



## PHOTON DYNAMICS, INC. SALES AND SERVICE TERMS AND CONDITIONS

Photon Dynamics' proposals are subject to Photon Dynamics' Sales and Service Terms and Conditions ("Terms and Conditions"). These Terms and Conditions may be modified from time to time without notice and the latest version of this document shall control. The proposal is Photon Dynamics' offer to sell or license products or to provide service. The proposal and the underlying transaction will not be binding on Photon Dynamics until the proposal is signed by Photon Dynamics. Acceptance of the proposal is strictly limited to the provisions set forth in the proposal and these Terms and Conditions. Photon Dynamics shall not be bound by, and specifically and expressly objects to, any terms or conditions whatsoever which are different from or in addition to the provisions of the proposal and these Terms and Conditions, including any terms and conditions contained on or referenced in Customer's purchase order. Customer's issuance of a purchase order or commencement of any activities pursuant to the proposal shall conclusively evidence Customer's acceptance of the proposal and these Terms and Conditions and create a binding contract between Customer and Photon Dynamics hereunder regardless of whether the proposal has been signed by Customer. Note that any preparation guides product specifications or other site condition related documents set forth additional requirements.

**Equipment** means all Photon Dynamics' hardware, excluding any Software.

**Products** means Photon Dynamics' Equipment, Software licenses, Software Program licenses, documentation (including manuals, training and education materials) and upgrades, accessories, or additions purchased from or supplied by Photon Dynamics.

**Service and Maintenance Service** mean all forms of installation, maintenance, and support for the Products as provided for in these Terms and Conditions and more specifically defined in Section 11, Maintenance Service.

**Software** means the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version where provided by Photon Dynamics. Software includes operating and application software incorporated in Equipment and Photon Dynamics' distributed Frontline Solution software programs ("Software Programs").

**Proposal** means any standard Photon Dynamics product sales, product license or maintenance service proposal.

### 1. Installation and Training

Photon Dynamics shall install the Products after determining that Customer is in compliance with all applicable Orbotech site requirements (the "Site Requirements") set forth in the Site Preparation Guide and/or Hardware Specifications. Prior to installation and training, Customer shall not handle, attempt

to operate, or operate any Products except in the presence and under the supervision of authorized Photon Dynamics' engineers, and shall prevent any third party from doing so. Following installation, Photon Dynamics shall train Customer in the use of the Products in accordance with and at the rates set forth in the proposal. Photon Dynamics shall either repair or replace at its own cost and expense any Products that cannot be successfully installed due to the negligence of Photon Dynamics or defects in the Products. In all other instances, repairs and replacements shall be at Customer's cost and expense.

### 2. Payment

Unless otherwise provided for in the proposal, charges for Products will be invoiced upon delivery and paid in full, without abatement, set-off, or deduction, within 30 days of invoice receipt at the address given for notices below. At Photon Dynamics' sole discretion, Customer may be subject to an interest charge of 1.5 percent per month on any outstanding balance if Customer fails to make timely payments.

### 3. Taxes and Duties

Customer shall be responsible for and shall pay directly all taxes (exclusive of any tax based on Photon Dynamics' income), customs duties, assessments, fees and other charges (collectively referred to as "Costs") levied by any and all government entities respecting delivery, possession, or use of any Products. Purchase prices for the Products do not include these Costs.

### 4. Transfer of Title, Risk of Loss

Unless otherwise provided for in the proposal, Customer shall take title to Equipment, including parts, upon Photon Dynamics' receipt of all payments due for the Equipment and any other Photon Dynamics' Products. Title to any part that Photon Dynamics removes in connection with the service of the Products shall pass to Photon Dynamics when the part is removed. Risk of loss shall be transferred to Customer at the time and location of delivery of the Products into Customer's possession.

