

EXHIBIT A
Taiyō.AI Inc. – Standard Terms and Conditions (Platform)

The following Standard Terms and Conditions govern Customer's access to and use of the Platform.

1. DEFINITIONS.

1.1 "Content" means all insights, inferences, predictions and other data and information made available through the Provided Dashboards.

1.2 "Custom Dashboard" means a data analytics and reporting interface of the Platform configured by Company pursuant to an SOW.

1.3 "Customer Data" means any and all data and information provided by Customer or its End Users to Company for use in connection with the Platform or Services.

1.4 "End Users" means Customer's individual employees who use the Platform.

1.5 "Fees" means, individually and collectively, the fees and expenses set forth in the Order.

1.6 "Intellectual Property Rights" means all forms of proprietary rights, titles, interests, and ownership relating to patents, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, *droit moral* (moral rights), and all similar rights of every type that may exist now or in the future in any jurisdiction, including without limitation all applications and registrations therefore and rights to apply for any of the foregoing.

1.7 "Order" means the Order Form document which is executed by authorized representatives of each party and to which this Exhibit A is attached.

1.8 "Platform" means Company's data analytics and reporting software-as-a-service, inclusive of all dashboards.

1.9 "Provided Dashboard" means each Custom Dashboard and Standard Dashboard listed on the Order.

1.10 "Services" means any services relating to the Platform which Company may agree to perform for Customer hereunder, including (by way of example) Custom Dashboard configuration services, training services, user interface customizations and new integrations with third party data providers. Services shall only be provided pursuant to a Statement of Work mutually executed by the parties.

1.11 "Standard Dashboard" means a data analytics and reporting interface that is generally made commercially available by the Company for inclusion in the Platform.

1.12 "Statement of Work" or "SOW" means each written agreement for Services to be performed subject to this Agreement which is executed by authorized representatives of each party.

2. PLATFORM.

2.1 Provision of Platform. Subject to all terms and conditions of this Agreement, Company shall make available the Platform with the Provided Dashboards for Customer access and use by up to the maximum number of simultaneous

End Users specified in the Order during the Term. Customer may access and use the Platform solely for Customer's internal business purposes and solely in the manner enabled by Company and in accordance with all applicable documentation. Company reserves the right to modify and update the features and functionality of the Platform (including the Provided Dashboards) from time to time. No rights or licenses are granted except as expressly set forth herein.

2.2 Restrictions. Customer acknowledges that use of the Platform is provided solely for Customer's internal use only in connection with repositories owned by Customer and agrees not to use the Platform for the benefit of any third party. Customer agrees not to, not to attempt to, nor allow any third party to, directly or indirectly: (i) copy, distribute, rent, lease, lend, sublicense or transfer the Platform or any Content, make the Platform or Content available to any third party or use the Platform or Content on a service bureau or time sharing basis, or (ii) decompile, reverse engineer, or disassemble the Platform or otherwise attempt to reconstruct or discover any source code, underlying structure, ideas, know-how, algorithms, file formats or programming interfaces relevant to the Platform or any Company software used in providing the Services. Customer may not use any automated means, including agents, robots, scripts, or spiders, to access or manage the Platform, except solely to the extent as may be specifically enabled and authorized by Company.

2.3 Accounts. Company may require each End User to create and use a separate username and password to access and use the Platform or Services. Customer is responsible for the activities of any and all persons accessing and using the Platform using any End User's user name and password and for ensuring that its End Users comply with this Agreement. Customer shall, and shall instruct its End Users to, use all reasonable means to secure user names and passwords, and shall promptly notify Company if it suspects that any user name and password has been compromised.

2.4 Third Party Services and Modifications. The Platform may include features or functionality that interoperate with online services operated by third parties (such services, "Third Party Services"), pursuant to agreements between Company and the operators of such Third Party Services (such agreements, "Third Party Agreements" and such operators, "Operators") or through application programming interfaces or other means of interoperability made generally available by the Operators ("Third Party APIs") which Company does not control. Customer is responsible for ensuring that Customer's use of the Platform in connection with Third Party Services complies with all policies, terms and rules applicable thereto.

2.5 Support. Subject to the terms of this Agreement, in connection with Customer's use of the Services and Platform,

Company will provide Customer with support in accordance with Company's standard practices at the time.

2.6 **Control.** Customer acknowledges and agrees that Company has no obligation to monitor or edit the Customer Data, and that as between the parties Customer is solely responsible for the Customer Data, including the accuracy and completeness of Customer Data. Company reserves the right to remove any Customer Data which Company becomes aware may violate the terms of this Agreement or infringe, misappropriate or violate any third party Intellectual Property Right or privacy right.

