

THESE TERMS OF SERVICE GOVERN YOUR USE OF OUR PLATFORM AND / OR THE PROVISION OF PROFESSIONAL SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THESE TERM OF SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE PLATFORM.

1. DEFINITIONS

- 1.1 "Agreement" means, in decreasing order, an Order Form You enter into with Us and these Terms of Service.
- 1.2 "Confidential Information" means all information and documentation of a Party provided to the other Party or obtained by the other Party including: (a) Customer Data, (b) any technical, operational or commercial information relating to the Platform or Professional Services, including the Documentation, (c) any solution, product, technology, software, know-how, material or immaterial result, customer information, prospect information or business strategy, (d) any information clearly identified as confidential by the disclosing Party, and (e) any information that should reasonably be recognized as confidential information of the disclosing Party.
- 1.3 "Customer", "You" or "Your" means the entity named on the Order Form.
- 1.4 "Customer Data" means any data uploaded into the Platform, or otherwise provided for processing by the Platform (including custom development executed by the Platform not provided by Us), by or on behalf of You in accordance with this Agreement.
- 1.5 "Documentation" means Our user documentation, in all forms, relating to the Platform (e.g., user manuals, on-line help files, etc.).
- 1.6 "ForePaaS", "We", "Us" or "Our" means ForePaaS Inc, whose office is located at 2415 Third Street, Suite 231, San Francisco, CA 94107, USA.
- 1.7 "Order Form" means an ordering document entered into between You and Us specifying the services to be provided thereunder, including any addenda and supplements thereto.
- 1.8 "Party" in singular, means You or Us; in plural, means You and Us.
- 1.9 "Permitted Third Party" means any entity authorized by You to access the Platform.
- 1.10 "Professional Services" means the professional services specified in an Order Form, if any, potentially including but not limited to implementation services, consulting, and training services.
- 1.11 "Platform" means the ForePaaS Platform as a Service that let You host, develop and operate Your own data analytics applications.
- 1.12 "Service Level" means the service level stated out in the Support Policy corresponding to the support level selected for the Platform subscription. The Support Policy is located at www.forepaas.com/legal.
- 1.13 "Subscription Fees" means the fees for the Platform specified in the Order Form.
- 1.14 "Technical Support Services" means the technical support services stated out in the Support Policy corresponding to the support level selected for the Platform subscription. The Support Policy is located at www.forepaas.com/legal.
- 1.15 "Work Product" means any work product or tangible results produced by or with Us pursuant to the provision of Professional Services.

2. USE OF THE PLATFORM

- 2.1 Right of Use of the Platform. When ordered in an Order Form, subject to the terms and conditions of this Agreement, We grant You a limited, worldwide, non-exclusive, non-transferable (except as explicitly permitted in this Agreement) right during the term of Platform subscription stated out in the Order Form to access and use the Platform solely in connection with (a) Your internal business operations or (b) any other specific use explicitly stated out in the Order Form (the "Permitted Use"). Your rights to use the Platform are subject to any limitations on use of the Platform based on the version of the Platform You subscribed (e.g., applicable usage limits) and as set forth in the Order Form (collectively, the "Scope Limitations") and Your rights to use the Platform are contingent upon Your compliance with the Scope Limitations and this Agreement. You are authorized to allow a Permitted Third Party to access and use the Platform as described above, solely for the Permitted Use. You are solely responsible for Your conduct, the conduct of any Permitted Third Party and the content of Customer Data. We are not responsible for the availability, accuracy, appropriateness, or legality of Customer Data or any other information You may access using the Platform.
- 2.2 Hosting Provider Selection. You shall specify in the Order Form which hosting provider / region shall be used for each Platform subscription. Any changes or migrations to different hosting providers / regions may incur additional charges and possibly changes to Subscription Fees.
- 2.3 Use of Work Products and Documentation. Subject to the terms and conditions of this Agreement, We grant You a limited, worldwide, non-exclusive, non-transferable (except as explicitly permitted in in this Agreement) right during the term of this Agreement to access, reproduce, modify, and use Work Products and the Documentation solely in connection with the use of

the Platform in accordance with this Agreement. You are authorized to allow a Permitted Third Party to access, reproduce, modify, and use Work Products and the Documentation as described above.

