



## Recurrency Service Agreement

### Terms and Conditions

This Agreement is the entire agreement of the parties regarding the Services and it includes all exhibits attached to these Terms, and all of the other terms and conditions incorporated into this Agreement by reference. This Agreement supersedes all prior or contemporaneous agreements, proposals, negotiations, conversations, discussions, and understandings, written or oral, with respect to the Services and all past dealings or industry customs. In the event of a conflict between these Terms and any Order's terms and conditions, these Terms will govern.

### 1. Services

**1.1 General:** The Company provides a limited license to use Recurrency, an enterprise resource planning automation and optimization platform (“**the Services**”). The Customer may obtain the Services pursuant to Orders. Each Order will outline (a) the Services selected by the Customer, (b) the period the Services will be accessible and provided (each, a “**Term**”), (c) the fees for the Services per Term (“**Fees**”), and (d) the number of users authorized to use the Services (“**End Users**”). Subject to the terms of this Agreement, the Company hereby grants the Customer a limited, nonexclusive, non-transferable license to internally access and use the Services.

**1.2 Maintenance:** The Company may conduct maintenance on the Services from time to time without prior notice to the Customer, provided, however, that except in the case of emergency maintenance, the Company will use best efforts to provide at least 24 hours notice to any interruptions of the Services.

**1.3 Customer Materials:** The Customer will provide all data, content, and other materials in a timely matter to the Company as reasonably necessary for, or otherwise in connection with, the Company's provision of the Services (the “**Customer Materials**”). The Customer hereby grants to the Company the right to use the Customer Materials to provide, maintain, and improve the Services during the Term. The Customer acknowledges that (a) the Company is relying on the Customer's timely, complete, and accurate provision of Customer Materials to the Company for the Company's performance of the Services and (b) the Company will not be responsible or liable for failures or delays to perform the Services to the extent resulting from (i) the Customer's delay or failure to provide the Customer Materials in a timely manner or (ii) the inaccuracy or incompleteness of the Customer Materials.

**1.4 Ownership & Reservation of Rights:** As between the parties and subject to the express grants within this Agreement, the Customer owns all right, title and interest in and to the Customer Materials, and any and all Intellectual Property Rights embodied in such Customer Materials.

**1.5 Passwords:** The Customer is responsible for maintaining the confidentiality of its End Users' passwords, IDs, and other credentials and login information (collectively, “**Passwords**”), and the Customer agrees that the Company has no liability with respect to the use of any Passwords. The Customer acknowledges that Passwords are personal to the Customer or each End User, and the Customer is responsible for ensuring that each Password is used only by the applicable End User. The Customer will notify the Company immediately if the Customer has reason to believe that the security of the Customer's account has been compromised or if any of the Services have been accessed by unauthorized individuals.

**1.6 Customer Training:** All training and ongoing support will be provided by Recurrency staff as needed.



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#### 2. Fees and Payment Terms

**2.1 Fees:** The Customer will pay the Company the Fees in accordance with the payment terms set forth in this Section 2. The Fees do not include taxes. The Customer will pay all invoiced amounts to the Company, due on receipt, in advance according to the scheduled on the order form. All payments made under this Agreement will be made (a) in U.S. Dollars and (b) by ACH or by bank wire transfer in immediately available funds to an account designated by the Company or by credit/debit card via an authorized company payment processor.

**2.2 Interest and Taxes:** Interest on any late payments will accrue at the rate of 1.5% per month, or the highest rate permitted by law, whichever is lower, from the date such amount is due, until the date such amount is paid in full. The Customer will be responsible for, and will pay all sales and similar taxes, all license fees and similar fees levied upon the provision of the Services excluding only taxes based solely on the Company's net income. Except as otherwise provided in this Agreement, (a) the Company will not be obligated to issue any refunds for Fees paid, and (b) the Company, at its sole discretion, may modify the Fees during any Term, provided that modifications will only be effective as of the directly subsequent Term.

**2.3 Suspension:** If any undisputed Fees under this Agreement are 30 or more days overdue, the Company may, without limiting its other rights or remedies, after five (5) days notice and failure to cure, (a) suspend all Services until such Fees are paid in full or (b) immediately terminate this Agreement without any further cure period and accelerate the Customer's unpaid Fee obligations such that all such obligations become immediately due and payable upon termination.

