its own expense.

9.2. **Indemnification by Customer.** Subject to this Agreement, Customer shall (a) defend, or at its option settle, any Claim made or brought against APTTUS by a third party alleging that the Customer Data or Customer's unlawful use of the Service (as opposed to the Service itself) infringes the intellectual property rights of, or has otherwise harmed, a third party and (b) pay (i) any final judgment or award directly resulting from such Claim to the extent such judgment or award is based upon such alleged infringement or (ii) those damages agreed to by Customer in a monetary settlement of such Claim; provided, that APTTUS (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases APTTUS of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance. APTTUS will have the right to participate in the defense, including retention of and/or advice of separate counsel, at its own expense.

## 10. Limitation of Liability.

10.1. **Limitation of Liability.** EXCEPT FOR A VIOLATION OF SECTION 5 (FEES AND PAYMENTS), SECTION 6 (PROPRIETARY RIGHTS), SECTION 7 (CONFIDENTIALITY), OR LIABILITY ARISING FROM SECTION 9 (MUTUAL INDEMNIFICATION), NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

10.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR



CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## 11. Term & Termination.

11.1. **Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

11.2. **Term of User Subscriptions.** User subscriptions commence on the start date specified in the relevant Order Form and continue for the Subscription Term specified therein. At the end of the initial Subscription Term, the Service(s) described in the active Order Form(s) will auto-renew for a period of 3 years, unless (i) Customer notifies APTTUS at least forty-five (45) days in advance of their intent not to renew; or (ii) renewal Order Form(s) have already been negotiated. The Subscription fees for the auto-renew term will increase by 5% over prior Subscription Term.

11.3. **Uninstall and Delete.** Upon termination or expiration of this Agreement, Customer will uninstall and delete, from all Customer desktop, mobile, server, web and other environments, any APTTUS provided software related to the Service. This includes managed packages or other software that has been installed in Customer environments.

11.4. **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, APTTUS shall refund Customer any prepaid fees for the remainder of the Subscription Term after the date of termination.

11.5. **Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to APTTUS prior to the effective date of termination.

11.6. **Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 5, 6 (excluding Section 6.2), 7, 8, 9, 10, 11 and 12.

## 12. General Provisions.

12.1. **Relationship of the Parties.** This Agreement does not create a franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.2. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

12.3. **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email.

12.4. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein,

the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.6. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.7. **Attorneys' Fees.** In any legal action or proceeding arising from, related to, or brought to enforce, construe, interpret, rescind or cancel this Agreement or any of its provisions (including any Order Forms executed hereunder), the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in connection with such action or proceeding, in addition to any other relief to which it may be entitled.

12.8. **Governing Law.** This Agreement shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules.

12.9. **Venue.** The state and federal courts located in San Francisco County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

12.10. **Export Control Laws.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

12.11. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms executed hereunder, constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum hereto, or Order Form executed hereunder, the terms of this Agreement shall prevail to the extent of any inconsistency, except with regard to any provision of any exhibit, addendum or Order Form that specifically identifies a conflicting provision of this

Agreement and states that the conflicting provision of this Agreement does not prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.