

Last updated January 1, 2025

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## MASTER SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS

These General Terms and Conditions form part of the Master Services Agreement made between Revinate, LLC, a Delaware limited liability company doing business as Revinate, together with its Affiliates (collectively “**Revinate**,” “**we**,” “**our**,” or “**us**”), and the Customer. “**Customer**”, “**you**”, and “**your**” means the person or entity that has executed a Service Order with Revinate. “**Agreement**” means these General Terms and Conditions together with all documents incorporated herein by reference, including the associated Service Order(s) executed by the Customer.

### 1. DEFINITIONS

“**Affiliate**” means any entity which is owned or controlled by, or under common control with, Revinate.

“**Aggregate Data**” means information, data, and statistics about a group of individuals or transactions that cannot be used to identify Customer or a particular individual, including data derived from de-identifying and anonymizing Customer Data and combining it with data about other individuals, Revinate customers, and transactions.

“**Applicable Laws**” means the laws, ordinances, rules, regulations, directives, and guidelines applicable to Revinate’s provision and Customer’s use of the Services.

“**Application Programming Interface (API)**” means a set of rules and protocols that allows different software applications to communicate with each other. In the event Revinate makes an API available for Customer’s use in association with the Services, Customer shall be solely liable for any data or content uploaded, downloaded, or otherwise accessed by Customer when using such API.

“**Authorized Users**” means any individual who is authorized by Customer to access and use the Services under Customer’s account, including Customer’s, and, if applicable, its Contracting Affiliates’, employees, consultants, contractors, or agents.

“**Contract Anniversary Date**” means (i) the renewal date of the Term for Customer’s Services based on the Contract Start Date and length of the Initial Term as further described in Section 7.2, and (ii) with respect to fee increases described in Section 3.9, each successive twelve (12) month period following the Contract Start Date.

“**Contract Start Date**” means the billing commencement date for the Services (excluding any One-Time Fixed Fees), set forth in the Statement of Work associated with Customer’s Service Order.

“**Customer**” means the party that has entered into a Service Order with Revinate, which may be the Primary Contracting Party or its Contracting Affiliate.

“**Customer Data**” means structured data regarding travel guests and leads of Customer and transactions between travel guests and Customer stored in a database hosted by Revinate that is or was (a) acquired from or provided by Customer, (b) acquired by Revinate from a reservation call or other communication with a travel guest or lead of Customer that takes place in the course of Revinate’s performance of the Services for Customer, or (c) acquired by Revinate through Customer’s use of the Services. Customer Data does not include Revinate Data.

**“Confidential Information”** has the meaning given to it in Section 6.1 below.

**“Contracting Affiliate”** means a person or entity, other than the Primary Contracting Party, that (i) owns, controls, or manages one or more hotels, resorts, or other properties that the Services will be used in connection with, (ii) is not a competitor of Revinate or in the business of developing and offering services that are substantially similar to the Services, and (iii) has executed a Service Order thereby agreeing to be bound by the terms of this Agreement as a “Customer” hereunder with respect to the Services and properties identified in such Service Order.

**“Data Processing Addendum”** or **“DPA”** means the Data Processing Addendum referenced in Section 8.5 herein.

**“Documentation”** means user manuals, technical manuals and any other materials provided by Revinate, in printed, electronic, or other form, that describe best practices or the installation, configuration, operation, use or technical specifications of the Services.

**“End User License Agreement”** or **“EULA”** means the End User License Agreement available at <https://www.revinate.com/terms/eula/> or such other location that Revinate may provide with written notice to Customer.

**“Feedback”** means comments or suggestions from Customer or its Authorized Users regarding the possible creation, modification, correction, improvement or enhancement to the Services, including without limitation ideas for the development of new products and services and any customer testimonials submitted by Customer to Revinate.

**“Intellectual Property Rights”** means all intellectual property or proprietary rights, including without limitation patent, copyright, trademark, service mark, trade secret, moral, and contract rights in any country or jurisdiction in the world, whether or not registered or registerable, and all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues of them now or hereafter in force.

**“Initial Term”** means the twenty-four (24) month period following the Contract Start Date unless otherwise set forth in the applicable Service Order.

**“PA-DSS”** means, at any given time, the then-effective Payment Application Data Security Standard published by the PCI Security Standards Council.

**“PCI Data”** means Cardholder Data (including, without limitation, Primary Account Number, cardholder name, expiration date, and Service Code) and Sensitive Authentication Data (including without limitation full magnetic stripe data or equivalent on a chip, CAV2/CVC2/CW2/CID, PINs/PIN block), as such terms are defined by the PCI Security Standards Council.

**“PCI DSS”** means, at any given time, the then-effective Payment Card Industry Data Security Standard published by the PCI Security Standards Council.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**“Primary Contracting Party”** means a person or entity that has executed a Service Order on behalf of itself as the Customer, and/or on behalf of one or more Contracting Affiliates as the Customer(s).

**“Product”** means a set of Services listed in a Service Order. Each Product may have a set of options, upgrades or services that may be indicated in the Service Order, with associated terms and Fees.

**“Product Specific Terms”** means the additional terms for each corresponding Product that are referenced via hyperlink in Customer's Service Order.

**“Professional Services”** means implementation, training, consulting, design, data mining, or other Customer services, other than provision of the Services, provided as part of a Service Order or related Statement of Work.

