

Terms and Conditions

Any capitalized terms not defined herein or in the Agreement shall have the meanings set forth at: <http://www.covisint.com/enable/covisint-definitions>.

1. **SUBSCRIPTION SERVICE.**

1.1 **Subscription.** Subject to the terms and conditions defined herein, Covisint Corporation ("Covisint") will make the Covisint Platform Services available solely for Customer and its Users. Covisint shall host, manage, and operate the Covisint Platform Services. Customer shall have a non-exclusive, non-transferable, royalty free, worldwide limited right:

- (a) to access and use the Covisint Platform Services for the Customer's business operations; and
- (b) to reproduce, print, download, and use a reasonable number of copies of the Covisint Technical Specifications Guide ("Specifications") and Covisint End User Documentation ("Documentation") as may be necessary for the Users to utilize the Covisint Platform Services.

1.2 **Order.** The Covisint Platform Services shall be ordered by the Customer pursuant to the Covisint Subscription Services Order Form ("Subscription Order Form"). Each Subscription Order Form shall include at a minimum; (a) a listing of the Covisint Platform Services being ordered, (b) the Fees for such Covisint Platform Services, and (c) the duration of the order. Except as otherwise provided on the Subscription Order Form, each Subscription Order Form cannot be terminated for convenience during its Term.

1.3 **Users.** Customer agrees that access to the Covisint Platform Services by Users is controlled by Customer, and as such, the Customer is responsible for the acts and omissions of the Users while using the Covisint Platform Services.

1.4 **License Restrictions.** Customer shall not:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, use an assigned User login concurrently, time-share or otherwise make the Covisint Platform Services available to any non-affiliated third party or User(s), except as may be otherwise expressly permitted;
- (b) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the Source Code of the Software or any part thereof;
- (c) use unauthorized and/or modified versions of the Covisint Platform Service, including (without limitation) for the purpose of building a similar or competitive service or to obtain unauthorized access to the Covisint Platform Services;
- (d) create any derivative works based on any of the Covisint Platform Services or any other Confidential Information of Covisint;
- (e) use the Covisint Platform Services in a manner that is contrary to applicable law or in violation of any third party rights of privacy, security, or intellectual property rights;
- (f) remove, obscure, or alter any Intellectual Property, marks, notices, or trademark appearing in or on any part of the Covisint Platform Services or other Covisint property;
- (g) publish, post, upload or otherwise transmit data that contains any viruses, "Trojan" horses, worms, time bombs, corrupted files or other computer programming routines that damage, or are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or
- (h) do any "mirroring or framing" of any part of the Covisint Platform Services.

1.5 **Covisint Platform Services.** At all times in connection with its performance under this Agreement, Covisint, or a mutually agreed upon third party shall provide to Customer the following:

- (a) the hosting, including availability, access, upgrades, patches, and use by the Customer and its Users for the Covisint Platform Services as described in one or more Subscription Order Forms; and
- (b) Covisint maintenance and support services (as applicable and as defined in the Agreement).

1.6 **Suspension.** Covisint may, with reasonably contemporaneous notification to Customer, suspend access to the Covisint Platform Services if Covisint reasonably concludes that Customer's instance of the Covisint Platform Services is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of the Customer's instance of the Covisint Platform Services is causing immediate, material and ongoing harm to the shared multi-tenant

environment in which the Customer's instance of the Covisint Platform Services resides. In the extraordinary event that Covisint suspends access to the Covisint Platform Services, if reasonably practicable, Covisint will use commercially reasonable efforts to limit the time of the suspension to the offending portion of the Covisint Platform Services. Customer agrees that Covisint shall not be liable to Customer nor to any third party for any suspension of the Covisint Platform Services. Further, such suspension shall be excluded from any Service Level calculation of Covisint's uptime metric for the period(s) in which such suspension occurs.