### 5. Security Agreement; Transfer of Product(s)

As security for the payment and performance of all of Customer's obligations to Photon Dynamics of every kind and description, direct and indirect, absolute and contingent, primary and secondary, due or to become due, now existing or hereafter arising or acquired ("Obligations"), Customer hereby grants to Photon Dynamics a security interest in all now owned or hereafter acquired Photon Dynamics' Products delivered to Customer (including, without limitation, the Equipment) and all other Products, and any and all additions, substitutions, replacements, accessories and proceeds thereof. Regardless of whether or not a default in the payment or performance of the Obligations has occurred, Photon Dynamics shall have, in addition to all other rights and remedies, the rights and remedies of a secured party under the

Uniform Commercial Code of California, as in effect from time to time, or such other law as may be applicable. Subject to the restrictions set forth below in Section 7, Software License, until Photon Dynamics has been paid in full, Customer shall not part with possession or control of the Products or sell, pledge, mortgage, lease or otherwise transfer or encumber the Products without the written consent of Photon Dynamics or Photon Dynamics' assignee.

## **6. Software License**

6.1. Title to all Software shall remain with Photon Dynamics. Photon Dynamics hereby grants to Customer a nonexclusive, nontransferable, royalty-free license to use Software Programs and Equipment operating and application Software, solely as part of Customer's use of the Products in Customer's normal internal business operations in the area of printed circuit board production activities. The license granted herein shall extend for the life of the Products in Customer's possession, provided that any transfer of the Products or breach of Sections 8 or 9 by the Customer shall result in immediate and automatic termination of this software license. Customer's use of Software Programs shall also be governed by any additional conditions which Photon Dynamics may provide on or prior to delivery of the Software Programs.

6.2. Regarding Software Programs, the Customer is granted a license subject to full payment of the license fee. Customer may install and use the Software Programs on one work station/computer with the maximum number of concurrent seats located on the same local area network and the optional Software Programs as specified in the license. Along with the license, Customer may receive a key/code set to the number of seats and the Node I.D. of the work station/computer. The key will enable the installation and use of the Software Programs according to the license restrictions. If Customer is provided a Software Programs upgrade, a prior version and all copies of the prior version, including any copies resident on any hard disk, shall be destroyed by Customer within ninety (90) days of the delivery of the upgrade.

## **7. Confidential and Proprietary Technology**

It is expressly understood and agreed by Customer that the Products incorporate highly confidential knowledge, technology, and trade secrets (all of which, whether or not copyrighted or patented, are hereafter referred to as "Technology"). The Technology includes Technology incorporated in the Products themselves, manuals and other documentation marked confidential by Photon Dynamics, and oral information provided to Customer by Photon Dynamics on a confidential basis. The Technology is, and shall always remain, the exclusive property of Photon Dynamics. Customer shall have a continuing obligation to maintain the confidentiality of the Technology until such time that it becomes publicly known. During such time, Customer will take reasonable measures to ensure the confidentiality of the Technology, using procedures at least as secure as those Customer uses to protect its own most confidential proprietary technology. Except for use of the Products in the normal

course of Customer's manufacturing business operations, Customer agrees not to use in any way or form whatsoever, any part of the Technology for any purpose whatsoever. Customer shall not replicate, reproduce, alter, modify, disassemble, decompile, reverse engineer, create derivative works from, transfer or disclose to third parties, any part of the Technology for any purpose whatsoever. Customer shall not use the Products to assess, test, or develop any hardware or software products either for Customer or others. Customer shall not remove any proprietary notice, labels, or marks on the Products. Customer acknowledges that any violation of this provision will result in irreparable harm to Photon Dynamics and that Photon Dynamics may enforce its rights hereunder by injunction against any threatened or continuing violation, or in an action for damages, or both.

## **8. Improvements by the Customer**

In the event that Customer or any of its principals, employees, contractors or agents make, develop, or invent any improvement to any Products which in Photon Dynamics' view enhances their usefulness, efficiency, or value, then Customer shall assign all right title and interest to such improvement to Photon Dynamics. At its sole and complete discretion, Photon Dynamics and its affiliates shall each be entitled to use any such improvement in any products manufactured or sold by them and to license its use to any Photon Dynamics customer worldwide. Photon Dynamics grants to Customer a nonexclusive, nontransferable, royalty-free license to use any of the foregoing in accordance with the terms of these Terms and Conditions. It is expressly understood that any such improvement by Customer or its employees or agents shall not entitle Customer to use of the Products beyond that specified in these Terms and Conditions. Additionally, in the case of Software Programs, Customer may develop application programs. Application programs means programs written in scripts for performing specific automatic printed circuit board design and test functions, but excludes programs such as environmental programs, handlers, operating systems and data base management programs. If the workstation for which the Software Program is licensed becomes temporally unavailable, use of such Software Program may be temporarily transferred to an alternate workstation. In any other case, if Customer desires to use the Software Program at another location, Customer shall request prior permission in writing from Photon Dynamics.

