Master Service Agreement

This Master Service Agreement (the "**Agreement**") is a legal contract between PickNik Inc., a Delaware corporation with offices located at 1942 Broadway, Suite 314, Boulder, Colorado, USA 80302, ("**PickNik**") and the company on behalf of which you, the individual agreeing hereto, have agreed to this Agreement and any accompanying Statements of Work (defined below) (such company, the "**Company**") (collectively referred to herein as the "**Parties**," or individually, a "**Party**"). You, the individual, represent and warrant that you have the full corporate right, power, and authority to enter into this Agreement on behalf of the Company, that this Agreement has been duly authorized by the Company, and that this Agreement will constitute the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms.

BY AGREEING TO THE TERMS OF ANY MUTUALLY AGREEABLE STATEMENT OF WORK (DEFINED BELOW) BETWEEN THE COMPANY AND PICKNIK, WHETHER THROUGH ELECTRONIC OR PHYSICAL SIGNATURE, EMAIL, OR OTHER FORMS OF MANIFESTING YOUR ASSENT TO THE TERMS OF ANY STATEMENT OF WORK AND THIS AGREEMENT (THE FIRST DATE ON WHICH ANY SUCH ACTIONS OCCURS, THE "EFFECTIVE DATE"), YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY IT ON BEHALF OF THE COMPANY.

WHEREAS, PickNik is engaged in the business of providing consulting, software development, and related services, Company wishes to retain PickNik to provide such services as described herein and PickNik wishes to provide the same to Company, each on the terms and conditions as set forth herein.

NOW, **THEREFORE**, in consideration of the mutual covenants, conditions, and agreements as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.   **Definitions.** For the purposes of this Agreement, the following terms have the following meanings:

"**Background Technology**" means all tools, programs, designs, processes, formulas, techniques, improvements, inventions, works of authorship, software, data, know-how, ideas, methodologies, specifications, code libraries, algorithms, protocols, routines, subroutines, network systems, machine learning models, Trade Secrets (defined below), and other technology which are: (a) created, developed, owned, or licensed by PickNik prior to the Effective Date of this Agreement; (b) are created, developed, owned, or licensed by PickNik during the term of this Agreement but not delivered as a part of the Software; (c) which have general applicability to PickNik's business and which are not based on any Company Confidential Information; or (d) modifications of or derivatives to any of the foregoing.

"**Confidential Information**" means all information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning, samples, beta versions, schematics, prototypes, and other confidential or proprietary information in any form or medium (e.g., written, verbal, electronic, visual) that, for any of the above: (a) has been identified by the Disclosing Party as

"Confidential" or "Proprietary"; or (b) should reasonably be understood to be confidential to the Disclosing Party based on the nature of the information or the circumstances of its disclosure. Confidential Information does not include information that the Receiving Party can demonstrate by documentation: (i) was already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information directly or indirectly from or on behalf of the Disclosing Party; (ii) was or is independently developed by the Receiving Party without use of any of the Disclosing Party's Confidential Information; (iii) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or any of its representatives; or (iv) was received by the Receiving Party from a third party who was not, at the time of such disclosure, under any obligation to the Disclosing Party or any other person to maintain the confidentiality of such information.

"**Company Data**" means all data, information, images, and other content provided to PickNik or its contractors by or for Company in connection with Company's use of the Software (as defined below), and all data, information, images, and other content received by or for Company from Company's use of the Software.

"**Intellectual Property Rights**" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) Trade Secrets, know-how, and similar Confidential Information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

"**Open Source Software**" means the computer source code, libraries, and program(s), including any documentation and/or materials associated therewith, that is publicly available for use, modification, enhancement, or inspection.

"**Services**" means any of the services PickNik is required to or otherwise does provide under this Agreement, as more fully described in this Agreement or as agreed to by the Parties in writing from time to time pursuant to the terms of this Agreement. The Services may include, but are not limited to, support and professional services relating to the Software (as defined below).

"**Software**" means the custom computer source code, libraries, and program(s), including any documentation and/or materials associated therewith that PickNik is required to develop under an applicable Statement of Work, excluding any Open Source or Open Source Contributions.

"**Trade Secret**" means information including a formula, pattern, compilation program, device product, method, technique, protocol, or process that is used or may be used in business or for any commercial advantage that: (a) derives independent economic value, actual or potential, from not being generally known to the public or to the persons who can obtain economic value from its disclosure or use; (b) is the subject of reasonable effort to prevent it from becoming so generally known; and (c) the disclosure of which would result in harm or improper benefit.

