



DUNS#: 07-9220254; Federal CAGE #: 7PES8; NAICS CODES: 517110, 517210, 517911, 517919, 334210, 334220  
Military DITCO Basic Agreement: HC1013-16-H-0039 8/29/2016; DITCO Telco / FCC Carrier Code: QXCC  
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## ARTICLE 1: TERMS AND CONDITIONS

- 1.1 Services. The Customer Service Agreement and other attachments incorporated into this Agreement (including the Privacy Policy and Acceptable Use Policy) detail the price, location and other information about the service(s) to be provided by QXC Communications Inc. ("QXC") to Customer ("Customer"), each a Party and collectively, the Parties. An initial Customer Service Agreement ("CSA") is attached. To order additional Services during the term of this Agreement, Customer shall complete a CSA for each additional Service or location requested.
- 1.2 Submission and Acceptance of Customer Order(s). Customer may issue one or more customer service orders describing Bandwidth Speed, Access Ports, IP Allocation, and/or other services in a form designated by QXC known as a "Customer Service Agreement" or "CSA" or "Customer Order." The Customer Service Agreement shall contain the duration for which Service is ordered, known as "Service Term". QXC will notify Customer of acceptance (in writing or electronically) of the Customer's Service Order upon the successful installation of a QXC Customer Premises Equipment ("CPE") and/or other QXC Equipment and lock down of such CPE to QXC Network. If Customer submits Customer Service Agreement electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Service Agreements.
- 1.3 Customer Premises. If access to non-QXC facilities is required for the installation, maintenance or removal of QXC equipment, Customer shall, at its expense, secure such right of access, and shall arrange for the provision and maintenance of Electrical Power, Electrical Battery Backup System(s) and/or Electrical Surge Suppression as needed for the proper operation of such equipment.
- 1.4 Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, QXC will (i) provide Customer 48-hours written notice via email, (ii) work with Customer to try to minimize Service interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time.
- 1.5 Installation Information. In order to install Customer's Service, QXC may need Customer to provide QXC with certain information to enable the Services to be provisioned. Customer will be required to provide the requested information in a timely fashion. Time is of the essence. If QXC does not receive the requested information in a commercially reasonable time frame, and Customer terminates the Agreement, Customer will be responsible for all Non-Recurring and Early Termination Charges as defined in the Agreement; provided



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however Customer shall not be responsible for such Non-Recurring and Early Termination Charges where Customer terminates the Agreement due to QXC's breach of the Agreement.

- 1.6 QXC Equipment. QXC Equipment shall be defined as that equipment provided by QXC, including but not limited to, Customer Premise Equipment (CPE), switches, routers and Power over Ethernet (POE) devices. QXC is not responsible for any customer equipment or QXC Equipment when the Customer changes, adds, modifies or deletes either the QXC Equipment or the configurations related thereto.

## **ARTICLE 2: BILLING AND PAYMENT**

2.1 Commencement of Billing. The first invoice provided by QXC to Customer will include all applicable non-recurring charges (NRC), installation and setup fees along with a prorated charge for Services rendered, with applicable taxes and fees, provided from the Service Delivery Date (the day that the Service was turned over by QXC for Customer use) to the last calendar day of that first month. The first invoice is due on the due date on the invoice (e.g., net five). Subsequent invoices will include all applicable charges for Services to be delivered during the month being invoiced (or other period of time if billing is set up for a period of time other than monthly). Monthly invoices are due on the first of the month.

2.2 Payment of Invoices and Disputes. Invoices are delivered monthly in advance, and are due in accordance with the terms set in the Customer Service Agreement. Monthly recurring charges ("MRC") are billed in advance. Usage charges, if applicable, are billed in arrears. Past due amounts may result in an administrative fee (e.g., a late fee) equal to the greater of forty-five (45) dollars or 1.5% of the past due amount. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within thirty (30) days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts from the date originally due. If Customer's check is returned to QXC unpaid, Customer is subject to a returned check charge of \$45.00 from QXC. Wire transfer fees are subject to a \$25 incoming wire transfer processing fee. All payments must be in USD.



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2.3 Taxes and Fees. Services are subject to Federal, State, County and local taxes and fees and may change from time to time. All taxes and fees will be billed to the Customer as part of the monthly invoice.