**“Prohibited Content”** means content that: (a) is illegal under Applicable Laws; (b) violates any third party's Intellectual Property Rights, including, without limitation, copyrights, trademarks, patents, and trade secrets; (c) contains indecent or obscene material; (d) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (e) promotes unlawful or illegal goods, services, or activities; (f) contains false, misleading, or deceptive statements; (g) contains any harmful, malicious, or hidden code, programs, procedures, routines, or mechanisms that would: (i) cause the Services to cease functioning; (ii) in any way damage or corrupt data, storage media, programs, equipment, or communications; or (iii) otherwise interfere with the operations of the Services, including, without limitation, trojan horses, viruses, worms, time bombs, time locks, devices, traps, access codes, or drop dead or trap door devices.

**“Prohibited Data”** means any of the following: PCI Data; social security number; account number, password, or personal identification number for banking, credit, or other financial or payment account; driver license number or other government-issued identification card number; or user name or email address, in combination with a password or security question and answer that would permit access to an online account (other than login credentials used to log into the Services).

**“Revinatize Data”** means Aggregate Data and all information and data Revinatize has acquired from sources other than Customer, Customer's travel guests and leads, and reservations booked by Revinatize on Customer's behalf.

**“Room Count”** means the number of rooms in Customer's rental inventory (“Rooms”) or other applicable, agreed upon units of measure used to calculate the Fees reflected in Customer's Service Order. By way of example, the Room Count for a Customer's hotel property would be the number of Rooms the hotel has available for guest bookings. Alternatively, the Room Count for a Customer in the business of vacation rental property management would be the number of vacation rental properties the Customer has available for guest bookings. Customer shall promptly notify Revinatize in writing of any change in Rooms or other applicable units of measure following execution of the Service Order.

**“Service Order”** means a Service Order executed by Customer and Revinatize that lists the Services Customer is purchasing from Revinatize, together with the associated quantities and Fees. Following full execution of the Service Order, Customer may use the Services in accordance with the terms set forth in the Service Order and the provisions of this Agreement.

**“Services”** means Revinatize's guest engagement Products made available to Customer pursuant to a Service Order and any associated Statement of Work attached thereto.

**“Software”** means the source code, object code or underlying structure, ideas, know-how or algorithms underlying the Services or any software, documentation or data related to the Services, which may be delivered as Software as a Service (“SaaS”), together with any applicable Documentation.

**“Statement of Work”** means the document attached to the Service Order that states the Contract Start Date and describes specific Deliverables or Professional Services to be provided to or performed for Customer.

**“Support Services”** means the customer support provided by Revinatē's trained and knowledgeable staff capable of providing support for the Services. Revinatē will use commercially reasonable diligence to correct reproducible errors when reported to Revinatē and provide phone, email, or online support.

**“Third Party Content”** means information ingested from third parties that may be available to Customers as part of the Services, including: (a) publicly available reviews and rankings posted on third party web sites, (b) feedback and information provided by guests at Customer facilities, (c) posts from social media sites and forums, news articles, blog posts, photos and videos, and (d) commercially available data regarding hospitality businesses and guest travel and hospitality trends, such as occupancy rates and rate metrics, marketing engagement data and guest travel information.

**“Usage Fees”** has the meaning set forth in Section 3.6 below.

## **2. SERVICES**

**2.1 Services.** Revinatē shall perform and provide to Customer the Services described in the Service Order(s) executed by Revinatē and Customer. Subject to and conditioned upon Customer's timely payment of the Fees set forth in the Service Order(s) and compliance with the terms of this Agreement, Revinatē grants Customer the right to access and use the Services during the Term.

**2.2 Additional Services.** Additional Services may be added to this Agreement by execution of a new Service Order. In order to be effective, a Service Order must be signed by authorized representatives of both parties.

**2.3 Contracting Affiliates.** Contracting Affiliates are permitted to order Services under this Agreement provided that any such Contracting Affiliate executes a Service Order and agrees to be bound by the terms of this Agreement as a “Customer” with respect to such Service Order and the Services purchased thereunder.

**2.4 Appropriate Use of Services.** Customer will not and will not authorize, permit, or encourage any Authorized User or any third party to: (a) allow anyone other than Authorized Users to access and use the Services; (b) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Services; (c) modify, adapt, or translate the Services; (d) make any copies of the Services; (e) resell, distribute, or sublicense the Services, or use the Services for the benefit of anyone other than Customer and its Authorized Users; (f) remove or modify any proprietary markings or restrictive legends placed on the Services; (g) use the Services in violation of any Applicable Laws; (h) build a competitive product or service; (i) introduce, post, or upload to the Services any Prohibited Content, or (j) use the Services for any purpose not specifically permitted in this Agreement. Notwithstanding any other provision of this Agreement, Customer has no right to download or access source code underlying the Services.

**2.5 Use of Proprietary Third-Party Content.** Customer may not modify, republish, reproduce, post, transmit, sell, offer for sale, or redistribute Third Party Content without the prior written permission of Revinatē, and, if applicable, the rights holder of the Third Party Content (such as industry research data). Customer must abide by all copyright notices, information, or restrictions related to any Third-Party Content.

**2.6 Maintenance and Support.** Unless otherwise specified in Customer's Service Order, Customer's Services subscription includes Revinate's standard Support Services.

**2.7 Responsibility for Use of Services.** Customer is responsible and liable for all uses of the Services by its Authorized Users or by any other Person to whom Customer or an Authorized User may provide access to or use of the Services, whether such access or use is permitted by or in violation of this Agreement. Customer shall promptly notify Revinate in the event Customer becomes aware of or reasonably suspects any unauthorized access to or use of the Services.