2. IP OWNERSHIP AND IP RIGHTS.

2.1 **Ownership.** Covisint retains all its rights, title, and interest in (a) any and all of the Covisint Platform Services, (b) the registered and unregistered trademarks and service marks of Covisint; (c) all Covisint copyrights, trade secrets, patents and proprietary information; (d) hardware, technology, implementation tools, documentation, text, typefaces, graphics, logos, button icons, images, audio clips, designs, illustrations, configurations, displays, screens, concepts, and other materials and information appearing on, displayed in connection with, embodied in or contained within the Covisint Platform Services; (e) the Covisint Platform Services documentation; (f) any improvements, modifications, enhancements or derivative works to, of, or from Covisint Platform Services created by or on behalf of Covisint; and (g) Covisint Confidential Information (collectively, "Covisint Intellectual Property").

2.2 **Limitation.** Nothing in this Agreement shall be deemed to grant, directly or by implication, estoppel or otherwise, any right or license to any technology or other Intellectual Property and each party retains all right, title and interest in and to their respective technologies and other Intellectual Property Rights.

2.3 **Remedies.** The parties recognize and agree that monetary damages are an inadequate remedy for misappropriation, loss, or damage to Covisint's ownership interests. Therefore, Covisint may seek injunctive relief from a court of competent jurisdiction to enjoin such activity, in addition to any other remedies available to it, including immediate termination of this Agreement and any Subscription Order Form or exhibits hereunder.

3. FEES.

3.1 **Invoice.** Customer shall be billed in accordance with the applicable Subscription Order Form. For Covisint Platform Services, Customer shall be billed in advance for the associated Term.

3.2 **Payment.** Unless otherwise agreed in writing by Customer and Covisint, payment of Fees are due net thirty (30) days from Customer's receipt of each invoice. All payments will be made in the currency applicable, as defined in the Subscription Order Form unless otherwise agreed. If Customer fails to pay any Fees by the applicable due date, Covisint shall have the right to assess late charges in an amount equal to the lesser of 1.5% per month or the maximum allowable under applicable law. Upon an invoice becoming more than sixty (60) days past due, Covisint may, in its sole discretion suspend the Covisint Platform Services to Customer until such time as the amount in arrears is fully paid by Customer. Customer will be responsible for any costs associated with Covisint's efforts to collect such Fees including, without limitation, reasonable attorneys' fees, court costs and collection agency fees.

3.3 **Taxes & Assessments.** All amounts specified in the payment terms of the Agreement are exclusive of any applicable value added, use, sales, property, federal, state, local or other taxes, duties or assessments. Customer will pay or reimburse Covisint for all taxes and duties, however designated, which are levied or imposed by reason of the performance by Covisint under the Payment Terms, excluding, however, taxes based upon Covisint's net or gross income. Should Customer be required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Covisint, then the sum payable to Covisint will be increased by the amount necessary to yield to Covisint an amount equal to the sum it would have received had no withholdings or deductions been made.

3.4 **Fee Increases.** During the Initial Term, Covisint may at its sole discretion and upon written notice to the Customer increase Fees for the Covisint Platform Services by no more than 5% from year to year on the anniversary of the Effective Date.

3.5 **Disputed Invoices.** If Customer disputes in good faith any portion of an invoice, Customer shall timely pay the undisputed portion of the invoiced amount and provide Covisint a written statement detailing the support for Customer's position regarding such good faith dispute. This statement must be provided to Covisint within thirty (30) days of receipt of the invoice at issue or any claim is thereby waived.

4. WARRANTIES AND LIMITATIONS.

4.1 **Warranties.** Covisint and Customer each hereby represent, warrant, and covenant to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; and (b) it will comply with all applicable laws and regulations, including laws regarding the security or privacy of Customer Data, that may be in effect during the term of the Agreement as they apply to such party's obligations under the Agreement.