## **9. Patent, etc., Indemnity**

9.1. Photon Dynamics shall, at its own expense, defend any action brought against Customer to the extent that it is based on a claim that the Products, or any component thereof, supplied pursuant hereto, infringe upon any patent, license, copyright or trademark, provided that (a) Customer promptly notifies Photon Dynamics in writing of the assertion, threat, or institution of any such claim, suit or proceeding; (b) Photon Dynamics shall have sole control of the defense of any action and any negotiation for its settlement or compromise; (c) Photon Dynamics shall have the sole right to choose attorneys to represent Customer in such action; (d) Photon Dynamics

shall not be obligated to pay for Customer's legal expenses if Customer chooses to have its own counsel represent it as co-counsel in any such action; (e) Customer shall provide all reasonable facilities, authority, information and assistance for a proper defense and/or settlement negotiations; and (f) Customer refrains from taking any position or action detrimental or adverse to Photon Dynamics. If the Products, or any component thereof, are adjudicated or reasonably anticipated to be an infringement on any patent, license, copyright or trademark, or in such other circumstances as Photon Dynamics in its sole discretion determines to be appropriate, Photon Dynamics, at its own option and expense, may elect to: (i) obtain for Customer the right to continue using the Products; (ii) replace or modify the Products so they become noninfringing; or, if unable to do either, then (iii) terminate the Software license herein granted, take back the Products, and refund to the Customer the depreciated cost of the Products, calculated on a straight-line, thirty-six (36) month basis.

9.2. Photon Dynamics shall not be liable for any claim that the Products, or any component thereof, infringe upon any patent, license, copyright or trademark, if such claim is based in whole or in part on (a) the use of Software which is not the latest unmodified release, where such infringement may have been avoided by the use of such latest release; (b) amendments, alterations, modifications or attachments to any Products made by any party other than Photon Dynamics; (c) use of the Software on or in conjunction with equipment other than the Customer's workstation or the Photon Dynamics Products; (d) a copy of the Software where the Software has been added to, altered, or amended in any way after the Software was copied; (e) the combination, operation, or use of the Products with any equipment not supplied by Photon Dynamics; or (f) any alteration of the Products made by any entity other than Photon Dynamics.

9.3. THIS SECTION 10 STATES ANY, ALL, AND THE ENTIRE LIABILITY OF PHOTON DYNAMICS WITH RESPECT TO PATENT, LICENSE, COPYRIGHT, OR TRADEMARK INFRINGEMENT BY THE PRODUCTS. PHOTON DYNAMICS SHALL HAVE NO ADDITIONAL LIABILITY TO CUSTOMER WHATSOEVER WITH RESPECT TO ANY ALLEGED OR PROVED INFRINGEMENT.

## **10. Maintenance Service**

10.1. Maintenance Service for Equipment is the provision of replacement parts, parts installation, and field installation of necessary engineering changes to maintain the Equipment in good working order. Maintenance Service for Software Programs includes all forms of installation, maintenance and application support. Unless otherwise provided for, the Maintenance Service provided hereunder shall begin on the date of expiration of the warranty period applicable to all the Products, if any, or on the date(s) shown on the proposal.

10.2. Maintenance Service shall be provided for performance failures of Products resulting from normal wear and tear.

Product failures shall not include failures resulting from any other cause, including, but not limited to (a) Customer's negligence, unauthorized attempts to maintain, repair or move the Products, or failure to maintain applicable Site Requirements; (b) insurable occurrences, Acts of Nature or power failure; or (c) alterations, out of specification supplies, or defects in design material or workmanship of non-Photon Dynamics' products and services.