#### 3. Confidentiality

**3.1 Definition:** "Confidential Information" means all information disclosed (whether in oral, written, or other tangible or intangible form) by one party (the "Disclosing Party") to the other party (the "Receiving Party") (or all information (whether in oral, written, or other tangible or intangible form) acquired by the Receiving Party), concerning or related to this Agreement or the Disclosing Party (whether before, on, or after the Effective Date) that the Receiving Party knows or reasonably should know, given the facts and circumstances surrounding the disclosure of the information by the Disclosing Party (or acquisition of the information by the Receiving Party), is proprietary information of the Disclosing Party. Confidential Information of the Company includes, but is not limited to, the Services.

**3.2 Obligations:** The Receiving Party will maintain in confidence the Confidential Information and will not use such Confidential Information except as expressly permitted in this Agreement. The Receiving Party will use the same degree of care in protecting the Confidential Information as the Receiving Party uses to protect its own confidential and proprietary information from unauthorized use or disclosure, but in no event less than reasonable care. Confidential Information will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party's obligations under this Agreement. In addition, the Receiving Party will only disclose Confidential Information to its directors, officers, employees and/or contractors who have a need-to-know such Confidential Information in order to perform their duties under this Agreement, and provided such directors, officers, employees and/or contractors are bound by a non-disclosure obligation with the Receiving Party with terms no less restrictive than the non-disclosure obligations contained in this Section 3.2.



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Each party agrees that the terms and conditions of this Agreement will be treated as Confidential Information of both parties and will not be disclosed to any third party, provided that each party may disclose the terms and conditions of this Agreement (a) to such party's legal counsel, accountants, banks, financing sources and their advisors, (b) in connection with the enforcement of this Agreement or rights under this Agreement, or (c) in connection with an actual or proposed merger, acquisition, or other transaction. Notwithstanding any terms to the contrary in this Agreement, any suggestions, comments or other feedback provided by the Customer to the Company with respect to the Company or the Services (collectively, "**Feedback**") will constitute Confidential Information of Company. Further, the Company will be free to use, disclose, reproduce, license and otherwise distribute and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights (as defined below) or otherwise.

**3.3 Exceptions:** Confidential Information will not include information that (a) is in or enters the public domain without breach of this Agreement through no fault of the Receiving Party, (b) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party, (c) the Receiving Party can demonstrate was developed by the Receiving Party independently of, and without use of or reference to, the Confidential Information, or (d) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. In addition, the Receiving Party may disclose Confidential Information that is required to be disclosed by law or by a subpoena or order issued by a court of competent jurisdiction (each, a "**Court Order**"), but solely on the conditions that the Receiving Party (a) gives the Disclosing Party written notice of the Court Order within 24 hours after receiving it, and (b) cooperates fully with the Disclosing Party before disclosure to provide the Disclosing Party with the opportunity to interpose any objections it may have to the disclosure of the information required by the Court Order and seek a protective order or other appropriate relief. In the event of any dispute between the parties as to whether specific information is within one or more of the exceptions set forth in this Section 3.3, the Receiving Party will bear the burden of proof, by clear and convincing evidence, that such information is within the claimed exception(s).

**3.4 Remedies:** The Receiving Party acknowledges that any unauthorized disclosure of Confidential Information will result in irreparable injury to the Disclosing Party, where injury could not be adequately compensated by the payment of money damages. In addition to any other legal and equitable remedies that may be available, the Disclosing Party will be entitled to seek and obtain injunctive relief against any breach or threatened breach by the Receiving Party of the confidentiality obligations hereunder, from any court of competent jurisdiction, without being required to show any actual damage or irreparable harm, prove the inadequacy of its legal remedies, or post any bond or other security.



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#### 4. Representations and Warranties

Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement, (c) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement, and (d) this Agreement is valid, binding and enforceable against it in accordance with its terms. Further, the Customer represents, warrants and covenants that (a) it possesses all necessary rights and consents to grant the Company the rights set forth in this Agreement with respect to all Customer Materials, (b) it has collected all Customer Materials in accordance with all applicable laws, rules, and regulations, (c) neither the Customer Materials nor the Company's use of the Customer Materials in accordance with this Agreement will (i) infringe, misappropriate, or otherwise violate any Intellectual Property Rights (as defined below) or other rights of any third party or (ii) violate applicable laws, rules, or regulations, and (iii) the Customer will use the Services in accordance with all applicable laws, rules, and regulations. The Company represents, warrants and covenants that (a) it possesses all necessary rights and consents to grant Customer the rights set forth in this Agreement with respect to the Services, (b) neither the Services nor the Customer's use of the Services in accordance with this Agreement will (i) infringe, misappropriate, or otherwise violate any Intellectual Property Rights (as defined below) or other rights of any third party or (ii) violate applicable laws, rules, or regulations, and (iii) Company will provide the Services in accordance with all applicable laws, rules, and regulations.