2.   **Engagement**. Company hereby engages PickNik, and PickNik hereby accepts such engagement, to develop Software and/or provide Services related thereto as set forth in one or more written statements of work executed by both Parties that is subject to and references this Agreement (each, a "**Statement**

of Work" or "**SOW**"). Each Statement of Work is incorporated into and subject to the terms and conditions of this Agreement. Bodies of email text do not create Statements of Work or amendments to this Agreement or Statements of Work. However, electronic signatures on documents and facsimiles of signatures on documents are acceptable and legally binding forms of execution. To the extent there is a conflict between the terms of this Agreement and any Statement of Work, the terms of this Agreement will control unless specifically stated otherwise in the Statement of Work.

3.   **Fees**. Subject to all terms and conditions set forth in this Agreement, Company will pay the fees as set forth in the applicable Statement of Work, or as may be otherwise agreed to by the Parties, in writing, from time to time.

    3.1.   **Disputed portions of invoice.** Any disputes in relation to any portions of fees shall be raised to PickNik prior to the date payment is due for such invoice. For the avoidance of doubt, Company will be deemed to have agreed to the fees in the applicable invoice if no dispute is raised prior to such due date.

    3.2.   **Undisputed portions of invoice**. All undisputed portions of any fees will be due and payable 15 days after the date of the applicable invoice, unless otherwise set forth in the associated Statement of Work. All fees paid are non-refundable, except as otherwise set forth in this Agreement.

4.   **Term**.

    4.1.   **Term.** The term of this Agreement commences as of the Effective Date, and unless this Agreement is terminated earlier pursuant to any of the express provisions set forth herein, will continue in effect until the termination or expiration of the last effective Statement of Work. If the Parties execute any Statement of Work at a date following the termination or expiration of this Agreement, this Agreement will then continue to govern such Statement of Work.

    4.2.   **Termination without Cause.** Either Party may terminate this Agreement or any Statement of Work at any time, upon 30 days' written notice to the other Party unless the Statement of Work specifically indicates otherwise, in which case such Statement of Work shall continue in full force and subject to the terms of this Agreement until it expires or is terminated pursuant to its terms.

    4.3.   **Termination with Cause.** If either Party breaches a provision of this Agreement, the other Party may immediately terminate this Agreement at any time upon written notice to the other Party where such breach has continued for 30 days after the non-breaching Party provided written notice to the breaching Party of such breach. For the avoidance of doubt, Company's failure to pay the fees due under any Statement of Work to PickNik within 10 days following the applicable due date will constitute a material breach of this Agreement.

    4.4.   **Effect of Termination.** The termination or expiration of a single Statement of Work shall not cause the automatic termination of any other Statement of Work. Upon termination of this Agreement or any Statement of Work, PickNik shall issue its invoice in relation to any fees or consideration due for Services or Software provided to Company by PickNik leading up to and through the termination of the Statement of Work in accordance with its terms, and Company shall make payment to PickNik within 30 days of the date of such invoice.

4.5.   **Survival.** Sections 1, 3 through 13, and Sections 14.2 through 14.4 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration.

5.   **Confidential Information**.

5.1   **Non-Use and Non-Disclosure.** The Parties agree not to use any Confidential Information of the Disclosing Party for any purpose except in connection with this Agreement. The Parties agree not to disclose any Confidential Information of the other Party to third parties or to their employees or representatives, except to those employees or representatives who reasonably should have access to such information for the Party's performance in connection with this Agreement and who are bound by confidentiality obligations at least as protective of the Confidential Information as this Agreement. The Parties shall not reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects that embody the other Party's Confidential Information.

5.2   **Duration of Confidentiality Obligations.** For Confidential Information that <u>does</u> concern, involve, relate, or pertain to a Trade Secret, the obligations of the Receiving Party hereunder shall commence as of the Effective Date and survive until such time as such Confidential Information no longer qualifies as a Trade Secret through no action or inaction of the Receiving Party. For Confidential Information that <u>does not</u> concern, involve, relate, or pertain to a Trade Secret, the obligations of the Receiving Party hereunder shall commence as of the Effective Date and survive for 2 years after the expiration or termination of this Agreement.

