NextEra 360 Subscription Agreement

Terms and Conditions

1.   Definitions.

(a)   "**Affiliate**" means any entity corporation, subsidiary, partnership, joint venture or other entity in which either Party's parent company owns a direct controlling interest, where direct controlling interest means the power to direct or cause the direction of the management, policies, or affairs of the controlled entity, whether through ownership of securities or partnership or other ownership interests by contract or otherwise.

(b)   "**Aggregated Statistics**" means data and insights in deidentified form derived from any Customer Data or Customer's and/or its Authorized Users' use of the Service, including, without limitation, any statistical and performance information related to the provision and operation of the Service.

(c)   "**Authorized User**" means Customer's employees and contractors (i) who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Service has been purchased hereunder.

(d)   "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Service.

(e)   "**Documentation**" means Provider's user manuals, handbooks, and guides relating to the Service provided by Provider to Customer, including information within the help features of the Service.

(f)   "**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Service as intended by this Agreement. Harmful Code does not include any provider disabling device, software, hardware, or other technology used by Provider to disable Customer's or any Authorized User's access to or use of the Service.

(g)   "**Provider IP**" means the Service, including all underlying software and algorithms, all service and component Add-Ons as described in the Cover Sheet, the Documentation, and any and all intellectual property used by or provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Service, but does not include Customer Data.

(h)   "**Service**" means the NextEra 360 Energy Management Optimization Software and Service ("**NextEra 360**") owned, developed and provided by Provider and made available to its customers on a software-as-a-service basis. Service may also include the installation of equipment

necessary to provide the Service, and any Add-Ons if the Customer so elects on the Cover Sheet. Service functionalities are described in Appendix A.

2.   Access and Use.

(a)   Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 13(g)), non-sublicensable right to (i) access and use the Service during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein; and (ii) use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Service. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Service. The total number of Authorized Users will not exceed the number set forth in the Cover Sheet, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder. During the Term, Customer agrees that Company may access and use Customer's property for the purposes of, and has the sole right of, constructing, installing, operating, inspecting, maintaining, repairing, enlarging, modifying, removing (at any time), testing and replacing any equipment or Add-Ons necessary to provide the Service. Provider reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms and Conditions, at any time. It is your responsibility to check these Terms and Conditions periodically for changes. Your continued use of the Service following the posting of changes will mean that you accept and agree to the changes.

(b)   Use Restrictions. Customer shall not use the Service for any purposes beyond the scope granted in this Agreement. Without limiting the foregoing, Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Service or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation to any other person or entity, including on or in connection with the internet or any time-sharing, service bureau, software-as-a-service, cloud or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove any trademarks, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary notices from the Service or Documentation, including any copy thereof; (v) use the Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or entity, or that violates any applicable law, (vi) interfere with, or disrupt the integrity or performance of, the Service, or any data or content contained therein or transmitted thereby; (vii) access or search the Service (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Service features provided by Provider for use expressly for such purposes; or (viii) use the Service, Documentation or any other Provider Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Service; (ix) bypass or breach any security device or protection used by the Service or Documentation, or access or use the Services or Documentation other than by an Authorized User through the use of his or her own then valid

access credentials; (x) input, upload, transmit, or otherwise provide to or through the Service any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; or (xi) otherwise access or use the Service or Documentation beyond the scope of the authorization granted under this Section 2. Provider shall own, and Customer hereby assigns to Provider, all right, title and interest in and to modifications and derivative works of the Provider IP, including all intellectual property rights therein.

(c)   Reservation of Rights. Provider reserves all rights to Provider IP not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(d)   Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Service if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Service to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Service; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(e)   Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Service and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile, develop, and derive Aggregated Statistics based on Customer Data. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law; (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law, provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information; and (iii) internally monitor Customer's usage of the Service, exclusively for the purposes of improving the Service or improving the provision of the Service.

(f)   Authorized Users. Customer will not allow any person other than Authorized Users to use the Service. Customer may permit Authorized Users to use the Service, provided that (i) the

number of Authorized Users does not exceed the number of Authorized Users described in the Cover Sheet; and (ii) Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement.