#### 5. Disclaimer

EXCEPT AS SET FORTH IN SECTION 4, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS, WARRANTIES, COVENANTS, OR CONDITIONS OF ANY KIND (EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON INFRINGEMENT. FURTHER, THE COMPANY DOES NOT REPRESENT OR WARRANT THAT (a) THE ACCESS TO OR USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, ERROR-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA, (b) THE SERVICES WILL MEET THE COMPANY'S REQUIREMENTS OR EXPECTATIONS, OR OTHERWISE PRODUCE ANY PARTICULAR RESULTS, (c) ANY STORED COMPANY MATERIALS OR OTHER DATA WILL BE ACCURATE OR RELIABLE, OR WILL NOT BE LOST, DAMAGED, OR CORRUPTED, (d) ERRORS OR DEFECTS WILL BE CORRECTED, PATCHES OR WORKAROUNDS WILL BE PROVIDED, OR THE COMPANY WILL DETECT ANY BUG IN THE SERVICES, (e) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (f) THIRD-PARTY DISRUPTIONS OR SECURITY BREACHES OF THE SERVICES WILL BE PREVENTED. WITHOUT LIMITING THE FOREGOING, THE COMPANY IS SOLELY RESPONSIBLE AND LIABLE FOR ALL COMPANY MATERIALS AND THE COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY CUSTOMER MATERIALS.



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#### 6. Indemnification

**6.1 Indemnification by Company:** The Company, at its sole expense, will defend the Customer from and against any and all third-party claims, suits, actions or proceedings (each a “**Claim**”), and indemnify the Customer from any related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys’ fees, costs, penalties, interest and disbursements) (“**Losses**”) that are awarded by a court of competent jurisdiction or included in a settlement approved, in advance and in writing, by the Company (a) from any negligence or willful misconduct by the Company or a party acting on its behalf, or (b) resulting from the Services infringing any Intellectual Property Rights of any third party. The Company’s defense obligations do not extend to Claims, nor do its indemnification obligations extend to Losses, resulting from, arising in connection with, or relating to (a) any negligent or willful misconduct of the Customer or any End Users or any of the Customer’s other employees, contractors, users, and/or service providers (collectively, the “**Customer Parties**”) or any third party, (b) any combination of the Services (or any portion thereof) by any of the Customer Parties or any third party in combination with any equipment, software, data or any other materials not provided by Company, (c) any modification to the Services by any of the Customer Parties or any third party, (d) the use of the Services by any of the Customer Parties or any third party in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use, (e) the continued use of the Services after the Company has provided substantially equivalent non-infringing software or services, (f) any Customer Materials, or any Customer services or products, or (g) any act or omission of any of the Customer Parties.

**6.2 Indemnification by Customer:** The Customer, at its sole expense, will defend the Company and its directors, officers, employees and agents (“**Company Indemnitees**”) from and against any Claims and indemnify Company Indemnitees from any related Losses arising in connection with or relating to (a) any Customer products or services, (b) any negligence or willful misconduct by Customer or a party acting on its behalf, (c) any alleged or actual breach of Customer’s obligations under this Agreement (including, but not limited to, any alleged or actual breach of any of Customer’s representations or warranties), or (d) Customer Materials.

**6.3 Infringement Claims:** In the event of a Claim pursuant to Section 6.1, or if the Company believes such a Claim may be brought, the Company may, at the Company’s option and expense, (a) replace the applicable Services, (b) modify the applicable Services, (c) procure the right to continue using the Services for the Customer, or (d) terminate this Agreement upon 30 days written notice to the Customer.

**6.4 Procedures:** The indemnifying party’s indemnification obligations under this Section 6 are conditioned upon the indemnified party (a) giving prompt written notice of the Claim to the indemnifying party once the indemnified party becomes aware of the Claim (provided that failure to provide prompt written notice to the indemnifying party will not alleviate an indemnifying party’s obligations under this Section 6 to the extent any associated delay does not materially prejudice or impair the defense of the related Claims), (b) granting the indemnifying party the option to take sole control of the defense (including granting the indemnifying party the right to select and use counsel of its own choosing) and settlement of the Claim (except that the indemnified party’s prior written approval will be required for any settlement that reasonably can be expected to require an affirmative obligation of the indemnified party), and (c) providing reasonable cooperation to the indemnifying party, and at the indemnifying party’s request and expense, assistance in the defense or settlement of the Claim.