2.7 **Customer Data.** As between the parties, Customer shall own all right, title and interest in and to Customer Data. Customer hereby grants Company a royalty-free, non-exclusive, perpetual, irrevocable, worldwide license to view, collect, use, reproduce, modify, create derivative works of, display, perform and transmit the Customer Data (i) in connection with Company's operation of the Platform or performance of the Services for Customer hereunder, (ii) to develop, enhance, and improve the Company's Platform or Services, including through the use of automatic or machine learning and for other development, diagnostic and corrective purposes in connection with the Services and (iii) subject to Customer's selection to make such data "public" within the Platform, to validate, analyze, aggregate and integrate such Customer Data with the existing data on the Platform. To the extent that Customer elects to make any of the Customer Data "public," Company may disclose such Customer Data and related data to its other customers and third parties, provided that Company does not disclose or provide any data or information that would enable any such customers or third parties to associate the data with Customer or its users, to identify Customer or its End Users as a source of any such data, or to use such data to identify or derive a list of Customer's suppliers or other Customer Data. Company will use commercially reasonable security measures to prevent unauthorized access to the Customer Data..

3. SERVICES

3.1 **SOWs.** The parties may agree from time to time that Company shall perform additional Services for Customer pursuant to an SOW. Each SOW is hereby incorporated into and forms a part of this Agreement. Each SOW shall identify the following: (i) the nature of the Services; (ii) the deliverables, if any, to be provided by Company to Customer in connection with the Services and the acceptance criteria and process therefor; (iii) a time schedule for estimated performance of Services by Company; and (iv) labor rates and/or amount of payment for Services, including any expenses which are to be reimbursed. For purposes of clarity, any reference to "deliverables" refers to Custom Dashboards or other Platform features and functionality that will be made available as part of the Platform provided hereunder. No software code or other materials will be provided to Customer under an SOW.

3.2 **Changes.** Either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and agree on factors that, at a minimum, include scope of the changes and additional deliverables, commensurate fee increases, time extensions, and pass-through of additional costs and expenses to Customer. If the parties agree on at least the minimum terms listed above, the parties will memorialize the agreement in a written change order or additional SOW signed by both parties and implement all such changes. No changes will be effective unless and until memorialized in a written change order or additional SOW signed by both parties.

4. PAYMENT

4.1 **Fees.** Customer shall pay Company the Fees as set forth in the Order and in each SOW. All recurring Fees under the Order shall be due and payable in advance of the applicable fee period. All other Fees are due and payable in arrears except to the extent otherwise set forth in the Order. Company may change the Fees for any renewal term by providing Customer notice (which may be sent by email) at least five (5) days prior to end of the then-current Term.

4.2 **Payment Terms.** Unless otherwise stated by the parties in the Order or SOW (as applicable), Company shall invoice Customer for Fees on a quarterly basis. Company may use payment processor services to bill and/or facilitate processing of Fees. By submitting payment account information, Customer grants to Company and its payment processor the right to store and process Customer's information with the third-party payment service, which may change from time to time. Customer agrees that during the Term, Company may charge and the payment processor may pay to Company any periodic Fees as they become due. All payments will be made in U.S. dollars. Any amounts due to Company under this Agreement not received by the date due will be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. Customer shall pay the amounts due under each invoice without deducting any taxes that may be applicable to such payments. Customer is responsible for paying any and all withholding, sales, value added or other taxes, duties or charges applicable to this Agreement, other than taxes based on Company's income.

5. OWNERSHIP.

5.1 **Company.** As between the parties, Company solely and exclusively owns all right, title and interest (including all Intellectual Property Rights) in and to the Services and the Platform (including without limitation all underlying source code, algorithms, models, features, or functionality) and any software, technology, materials and information and all improvements, enhancements and modifications thereto (i) owned by Company prior to the Effective Date or (ii) created, authored, developed, made, conceived, or reduced to practice by Company, whether solely or jointly, after the Effective Date (collectively, the "**Platform Materials**"), whether solely or jointly. Nothing herein shall be construed to transfer any rights, title or ownership of the Platform, the Platform

Materials, or any Company software, technology, materials, information or Intellectual Property Rights to Customer.

5.2 Customer is not required to provide any ideas, feedback or suggestions regarding any of Company's products or services ("Feedback") to Company. To the extent Customer provides Feedback, Customer acknowledges and agrees that Company may freely use, reproduce, modify, distribute, make, have made, sell, offer for sale, import and otherwise exploit in any manner such Feedback on a perpetual, irrevocable and worldwide basis without payment of any royalties or other consideration to Customer.