5.3   **Exceptions.** Notwithstanding the foregoing, the Receiving Party shall not be in violation of this Section 5 with regard to a disclosure of Confidential Information that (a) was in response to an order or subpoena of a court, agency, or tribunal of competent jurisdiction, or pursuant to any applicable law or regulation, provided that the Receiving Party provides the Disclosing Party with prior written notice of such disclosure to the extent reasonably practicable and legally permissible in order to permit the Disclosing Party to seek confidential treatment of such information and/or (b) was disclosed to its professional advisors on terms such that the professional advisors accept such information under a duty of confidentiality no less stringent than the Receiving Party's duty to the Disclosing Party.

5.4   **Ownership of Confidential Information.** The Disclosing Party grants no right, title, or interest in or to the Confidential Information, and hereby reserves any such rights that it may have, including any intellectual property that may constitute a portion thereof, as well as any Intellectual Property Rights therein, except the limited rights expressly granted in this Agreement.

6.   **Intellectual Property**.

6.1.   **Company's Ownership of the Software.** Unless specified otherwise in a Statement of Work and except as provided in Section 6.2, Company is and will be the owner of all right, title, and interest in and to all Intellectual Property Rights in the Software, and PickNik hereby assigns to Company all such right, title, and interest in and to the Intellectual Property Rights in the Software.

6.2.   **PickNik's Ownership of the Background Technology.** PickNik is and will remain the sole and exclusive owner of all right, title, and interest in and to all Background Technology and all derivatives of and modifications thereto, including all Intellectual Property Rights therein. Company acknowledges the validity of PickNik's ownership rights in and to the Background Technology, and Company agrees to never challenge or contest the existence or validity of PickNik's ownership rights in and to the Background Technology, including all Intellectual Property Rights therein.

6.3.   **License of the Background Technology.** To the extent that any Background Technology is incorporated into the Software, PickNik hereby grants to Company a worldwide, perpetual, royalty-free, non-exclusive license to use the Background Technology as incorporated into the Software solely to the extent necessary to utilize the Software as fully intended. PickNik reserves all rights in the Background Technology not expressly granted to Company herein. For the avoidance of doubt, the foregoing shall not limit PickNik's ability to use, license, sell, or commercialize any PickNik Background Technology.

6.4.   **Open Source Licensing.** If (a) any Statement of Work sets forth any contribution of Open Source Software to any Open Source Software projects or (b) the Parties agree to so contribute any software developed in furtherance of the Services or originally intended to constitute any portion of the Software, then such contributions will be made pursuant to the terms of such project (any such contributions, the "**Open Source Contributions**"). Company hereby assigns all ownership of such Open Source Contributions to PickNik. PickNik shall contribute such Open Source Contributions to the relevant Open Source project. Company shall license its use of such Open Source Contributions under the applicable Open Source licensing terms for such Open Source Contributions. Any necessary bug fixes or improvements to robotic software packages originating outside the Company's private code repositories will be considered Open Source Contributions using the business-friendly BSD license[1]. Open source release may benefit the Company by reducing feature maintenance overhead of forked packages through leveraging the broader community to maintain, test, and debug the software without additional cost to the Company. Upon request, sponsorship attribution will be provided to the Company for these Open Source Contributions in the description of pull requests.

6.5.   **License of the Company Data.** Company hereby grants to PickNik and its authorized contractors and representatives a non-exclusive and non-transferable right and license to use, process, store, transmit, and disclose Company Data to provide the Services to Company and fulfill other obligations described in this Agreement.

6.6.   **Use of Name and Logo.** PickNik may use Company's name and logo to identify Company as a customer of PickNik or as set forth in a Statement of Work. PickNik's use of the name and logo does not create any ownership right therein and all rights not granted to PickNik are reserved by Company.

7.   **Independent Contractor**. PickNik is an independent contractor of Company (not an employee or other agent) solely responsible for the manner and hours in which the Services are performed, is solely responsible for all taxes, withholdings, and other statutory, regulatory, or contractual obligations of any sort related to its employees (including, but not limited to, those relating to workers' compensation, disability insurance, Social Security, unemployment compensation coverage, the Fair

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[1] https://opensource.org/licenses/BSD-3-Clause

Labor Standards Act, income taxes, etc.), and is not entitled to any employee benefit plans, fringe benefit programs, group insurance arrangements, or similar programs provided by Company.

8.   **Company's Obligations.** Company will provide PickNik with such assistance and access to such information and materials as is reasonably necessary for PickNik to perform its obligations in a timely basis. Company is solely responsible for the final implementation of any Software and Company's use of the Services, except for the limited warranty provided below.