4.2 No Infringement. Covisint warrants that the Covisint Platform Services, and the use thereof by Customer in accordance with the terms of the Agreement, does not and will not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Rights of a third party. Customer warrants that the Customer Data, and/or and Customer or third party application or system component Customer integrates with the Covisint Platform Services the use of which, in conjunction with the Covisint Platform Services, does not and will not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Rights of a third party.

4.3 Service Warranties. Covisint warrants that, during the term of the Agreement, the Covisint Platform Services provided hereunder will be performed: (a) in a professional manner consistent with generally accepted industry standards applicable to the provision of the Covisint Platform Services; (b) substantially in accordance with the Covisint Technical Specifications Guide and Covisint User Documentation relating to the operation and use of the Covisint Platform Services, as reasonably updated by Covisint from time to time.

4.4 Risk. Other than those warranties specifically provided herein, Customer's and its Users' use of or access to the Covisint Platform Services, and information provided by Covisint to Customer accessible through the Covisint Platform Services is "as is", "as available" and with all faults and the entire risk as to satisfactory quality, performance and accuracy is with Customer. Customer bears the entire risk of satisfactory quality, performance and accuracy of Customer developed applications or solutions that utilize Covisint Platform Services.

4.5 Personnel. Covisint warrants that it shall provide the Covisint Platform Services through fully trained and competent employees or agents having a skill level appropriate for the tasks assigned to them.

4.6 Limitation of Warranty. THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES PROVIDED BY COVISINT. COVISINT SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE OR ANY OTHER ITEMS OR SERVICES COVERED BY OR FURNISHED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, OR (III) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. COVISINT DOES NOT WARRANT THAT ANY SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

4.7 Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 2, 5, OR 6 OF THIS AGREEMENT OR FOR PERSONAL INJURY, FRAUD, WILLFUL MISCONDUCT, OR AMOUNTS OWED HEREUNDER:

(a) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY UNDER THE AGREEMENT, FOR WHATEVER CAUSE, WHETHER IN AN ACTION IN CONTRACT OR IN TORT OR OTHERWISE, WILL BE LIMITED TO GENERAL MONEY DAMAGES AND SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF ALL FEES ACTUALLY PAID OR OWING HEREUNDER BY CUSTOMER TO COVISINT DURING THE TWELVE MONTH PERIOD PRECEDING THE TIME THAT THE CLAIM AROSE (BUT NOT LESS THAN THE AMOUNT OF BASE TRANSACTION FEES DUE DURING THE FIRST YEAR AFTER THE EFFECTIVE DATE).

5. INDEMNIFICATION.

5.1 IP Indemnification. Covisint and Customer ("Indemnitor") shall defend, indemnify and hold the other party ("Indemnitee") harmless from and against any and all losses asserted by a third party arising out of, in connection with, or based upon any claim that the Indemnitor's Intellectual Property infringes or misappropriates the Intellectual Property Rights of any third party. Notwithstanding anything in an applicable amendment hereto to the contrary, Covisint's aggregate liability for any losses under this Section 5 shall not exceed the total Fees received by Covisint from or on behalf of Customer during the twelve (12) month period preceding the date when such Losses first accrued.

5.2 Other Indemnification. Covisint or Customer shall defend, indemnify and hold the other party harmless from and against any and all Losses asserted by a third party arising out of, in connection with or based upon: (i) the negligence or willful misconduct of Indemnitor or any of its employees or contractors; (ii) death or bodily injury resulting from the gross negligence of Indemnitor or its employees while acting in the course of their employment; (iii) any violation of applicable law by Indemnitor; and (iv) in the case of Customer as Indemnitor (A) any acts or omissions of Customer or its Users related to or arising out of the use of the Covisint Platform Services, or (B) any dispute between Customer and any other Customer(s) in connection with the Covisint Platform Services or any transaction conducted via the Covisint Platform Services.

