

VANDIS MANAGED SERVICES AGREEMENT

IMPORTANT: READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE AND/OR ACCESSING THE SERVICES IN YOUR MICROSOFT LIGHTHOUSE ACCOUNT. VANDIS GRANTS YOU ACCESS TO THE SOFTWARE AND/OR SERVICE ONLY IF YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THE SOFTWARE OR ACCESSING THE SERVICE, YOU (1) AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND (2) REPRESENT AND WARRANT THAT YOU POSSESS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOU AND ANY COMPANY FOR WHICH YOU ARE ACTING (FOR EXAMPLE, YOUR EMPLOYER). IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE OR ACCESS THE SERVICE.

THIS **MANAGED SERVICES AGREEMENT** (“**Agreement**”), is between you or the company you represent (“**Customer**”) and Vandis, Inc., a New York corporation with a principal office at 1 Albertson Avenue, Albertson, NY 11507 (“**Vandis**”) and is made effective (“**Effective Date**”) as of the date Customer first registers for the Vandis Managed Service offering on the Microsoft Azure Marketplace. portal. Customer and Vandis are each a “**Party**” and collectively, the “**Parties.**”

1. DEFINITIONS

- (a) “**Customer Data**” means Customer’s IT infrastructure data (including Customer’s infrastructure, support incidents, network traffic data, and system logs pertaining to hosts, end points, and networking equipment which are accessed by or monitored by Vandis as part of the Managed Services).
- (b) “**Network as a Service (NaaS)**” means the provision of network infrastructure and services from Vandis to Customer.
- (c) “**Term**” means the subscription term of Managed Services as set forth in an ordering document.
- (d) “**Vandis Monitoring**” means the Vandis infrastructure monitoring managed services platform maintained and operated by Vandis to gather and analyze Customer Data, and to generate alerts and reports on Customer Data.
- (e) “**Vandis Monitoring Appliance**” means Vandis’ data collection appliance, to be deployed and configured in the agreed location on Customer’s premises, and physically and logically connected to Customer’s network.
- (f) “**Vandis Change Ops**” activities means the scheduling and remote implementation of software configuration changes to Customer’s logical IT infrastructure. Except to the extent authorized in a separate professional services engagement, Change Ops excludes the performance of physical IT infrastructure installations, relocations, upgrades, modifications, or de-installations, as well as any services commonly known as “smart hands” services.
- (g) “**Vandis OnCall**” means the remote, on-call availability of Vandis resources to provide technical and implementation support, as may be further described in an ordering document.

2. AGREEMENT SCOPE AND STRUCTURE; SERVICES

- 2.1 Customer retains, and Vandis agrees to perform the services (the “Managed Services”) for Customer on the terms, conditions, and assumptions set forth in this Agreement and in one or more separately agreed Order (each, an “Order”).
- 2.2 In the event of a conflict between a term found in this Agreement and in an Order, the terms of this Agreement shall prevail unless otherwise agreed by the Parties in writing.

3. PERFORMANCE OF MANAGED SERVICES

- 3.1 **Service Descriptions.** Vandis’s Managed Services are described in the Order (including any attachments thereto) to this Agreement. Customer acknowledges and agrees that:
 - Vandis may publish and periodically update subscriber guides to provide more detailed delivery and configuration information for one or more of the Managed Services.
 - Customer will promptly acknowledge the receipt of, and familiarize itself with, such subscriber guides and

work with Vandis in good faith to implement any procedural or administrative changes to the delivery of Managed Services.

Other Managed Services Requirements may be set forth in the Order and included Attachments, if any. Customer acknowledges its responsibility to read any such Specifications carefully.

