

CARTONET CLOUD SERVICES TERMS AND CONDITIONS

These CARTONET Cloud Services Terms and Conditions (these “**Terms and Conditions**”) are incorporated by reference into the CARTONET Subscription Agreement between Biosense Webster, Inc. (the “**Company**”) and the Customer (the “**Agreement**”) and together with the Agreement and the other documents referenced in the Agreement other than the Siemens Ecosystem T&Cs, govern the Company’s provision and the Customer’s use of the Services.

1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in these Terms and Conditions or in the Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires. Any capitalized terms not defined herein shall have the meaning ascribed to such term under the Agreement.
- 1.2 “**Affiliate**” means any entity that, directly or indirectly, whether through one or more intermediaries, controls, is controlled by, or is under common control with such party, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of an entity, whether through ownership of voting securities or by agreement or otherwise.
- 1.3 “**Applicable Law**” means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations or having jurisdiction over all or any part of the products manufactured and/or delivered under these Terms and Conditions and/or the Services to be performed hereunder.
- 1.4 “**CARTONET Network Receiver**” means the physical device installed within the Customer’s facility.
- 1.5 “**Data**” means all data, information, content and other results emanating from the use of, concerning or contained in or otherwise transmitted by or through, the use of the Services, including case data generated prior to, during and after the performance of the procedure in connection with such case. The CARTONET Software will also collect certain additional procedure data, including images and system connection and configuration data.
- 1.6 “**Confidential Information**” means each party’s and its Affiliates’ business and technical information in any form, including without limitation, Data, business and marketing plans, strategies, sales, product and financial data and projections, formulas, processes, techniques, trade secrets, know-how, inventions, processes (business, technical or other), designs, algorithms, source code, customer lists and these Terms and Conditions, which are the Confidential Information of the Company.
- 1.7 “**Destructive Elements**” means computer code, programs or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Services or any other associated software, firmware, hardware, computer system or network (including “malware,” “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious or hidden procedures, routines or mechanisms that would cause such Services to cease

functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

- 1.8 “**Documentation**” means the manuals, specifications and other written and electronic materials describing the functionality, features and operating characteristics, maintenance, operation and use of the Services as provided by or through the Company to the Customer from time to time, including as may be indicated by the Company in a link to specific entries posted by the Company on the Company’s website.
- 1.9 “**Error**” means any failure of the Services to meet the Functional Specifications.
- 1.10 “**Functional Specifications**” means the features, functionality, configuration and other specifications and requirements for the Services that are set forth in the Documentation.
- 1.11 “**Intellectual Property Rights**” means all intellectual property rights throughout the world, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering intellectual property recognized in any jurisdiction.
- 1.12 “**Personal Information**” means information that identifies, can be used to identify, or relates to an identifiable individual. An identifiable individual is one who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that individual. Personal Information includes “**Protected Health Information**” as such term is defined under 45 C.F.R. 160.103
- 1.13 “**Updates**” means any Error correction, bug fix, patch, enhancement, update, upgrade, new version, release, revision or other modification to the Services provided or made available by the Company, including any update designed, intended or necessary to make the Services or Customer’s use thereof comply with Applicable Law.

2. **SERVICES.**

- 2.1 **Services.** The Company agrees to provide the Services as set forth in the Agreement. The Customer agrees to comply with any applicable requirements set forth in the Documentation in order to receive and use the Services.
- 2.2 **Use Restrictions.** The license and access rights granted to the Customer under the Agreement do not include any right to, and the Customer will not, and will not permit others to:
- (a) remove or modify any program markings or any notice of the Company’s or its licensors’ proprietary rights in the Documentation;
 - (b) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the CARTONET Software or the Services (the foregoing prohibition includes review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products

or services competitive to the Company or use the Services to create or develop any service, interface or software that competes with the Services;

- (c) perform or disclose any benchmark or performance tests of the Services without the Company's prior written consent;
- (d) perform or disclose any of the following security testing of the Services or associated infrastructure without the Company's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing;
- (e) disable or circumvent any security features of the Services;
- (f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, or any Data or materials made available to you through the Services, to any third party, other than as expressly permitted under these Terms and Conditions;
- (g) permit unauthorized third parties to use or access the Services; or
- (h) use the Services in any manner that violates any Applicable Law.