5.3 Customer. As between the parties, Customer owns all right, title and interest (including all Intellectual Property Rights) in and to the Customer Data and any software, technology, materials and information owned by Customer prior to the Effective Date or created, authored, developed, made, conceived or reduced to practice by Customer after the Effective Date. Nothing herein shall be construed to transfer any rights, title or ownership of the Customer Data or any Customer software, technology, materials, information or Intellectual Property Rights to Company.

6. TERM; TERMINATION

6.1 Term. The Term of this Agreement is as set forth in the Order.

6.2 Termination.

(a) The Customer has the right to cancel this annual Agreement provided that written notice is given at least thirty (30) days prior to the start of the new quarterly billing period. No refunds will be issued upon receipt of notice for cancellation for the current quarterly billing period.

(b) Either party may terminate this Agreement effective immediately if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach (if capable of cure) within thirty (30) days (or five (5) days in the event of breach of payment obligations) after receiving written notice of the breach from the non-breaching party.

(c) Either party may terminate this Agreement immediately upon written notice at any time if: (i) the other party files a petition for bankruptcy or is adjudicated as bankrupt; (ii) a petition in bankruptcy is filed against the other party and such petition is not removed or resolved within sixty (60) calendar days; (iii) the other party makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to bankruptcy law; (iv) the other party discontinues its business; (v) a receiver is appointed over all or substantially all of the other party's assets or business; or (vi) the other party is dissolved or liquidated.

6.3 Effect of Termination. All rights and obligations of the parties hereunder shall terminate upon expiration or termination of this Agreement, provided that accrued obligations and Sections 1, 2.5, 2.7, 2.8, 3.7, 4 (with respect to accrued but unpaid Fees), 5, 6.3, 8, 9, 10, 11 and 12 shall

survive expiration or termination of this Agreement. Company will not be obligated to refund any prepared Fees.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Mutual Representations. Each party represents and warrants to the other party that: (i) it has the full power and authority to enter into this Agreement; (ii) the execution of this Agreement and performance of its obligations under this Agreement does not violate any other agreement to which it is a party; and (iii) this Agreement constitutes a legal, valid and binding obligation when executed and delivered.

7.2 Customer Representation. Customer warrants and covenants to Company that Customer has the right to provide the Customer Data to Company for the purposes of this Agreement.

8. INDEMNIFICATION

8.1 Company Indemnity. Company agrees to, at its own expense, defend and/or settle any claim, action or suit brought by a third party against Customer or its Affiliates, or their directors, officers and employees ("Customer Indemnitees"), alleging that Company's technology underlying the Platform infringes the United States copyright or trade secret of such third party (an "IP Claim"), Company will pay those amounts finally awarded by a court of competent jurisdiction against the Customer Indemnitees, or subject to the terms of Section 8.2, payable pursuant to a settlement agreement with respect to the IP Claim. If Company, in its sole discretion, believes an IP Claim or an adverse judgment in connection with an IP Claim is likely, then Company may, at its option, (a) obtain a license from such third party claimant that allows Customer to continue the use of the Platform, (b) modify the Platform so as to be non-infringing, or (c) if neither (a) nor (b) is available to Company on commercially reasonable terms, terminate this Agreement upon written notice to Customer and refund to Customer any prepaid Fees on a pro-rata basis. Company will have no obligation or liability relating to any IP Claim that: (x) is based on modification or customization of the Platform at the direction of Customer or any third party; (y) is based on the combination or use of the Platform (or any component of either) with any software, hardware, system, method, device or materials (including Customer Data) not provided or required by Company; or (z) results from Customer's use of the Platform in a manner that is inconsistent with its intended use or is in breach of this Agreement. This Section 8.1 sets forth the entire liability of Company and the sole and exclusive remedy of Customer in the event of any claim that the Platform infringes any third party Intellectual Property Right.

8.2 Indemnification Procedure. Customer shall promptly notify Company in writing of any action for which Customer believes it is entitled to be indemnified pursuant to Section 8.1. Customer shall cooperate with Company at Company's sole cost and expense. Company shall immediately take control of the defense and investigation of such Claim or IP Claim and shall employ counsel reasonably acceptable to Customer to handle and defend the same, at Company's sole cost and expense. Customer's failure to perform any

obligations under this Section 8.2 will not relieve Company of its obligations under this Section 8 except to the extent that Company can demonstrate that it has been materially prejudiced as a result of such failure. Customer may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Company may settle a Claim or IP Claim so long as any settlement (i) does not, without Indemnitee's prior written approval, (x) involve the admission of any wrongdoing by any Indemnitee, (y) restrict any Indemnitee's future actions, or (z) require any Indemnitee to take any action, including the payment of money (other than payment obligations to be satisfied by Company), and (ii) includes a full release of Customers.