- 3.2 **Site Access.** Customer will ensure timely access to Vandis and authorized agents, if any, at no charge, to its premises, IT environment (including infrastructure and applications, to the extent necessary), its subject matter experts and its third-party suppliers and agents who are also engaged in the operation of Customer's IT environment. Additional onboarding requirements may be set forth in the Order(s).
- 3.3 **Remote Access.** Customer acknowledges that remote access to Customer's network (using one or more industry standard protocols and/or appliances, such as for example only, Pulse Secure, Citrix, Cisco, and Palo Alto Networks), is a prerequisite for the Managed Services. Customer will ensure timely and unobstructed remote access for authorized Vandis support and engineering personnel. Customer is required to inform Vandis of any changes that would affect Vandis' ability to remotely access customer systems between three to five business days. If Vandis is not notified within the stated dependency of three to five business days, Vandis will therefore be excused from any Managed Services impairment or delays attributable to any changes affecting Vandis' remote access to customer environment.
- 3.4 **Managed Services Dependencies.** Customer will timely accommodate all reasonable requests of Vandis to assign Customer's reasonably skilled and experienced subject matter experts to enable Managed Services delivery, and to procure the active cooperation and participation of its agents, including procuring access to systems and data maintained by its third party equipment and/or services providers. Customer acknowledges and agrees that (i) Customer's failure to meet the foregoing dependencies may adversely affect Vandis' ability to provide the Managed Services; (ii) the Managed Services do not substitute for Customer's own security information and event management (SIEM), or IT service management functions; and (iii) Vandis may be dependent upon or use Customer Data, materials, and other information furnished by Customer, that Vandis will not be in a position to independently investigate or verify their accuracy or completeness, and that Vandis will therefore be excused from any Service impairment or delays attributable to any inaccuracies or incomplete materials or information.
- 3.5 Vandis may also communicate on an ongoing basis processes and procedures providing guidance and conditions relative to Customer's preparation for, and consumption of, the Managed Services (e.g., how Customer's IT Service Management and help desk functions should interface with Vandis' OnCall and Change Ops Managed Services).
- 3.6 **Contract Change Management.** Each party may request changes that affect the scope or duration of the Managed Services. If either party requests such any such change, Vandis shall notify Customer if it believes that an adjustment in the fees or the manner or timing of its performance is required. The parties shall then negotiate in good faith a reasonable and equitable adjustment thereto. Vandis shall continue performance pursuant to the existing term of the Managed Services and shall not be bound by any change requested by either party, until such change has been accepted in writing by the other party, in which case.

4. FEES & EXPENSES

- 4.1 **General.** During the Term of this Agreement, Customer agrees to compensate Vandis as set forth in each SOW. In addition to the Managed Services subscription fees set forth in an Order, any applicable separate charges or fees including, but not limited to, any applicable freight charges for Equipment (as that term is defined in Section 7.1) or other that may be assessed against Customer will be clearly described in the Order document.
- 4.2 **Payment Terms.** Invoices shall be mailed to Customer at the address set forth in Section 13.5 hereof. Customer shall pay correct invoices within fifteen (15) days of receipt. Any past due amount is subject to a late charge in the amount of one and a half (1.5) percent per month or the maximum amount permissible by law, whichever is less, to defray Vandis' costs of carrying such balance. . Vandis may decline to accept money orders or traveler's checks as payment mechanisms in its sole discretion. Customer shall notify Vandis of any disputed invoices

within twenty (20) days of receipt and pay the undisputed portion of such invoice. Without limiting its rights or remedies hereunder, and notwithstanding the parties' rights under Section 12.2, Vandis reserves the right to immediately suspend or terminate or delay provision of its Managed Services and Vandis may revoke any or all quantity discounts and/or credit extended, in the event of Customer's failure to make timely payment. Customer shall pay all costs of collection, including reasonable attorneys' fees.

4.3 **Establishment of Credit.** Customer shall furnish to Vandis all financial information reasonably requested by Vandis from time to time for the purpose of establishing or continuing Customer's credit limit, it being understood that Vandis shall have the right to decline to extend credit to Customer and to require that the applicable purchase price be paid prior to shipment. Vandis shall have the right from time to time, without notice, to change or revoke Customer's credit limit on the basis of changes in Vandis' credit policies or Customer's financial condition and/or payment record. Any obligation of Vandis under these terms and conditions to deliver Products on credit terms shall terminate without notice if Customer files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Customer, or if a receiver or trustee is appointed to take possession of the assets of Customer.

