

ExaVault Terms of Service

Last Updated: 30 March 2018

ExaVault, Inc. (“ExaVault”, “We”, “Us”) provides Internet-based data storage and transfer services. Use of the service, including any website, API, software, application, program or service provided now or in the future (“Service” or “Services”) via exavault.com or evbackup.com is governed by these Terms of service (“Terms”). These Terms apply to Customer (also referred to as “You”, “Your”), Customer’s employees (“Employee Users”) and third party users (“Third Party Users”) (collectively “Users”) using your Customer Account.

BY COMPLETING THE REGISTRATION PROCESS, YOU REPRESENT AND WARRANT THAT YOU: (i) ARE 18 YEARS OF AGE OR OLDER; (ii) HAVE THE AUTHORITY TO, OR ARE AUTHORIZED TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS; AND (iii) HAVE READ, UNDERSTAND AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY THESE TERMS AND CONDITIONS.

1. Definitions

For purposes of this Agreement:

- “Agreement” means these Terms of Service as may be amended and any other documents incorporated by reference.
- “Customer” means the legal entity or individual that enters into this Agreement. Customer is also referred to in this Agreement as “you”.
- “Customer Account” means a storage account for the use of the Service assigned to a Customer.
- “Effective Date” means the date of electronic acceptance of this Agreement by Customer.
- “Customer Data” means any files and data that Customer or User uploads into Customer Account for storage or transfer to third parties, but not any other data. Without limitation, data that is not Customer Data includes registration and relationship information that ExaVault collects to do business with Customer and to improve the Service.
- “User Account” means an individual’s account for use of the Service that is affiliated with a Customer Account.

2. Description of Service

The Service is an Internet-based data storage and transfer service, which can be accessed via a variety of means, including via an ExaVault or third-party website, an ExaVault or third-party mobile application, FTP, SFTP, and an application programming interface (API). We are constantly innovating the Service in order to provide our customers with the best possible experience, and we reserve the right to update the Service at our discretion and to add or delete features at any time. The Service is provided on a subscription basis and does not constitute the license of any software.

3. Customer Account, User Accounts and Responsibilities

A Customer Account is required to be able to access the Service. A Customer Account includes one or more User Accounts. To establish a Customer Account, you must complete a registration process by providing ExaVault with current, complete and accurate information as prompted by the registration form. Once you've established your Customer Account, you can set up additional User Accounts via our Service. In registering users for the Service, you agree that you and your users will submit accurate, current and complete information and promptly update such information as appropriate. Should we suspect that any user information is not accurate, current or complete, we reserve the right to suspend or terminate the Customer's and/or the User's usage of the Service. Each User must choose a personal, non-transferable password. You are solely responsible for any and all activities that occur under your Customer Account, including ensuring that you and all users exit or log-off from the Service at the end of each session of use and ensuring that you and your users have all necessary rights in and to the data submitted to the Service under your Customer Account. You shall notify us immediately of any unauthorized use of your Customer Account or any user password or any other breach of security that is known or suspected by you. Customer agrees to indemnify and hold ExaVault harmless, as provided in section 10, against any claim and/or liability resulting from customer's failure to comply with the responsibilities set forth in this Section.

4. Your Data

Customer retains all rights to any and all of customer's or its users' uploaded data. ExaVault shall not own or license any data, content, information or material that you or your users upload to, download from or store on the service. We will not monitor, edit or disclose any information regarding you or your Customer Account, including any of your data, without your prior permission, except as required by applicable law. We may access your account, including

uploaded data, to respond to service or technical problems or as stated in this Agreement or required by applicable law. You, not ExaVault, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all data, and we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any data.

5. Free Trial

ExaVault provides a one-time free trial offer, which may contain restrictions not found in our paid products (for example, limits on space, bandwidth or number of users). If you exceed these restrictions, we reserve the right to terminate your free trial before the specified end date or require you to switch to a paid plan to continue usage of the account. Additionally, if you have previously created a free trial, you may be required to convert your free trial to a paid account or your free trial account may be canceled. Finally, if we determine that you are using your free trial in a potentially illegal or unethical way, your free trial may be terminated without notice. We also reserve the right to terminate your free trial for other reasons not outlined above, at our discretion. At the end of the trial period, if you previously provided your credit card information, you will be automatically subscribed. We will bill your credit card for the service plan you selected at registration. If you wish to terminate the trial and do not wish to subscribe to a plan, you must notify us at least three (3) business days before the end of your trial period, or after we have notified you of the end of your free trial, as applicable. If you have not previously provided your credit card information, you will be asked to do so at the end of the trial period. If you fail to do so, your account may be terminated pursuant to section 7.