2.4 If Service is terminated by Customer without cause after Billing Commencement and/or Service Commencement Date prior to the end of the initial service term, then, commencing on the effective date of such termination, Customer will be subject to early termination charges equal to one hundred percent (100%) of the monthly recurring charges times the number of months remaining in the initial service term, if any; plus one hundred percent (100%) of any and all waived installation fees and/or third-party provisioning and/or construction costs ("Early Termination Charges"). For the avoidance of doubt, Early Termination Charges are in lieu of all other charges, fees, payments that Customer owes under this Agreement. That is, if Customer owes Early Termination Charges, Customer is no longer liable for all other charges, fees, payments arising under the Agreement or CSA. Customer agrees to pay all such Early Termination Charges within thirty days of Customer's notice of termination or immediately upon receipt of QXC's last invoice to Customer ("Final Invoice"). All requests to terminate Services must be submitted in writing to QXC 30 days prior to the termination effective date. QXC will not throttle services to less than specified on the CSA up to and including the termination date. Customer hereby agrees that the charges in this Section are a genuine estimate of QXC's actual damages and do not represent a penalty.

2.5 Termination of Service by the Customer with Cause. Service may be terminated by Customer any time after Service Commencement Date, prior to the end of the initial service term, without incurring Early Termination Charges when Customer incurs service interruption for a period of five (5) consecutive days without QXC curing such service interruption after receiving written notice from the Customer. Service Interruption shall be defined as:

- a. QXC Equipment that is found to be interfering with a QXC service;
- b. applying to QXC Equipment only in the event Customer has not changed any configurations as set by or otherwise authorized by QXC and does not apply when Customer changes, adds, modifies or deletes such QXC Equipment in any way (unless otherwise authorized or directed by QXC);



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c. bandwidth throughput as tested from QXC point of demarcation (defined as the Access Point) to Customer CPE when such throughput is less than eighty percent (80%) of the subscribed Service as designated on the related Customer CSA;

d. mutually agreed upon that such Service Interruption was in fact the result of QXC Equipment or bandwidth throughput degradation as referred to in 2.5.1.c above;

e. latency and packet loss as explained in the QXC Service Level Agreement which persists for five (5) consecutive days and for which QXC was not able to cure within the five (5) day time period; or

f. failure to adhere to service levels provided in a QXC Service Level Agreement associated with a Service ordered under a CSA, which persists for five (5) consecutive days and for which QXC was not able to cure within the five (5) day time period.

2.6 Collection Costs: If QXC is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These costs include but are not limited to any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

2.7 Reconnection Fees and Related Charges. Should Customer wish to resume a Service after any suspension, QXC will require Customer to pay a \$45 reconnection fee. Should Customer wish to reinstate any or all Services after disconnection and removal of QXC equipment at the Customer locations, QXC will require Customer to pay any installation fee or service activation fee necessary to reconnect Services. These fees are in addition to all past due charges and other fees outstanding on the Customer's account.

2.8 Suspension/Disconnect/Termination: If Customer fails to pay any undisputed amount due for a particular Service within fifteen (15) days ("Late Balance") from the date of the issued Invoice ("Payment Due Date"), QXC, at its sole discretion, in accordance with applicable law, may suspend or disconnect the Service associated with Late Balance. QXC will notify Customer of a declined debit or credit card or the return of a Customer check or e-check immediately after processing the payment on the Due Date or if check is not received by such Due Date at which time QXC will have the right, after providing written or electronic notice and allowing the three (3) day cure period to expire, to immediately throttle down the Customer Service



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broadband by half the capacity then being utilized by Customer. In no event will Customer be throttled down or disconnected without prior written or electronic notification to the Customer and five (5) days to cure such deficiency. Service with Customer will be disconnected if payment has not been sufficiently paid to QXC by the twentieth (20<sup>th</sup>) day after the date of the issued Invoice and only after providing to Customer in writing (including electronic communications) a notice of deficiency in payment. QXC equipment will be removed from the premises of the Customer by QXC upon the thirtieth (30<sup>th</sup>) day after the date of the issued invoice first of the month for which Customer has not paid with cleared funds to QXC. QXC reserves the right to terminate this Agreement if it determines in its reasonable business judgment and after three (3) late payments by Customer that it will not continue to provide such Services under this Agreement. In that event, QXC will provide no less than thirty (30) days prior notice of such termination.