**2.8 Authorized Users.** Customer shall not permit any Person other than an Authorized User to access or use the Services. Only employees, service providers, and independent contractors of Customer, in each case who have executed written agreements with Customer containing restrictions on use and disclosure of Confidential Information consistent with the provisions of this Agreement, may be designated by Customer as Authorized Users. If the Fees set forth in the applicable Service Order are based in whole or in part on the number of Authorized Users of certain Services, Customer agrees to promptly and truthfully disclose to Revinate, at all times during the term of this Agreement, any changes in the number of individual natural persons Customer is allowing to access such Services.

**2.9 Unique Log-in Credentials.** Customer shall request from Revinate, and Revinate shall provide, unique log-in credentials for each Authorized User. Log-in credentials may not be shared or transferred.

**2.10 Restrictions Related to Data.** Customer shall not store or transmit any PCI Data or other Prohibited Data using the Services, except that Customer may collect PCI Data from travel guests over the telephone and enter such PCI Data into Customer's Payment Application (defined in Section 2.11 below); provided, however, that Customer shall not record such telephonic transmission of PCI Data or otherwise store such PCI Data using the Services. Revinate may, but is not required to, search for and delete any Prohibited Data it detects or finds is being stored by or on behalf of Customer in the Services. If Customer violates the restrictions set forth in this paragraph, then Customer's use of the Services for storage or transmission of PCI Data or other Prohibited Data shall be at Customer's own risk, and Revinate shall have no liability to Customer with respect to such data.

**2.11 Not A PCI Data Payment Application.** Customer understands and acknowledges that the Services are not intended or designed to be used as a "Payment Application," as that term is defined by the PCI Security Standards Council, or for the storage, transmission, or processing of PCI Data or Prohibited Data. Therefore, Revinate DOES NOT WARRANT THAT THE SERVICES ARE OR SHALL BE (A) SUITABLE FOR STORING, TRANSMITTING, OR PROCESSING PCI DATA OR PROHIBITED DATA OR (B) COMPLIANT WITH PA-DSS.

### **3. COMPENSATION; BILLING AND PAYMENT TERMS**

**3.1 Fees.** In consideration for the Services, Customer shall pay Revinate the Fees described in the Service Order(s), including any Statement(s) of Work attached thereto, and any applicable Product Specific Terms. All Fees are non-cancelable and non-refundable.

**3.2 Reimbursement of Expenses.** In addition to the payment of Fees pursuant to Section 3.1, unless otherwise specified in a Service Order or Statement of Work, Customer agrees to reimburse Revinate for all actual, documented and reasonable travel and out-of-pocket expenses incurred by Revinate in connection with the performance of the Professional Services that have been pre-approved in writing by Customer. Customer agrees to provide reasonable accommodations at no charge to Revinate when required for on-site visits by Revinate personnel for implementation, training, Customer advocacy, consulting or other agreed-upon Services.

**3.3 Recurring Fees.** Recurring Fees for Services, other than Usage Fees, shall be deemed to commence on the Contract Start Date unless otherwise provided in Customer's Service Order or associated Statement of Work.

**3.4 One-Time Fixed Fees.** Services provided in exchange for a one-time fixed fee, including, but not limited to, set up and training Fees, shall be due and payable upon Customer's receipt of Revinate's invoice for such Fees.

**3.5 Time and Materials Basis Fees.** Services provided on a time and materials basis shall be calculated at Revinate's then current standard rates or, when specified, rates set forth in Customer's Service Order(s) or associated Statement(s) of Work.

**3.6 Usage Fees.** A Service Order may provide that a One-Time Fixed Fee or Recurring Fee will be charged for certain Services, and that Customer's usage of certain Services may result in additional Fees if such usage exceeds any applicable volume limitations set forth in the Service Order, such as number of transactions, call minutes, Toll Free Numbers, Local Numbers, Short Code Numbers (Standard or Vanity), Authorized Users, hours of training or consulting services, number of emails that can be sent, or other limitations ("Usage Fees"). Revinate will invoice Usage Fees in arrears for the prior month's transactions.

**3.7 Invoicing and Payment.** Revinate shall invoice Customer for the Recurring Fees and all other Fees, including, but not limited to, Usage Fees, One-Time Fees, Time and Material Basis Fees, and Expense Reimbursements, pursuant to the invoicing terms specified in Customer's Service Order, and Customer agrees to execute and deliver to Revinate any necessary documents to complete the foregoing as needed from time-to-time. Should Customer prefer to pay any Fees by credit card, Revinate may apply an additional surcharge subject to applicable laws. A monthly late fee of 1.5% per month (or the highest amount permitted by applicable law) may be assessed on unpaid balances over fifteen (15) days past due. Revinate will not bill Customer's guests directly for requested reservations, activities, ticketing, or any other items purchased by guests. Customer acknowledges and agrees that Customer remains solely responsible for billing for such items and for collecting any required payments from guests.

**3.8 Disputed Amounts.** Any disputed charges must be presented by Customer to Revinate in writing within ten (10) days of invoice, and the parties agree to cooperate in good faith to promptly resolve any disputed invoice within five (5) days of Revinate's receipt of Customer's written notice of dispute. In the event Customer disputes any amounts invoiced by Revinate in good faith, the undisputed amount shall be paid when due, and only disputed amounts shall be withheld pending resolution of the dispute. If payment of a disputed amount has already been made at the time Customer provides notice of the disputed charge and later resolution of the dispute is in Customer's favor, a credit will be made by Revinate to Customer on the next invoice.