2.3 **Ownership.** As between the parties, the Company and its Affiliates shall retain any and all right, title, and interest, in and to the Services, the CARTONET Software, and the Documentation and, including any and all improvements, updates and modifications thereto that may be made by or on behalf of the Company and any all Intellectual Property Rights related thereto. Except as specifically set forth in these Terms and Conditions, no express or implied license or right of any kind is granted to the Customer in connection with the Services.

2.4 **Data Rights.** While the Customer's patients own any Data specific to them, as between the Company and the Customer, the Customer owns the specific Data generated from its use of the Services ("Customer Data"). The Customer hereby grants to the Company and the Company's Affiliates a worldwide, royalty-free, fully-paid, non-exclusive, sublicensable right and license to use, store, host, reproduce, process and maintain the Customer Data during the term of the Agreement solely for the Company to provide the Services to the Customer in accordance with terms of the Agreement and these Terms and Conditions and for the Company to generate Services Analyses Data in accordance with Section 9, such right and license subject to Applicable Law and Section 2.5 below. In accordance with the terms of the Agreement, including the Business Associate Agreement, the Company shall have the right to de-identify any Data, including Personal Information, and use and disclose such information for any purpose. In addition to the Company's other obligations pursuant to these Terms and Conditions with respect to the Data, including those obligations set forth in Section 5 (Confidential Information), the Company agrees to require that all of its vendors and subcontractors with access to the Data, including Customer Data, or its processing adhere to the applicable terms of these Terms and Conditions.

2.5 **Security and Data Protection.** In providing the Services, the Company agrees to comply with the CARTONET privacy policy www.biosensewebster.com/products/cartonet/privacypolicy.aspx and the CARTONET data security terms incorporated herein by reference. A copy of the CARTONET data security terms shall be provided to the Customer along with the Agreement. The Customer also must comply with the data security requirements set forth in the CARTONET data security terms and the Documentation. For clarity, the Company is not responsible for the data security of the Siemens Ecosystem and any claim that the Customer may have regarding the Siemens

Ecosystem is between the Customer and Siemens in accordance with the Siemens Ecosystem T&Cs.

- (a) Incident Management. If the Company reasonably determines that the Services, or any component thereof has been compromised by unauthorized access or unauthorized modification of Data:
 - (i) the Services will be suspended;
 - (ii) the Company will notify the Customer; and
 - (iii) the Company will adhere to required regulatory and legal notification requirements, as necessary.
- (b) Patches. From time to time, the Company may notify the Customer of the availability of security or other software patches that the Customer will need to promptly implement. The Customer agrees to implement any such patches upon written notice from the Company.

3. REPRESENTATIONS AND WARRANTIES.

3.1 **Company Representations and Warranties.** The Company represents and warrants to the Customer that:

- (a) it has the full right, power and authority to enter into and perform the obligations under the Agreement without the consent of any third party;
- (b) it has the right to grant the license and other rights relating to the Services provided under the Agreement; and
- (c) the Services will comply with all Applicable Laws.

3.2 **Service Performance Warranty.** So long as the Customer has complied with all applicable technical specifications for receipt and use of the Services as set forth in the Documentation, the Company represents and warrants that the Services will perform in all material respects in accordance with the Functional Specifications. For any breach of this services warranty, the Customer's sole and exclusive remedy and the Company's sole and entire liability shall be the correction of the deficient Services that caused the breach of this warranty, or, if the Company cannot substantially correct the deficiency in a commercially reasonable manner, the Customer may cease using the Services as set forth in the Agreement.

3.3 **Customer Representations and Warranties.** The Customer represents and warrants that (a) it has the full right, power and authority to enter into and perform its obligations under the Agreement; (b) all individuals using the Services are duly authorized to do so; and (c) all of its uses of the Service will comply with all Applicable Laws.