2.9 Preferred Method of Payment: QXC accepts ACH, debit card, credit card, e- checks, wires and checks. Credit or debit cards are the preferred method of payment. If customer prefers to pay by wire then QXC will provide current banking instructions. If a payment is deemed late due to incorrect banking information provided by QXC, QXC will waive any and all late fees or penalties and the Payment Due Date will be reset from the date correct banking details are provided by QXC to the Customer. In this case, Customer will also only be responsible for paying one (1) incoming wire fee of \$25 to QXC.

2.10.1 Debit card and credit card payments: QXC will accept Debit and Credit Card payments made by a Customer until such time that the method is declined by QXC's banking institutions. If a debit card or credit card is declined, QXC will have the right to require Customer to submit future payments by ACH.

2.10.2 Checks and e-checks: QXC will accept such method of payment but requires the Customer to deliver such check or e-check to QXC three (3) days prior to the 1<sup>st</sup> of the; and (a) submit a late fee of \$45 to QXC in the event Customer check has not cleared by the 1<sup>st</sup>; (b) submit a \$45 non-sufficient fund ("NSF") fee in the event a Customer check or e-check does not clear QXC bank deposit; and, (c) agree to transfer the method of payment of the balance to QXC from check or e-check to credit/debit card or ACH for all future payments.

### **ARTICLE 3: DEFAULT; REMEDIES; LIMITATIONS OF LIABILITY**

**QXC Communications, Inc**  
Mail: 102 NE 2<sup>nd</sup> Street, Box 136, Boca Raton, FL 33432  
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3.1 Exclusion of Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 3.2, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR ANY LIABILITY NOT EXCLUDED BY THE FOREGOING OR SECTION 3.2, THE PARTIES SHALL IN NO EVENT BE LIABLE IN AN AMOUNT THAT EXCEEDS, IN THE AGGREGATE FOR ALL SUCH LIABILITIES, THE MOST RECENT TWELVE (12) MONTHS OF CHARGES COLLECTED BY QXC.

3.2 NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS LIMITING THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTION 4.8, PERSONAL INJURY OR DEATH RESULTING FROM THE NEGLIGENCE OF A PARTY OR ITS EMPLOYEES.

3.3 Indemnification: Each Party shall indemnify the other from and against any claims by third parties (including any Governmental Authority) and expenses (including legal fees and court costs) arising from damage to tangible property, personal injury or death caused by such Party's negligence or willful misconduct.

3.4 The indemnified Party under Section 3.3: (i) must notify the other Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the other Party is prejudiced thereby; (ii) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the other Party shall have control of the defense and settlement; and (iii) shall reasonably cooperate with the defense.

3.5 Sections 3.3 and 3.4 are the Parties' sole and exclusive indemnification obligations.

3.6 QXC represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during each CSA term, to provide the equipment and Services ordered by Customer hereunder and (ii) the performance of QXC's obligations under this



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Agreement will not violate any applicable law, rule or regulation.

#### **ARTICLE 4: OTHER TERMS AND CONDITIONS**

4.1 **Applicability:** This Agreement is applicable only where the Customer orders Internet Access (Broadband Service), Point to Point Services (PTP) or other associated services from QXC.

4.2 **Access To Customer Premises:** Customer agrees to allow QXC and its agents to enter, at reasonable times (where QXC shall use commercially reasonable efforts to provide advanced prior written notice to Customer), Customer property upon which the Services and/or QXC Equipment will be provided (the "Premises"), for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Services and/or QXC Equipment used to receive any of the Services. Customer warrants that Customer is either the owner of the Premises or that Customer has the authority to give QXC access to the Premises.