6. Payment of Fees

ExaVault charges for its Service on a monthly, quarterly or annual basis, and there are certain fees which you will be required to pay at pre-determined times using pre-determined methods (e.g. credit card or PayPal). The fees applicable for the Service are available via your Client Area. The fees are due on the anniversary of your plan (monthly, quarterly or yearly) unless otherwise agreed to by the Parties. We reserve the right to change the fees or applicable charges and to institute new charges at any time, upon thirty (30) days prior notice to you. You agree that such notice may be sent by email to the address you have most recently provided to us. Your Customer Account will be considered delinquent if you or your credit card company fails to pay the amount billed to on the date the payment is due. If your account is delinquent for more than fifteen (15) days, we may suspend your account until you pay. If your account is delinquent for more than 30 days, we may delete your account and purge your data from our system. If you believe we have billed you incorrectly, you must contact us no later than 60 days

after the invoice on which the error or problem appeared in order to receive an adjustment or credit.

7. Term and Termination

This Agreement shall commence on the Effective Date and continue until cancelled by either Customer or ExaVault pursuant to this section. ExaVault, in its sole discretion, may suspend or terminate your User Account or Customer Account and remove or discard any uploaded data if you materially fail to comply with this Agreement, which shall include, without limitation, failure to pay fees as specified in section 6, or any of the obligations in Section 3 and 8 regardless of materiality. You may terminate your Customer Account at any time upon three (3) business days' notice to ExaVault. ExaVault may terminate this Agreement and the Service for convenience on sixty (60) days' notice to you. If you terminate your account in the middle of your billing period, we will not provide a refund for the unused portion of your billing period. If you submit a termination request it MUST be submitted in writing, either directly via the 'Request Cancellation' feature of our Service, or via electronic mail sent to ExaVault's support department (support@exavault.com) from the primary address on file for the account. We will not consider any other request as valid, including requests via telephone, online chat, or requests from an email address other than the primary address on file. Upon termination of this agreement, you agree to immediately discontinue all access and use of the Service. You understand that ExaVault will remove and delete all uploaded data from the Service, and you will not have access to such data even if you later decide to re-subscribe or continue your service. Neither party shall be liable for any damages resulting from a termination of this agreement in accordance with this section.

8. User Conduct and Restrictions

Except to the extent permitted by applicable law, neither Customer nor its Users may modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Services and/or any other aspect of the Company's technology. Customer shall not market, offer to sell, sell and/or otherwise resell the Service to any third party. Customer agrees, on behalf of itself and its Users, not to use the Service

- in connection with sending unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages, whether commercial or otherwise;
- to harvest, collect, gather or assemble information or data regarding other persons, including email addresses, without their consent;

- to transmit through or post on the Service unlawful, harassing, libelous, abusive, fraudulent, tortious, defamatory, threatening, harmful, abusive, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or material which is harmful to minors in any way;
- to transmit through or post on the Service any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright, or right of publicity;
- transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as trojan horses, worms, time bombs, cancelbots;
- to interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies or procedures of such networks;
- to harass or interfere with another user's use and enjoyment of the Service;
- to submit to or store in the Service any Protected Health Information;
- to make any representations with respect to ExaVault or this Agreement (including, without limitation, that ExaVault is a warrantor or co-seller of any of Customer's products and/or services);
- use the Service for data backup other than with incremental backup software;
- use the Service for large-scale file distribution; or
- use the Service in a way that 'polls' the Service for a connection more than once per thirty seconds per device, or more than six hundred times per hour in aggregate for all devices. All judgments concerning the applicability of these restrictions and any responses to violations thereof shall be at the sole and exclusive discretion of ExaVault.

ExaVault has no obligation to monitor the Service or any user's use thereof or retain the content of any User session. However, you agree that has ExaVault the right at all times to access, acquire, use, delete, monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request.

9. Proprietary Rights

Except for the subscription rights granted herein, you have no right, title or interest in or to the Service or any intellectual property rights related thereto. You agree that ExaVault or its licensors retain all proprietary right, title and interest, including intellectual property rights, in and to the Services, including, without limitation, all modifications, enhancements, derivative works, configuration, translations, upgrades and interfaces thereto. Unless you request otherwise, we may use the name of your company and screenshots from your public website in advertisements promoting ExaVault.