10.3. Photon Dynamics has no obligation to provide Maintenance Services for non-Photon Dynamics equipment or Products which were modified without Photon Dynamics' express written approval. Should Photon Dynamics agree to maintain or service modified Products, Photon Dynamics may impose additional charges. Photon Dynamics is not responsible for any malfunction, nonperformance, or degradation of performance of Products, supplies or maintenance support materials caused by or resulting directly or indirectly from any modification.

10.4. Additional Services and Supplies. Upon Customer's reasonable request and subject to availability, Photon Dynamics shall provide consumable supplies and other maintenance service not covered by a proposal at the current published Photon Dynamics charges.

10.5. Unless otherwise provided for in the proposal, Service charges are payable in advance as billed by Photon Dynamics on a quarterly basis. Photon Dynamics reserves the right to change the service charge immediately in the event of relocation of the Products and otherwise, by giving Customer at least ninety (90) days' prior written notice. Upon such notice, Customer may terminate the Service effective as of the date that the change is to become effective, by giving Photon Dynamics thirty (30) days' written notice.

10.6. Photon Dynamics may delegate any of its duties under this Agreement to any third party that, in its reasonable discretion, Photon Dynamics determines to be qualified to perform that duty.

## **11. Warranties and Disclaimers**

**12.1 EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. PHOTON DYNAMICS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS TO ALL PRODUCTS. PHOTON DYNAMICS' WARRANTIES EXTEND SOLELY TO CUSTOMER.**

**12.2 EQUIPMENT WARRANTY AND DISCLAIMERS: PHOTON DYNAMICS WARRANTS THAT IT SHALL HOLD GOOD TITLE TO THE EQUIPMENT AT THE TIME OF ITS SALE TO CUSTOMER; THAT ALL EQUIPMENT COVERED BY THESE TERMS AND CONDITIONS SHALL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP WHEN DELIVERED; AND THAT ALL EQUIPMENT SHALL**

OPERATE IN ACCORDANCE WITH THE EQUIPMENT SPECIFICATIONS FOR A PERIOD OF NINETY (90) DAYS (OR OTHER SUCH PERIOD AS MAY BE SPECIFIED IN THE APPLICABLE PROPOSAL) FROM THE DATE OF INSTALLATION. THE PRECEDING WARRANTIES ARE SUBJECT TO THE FOLLOWING: (A) PHOTON DYNAMICS' SOLE OBLIGATION HEREUNDER SHALL BE TO REPAIR OR REPLACE, AT PHOTON DYNAMICS' ELECTION, ANY DEFECTIVE COMPONENT, WITH TRANSPORTATION COSTS FOR SUCH REPAIR OR REPLACEMENT TO BE AT NO CHARGE TO CUSTOMER; AND (B) PHOTON DYNAMICS SHALL HAVE NO OBLIGATION (EITHER DURING OR SUBSEQUENT TO THE WARRANTY PERIOD AND WHETHER OR NOT UNDER MAINTENANCE SERVICE) TO MAKE REPAIRS OR REPLACEMENTS NECESSITATED IN WHOLE OR IN PART BY: (I) THE FAULT OR NEGLIGENCE OF CUSTOMER; (II) IMPROPER OR UNAUTHORIZED USE OF THE EQUIPMENT; (III) UNAUTHORIZED ATTEMPTS BY CUSTOMER TO REPAIR OR MAINTAIN THE EQUIPMENT; (IV) CUSTOMER'S UNAUTHORIZED MOVEMENT, ALTERATION, OR MODIFICATION OF THE PRODUCTS OR ADDITION OF ANY ACCESSORY, FEATURE OR DEVICE; (V) CUSTOMER'S FAILURE TO MAINTAIN THE SITE REQUIREMENTS; OR (VI) CAUSES EXTERNAL TO THE EQUIPMENT SUCH AS, BUT NOT LIMITED TO, POWER OR AIR CONDITIONING FAILURE OR CATASTROPHE.