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#### 7. Limitation of Liability

**7.1 Consequential Damages Waiver:** Except for a party's indemnification obligations hereunder, in no event will the either party be liable for any loss of profits or any indirect, special, incidental, reliance, or consequential damages of any kind, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if informed of the possibility of such damages in advance.

**7.2 Liability Cap:** Except for a party's indemnification obligations hereunder, a party's entire liability to the other party will not exceed the fees actually paid by the customer to the company during the term within which the damages occurred.

**7.3 Failure of Essential Purpose and Additional Limitation:** Multiple claims will not expand this limitation. This section 7 will be given full effect even if any remedy specified in this agreement is deemed to have failed of its essential purpose.

#### 8. Term & Trial, Termination and Effect of Termination

**8.1 Term & Trial:** This Agreement commences on the Effective Date and, unless earlier terminated as set forth in Section 8.2, continues for the Term. The Trial Period is considered "no risk" and will not result in any fees due to the Company if the Customer elects, in writing, to discontinue service with the Company, at any point during the Trial Period or within 15 days following the close of the Trial Period. If the Company does not make an election to discontinue service before or within 15 days following the close of the Trial Period, this Agreement is automatically rolled over into an annual contract as stated in the Service Order.

**8.2 Termination:** Either party may terminate this Agreement (a) without cause, upon 60 days written notice, (b) with cause, if the other party materially breaches this Agreement and does not remedy such breach within 30 days after its receipt of written notice of such breach, or (c) without cause during the initial Trial Period, upon 14 days written notice and before the Trial Period has ended. Provided, however, that in the event the Company terminates this Agreement without cause, it shall refund any Fees paid by the Customer on a pro rata basis. Further, notwithstanding any terms to the contrary in this Agreement, the Company may suspend use of the Services (or any portion thereof) without liability if the Company reasonably determines that (a) the Company is required by any applicable law to suspend the Services (subject to a pro rata refund of any prepaid Fees), or (b) the Customer is in material breach of this Agreement.

**8.3 Effect of Termination or Expiration:** Upon any termination or expiration of this Agreement (a) all rights granted to the Customer under this Agreement will immediately cease, (b) the Customer will immediately pay to the Company all amounts due and payable up to the effective date of termination of this Agreement, and (c) each party will promptly return to the other party all Confidential Information of such other party then in its possession or destroy all copies of Confidential Information of such other party, at such other party's sole discretion and direction. Notwithstanding any terms to the contrary in this Agreement, Sections 2, 3, 5, 6, 7, 8.3, 9, 10, 11.2, 11.4, 11.6, 11.7, 11.8, 11.9, and 11.12 will survive any termination or expiration of this Agreement.





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#### 9. Additional Rights, Ownership, and Reservation of Rights

As between the parties and subject to the express grants within this Agreement, the Company owns all right, title and interest in and to the Services (and any and all modifications to or derivative works of the Services), the Usage Data (as defined below), the Feedback and any and all Intellectual Property Rights embodied in or related to the foregoing. Each party reserves all rights not expressly granted in this Agreement, and no licenses are granted by a party to the other party under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth in this Agreement. For the purpose of this Agreement, “**Intellectual Property Rights**” means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing. The Customer acknowledges and agrees that the Company may create, monitor, collect, use and store analytic information, data and/or statistics regarding use of the Services (collectively, “**Usage Data**”), provided, however, that such Usage Data shall not include any personal data.

#### 10. Restrictions

Except as expressly authorized by this Agreement, the Customer may not (a) modify, disclose, alter, translate or create derivative works of the Services (or any components thereof), (b) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Services (or any components thereof), (c) reverse engineer, decompile, disassemble, decrypt, re-engineer, reverse assemble, reverse compile or otherwise translate, create, or attempt to create the source code of the Services or their structural framework (in whole or in part), or perform any process intended to determine the source code for the Services, (d) use the Services to store or transmit any viruses, software routines or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions, (e) copy, frame or mirror any part or content of the Services, (f) build a competitive product or service, or copy any features or functions of the Services, (g) interfere with or disrupt the integrity or performance of the Services, (h) attempt to gain unauthorized access to the Services or their related systems or networks, (i) disclose to any third party any benchmarking or comparative analysis relating to the Services, (j) circumvent or attempt to circumvent any technological protection measures intended to restrict access to or use of any portion of the Services or the functionality of the Services, (k) take any action that imposes an unreasonable or disproportionately large load on the Services, (l) use the Services for any purpose that is illegal in any way or that advocates illegal activity, or (m) cause or permit any individual or entity to do any of the foregoing.