4.4 **Taxes.** With the exception of any taxes based on Vandis net income or taxes arising from the employment or independent contractor relationship between Vandis and its personnel, all fees, expenses and other charges payable to Vandis hereunder do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be the sole responsibility of Customer (excluding any applicable taxes based on Vandis net income or taxes arising from the employment or independent contractor relationship between Vandis and its personnel). In the event that such taxes, tariffs or duties are assessed against Vandis, Customer shall reimburse Vandis for any such amounts paid by Vandis or, prior to the payment of such amounts by Vandis, provide Vandis with valid tax exemption certificates with respect thereto.

5. CONFIDENTIALITY

5.1 **Definitions.** "Confidential Information" means all documents, software and documentation, reports, financial or other data, records, forms, tools, Products, services, methodologies, present and future research, technical knowledge, marketing plans, trade secrets, and other materials provided by one party to the other party in the course of performing under this Agreement (including the Vandis Materials), whether tangible or intangible and whether or not stored, compiled, or memorialized physically, electronically, graphically, in writing, or by any means now known or later invented. Confidential Information includes without limitation records and information (i) that has been marked as proprietary or confidential; (ii) whose confidential nature has been made known by Customer or Vandis; or (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is already known to the recipient at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of recipient; (iii) is independently developed by recipient without benefit of the other party's Confidential Information; or (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality.

5.2 **Covenants.** Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. Vandis will deliver to Customer all Confidential Information and all copies thereof (and all other property obtained from or through Customer) when Customer requests the same or immediately upon termination of this Agreement, whichever occurs earlier, except for one copy thereof that Vandis may retain for its records. Neither party shall, except with respect to those of its employees or authorized agents (including any product manufacturers or licensors) who have a need to know in order to enable such party to perform under this Agreement, use or disclose to any person, firm or entity any Confidential Information of the other party without such other party's express, prior written permission; provided, however, that notwithstanding the foregoing, Vandis may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order. The confidentiality restrictions and obligations imposed by this Section 5.2 shall terminate two (2) years after the expiration or termination of this Agreement.

6. CUSTOMER DATA

- 6.1 **Collection and Use.** Customer hereby grants Vandis the right, during the Term, to collect (including collection via the installation, maintenance, and remote access to the Vandis Monitoring Appliance) and to use the Customer Data for the performance of the Managed Services, including analysis and reporting and working with third party manufacturer and licensor resolver groups. Vandis shall have the right (subject to its confidentiality obligations set forth in the Agreement, and to the data return and retention requirements described in Section 6.5, below) to perform analytics on Customer Data and to retain and use such analytics for any commercial purpose.
- 6.2 **Ownership and Confidentiality.** Vandis acknowledges that, as between the parties, Customer owns and controls all right, title and interest in and to the Customer Data. Vandis will use and process the Customer Data solely to the extent necessary for the delivery of the Managed Services and will obtain no rights in such Customer Data.
- 6.3 **Security.** Vandis will maintain appropriate administrative, technical and physical security measures to protect Customer Data against unauthorized access, disclosure and loss.
- 6.4 **Access and Return.** Customer may view Customer Data in Vandis' custody (e.g., data resident on the Vandis Monitoring) via the administrative console at any time during the Term, at no additional charge. During the limited retention period described in Section 6.5, below, Customer may request the export of all ticket data generated by Vandis in the course of providing the Managed Services, at no additional charge and in Vandis' standard structured data format. Export of any other Customer Data, or export of Customer Data in a custom format requires the engagement of Vandis as part of a separate professional services project at Vandis' then-current rates. The parties acknowledge and agree that any such engagement will (due to its potential complexity or Customer's potential data formatting or other non-standard requirements), require an extension of this Subscription and additional compensation to Vandis on a time and materials basis. The parties agree to work collaboratively to determine a mutually satisfactory agreement regarding such extension, if needed.
- 6.5 **Limited Retention.** During and as of the end of the Term, Vandis will retain the Customer Data as follows: (i) thirty days after completion of a Customer Data retrieval project performed by Vandis; or (ii) in the case of expiration or termination of this Agreement without such a project, then Vandis will retain the Customer Data for thirty days following expiration or termination. Vandis will destroy the Customer Data upon completion of the foregoing retention period. Upon Customer's written request, Vandis will provide written confirmation of its destruction of the Customer Data.
- 6.6 **Inputs and Decision.** Customer acknowledges and agrees that Vandis may, in performing its obligations pursuant to this Agreement, be dependent upon or use Customer Data, materials, and other information furnished by Customer, that Vandis will not be in a position to independently investigate or verify the accuracy and completeness of such information or materials, and that Vandis will therefore be excused from any Managed Services impairment or delays attributable to any inaccuracies or incomplete materials or information. Vandis, in performing the Managed Services, will be making recommendations and providing advice, but all decisions as to implementing such advice and recommendations shall be made by and be the sole responsibility of Customer.