**12.3 SOFTWARE PROGRAMS WARRANTY AND DISCLAIMERS:** (A) EACH ITEM OF ANY SOFTWARE PROGRAM IS, IN ITS UNALTERED FORM, WARRANTED TO CONFORM SUBSTANTIALLY TO THE THEN-CURRENT PUBLISHED FUNCTIONAL SPECIFICATION, PROVIDED SUCH SOFTWARE PROGRAM IS USED IN A MANNER CONSISTENT WITH ANY APPLICABLE PHOTON DYNAMICS MINIMUM EQUIPMENT AND SOFTWARE CONFIGURATION SPECIFICATIONS, AND PROVIDED THAT: THE SOFTWARE PROGRAM IS COVERED UNDER A MAINTENANCE SERVICES AGREEMENT. PROVIDED THAT THE SOFTWARE PROGRAM IS COVERED UNDER A MAINTENANCE SERVICES AGREEMENT, PHOTON DYNAMICS WILL MAKE REASONABLE EFFORTS TO CORRECT ERRORS REFLECTING SIGNIFICANT DEVIATIONS FROM THE FUNCTIONAL SPECIFICATIONS AS ARE REPORTED BY CUSTOMER TO PHOTON DYNAMICS. (B) BECAUSE NOT ALL ERRORS IN SOFTWARE CAN OR NEED BE CORRECTED, PHOTON DYNAMICS DOES NOT WARRANT THAT ALL SOFTWARE PROGRAM DEFECTS WILL BE CORRECTED. SIMILARLY, PHOTON DYNAMICS DOES NOT WARRANT THAT FUNCTIONS

CONTAINED IN THE SOFTWARE PROGRAM WILL MEET CUSTOMER'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS SELECTED FOR USE BY CUSTOMER. CUSTOMER ACKNOWLEDGES THAT IT HAS INDEPENDENTLY DETERMINED THAT THE SOFTWARE AND SUPPORT SERVICES ORDERED UNDER THIS AGREEMENT MEET ITS REQUIREMENTS.

**12.4 MAINTENANCE WARRANTY DISCLAIMERS:** PHOTON DYNAMICS HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO PARTS NOT MANUFACTURED BY PHOTON DYNAMICS. PHOTON DYNAMICS WARRANTS THAT PRODUCTS WILL BE SUPPORTED IN ACCORDANCE WITH THE SERVICE DESCRIBED IN THE PROPOSAL.

## **12. Limitation of Liability**

PHOTON DYNAMICS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES) CAUSED BY OR RELATING TO THE SERVICES PERFORMED OR THE PRODUCTS PROVIDED UNDER THE PROPOSAL AND THESE TERMS AND CONDITIONS, OR BY DELAY OR ANY ACT OR OMISSION OF PHOTON DYNAMICS IN CONNECTION WITH THE PROPOSAL AND THESE TERMS AND CONDITIONS, EVEN IF PHOTON DYNAMICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY AND ALL WARRANTIES AND FOR PHOTON DYNAMICS' LIABILITY OF ANY KIND UNDER OR ARISING OUT OF THE PROPOSAL AND THESE TERMS AND CONDITIONS (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE COMPONENTS IN ORDER TO MEET PRODUCT SPECIFICATIONS.

## **13. Default and Remedies**

13.1. By providing Customer with written notice of termination, Photon Dynamics may immediately terminate this Agreement if (i) Photon Dynamics determines that any material representation or warranty now or hereafter made by Customer was not true or accurate when given, or (ii) Customer is in breach of a proposal or these Terms and Conditions or otherwise defaults on any of its duties, including, but not limited to, timely payments of sums due, and fails to cure this default within five (5) days after Photon Dynamics gives Customer written notice of default.

13.2. Upon any such default, Photon Dynamics may: (i) declare any and all sums payable as to any and all Products or Service immediately due and payable, without further notice or demand; (ii) without notice, demand, court order or other process of law, repossess any or all Product(s) by any means

whatsoever and keep or dispose of said Product(s) according to law; (iii) terminate or suspend Service as to any and all Products and suspend any other Photon Dynamics obligations; and (iv) pursue any other remedies available at law or in equity.

13.3. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies provided herein or available at law or in equity. Customer shall pay Photon Dynamics all costs and expenses, including reasonable attorney's fees, incurred by Photon Dynamics in exercising any of its rights or remedies or enforcing any provisions herein or within a proposal.

13.4. Customer shall not be entitled to a refund of any payments for or Products or license fees payments made prior to any payment default and such prior payments are agreed and acknowledged by the parties hereto to be nonrefundable fees for the use of the Products prior to the default.