5.3 Limitations on Infringement Indemnity. Covisint will not be obligated to indemnify Customer: (i) for any use of the Covisint Platform Services and/or Intellectual Property other than in accordance with the Agreement or documentation provided by Covisint; (ii) for any failure of Customer to use any corrections or modifications to the Covisint Platform Services; (iii) for any use of the Covisint Platform Services or Covisint Intellectual Property in combination with any product, system or process not provided or approved by Covisint; (iv) for any modifications of the Covisint Platform Services or Covisint Intellectual Property (other than those by Covisint or its Suppliers) or any non-standard customization made by or on behalf of Customer; and (v) to the extent attributable to Customer's fault or wrongful act such as actions taken that would prejudice defense.

5.4 Procedure. Indemnitee shall (a) promptly provide notification of the claim and reasonable cooperation to the Indemnitor; (b) tender to the Indemnitor complete control of the defense, settlement and compromise of the claim; and (c) not make any admissions to any third party regarding the claim or settle any indemnified claim except as approved by the Indemnitor in writing. Nothing contained in this provision is, however, intended to require the Indemnitor to pay to the Indemnitee any amount other than (1) for the costs of Indemnitee's defense, if the Indemnitor elects not to defend; and (2) such amounts actually paid by the Indemnitee to the third party claimant, if the Indemnitor fails to pay the third party claimant directly for any settlement approved by the Indemnitee or any finally awarded judgment in favor of the third party claimant. The Indemnitee shall have the right to approve any settlement that does not provide a full release to the Indemnitee. The Indemnitee shall have the right to participate in its defense at its own expense.

6. CONFIDENTIALITY.

6.1 Confidential Information. In connection with the Agreement, each party hereto a disclosing party may disclose its confidential and proprietary information, including Intellectual Property, to the other party a receiving party. Subject to the exceptions listed below, a disclosing party's Confidential Information shall be defined as information disclosed by the disclosing party to the receiving party under the Agreement that is either: (a) clearly marked or otherwise clearly designated as confidential or proprietary; or (b) should be reasonably understood by the receiving party to be the confidential or proprietary information of the disclosing party. For the avoidance of doubt, Covisint pricing under the Agreement is the Confidential Information of Covisint, and Customer Data is the Confidential Information of Customer.

6.2 Confidential Treatment. During the term of the Agreement and for five (5) years after its expiration or termination, a receiving party shall not use, or otherwise disclose to any third party, a disclosing party's Confidential Information without the prior written consent of the disclosing party; provided, however, that Covisint may use and disclose the Confidential Information of Customer as necessary for the limited purpose of performing the Covisint Platform Services hereunder.

6.3 Exceptions. Notwithstanding anything to the contrary, the obligations of the receiving party set forth in this Section 6 shall not apply to any information of the disclosing party that: (a) is or becomes a part of the public domain through no wrongful act of the receiving party; (b) was in the receiving party's possession free of any obligation of confidentiality at the time of the disclosing party's communication thereof to the receiving party; (c) is developed by the receiving party completely independent from the Confidential Information of the disclosing party; or (d) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing the disclosing party with advance written notice, if reasonably possible, such that the disclosing party is afforded an opportunity to contest the disclosure or seek an appropriate protective order.

6.4 Remedies. The parties recognize and agree that money damages are an inadequate remedy for breach of Section 6 and further recognize that any such breach would result in irreparable harm to the non-breaching party. Therefore, in the event of any such breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to enjoin such activity in addition to any other remedies available to it.

7. DATA.

7.1 Customer Data. Customer hereby grants Covisint a non-exclusive, non-transferable, worldwide right to use, adapt, and use the Customer Data that the Customer and/or its Users submit into the Covisint Platform Services as reasonably necessary for the limited purpose of performing the Covisint Platform Services obligations. Customer retains all right, title, and interest in the Customer Data.