7. EQUIPMENT.

- 7.1 This Section 7 is applicable where the Customer has subscribed to NaaS as part of the Managed Services. In such instances, Vandis will deliver hardware and/or other physical devices ("Equipment") to Customer as part of its provision of the Services.
- 7.2 **Equipment acceptance.** Customer will be deemed to have accepted the Equipment if Customer fails to notify Vandis in writing within fifteen (15) days after receipt of all components of such Equipment, irrespective of whether Customer has installed and tested the Equipment prior to the end of the fifteen (15) day period. Customer agrees to keep the Equipment in in good working order, use it for business purposes only, and not modify it or move it from its original location without obtaining Vandis' prior written consent, which will not be unreasonably withheld.

8. INSURANCE.

Customer agrees to maintain commercial general liability insurance acceptable to Vandis, Customer also agrees to (1) keep the Equipment fully insured against the loss at its replacement cost, with Vandis named as loss payee, and (2) provide proof of insurance satisfactory to Vandis no later than thirty (30) days following the commencement of this Agreement and thereafter upon Vandis' written request.

9. INTELLECTUAL PROPERTY RIGHTS.

9.1 Customer acknowledges that the Managed Services embody valuable trade secrets of Vandis and shall be treated as Vandis Confidential Information. Customer is subscribing to the Managed Services only and does not acquire any ownership or use rights in or to the Managed Services other than as expressly set forth in this Agreement or an Order. As between Customer and Vandis, Vandis retains all ownership and intellectual property or proprietary rights in and to the Managed Services (including any derivatives, improvements, updates, upgrades, corrections, customizations, and copies thereof, and including without limitation any tools, intake, ingest, survey, processing, reporting or output templates used in connection with the Managed Services), and reserves all rights not expressly granted to Customer in this Agreement. Customer agrees to reproduce and include Vandis copyright, trademark, and other proprietary rights notices on any copies of outputs of the Managed Services, including partial copies and derivative works (if applicable).

10. REPRESENTATIONS AND WARRANTIES

10.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other that: (a) it has all right, power, and authority necessary to enter into this Agreement, perform its obligations hereunder and grant the rights it grants to the other Party hereunder; and (b) its performance of this Agreement, and the other Party's exercise of its rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any agreement by which it is bound or any applicable law, rule or regulation. Vandis warrants that the Services will be rendered in a diligent and workmanlike manner, and in accordance with the practices and standards observed by well-managed professional services providers in Vandis' industry when performing similar services. Customer's sole and exclusive remedy for any non-conformity, of which Customer promptly notifies Vandis in writing, shall be corrective reperformance of the affected portion of the nonconforming Services, or for Services which cannot be reperfomed, an equitable abatement of fees associated with the non-conforming portion of the Services