**3.9 Fee Increases.** Customer acknowledges and agrees that Fees will automatically increase on the Contract Anniversary Date by the amount specified in Customer's Service Order.

**3.10 Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Revinate's income, revenues, gross receipts, personnel or real or personal property or other assets.

## 4. RESPONSIBILITIES OF CUSTOMER

### 4.1 Responsibilities. Customer shall:

- (a) Provide Revinate with such access to Customer's premises, hardware, software, devices, IT systems, and property management systems (collectively, "PMS") as may reasonably be requested by Revinate for the purposes of performing the Services, subject to any Customer access policies and/or procedures communicated in writing to Revinate;
- (b) Respond promptly to any Revinate request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Revinate to perform Services in accordance with the requirements of this Agreement;
- (c) Ensure any information provided to Revinate pursuant to (b) above is complete and accurate in all material respects;
- (d) Use the Services in accordance with all Applicable Laws;
- (e) Fulfill its technical responsibilities set forth in the Statement(s) of Work, if any; and
- (f) Be responsible for Customer's network issues and changes to Customer's computer environment, network, or PMS and notify Revinate sufficiently in advance of any changes that may affect the operation or provision of Revinate Services so that necessary adjustments can be made. Changes and/or upgrades to an existing PMS or conversion to a new PMS or other third-party system may result in additional Fees if Revinate is required to provide integration services or other Professional Services to ensure continuity of Services for Customer's new, changed, or upgraded third party system.

**4.2 Delays Caused by Customer.** If Revinate's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or Customer's agents, subcontractors, consultants or employees, Revinate shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## 5. INTELLECTUAL PROPERTY RIGHTS

**5.1 No Ownership Assignment.** This Agreement is for SaaS use rights. Neither party will assign ownership rights in any of its assets to the other pursuant to this Agreement, and neither party grants the other any rights or licenses not expressly set forth in this Agreement.

**5.2 What Customer Owns.** Customer owns all right, title and interest in and to the Customer Data as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services, and all Intellectual Property Rights related to any of the foregoing.

**5.3 What Revinate Owns.** Revinate owns and retains all right, title and interest in and to: (a) the Services, Software and Revinate Data, and (b) all Intellectual Property Rights related thereto.

**5.4 Ownership of Third-Party Content.** Revinate gathers, stores, analyzes, displays and uses a variety of Third-Party Content. Some Third-Party Content is public information (such as online reviews) and other Third-Party Content is proprietary to its creators (such as industry research data). Third Party Content may be owned by the people or entities that publish the content, or by other parties.

**5.5 Feedback.** Customer assigns to Revinate all rights, title and interest in any Feedback provided by Customer or its Authorized Users to Revinate, and agrees information disclosed by Revinate during discussions related to Feedback shall be considered Revinate Confidential Information. If, for any reason, such assignment is ineffective, Customer grants to Revinate a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, without restriction, remuneration, or attribution of authorship to use, publish and disclose Feedback in any manner Revinate chooses, and to display, perform, copy, make, have made, use, sell, and otherwise commercially exploit the Feedback in any manner and via any media that Revinate chooses without reference to the source. Customer acknowledges that Feedback disclosed to Revinate under this Agreement is only intended as suggestions and shall not be binding upon Revinate in any way.

**5.6 Trademarks and Publicity.** Customer hereby grants to Revinate a worldwide right and license, during the Term of this Agreement, to use, publish, and display Customer's name and marks for the purpose of marketing products and services to potential Revinate customers, subject to Customer's prior written approval of any such use, publication, or display. For example, Revinate may display Customer's logo on Revinate's website and in Revinate marketing materials solely for the purpose of identifying Customer as a customer of Revinate. Revinate's use of Customer's marks shall be in the same manner and quality of use as used by Customer and shall be subject to any written trademark usage guidelines or restrictions Customer provides to Revinate. The goodwill in any such use by Revinate shall accrue solely to Customer, or, as applicable, the legal rights-holder. Customer reserves the right to review and request Revinate not to use Customer's marks for a specific use hereunder. Notwithstanding the foregoing, any press release pertaining to this Agreement shall be subject to the prior written approval of both parties.

## **6. CONFIDENTIALITY**

**6.1 Definition.** "**Confidential Information**" means any information that either party (the "**Disclosing Party**") discloses to the other party (the "**Receiving Party**") or that the Receiving Party otherwise learns or acquires in connection with the parties' performance under this Agreement that the Disclosing Party designates as confidential or which Receiving Party should reasonably know is confidential due to the nature of the information or the circumstances surrounding its disclosure, whether such information is of a technical, business or other nature, and regardless of form or media now known or later developed. Confidential Information includes, without limitation, (a) information regarding third parties which the Disclosing Party is obligated to keep confidential, (b) information or data relating to Disclosing Party's business and technology, including by way of example and without limitation information concerning current or proposed projects, concepts, ideas, business models, processes, methods, know-how, inventions, discoveries, designs, technical specifications, source code, documents, marketing plans, sales information, strategies, financial information, and customer and supplier identities. Confidential Information may be contained in tangible materials, such as documents, drawings, reports and computer programs, or may be in the nature of unwritten information that is disclosed orally or merely observed. Confidential Information of Revinate includes, without limitation, information about the Services, and any Documentation that Revinate provides to Customer. Confidential Information of Customer includes, without limitation, the Customer Data.

