

## Terms and Conditions of Sale

These terms and conditions of sale ("terms and conditions" or "agreement") are agreed between QAMETA SOFTWARE INC., or its affiliate, whichever is the reseller ("reseller") and the entity ("customer") to which seller is making a sale ("sale") of one or more "sales offerings" (meaning products, product support and services) under a "transaction document" (meaning a purchase order or statement of work) and form an agreement, exclusively governing such sale effective on the earlier of the date when such transaction document is "executed" (meaning, with respect to a purchase order, the date on which such purchase order is accepted by seller, and with respect to a statement of work, the date that is identified as the effective date, or in the absence of such identified effective date, when the statement of work is countersigned) and the date when seller initiates performance hereunder at customer's request ("agreement effective date"). These terms and conditions may be updated from time to time by seller without prior notice; provided that the version of these terms and conditions posted on this website at the time the transaction document is executed shall be the agreement that governs such transaction document. Notwithstanding the foregoing, if the parties have entered into a separate, effective agreement applicable to such transaction document ("separate agreement"), then these terms and conditions shall not apply to such transaction document and shall not govern such sale, and instead such separate agreement shall govern such sale.

In the event of a conflict between these terms and conditions and a separate agreement, the separate agreement shall prevail. In the event of a conflict between the transaction document and these terms and conditions, these terms and conditions shall prevail, and any additional or different terms or conditions in any form associated with the transaction document or otherwise provided by customer, other than the "transaction specifics" (meaning the numerical and other identifying information necessary to the sale, including without limitation price, quantity, product names and/or codes, and delivery and/or invoice addresses), are hereby deemed to be material alterations of these terms and conditions, are hereby rejected, and are null and void; provided that conflicting terms and conditions in a statement of work that expressly state that they supersede certain specified provisions of these terms and conditions shall prevail.

As used herein, "party" means seller or customer individually, and "parties" means seller and customer collectively.

### PRODUCT AND PRODUCT SUPPORT SALES.

**Product and Product Support Purchasing.** Subject to credit approval, Customer shall be entitled to purchase hereunder for its own internal use and not for resale: (a) hardware, software, and other items that are commercially available in Seller's catalog (each a "Product"); and (b) warranties, maintenance, and other services that are resold by Seller and that are performed by a third party under the terms of a separate contract exclusively between Customer and such third party ("Product Support"). With respect to Product Support, Customer acknowledges and agrees that such third party is the contracting party, that such third party is exclusively responsible for performing the Product Support, and that Customer hereby releases and shall have no claim against Seller, Seller's Affiliates or Seller's Personnel for any loss, claims or damages arising from, or related to, such Product Support.

**Product and Product Support Quotes.** Seller may from time to time provide quotes to Customer, orally or in writing, specifying Transaction Specifics related to identified Products or Product Support ("Quote") that may be the subject of a Sale hereunder. Any Quote is presented for reference purposes only and shall not be deemed to be an offer.

**Product and Product Support Pricing.** Any pricing is subject to change, except pricing that appears in a "Purchase Order" or "PO" (meaning an order for Sales Offerings submitted by Customer to Seller either in hard copy or electronic form, including via Seller's website, in accordance with these Terms and

Conditions) that is accepted by Seller in writing ("Confirmed Pricing"). Other than with respect to Confirmed Pricing, Seller reserves the right to make adjustments to pricing, Products and Product Support for reasons including, but not limited to, changes in market conditions or manufacturer price, or Product unavailability or discontinuation. Notwithstanding the foregoing, Seller shall have the right to terminate, and shall not be obligated to perform under, any accepted Purchase Order in the event that the Confirmed Pricing associated therewith was based on an error in any advertisement or Quote.