#### **14. Assignment, Lease of Products and Credit Investigations**

Photon Dynamics may, without the consent of or notice to Customer, assign to a third party financial institution its rights, but not its obligations. In such event, Photon Dynamics' assignee shall not incur Photon Dynamics' obligations. Photon Dynamics may assign or transfer any of its rights or obligations under this Agreement to any other third party without Customer's consent. Customer hereby expressly waives all defenses against Photon Dynamics' assignee. Customer shall not have the right to assign or transfer any of its rights or obligations herein to any third party without the prior written consent of Photon Dynamics. Customer may assign the purchase rights granted hereunder to a third party leasing company subject to the prior written approval of Photon Dynamics and provided that such third party leasing company executes Photon Dynamics' standard form of software license agreement. Customer agrees to execute Photon Dynamics' form of assignment of purchase rights in conjunction with such lease and all required lease documents ten (10) days prior to the Product delivery. Customer hereby authorizes Photon Dynamics to conduct a credit investigation of Customer. If Photon Dynamics does not grant credit approval, Photon Dynamics may revoke the transaction by written notice.

#### **15. Force Majeure**

If performance of any obligation, except for the payments, is prevented, restricted, or interfered with because of fire, natural disaster, labor disputes, law, order, regulation or governmental requirement, war, civil disorder, other violence or any other act or condition, whether foreseeable or not, beyond the reasonable control of the affected party, the affected party shall be excused from such performance to the extent of such prevention, restriction, or interference. The affected party shall give prompt notice and shall resume performance immediately whenever such causes are removed. The affected party shall take reasonable steps to avoid or remove such cause at the earliest possible time, but in any event within

ninety (90) days. The other party's only remedy for this non-performance shall be rescission after the ninety (90) day period.

#### **16. Notices**

All notices shall be in writing and shall be hand-delivered or sent by certified or registered mail, return receipt requested, or by telecopier. All notices to Customer will be to its address provided in the proposal. All notices to Photon Dynamics will be addressed to: Vice President of Finance & Operations, Photon Dynamics, Inc., 5970 Optical Court, San Jose, CA 95138.

#### **17. General Provisions**

17.1. These Terms and Conditions, together with all proposals, constitute a California contract and shall be governed by the laws of the State of California, excluding conflict-of-law or choice-of-law principles. Litigation by Customer to enforce its rights may be brought only in a court of competent jurisdiction within the State of California. Photon Dynamics may file suit in California or in any jurisdiction where its rights may be threatened, and judgment will be enforceable in any state or country. The parties consent to the exclusive jurisdiction of such courts and consent to the service of process by registered or certified mail.

17.2. These Terms and Conditions, together with all proposals, represent the entire agreement between the parties regarding the subject matter, superseding and replacing any additional or inconsistent terms and conditions contained on the face or reverse side of Customer's purchase orders or other standard forms of Customer of whatever date and cancels all prior understandings, written or oral. No amendment, waiver, or cancellation of any part of this Agreement shall be valid unless in writing and signed by an authorized officer of each of Customer and Photon Dynamics.

17.3. Omission by Photon Dynamics to remedy a default or enforce rights reserved to it, or to require performance of any of the terms hereof, shall not be a waiver, nor shall it affect the right of Photon Dynamics to enforce such provisions thereafter.

17.4. During the course of the relationship between Customer and Photon Dynamics, Customer may have access to or possession of personal or private information of Photon Dynamics or its customers. Such data may be protected by various laws, rules and regulations. Accordingly, Customer shall comply with all applicable privacy and data protection laws, rules and regulations which are or which may in the future be applicable to the terms of this Agreement, including without limitation the (i) Gramm-Leach-Bliley Act (15 U.S.C. § 6801, et seq.) and related security regulations (12 C.F.R. Part 364, App. B); and (ii) provisions of the Health Insurance Portability and Accountability Act as amended ("HIPAA") and 45 CFR §§ 160 through 164.

17.5. If any provision of a proposal or these Terms and Conditions is contrary to, prohibited by, or deemed invalid under applicable laws of a jurisdiction in which it is sought to



be enforced, then such provision shall be deemed inapplicable and omitted, but shall not invalidate remaining provisions.