

TERMS OF SALE

These Terms of Sale govern all purchases of goods, services or licenses from Prodevia Learning, Inc. (the “Company”) by the person (the “Customer”) who registers to utilize and/or receive goods, services or licenses (the “Service”) provided via the Company’s website at www.prodevia.com (the “Company Site”). The entire contract (the “Agreement”) consists of these Terms of Sale, the description of the Service (the “Service Description”) provided by the Company on its website or in another online format for the Customer’s review for the particular Service selected by the Customer, any billing information provided by the Customer. The various Services may be subject to fees as set forth in the Service Description. More information is available regarding Services at the Site.

The Agreement becomes binding on the Customer on the earlier of when (i) the Customer accesses a Service, or (ii) completes the online registration process to begin utilizing a Service.

Some Customers may be subject to separate agreement. This Agreement applies only to Customers without a separate written agreement with Company. Any provisions of a separate written agreement with a Customer will prevail over any provisions of this Agreement.

1. **Enrollment, Acceptance and Service.**

- (a) When Accepted by Company, the registration by Customer for the Service (the “Enrollment”) creates the Agreement. The Enrollment is “Accepted” by Company upon provisioning of the Service for the Customer or another person designated by the Customer.
- (b) Company will provide, and Customer will purchase and pay for, the Service specified in the Enrollment by Customer (the “Service Fees”). Service Fees will vary by Service (and may be waived for certain Services) and will be specified in the Customer’s Enrollment or on the Company Site.
- (c) Specific course offerings for the Services made available for selection by Customer are not guaranteed and may vary.
- (d) Services are not intended for users under 16 years of age. Users that are not 16 years of age may not register for Services.

2. **Fees, Taxes and Payment.** Customer will pay to Company the Service Fees in the manner set forth in the Enrollment. All fees are fully earned when due and non-refundable when paid.

- (a) The Company may offer subscription plans that allow Customers to access content made available through the Service. Customers that provide credit card information and purchase subscription plans expressly agree that Company is authorized to charge the payment method provided for the subscription fee (plus applicable taxes) on the applicable recurring basis of the subscription.

3. **Term and Termination.**

- (a) The Service will commence when provisioned and continue until the end of the term specified in the Service Description or until terminated by either party (such period being the “Term”).
- (b) Either party may terminate the Agreement immediately upon the occurrence of any one or more of the following events: (i) the other party fails to pay when due any amounts required to be paid under the

Agreement; (ii) the other party breaches any material term or provision of the Agreement (other than a breach described in subsection (i) above), and if capable of cure, such breach remains uncured 10 days after the non-breaching party gives written notice thereof to the breaching party; or (iii) the other party becomes insolvent, makes an assignment for the benefit of its creditors, institutes or becomes subject to any proceeding under any bankruptcy or similar laws for the relief of debtors, or seeks the appointment of, or becomes subject to the appointment of, any trustee or receiver for all or any portion of such party's assets. Customer may terminate the Agreement at any time. Following termination of a subscription plan, Customer will continue to have access to the Service through the current subscription period.

(c) Upon termination of the Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under the Agreement, except as expressly set forth herein. The provisions of **Sections 3-5 and 7-15** of the Agreement shall survive the expiration or termination of the Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of the Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under the Agreement. Termination of the Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other legal or equitable rights or remedies to which Company may be entitled.

(d) In the event of termination of the Agreement Company shall have no obligation to return Customer Content.

4. **Customer's Representations and Warranties.** Customer hereby represents and warrants to Company, and agrees that during the Term: (a) Customer will utilize the Service only for the Customer's personal educational purposes and will not resell or redistribute to third parties any materials, reports, data, communications, guidance, and other information provided by the Company in conjunction with the delivery of the Service except as otherwise permitted by these Terms of Sale; (b) Customer will utilize the Service only for lawful purposes; (c) Customer is the owner or valid licensee of any content, including text, graphic images, photographs, video recordings, audio recordings, and other data of every kind and description, that Customer may provide to Company in conjunction with the use of the Service (as applicable, the "Customer Content"), and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof without any obligation by Company to pay any fees, residuals, or other compensation of any kind to any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association or organization, or government or any agency or political subdivision thereof (as applicable, a "Person"); (d) Customer's use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any Person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any Person; (e) Customer will comply with all applicable laws, rules and regulations regarding the Customer Content; and (f) Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, trojan horses and other malicious code.