**Products and Product Support POs.** Customer makes an offer to purchase Products or Product Support hereunder by submitting the Purchase Order to Seller. Customer also may request Products or Product Support via telephone; provided that Customer confirms its offer promptly thereafter by submitting the Purchase Order to Seller. Seller agrees to fill any Purchase Order upon Seller's written acceptance of such Purchase Order; provided that: (a) any such acceptance by Seller is subject to Product availability; and (b) any delivery dates specified in such Purchase Order are non-binding; and (c) Seller is obligated only to make good faith efforts to meet such delivery dates. Each Purchase Order for Products and/or Product Support shall specify, as applicable, the quantities and prices specified on Seller's Quote, along with destination, preferred (but non-binding) delivery date, and any non-standard shipping instructions. Nothing stated in Customer's Purchase Order or other forms shall in any way be deemed to add to, modify, or amend these Terms and Conditions. Any terms or conditions attached to or set forth or referenced in any Purchase Order shall be of no force or effect.

**Product Delivery.** Seller shall make commercially reasonable efforts to meet any requested delivery dates, but Seller shall not be liable for any delay or inability to ship Products due to Product unavailability, manufacturer delays, or any Force Majeure Event. Seller shall have the right to make two (2) or more partial deliveries under a single Purchase Order to complete delivery of all Products ordered thereunder.

**Product Title.** Title to Products and risk of Product loss or damage pass to Customer upon delivery to Customer. Notwithstanding the foregoing, title to software Products manufactured by a third party shall at all times remain with such third party, and Customer's rights to any such software Products shall be as specified in the applicable software license agreement between Customer and such third party ("EULA"); Customer warrants that it shall not download or use any software Products without first entering into the applicable EULA.

**Product and Product Support Invoicing.** Seller will invoice Customer for Products at the time of shipment and for Product Support at the time of purchase. Seller may invoice Customer separately for partial deliveries. Any amounts invoiced by Seller with respect to Product Support, including without limitation sales taxes, are collected by Seller solely in the capacity of independent sales agent. Customer further grants to Seller a security interest in the Products to secure payment in full and authorizes Seller to execute and file a financing statement or other documents necessary to perfect such security interest. Any such security interest shall terminate upon payment of all amounts due for the applicable Products and any costs of collection.

**Product and Product Support Warranties.** Notwithstanding anything to the contrary set forth herein or in any separate communication, the sole warranty received by Customer with respect to any Products and Product Support is the warranty, if any, that is conveyed directly from, respectively, the Product manufacturer or the Product Support provider and that will be passed through to Customer by Seller to the extent Seller has the right to do so. Seller, acting solely as a reseller of Products and a sales agent for Product Support, makes no independent warranty related to the Products or Product Support, sells such Products and Product Support "as is", and shall have no obligations related to the performance of the Products or the Product Support. Customer acknowledges that in purchasing the Products or Product Support, Customer relies solely on the applicable manufacturer specifications or the separate contract with the Product Support provider, as applicable, not on any communications from Seller, any Seller "Affiliate" (meaning an entity that owns, is owned by, or is under common ownership with, a Party) or its

or their "Personnel" (meaning the owners, directors, officers, employees, agents or contractors of a Party), including without limitation any statements, specifications, photographs or other illustrations representing the Products or Product Support.

#### **SERVICES SALES.**

**Services Purchasing.** Subject to credit approval, Customer shall be entitled to purchase consulting and other services performed by Seller, Seller's Affiliate, or Seller's subcontractors (each a "Service"), according to the terms and conditions set forth generally in these Terms and Conditions and specifically in a "Service Order" or "SO" (meaning a written and executed contract that is between Seller or Seller's Affiliate and Customer or Customer's Affiliate and that specifies the terms and conditions under which one of the former will sell and provide Services to one of the latter).

**Customer Responsibilities.** Customer agrees to cooperate reasonably at all times during Seller's performance of the Services, and Customer warrants that it will provide timely responses, approvals, authorizations, access and applicable information, as necessary ("Customer Support"). Customer further acknowledges and agrees that Seller's performance of the Services is dependent on Customer's timely and accurate fulfillment of the foregoing warranty obligations. Customer shall ensure that at all times during performance of Services at a site designated by Customer for such performance ("Customer Site"), Customer maintains adequate insurance coverage to protect Seller, Seller's Affiliate, Seller Personnel and the Customer Site, and Customer indemnifies and holds harmless Seller, Seller's Affiliate, Seller Personnel from any claims that arise out of any product liability, death, or damage to any person or property and that are not solely and proximately caused by Seller's gross negligence or willful misconduct.