3. Customer Responsibilities. Customer is responsible and liable for all uses of the Service and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords, hardware and software used to access the Service in accordance with customary security protocols, and will promptly notify Provider if Customer knows or reasonably suspects that any user name and/or password has been compromised. Each account for the Service may only be accessed and used by the specific Authorized User for whom such account is created.

4. Service Levels and Support Services. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Service available and provide support services in accordance with the service levels set out in the Service Level Agreement in Appendix A.

5. Fees and Payment.

(a) Fees. Customer shall pay Provider a License Fee and any Add-On Fees (collectively, "**Fees**") as set forth in the Cover Sheet without offset or deduction. Customer shall make all payments hereunder in US dollars according to the Billing Cycle and Payment Terms in the Cover Sheet by wire transfer of immediately available funds to an account designated by Provider or such other payment method mutually agreed by the Parties. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 30 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Service until such amounts are paid in full. Provider reserves the right to change the Fees and to institute new Fees at the end of the Initial Term or then-current Renewal Term, upon ninety (90) days' prior notice to Customer (which may be sent by email).

(b) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is 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 or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

6. Confidential Information. From time to time during the Term, either Party or its Affiliates may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or

media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, **"Confidential Information"**). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party will maintain the disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; provided that Provider may use and modify Confidential Information of Customer in deidentified form for purposes of developing and deriving Aggregated Statistics. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, representatives, or contractors who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement.

7.   Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and, upon request by the other Party, certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a Provider trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes. Subject to the other terms of this Agreement, Provider IP is Provider's Confidential Information and Customer Data is Customer's Confidential Information.

8.   Intellectual Property Ownership; Feedback.

        (a)   Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP.

        (b)   Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, modify, distribute, and otherwise use and display the Customer Data and

perform all acts with respect to the Customer Data as may be necessary for Provider to host, operate, improve, and provide the Service to Customer during the Term. Customer represents and warrants that (i) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Data (including any personal data provided or otherwise collected pursuant to Customer's privacy policy) as contemplated by this Agreement and (ii) Provider's use of the Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer and any third party.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, through the Service, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

9. Limited Warranty and Warranty Disclaimer.

(a) Each Party hereby represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

(b) Provider warrants that the Service will conform in all material respects to the service levels set forth in the Service Level Agreement available in Appendix A when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Service unless specifically identified in the Service Level Agreement. The remedies set forth therein are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 9(b).

(c) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9(a), THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9(b), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM,

OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, FREE OF HARMFUL CODE, BUG FREE OR ERROR FREE.

10. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, hold harmless, and at Customer's option, defend Customer and its Affiliates and each of their respective officers, directors, employees, contractors, agents, successors, and assigns from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Service, or any use of the Service in accordance with this Agreement, infringes such third-party's US patents or registered US copyrights, or misappropriates such third party's trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim. For the avoidance of doubt, this Section 10(a) will not apply to the extent any alleged infringement or misappropriation arises from: (A) use of the Service in combination with data, software, hardware, equipment, or technology not provided by Provider; (B) modifications to the Service not made by Provider; or (C) Customer Data.

(ii) If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. Alternatively, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer; if the Agreement is terminated in its entirety, Customer shall not be responsible for Fees from the date of termination, and if terminated with respect to the affected component or part, Customer shall not be responsible for Fees to the proportional amount effected from the date of termination.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider and its Affiliates and each of their respective officers, directors, employees, contractors, agents, successors, and assigns from and against any Losses incurred by Provider resulting from: (i) any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement (A) infringes or misappropriates such third party's intellectual property rights or privacy rights or (B) violates any applicable law, rule or regulation; (ii) any Third-Party Claims based on Customer's or any Authorized User's (A) negligence or willful misconduct; (B) use of the Service in a manner not authorized by this Agreement; (C) use of the Service in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (D) modifications to the Service not made by Provider; and (iii) any Third-Party Claim arising from any of Customer's products or services, provided that Provider promptly notifies Customer in writing of the claim, cooperates with Customer, and allows Customer sole authority to control the defense and settlement of such claim.