5. **License to Company.** Customer hereby grants to Company a non-exclusive, royalty-free, fully-paid, transferable license, with the right to sublicense through multiple tiers, to copy, edit, modify, adapt, publish, transmit, distribute, prepare derivative works, perform, display, use, and otherwise exploit in any manner in the performance of the Service: (a) digitize, convert, install, upload, select, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the Customer Content; and (b) make archival or back-up copies of the Customer Content. To the extent reasonable or appropriate to effect or support the license granted by Customer, Customer hereby waive and agree to waive (or if not waivable, agree not to assert) any rights of privacy or publicity, or other similar rights, with respect to Customer Content.

In addition to and without limiting any other rights herein (including in the Privacy Policy), Customer also grants Company the rights to (a) de-identify Your Content, (b) use or disclose de-identified data for any purpose, and (c) allow us to share de-identified data with third parties.

6. **License to Customer.** Company hereby grants to Customer a non-exclusive, royalty-free, worldwide right and license during the Term to do the following to the extent necessary for Customer's personal educational use of the Service under the Enrollment: digitize, convert, install, upload, select, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the Company Content and Technology (defined herein) contained in the Service. The foregoing license is for the personal educational use of Customer only and Customer may not share its login ID, password or the Company Content and Technology with any other person.
7. **Company's Acceptable Use Policy.** Customer will abide by, and utilize the Service only in accordance with this Agreement. In addition, Customer agrees (i) not to use the Services in violation of applicable law, (ii) not to use the Services to violate the rights of any third party or commit any tortious act, (iii) not to use the Services to distribute bulk commercial e-mail, or (iv) not to violate the Company's the Acceptable Use Policy as the same may be posted on the Company's Site from time to time (the "Acceptable Use Policy"). The Acceptable Use Policy is hereby incorporated herein and made a part hereof by this reference. Customer shall familiarize itself with the Acceptable Use Policy and periodically access the Company Site to determine if Company has made any changes thereto.
8. **Customer's Responsibilities.**
 - (a) Customer will provide Customer's current and updated Customer information, including email address, postal address, phone numbers, and the like ("Customer Data"), for Company's use in contacting Customer in conjunction with delivery of the Service by the Company, and will cooperate fully with Company in connection with Company's performance of the Service.
 - (b) Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and any statements made by the Customer when utilizing the Service.
 - (c) To the extent that the Service permits Customer to post or otherwise provide Customer Content, Customer shall be fully responsible for uploading all content and Company shall not be responsible for any damages to the Customer Content or other damages or any malfunctions or service interruptions caused by any failure of the Customer Content to be compatible with the hardware and software used by Company to provide the Service.
9. **Company Intellectual Property.**
 - (a) Except for the Customer's limited right to utilize the Service for personal educational purposes, the Agreement does not transfer from Company to Customer any of the Company's proprietary content or technology, including, without limitation, Company-provided information, such as reports, data, communications, guidance, and the like; software, hardware designs, algorithms, user interface designs, and the like; know-how, trade secrets, and any related intellectual property rights throughout the world (whether owned by Company or licensed to Company from a third party), and any derivatives, improvements, enhancements, updates, modifications or extensions of Company content or technology conceived, reduced to practice, or developed at any time (as applicable, the "Company Content and Technology").
 - (b) Company Content and Technology, and all rights, titles and interests in and to the Company Content and Technology shall remain solely with Company. Customer shall not, directly or indirectly, redistribute,

publish, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the Company Content and Technology.

- (c) Company's trademarks, tradenames, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of Company. Customer may not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of Company.
- (d) Any feedback, data, answers, questions, comments, suggestions, ideas or the like which Customer sends to Company relating to the Service (excluding any Customer Data) will be treated as being non-confidential and non-proprietary. Company may use, disclose or publish any ideas, concepts, know-how or techniques contained in such information for any purpose whatsoever.

10. **Limited Warranty.**

- (a) Company represents and warrants to Customer that the Service will be performed (i) in a manner consistent with industry standards reasonably applicable to the performance thereof and (ii) at least at the same level of service as provided by Company generally to its other Customers for the same Service. Customer will be deemed to have accepted such Service unless Customer notifies Company within 30 days after performance of any Service of any breach of the foregoing warranties. Customer's sole and exclusive remedy, and Company's sole obligation, for breach of the foregoing warranties shall be for Company, at its option, to re-perform the defective Service at no cost to Customer.
- (b) The foregoing warranties shall not apply to performance issues or defects in the Services (i) caused by factors outside of Company's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment or any third-party equipment not within the sole control of Company.
- (c) **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR ANY INFORMATION OR SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND COMPANY HEREBY EXPRESSLY DISCLAIMS THE SAME. WITHOUT LIMITING THE FOREGOING, ANY THIRD-PARTY SOFTWARE PROVIDED TO CUSTOMER HEREUNDER IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. COMPANY DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.**

11. **Limitation of Liability.**

- (a) **IN NO EVENT WILL COMPANY'S LIABILITY IN CONNECTION WITH THE SERVICES, ANY SOFTWARE PROVIDED HEREUNDER OR ANY SUBSCRIPTION, WHETHER CAUSED BY FAILURE TO DELIVER, NON-PERFORMANCE, DEFECTS, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID TO COMPANY BY CUSTOMER FOR THE SERVICE DURING THE TERM IN WHICH THE EVENT GIVING RISE TO SUCH LIABILITY OCCURS.**
- (b) **COMPANY CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION, OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. COMPANY WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA,**

INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.