2.4 Use Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, You shall not:

- (a) make the Platform available to anyone other than Permitted Third Parties, or use the Platform for any purpose other than the Permitted Use,
- (b) use the Platform to store or transmit malicious code,
- (c) interfere with or disrupt the integrity or performance of the Platform,
- (d) attempt to gain unauthorized access to the Platform or its related systems or networks,
- (e) disassemble, reverse engineer, or decompile the Platform,
- (f) access or use the Platform to (i) build a competitive product or service, (ii) build a product or service using similar ideas, features, functions or graphics of the Platform, or (iii) determine whether the Platforms are within the scope of any patent.

2.5 Protection against Unauthorized Use. You will ensure that Your Permitted Third Parties comply with this Agreement. You will be directly and fully responsible to Us for their conduct and any breach of this Agreement by them. You will, and will ensure that Your Permitted Third Parties use reasonable efforts to prevent any unauthorized use of the Platform and Documentation. If an unauthorized use or access to the Platform or Documentation comes to Your attention, You shall notify Us in writing of said use or access and take all steps reasonably necessary to terminate such use or access as soon as reasonably possible.

2.6 Reservation of Rights. We retain all right, title, and interest in and to the Platform (and the software forming part of the Platform), Work Product and Documentation and all related intellectual property rights. Your rights to use the Platform, Work Product and Documentation are limited to those expressly set forth in this Agreement. We reserve all other rights in and to the Platform, Work Product and Documentation.

3. TECHNICAL SUPPORT SERVICES AND SERVICE LEVEL

3.1 Technical Support Services. We will provide You with the applicable Technical Support Services to which You have subscribed so long as You are current in payment of the Subscription Fees. You are responsible for providing support to Permitted Third Parties.

3.2 Service Level. We will provide You with the applicable Service Level to which You have subscribed so long as You are current in payment of the Subscription Fees.

3.3 Service Level Calculation. The Service Level is calculated on a monthly basis, excluding scheduled downtime periods (which, except in case of emergency, shall be notified to You at least 48 hours in advance).

3.4 Service Credits. Service credits awarded in case of breach of Service Level shall be deducted from subsequent invoices for subscription fees or other fees payable by You or, upon expiration or termination of the Agreement, paid to You directly.

3.5 Sole Remedy. The terms of this section constitute Your sole remedy and Our entire liability in respect of the unavailability of the Platform and/or for breach of the Service Level set out in this section 3.

4. PROFESSIONAL SERVICES

4.1 Professional Services. When ordered in an Order Form, We will perform Professional Services. The specific details of the Professional Services to be performed are determined on a per-project basis by the Parties, and the details for each project are described on the Order Form. Unless otherwise specified in the applicable Order Form, (i) any planning relating to Professional Services is for information purposes only, and (ii), any unused portion of the Professional Services and training will expire and may not be carried over after 12 months from the Order Form effective date.

4.2 Your Responsibilities. You shall provide assistance, cooperation, information, equipment, data, a suitable work environment, and resources reasonably necessary to enable Us to perform the Professional Services and Technical Support Services. You acknowledge that Our ability to provide Professional Services and Technical Support Services may be affected if You do not meet Your responsibilities as set forth above.

4.3 Feedback and Other Content. If You provide any feedback to Us concerning the features and performance of the Platform (including identifying potential errors and improvements), You hereby assign to Us all right, title, and interest (including intellectual property rights) in and to the feedback, and We are free to use the feedback without payment or restriction.

5. FEES AND PAYMENT

5.1 Fees. All Fees payable to Us and invoicing schedules are stipulated in the Order Form. All amounts payable by You to Us under this Agreement are exclusive of any value added tax or similar taxes, levy or similar governmental charge. If, as a result of any tax or levy, You are required to withhold any amount on any payment to Us, then the amount of the payment to Us shall be automatically increased to totally offset such tax, so that the amount actually remitted to Us, net of all taxes, equals the amount invoiced or otherwise due. You will promptly furnish Us with the official receipt of payment of these taxes to the appropriate taxing authority. You may provide Us with a certificate of exemption acceptable to an applicable taxing authority.

5.2 Payment Terms. Unless otherwise specified on the Order Form, all invoices will be paid in U.S. Dollars and will be paid within thirty (30) days of the date of the invoice, in full and cleared funds by ACH, credit card payment, or wire transfer, as detailed in the Order Form or invoice.

