



Prefect Cloud Terms and Conditions

These Prefect Cloud Terms and Conditions (together with each applicable Order Form and document incorporated by reference herein, the “Agreement”) are effective upon execution of a written order form or click-through web order form referencing this Agreement (each, an “Order Form”) between Prefect Technologies, Inc. (“Prefect”) and the client (“Client”) listed on such Order Form. In the event of any direct conflict between these Prefect Cloud Terms and Conditions and an Order Form, the terms of the Order Form shall govern.

1. DEFINITIONS

As used in this Agreement, the definitions below shall apply. Definitions for other defined terms are set forth elsewhere in this Agreement.

1.1 “Affiliate” means with respect to a party, any person or entity that controls, is controlled by, or is under common control with such party, where “control” means ownership of fifty percent (50%) or more of the outstanding voting securities.

1.2 “Client Data” means all data, information, files or other materials and content that Client makes available to Prefect in connection with Client’s use of the Cloud Services.

1.3 “Cloud Services” means the access to Prefect’s Cloud-hosted software applications.

1.4 “Documentation” means the publicly available Prefect documentation relating to the Cloud Services, as updated by Prefect from time to time.

1.5 “Intellectual Property Rights” means all current and future worldwide intellectual property rights, including without limitation, all patents, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights and similar forms of protection, and all applications and registrations for any of the foregoing.

1.6 “Professional Services” means consulting services provided to Client by Prefect pursuant to this Agreement (if any), as described in an applicable Order Form.

1.7 “Services” means the access to the Cloud Services and Professional Services (if any) provided by Prefect in connection with this Agreement.

1.8 “Term” means the Initial Term (defined below), together with any Renewal Term(s) (defined below).

1.9 “Users” means employees and agents of Client, or any individuals otherwise authorized by Client, that have been designated or permitted by Client to access the Cloud Services on behalf of Client.

2. PREFECT CLOUD SERVICES

2.1 **Prefect Cloud Services; License.** Prefect will host and make the Cloud Services available to Client during the Term, subject to the terms and conditions of this Agreement. Client’s access and usage of the Cloud Services may not exceed the number of Users, Workspaces, and/or other license entitlements designated by Prefect (as applicable) that are purchased by Client pursuant to this Agreement. Prefect grants Client a limited, non-exclusive, non-sublicensable, non-transferable (except as expressly permitted in this Agreement) right to access and use the Cloud Services and the Documentation during the Term, solely for Client’s internal business purposes. Client may permit its Affiliates to use and access the Cloud Services and Documentation in accordance with this Agreement; provided that Client will be responsible for the compliance of all Affiliates with this Agreement. For the avoidance of doubt, the Cloud Services are available only on a hosted basis, and Client will not independently possess, run, or install the Cloud Services. Client may add additional Services during the Term by entering into an additional Order Form.

2.2 **Changes and Updates.** Prefect will use commercially reasonable efforts to resolve any failure, malfunction, defect, problem, or non-conformity in the Cloud Services identified by Client or otherwise brought to Prefect’s attention. Prefect may update the content, features, functionality, and user interface of the Cloud Services from time to time in its sole discretion.

2.3 **Security and Privacy.** Prefect has implemented and will maintain commercially reasonable and appropriate physical, administrative, and technical safeguards to secure Client Data from unauthorized use or disclosure. Except as described in this Agreement or as otherwise required by applicable law, Prefect will not disclose Client Data or Client Confidential Information to any third party.

2.4 Discretionary Offerings; POC Period. Client may be offered and opt-in to (i) beta releases of the Cloud Services, (ii) a proof of concept trial period (a “POC Period”) for Cloud Services; and/or (iii) temporary access to other premium features or Cloud Services not provided to similarly situated customers of Prefect that have purchased the same tier of Services as Client (collectively, “Discretionary Offerings”), subject to the terms and conditions of the Agreement. Prefect may remove access to any Discretionary Offerings at any time, in its sole discretion. Any Discretionary Offerings are provided “as is” without any support, indemnity, liability or remedy of any kind, and Prefect expressly disclaims all warranties and conditions of any kind, express or implied.

3. CLIENT UNDERTAKINGS AND ACKNOWLEDGMENTS; RESTRICTIONS

3.1 Data Processing Addendum. Client hereby accepts the terms of Prefect’s Data Processing Addendum (located at <https://www.prefect.io/data-processing-addendum>).