9.   **Warranties.** Each Party represents and warrants to the other Party that it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder. Further, Company represents and warrants to PickNik that Company will not provide any Company Data that infringes, misappropriates, or otherwise violates the rights of any third party, including Intellectual Property Rights and other rights to privacy. In addition, PickNik warrants to Company that the Services will be performed in a professional manner consistent with industry standards and will not purposefully include any code that contains any virus, time-bomb, trojan horse, or other such malicious code or any open source licensed under any "copy-left" type provisions without Company's approval. PickNik shall, as its sole obligation and Company's sole and exclusive remedy for any breach of this warranty, re-perform the Services which gave rise to the breach, or, at PickNik's option, refund the fees paid by Company for the portion of the Services that did not fulfill such warranty, provided that Company shall notify PickNik in writing of the breach within 30 days following performance of the defective Services, specifying the breach in reasonable detail.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SOFTWARE AND SERVICES ARE PROVIDED "AS-IS" AND EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES RELATED TO THE SERVICES OR SOFTWARE, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF MERCHANTABILITY, WARRANTY OF NON-INFRINGEMENT, WARRANTY OF TITLE, AND PICKNIK MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE WILL BE ERROR-FREE. IN ADDITION, BECAUSE PICKNIK CANNOT CONTROL COMPANY'S NETWORKING OR FINAL PRODUCT, PICKNIK CANNOT AND DOES NOT WARRANT THAT THE SOFTWARE, BACKGROUND TECHNOLOGY, OPEN SOURCE SOFTWARE, OR SERVICES OR ANY TECHNOLOGIES RESULTING FROM THE SAME WILL BE FREE FROM SECURITY VULNERABILITIES OR MALWARE OF ANY KIND AND PICKNIK IS NOT RESPONSIBLE OR LIABLE FOR COMPANY'S USE OF ROBOT OPERATING SYSTEM SOFTWARE OR USE OF THE SOFTWARE, BACKGROUND TECHNOLOGY, OPEN SOURCE SOFTWARE, OR SERVICES OR ANY TECHNOLOGIES RESULTING FROM THE SAME IN ANY APPLICATIONS, EXCEPT FOR LIABILITIES EXPLICITLY SET FORTH IN SECTION 10.1. COMPANY HEREBY ACKNOWLEDGES THAT THE SERVICES, SOFTWARE, BACKGROUND TECHNOLOGY, AND OPEN SOURCE SOFTWARE ARE PROVIDED SOLELY AS THEY RELATE GENERALLY TO ROBOTIC THEORIES AND NOT FOR ANY SPECIFIC END USER PURPOSES.

10.   **Indemnification.**

10.1.   **By PickNik.** PickNik will defend at its own expense any action against Company brought by a third party to the extent that the action is based upon a claim that the Software provided pursuant to the terms of this Agreement directly infringes upon that third party's U.S. copyright or misappropriates that third party's Trade Secret recognized as such under the Uniform Trade

Secret Law, and PickNik will pay those costs and damages finally awarded against Company in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

10.2. **By Company.** Company will defend PickNik at its own expense against any action brought by a third party to the extent that the action is based upon a claim (a) arising in connection with PickNik's use of the Company Data in accordance with this Agreement, or (b) based upon Company's use of the Software, except to the extent a claim arises out of PickNik's indemnification obligations in Section 10.1. Company will pay those costs and damages finally awarded against PickNik in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

10.3. **Conditions.** The Party's obligations under the preceding paragraphs with respect to an action are conditioned on the indemnified Party: (a) notifying the indemnifying Party promptly in writing of such action; (b) giving the indemnifying Party sole control of the defense thereof and any related settlement negotiations (provided that the indemnifying Party shall have the right to approve any material liability imposed on the indemnified Party in connection with such settlement); and (c) cooperating with the indemnifying Party in such defense (including, without limitation, by making available to the indemnifying Party all documents and information in the indemnified Party's possession or control that are relevant to the claims, and by making personnel available to testify or consult with the indemnifying Party or its attorneys in connection with such defense).

10.4. **Exclusions.** Notwithstanding the foregoing, PickNik will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon: (a) any use of the Software provided pursuant to the terms of this Agreement not in accordance with the purpose of this Agreement or for purposes not intended by PickNik; (b) any use of the Software provided under this Agreement in combination with other products, equipment, software, or data not supplied by PickNik; (c) any use of any release of any software provided under this Agreement other than the most current release made available to Company; (d) any Open Source Software provided under this Agreement; or (e) any modification of the Software provided under this Agreement made by any person or entity other than PickNik.