**Services POs.** Any PO issued for Services is intended for administrative purposes only.

**Services Acceptance.** Seller may provide to Customer from time to time notification that certain among the Services and/or Work Product (as defined herein) are substantially complete. Upon receiving such notification, Customer has three (3) "Business Days" (meaning Monday through Friday, excluding Holidays) to evaluate such Services and/or Work Product and to indicate Customer's Rejection or Acceptance of them ("Acceptance Period"), as follows: (a) Customer rejects such Services and/or Work Product by submitting to Seller during the Acceptance Period a written document detailing with specificity each reason for which the Services and/or Work Product are rejected ("Rejection"); or (b) Customer accepts such Services and/or Work Product either by submitting to Seller a written and signed document on Seller's template, confirming its acceptance thereof, or by failing to reject such Services and/or Work Product prior to the expiration of the Acceptance Period ("Acceptance"). Seller shall have up to thirty (30) days after its receipt of a Rejection, or such longer period on which the Parties may agree ("Correction Period") to correct the rejected Services and/or Work Product and to provide notification that such Services and/or Work Product are again complete, thereby initiating a new Acceptance Period.

**Services Invoicing.** Customer will be invoiced in accordance with the applicable SO; provided that Seller may invoice Customer for all Services under such SO or for a portion thereof.

**Services Warranty.** Seller warrants that the Services will be performed and the Work Product will be prepared in a professional and workmanlike manner consistent with good practices in the information technology services industry. Customer's sole and exclusive remedy with respect to this warranty is for Seller, at Seller's sole option, either: (a) as applicable, to perform again any substantially failed Service or to prepare again any substantially failed Work Product; or (b) to refund the amount paid, as applicable, for any substantially failed Service or Work Product; provided that, with respect to either option, Customer notifies Seller in writing of any such substantial failure within five (5) Business Days after performance of such Service or delivery of such Work Product, and provided that the warranty with respect to any Service or Work Product is voided if: (i) such Work Product is used in conjunction with any hardware configuration, operating environment or computer program other than one expressly specified

in the applicable SO; (ii) any portion of the Work Product is modified by anyone other than Seller or a party acting under Seller's direction; or (iii) the failure of the Work Product is due to any bugs, defects, problems or failures of hardware caused by the negligence or user error of Customer or any third party. Customer acknowledges that any estimates related to Services performance are non-binding and are intended for planning purposes only.

**Services Warranty Disclaimer.** Seller disclaims all warranties: (a) that the work product will function other than as set forth in writing by seller; and (b) that the operation of the work product will be free from interruption or errors in all circumstances.

**Responsibility for Data.** Seller shall have no responsibility for customer's data, and customer acknowledges and agrees that at all times during performance hereunder, customer is and shall remain solely responsible for risks to its data arising from, and for daily back-up and protection of its data, software and images against, loss, damage, corruption or destruction.

**License to Work Product.** As between the Parties, Seller owns all rights, including without limitation all associated intellectual property rights, in the "Work Product" (meaning all deliverables, documents, other tangible items and Services results, including any inventions, innovations, improvements, other works of authorship, and other derivative works that arise therefrom and intellectual property therein or related thereto, conceived, developed or provided by Seller in the course or as a result of performing the Services, including from time to time third party intellectual property, regardless of whether they are eligible for patent, copyright, trademark, trade secret, or other legal protection). Nothing in these Terms and Conditions is intended to grant or transfer any ownership interest in the Work Product. Customer obtains under these Terms and Conditions and the applicable SO, upon payment in full, a non-exclusive, non-transferable, perpetual, royalty-free, license to use the Work Product for Customer's internal purposes only.