9. DISCLAIMER. THE SERVICES, PLATFORM ANY RESULTS THEREFROM AND ANY CONTENT ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR PERFORMANCE. COMPANY AND ITS SUPPLIERS, PARTNERS AND SERVICE PROVIDERS DO NOT WARRANT THAT THE PLATFORM, SERVICES AND CONTENT WILL BE CORRECT, UNINTERRUPTED, ERROR-FREE OR WILL INTEGRATE WITH SYSTEMS OF ANY THIRD PARTY OR THAT DEFECTS WILL BE CORRECTED. COMPANY DOES NOT WARRANT THE RESULTS OF USE OF THE PLATFORM, SERVICES OR CONTENT, AND CUSTOMER HEREBY ASSUMES ALL RISKS ASSOCIATED WITH CUSTOMER'S USE THEREOF AND ANY RELIANCE PLACED BY CUSTOMER ON ANY CONTENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT THE PLATFORM IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PLATFORM COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE (COLLECTIVELY, "**HIGH RISK ACTIVITIES**"). COMPANY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED GUARANTEE OF FITNESS FOR SUCH HIGH RISK ACTIVITIES.

10. CONFIDENTIALITY.

10.1 Definition. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents,

prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any information which (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. Confidential Information of Company will include without limitation the Platform and any related documentation.

10.2 Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party with a need to know. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

10.3 Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees and contractors who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

10.4 Required Disclosure. Neither party shall be in breach of this Section 10 for any disclosure of the other party's Confidential Information that such party is required by law or legal process to make, provided that the party subject to such requirement gives the other party prompt written notice of

such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

10.5 Return of Materials. Upon the termination of this Agreement, each party shall return to the other party, or destroy, all of such other party's Confidential Information that such party may have in its possession or control.

11. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY AND ITS LICENSORS WILL NOT BE LIABLE (I) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR (II) FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, INCLUDING LOST BUSINESS, REVENUE, OR PROFITS, IN EACH CASE (I) AND (II), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT WILL COMPANY AND ITS LICENSOR'S LIABILITY AND DAMAGES UNDER THIS AGREEMENT EXCEED THE SUM OF THE TOTAL FEES PAID TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THE PARTIES AGREE THAT THE LIMITATIONS AND DISCLAIMERS OF LIABILITY SET FORTH IN THIS SECTION 11 WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF THE THEORY OF LIABILITY. The provisions of this Section 11 allocate risks under this Agreement between Customer and Company, and Customer acknowledges that the fees payable hereunder reflect this allocation of risks and limitation of liability.

12. MISCELLANEOUS

12.1 Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever.

12.2 Publicity. Customer acknowledges that Company may desire to use its trademarks in websites, marketing collateral, press releases, product brochures and financial reports to indicate that Customer is a customer of Company, and Customer agrees that Company may reasonably use its trademarks in such a manner.

12.3 Third Party Beneficiaries. Except as expressly set forth in this Agreement, nothing herein shall give, or is intended to give, any rights of any kind to any third parties.

12.4 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred or delegated by Customer, in whole or in part, whether voluntarily or by operation of law, including by way of or in connection with a sale of assets, merger or consolidation, without the prior written consent of Company, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

12.5 Force Majeure. Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

12.6 Notices. All notices under the terms of this Agreement shall be given in writing and sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses noted in the Order. All notices shall be presumed to have been given three business days following deposit in the mail as set forth in the foregoing.

12.7 Amendments. An amendment of this Agreement shall be binding upon the parties so long as it is in writing and executed by both parties. No regular practice or method of dealing between the parties shall modify, interpret, supplement or alter in any manner the express terms of this Agreement.

12.8 Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

12.9 Severability: Counterparts. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law. This Agreement may be signed in counterparts. Each of them is an original, and all of them constitute one agreement.

12.10 Purchase Orders. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may issue in connection with this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Company to object to such terms, provisions or conditions.

12.11 Governing Law; Jurisdiction; Attorney's Fees. This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles, and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in California for resolution of any disputes arising out of this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

12.12 Interpretation; Headings. The word "including," "includes" and "include" will be deemed to be followed by "without limitation". References to a "party" mean Customer or Company. Headings of this Agreement are for convenience only and will not affect the interpretation of this Agreement.

12.13 Entire Agreement. This Agreement constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.