

**I. CERTAIN DEFINITIONS.** As used herein, the following terms have the following definitions:

- A. **"Customer"** means the entity specified as Customer on a valid Purchase Order.
- B. **"Customer Data"** means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or a Permitted User through the Services.
- C. **"Documentation"** means (i) all user and administrator manuals, operating instructions, installation guides, help files, standard documentation, and other printed, electronic, and online material that ShadowDragon generally makes available to its customers as part of the Service; and (ii) all other printed, electronic, or online materials (other than marketing materials) that ShadowDragon provides or makes available to Customer which describe the features, functions, or operation of a Service.
- D. **"Fees"** means all fees due under a Purchase Order.
- E. **"Initial Term"** means the period specified as such on a Purchase Order for a Service.
- F. **"Intellectual Property Rights"** means all patent, copyright, trade secret, trademark and other proprietary and intellectual property rights recognized in any jurisdiction worldwide, including moral rights
- G. **"Party"** means, as the context requires, ShadowDragon or Customer. ShadowDragon
- H. **"Permitted User"** means Customer employees, consultants or contractors authorized by Customer to use the Service who have been supplied user identifications and passwords by Customer (or by ShadowDragon at Customer's request).
- I. **"Purchase Order"** means a valid purchase order, invoice or quote from ShadowDragon to Customer for describing access to one (1) or more Services, the associated Fees, Initial Term, and all other applicable limits or conditions (e.g., number of Permitted Users, number of queries per day) on the use of the Service.
- J. **"Service"** means the software-as-a-service offering specified on the applicable Purchase Order.
- K. **"ShadowDragon"** means ShadowDragon, LLC, a Delaware limited liability company.
- L. **"Support"** means ShadowDragon's standard support and maintenance program available to its Customers as further described in Section III.
- M. **"Term"** means the Initial Term together with any Renewal Terms.
- N. **"Terms"** means these Terms and Conditions.

**II. LICENSE RIGHTS AND RESTRICTIONS**

- A. **License to the Service.** Subject to payment by Customer of applicable Fees, and compliance by Customer and its Permitted Users with these Terms and the limitations specified on the applicable Purchase Order, ShadowDragon grants to Customer a non-exclusive, non-transferable worldwide license to access and use the Service and Documentation during the Term, solely for Customer's internal business purposes. ShadowDragon shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services during the Term.
- B. **Permitted Users.** Customer shall be responsible for the breach by its Permitted Users of any provision of these Terms. Permitted User subscriptions are for designated Permitted Users and cannot be shared or used by more than one individual but may be reassigned to new personnel replacing former users who no longer require on-going use of the Services.
- C. **Restrictions.** Customer shall not: (i) access or use, or attempt to copy the Service or Documentation; (ii) sell, relicense, sublicense, lease, rent, loan, lend, transmit, network, or otherwise distribute or transfer the passwords or access codes to, the Service in any manner, to any third party unless expressly permitted on the applicable Purchase Order; (iii) create derivative works of Service; (iv) create a product or service intended to replace the Service, (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (vi) use the Service for any benchmarking purposes; (vii) use the Service to build a competitive product or service using similar ideas, features, functions or graphics of the Service, or copy any ideas, features, functions or graphics of the Service; (viii) use any robot, spider, site search/retrieval application or other manual or automatic device or process to retrieve, index, "data mine" or in any way reproduce or circumvent the navigational structure or presentation of the Service; (ix) remove, obscure, or alter any copyright notices, trademarks, or other proprietary rights notices affixed to or contained within the Service; (x) permit any third party to interfere with, modify, disrupt, or disable features or functionality of the Service, including without limitation any such mechanism used to restrict or control the functionality thereof, or copy, modify, translate, reverse engineer, decompile, disassemble or reproduce the Service for any reason; or (xi) knowingly or intentionally use the Service or Documentation in violation of these Terms of applicable law.
- D. **Ownership; Reservation of Rights.** Customer acknowledges that, except for the limited rights granted above, nothing in these Terms grants Customer or any third party any Intellectual Property Rights or other right, title or interest in or to the Service or the Documentation or any part thereof.
- E. **Suspension.** ShadowDragon may temporarily suspend Customer's and any Permitted User's access to the Service if (i) Customer has undisputed amounts more than ten (10) days past due; (ii) ShadowDragon reasonably determines that (a) there is a threat or attack on the Service; (b) Customer's or any Permitted User's use of the Service disrupts or poses a security risk to the Service or to any other customer or vendor of ShadowDragon; or (c) Customer or any Permitted User is using the Service for fraudulent or illegal activities (any such suspension described in subclause (i) or (ii), a "Service Suspension"). ShadowDragon shall use commercially reasonable efforts to provide prior written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. ShadowDragon shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. ShadowDragon will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Permitted User may incur as a result of a Service Suspension.
- F. **Training.** In the event that Customer conducts training on ShadowDragon's product and usage, Customer must attend and complete ShadowDragon's authorized training course on OSINT methodology. The training course must be completed prior to providing any internal training on ShadowDragon tools.

**III. SUPPORT**

- A. **Fees.** Unless otherwise specifically stated in an applicable Purchase Order, Support is included with the Service at no additional cost.
- B. **Generally.** Support includes:
  1. Unlimited access to ShadowDragon's support website located at [www.shadowdragon.io](http://www.shadowdragon.io).
  2. Telephone and email hotline support for the Service twenty-four hours per day, seven days per week in English. Email support requests must be sent to [support@shadowdragon.io](mailto:support@shadowdragon.io) and toll-free telephone support is provided at 1-877-468-5054.
  3. All upgrades to a Service that ShadowDragon makes available to all of its Customers at no additional charge.
- C. **Incidents And ShadowDragon's Response**
  1. **Incident Classification.** ShadowDragon and Customer will together classify each incident reported by Customer (each, an **"Incident"**), based on the Incident Classification Table below and on information provided by Customer.

Incident Classification	Description
Catastrophic Incident (Severity Level 1)	The Service is unusable, unavailable for a significant number of Permitted Users, or there is an imminent risk to Customer of the loss of Customer Data or the occurrence of a Security Incident.
Critical Incident (Severity Level 2)	The Service is materially degraded or otherwise causes results that are more detrimental to Customer's use of the Service than a Severity Level 3 Incident.
Serious Incident (Severity Level 3)	The Service experiences a significant malfunction, which materially impacts a portion of the functionality or portion of Permitted Users.
Important Incident (Severity Level 4)	The Service experiences a non-critical malfunction, which does not materially impact the functionality of the Service.
Non-Critical Incident (Severity Level 5)	Customer requests information about the Service or improvements to the Service.

2. **Incident Reporting and Response.** Customer will provide ShadowDragon with a reasonably detailed description of the Incident by email or phone. ShadowDragon shall take the following steps, in accordance with the Support Response Expectation Table below:

**Step 1:** ShadowDragon shall begin collecting any additional information from Customer necessary to correct the Incident.

**Step 2:** ShadowDragon shall use best efforts to provide a patch, correction, workaround, or otherwise resolve the Incident.

ShadowDragon may subsequently provide a tested patch, correction, or upgrade, or a new version or an interim version of the Service.

ShadowDragon shall use commercially reasonable efforts to respond to reported Incidents during the response times set forth in the Support Response Expectation Table set forth below.

Incident Classification	Step 1	Step 2
Catastrophic Incident (Severity Level 1)	Within 2 hours	Immediate and continuing effort to address the incident with email updates every 6 hours, along with ad hoc updates as requested by customer
Critical Incident (Severity Level 2)	Within 2 hours	Immediate and continuing effort with daily email updates to customer
Serious Incident (Severity Level 3)	Within 4 hours	Immediate and continuing effort with email updates
Important Incident (Severity Level 4)	Within 1 business day	Updates provided every 5 business days
Non-Critical Incident (Severity 5)	Within 5 business days	Updates provided as reasonably necessary

- D. **Non-Standard Support**

If ShadowDragon reasonably believes that a problem reported by Customer is not due to a failure of the Service to meet the warranty set forth in Section IV(A)(1) below or the request is for other professional services, ShadowDragon shall notify Customer and provide Customer with a proposal to provide the professional services. Upon mutual agreement, ShadowDragon will provide such professional services.

#### IV. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

- A. ShadowDragon hereby represents and warrants that:
- ShadowDragon shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a professional and workmanlike manner. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by ShadowDragon or by third-party providers, or because of other causes beyond ShadowDragon's reasonable control, but ShadowDragon shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled Service disruption.
  - The Services do not contain any virus or Disabling Device, other than a Disabling Device that may be invoked to terminate Customer's access to the Service upon the occurrence of a Service Suspension or expiration of the Term or termination of these Terms. A "Disabling Device" means any timer, clock, counter, time lock, time bomb, other limiting code, design, instruction or routine which is designed or intended to do any of the following, either automatically or without the intentional action of Customer: (a) erase data or other programming; (b) damage, disable, or otherwise alter the operation of any Services; or (c) cause any Service (or component thereof) to become incapable of being used in the full manner for which it was designed.
  - The Service will materially conform with the Documentation.
  - The Services are, and all websites, web pages, and software provided as part of the Service are developed and supplied in such a manner that they can be accessed, viewed, used, and have their content displayed using only Chrome or supported browsers, supported integration platforms or Application Programming Interface ("API").
- B. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND SHADOWDRAGON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SHADOWDRAGON DOES NOT WARRANT THAT THE SERVICES AND DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES AND DOCUMENTATION.

#### V. INDEMNIFICATION

- A. Infringement.
- ShadowDragon shall defend, indemnify, and hold harmless Customer and the Permitted Users (each, a "Customer Indemnitee"), from all losses, damages, judgments, liabilities, costs and expenses to third parties (including reasonable attorneys' fees), arising from a third-party claim that a Service infringes any Intellectual Property Right of such third party (collectively, an "IP Claim"); provided, however; ShadowDragon shall have no obligations to any Customer Indemnitee hereunder for any IP Claim that is based on: (i) any change or addition to a Service or Documentation made by Customer (other than at ShadowDragon's direction), where the infringement, misappropriation or violation would not have occurred but for that change or addition; (ii) the combination, operation or use of a Service or Documentation with any product, data, content, methodology or software that ShadowDragon did not provide to Customer or specify as being compatible with a Service or Documentation, where the infringement, misappropriation, or violation would not arise but for the combination, operation or use; or (iii) Customer's use of a Service or Documentation in breach of these Terms. If any Service or the Documentation becomes subject to an IP Claim or injunction, ShadowDragon will either (a) procure for Customer the right to continue to use such Service and/or Documentation, or (b) replace or modify such Service and/or Documentation in a manner that substantially retains its functionality and quality so that it is no longer infringing, misappropriating or violating such right; and (c) if neither of the foregoing options are available to ShadowDragon on commercially reasonable terms, ShadowDragon may terminate Customer's use of the affected Service and provide to Customer a pro rata refund of any pre-paid but unused or unfulfilled portions of the Fees for such Service, calculated on a daily basis.
  - THIS SECTION V(A) SETS FORTH CUSTOMER'S SOLE REMEDIES AND SHADOWDRAGON'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
- B. ShadowDragon Indemnification. ShadowDragon shall indemnify, hold harmless, and defend the Customer Indemnitees from and against any losses resulting from any third-party claim (i) based on ShadowDragon's gross negligence or willful misconduct; or (ii) that ShadowDragon is in violation of applicable law.
- C. Customer Indemnification. Customer shall indemnify, hold harmless, and defend ShadowDragon from and against any losses resulting from any third-party claim (i) that the Customer Data, or any use of the Customer Data in accordance with these Terms, infringes or misappropriates such third party Intellectual Property Rights; and/or (ii) based on or arising out of Customer's or any Permitted User's (1) negligence or willful misconduct; (2) use of the Services in violation of these Terms.
- D. Process. The Party seeking indemnification hereunder shall provide the other Party with: (i) prompt written notice of any claim for which indemnification is sought (provided that failure to receive such prompt notice shall not diminish the indemnifying Party's obligation except to the extent that such failure prejudices the indemnifying Party's ability to defend against such claim); (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying Party's expense. Notwithstanding the foregoing, the indemnifying Party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified Party (which amounts must be subject to indemnification by the indemnifying Party) without the indemnified Party's written consent.

#### VI. LIMITATIONS OF LIABILITY

- A. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; OR (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY, IN EACH CASE REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE TO SHADOWDRAGON FOR THE SERVICES IN THE TWELVE (12)-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. The foregoing limitation of liability shall apply regardless of any other remedies provided for herein or pursuant to law.
- B. The preceding sentence shall not limit any obligation or liability for a Party's breach of its confidentiality obligations, including under Section VII, a Party's indemnification obligations, Customer's obligations to remit all amounts properly due and payable hereunder or any liability for damages arising from gross negligence, willful misconduct, bodily injury, or death.
- C. The terms of this Section shall apply to the fullest extent of the law, whether in contract, statute, tort (including negligence and strict liability) or otherwise.

#### VII. CONFIDENTIALITY

- A. "Discloser" means the Party that discloses or causes the disclosure of the Confidential Information at issue or to which such Confidential Information belongs or is otherwise confidential.
- B. "Recipient" means the Party that receives Discloser's Confidential Information.
- C. "Confidential Information" means all confidential or proprietary information or data of a Party (including any such information of a third party in the possession of the Party) that is disclosed in any manner and in any media to the other Party in connection with these Terms or the performance or receipt of the Service which, at the time of disclosure, is either (i) marked as being "Confidential" or "Proprietary", (ii) otherwise reasonably identifiable as the confidential or proprietary information of the Discloser, or (iii) given the nature of such information and the circumstances under which it is disclosed should reasonably be understood to be confidential or proprietary information of the Discloser.

Notwithstanding the above, "Confidential Information" does not include information that: (i) is or becomes publicly available, other than as a result of disclosure by Recipient in breach of the terms hereof; (ii) was known by Recipient prior to receipt of such information from Discloser; or (iii) is developed by Recipient independently and without use of or reference to any information received from Discloser. Recipient shall:

- Maintain the confidentiality of the Confidential Information using at least the same degree of care as it employs in maintaining its own trade secret, proprietary and/or confidential information, but in no event using less than a reasonable degree of care.
- Limit its use of the Confidential Information solely for purposes of exercising its rights and/or fulfilling its obligations hereunder.
- Limit access to the Confidential Information solely to those personnel of Recipient who have a direct and immediate need of such access and who are obligated to maintain the confidentiality of such information.
- Not disclose the Confidential Information to any third parties except to its own legal and business advisors who have a need to know such information and who are obligated to maintain the confidentiality of such information, or as otherwise allowed herein.

- D. Notwithstanding the above, it shall not be a breach of the terms hereof for Recipient to disclose Discloser's Confidential Information: (i) as requested or required by interrogatories, requests for information from a governmental, regulatory or supervisory authority, subpoena or similar legal process, or in accordance with professional standards, or in connection with litigation pertaining hereto, provided that, where reasonably feasible, Recipient shall provide Discloser with notice prior to such disclosure and reasonable assistance in obtaining, through court order, administrative ruling, or otherwise, a limitation or other protection of the Confidential Information that is subject to such disclosure; or (ii) that was disclosed to Recipient on a non-confidential basis from a source other than Discloser where the source is not prohibited from making such disclosure.
- E. Each of Customer and ShadowDragon recognizes and acknowledges that the Confidential Information is of a special, unique and extraordinary character, disclosure of which may not be wholly compensated by monetary damages, and that any disclosure or unauthorized use of the Confidential Information, or other breach of this Section by them or their personnel may cause the other Party irreparable injury. Each of Customer and ShadowDragon, therefore, expressly agrees that, in addition to any rights and remedies which such other Party may have hereunder or at law or in equity, such other Party shall be entitled to seek injunctive and/or other equitable relief to prevent the breach of this Section, and/or to otherwise secure the enforcement of any of its terms.

### VIII. NOTICES

All notices given hereunder shall be in writing, and shall be delivered by: (a) electronic mail; (b) personal delivery; (c) registered or certified mail, postage prepaid, return receipt requested; or (d) a globally or nationally (as the case may be) recognized express mail, courier, or delivery service ("**Express Courier**"). A notice sent by electronic mail shall be deemed given on the date of electronic confirmation of receipt. A notice sent by personal delivery, certified mail or Express Courier shall be deemed given on the date of receipt or refusal of receipt. Notices shall be sent to the respective addresses/contacts of each Party as follows, and any change of address/contact shall be made according to the procedure stated above. **ALL Notices to ShadowDragon shall be sent to:**

ShadowDragon LLC  
265 Riverchase Parkway East, Suite 200  
Hoover, AL 35244  
Email: legal@shadowdragon.io  
ALL Notices and Invoices to Customer shall be sent to:

Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

### IX. TERM AND TERMINATION

- A. Term. The applicable Purchase Order shall be effective as of the date specified therein and continue until terminated as provided herein.
- B. Renewal. Upon expiration of the Initial Term for each Service, these Terms shall automatically renew for successive one (1)-year periods (each, a "**Renewal Term**") subject to payment of Fees, which are subject to nominal annual price increases, unless either Party notifies the other Party of its intention to cancel such Service at least 35 days prior to the expiration of the then-current Term.
- C. Termination
1. Termination for Bankruptcy, etc. Either Customer or ShadowDragon may, with respect to each other, terminate immediately any Purchase Order and/or any Service, in each case if the other Party ceases business operations, makes a general assignment for the benefit of creditors, becomes insolvent or the subject of voluntary bankruptcy or receivership proceedings, or if bankruptcy or receivership proceedings are initiated against it and not lifted within 120 days.
  2. Termination for Breach. Either Customer or ShadowDragon may, with respect to each other, terminate any Purchase Order upon 30 days' prior written notice of termination, for material breach of such Purchase Order by the other Party, if the other Party does not cure such breach within such 30-day period. Such notice shall set forth in reasonable detail the nature of the breach and the date of termination.
  3. Termination by ShadowDragon. ShadowDragon shall have the right to terminate any outstanding Service if ShadowDragon: (a) decides to stop providing all of its customers the Services hereunder; or (b) is enjoined from providing the Service under applicable law.
- D. Effect of Termination; Survival
1. Termination of any Purchase Order shall automatically terminate all Services provided thereunder.
  2. Termination of any Service shall not terminate a Purchase Order unless such Purchase Order is also being terminated.
  3. **Sections II(D), V, VI, VII, VIII, IX, X, AND XI** shall survive termination of a Purchase Order.