**Non-Solicitation.** During the term of any SO and for one (1) year thereafter, each Party and its Affiliates may not directly or indirectly solicit for employment, offer employment to, employ or engage as a consultant any individual who either is then employed or was employed within the preceding three (3) months by the other Party or any of the other Party's Affiliates ("Employing Entity") and who was in any way engaged in or involved with the provision of Services under such SO unless and until such Party pays to the Employing Entity as liquidated damages and not as a penalty, an amount equal to the aggregate salary and wages (including bonus) paid by the Employing Entity to such individual during the six (6) months immediately preceding the date such individual is employed or engaged by such Party; provided that if such individual at the time he or she first discusses such employment or engagement with such Party is subject to or bound by any written employment agreement or non-competition covenant with the Employing Entity, this provision shall not authorize such Party to employ or engage such individual in violation of any such employment agreement or non-competition covenant or limit such Party's liability for damages in the event that such Party employs or engages such individual in violation thereof. Notwithstanding the foregoing, this provision shall not prohibit either Party from hiring any individual who initiates contact with such Party by responding to a general, non-targeted solicitation, such as a job posting in a mass publication or on a website.

#### **PAYMENT.**

**Payment.** Customer will pay in full the amount specified as due on each undisputed invoice, including without limitation sales taxes and any shipping charges, within the time period specified on such invoice ("Payment Timing"), measured from the date of issuance of such invoice, subject to continuing credit approval of Customer. Notwithstanding the foregoing, Payment Timing is at Seller's sole discretion.

**Late Payment.** In any event of Customer's failure to pay an undisputed amount due in accordance with these Terms and Conditions ("Payment Delinquency"), Seller has the right to charge and collect interest

on such amount at the lesser of one-and-one-half percent (1½%) per month, and the highest rate legally permitted ("Interest Charge") until paid in full. Customer also agrees to pay the Interest Charge on any disputed amounts that are withheld by Customer in good faith and that are determined to be properly due and owing to Seller, calculating from the thirty-first (31st) day after the date of issuance of the original invoice. Customer shall reimburse Seller for all reasonable expenses arising from collection of past due amounts and Interest Charges, including reasonable attorneys' fees, filing fees, arbitration costs and court costs. Seller has the right to suspend performance hereunder during any Payment Delinquency, and any schedule will be deemed extended for the duration of such Payment Delinquency.

**Financial Status.** If at any time during the term of the Transaction Document there is a detrimental material change in Customer's financial status, as determined in Seller's sole discretion, Seller has the right to modify the Payment Timing or terminate any credit extended to Customer under these Terms and Conditions. In the event Customer does not remit payment in accordance with these Terms and Conditions or such modified Payment Timing, Seller has the right immediately: (a) to stop all provision of Sales Offerings; and/or (b) to terminate any currently effective and not expired Transaction Document.

**Taxes.** Customer agrees to pay all sales, use, transaction, excise, VAT or similar taxes and any Federal, state or local fees or charges ("Taxes") that may become due in connection with Customer's purchase of the Sales Offerings, except for taxes on Seller's income, assets, or net worth. In lieu thereof, Customer may provide to Seller a tax exemption certificate acceptable to Seller and the applicable taxing authority. Customer will reimburse Seller for all such Taxes paid by Seller for which Customer is responsible hereunder.

**Credits.** Any credit that is issued to Customer for any reason and that is not used by Customer to purchase Sales Offerings within a period of two (2) month measured from the date of issuance shall expire.

#### **CONFIDENTIALITY.**

**Purpose of Disclosure.** Each Party ("Discloser") may disclose certain of its "Confidential Information" (meaning information that is owned or possessed by a Party, its Affiliates or its or their Personnel, that either is marked as "confidential" or "proprietary" or otherwise due to its nature reasonably would be deemed to be confidential, and that is disclosed to, or accessed by, the other Party) to the other Party ("Receiver"), and Receiver agrees that it will only use Discloser's Confidential Information for the purposes contemplated hereunder.

**Non-Confidential Information.** No information disclosed hereunder will be considered Confidential Information to the extent such information: (a) is in the public domain through no fault of a receiving Party; (b) was in the possession of the receiving Party prior to such disclosure; (c) was independently developed by the receiving Party's Personnel with no prior access to such information; or (d) was rightfully received by a Party from a third party without breach of any obligation of confidence.