(c) **EXCEPT AS EXPRESSLY PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY SUBSCRIPTION, OR (EXCEPT AS PROVIDED IN SECTIONS 11 AND 12) FOR ANY CLAIM AGAINST THE OTHER PARTY BY A THIRD PARTY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.**

(d) The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other legal theory (including strict liability), other than claims based on fraud or willful misconduct. The limitations contained in Section 11(c) shall not apply to liability arising on account of Customer's indemnification obligations under Section 12.

12. **Indemnification of Company.** Customer shall defend, indemnify and hold harmless Company, its affiliates and their respective present, former and future officers, directors, employees and agents, and their respective heirs, legal representatives, successors and assigns (collectively the "Company Indemnitees"), from and against any and all losses, damages, costs, liabilities and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees) which any of the Company Indemnitees may suffer, incur or sustain resulting from or arising out of (i) Customer's breach of any representation, warranty, or covenant contained in the Agreement, (ii) the Customer Content or any end user's use of the Customer Content, (iii) violation by Customer or any of its officers, directors, employees or agents of the Acceptable Use Policy or any applicable law, (iv) claims or actions of third parties alleging misappropriation of trade secrets or infringement of patents, copyrights, trademarks or other intellectual property rights arising from the use, display or publication of the Customer Content, or the use of the Service in combination with hardware, software, or content not provided by Company, (v) claims or actions by third parties relating to or arising out of Customer's use of the Service, and (vi) any damage to Company's servers or other hardware caused by Customer.

13. **Indemnification of Customer.**

(a) Subject to Section 11, Company shall, at its own expense, indemnify, defend and hold Customer harmless from any claim or suit alleging that the Service infringes any United States patent, copyright or trademark existing on the Effective Date, or that Company has knowingly misappropriated any trade secret or other intellectual property right of any other Person, including any losses, damages or expenses arising from any such claim or suit. Customer agrees to cooperate with and assist Company in the defense or settlement of any such claim or suit. Customer shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation or assistance requested by Company, but Company will not be liable for any costs or expenses incurred without its prior written authorization.

(b) Promptly after receipt by Customer of a threat of any claim or suit, or a notice of the commencement or filing of any claim or suit, against which Customer may be indemnified hereunder, Customer shall give written notice thereof to Company, provided that failure to give or delay in giving such notice to Company shall not relieve Company of any liability it may have to Customer hereunder, except to the extent that the defense of such claim or suit is prejudiced thereby. Company shall have sole control of the defense and of all negotiations for settlement of such claim or suit. Subject to the foregoing, Customer may participate in the defense of any such claim or suit at Customer's own expense.

- (c) If an injunction, decree or judgment is, or Company believes in its sole discretion is likely to be, entered providing that Customer may not use the Services as contemplated in the Agreement without violating the intellectual property rights of a third party, Company may, at its sole option and expense, either (i) procure for Customer the right to use the Service or affected part thereof as provided in the Agreement; (ii) replace the Service or affected part thereof with other non-infringing services or modify the Service or affected part thereof so as to be non-infringing; or (iii) terminate the Agreement upon written notice to Customer.
- (d) Notwithstanding Section 13(a), Company assumes no liability for infringement claims arising from (i) use of the Service with third-party products or services where the third-party products or services cause the infringement, (ii) any modification of the Service not authorized by Company in writing, (iii) the Customer Content or any content, data or information provided or supplied by an end user of the Services, or (iv) Customer's use of any third-party software provided hereunder. THE FOREGOING DEFENSE AND INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATION OF COMPANY, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SERVICES PROVIDED HEREUNDER.