3.4 **Disclaimer.** THE COMPANY DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT THE COMPANY WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH THE DATA OR CUSTOMER'S OTHER APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY THE COMPANY, AND (C) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS OR ANY REQUIREMENTS, SPECIFICATIONS OR

EXPECTATIONS OF CUSTOMER'S PATIENTS. THE CUSTOMER ACKNOWLEDGES THAT THE COMPANY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, THE CUSTOMER'S OWN DATA SYSTEMS AND IT NETWORKS, THE SIEMENS ECOSYSTEM, THE DATA HOSTING AND STORAGE FACILITIES OF MICROSOFT AZURE OR ANY HOSTING SERVICES PROVIDE, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THE COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THE COMPANY IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM THE DATA. THE COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD-PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

3.5 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY EACH PARTY IN THE AGREEMENT, NEITHER PARTY MAKES AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SERVICES OR THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY AND TITLE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. YOU SHALL NOT MAKE TO ANY THIRD PARTY ANY WARRANTY OR REPRESENTATION IN THE NAME OF OR ON BEHALF OF THE COMPANY OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY THE COMPANY UNDER THESE TERMS AND CONDITIONS.

4. INDEMNIFICATION.

4.1 **Indemnification by the Company.** The Company shall defend the Customer and its agents, successors and permitted assigns (each, in such capacity, the "Customer Indemnified Parties") against any and all third party claims, demands, suits and proceedings (collectively "Claims") and indemnify and hold the Customer Indemnified Parties harmless from and against any and all liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees (collectively, "Losses") in connection with or arising out of the following: (a) the Services as used by the Customer in accordance with the Documentation infringes or misappropriates the Intellectual Property Rights of a third party; or (b) the Services as used by the Customer in accordance with the Documentation results in bodily injury.

4.2 Notwithstanding anything to the contrary herein, the Company will not indemnify the Customer for any of the following:

- (a) if the Customer (i) alters the Services or uses the Services outside the scope of Agreement, (ii) uses a version of any installed CARTONET Software which has been superseded, (iii) if a Claim could have been avoided by using an unaltered current version of the CARTONET Software, or (iv) the Customer continues to use the Services or any associated software after the expiration or termination of the Subscription Agreement;
- (b) any portion of a Claim that is based upon the combination of the Services with any products or services not provided by the Company; and

- (c) to the extent that a Claim is based on third party content or any material from a third party portal or other external source that is accessible to the Customer within or from the Services.
- 4.3 It is a condition to the Company's obligations under Section 4.1 that the Customer notify the Company promptly of that claim, permit the Company to control the litigation and settlement of that claim, and cooperate with the Company in all matters related thereto, including by making its documents, employees and agents available as reasonably necessary.
- 4.4 The Company will not be required to indemnify the Customer with respect to: any claim arising out of negligence or willful misconduct by the Customer.
- 4.5 The Company may not settle any claim without the consent of the Customer unless there is no finding or admission that the Customer has violated any law or the rights of any person or entity and the sole relief provided is monetary damages that the Company pays in full.

5. CONFIDENTIAL INFORMATION.

- 5.1 **Disclosure.** Each party acknowledges that in connection with these Terms and Conditions it may from time to time receive Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party"). The parties agree that (i) the Receiving Party shall not disclose to others nor authorize any of its employees, agents, consultants or representatives to disclose to others any of the Disclosing Party's Confidential Information, except as expressly permitted under these Terms and Conditions, (ii) the Receiving Party shall use the Disclosing Party's Confidential Information solely for the purpose of carrying out its responsibilities and obligations or exercising its rights under these Terms and Conditions (the "Purpose") and (iii) the Receiving Party shall use the same degree of care to protect the confidential nature of the Disclosing Party's Confidential Information that the Receiving Party takes to protect its own Confidential Information of a similar nature and value, but in no event less than reasonable care, including industry standard controls. The Receiving Party agrees that its own use and/or distribution of the Disclosing Party's Confidential Information will be limited to the Receiving Party's own employees on a "need to know" basis; provided, however, that the Receiving Party may disclose Confidential Information learned pursuant to these Terms and Conditions to its employees, including the employees of their respective Affiliates, and to consultants or other persons having a "need to know" in support of the Purpose, and who have been advised of the obligations of confidentiality and agreed to be bound by them or, alternatively, are under pre-existing obligations of confidentiality substantially as protective as those set forth in these Terms and Conditions. The Receiving Party further acknowledges that the Disclosing Party's Confidential Information is and shall remain the sole property of the Disclosing Party (including any Intellectual Property Rights therein). The Receiving Party will not, without first obtaining the written consent of the Disclosing Party, or as otherwise permitted hereunder, disclose to any person, firm or enterprise, or use for its own benefit, any of the Disclosing Party's Confidential Information except as permitted for the Purpose.
- 5.2 **Limitations.** Notwithstanding the foregoing, the Receiving Party's obligation of confidentiality hereunder shall not extend to Confidential Information that the Receiving Party can document (i) is legally in the Receiving Party's possession or already known by it free of any confidentiality obligation prior to the time it is received from the Disclosing Party, (ii) is or subsequently becomes legally and publicly available without restriction without breach of these Terms and Conditions, (iii) is rightfully received by the Receiving Party from a third party without restriction and not in violation of any duty of non-disclosure on the part of such third party or (iv) the Receiving Party independently developed, or had developed for it, without use or reference to the Disclosing Party's Confidential Information. The Receiving Party shall not be deemed in breach of this Section if the