**Receiver Disclosures Permitted.** Each Party, as Receiver, further agrees that it will only disclose Discloser's Confidential Information to Receiver's Personnel or financial, legal or business advisors who are themselves bound to obligations of confidentiality substantially consistent with those specified herein; provided that if Receiver is compelled to disclose Discloser's Confidential Information by law, rule, regulation or judicial, regulatory or other governmental authority, Receiver will provide Discloser with prompt Notice of any such compulsion, will provide the maximum allowable opportunity for Discloser to seek a protective order or measure to bar such disclosure, will disclose only the Confidential Information that is required to be disclosed, and will make reasonable efforts to ensure that such disclosed Confidential Information is protected to the fullest extent possible under the circumstances.

**Period of Confidentiality.** Each Party, as Receiver, agrees: (i) that, for a period of three (3) years from the date of any disclosure of Discloser's Confidential Information, it will maintain the confidentiality of such

Confidential Information in a manner that is at least as protective as Receiver maintains its own confidential information, and that in no event will be inconsistent with a standard of reasonable care; and (ii) that, upon Discloser's request, it will return or destroy any extant Confidential Information disclosed by Discloser.

**Injunctive Relief.** In the event of Receiver's breach of these Terms and Conditions, Discloser may suffer irreparable harm and have no adequate remedy at law. In such event, or when encountering risk of such event, Discloser shall be entitled, in addition to any and all other remedies, to seek injunctive relief, specific performance, and other equitable remedies without the need to prove monetary damages or the inadequacy of other remedies.

#### **DISCLAIMED WARRANTIES.**

Except as set forth herein, and subject to applicable law, seller makes no other, and expressly disclaims all other, conditions, covenants, representations and warranties of every kind, whether express or implied, including without limitation any warranties or representations related to accuracy, durability, fitness for a particular purpose, merchantability, non-infringement, or applicability of laws or regulations associated with the products or their manufacture or packaging, arising by law, by reason of custom, from usage in the trade, or from course of prior dealing. Customer acknowledges and agrees that any information or advice given by seller or seller's affiliate or personnel shall not be deemed to create or in any way increase the scope of the warranties set forth herein and that customer shall not rely on any such information or advice. Seller further disclaims representations, warranties or assurances that the products are designed for, or suitable for use in: (a) any aircraft or automobile, including any safety or navigation devices related thereto; (b) any life support or other healthcare delivery systems or medical devices; (c) any nuclear facilities; (d) any weapon systems or other military or policing devices; or (e) any other high risk environment or manner that could reasonably be expected to result in personal injury, death or property damage ("high risk use"). Customer agrees to comply with any manufacturer requirements and restrictions and to accept any manufacturer disclaimers related to any high risk use. customer takes sole responsibility for, and agrees to indemnify and hold harmless seller and seller's affiliates and personnel from any claim arising from, customer's high risk use.

#### **LIMITATION OF LIABILITY.**

Under no circumstances, and notwithstanding the failure of essential purpose of any remedy set forth herein, will seller, its affiliates, or any of their personnel ever be liable for consequential, exemplary, incidental, indirect, punitive, or special damages (including, without limitation, loss of business, market, profits, revenues, savings, or goodwill) even if advised of the possibility of such damages or if such damages were otherwise foreseeable and regardless of the theory of liability. The maximum liability of seller, its affiliates and any of their personnel hereunder, arising from any theory of liability, will be the lesser of: 5% of the total amount paid to seller for the specific sales offering(s) giving rise to the claim.

#### **ARBITRATION.**

Any dispute that arises from or under these Terms and Conditions or the applicable Transaction Document or that relates directly or indirectly to the relationship between the Parties and that cannot be resolved amicably within thirty (30) days shall be resolved by binding arbitration before a single arbitrator in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. Judgment on any award arising from such arbitration may be entered in any court of competent jurisdiction. Discovery may be performed according to the Federal Rules of Civil Procedure. The fees and expenses of the arbitration shall be borne equally by the Parties but may be awarded, together with reasonable attorneys' fees and expenses, to the prevailing Party (if any) in the informed discretion of the arbitrator. Notwithstanding anything to the contrary set forth herein, either Party may seek injunctive or other equitable relief at any time in federal or state court. The forum for any such arbitration and for any

such court shall be located in Dade County, Miami, Florida. Customer agrees that it shall not join or lead any class of claimants pursuing any claim related to the subject matter of this Agreement or the Transaction Document.