11. LIMITATION OF LIABILITY

- 11.1 THE EXPRESS WARRANTIES IN THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, COMPATIBILITY, INTEROPERABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. VANDIS MAKES NO ASSURANCES THAT A MANAGED SERVICE WILL BE UNINTERRUPTED OR DETECT ALL SECURITY THREATS, OR PREVENT ANY SECURITY INCIDENT, BREACH OR MISAPPROPRIATION OF CUSTOMER DATA OR CUSTOMER SYSTEMS BY A THIRD PARTY
- 11.2 IN NO EVENT SHALL VANDIS BE LIABLE TO CUSTOMER FOR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO VANDIS' PERFORMANCE UNDER AN ORDER, IN EXCESS OF THE AMOUNT OF FEES PAID (OR PAYABLE, IF GREATER) TO VANDIS FOR THE PERFORMANCE OF THE ORDER, AS THE CASE MAY BE, WHETHER IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.
- 11.3 NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, SAVINGS, BUSINESS, OR DATA, NOR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE.

12. TERM; TERMINATION

12.1 **Term.** The term of this Agreement will be effective as of the Effective Date indicated above and will conclude upon the earliest of: (a) when all Managed Services provided by Vandis are concluded under any Order; (b) upon termination as set forth in Sections 12.2 or 12.3.

12.2 **Termination for Cause:** Either party may terminate this Agreement or any outstanding Order, upon thirty (30) days' written notice to the other party, in the event such other party breaches a material term of this Agreement or any Order and such breach remains uncured at the end of such thirty (30) day period. Vandis may suspend the Managed Services (including the operation of the Vandis Monitoring Appliance, if applicable) in the event Customer fails to pay any undisputed amount within fifteen days of Vandis' notice to Customer of a failure to pay, or if the Customer Data presents a security risk to the Managed Services (or the Vandis Monitoring). Upon any such termination, Customer will pay Vandis all fees and expenses which have been incurred or earned in connection with the performance of the Managed Services through the effective date of such termination.

12.3 **Termination Without Cause:**

(a) This Section 12.3(a) is applicable only where the Customer has not subscribed to NaaS as any part of the Managed Services: A Customer may terminate any particular subscribed Managed Service without cause by providing Vandis with minimum prior written notice of sixty (60) days. As subscriptions automatically renew for successive terms, cancellation will be effective as of the end of the notice period.

(b) This Section 12.3(b) is applicable where the Customer has subscribed to NaaS as part of the Managed Services: There shall be no termination without cause during a subscription term. Subscriptions will automatically renew for successive terms, *provided however*, that a Customer may elect not to renew a NaaS-related Managed Service for another subscription period by providing Vandis with minimum prior written notice of sixty (60) days before the end of the current subscription term of Customer's intention not to renew.

12.4 **Consequences:**

(a) Following any termination, Customer will pay Vandis all unpaid fees and expenses which have been incurred or earned in connection with the performance of the Managed Services through the effective date of such termination (including the thirty (30) business day notice period), as well as any other fees or charges specified in an Order..

(b) This subsection (b) is applicable where the Customer has subscribed to NaaS as part of the Managed Services: Unless otherwise specified in an Order, upon termination or expiration of this Subscription, Customer will, at its expense, return all Equipment to Vandis within thirty (30) days. If Equipment is not returned in both a timely fashion and in good working order, then Customer will remit payment to Vandis in an amount equal to the total replacement cost of any such Equipment. If the returned Equipment is not immediately available for use by another without need of repair, Customer will reimburse Vandis for all repair costs.

13. MISCELLANEOUS

13.1 **Informal Dispute Resolution.** If any disagreement or dispute arises between the parties, the executive officers of Customer and of Vandis (or their respective designated alternates with appropriate responsibility for this Agreement and/or the applicable Order, together the "Contract Executives") shall, within seven (7) business days of receipt of notice of such disputed matter, attempt in good faith to resolve such disagreement or other dispute. If the disputed matter has not been resolved by the Contract Executives within thirty (30) days after such dispute has been referred to them, or such longer period as agreed to in writing by the parties, each party shall have the right to commence any legal proceeding as permitted by law. Neither party shall be obligated to follow this provision for breaches of Section 5 hereof or for any other breach as to which injunctive relief is sought.