**6.2 Exceptions.** Confidential Information excludes any information that Receiving Party demonstrates (a) is or becomes generally known or available to the public through no failure on the Receiving Party's part to preserve its confidentiality; (b) is already in the possession of the Receiving Party, with no obligations of confidentiality, at the time of disclosure; (c) is disclosed to the Receiving Party by a third party who has the right to disclose it without restriction on its further disclosure or use; or (d) is independently developed by the Receiving Party without use of or reference to any of the Disclosing Party's Confidential Information.

**6.3 Restrictions on Use and Disclosure.** Except as expressly permitted by this Agreement, Receiving Party will not, during or subsequent to the term of this Agreement use the Confidential Information for any purpose whatsoever other than the performance of its obligations under this Agreement or disclose the Confidential Information to any third party except with Disclosing Party's prior written permission; provided, however, that Receiving Party may disclose the Confidential Information on a need-to-know basis to those employees, consultants, suppliers, and other agents and representatives of Receiving Party who (a) require access to such Confidential Information for the purpose of performing Receiving Party's obligations under this Agreement; (b) are informed by Receiving Party of the confidential nature of such Confidential Information and the obligations of Receiving Party under this Agreement; and (c) have executed written nondisclosure agreements with Receiving Party containing restrictions on use and further disclosure consistent with the terms of this Section 6. Receiving Party shall be responsible for any breach of this Agreement by its agents or representatives. Receiving Party agrees to take reasonable precautions to prevent any unauthorized disclosure, access, or use of Confidential Information, including implementing reasonable technical, administrative, and physical safeguards.

**6.4 Disclosure Required by Law.** This Section 6 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that if Receiving Party is subpoenaed or otherwise compelled by valid law or a court order to disclose Confidential Information, prior to disclosure, Receiving Party shall first give prompt written notice to Disclosing Party of the receipt of any subpoena or other request for such disclosure (to the extent permitted by Applicable Laws) sufficiently in advance to permit Disclosing Party to contest the subpoena or requested disclosure and/or seek a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued; and provided further that Receiving Party shall provide Disclosing Party with reasonable assistance with any such action.

**6.5 Notification Obligations.** Receiving Party will promptly notify Disclosing Party if Receiving Party becomes aware of any unauthorized disclosure or use of Confidential Information of the Disclosing Party and will cooperate with Disclosing Party to assist it in regaining possession of the Confidential Information and to prevent its further unauthorized disclosure or use.

**6.6 Return or Destruction.** Upon any written request from Disclosing Party, Receiving Party shall promptly return or destroy all copies of Confidential Information (including backups, summaries, and excerpts) in its possession or control, and within ten (10) business days of Disclosing Party's request, certify in writing to Disclosing Party that such return or destruction has been completed. Notwithstanding the foregoing, nothing in this Section shall require the return or destruction of any Confidential Information: (a) deemed necessary to comply with any obligations under applicable law, reasonable corporate governance requirements or other contractual requirements; or (b) that cannot reasonably be returned, destroyed or deleted, such as oral communications reflecting Confidential Information, email and standard backup systems. The Receiving Party shall: (x) continue to extend the protections of this Section to such Confidential Information and limit further use and disclosure of such Confidential Information to those purposes that make the return or destruction of such Confidential Information infeasible, and (y) comply

with the preceding paragraph as soon as permitted under Applicable Laws or Receiving Party's internal record retention policy.

## **7. TERM AND TERMINATION**

**7.1 Term of this Agreement.** This Agreement shall commence as of the later signature date set forth in Customer's initial Service Order and shall continue thereafter until completion of all Services, unless sooner terminated in accordance herewith.

**7.2 Term of Services.** The Initial Term for the Services purchased by Customer shall commence for purposes of Recurring Fees billing on the Contract Start Date specified in the Statement of Work associated with Customer's Service Order, and shall automatically renew on the Contract Anniversary Date for successive renewal terms that are of equal duration to the Initial Term (each a "Term"), unless otherwise stated in Customer's Service Order or either party indicates in writing its intention not to renew the Services at least ninety (90) days before the end of the then-current Term. For example, if Customer's Contract Start Date is January 15<sup>th</sup>, and the Initial Term is twenty-four (24) months, the Term for each Service set forth in Customer's Service Order will, if not terminated by a party pursuant to the foregoing, automatically renew on January 15<sup>th</sup> two years later.

**7.3 Termination for Cause.** Either party may terminate this Agreement, effective upon written notice to the other party, if the other party breaches this Agreement and such breach is incapable of cure, or with respect to a breach capable of cure, the breaching party does not cure, or take all reasonable steps to cure, such breach within thirty (30) days after receipt of written notice of such breach. Notwithstanding the foregoing, the cure period shall be five (5) business days for any violation by a party of the other party's Intellectual Property Rights hereunder, or any breach by a party of its confidentiality obligations set forth in Section 6.

**7.4 Termination Due to Insolvency.** Either party may terminate this Agreement, effective upon written notice to the other party, if the other party: (a) becomes insolvent or admits its inability to pay its debts generally as they become due; (b) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (c) is dissolved or liquidated or takes any corporate action for such purpose; (d) makes a general assignment for the benefit of creditors; or (e) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**7.5 Termination for Nonpayment.** Revinate may terminate this Agreement, effective upon written notice to Customer, if Customer has failed to pay any undisputed amounts when due hereunder within fifteen (15) days of written notification from Revinate that payment has not been received.