3.2 Feedback. Client may provide Prefect with ideas, suggestions, feedback, recommendations or improvements pertaining to the Services (collectively, “Feedback”). Client grants Prefect a non-exclusive, fully-paid, transferable (notwithstanding Section 10.1 (Assignment)), perpetual, irrevocable, worldwide, royalty-free license to use, sell, offer for sale, import and otherwise exploit all Feedback for any purpose (including by incorporation of such Feedback into the Cloud Services without restrictions). Feedback is provided to Prefect on an “as-is” basis without warranties of any kind.

3.3 Responsibility for Users and Client Data. Client has exclusive control and responsibility for determining what data Client submits to the Cloud Services, for obtaining all necessary consents and permissions for submission of Client Data and processing instructions to Prefect, and for the accuracy, quality and legality of Client Data. Client is further responsible for the acts and omissions of its Users in connection with this Agreement, for all use of the Cloud Services by its Users, and for any breach of this Agreement by its Users. Client will use reasonable measures to prevent and will promptly notify Prefect of any known or suspected unauthorized use of User access credentials.

3.4 Sensitive Data. Client agrees that it will not submit the following types of information to the Cloud Services except with Prefect’s prior written approval: government-issued identification numbers, consumer financial account information, credit and payment card information, personal health information, or information deemed “sensitive” under applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs) or personal data (as described in the EU General Data Protection Regulation 2016/679, personal information under the California Privacy Rights Act, and similarly defined terms under other applicable laws).

3.5 Restrictions. Client shall not, and shall not permit its Users to:

- (a) create or enable the creation of derivative works, modifications, or adaptations of the Cloud Services or Documentation, or attempt to recompile, reverse engineer, decompile, disassemble or otherwise attempt to obtain, discover or derive the source code or non-public APIs or algorithms of the Cloud Services, or the underlying ideas or trade secrets therein, except to the extent that such restrictions are expressly prohibited by applicable statutory law (and then only upon advance written notice to Prefect);
- (b) use any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Cloud Services or Documentation or portions or content thereof;
- (c) interfere with the functionality of the Cloud Services or Documentation or otherwise use them in ways that would be reasonably likely to disrupt or pose a security risk to Prefect or to any other customers or vendors of Prefect;
- (d) violate applicable laws rules or regulations in connection with its use of the Cloud Services;
- (e) copy or use any features, functions or graphs of the Cloud Services or any Intellectual Property Rights thereto for any reason other than expressly set forth in this Agreement;
- (f) encumber, sublicense, rent, loan, lease, time-share, frame, mirror, commercially exploit or otherwise use the Cloud Services in a manner that allows anyone to access or use the Cloud Services without an authorized subscription;
- (g) allow User log-in information or subscriptions to be shared or used by more than one individual User; provided that User subscriptions may be reassigned by Client to new Users;
- (h) attempt to gain unauthorized access to the Cloud Services (including unauthorized features and functionality) or its related systems or networks;
- (i) engage in excessive creation/deletion of accounts or any other non-standard usage; or
- (j) remove or modify any proprietary markings or restrictive legends placed in or generated by the Cloud Services.

4. FEES; TAXES; PAYMENTS

4.1 Fees. The fees and payment terms for the Services are set forth in the Order Form. Prefect reserves the right to deny Client access to the Cloud Services upon its failure to pay any amount due, except where: (i) there is a bona fide dispute over the amount due and (ii) Client has paid all undisputed amounts in full. Except as otherwise specified herein, all fees paid under the Agreement shall be paid in U.S. Dollars and are non-refundable.

4.2 Taxes. Except as otherwise specified on an Order Form, (i) all fees for the Services are exclusive of all taxes, duties, levies, tariffs, and other governmental charges (collectively, "Taxes"), and (ii) Client represents and warrants to Prefect that its billing address and shipping address are the same for applicable Tax calculations. Client will be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than U.S. Taxes based solely on Prefect's net income. If Prefect has the legal obligation to pay or collect Taxes for which Client is responsible, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Prefect with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.3 Payments. Except as otherwise set forth in an Order Form, payments from Client to Prefect shall be made (i) without offset or deduction of any kind, (ii) within thirty (30) days after the issuance of each applicable invoice, (iii) to the account designated by Prefect and (iv) by one of the payment methods set forth in the applicable invoice.

5. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

5.1 Ownership. All right, title and interest in and to the Services, and all patents, copyrights, trade secrets, trademarks and other proprietary rights embodied therein are and shall remain with Prefect or its third-party licensors. Client is not authorized to use (and will not permit any third party to use) the Cloud Services or Documentation except as expressly authorized by this Agreement. Client acknowledges that no other rights are conveyed except for the limited licenses expressly granted in this Agreement.

5.2 License to Client Data. Client retains all right, title, and interest in and to Client Data. Client grants to Prefect all necessary licenses and rights to Client Data during the Term as necessary for Prefect to provide the Services to Client. Prefect will not use or access any Client Data except as necessary to provide the Services.

5.3 Use of Aggregated Information. Prefect may collect and aggregate data derived from the operation of the Services ("Aggregated Information"), and use such Aggregated Information for purposes of operating Prefect's business, monitoring performance of the Services, and/or improving the Services; provided that Prefect's use of the Aggregated Information shall not reveal any Client Data, Client Confidential Information, or personally identifiable information of authorized Users in violation of Section 6.

5.4 Non-exclusivity. Nothing in the Agreement will limit Prefect from providing software, materials or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered hereunder to Client.

6. CONFIDENTIALITY

6.1 Confidentiality. Each party shall retain in confidence the non-public information and know-how disclosed or shared by the other party hereto pursuant to this Agreement that is designated as proprietary and/or confidential, or that should otherwise reasonably be understood to be confidential by the recipient, including without limitation, this Agreement (and the pricing information herein), the Services and Client Data ("Confidential Information"). Each party agrees to: (i) maintain the confidentiality of the other party's Confidential Information; (ii) refrain from using the other party's Confidential Information other than to perform its obligations under this Agreement; and (iii) not disclose such Confidential Information to any third party other than its and its Affiliate's employees, subcontractors and agents as is reasonably required in connection with this Agreement and who are subject to confidentiality obligations at least as protective as those set forth in this Section 6. The foregoing obligations will not apply to Confidential Information of the other party which (x) is or becomes publicly known without breach of this Agreement; (y) is discovered or created by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, as evidenced by the parties' records; or (z) is otherwise known to the receiving party without confidentiality restrictions and through no wrongful conduct of the receiving party. The receiving party may disclose Confidential Information to the extent required by law or court order; provided that the receiving party shall provide prompt notice (if permitted by applicable law) and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or other protective remedy; and provided further that any information so disclosed retains its confidentiality protections for all other purposes.

7. TERM; DEFAULTS; TERMINATION

7.1 Term. This Agreement will continue from the effective date until the date that is one (1) year after the Subscription Date (the “Initial Term”), except (i) as otherwise set forth in an applicable Order Form or the Prefect web page where Client registers for the Cloud Services or (ii) as sooner terminated pursuant to Section 7.3 below. If neither party indicates its intention to terminate the Agreement in writing at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term (defined below), this Agreement will automatically renew on the same terms and conditions for an additional period equal to the length of the Initial Term (a “Renewal Term”). Any Services purchased by Client may only be used during the applicable Term and any Services unused during such Term will expire.

7.2 Defaults. Each of the following shall constitute a default: (i) Client’s failure to pay any undisputed sum due hereunder; (ii) a party’s failure to perform any of its obligations hereunder; or (iii) a party making a representation or warranty that is materially false or misleading when made.

7.3 Termination. Either party may terminate this Agreement immediately upon written notice to the other party if: (i) such other party breaches or fails to perform or observe any material term or condition of this Agreement and such default has not been cured within thirty (30) days after receipt of written notice of such default; or (ii) if the other party (w) terminates or suspends its business, (x) becomes subject to any insolvency proceeding under federal or state statute, (y) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (z) has wound up or liquidated.

The remedies contained in this Section 7.3 are cumulative and in addition to all other rights and remedies available hereunder, by operation of law, or otherwise, except as expressly excluded hereunder. The termination of the Agreement for any reason shall not affect or impair any rights, obligations or liabilities of either party that may accrue prior to such termination or that, under the terms of the Agreement, continue after termination.