13.2 **Independence.** Vandis is performing the Managed Services as an independent contractor and not as an employee of Customer and none of Vandis personnel shall be entitled to receive any compensation, benefits or

other incidents of employment from Customer. Neither Vandis nor Customer shall be or become liable or bound by any representation, act or omission whatsoever of the other.

- 13.3 **Non-Solicitation of Vandis Employees.** Neither Party shall, during the Term of this Agreement or for one (1) year thereafter, solicit for hire as an employee, consultant or otherwise any of the other Party's personnel who have had direct involvement with the Managed Service, without such other Party's express and prior written consent. The foregoing covenant shall not prohibit solicitation or hiring by means of advertising in newspapers or trade publications or internet media available to the public.
- 13.4 **Press Releases and Customer List Reference.** Neither party shall issue any press release concerning Vandis work without the other's consent. Vandis may identify Customer as a Customer of Vandis (using Customer's name and logo) and generally describe the nature of the Managed Services in Vandis promotional materials, presentations, and proposals to current and prospective Customers.
- 13.5 **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon personal delivery, five (5) days after being mailed by registered or certified mail, return receipt requested, or one (1) business day after being sent by nationally recognized overnight courier. Notices shall be addressed to Customer at the address provided as part of the registration process. Notices to Vandis shall be made to Vandis Inc., 1 Albertson Ave., Albertson, NY 11507, Attention: Legal Department.
- 13.6 **Insurance.** Throughout the Term of this Agreement, Vandis shall at its own expense, obtain and maintain the following insurance: (a) Commercial General Liability, with coverage of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage; (b) Motor Vehicle Liability insurance for owned, non-owned and hired vehicles, with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage; (c) Workers' Compensation insurance in the amount required by statute for all states in which the project or work is to be performed, (d) Professional Liability Insurance with limits of not less than \$1,000,000 per claim. Vandis will endeavor to notify Customer in writing of any material change to its coverage as described herein. Vandis shall furnish certificates of insurance evidencing coverage or other acceptable evidence of self-insurance to Customer upon request.
- 13.7 **Force Majeure.** Vandis shall not be liable for any delays to its performance hereunder resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, severe weather conditions, failure of power, acts of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority, or the acts or omissions of Customer or its agents.
- 13.8 **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state courts located in Suffolk or Nassau Counties, NY, or (if permitted by law) in a competent federal court located in the state of New York, which shall be the exclusive venue for any such actions or proceedings.
- 13.9 **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 13.10 **No Waiver of Breach.** No failure (whether in whole or in part) on the part of either party hereto to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver thereof. No waiver shall be valid unless it is in writing and signed by the party to be bound thereby.
- 13.11 **Survival.** All obligations of each party that have accrued before termination, or which become effective as a result of termination, or which by their terms are of a continuing nature (e.g., confidentiality) shall survive the expiration or termination of this Agreement (irrespective of the reason for termination).
- 13.12 **Interpretation.** No purchase order, proposal, or other ancillary document (irrespective of when it is proffered or whether it is separately rejected) that purports to modify or supplement the printed text of this Agreement

or any schedule or exhibit hereto or to otherwise alter the terms of this Agreement shall add to or vary the terms of this Agreement. Any such proposed variation or addition (irrespective of which Party submits it) is objected to and deemed a material change unless agreed to in writing. In the event of a conflict between the provisions of this Agreement and the specific provisions set forth in an Order, the provisions of this Agreement shall control, except to the extent the provisions in an Order expressly provide otherwise. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement is not intended to be for the benefit of, and will not be enforceable by, any person who is not named at the date of this Agreement as a party to it. This Agreement, including any Orders entered into pursuant hereto, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing.