



# SaaS MASTER SERVICE AGREEMENT

**Revised: September 19, 2023.**

PLEASE READ THESE TERMS AND CONDITIONS BEFORE USING CLINCAPTURE'S SERVICES. BY ACCESSING OR USING CLINCAPTURE'S EDC PLATFORM OR OTHER SERVICE OFFERINGS, OR BY SIGNING A CLINCAPTURE STUDY ORDER FORM, YOU ("the Customer") SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICES AND DO NOT SIGN A STUDY ORDER FORM. ONLY A CLINCAPTURE STUDY ORDER FORM, WHEN SIGNED BY THE CUSTOMER AND CLINCAPTURE, SHALL SUPERSEDE THIS AGREEMENT.

These Terms and Conditions for ClinCapture's SaaS Master Service Agreement ("Agreement") is entered into between Customer and ClinCapture, Inc., a Delaware corporation hereinafter referred as ("**ClinCapture**", "**We**", "**Us**", "**Our**"). Please note that we may modify this Agreement as further described in the amendments section below, so you should make sure to check this page from time to time.

As a convention, defined terms are capitalized and are defined in Section 1 below.

## 1. DEFINITIONS

- a. "Add-on Services" include programming, management and engineering services requested for (i) customizing or facilitating the use of the Hosted System for a specific Customer; (ii) specialized engineer services requested by Customers; (iii) additional software modules available through the Website but not included in the ClinCapture's EDC program.
- b. "Customer" refers to organizational entity, but also includes all employees, agents, and independent contractors of Customer.
- c. "Customer Data" means Customer and/or third-party data, including, without limitation, electronic data capture clinical trial data, uploaded to, stored in, or processed by the Hosted Applications.
- d. "Hosted Applications" mean the ClinCapture Electronic Data Capture (EDC) program, Add-On and/or third party software applications utilized on the Website.
- e. "Hosted System" means, collectively, the Hosted Applications and the Services.
- f. "Intellectual Property Rights" means patent rights, copyrights, trade secrets, and any other intellectual property rights recognized in any country or jurisdiction in the world.
- g. "Study Order Form" means ClinCapture's ordering documentation, or online sign-up subscription flow that references this Agreement and is made a part of this Agreement by



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such reference. Each discrete study conducted under this Agreement will have a separate Study Order Form.

h. "Services" means Subscription Services and Add-On Services.

i. "Site" or "Sites" mean an autonomous clinical trial site. A clinical trial Site is the location where a subject or patient is seen by the Investigator. In ClinCapture the Site is used to segregate subjects/patients by the Investigator and other staff that have responsibility for the data associated with those specific subjects/patients. A Site can have multiple responsible users, but all users assigned to one specific Site will have the same rights, based on their role, to all subjects/patients assigned to that site.

j. "Subscription" means one study (or multiple studies sold as a package) done pursuant to a Study Order Form (and any amendments thereto).

k. "Subscription Period" means the duration of one study or more studies as defined in Section 1.j.

l. "Subscription Services" means the ongoing hosting and management services that ClinCapture will perform in order to host, manage and enable Customer to access and use the Hosted Applications.

m. "Website" means the [www.clincapture.com](http://www.clincapture.com) Website.

### 2. SUBSCRIPTION SERVICES

a. Performance of Subscription Services: Subject to Customer's compliance with the terms and conditions contained herein, ClinCapture will perform the Services in accordance with this Agreement and the Customer's Study Order Form. Included in the Services is implementing Customer's electronic data capture (EDC) database, which does not include configuration of the EDC database or implementation of other applications on the platform, such as Randomization.

b. Access Grant. Subject to Customer's compliance with the terms and conditions contained herein, ClinCapture grants to Customer a non-exclusive, non-transferable, worldwide, revocable, non-sublicensable right to allow an unlimited number of Authorized Users to access and use the Subscription Services and the Hosted System during a Subscription Period. Usage limits and pricing that apply to you will be specified in your "**Study Order Form**" or in this Agreement.

c. Modifications to Subscription Services: We modify the Subscription Services from time to time, including by adding or adjusting features and functions, in an effort to improve your experience. But we will not make changes to the Subscription Service that materially reduce the functionality of the Subscription Service provided to you during the Subscription Term.



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d. Third-Party Service Providers: ClinCapture uses the services of a third-party provider to host its servers, provide security for Hosted Applications and Customer Data, and provide legal compliance with United States and relevant international privacy laws. Our Third-Party provider is Amazon Web Services and its privacy and security information is found at: <https://aws.amazon.com/compliance/programs/>. ClinCapture will notify Customer at least fifteen (15) days in advance of any change in third-party services.

e. Additional features: You may subscribe to additional features and Add-On Services by agreeing to a new **Study Order Form**.

f. Suspension or Termination of Authorized User: ClinCapture may suspend or terminate a Customer's or an Authorized User's access to the Hosted System if ClinCapture reasonably determines that a Customer or an Authorized User has (i) violated the terms and conditions of this Agreement or applicable law; or (ii) suspension or termination is otherwise necessary to protect the integrity of the Hosted System or any Customer Data. Suspension or termination will be as limited as commercially reasonable. ClinCapture will provide Customer with forty-eight hours prior notice of any planned suspension or termination unless immediate suspension or termination is required. In all events, Customer will be liable for any violation of the terms and conditions of this Agreement by any of its Authorized Users or any other unauthorized user that has been allowed access as a result of any act or omission on the part of Customer.

g. Customer Data: Customer acknowledges and agrees that ClinCapture does not monitor communications or Customer Data transmitted through the Hosted System and that ClinCapture will not be responsible for the content of any such communications or Customer Data. Customer is responsible for its use of the Hosted System, for any Customer Data it uploads to the Hosted Applications, and for any consequences thereof. ClinCapture will not be responsible for the content or outcome of Customer Data hosted on its Hosted Application. Customer Data is backed up on discrete servers and in the event of a failure of the primary third-party servers ClinCapture will reinstall Customer Data as of the last back up. Notwithstanding the foregoing, Customer is advised to maintain original raw data.

### 3. **ADD-ON SERVICES**

Subscription Services do not include professional services for customizing or facilitating the use of the Hosted System for a specific Customer. ClinCapture also periodically offers other modules we consider useful to our Customers, but which are not part of our Hosted Applications.

### 4. **CUSTOMER OBLIGATIONS**



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a. Authorized Users: Customer will require each affiliated employee or contractor (each a "**Potential User**") who desires to access and use the Hosted Systems to complete a registration process. Customer will issue passwords or access codes only to a Potential User who has completed Customer's registration process. In addition to the foregoing, Customer will ensure that each Potential User who desires to access and use the Hosted System is informed of the terms of this Agreement and understand that by access the Hosted System they agree to comply with those terms. Once registered each Potential User will be an "**Authorized User**".

In order to use ClinCapture's Services, an Authorized User must:

- i. be at least eighteen (18) years old and able to enter into contracts;
- ii. complete the registration process;
- iii. agree to the terms of this Agreement; and
- iv. provide accurate and verifiable contact information.

By using the Hosted System, Authorized User represents and warrants that it meets all the requirements listed above, and that the Authorized User will not use the Hosted System in a way that violates any laws or regulations. ClinCapture may refuse service, close accounts of any users, and change eligibility requirements at any time.

b. Enforcement: Customer agrees that it and its Authorized Users will: (i) use the Hosted System exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others; and (ii) comply with the terms of this Agreement. Customer will promptly notify ClinCapture of any suspected or alleged violation of this Agreement and will cooperate with ClinCapture with respect to any investigation or action by ClinCapture concerning any such breach.

c. Restrictions: Customer will not attempt to interfere with or disrupt the Hosted System or attempt to gain access to any systems or networks that connect thereto. Customer will not: (a) copy, modify or distribute any portion of the Hosted System; or (b) rent, lease, resell or provide access to the Hosted System on a time-share or service bureau basis; or (c) assign or transfer any of its rights hereunder.

d. Licenses: For the avoidance of doubt, ClinCapture is not responsible for providing medical coding, or any other licenses which may or may not be required, including, but not limited to WHODrug, MedDRA, or other standardized codes for medications and adverse events.

e. Telecommunications and Internet Services: Customer, at its own cost, will be solely responsible for its telecommunications and internet services, and other hardware and



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software required to access and use the Hosted System. ClinCapture will not be responsible for any loss or corruption of data, or any interruption of service or access related to a failure or disruption of Customer's internet service or connection.

f. Cooperation. Customer will at all times provide ClinCapture with good faith cooperation and assistance as may be reasonably required by ClinCapture to perform the Services.

### **5. PAYMENT**

a. Fees: The fees applicable for the Service ("Fees") are listed on Customer's the Study Order Form. The price stated for the Service excludes all taxes and other charges incidental to your use of the Services (for example currency exchange settlements, internet connectivity charges). All fees are based on an annual up-front payment. Variations in the payment schedule can change quoted Fees. Subscriptions are billed annually or as per your Study Order Form.

b. Payment Terms: Payment of undisputed amounts is due within fifteen (15) days of the invoice date. Any payment not received by ClinCapture within fifteen (15) days of the due date shall be subject to a late payment charge of 1.5% per month or the maximum rate allowed by law, whichever is less. We may suspend or cancel Services on accounts that are more than fifteen (15) days overdue. Customer shall notify ClinCapture of any disputed amounts within five (5) days of receipt of the Invoice.

c. Sales Tax: Customer is responsible for remitting any sales tax owed on these services and software to the proper tax authority. ClinCapture reserves the right to invoice customer for sales tax owed on sales of these services and software if it is deemed required by the governing state.

### **6. OWNERSHIP**

a. As between ClinCapture and Customer, ClinCapture owns all right, title and interest in and to the Hosted System and any software programs, tools, specifications, ideas, concepts, know-how, processes and techniques used in performing the Services, including all Intellectual Property Rights therein. Nothing in this Agreement shall constitute a license or transfer any rights to any of the Intellectual Property contained in the Hosted System to Customer.

b. As between ClinCapture and Customer, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 2.b.

c. If Customer is delinquent on any payment obligations for a period of 30 days or more



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beyond the due date, ClinCapture shall have the right to assume ownership of data stored or processed on the application associated with Customer's account ("Customer Data"). Customer may request, in writing, the retrieval and transfer of their data subject to the payment of all outstanding amounts due, including any additional costs associated with data retrieval and transfer. ClinCapture may, at its discretion, provide Customer with a reasonable timeframe of 30 days within which to complete this payment.

### **7. WARRANTY**

a. **Services Warranty.** ClinCapture warrants that the Services will be performed in a good and workmanlike manner, consistent with generally accepted industry standards. As Customer's sole and exclusive remedy, and ClinCapture's entire liability for any breach of the foregoing warranty, ClinCapture will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or, if ClinCapture is unable to re-perform the Services to conform to the foregoing warranty, refund to Customer the fees paid for the nonconforming portion of the Services.

b. **Regulations.** ClinCapture represents and warrants that it will conform to and comply with material and applicable statutory or regulatory requirements imposed by any federal or state law, rule, regulation and any intermediary regulations, with regard to the performance of its obligations hereunder; and that ClinCapture has obtained or will obtain all permits, licenses and other authorizations necessary to commence and continue its performance under this Agreement.

### **8. TERMINATION**

a. **Agreement Term:** This Agreement is effective on the execution of the first Study Order Form, and run concurrently with any active Subscription. If Customer enters into any additional Subscriptions, this Agreement will be deemed to be reinstated, if necessary and extended through the expiration of the last Subscription.

b. **Subscription Period:** All Subscriptions are represented by a separate Study Order Form and are on an annual basis, starting on the subscription start date or the publication of the related eCRF's (electronic case report forms) ("Deployment"), whichever comes first. Subscriptions will automatically renew at the end of the Subscription Term as set forth in the Study Order Form unless you cancel your Subscription at least thirty (30) days prior to the renewal date. Pricing for any Subscription automatic renewal will be at ClinCapture's then-applicable rates.

c. **Termination for Convenience:** The Subscription cannot be cancelled for convenience. All fees shall be fully earned when payable and shall be non-refundable.

d. **Termination for cause:** Either party, upon giving written notice to the other party, may



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terminate this Agreement or any active Subscription: (a) if the other party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof from the other party; or (b) immediately in the event the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under federal or state statute, or becomes subject to direct control by a trustee or similar authority.

e. Termination for Non-payment. If any invoice is unpaid for more than fifteen (15) days, ClinCapture can, upon fifteen (15) additional days written notice to Customer, terminate this Agreement or the Subscription for which payment has not been made. All fees are fully earned when due, and when paid are non-refundable.

f. Obligations Upon Expiration or Termination: Upon expiration or termination of a Subscription: (a) Customer's right to access and use the Hosted Applications for that Subscription will immediately terminate; (b) each party will promptly transfer to the other party or, at such other party's request, destroy, any Confidential Information of the other party, including all copies and portions thereof, and provide such party with an officer's written statement certifying to its compliance with the foregoing; and (c) Customer will, within fifteen (15) days of receipt of ClinCapture's invoice, pay any and all fees accrued fees as of expiration or termination. NOTE: Fees, once paid, are non-refundable.

g. Disposition of Customer Data: It is Customer's responsibility upon conclusion of any study to provide ClinCapture with information about the disposition of Customer Data. Upon request by Customer prior to or within ten (10) days of termination of a study or its Study Order Form, ClinCapture will return all Customer Data in a mutually agreed upon format, at Customer's expense. After that time, ClinCapture will have the right to destroy of any Customer Data.

h. Survival: The rights and obligations of the parties under Sections 1, 2.d, 4.c, 5, 6, 8, and 9 through 13 will survive any expiration or termination of this Agreement.

### 9. **CONFIDENTIALITY; Information Security and Privacy**

Definition: "**Confidential Information**" means: any business or technical information of ClinCapture or Customer, including but not limited to any information relating to ClinCapture's or Customer's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, regardless of the manner in which it is disclosed, delivered, furnished, learned or observed, either marked "Confidential" or, if oral, declared to be confidential when disclosed and confirmed in writing within thirty (30) days of disclosure. Failure to mark Confidential Information disclosed in writing hereunder as "Confidential" shall not cause the information to be considered non-confidential, if it appears such information clearly should have been known by a reasonable person, with expertise on the subject matter, to



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be Confidential Information, based on the nature of the information and the circumstances of its disclosure. Notwithstanding the foregoing, Customer Data shall be treated as Confidential Information regardless whether they were marked or identified as confidential.

a. Exclusions: Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is rightfully known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information as evidenced ; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

b. General Use and Disclosure Restrictions: Each party will not use the other party's Confidential Information except as expressly permitted within this Agreement, and will not disclose such Confidential Information to any third party, except to employees and consultants who have a bona fide need to know such Confidential Information. However, ClinCapture may disclose Confidential Information of the Customer: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the ClinCapture gives reasonable notice to Customer to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors.

c. Permitted Analytical and Knowledge Base Uses: ClinCapture may use Customer Data for analytical purposes, including to improve and enhance the Hosted Services technology and to generate statistical information. ClinCapture may make such analytical and statistical information available to third parties, but only on a de-identified or aggregated basis and subject to the confidentiality terms in this Section 9.

d. Other Permitted Uses: Except as provided on a Study Order Form, ClinCapture may use Customer Data in anonymized and aggregated form only, and subject to the terms set forth in Section 9.d. for any legal purpose.

e. Equitable Relief. Each party acknowledges that the unauthorized disclosure or use of the disclosing party's Confidential Information is likely to cause irreparable harm to the disclosing party, for which the award of damages will not be an adequate remedy. Consequently, the disclosing party shall be entitled to obtain preliminary and permanent injunctive relief to restrain such unauthorized disclosure or use, in addition to any other relief to which the disclosing party may be entitled at law or in equity.

f. Right to Use Client's Name: Client grants ClinCapture a license to use Client's name and logo on lists of representative clients in publicly disseminated marketing material.