5.3 Indexation. Unless stated otherwise in the Order Form, at the time of renewal, the per-unit pricing during any renewal term will increase by seven percent (7%) above the applicable pricing in the prior term, provided We provide You notice of the new pricing at least 60 days prior to the end of the current term. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Platform subscription has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

5.4 Late Payment. Any fees not paid by You upon their due date shall be automatically subject to interest at the rate of one and one half percent (1.5%) per month or, the maximum rate permitted by applicable law, whichever is less, determined and compounded on a daily basis from the date due until the date paid. Furthermore, without limiting Our other rights or remedies, if You fail to pay any applicable fees within 14 days following its receipt of a written notice to do so, such non-payment shall entail full right to immediate payment of any sum due until the term of this Agreement.

5.5 Suspension and Termination. Without limiting Our other rights or remedies, We may suspend provision of the Platform and/or Professional Services if You fail to pay any applicable fees within 14 days following Your receipt of a written notice to do so. Non-payment may also result in termination of this Agreement for material breach.

6. TERM AND TERMINATION

6.1 Term. This Agreement commences on the effective date specified in the Order Form and continues for the initial subscription term specified in the Order Form (the "Initial Term"), unless this Agreement is terminated earlier in accordance with the terms of this Agreement. Unless specified otherwise in the Order Form, this Agreement along with any expiring subscription automatically renew for a further term of twelve (12) months (each, a "Renewal Term") unless at least one (1) month before the end of the then-current term either Party provides written notice to the other Party that it does not intend to renew.

6.2 Termination for Material Breach. Without limiting its other rights or remedies, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing to do so.

6.3 Post-Termination Obligations. If this Agreement is terminated for any reason: (a) You shall pay Us any and all amounts which are due and payable hereunder up to the date of termination, if any; (b) We will cease to provide the Platform to You, ; (c) You shall no longer have any right to access or use the Platform, and (d) Sections and Subsections 1, 2.5, 3.5, 4.3, 5, 6, 7, 8.3, 10.3, 11, 12 and 13 will survive termination. If this Agreement is terminated by Us for Your uncured material breach or by You other than as a result of a material, uncured breach by Us, You will pay to Us the amounts due under the applicable Order Form for the remainder of the then-current term.

7. CONFIDENTIAL INFORMATION

7.1 Confidentiality Obligation. The Party receiving Confidential Information agrees that, for the Agreement term and two (2) years after the termination or expiration of this Agreement for any reason, any Confidential Information provided by the disclosing Party shall:

- (a) be protected and kept strictly confidential, and be handled by the receiving Party with the same level of care and protection as it protects its own equally important Confidential Information;
- (b) be disclosed only to receiving Party's staff members, contractors, or subcontractors who need to access such information and shall be used by them only for the purpose of implementing the Agreement;
- (c) not be used by the receiving Party, in whole or in part, for any purpose other than as set forth in this section without the prior written consent of the disclosing Party. In particular, Confidential Information shall not be sold, transferred, rented or commercially exploited; and
- (d) not be copied, reproduced or duplicated, in whole or in part, except (i) for the purpose of performing its contractual obligations herein and/or (ii) if expressly approved in writing by the disclosing Party.

7.2 Disclosure to Third Parties. In case of disclosure to a Party's contractor or subcontractor, such third party shall have with the receiving Party a signed confidentiality agreement incorporating terms at least as protective as those set out in this section, which shall be notified to the other Party upon request. In addition, each Party may disclose, in strict confidence, this Agreement and related documents (a) to its parent companies, lawyers, insurance brokers, auditors, (b) as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, or (c) where such disclosure is necessary to implement or prove the existence of rights under this Agreement.

7.3 Adherence by Employees, Subcontractors and Agents. Each Party shall ensure that its employees, subcontractors and/or agents comply with the obligations set out in this section as though they were a party to this Agreement. Each Party will be liable for any disclosure made in breach of this section by its employees, subcontractors and/or agents. If Confidential Information is disclosed in breach of this section, the Party who has knowledge of it must notify the other Party without delay.

7.4 Limitations. The confidentiality obligations defined in this section shall not apply to Confidential Information:

- (a) which has entered the public domain, except where such entry is the result of a Party's breach of this Agreement;
- (b) which, prior to disclosure hereunder, was already known by the receiving Party without restriction, as demonstrated by the receiving Party;
- (c) which, subsequent to disclosure hereunder, is obtained by the receiving Party on a non-confidential basis from a third party who has the right to disclose such information;
- (d) which was developed independently by the receiving Party, as demonstrated by the receiving Party, without violating the disclosing Party's proprietary rights; or
- (e) whose use or disclosure has been authorized in writing by the disclosing Party.