4.3 **Maintenance and Ownership of QXC Equipment:** Customer agrees that except for the wiring installed inside the Premises ("Inside Wiring"), all QXC equipment belongs to QXC or other third parties and will not be deemed fixtures or in any way part of the Premises. Customer may not sell, lease, abandon or give away the QXC Equipment, or permit any other provider of video, high speed data or telephone services to use the QXC Equipment. The QXC Equipment may only be used in the Premises. At Customer request, QXC may relocate the QXC Equipment in the Premises for an additional charge, at a time agreeable to Customer and QXC. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT IF CUSTOMER ATTEMPTS TO INSTALL OR USE THE QXC EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. Customer agrees that Customer will not allow anyone other than QXC employees or agents to service the QXC Equipment. QXC recommends the QXC Equipment in Customer possession be covered by the Customers homeowners, renters, or other business insurance. Customer will be directly responsible for loss, repair, replacement if Customer does not return the QXC Equipment in proper working condition minus normal wear and tear.

4.4 **Customer Equipment Responsibility:** QXC has no responsibility for the operation or support, maintenance or repair of any non QXC equipment or non QXC Services defined as the Customer Equipment that the Customer elects to use in connection with the Services or QXC



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Equipment.

4.5 Non-Recommended Configurations: Customer Equipment that does not meet QXC's minimum technical or industry then-current standards and specifications constitutes a "Non-Recommended Configuration." NEITHER QXC NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANTS THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY INSTALL, ACCESS, OPERATE OR USE THE SERVICES. CUSTOMER ACKNOWLEDGES THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE OF NON-RECOMMENDED CONFIGURATIONS COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, CUSTOMER, CUSTOMER PREMISES OR QXC EQUIPMENT. NEITHER QXC NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE CAUSED BY NON-RECOMMENDED CONFIGURATIONS. QXC reserves the right to deny Customer Support for the Services if Customer uses a Non-Recommended Configuration, but only to the extent that the Non-Recommended Configuration caused an issue.

4.6 Inside Wiring. Customer may install Inside Wiring, such as additional cable wiring and outlets, provided it does not interfere with the normal operations of QXC's cable or network. If Customer has QXC to install Inside Wiring, QXC will charge Customer for that service pursuant to a signed CSA. Regardless of who installed it, QXC considers the Inside Wiring as Customer property of whoever owns the Premises. Accordingly, Customer is responsible for the repair and maintenance of the Inside Wiring, unless Customer and QXC have agreed otherwise in writing. If Customer has QXC repair or maintain the Inside Wiring, QXC will charge Customer for that service pursuant to a signed CSA.

4.7 Customer acknowledges that Customer is accepting this Agreement on behalf of all persons who use the QXC Equipment and/or Services and that Customer shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement. QXC acknowledges that QXC is accepting this Agreement on behalf of all persons who provide the QXC Equipment and/or Services and that QXC shall have sole responsibility for ensuring that all QXC staff, agents, and contractors understand and comply with the terms and conditions of this Agreement as it pertains to Customer.

4.8 Confidentiality. The following shall be deemed "Confidential Information" for purposes of this Section 4.8: (i) the provisions of this Agreement; and (ii) all information provided to a





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Party (the "Receiving Party") by the other Party (the "Disclosing Party") under, or in the course of performing under, this Agreement where such information is marked or reasonably identified or identifiable as confidential or proprietary, including without limitation technical, operational, marketing, billing, pricing and commercial information. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is independently developed by the Receiving Party; or (ii) is lawfully received by the Receiving Party free of any obligation to keep it confidential; or (iii) becomes generally available to the public other than by breach of this Section 4.8 (provided that the burden of establishing the availability of the foregoing exceptions shall be on the Receiving Party). Confidential Information shall remain the property of the Disclosing Party. Each Receiving Party shall maintain the confidentiality of the Confidential Information of the Disclosing Party (and each Party shall maintain the confidentiality of this Agreement) using at least the same degree of care as it employs in maintaining as secret its own trade secret, proprietary and confidential information but in any event always at least a reasonable degree of care. A Receiving Party must not disclose the Disclosing Party's Confidential Information to any person except: (i) to its employees and contractors on a 'need-to-know' basis provided those persons first agree to observe the confidentiality of the information; (ii) to legal and financial advisers; (iii) with the other party's prior written consent; or (iv) if required by law, any stock exchange, or any Governmental Authority.