14. **Privacy Policy.**

- (a) Company will keep confidential Customer's address, telephone number, email address, credit card information, password and other non-public information provided by Customer to Company for the purpose of obtaining or maintaining the Customer's account or paying amounts owed to Company (collectively, the "Customer Confidential Information").
- (b) Company may use the Customer Confidential Information to administer the Customer's account, collect fees owed by Customer and as reasonably necessary or convenient to facilitate the Service. Company may not provide the Customer Confidential Information to any third party, except for attorneys, accountants, employees, and agents working on behalf of Company pursuant to the Agreement.
- (c) Company may collect information regarding the Customer from sources other than the Customer Confidential Information (including data concerning Customer's usage of the Service and the Company Site) ("Customer Non-Confidential Information"). Company may use the Customer Non-Confidential Information for any purpose and may share Customer Non-Confidential Information with any party so long as the Customer Non-Confidential Information cannot be correlated with, or linked to, Customer Confidential Information. The Company Site may use software cookies or web beacons to track Customer usage of the Company Site or the Service. Information collected by Company through such means is Customer Non-Confidential Information.
- (d) Notwithstanding Section 14(a), the following shall not be considered Customer Confidential Information: (i) any information that Company can demonstrate by written documentation was within its legitimate possession prior to the time of disclosure by Customer; (ii) any information that was in the public domain prior to disclosure by Customer to Company as evidenced by documents that were published prior to such disclosure; (iii) any information that, after disclosure by the Customer to Company, comes into the public domain through no fault of Company, (iv) any information that is disclosed to Company without restriction by a third party who has legitimate possession thereof and the legal right to make such disclosure, or (v) the De-Identified Data.

15. **Miscellaneous.**

- (a) Independent Contractor. Company and Customer are independent contractors and nothing contained in the Agreement places Company and Customer in the relationship of principal and agent, master and servant, partners or joint venturers. Neither party has, expressly or by implication, or may represent itself as having,

any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

- (b) Governing Law; Jurisdiction. Any controversy or claim arising out of or relating to the Agreement, the formation of the Agreement or the breach of the Agreement, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the State of Georgia, except that all arbitration and related proceedings conducted pursuant to Section 15(c) below, including without limitation confirmation proceedings, shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et. seq. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement. ANY SUIT, ACTION OR PROCEEDING CONCERNING THE AGREEMENT THAT IS NOT SUBJECT TO MANDATORY ARBITRATION PURSUANT TO SECTION 15(C) BELOW MUST BE BROUGHT IN A GEORGIA STATE OR FEDERAL COURT LOCATED IN FULTON COUNTY, GEORGIA, AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.
- (c) Mandatory Arbitration. Notwithstanding Section 15(b) above, each party agrees that any dispute between the parties arising out of the Agreement or in any manner relating to the Services must be submitted by the parties to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator, appointed in accordance with such rules. Any such dispute shall address only the claims brought by the applicable party and no party may represent a class of similarly situated persons. Any such arbitrator must render a reasoned opinion in writing only where the amount in dispute exceeds \$100,000. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration will be held in Atlanta, Georgia. Any action filed by either party in any court in violation of this Section should be dismissed pursuant to this Section.
- (d) Headings. The headings herein are for convenience only and are not part of the Agreement.
- (e) Modification of Services. Company reserves the right to modify the Services at any time without notice to Customer.
- (f) Entire Agreement; Amendments. This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and the Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between the Agreement and any Enrollment, confirmation, correspondence or other communication of Customer or Company, the terms and conditions of the Agreement shall control. The Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Sale may be modified from time to time by Company in its sole discretion, which modifications will be effective upon posting to Company Site.
- (g) Severability. All rights and restrictions contained in the Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render the Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of the Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining

provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

- (h) Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, with respect to the Customer to the address or facsimile number given in the Customer Data and with respect to the Company to Prodevia Learning, Inc., Suite 100, 4495 Olde Towne Parkway, Marietta, Georgia 30068. Either party may change its address or facsimile number for purposes of the Agreement by notice in writing to the other party as provided herein. Company may give written notice to Customer via e-mail to the Customer's e-mail address as maintained in Company's billing records.
- (i) Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of the Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.
- (j) Assignment; Successors. Customer may not assign or transfer the Agreement or any of its rights or obligations hereunder, without the prior written consent of Company. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. Company may assign its rights and obligations under the Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (k) Limitation of Actions. No action, regardless of form, arising by reason of or in connection with the Agreement may be brought by either party more than one year after the cause of action has arisen.
- (l) Counterparts. If the Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If the Agreement is signed electronically, Company's records of such execution shall be presumed accurate unless proven otherwise.
- (m) Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under the Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any goods or material required for such party to perform its obligations hereunder.
- (n) No Third-Party Beneficiaries. Except as otherwise expressly provided in the Agreement, nothing in the Agreement is intended, nor shall anything herein be construed to confer any rights, legal or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns.
- (o) Government Regulations. Customer may not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with the Agreement without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction Customer operates or does business.