7.5 Effect of Termination on Confidential Information. Upon written request of the disclosing Party, or in any event upon any termination or expiration of this Agreement, the receiving Party shall return to the disclosing Party or destroy all materials, in any medium, to the extent containing or reflecting any of the disclosing Party's Confidential Information.

8. CUSTOMER DATA

8.1 Customer Data Security. We implement and maintain commercially reasonable physical, electronic, and managerial procedures intended to protect against the loss, misuse, unauthorized access, alteration, or disclosure of Customer Data. We will notify You of any unauthorized access to, or use of, Customer Data that comes to Our attention. If any unauthorized disclosure of Customer Data resulting from Your use of the Platform comes to Our attention, We will work with You to investigate the cause of such unauthorized disclosure, and will work together in good faith to take the steps reasonably necessary to prevent any future reoccurrence and to comply with applicable data breach notification laws.

8.2 Customer Data Transmission. You acknowledge that use of the Platform involves transmission of Customer Data and other communications over the Internet and other networks, and that such transmissions could potentially be accessed by unauthorized parties. You must (i) protect Your login names and passwords from access or use by unauthorized parties, and are solely responsible for any failure to do so, and (ii) backup any Customer Data transmitted to Us.

8.3 Customer Data Ownership. Customer Data is Your property. You grant Us a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, aggregate, and display Customer Data as required to provide the Platform (including to improve the Platform) or perform Technical Support Services, account management services, and Professional Services.

8.4 Customer Data Compliance. You warrant and represent that Customer Data shall not infringe any third party right, (including any intellectual property right) or any applicable law or regulation.

8.5 Customer Data Portability. Provided You are current in Your payments, within seven (7) days following the termination of the Agreement and following Your request, We shall deliver Customer Data in an intelligible form to You. After delivery of Customer Data or two (2) months after the termination of the Agreement, We shall destroy all Customer Data within thirty (30) days.

9. PERSONAL DATA

9.1 Personal Data in Customer Data. If Customer Data includes personal data as defined by any US federal regulation, each Party shall comply with said US federal regulation. If Customer Data includes personal data as defined by Regulation (EU) 2016/679 "General Data Protection Regulation" (the "GDPR"):

9.1.1 Compliance by You. You shall comply with any applicable European regulation related to personal data (such as the GDPR from its date of enforceability). In that regard:

- (a) before any personal data processing, You shall provide Us with (i) the type of personal data (ii) the categories of data subjects for said personal data, (iii) the subject-matter, duration, nature and purpose of the processing of said personal data;
- (b) You warrant that Your use of personal data through the Platform will comply with the scope described above;
- (c) You warrant that unless We gave You prior written consent, You shall only use hosting providers / regions located in the European Union to process data covered by the GDPR;
- (d) You warrant that unless We gave You prior written consent, You shall not process sensitive data (such as personal financial and financial account information, sexual orientation, personal medical or health information, personal information of children under 13, social security numbers, national identity, national insurance, and similar personal identifiers) through the Platform.

9.1.2 Compliance by Us. Provided You complied with section 9.1.1, We shall comply with any applicable European regulation related to personal data (such as the GDPR from its date of enforceability). In that regard:

- (a) With your assistance, We shall stipulate in the Agreement the information provided by You in accordance with section 9.1.1(a);
- (b) We shall comply with all obligations stated out in section 28.3 (a) to (h) of the GDPR. In that regard:
 - We shall process the personal data only on documented instructions from You;
 - We shall not transfer personal data outside of the European Union without your prior consent;

- We shall ensure that persons under Our authority and authorized to process personal data have committed themselves to confidentiality;
- pursuant to Article 32 of the GDPR, We shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons;
- We shall inform You of any intended changes concerning the addition or replacement of other processors, thereby giving You the opportunity to object to such changes on security and/or regulatory grounds;
- taking into account the nature of the processing, We shall assist You by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Your obligation to respond to requests for exercising the data subject's rights, and We may claim reasonable compensation for said assistance;
- We shall reasonably assist You in ensuring compliance with Your obligations pursuant to Articles 32 to 36 of the GDPR, taking into account the nature of processing and the information available to Us, and We may claim reasonable compensation for said assistance;
- At Your choice, We shall delete or return all the personal data to the controller after the end of the provision of services (as further described in Section 8.5 above), and deletes existing copies unless union or member state law requires storage of the personal data;
- We shall make available to You all information necessary to demonstrate compliance with the obligations laid down in this section,
- We shall allow for and contribute to audits regarding our compliance with this section, including inspections, conducted by You or another auditor mandated by You and reasonably accepted by Us, provided (i) such audits are notified to Us at least ten (10) business days in advance, and (ii) You bear the cost for such audit.