11. **Limitations of Liability.**

11.1. **Exclusions.** NEITHER PARTY SHALL BE LIABLE FOR ANY: (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY EXHIBIT OR THE OPERATION OR USE OF SOFTWARE PROVIDED UNDER THIS AGREEMENT INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST COMPANY BY ANY THIRD PERSON, EVEN IF THE RELEVANT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY PICKNIK TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST SUCH PARTY MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. PICNIK HEREBY EXPRESSLY DISCLAIMS, AND

COMPANY HEREBY UNDERSTANDS AND AGREES, THAT PICKNIK WILL NOT BE LIABLE FOR ANY INTENDED USES OF THE SERVICES, SOFTWARE, OPEN SOURCE SOFTWARE, OR BACKGROUND TECHNOLOGY UTILIZED UNDER THIS AGREEMENT. COMPANY HEREBY RELEASES AND FOREVER DISCHARGES PICKNIK FROM ANY ALL CLAIMS RELATED TO COMPANY'S USE OF THE SERVICES, SOFTWARE, OPEN SOURCE SOFTWARE, AND BACKGROUND TECHNOLOGY BEYOND THE LIMITED WARRANTY RIGHTS CONTAINED IN SECTION 9.

11.2. **Cap on Monetary Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY PICKNIK FROM COMPANY IN THE 12 MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE FIRST CLAIM.

12. **Compliance with Law**. In performing its obligations or exercising its rights under this Agreement, each Party shall comply with all applicable laws and government regulations to which they are subject at all times, including but not limited to any applicable laws and regulations of the United States and other jurisdictions relating to export or re-export of technology, consumer protection, information access, and privacy.

13. **Non-Solicitation.** Company acknowledges that PickNik has expended significant time and resources to obtain and train professionals and match each customer's needs, whether the professionals be employee or independent contractor. Therefore, during the Term, and for a period of one year after the termination or expiration of this Agreement, Company agrees not to hire or cause to be hired, as either an employee of or an independent consultant to Company or a related company, any of PickNik's employees, contractors, subcontractors, or consultants with whom Company has had contact with during the term of this Agreement. A breach of this provision, without PickNik's prior written approval, will entitle PickNik to receive $40,000 from Company. Company agrees that these amounts represent a fair and reasonable estimate of the damages PickNik will incur by reason of a breach of this Section. Company further agrees that proof of actual damages will be difficult or impossible to ascertain.

14. **General**.

14.1. **Assignment.** Neither Party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to a parent, affiliate, or subsidiary, or to a successor, whether by way of merger, sale of all or substantially all of its assets, or otherwise. No delegation or other transfer will relieve a Party of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section is void. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

14.2. **Notices**. All notices under this Agreement shall be in writing, and shall be deemed given

when delivered, or three days after being sent by government mail or globally-recognized carriers (such as FedEx or UPS) to the physical or email address of the Party as such Party last provided to the other by written notice.

14.3.   **Equitable Relief.** Each Party acknowledges that any breach of Section 5 or Section 6 will cause immediate and irreparable harm to the non-breaching Party for which damages would not be an adequate remedy. Therefore, each Party agrees that in the event of such breach, or threatened breach, the non-breaching Party will be entitled to equitable relief, in the form of injunctive relief, specific performance, and any other relief that may be available from any court. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available under the Agreement, at law or in equity, subject to any express exclusion or limitations in this Agreement to the contrary.

14.4.   **Governing Law; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to the conflicts of laws provisions thereof. Any litigation or arbitration proceedings under this Agreement may be brought by the Parties in the State of Colorado and each Party irrevocably consents to the exclusive jurisdiction of the courts or relevant adjudicative bodies in Denver, Colorado, whether private, federal, or state courts. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover reasonable costs and attorneys' fees. A prevailing Party's right to recover reasonable attorneys' fees, costs, and expenses is to be proportional to the amount of claims on which the Party actually prevailed in relation to the total amount of claims alleged, pursued, or brought by that Party.

14.5.   **Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

14.6.   **Force Majeure.** With the exception of payment of the fees for provision of Software or Services under this Agreement, neither Party shall be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of God or any governmental body, war or national emergency, riots or insurrection, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, or interruption of or delay in systems, power, or telecommunications under third-party control.

14.7.   **Severability.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

14.8.   **Entire Agreement.** This Agreement and each Statement of Work constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and communications, whether oral or written, between the Parties relating to the subject matter hereof, and all past courses of dealing or industry custom.

14.9.   **No Amendment or Modification.** No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by an authorized representative of both Parties.