## **ARTICLE 5: GENERAL TERMS**

5.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to force majeure event(s). In the event QXC is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay QXC for the affected Service for as long as QXC is unable to deliver the affected Service. Force majeure events along with scheduled maintenance under section 1.4 shall be considered "Excused Outages." In the event that QXC is unable to deliver any Service for more than five (5) days as a result of a force majeure event, Customer shall have the right to terminate the Agreement without causing any breach or incurring any additional obligation, liability, or penalty.

5.2 Affiliates. Service may be provided to Customer pursuant to this Agreement by an affiliate of QXC, but QXC shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement. Customer shall

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be liable for all claims and liabilities related to Service ordered by any Customer affiliate, and any default under this Agreement by any Customer affiliate shall also be a default by Customer.

5.3 Notices. All notices between the parties regarding this agreement shall be in writing, and shall be deemed given upon receipt or refusal of delivery, if sent (a) by overnight courier, addressed to the party to be notified at the address stated in this section, or (b) if tendered by personal delivery to such party, or (c) if sent certified, postage prepaid, return receipt requested. Notice to Customer may also be effectuated by delivery to the Premises. Either party may change its address for notice by notice given in the manner provided in this Section 5.3.

**TO QXC:**

QXC Communications, Inc  
102 NE 2<sup>nd</sup> Street  
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5.4 Acceptable Use Policy; Data Protection. QXC exercises no control over, and accepts no responsibility for, the content of the information passing through QXC's host computers, network hubs and points of presence (the "QXC Network"). Customer's use of Service shall comply with this Agreement. QXC may transfer, process, and store billing and utilization data and other data necessary for QXC's operation of its network and for the performance of its obligations under this Agreement to or from the United States. Customer consents that QXC may (i) transfer, store, and process such data in the United States; and (ii) use such data for its own internal purposes and as allowed by law. Customer's data is Customer's Confidential Information and QXC shall not disclose Customer's data to third parties unless requested by Customer. Customer's data shall not include billing, utilization data, and other data necessary for QXC's operation of its systems and network.

5.5 Governing Law; Amendment. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to its choice of law rules. This Agreement, including any CSAs, Service Schedule(s) and Customer Service Agreement(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Services and supersedes all prior agreements relating to the Services. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s)



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hereunder shall constitute a waiver of such right(s).

5.6 This Agreement renews or terminates per the CSA. Upon expiration or termination of this Agreement, Services not previously terminated by Customer will remain in effect for the term specified in the applicable Customer Service Agreement for each affected Service, and the Terms and Conditions of this Agreement will continue to apply to such Services. Upon expiration or termination of this Agreement, QXC shall have no obligation to furnish new Services to Customer, and all rights of Customer to order new Services under this Agreement cease.

5.7 Non-Solicitation of Employees. Each party acknowledges that their respective employees constitute valuable assets of each other. Accordingly, neither party shall, during the Term of this Agreement and for a period of one year thereafter, directly or indirectly, solicit, employ or offer to employ, or engage as a consultant or employee, any employee of the other. The parties agree that the remedy at law for any breach of this provision would be inadequate and that, in addition to any other remedy it might have, the aggrieved party shall be entitled to injunctive relief without proof of irreparable injury and without posting bond.

5.8 Relationship of the Parties. The relationship between Customer and QXC shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes.

5.9 Counterparts. This Agreement may be executed in one or more counterparts or included by reference via the CSA, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.

5.10 Survival of Terms. The obligations of the parties under this Agreement that by their nature would continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

5.11 Additions/Modifications to Agreement. This Agreement can only be modified by a written document executed by authorized representatives of each Party.

5.12 Severability. In the event that any of the terms of this Agreement or the application of any such term shall be found to be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement or their application shall not be affected thereby, and shall

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remain in full force and effect.

5.13 **Waiver.** Either party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

5.14 **Entire Agreement.** This Agreement, including all CSAs and other exhibits and attachments, constitutes the sole and entire Agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related CSAs, and appendices, the following order of precedence governs: (a) first, the Agreement, excluding its exhibits, attachments, and appendices (b) second, the CSA; (c) third, exhibits, attachments, and appendices to the CSA and Agreement, and (d) fourth, the AUP and Privacy Policy.

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