Receiving Party must disclose the Disclosing Party's Confidential Information pursuant to a validly issued order of a court, administrative agency or other governmental body with jurisdiction over the Parties hereto, or as required by law or regulation, or in response to an audit, inquiry, request or other investigation by a governmental agency, provided that to the extent that it may legally do so, the Receiving Party (x) first provides the Disclosing Party with prompt written notice of such disclosure and takes reasonable steps to allow the Disclosing Party, at its sole option and expense, to object to such disclosure, seek a protective order with respect to the confidentiality of the information to be disclosed or take such other action as it deems appropriate to protect its Confidential Information and (y) discloses only reasonably related portions of the Disclosing Party's Confidential Information.

- 5.3 **Remedy.** Any use or disclosure of the Disclosing Party's Confidential Information in violation of these Terms and Conditions may cause immediate and irreparable injury, loss and/or damage to the Disclosing Party for which an adequate remedy at law may not exist. Therefore, in the event of an actual or threatened violation, through any means whatsoever, the Disclosing Party may seek to obtain from a court of competent jurisdiction specific performance and/or temporary or permanent injunctive relief without having to post a bond.
- 5.4 **Termination of Agreement; Return or Destruction of Confidential Information.** In the event of any termination/expiration of the Subscription Agreement or at any time upon written request of the Disclosing Party (which request shall not apply to the Services, any portion thereof or any other Confidential Information in which the Receiving Party has continuing rights that it may exercise) the Receiving Party shall destroy the other Party's Confidential Information and all full and partial copies thereof in its possession or the possession of any third party who received such Confidential Information from the Receiving Party. Nothing in this Section shall require the destruction or alteration of computer back-up tapes or similar storage made in the ordinary course of the Receiving Party's business that contain Confidential Information, provided that such Confidential Information contained therein may not be disclosed or used by the Receiving Party for any purpose.
6. **PRIORITY. IN THE EVENT OF A CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND THE AGREEMENT TO WHICH THESE TERMS AND CONDITIONS ARE ATTACHED, THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE UNLESS EXPRESSLY SET FORTH TO THE CONTRARY IN THE BODY OF THE AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN ANY TERMS OR CONDITIONS CONTAINED IN THESE TERMS AND CONDITIONS AND ANY OTHER AGREEMENT BETWEEN THE COMPANY AND THE CUSTOMER REGARDING THE SUBJECT MATTER OF THE AGREEMENT, THESE TERMS AND CONDITIONS SHALL GOVERN.**
7. **ANTI-CORRUPTION. NO PARTY SHALL PERFORM ANY ACTIONS THAT ARE PROHIBITED BY LOCAL AND OTHER ANTI-CORRUPTION LAWS ("ANTI-CORRUPTION LAWS") THAT MAY BE APPLICABLE TO ANY PARTY TO THESE TERMS AND CONDITIONS. WITHOUT LIMITING THE FOREGOING, NEITHER PARTY SHALL MAKE ANY PAYMENTS, OR OFFER OR TRANSFER ANYTHING OF VALUE, TO ANY GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE, TO ANY POLITICAL PARTY OFFICIAL OR CANDIDATE FOR POLITICAL OFFICE OR**

TO ANY OTHER THIRD PARTY RELATED TO THE TRANSACTION IN A MANNER THAT WOULD VIOLATE ANTI-CORRUPTION LAWS.