### **10. INDEMNIFICATION**



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Each party (the “Indemnifying Party”) shall indemnify and hold harmless the other party and its affiliates, and their respective directors, employees, consultants and agents (the “Indemnified Parties”) from and against any and all liabilities, losses, damages, costs, and other expenses (including reasonable attorneys’ fees) (“Losses”) incurred by the Indemnified Parties as a result of any claim, demand, action or proceeding by any third party against such Indemnified Parties (each, a “Claim”) to the extent arising from or relating to any material breach of any representation, warranty, covenant, or obligation of the Indemnifying Party under this Agreement; or any negligence or willful misconduct by the Indemnifying Party or any of its employees, agents, or subcontractors, except, in each case, to the extent such Losses result from any material breach of any representation, warranty, covenant or obligation of any Indemnified Party under this Agreement or the negligence or willful misconduct of any of the Indemnified Parties. In no case will ClinCapture indemnify Customer for any issues relating to patient care.

### **11. LIMITATION OF LIABILITY**

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE HOSTED SYSTEM IS PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.a, CLINCAPTURE DISCLAIMS ANY WARRANTY THAT THE HOSTED SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CLINCAPTURE OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY ON WHICH ANY SUCH DAMAGES MAY BE BASED. EACH PARTY’S TOTAL LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE FEES PAYABLE BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE APPLICABLE CAUSE OF ACTION AROSE. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY OF ITS ESSENTIAL PURPOSE.

### **12. GENERAL**

Assignment: Neither Party may assign this Agreement in whole or in part, by operation of law or otherwise, without the other Party’s prior written consent which shall not be unreasonably withheld. Any attempt to assign this Agreement, without such consent, will be null and void. Notwithstanding the foregoing, ClinCapture or Customer may assign this Agreement, without consent from the other party: (a) to an affiliate; or (b) to an entity that



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acquires all or substantially all of the party's assets or to any successor in a merger or acquisition involving the party, provided that such successor is not a direct competitor with the other party. Subject to the foregoing, this Agreement shall inure to the benefit of the parties' respective successors and permitted assigns.

a. **Choice of Law:** This Agreement shall be governed by, construed, interpreted and enforced under the laws of the state of Delaware, without regard to the conflicts of laws principles thereof.

b. **Arbitration:** If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Claims shall be heard by a single arbitrator. The place of arbitration shall be determined by the parties or in the absence of agreement, in Dallas, Texas. This Agreement shall be governed by, construed, interpreted and enforced under the laws of the state of Delaware, without regard to the conflicts of laws principles thereof. The Expedited Procedures of the Commercial Rules shall apply and take priority in all procedural matters. Arbitrator will have the authority to allocate the costs of the arbitration process among the parties but will only have the authority to allocate attorneys' fees if a particular law permits them to do so. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator shall not award consequential damages in any arbitration initiated under this section. Proceedings shall be conducted electronically to the extent reasonable as determined by the arbitrator.

c. **Severability:** If for any reason a court or arbitrator of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.



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d. Waiver: No modification, addition or deletion or waiver of any rights under this Agreement will be binding on a party unless made in writing, 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.

e. Notices: Any notice, request, demand or other communication required or permitted to be given under this Agreement will be given in writing, will reference this Agreement and will be deemed properly given: (a) when actually delivered in person; (b) two (2) business days after deposit with a nationally recognized overnight courier; or (c) five (5) business days after mailing via certified mail, postage prepaid. Any such notice, request, demand or other communication will be sent to the Customer address provided upon registration or in the Study Order Form in accordance with this Section. Any such notice, request, demand or other communication will be sent to ClinCapture's corporate headquarters in accordance with this Section. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

f. Force Majeure: Neither party will not be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, denial-of-service attacks, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action.

g. Relationship of Parties: The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

h. Entire Agreement: This Agreement and any Study Order Form executed by both parties constitute the complete understanding and agreement of the parties regarding its subject matter and supersede all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

i. Headings: The headings in this Agreement are for the convenience of reference only and have no legal effect.