#### **NOTICE.**

Any notice required or permitted under these Terms and Conditions shall be deemed valid and to have been duly given when: (i) delivered by hand with written confirmation of receipt; (ii) sent by facsimile with written confirmation of receipt; or (iii) delivered by a nationally recognized overnight delivery service with package tracking ("Notice"). The address for Notice to Customer shall be either Customer's corporate headquarters or Customer's address set forth in the applicable Transaction Document; the address for Notice to Seller shall be as set forth below:

QAMETA SOFTWARE INC. 8 The Green STE A, Dover, Kent Country, DE 19901 or 619 New York Ave, Claymont, DE 19703, USA

#### **TERM AND TERMINATION.**

**Term.** The "Term" (meaning the period of time during which, as applicable, the Transaction Document or this Agreement is in full force and effect) of each Transaction Document shall commence on the Agreement Effective Date. Both the Transaction Document and this Agreement shall expire upon the completion of the Parties' performance and payment obligations thereunder.

**Termination for Cause.** Seller may terminate the Transaction Document and this Agreement immediately upon Notice if Customer: (a) terminates or suspends its business; (b) becomes insolvent; (c) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute; (d) becomes subject to direct control by a trustee, receiver or similar authority; (e) has a controlling interest in its voting stock acquired by a third party; or (f) sells or transfers all or substantially all of its assets. Customer may terminate the Transaction Document and this Agreement immediately upon Notice if Seller: (i) terminates or suspends its business; (ii) becomes insolvent; (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute; or (iv) becomes subject to direct control by a trustee, receiver or similar authority. Seller may terminate the Transaction Document and/or this Agreement ten (10) days after Notice of a payment default and otherwise either Party may terminate the Transaction Document and/or this Agreement thirty (30) days after Notice of any material breach of an obligation under these Terms and Conditions (in either case, a "Notice Period"); provided that such breach is not cured within such Notice Period.

**Termination of Purchase Order for Convenience.** Customer may cancel within three (3) business days after receipt by Seller any Purchase Order for Products: (a) that appear in Seller's currently published catalog; (b) that were not modified according to Customer's specifications or request; and (c) that are not, in Seller's sole opinion, aged or out of use inventory. Any such cancellation shall not relieve Customer of its obligations to pay for all Products shipped, Product Support initiated, and Services performed hereunder. Seller may terminate any Executed Purchase Order for Products or Product Support that are not commercially available; Customer's sole remedy, and Seller's sole obligation with respect to such

terminated Purchase Order is to refund Customer any amounts paid for such unavailable Products or Product Support.

**Termination of SO for Convenience.** Except as otherwise specified in the SO, Seller may terminate the SO for convenience upon fourteen (14) days' prior Notice to Customer.

**Effect of Termination of SO.** If the SO is terminated for any reason, Customer agrees to pay Seller all fees due and to reimburse Seller for authorized expenses incurred up to and including the effective date of termination.

**Conflict with SO.** In the event of a conflict between these Terms and Conditions and the terms and conditions of the SO, these Terms and Conditions shall control; provided that any provision in the SO that expressly states that it is intended to supersede a specified provision of these Terms and Conditions shall supersede solely with respect to such SO.

#### **MISCELLANEOUS.**

**Amendments.** These Terms and Conditions may be amended only in a writing executed by authorized representatives of both Parties ("Amendment").

**Assignment.** Seller may assign the Transaction Document, these Terms and Conditions, or any portion of its rights and responsibilities hereunder, including its right to receive payments, without Customer's consent. Customer may not assign the Transaction Document, these Terms and Conditions or any of its rights or responsibilities without Seller's prior written consent. Any attempted assignment other than as expressly authorized hereunder shall be void and of no force or effect. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their permitted successors, assigns, heirs and legal representatives.

**Attorney Fees and Expenses.** Except as otherwise provided herein, in any claim or dispute under these Terms and Conditions, the prevailing Party will be entitled to an award by the arbitrators or the court, as applicable, of reasonable attorneys' fees and related out of pocket costs and disbursements.

**Counterparts.** The Transaction Document and any Change Order may be executed in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same Transaction Document.