7.2 Privacy and Data Protection. Covisint hereby represents that it will provide and will implement during the term of this Agreement, technical, organizational, and physical security measures for the protection and prevention of unauthorized use, of information (including Customer Data), material or assets and any and all proprietary or Confidential Information of the Customer, held by or in the possession of Covisint and its subcontractors and suppliers, in accordance with all applicable Data Protection Laws and regulations.

7.3 Disaster Recovery/Business Continuity. Thorough the Term Covisint will maintain a Business Continuity ("BC Plan") and Disaster Recovery Plan ("DR Plan", collectively the "Plans") for the Service's and implement such Plans in

the event of any unplanned interruption of Covisint Platform Services. Covisint actively tests, reviews and updates the Plans on an annual basis. Covisint will provide Customer with copies of all such Plans and updates upon request.

7.4 Security Auditing. Upon Customer request, Covisint will provide Customer with the most recent copy of a third party audit which will attest to the adequacy of Covisint's data security systems and procedures (both technological and organizational), including business continuity, disaster recovery, and incident management.

7.5 Security Breach. Covisint shall notify Customer in writing as soon as practicable and without unreasonable delay of any Security Breach experienced by Covisint involving any Customer Data. Covisint shall also provide Customer with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach, the identity of each affected person, and any other information Customer may reasonably request concerning such affected persons and the details of the Security Breach, as soon as such information can be collected or otherwise becomes available.

7.6 Investigation. Covisint shall take action at its own expense to investigate any Security Breach and will act to identify, prevent, and mitigate the effects thereof and to carry out any recovery or other actions necessary to remedy the impact.

7.7 European Union. If in the course of the parties' performance of this Agreement, any Customer Personal Data will be transferred from a member state of the European Union to a jurisdiction outside the EU that has not been declared "adequate" for personal data protection by the European Commission, the party becoming aware of this situation will inform the other, and Covisint and Customer agree each party shall comply with all Data Protection Laws applicable to its role in connection with such data transfer.

8. TERM AND TERMINATION.

8.1 Term. The Agreement will commence on the Effective Date and will continue thereafter until terminated as defined herein. Each party may terminate this Agreement by providing sixty (60) days prior written notice provided that the Agreement may not be terminated for convenience during the Term of a valid Subscription Order Form.

8.2 Termination for Cause. Either party may terminate the Agreement based upon a material breach or violation of applicable law by the other party by giving notice of the breach and of the effective date of termination at least thirty (30) days prior to such effective date, unless the breaching party cures such material breach prior to such effective date. Covisint may also terminate the Covisint Platform Services under the Agreement on thirty (30) days prior written notice to Customer in the event that any applicable law prohibits the performance of such Covisint Platform Services or makes the performance of such Covisint Platform Services by Covisint or its Suppliers commercially unreasonable.

8.3 Effect of Termination. Upon any termination of the Agreement, all rights granted to Customer hereunder shall cease. Customer shall immediately discontinue use of the Covisint Platform Services, and both Covisint and Customer shall have the right to pursue any remedies available to it at law or in equity. Termination of the Agreement shall not be construed to waive or release any claim that a party is entitled to assert at the time of such termination (including any claim for fees accrued or payable to Covisint prior to the effective date of termination), and the applicable provisions of the Agreement shall continue to apply to such claim until it is resolved.

8.4 Customer Data and Confidential Information upon Termination. Within thirty (30) days after the termination of the Agreement, Customer is responsible to export all Customer Data and Confidential Information of Customer from the Covisint Platform Services.

8.5 Service Extension. Upon a mutually agreed upon SOW and at then-current rates, Covisint will agree to continue provide Customer access to the Covisint Platform Services for a period of no longer than six (6) months following the effective date of termination in order to facilitate Customer's transition to another service provider. This clause will not apply if Covisint terminates this Agreement for cause, including but not limited to failure to timely pay fees.

9. MISCELLANEOUS.

9.1 Relationship of the Parties. Nothing in this Agreement shall be construed as creating an employer-employee relationship nor create an agency, joint venture, or any other relationship other than a supplier and customer contractual arrangement.