10. WARRANTIES AND DISCLAIMER

10.1 Mutual Warranties. Each Party represents and warrants to the other that: (a) this Agreement constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; and (b) no authorization or approval from any third party is required in connection with such Party's execution and delivery of the Order Form, or performance of this Agreement.

10.2 Our Warranty. We warrant that the Platform will materially conform to the specifications set forth in the applicable Order Form and Documentation. We further warrant that We will perform Professional Services in a professional and workmanlike manner in accordance with the Order Form. You must notify Us of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears. To the extent permitted by law, Your sole and exclusive remedy arising out of or in connection with a breach of warranty is limited to correction of the Platform or re-performance of the Professional Service, as applicable, or if correction or re-performance is not commercially reasonable, termination of the applicable Order Form and a refund of any prepaid unused fees for the applicable Platform or Professional Services. This warranty shall not apply if the error was caused by misuse, unauthorized modifications, Customer Data or third party-hardware, software or services.

10.3 DISCLAIMER. THE WARRANTIES DESCRIBED ABOVE ARE EXHAUSTIVE, REPLACE ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND IN PARTICULAR DO NOT INCLUDE ANY WARRANTY REGARDING THE ABILITY OF THE PLATFORM TO SATISFY YOUR INDIVIDUAL OBJECTIVES, ITS ADEQUACY FOR YOUR PARTICULAR REQUIREMENTS, THE MERCHANTABILITY OR FUNCTIONING THEREOF IN ANY COMBINATION OTHER THAN THOSE INDICATED IN THE DOCUMENTATION OR THE LEGALITY OF THE USE MADE THEREOF BY YOU. WE DO NOT WARRANT THAT THE PLATFORM OR DOCUMENTATION IS ERROR-FREE OR THAT OPERATION OR USE OF THE PLATFORM OR DOCUMENTATION WILL BE UNINTERRUPTED.

11. INDEMNIFICATION

11.1 Indemnification by Us.

(a) We will, at Our expense, defend You from or settle any claim, proceeding, or suit brought by a third party against You alleging that Your use of the Platform in accordance with this Agreement infringes or misappropriates any patent claim, copyright, trade secret, trademark, or other intellectual property right ("Infringement Claim").

(b) We will indemnify You from and pay all damages, costs, and attorneys' fees finally awarded against You in any Infringement Claim (or the amount that We agree to pay to any third party to settle any Infringement Claim) with respect to this Infringement Claim.

(c) We have no obligation for Infringement Claim to the extent that it arises out of or is based upon (i) use of the Platform in combination with other products or services, (ii) any aspect of the Platform configured specifically for You to comply with designs, requirements, or specifications required by or provided by or on Your behalf (including any business application built upon the Platform), or (iii) use of the Platform outside the scope of the rights granted in this Agreement.

(d) In the event an Infringement Claim is made or likely to be made, We may, at Our sole option and expense: (i) procure for You a license to continue using the Platform, (ii) modify the Service so that it becomes non-infringing but is substantially functionally equivalent, or (iii) if the foregoing are not commercially feasible in Our sole judgment, then terminate Your license right to use and access to the Platform and refund any prepaid, unused Platform Subscription Fees as of the date of termination (*pro rata temporis*).

11.2 Indemnification by You.

(a) You will defend Us from any actual or threatened third-party claim ("Third Party Claim") arising out of or based upon (i) use of the Platform by You or Permitted Third Parties that is not in accordance with the terms of this Agreement, (ii) the Customer Data or other materials or information provided by You or on Your behalf under this Agreement, or (iii) a breach by You or Permitted Third Parties of any applicable law or regulation.

(b) You will indemnify Us from and pay all damages, costs, and attorneys' fees finally awarded against Us in any Third Party Claim (or the amount that You agree to pay to any third party to settle any Third Party Claim).