7.4 Actions Upon Termination. Upon termination of the Agreement for any reason: (i) Client shall immediately pay to Prefect all outstanding amounts due and shall return or destroy copies of all Prefect Confidential Information and (ii) all rights granted by Prefect under this Agreement shall cease and Client shall immediately cease use and access of the Cloud Services.

8. WARRANTIES; LIMITATION OF LIABILITY; DISCLAIMERS

8.1 Mutual Warranties. Each of the parties represents and warrants to the other party hereto that it has the power and authority to enter into this Agreement and that its provision and use of the Cloud Services, as applicable, is in compliance with laws applicable to such party.

8.2 Client Warranties. Client represents and warrants that Client owns or otherwise has the valid right to deliver the Client Data to Prefect and that Prefect may use the Client Data as contemplated by this Agreement without violating any applicable law, rule or regulation or the proprietary rights of any third party.

8.3 Prefect Warranties. Prefect represents and warrants that (i) the Cloud Services will perform materially in accordance with the applicable Documentation; and (ii) any Professional Services will be performed in a professional and workmanlike manner by qualified personnel.

8.4 Exclusion of Damages; Liability Cap. (a) IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR LICENSORS BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTIONS, LOSS OF DATA, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE SOLE LIABILITY OF EACH PARTY TO THE OTHER PARTY HERETO FOR DAMAGES FOR ANY CAUSE WHATSOEVER, NOTWITHSTANDING THE FORM OF SUCH CLAIMS (INCLUDING NEGLIGENCE), SHALL BE LIMITED TO AN AMOUNT NOT EXCEEDING THE TOTAL FEES PAID BY CLIENT TO PREFECT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE (OR \$100 IF CLIENT IS USING SERVICES WITHOUT CHARGE).

(c) THE LIMITATIONS IN THIS SECTION 8.4 WILL NOT LIMIT (I) EITHER PARTY’S LIABILITY FOR FRAUD, WILLFUL MISCONDUCT, OR INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS OR (II) CLIENT’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8.4 REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT, AND THAT IN THE ABSENCE OF SUCH LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SIGNIFICANTLY DIFFERENT.

8.5 Warranty Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE CLOUD SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND,

AND PREFECT MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH REGARDING OR RELATING TO THE CLOUD SERVICES OR DOCUMENTATION. PREFECT SPECIFICALLY AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. FURTHER, PREFECT DOES NOT WARRANT THE CLOUD SERVICES WILL BE ERROR-FREE OR THAT THE USE OF THE CLOUD SERVICES WILL BE UNINTERRUPTED.

9. INDEMNIFICATION

9.1 Prefect Indemnification of Client. (a) Subject to the remainder of this Section 9 and the liability limitations set forth in Section 8, Prefect will: (i) defend Client against any third party claim that the Cloud Services infringe any trademark or copyright of such third party, enforceable in the jurisdiction of Client's use of the Cloud Services, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Client's actions) ("Infringement Claim"); and (ii) indemnify Client against and pay any settlement of such Infringement Claim consented to by Prefect or any damages finally awarded against Client to such third party by a court of competent jurisdiction. Prefect will have no obligation and assumes no liability under this Section 9.1 or otherwise with respect to any claim to the extent based on: (x) any modification of the Cloud Services that is not performed by or on behalf of Prefect, or was performed in compliance with Client's specifications; (y) the combination, operation or use of the Cloud Services with any Client Data or any Client or third party products, services, hardware, data, content, or business processes not provided by Prefect where there would be no Infringement Claim but for such combination; or (z) Client's or any User's use of the Cloud Services other than as permitted under this Agreement and the Documentation.

(b) In the event an Infringement Claim under this Section 9.1 is made or, in Prefect's reasonable opinion, is likely to be made, or if required by settlement, Prefect may elect, at its sole option and expense, to: (i) procure for Client the right to continue using the Services that are the subject of such claim, (ii) replace or modify the Services to be non-infringing, or (iii) terminate the Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the Services. THIS SECTION 9.1 STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND PREFECT'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

9.2 Client Indemnification of Prefect. Client will defend, indemnify and hold harmless Prefect and its Affiliates, and its and their directors, officers, employees, agents and licensors, from and against any damages and costs (including reasonable attorneys' fees and costs incurred by the indemnified parties) finally awarded against them in connection with any claim arising from (i) Client's use of the Cloud Services or (ii) Client Data; provided that Client will have no obligation under this Section 9.2 to the extent the applicable claim arises from Prefect's breach of this Agreement.