(c)   Sole Remedy. THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 10 EXCEED $1,000,000.

11.   Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.   THE FOREGOING EXCLUSION SHALL NOT BE CONSTRUED TO LIMIT RECOVERY UNDER SECTION 10 (c) OF THE AGREEMENT.

12.   Term and Termination.

(a)   Term. The term of this Agreement begins on the Effective Date and unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect through the conclusion of the Initial Term. Thereafter, this Agreement will automatically renew for successive Renewal Terms as per the Cover Sheet (together with the Initial Term, the **"Term"**) unless earlier terminated pursuant to this Agreement's express provisions, or either Party gives the other Party written notice of non-renewal at least 60 days prior to the expiration of the then-current term.

(b)   Termination. In addition to any other express termination right set forth in this Agreement:

(i)   Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 30 days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(b) or Section 6;

(ii)   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A)

is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii)   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed 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.

(c)   Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d)   Survival. This Section 12(d) and Sections 1, 2(d), 2(e), 3, 5, 6, 7, 8(c), 9, 10, 11(c) and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13.   Miscellaneous.

(a)   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, including the Cover Sheet, and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the Cover Sheet; (ii) second, the Terms and Conditions as of the Effective Date; and (iii) third, any other documents incorporated herein by reference or found at URLs or web addresses included herein.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

If   to   700 Universe Boulevard, Juno Beach, Florida 33408-0420
Provider: Attention: Richard Argentieri

With a copy to:

700 Universe Boulevard
Juno Beach, FL 33408
Attention: Vice President and General Counsel

If   to   Notices shall be sent to Customer at the address specified on the Cover Sheet.
Customer:

(c)   Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d)   Waiver. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e)   Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f)   Governing Law; Submission to Jurisdiction. The validity, interpretation and performance of the Agreement are controlled by and construed under the laws of the State of New York, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of laws. The exclusive jurisdiction and venue of any action brought arising out of the Agreement will be the state and federal courts of New York, located within New York County. Each of the parties hereby irrevocably submits itself to the exclusive jurisdiction and venue of such courts for purposes of such actions.

(g)   Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment or delegation by Customer in violation of this Section will be null and void. No assignment or delegation will

relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h)   Export 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), that prohibit or restrict the export or re-export of the Service or any Customer Data outside the US.

(i)   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(b), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j)   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Electronic signatures will have the same weight and effect as originals.

(k)   Customer Generated Publicity. Customer shall not release or make any announcements, public disclosures or press releases, including, without limitation, use of Provider's or Provider's Affiliates' name(s), any advertisements, publications or documents or the release of any information to any member of the public, press or official body, regarding or concerning the Agreement, the Service, or any part thereof without obtaining prior written consent from Provider, which consent may be withheld in Provider's sole and absolute discretion.

(l)   Subcontracting. Provider may use subcontractors, and other third-party providers ("**Subcontractors**") in connection with the performance of its own obligations hereunder as it deems appropriate; provided that Provider remains responsible for the performance of each such Subcontractor. Notwithstanding anything to the contrary in this Agreement, with respect to any third-party vendors, including any vendors used for installation services, hosting (e.g. AWS) or payment vendors (e.g. PayPal), Provider will use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but will not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that such damages or issues are caused directly from the gross negligence or willful misconduct of Provider.

(m)   Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

(n)   <u>Use of Customer's Name and Logos</u>. During the term of Customer's use of the Service, Provider may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on Provider's website and in its marketing materials to identify Customer as Provider's customer, and for the purpose of providing the Service, provided that Provider shall use commercially reasonable efforts to adhere to the usage guidelines furnished by Customer with respect to Customer's Marks.

(o)   <u>WAIVER OF RIGHT TO TRIAL BY JURY</u>. IN ANY LITIGATION ARISING FROM OR RELATED TO THE AGREEMENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THE AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THE AGREEMENT.