11.3 Claim Procedure.

(a) The Party against whom an Infringement Claim or Third Party Claim is brought (i) shall timely notify the other Party of said claim, (ii) shall reasonably cooperate in the defense, and (iii) may appear (at its own expense) through counsel reasonably acceptable to the Party providing the defense.

(b) Parties acknowledge and agree that the Party obligated to defend a claim shall have the right to fully control the defense or settlement of said claim.

(c) Parties agree that any settlement of a claim will not include a specific performance obligation on or admission of liability by, the Party against whom the claim is brought without the prior agreement of said Party.

11.4 Exclusive Remedy. The provisions of this Section 11 state the sole, exclusive, and entire liability a Party to the other Party, and is the other Party's sole remedy, with respect to covered Third Party Claim or Infringement Claim.

12. LIABILITY

12.1 MITIGATION OF LOSS. EACH PARTY SHALL TAKE ALL COMMERCIALY REASONABLE STEPS TO MITIGATE ANY LOSSES OR DAMAGES THAT MAY BE INCURRED HEREUNDER.

12.1 DISCLAIMER OF INDIRECT DAMAGES. TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, OR FOR LOST PROFITS, LOSS OF BUSINESS OR DATA LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING IN CASE OF NEGLIGENCE, EVEN IF THE PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

12.2 CAP ON LIABILITY. TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID BY YOU UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. HOWEVER, THE ABOVE LIMITATIONS SHALL NOT APPLY IN CASE OF (I) BREACH OF ANY CONTRACTUAL PAYMENT OBLIGATION, (II) BREACH OF SECTION 2.4, (III) BREACH OF CONFIDENTIALITY, (IV) DEATH, (V) BODILY INJURY, (VI) GROSS NEGLIGENCE, OR (VII) WILLFUL MISCONDUCT.

12.3 INDEPENDENT ALLOCATIONS OF RISK. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY US TO YOU AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

13. MISCELLANEOUS

13.1 Relationship. The Parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the Parties.

13.2 Publicity. You authorize Us to use Your company name and/or logo and/or trademarks on Our website, on a reference list, through press releases issued by Us, and in other promotional materials.

13.3 Assignment. Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent. Any attempt to assign this Agreement without such consent will be null and void.

Notwithstanding the foregoing, either Party may assign this Agreement without the consent of the other Party if a majority of its outstanding voting capital stock is sold to a third party, or if it sells all or substantially all of its assets or if there is otherwise a change of control.

13.4 Subcontractors. We may use subcontractors or other third parties in carrying out Our obligations under this Agreement. We remain responsible for all of Our obligations under this Agreement.

13.5 Non-solicitation. During the Agreement and for a period of twelve (12) months following its expiry or earlier, lawful termination, You shall not, unless otherwise agreed in writing by Us, directly or indirectly solicit or entice away from Us or employ or attempt to employ or hire the services of any person who is, or has been, engaged as an employee of Us, regardless of the position, even if the solicitation was initially produced by the employee.

13.6 Notices. Any notice under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or by recorded delivery to the other Party at its address as set out in this Agreement, or such other address as may have been notified by that Party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class post or by recorded delivery shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

13.7 Force Majeure. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control. If the force majeure event lasts for more than thirty (30) consecutive days, each Party shall be entitled to terminate the Agreement by registered letter with acknowledgment of receipt without the other Party claiming any damages in this regard.

13.8 Governing Law. This Agreement will be governed by the laws of the state of Delaware, without regard to its conflict of laws principles. The Parties expressly exclude the enforcement of the United Nations Convention on Contracts for the International Sale of Goods, all national laws aimed at implementing this Convention as well as the rules of conflict of law which may be enforceable.

13.9 Jurisdiction. In the absence of mutual agreement between the Parties, the courts of the state of Delaware shall have jurisdiction to rule on any dispute occurring between the Parties with regard to the Agreement construction or performance, notwithstanding multiple defendants or introduction of third parties, even for protective, summary or motion procedures. If either You or Us employ attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses

13.10 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, including, without limitation, Permitted Third Parties.

13.11 Waiver and Modifications. Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the Party's right to take subsequent action.

13.12 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

13.13 Headings. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.

13.14 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to said subject matter, including any prior Nondisclosure Agreement between the parties. Neither Party will be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by the other Party in any acceptance, confirmation, invoice, purchase order, receipt, correspondence, or otherwise, unless each Party mutually and expressly agrees to such provision in writing.