8. SERVICES TOOLS AND ANCILLARY PROGRAMS.

The Company may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve the service requests related to the Services. The Tools will collect the Data necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools may also be used to assist in managing the Company’s product and service portfolio, to help the Company address deficiencies in its product and service offerings, and for license and Services management.

9. SERVICE ANALYSES

In addition to any other rights granted to use the Data, the Company may (i) compile statistical data and other information related to the performance, operation and use of the Services by its customer, including the Customer, and (ii) use the Data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as “Service Analyses Data”). The Company may make any portions of the Service Analyses Data publicly available; however, Service Analyses Data will not incorporate any of the Customer’s Confidential Information in a form that could serve to identify the Customer, a patient or any other individual, and Service Analyses Data will not constitute Personal Information. As between the parties, the Company owns any and all data, results and information included in the Service Analyses Data and any and all Intellectual Property Rights therein.

10. EXPORT

Export to the Customer of the Services is subject to all applicable country export and re-export laws and regulations. Each party shall provide the other with all necessary assistance for any application for such authorizations, licenses and other approvals, or other documentation related to the export or re-export of the Services. The Customer shall not export or re-export, either directly or indirectly, the CARTONET Software when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval.

11. MISCELLANEOUS.

11.1 **Relationship of the Parties.** The parties specifically acknowledge and agree that they are independent contractors to one another and that nothing in these Terms and Conditions or the Agreement shall in any way be construed to constitute either party as an agent, partner, joint venturer, employee, servant, or legal representative of the other for any purpose whatsoever (including, for the avoidance of doubt, for any tax reporting or other purposes). Neither party has the right to negotiate on behalf of or bind the other in any way or to incur any liability on behalf of the other.

11.2 **Successors and Assigns.** The Agreement, and the rights and obligations thereunder, may not be assigned or transferred by the Customer without the prior written consent of the Company. There is no restriction under the Agreement or these Terms and Conditions for the assignment or transfer of the Agreement or its rights or obligations hereunder by the Company. The Agreement and these Terms and Conditions shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

- 11.3 **Notices and Other Communications.** All notices required or permitted under this Agreement must be in writing and reference this Agreement and will be deemed given: (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as set forth in the Agreement or to such other address or facsimile number as a party may have specified to the other party in writing delivered in accordance with this Section 11.3.
- 11.4 **Force Majeure.** The Company shall not be held liable for failure of or delay in performing its obligations under this Agreement if such failure or delay is the result of an act of God, such as earthquake, hurricane, tornado, flooding, or other natural disaster, war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, failure of electrical service, delay in delivery by the Company's suppliers, or any cause or causes beyond the Company's reasonable control.
- 11.5 **Severability.** If any provision in the Agreement or these Terms and Conditions is found or held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of the Agreement, which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by either party. In such event, the parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the parties' intent in entering into the Agreement.
- 11.6 **No Third-Party Beneficiaries.** The terms and provisions of the Agreement are intended solely for the benefit of each party and their respective successors and permitted assigns, and the parties do not intend to confer third party beneficiary rights upon any other entity or person.
- 11.7 **Waiver.** Failure, neglect or delay by either party to enforce at any time any of the provisions hereof or its rights or remedies shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way affect the validity of the whole or any part of the Agreement nor prejudice such party's rights to take subsequent action. The rights and remedies provided in the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 11.8 **Headings and Construction.** The headings to the clauses, sub-clause and parts of the Agreement, including these Terms and Conditions, are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of the Agreement. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms and Conditions or of the Agreement. As used in these Terms and Conditions and the Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation."
- 11.9 **Amendment.** The Agreement may not be altered except by a written instrument signed by authorized legal representatives of both parties; provided, however, that as stated in the Agreement, the Company may unilaterally amend in its sole discretion these Terms and Conditions and any other document linked from the Agreement in it.

- 11.10 **Counterparts.** The Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. The parties agree that .pdf signature copies of the Agreement will be legally binding.
- 11.11 **Entire Agreement.** The Agreement, together with these Terms and Conditions and any other document expressly incorporated by reference in the Agreement, constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and supersedes any prior communications, representations, understandings, and agreements, either oral or written, between the parties with respect to such subject matter.