**7.6 Termination of Contracting Affiliate or Primary Contracting Entity.** In the event this Agreement is terminated by a Contracting Affiliate, or terminated by Revinate due to a termination event affecting only the Contracting Affiliate, such termination shall be effective only with respect to such Contracting Affiliate and the Service Order(s) to which it is a party, and this Agreement shall continue in full force and effect with respect to the Primary Contracting Party and all other Contracting Affiliates. In the event this Agreement is terminated by Revinate for any other reason, or by the Primary Contracting Party, unless such termination is with respect to a Service pursuant to Section 7.2, this entire Agreement, together with the Service Order(s), will terminate with respect to the Primary Contracting Party and all Contracting Affiliates.

**7.7 Other Rights of Termination.** The rights of termination provided in this Section 7 are in addition to, and not in lieu of, any other rights of termination described elsewhere in this Agreement.

**7.8 Effect of Termination; Survival.** Immediately on termination of this Agreement for any reason (a) any payment obligations of Customer will immediately become due and payable, (b) Customer shall cease all use of the Services, and (c) each party shall return to the other all property and Confidential Information of the other party in its possession or control, subject to Section 6.6. Upon termination by Customer of any Services prior to the end of the Initial Term or any renewal Term for such Services, Customer shall pay to Revinate the amount that would have been due and payable by Customer for such Services through the end of the Initial Term or any renewal Term, as the case may be. Such amount shall be calculated using the greater of (i) the Recurring Fee paid by Customer at the beginning of the then applicable Term, or (ii) the Recurring Fee paid by Customer at the time of termination of the Services. This payment obligation is part of the bargained-for terms of this Agreement (i.e. in lieu of requiring full payment in advance at the start of each Term) and may not be deemed a penalty clause. Termination of this Agreement, regardless of how it occurs, will not relieve Customer of any obligations that have accrued prior to termination, including payment obligations. Where the context, nature, or express terms of any provision indicates intent that it shall survive the term or termination or expiration of this Agreement, then it shall survive the same. This includes, but is not limited to, the following provisions: Section 5 (Intellectual Property), Section 6 (Confidentiality), Section 9 (Limitations of Liability), and Section 10 (Indemnification).

## **8. REPRESENTATIONS AND LIMITED WARRANTY**

**8.1 Authority.** Each of Revinate and Customer represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement; (b) the person signing this Agreement on its behalf is a duly authorized representative of such party who has in fact been authorized to execute this Agreement; (c) its entry herein does not violate any other agreement by which it is bound; and (d) it is a legal entity in good standing in the jurisdiction of its formation.

**8.2 Services Warranty.** Revinate warrants that the Services will contain the functionality described in the Documentation and, when operated in accordance with the Documentation, will perform in accordance therewith, and that the Services will be performed in a professional and workman-like manner by qualified personnel with the requisite skills and training.

**8.3 Exclusive Remedy.** Revinate's sole obligation, and Customer's exclusive remedy for any breach by Revinate of the foregoing Services Warranty, will be that Revinate shall use commercially reasonable efforts to cure the breach in a timely manner.

**8.4 Guest Information.** Each Customer that uses Revinate's guest-facing Services represents and warrants to Revinate that it has authority from its guests and prospective guests to provide to Revinate the names, email addresses, telephone numbers and other information of such guests and prospective guests in order to provide those Services. Customer is responsible for obtaining guest consent for communications sent by the Services and certifies that all guest data provided to Revinate is compliant with regulations promulgated by the Federal Communications Commission ("FCC"). Customer further acknowledges that it will use the Services in a manner compliant with all Applicable Laws and industry best practices, including CAN-SPAM, the Telephone Consumer Privacy Act in the United States, and the policies and best practices of mobile service carriers, the CTIA and the Mobile Marketing Association. Customer also agrees to follow Revinate Best Practices when communicating with guests. If a guest opts out of a specific form of messaging from Customer (e.g., SMS), Customer will update the Services accordingly.

**8.5 Personal Data Protection.** Revinate will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Revinate personnel except: (a) to provide the Services, or (b) as Customer expressly permits in writing. Safeguards also include measures to comply with Applicable Laws regarding the processing of personal data, including the General Data Protection Regulation and California Consumer Privacy Act. When the Services involve processing of personal data regarding residents of the European Economic Area or California, Revinate's DPA located at <https://www.revinate.com/data-processing-addendum> is incorporated herein by reference.

**8.6 DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, REVINATE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPATIBILITY, SECURITY, ACCURACY, OR ANY IMPLIED WARRANTIES ARISING OUT OF THIS AGREEMENT. REVINATE DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS ARISING FROM CUSTOM OR TRADE USAGE OR FROM COURSE OF DEALING OR PERFORMANCE. WITHOUT LIMITATION TO THE FOREGOING, REVINATE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE PROVIDED ERROR FREE, UNINTERRUPTED, SECURE, OR VIRUS-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

## **9. LIMITATIONS OF LIABILITY**

**9.1 No Liability for Prohibited Data Breach Caused by Customer.** Revinate shall have no liability or obligation to indemnify Customer with respect to any Prohibited Data breach caused by any act or omission of Customer or Customer's employees, contractors, or agents, including, without limitation (a) their loss of control of any device, (b) their failure to maintain the confidentiality of their log-in credentials, (c) their transmission of data via methods that are not secure, (d) any vulnerability in their environment, systems, hardware, software, or physical or administrative security safeguards or procedures, or (e) their use of the Services for storage or transmission of PCI Data or other Prohibited Data in violation of this Agreement.