9.3 Conditions for Indemnification. Each party's indemnification obligations are conditioned on the indemnified party: (i) promptly giving written notice of the claim to the indemnifying party; (ii) giving the indemnifying party sole control of the defense and settlement of the claim; and (iii) providing to the indemnifying party all available information and assistance in connection with the claim, at the indemnifying party's request and expense. The indemnified party may participate in the defense of the claim, at the indemnified party's sole expense (not subject to reimbursement). Neither party may admit liability for or consent to any judgment or concede or settle or compromise any claim unless such admission or concession or settlement or compromise includes a full and unconditional release of the other party from all liabilities in respect of such claim.

10. GENERAL

10.1 Assignment. This Agreement shall be binding upon each party's successors and permitted assigns. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party hereto; provided that no such consent will be required to assign or transfer this Agreement in its entirety to (i) an Affiliate that is able to satisfy such party's obligations under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially of the assigning or transferring party's assets; and provided further that the assignee or transferee has agreed in writing to be bound by all of the terms of this Agreement and all fees owed to the other party are paid in full. If Client is acquired by, sells substantially all of its assets to, or undergoes a change of control in a favor of, a direct competitor of Prefect, then Prefect may terminate this Agreement immediately upon written notice.

10.2 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and any dispute arising from this Agreement shall be brought exclusively before the state and federal courts located in Delaware, and each party irrevocably submits to the jurisdiction of such courts. To the fullest extent permitted by applicable law, each party waives the right to trial by jury in any legal proceeding arising out of or relating to the Agreement or the transactions contemplated hereby.

10.3 Anti-Corruption. Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act.

10.4 Trade Laws. Each party will comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Cloud Services. Without limiting the generality of the foregoing, Client represents that it is not named on any U.S. government denied-party list and will not make the Cloud Services available to any user or entity that is located in a country that is subject to a U.S. government embargo, or is listed on any U.S. government list of prohibited or restricted parties. Prefect may reject credit card payments and/or suspend access to the Cloud Services, without liability or penalty, where Prefect has reason to believe Client is in violation of this Section 10.4.

10.5 Force Majeure. Neither party is responsible for non-performance or delays in performance of its obligations under the Agreement due to force majeure events beyond its reasonable control, including without limitation acts of government, floods, fires, earthquakes, civil unrest, acts of terror, epidemics, quarantine restrictions, strikes or other labor disruptions, internet, power grid, or service provider failures, or denial of service attacks.

10.6 Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, quotes, negotiations, discussions or agreements relating to the subject matter hereof. Without limiting the generality of the preceding sentence, any preprinted terms on any Client ordering documents or terms referenced or linked therein will have no effect on the terms of this Agreement and are hereby expressly rejected, including where such Client ordering document is signed by Prefect. No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. No failure or delay in exercising any right, power or remedy under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that such electronic signatures will be legally binding with the same force and effect as manually executed signatures.

10.7 Notices. All notices under this Agreement shall be in writing (email sufficient), delivered to the parties at their respective addresses stated in the Order Form and will be deemed given seventy-two (72) hours after mailing or upon confirmed delivery or receipt, whichever is sooner. All notices to Prefect shall be sent with copy to: legal@prefect.io.

10.8 Severability. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it will be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.

10.9 Publicity. During the Term, Prefect is permitted to (i) refer to Client as a customer and (ii) use Client's name and logo(s) in its marketing materials. Client is permitted to use Prefect's name and logo in any press releases announcing this Agreement or the relationship between the parties. Each party shall comply with the trademark usage guidelines provided by the other party (if any).

10.10 Counterparts. This Agreement (by execution or click-through of the Order Form) may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

10.11 Relationship of the Parties. The parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other party. Neither party shall hold itself out as an agent of the other party hereto. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

10.12 Headings. The headings in this Agreement are intended solely for the convenience of the parties and shall not be deemed relevant in the construction of this Agreement or its terms.

10.13 Survival. The obligations under Sections 3, 4, 5, 6, 7.4, 8.4, 8.5, 9, and 10, as well as any other provision that by its nature is intended to survive, shall survive the termination or expiration of this Agreement.