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#### 11. General Provisions

**11.1 Independent Contractors:** Neither party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other party, and the relationship between the parties will only be that of independent contractors. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

**11.2 Governing Law and Venue:** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be entirely performed within the State of Delaware, without resort to its conflict of law provisions. Each party submits to the exclusive jurisdiction of any state or federal court sitting in Delaware in any litigation arising out of or relating to this Agreement.

**11.3 Publicity:** Notwithstanding any terms to the contrary in this Agreement, and unless otherwise agreed to, the Customer consents to the Company's use of the Customer's name and unmodified logo on the Company website and on any Company promotional and marketing related materials, identifying the Customer as a customer of the Company and describing the Customer's use of the Services. The Customer may elect to participate in a case study and related blog post with respect to its use of the Services, provided that such case study and blog post will not be published until the Company has obtained the Customer's approval (and such approval will not be unreasonably withheld).

**11.4 Third-Party Services:** The Customer acknowledges and agrees that the Company uses third-party hosting infrastructures and/or other services in connection with the Services ("**Third-Party Services**") and, notwithstanding any terms to the contrary in this Agreement, the Customer agrees to abide by the terms and conditions provided by the Company with respect to the Third-Party Services.

**11.5 Modifications:** Notwithstanding any terms to the contrary in this Agreement, the Customer acknowledges and agrees that the Company may modify features of the Services from time to time at the Company's sole discretion, provided that such modifications will not materially degrade the Services.

**11.6 Assignment:** Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by a party, by operation of law or otherwise, without the prior written consent of the other party, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Notwithstanding the foregoing, either party may freely assign this Agreement or any right or duty under this Agreement to an affiliate or to any successor to substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization, or other transaction. This Agreement will be binding upon and enforceable against any successor or permitted assignee.

**11.7 Amendments and Waivers:** No modification, addition or deletion, or waiver of any rights under this Agreement will be binding on a party unless clearly understood by the parties to be a modification or waiver and signed by a duly authorized representative of each party. No failure or delay (in whole or in part) on the part of a party to exercise any right or remedy hereunder will operate as a waiver thereof or effect any other right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.





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**11.8 Notices:** Any notice or communication required or permitted to be given hereunder will be in writing, signed or authorized by the party giving notice, and may be delivered by hand, deposited with an overnight courier, sent by confirmed email, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as identified on this Agreement or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered. Notice is effective on the earlier of ten (10) days from being deposited for delivery or the date on the confirmed facsimile, confirmed email or courier receipt.

**11.9 Severability:** If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, (a) such invalidity, illegality or unenforceability will not affect any other provision of this Agreement or invalidate or render unenforceable such provision in any other jurisdiction, and (b) such provision, in such jurisdiction, will be replaced by a valid, legal and enforceable provision that best reflects the parties' intent for such first provision.

**11.10 Audit:** The Company may, at the Company's sole cost, upon three (3) days' written notice, by itself or through an independent third party, audit the Customer's use of the Services to verify the Customer is in compliance with the terms and conditions of this Agreement. All such audits will be conducted in a manner which does not unreasonably interfere with the Customer's business operations, and not more than once per calendar year. The Customer agrees to provide reasonable access to the Customer's systems and records for purposes of conducting these audits. The Company will examine only information directly related to the Customer's use of the Services, and all such information shall be considered Confidential Information.

**11.11 Counterparts:** This Agreement may be executed (a) in two or more counterparts, each of which will be deemed an original and all of which will together constitute the same instrument; and (b) by the parties by exchange of signature pages by mail, facsimile, electronic or online signature, or email (if email, signatures in Adobe PDF or similar format).

**11.12 Force Majeure:** Except for payments due under this Agreement, neither party will be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control including, but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), acts of terrorism, war, civil disturbances, disruption of telecommunications, disruption of power or other essential services, interruption or termination of any services provided by any service providers used by the Company, labor disturbances, vandalism, cable cut, computer viruses or other similar occurrences, or any malicious or unlawful acts of any third party. Either party may terminate this Agreement if a Force Majeure event affecting the other Party continues substantially uninterrupted for more than 30 days.