**9.2 NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL EITHER PARTY, TOGETHER WITH ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND REPRESENTATIVES, BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY UNDER ANY THEORY OR CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOSS OR CORRUPTION OF DATA, USE OF CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, OR LOST REVENUE OR PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

**9.3 LIABILITY CAP.** AT NO TIME SHALL THE CUMULATIVE LIABILITY OF EITHER PARTY, TOGETHER WITH ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND REPRESENTATIVES, TO THE OTHER PARTY FOR ALL CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY WAY, UNDER ANY THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF ALL FEES ACCRUED BY CUSTOMER UNDER THIS AGREEMENT, WHETHER PAID OR OWING TO REVINATE, DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**9.4 EXCLUSIONS.** THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO LIABILITIES ARISING FROM (A) A PARTY'S INDEMNITY OBLIGATIONS; (B) CUSTOMER'S PAYMENT OBLIGATIONS; OR (C) A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT.

**9.5 APPLICABILITY.** THE LIMITATIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF REVINATE OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. THE LIABILITY CAP SET FORTH IN SECTION 9.3 SHALL APPLY TO CUSTOMER, ON AN AGGREGATED BASIS, ACROSS THIS AGREEMENT AND, IF APPLICABLE, ANY SEPARATE AGREEMENT(S) GOVERNING USE OF THE SERVICES ENTERED INTO BETWEEN REVINATE AND ANY CONTRACTING AFFILIATE(S), INCLUDING, WITHOUT LIMITATION, AS CONTEMPLATED BY SECTION 2.3.

**9.6 Bargained For Allocation of Risk.** Customer acknowledges that the limitations of liability contained in this Agreement are an essential element of the Agreement between the parties and that in the absence of such limitations, the pricing and other terms set forth in this Agreement would be substantially different.

## 10. INDEMNIFICATION

**10.1 Revinate's Indemnification Obligations.** Revinate will indemnify, defend, and hold harmless Customer, its officers, directors, employees, consultants, representatives, and agents from and against all liabilities, losses, damages, injuries, harm, expense, expenditure and disbursement of every nature (including, without limitation, reasonable costs of investigation, travel expenses, and value of time expended by personnel), fines, fees, costs, and expenses of litigation, including, without limitation, reasonable attorneys' fees incident to any of the foregoing (collectively, "Losses") resulting from any claim, suit, action or proceeding brought, instituted, asserted, or threatened by a third party ("Claims") alleging that Revinate's Services infringe, misappropriate, or violate a third party's Intellectual Property Rights. Notwithstanding the foregoing, Revinate shall have no obligation to indemnify, defend, or hold harmless Customer from or against Losses arising from (a) Customer's combination, operation or use of the Services provided by Revinate with technology, content, data or other materials not supplied by Revinate if the Losses would have been avoided by use of other technology, content, data or other materials; or (b) modifications to Services made by or on behalf of Customer or at Customer's request.

**10.2 Customer's Indemnification Obligations.** Customer will indemnify, defend, and hold harmless Revinate and its parents, subsidiaries, affiliates, officers, directors, employees, consultants, representatives, and agents from and against all Losses resulting from Claims (a) regarding any information Customer or any user submits, posts, or transmits through the Services or any other act or omission of Customer or any user in connection with the Services, (b) alleging Customer's, or any user's, violation of any rights of any other person or entity arising out of or related to the use of the Services, or (c) arising from or related to Customer's use of the Services in violation of Section 2.10.

**10.3 Additional Indemnification Obligations.** All indemnification obligations set forth in this Agreement, whether in these General Terms or elsewhere, shall be subject to the procedures set forth below.

**10.4 Conditions to Indemnification.** The obligations set forth in this Section shall apply only if the indemnitee (a) notifies the indemnitor in writing of a Claim promptly upon learning of or receiving the same and (b) provides the indemnitor with reasonable assistance requested by the indemnitor, at the indemnitor's expense, for the defense and settlement, if applicable, of any

Claim. The indemnitee's failure to perform any obligations or satisfy any conditions under this Section shall not relieve the indemnitor of its obligations hereunder except to the extent that the indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

**10.5 Control of Defense.** After receipt of notice, the indemnitor shall be entitled, if it so elects, at its own cost, risk and expense: (a) to take control of the defense, investigation, and compromise or settlement, if applicable, of such Claim; and (b) to employ and engage attorneys of its own choice to handle and defend the same. If the indemnitor fails to assume the defense of such claim within ten (10) business days after receipt of notice of the Claim, the indemnitee against which it has been asserted will (upon delivering notice to such effect to the indemnitor) have the right to undertake, at the indemnitor's cost and expense, the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the indemnitor; provided, however that such Claim shall not be compromised or settled without the written consent of the indemnitor. In the event the indemnitee assumes the defense of the Claim, the indemnitee will keep the indemnitor reasonably informed of the progress of any such defense, compromise or settlement. Notwithstanding the foregoing, the indemnitee shall be entitled to conduct its own defense at the cost and expense of the indemnitor if the indemnitee establishes that the conduct of its defense by the indemnitor would reasonably be likely to prejudice materially the indemnitee due to a conflict of interest between the indemnitee and the indemnitor; and provided further that in any event, the indemnitee may participate in such defense at its own expense.