### X. PAYMENT; FEES

- A. Invoices. The Fees for the first twelve (12) months of the Initial Term will be invoiced upon execution of the applicable Purchase Order, and, for multi-year agreements, upon the anniversary of each twelve-month period of the Initial Term thereafter; and (ii) all payments are due within 30 days of the date of delivery of the invoice (the "**Due Date**"). Interest of 10% per month (or, if lower, the highest rate permitted under applicable law) will be assessed on all invoices more than 60 days past due. Customer shall reimburse ShadowDragon for all costs incurred by ShadowDragon in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.
- B. Taxes
1. With respect to all purchases under a Purchase Order, Customer shall be responsible for paying all applicable Transactional Taxes (as defined below): (i) to ShadowDragon upon receipt of a valid tax invoice; or (ii) to the relevant tax authority by means of self-assessment, as applicable.
  2. In the event that any Service is provided to Customer outside the United States, Customer will, where required, self-assess applicable value added tax upon receipt of a valid tax invoice.
  3. For purposes of these terms and conditions, "**Transactional Taxes**" means value added tax, goods and services tax, sales and use tax, or similar tax levied on business transactions in proportion to the value of the relevant turnover and in connection with the sale, purchase, receipt, consumption, or use of goods or services, but Transactional Taxes do not include taxes relating to ShadowDragon's income, net worth, or gross receipts.

### XI. GENERAL TERMS

- A. Construction
1. Agreement Headings and Numbering. Section and paragraph headings and numbers used herein are included for convenience of reference only and, if there is any conflict between any such numbers and headings and the text of these terms and conditions, the text shall control.
  2. Including. As used herein, the word "including" means "including, without limitation," and the word "include" means "include, without limitation."
- B. Entire Agreement. The Purchase Order and these Terms and Conditions constitute the full and complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements, both written and oral, between the Parties with respect to its subject matter. The parties agree that any pre-printed terms and conditions on or attached to any Purchase Orders or invoices will be of no force or effect.
- C. Amendments. These terms and conditions may only be amended by a written document signed on behalf of both ShadowDragon and Customer that specifically states that it is amend these terms and conditions.
- D. Severability. If any term contained herein is invalid, illegal, or unenforceable, such term shall be reformed to the maximum extent allowed by law to reflect the original intent of the Parties (or, in absence of such intent, the same economic effect) as closely as possible to the invalid, illegal, or unenforceable term. Such invalidity, illegality, or unenforceability shall not affect any other term contained herein or invalidate or render unenforceable such term in any other jurisdiction, and the other terms contained herein shall remain in full force and effect.
- E. Waiver. No course of dealing, failure by either Party to require the strict performance of any obligation assumed by the other, or failure by either Party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under these Terms. No provision of these Terms shall be deemed to have been waived by any act or knowledge of either Party, unless expressly done so in writing by a duly authorized representative. Waiver by either Party of any default shall not constitute a waiver of any other or subsequent default.
- F. Remedies Not Exclusive. Exercise or enforcement of a right or remedy contained herein shall not be considered to be in lieu of enforcement of other rights or remedies otherwise existing at law or equity, unless specifically waived in writing.
- G. Applicable Laws. These Terms shall be governed by the laws of the State of Delaware, United States of America without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- H. Waiver of Jury Trial. Each Party hereby agrees to irrevocably waive its right to a jury trial in any action, proceeding or counterclaim, whether in contract, statute, tort (including negligence) or otherwise, relating to a Purchase Order, the terms contained herein or the subject matter hereof.
- I. Assignment. Any Party hereto may assign a Purchase Order and these terms and conditions in whole, but not in part, to any successor entity. Except as set forth in the preceding sentence, no Party may assign a Purchase Order and these terms and conditions, in whole or in part, to any third party, without the express prior written consent of the other Party. A Purchase Order and these terms and conditions shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
- J. Relationship of the Parties. No agency, partnership, franchise, or joint venture is created among or between any of the Parties.
- K. No Construction Against Drafter. If an ambiguity or question of intent or interpretation arises with respect to any term contained herein, these terms and conditions will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise, and no rule shall be enforced, favoring or disfavoring any Party by virtue of authorship of any of the terms contained herein.