**Electronic Records.** Customer hereby consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet.

**Entire Agreement.** Subject to the control of any Separate Agreement, as set forth in the preamble of these Terms and Conditions, these Terms and Conditions, the Transaction Document and any amendments thereto together set forth the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede and replace in their entirety any and all other prior and contemporaneous agreements and understandings, whether oral, written or implied, if any, between the Parties with respect to the subject matter hereof.

**Force Majeure.** Seller shall not be held liable, and shall not be deemed to have breached its obligations under these Terms and Conditions or the Transaction Document by reason of any delay or failure in performance caused in whole or in part by any circumstances beyond its reasonable control, including, without limitation, the following: accidents, fires, floods, severe weather, or other acts of God or nature; sabotage, riot, insurrection, war or other acts or threatened acts of violence or terrorism; embargoes, quarantine restrictions, changing laws or regulations or other government actions or requirements; carrier, labor or supplier interruptions or stoppages, or other third party delays; equipment or network outages or failures ("Force Majeure Event"). In the event of Seller's delay or failure in performance due to



a Force Majeure Event, Seller agrees to make commercially reasonable efforts to minimize the hindering effect of such Force Majeure Event and resume performance with commercially reasonable dispatch.

**Governing Law.** The Transaction Document, these Terms and Conditions, and any disputes, litigation, arbitration or enforcements directly or indirectly related thereto shall be construed and interpreted in accordance with, and the rights of the Parties shall be governed by, the substantive laws of the State of Washington, without giving effect to any conflict-of-laws rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to any Sale hereunder.

**Forum.** The Parties hereby agree that any suit, legal claim, or other court action arising out of the Transaction Document or these Terms and Conditions shall be brought exclusively in either the Superior Court or Federal Court in Dade County, Miami, Florida, and both Parties consent and submit to the jurisdiction thereof and waive any rights to change venue.

**Headings.** The headings stated in these Terms and Conditions are for convenience of reference only, shall not be deemed to be a part of these Terms and Conditions, and shall not have any bearing on the construction or interpretation hereof.

**Independent Contractors.** Each Party is an independent contractor, not an employee or employer of the other Party, and not a joint venture or partner with the other Party.

**Posted Descriptions.** Any descriptions of Products, Product Support or Services displayed or posted other than in a Transaction Document, including without limitation on this or any other website or mobile application, are excluded from and do not constitute a part of this Agreement or, except as expressly specified in the Transaction Document, the Transaction Document.

**Preparation of Agreement.** There will be no presumption against either Party on the ground that such Party was responsible for preparing all or any part of the Transaction Document or these Terms and Conditions.

**Sales Limitations.** Seller reserves the right to prohibit sales to resellers or for any other reason and to limit the quantity of Products sold to Customer.

**Severability.** If any provision of the Transaction Document or these Terms and Conditions or the application thereof is found to be invalid, illegal, or unenforceable, such finding shall not have any effect on any other provision of the Transaction Document or these Terms and Conditions, it being the intent and agreement of the Parties hereto that in the event of such finding, the Transaction Document or these Terms and Conditions shall be deemed amended either by modification of such provision to the extent necessary to render such provision valid, legal, and enforceable, while preserving its intent, or, if such modification is not possible, by substitution of such provision with another provision that is valid, legal, and enforceable and that achieves the same objective.

**Subcontracting.** Seller may subcontract any of its rights or obligations hereunder, provided that notwithstanding such subcontracting, Seller shall remain fully obligated and responsible both for its and its subcontractors' performance hereunder.

**Survival.** In the event of the expiration or termination of the Transaction Document, those provisions whose nature, meaning or intent indicate an expectation of survival shall survive.

**Third Party Beneficiaries.** These Terms and Conditions and the Transaction Document are not intended to benefit any party except the Parties.

**Waiver of Remedies.** No delay or failure by either Party to exercise or enforce any right hereunder shall be considered a waiver of such right or of any other right under the Transaction Document or these Terms and Conditions. No claim may be asserted by either Party against the other Party with respect to any

event, act, omission or otherwise that occurred more than one (1) year prior to the assertion of such claim.