**11. AMENDMENTS.** Revinatate may amend this Agreement from time to time by posting an amended version at its website. If changes to this Agreement will materially reduce Customer's rights or materially increase Customer's obligations, then Revinatate will provide Customer with advance written notice of such changes. All such changes will be deemed accepted and become effective thirty (30) days after Revinatate's notice (the "Proposed Amendment Date"). However, if Customer gives Revinatate written notice of rejection of the amendment prior to the Proposed Amendment Date, this Agreement will continue under its original provisions, and the amendment will become effective at the start of the next Term. Revinatate reserves the right to modify, suspend, or discontinue the Services upon notice to Customer. Revinatate shall not be liable should Revinatate exercise its right to modify, suspend, or discontinue the Services. If, however, Revinatate discontinues the Services, Revinatate will refund to Customer any subscription Fees Customer has prepaid for the period after which Revinatate has discontinued the Services.

**12. EXPORT REGULATION.** The Services may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export or release the Services to, or make the Services accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. Customer shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Services available outside the US.

## **13. GENERAL**

**13.1 Independent Contractors.** The relationship of the parties is that of independent contractors. This Agreement is not intended to create and shall not be construed as creating between the parties a relationship of principal and agent, joint venturers, partners, employer-employee or any other similar relationship, the existence of which is hereby expressly denied, nor shall either party be considered in any sense an affiliate or subsidiary of the other. Revinatate will be free from direction and control over the means and manner of providing the Services, subject only to the right of Customer to specify the desired results. Neither party shall have any authority to create or assume in the other party's name or on its behalf any obligation, expressed or implied, or to act or purport to act as the other party's agent or legally empowered representative for any purpose whatsoever, except as expressly provided for herein.

**13.2 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes in their entirety any and all prior or contemporaneous agreements, representations, statements, and negotiations regarding the subject matter hereof, either written or oral.

**13.3 Order and Priority.** The provisions of this Agreement shall be interpreted, whenever reasonable, to be consistent with each other and so that all provisions remain in full force and effect. Whenever such interpretation is not reasonable, and there is a conflict or inconsistency between the various parts of this Agreement, the parts of this Agreement shall control and govern in the following order and priority: (a) the Service Order(s); (b) these General Terms, (c) the applicable Product Specific Terms, if any; and (d) the DPA.

**13.4 Waiver.** No waiver of any breach or default shall constitute a waiver of any subsequent breach or default, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder, operate as waiver of any right or remedy.

**13.5 Remedies Cumulative.** Except as otherwise provided in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise.

**13.6 Severability.** If any provision of this Agreement is adjudicated invalid or unenforceable, this Agreement will be amended to the minimum extent necessary to achieve, to the maximum extent possible, the same legal and commercial effect originally intended by the parties. To the extent permitted by applicable law, the parties waive any provision of law that would render any clause of this Agreement prohibited or unenforceable in any respect.

**13.7 Dispute Resolution.**

**(a) Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, notwithstanding any choice of law rules of any jurisdiction that would cause the application of another jurisdiction's laws or rules. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action relating to this Agreement must be brought in the federal or state courts in San Francisco County, California, U.S.A., and the parties agree to the exercise of jurisdiction by such courts.

**(b) Venue and Jurisdiction.** Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or validity thereof, shall be resolved exclusively in the state or federal courts located in San Francisco County, California. Each party irrevocably submits to the exclusive jurisdiction of such courts.

**(c) Waiver of Jury Trial.** EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**(d) Injunctive Relief.** Notwithstanding the foregoing, either party may seek equitable relief, including a temporary restraining order or injunction, in any court of competent jurisdiction to prevent any unauthorized access to or misuse of its Intellectual Property, Confidential Information, or Data, without the requirement to post a bond.

**13.8 Expenses.** Each party shall bear any and all costs and expenses incurred by it in the performance of, or in connection with, the performance of this Agreement, unless expressly otherwise agreed upon by the parties.

**13.9 Notices.** Except as described in Section 11, all notices permitted or required under this Agreement shall be in writing and shall be by personal delivery, nationally recognized overnight courier service, electronic transmission, or by certified or registered mail, return receipt requested, and shall be deemed given (a) upon personal delivery to the party to be notified, whether by hand delivery or by courier, (b) three (3) days after deposit in the mail, postage prepaid, or (c) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. Notice sent electronically to Revinate shall be delivered to legal@revinate.com. Customer Notices shall be sent to the email and/or mailing address for legal notices set forth in the most recent Service Order or the Customer Contact Information Sheet attached thereto. Notices mailed to Revinate shall be delivered to Attn: Legal Affairs, Revinate, 543 NW York Drive, #120, Bend, Oregon, 97702, with a copy addressed to Revinate's Chief Financial Officer delivered to the same street address. Notwithstanding the foregoing, either party may designate an updated address for receipt of notices hereunder by providing notice of such updated address to the other party.

**13.10 Assignment.** Neither party may assign or otherwise transfer its rights or delegate its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, and any attempt to do so without consent shall be void. Notwithstanding the foregoing, either party may assign its rights and obligations under this Agreement to a purchaser of all or substantially all of the outstanding capital stock or assets of such party or the surviving entity in a merger, reorganization, or other business combination involving such party. Any other purported assignment will be void. Subject to the foregoing limitations, this Agreement shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns.

**13.11 Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy to any third party.

**13.12 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) shall not be considered a breach of this Agreement if the delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, pandemic, or any other event beyond the control of the party if the party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**13.13 Construction; Interpretation.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof. Headings contained in this Agreement are for convenience of reference only and do not form part of this Agreement. A word importing the singular includes the plural and vice versa. Gendered pronouns are used for convenience and are intended to refer to the masculine or feminine, as applicable. The word "including" shall be interpreted to mean "including without limitation".

**13.14 Counterparts; Electronic Transmission.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by

facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.