9.2 Assignment. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, whose permission shall not be unreasonably withheld. Any attempted assignment without such consent will be void. Notwithstanding the foregoing, the assigning party must; (a) warrant that the assignee is capable of fully performing the obligations of the assignor under the Agreement; and (b) the assignee agrees to be bound by the terms and conditions of the Agreement before any assignment is valid. The Agreement is binding on the parties hereto and their respective successors and permitted assigns.

9.3 Export Compliance. The parties acknowledge that they are familiar with and will comply with all applicable laws and regulations of the US, EU, and other countries regarding export and, import and domestic use of the Covisint Platform Services, software, and/or technology covered by this Agreement and/or any exhibit or statement of work issued hereunder. Either party shall timely obtain all licenses or permits that are required for the performance of its obligations under this Agreement and/or any exhibit or statement of work issued hereunder. The parties acknowledge that Covisint Platform Services may be used to facilitate transactions for the purchase of goods and services that may be subject to export compliance, and, under these circumstances, Covisint is not responsible for the export compliance of Customer's transactions.

9.4 Force Majeure. Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction each of the foregoing, a "Force Majeure Event".

9.5 Publicity. Customer agrees that Covisint may identify Customer on its list of representative clients in promotional materials and on Covisint's website. Neither party shall acquire a right to use any logos, trademarks, or service marks, or use the other party's name in any other advertising, publicity, press release, customer list, presentation or promotion without their prior written consent, which will not be unreasonably withheld. Customer agrees to participate in a case study associated with the Covisint Platform Services.

9.6 Dispute Resolution. Before initiating any legal claim or action (except with respect to equitable relief and any claims related to violation of either parties Intellectual Property or disclosure of confidential information), the Parties agree to attempt in good faith to settle any dispute, controversy or claim arising out of or related to this Agreement (collectively, a "Claim") through discussions which shall be initiated upon written notice of a Claim by either Covisint or Customer. If the parties cannot come to a mutually agreeable resolution of the Claim within ten (10) business days, then such Claim shall be referred to members of the parties' executive management (each such member a "Representative") for resolution, which referral shall be evidenced by a written notice from either party to the other (the "Referral"). The parties' representatives shall meet within ten (10) business days of such Referral. If the parties have not reached a mutually agreeable resolution of the Claim within ten (10) business days after their initial meeting, then either party may pursue its rights and remedies available at law or in equity.

9.7 Travel. Customer will reimburse Covisint for travel and other expenses pre-approved by Customer in writing.

9.8 Notice. Notices sent pursuant to this Agreement shall be sent by overnight mail (e.g., Fed Ex or UPS) to the addresses or email identified in the Agreement, or their successors sent requesting delivery receipt and read receipt, or to such address as either party may in the future designate. Notices shall be effective upon receipt. A copy of any notice to Covisint shall also be sent to Covisint Corporation, General Counsel, 26533 Evergreen Road, Suite 500, Southfield, MI 48076.

9.9 Entire Agreement. This Agreement cannot be modified without the express prior written consent of both parties. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect.

9.10 Remedies. Any remedy conferred by the specific provisions of the Agreement is not intended to be exclusive of any other remedy, and each and every remedy shall be cumulative. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

9.11 No-waiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right or privilege under the Agreement.

9.12 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

9.13 Governing Law. This Agreement and all attachments and any other mutually agreed upon documents shall be governed by the laws of the State of Michigan, without reference to conflicts of law principles. The parties hereby consent to the exclusive jurisdiction of the federal and state courts in the County of Oakland for purposes of any legal action arising out of or related to this Agreement.

9.14 Survival. Sections 4 (Warranties and Limitations), 5 (Indemnification), 6 (Confidentiality), 9.13 (Governing Law), shall survive any termination or expiration of this Agreement.