10. Indemnification

You agree to indemnify, defend and hold harmless ExaVault, its parents, its affiliates and their respective officers, directors, employees, attorneys, representatives, licensors, third-party providers and agents (collectively, the “Indemnified Parties”) from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with your use of the Service or breach of this Agreement (each an “Indemnified Claim”), including but not limited to any use or misuse of of Customer Data by you, or any provision in this Agreement specifying your indemnification of ExaVault. You will indemnify, defend, and hold the Indemnified Parties harmless against any Indemnified Claim, provided ExaVault gives your prompt notice of such Indemnified Claim. Your obligations set forth in the preceding sentence include, without limitation, retention and payment of attorneys and payment of court costs, as well as settlement at your expense, payment of judgments, or both. You will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided ExaVault will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any obligations.

11. Disclaimer of Warranties

THE SERVICES ARE PROVIDED BY EXAVULT ON AN "AS IS", "AS AVAILABLE" BASIS. EXAVULT DOES NOT REPRESENT OR WARRANT THAT: (I) THE USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (II) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (III) ERRORS OR DEFECTS WILL BE CORRECTED. ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY EXAVULT.

12. Limitation of Liability

IN NO EVENT SHALL EXAVULT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY THE CUSTOMER TO EXAVULT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EXAVULT BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER

ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO YOUR USE OR INABILITY TO USE THE SERVICE OR FOR ANY DATA OBTAINED FROM OR THROUGH THE SERVICE, EVEN IF EXAVULT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS ABOVE MAY NOT APPLY TO YOU.

13. Compliance with Laws

Customer and all Users agree to comply with all applicable local, state, national and foreign laws, rules and regulations in connection with their access and/or use of the services under this agreement. You shall comply with all legal duties applicable to you as a data controller by virtue of you submitting uploaded data to or storing uploaded data within the Service. Specifically, you shall provide the relevant persons and/or participants with all information or notices you are required to by applicable privacy and data protection law to provide and, if necessary, obtain the consent of or provide choices to such persons and/or participants as required by such laws. You agree to indemnify ExaVault, pursuant to the terms of Section 10 for any breach by You or your employees or agents of this Section 13.

14. Copyright Complaints and Removal Policy

ExaVault reserves the right to suspend or delete the accounts of users who we believe to be infringing the intellectual property rights of others and to remove any such infringing materials. If you believe the Service has been used in a way that constitutes copyright infringement, please send a message to our Copyright Agent, providing all of the following information, as required by the Digital Millennium Copyright Act:

- A statement that you have identified content on the Service that infringes a copyright you own or the copyright of a third party for whom you are authorized to act;
- A description of the copyrighted work you claim has been infringed;
- A specific description of where the allegedly infringing material is located on the Services, including a URL or exact description of the content's location;
- Your full name, address, telephone number and email address;
- A statement that you have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use);

- A statement that, under penalty of perjury, the information in your notice is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; and
- Your electronic or physical signature (e.g., a scanned copy).

Please send your notice by email or regular mail to:

Attn: DMCA Copyright Agent

ExaVault, Inc.

344 Thomas L Berkley Way

Oakland, CA 94612

Email: support@exavault.com

ExaVault reserves the right to forward the information in the copyright-infringement notice to the user who allegedly provided the infringing content.

15. Export Restrictions

ExaVault controls and operates the Service from its location in the United States using servers in the U.S. and other countries. As a U.S. company, ExaVault and its Services are subject to the U.S. economic sanctions and export control laws and regulations. ExaVault makes no representation that the Service is appropriate or available for use in other locations. By using the Service outside of the U.S., you agree that you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of the U.S. and other countries. You further agree that no information or data acquired through the use of the Service is or will be acquired for, shipped, transferred, exported or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor is or will be used for nuclear activities, chemical biological weapons or missile projects, unless specifically authorized by the U.S. Government for such purposes. You further acknowledge that uploaded data may be stored on or routed through servers located outside the United States. You shall comply strictly with all U.S. export control and economic sanctions laws and regulations (including, without limitation, the U.S. International Traffic in Arms Regulations, the U.S. Export Administration Regulations and regulations administered by the Department of the Treasury's Office of Foreign Assets Control) applicable to transfers of such uploaded data and assume sole responsibility for obtaining licenses to export or re-export as may be required. ExaVault shall have no liability for your failure to comply with such laws, regulations, licenses or other authorizations in relation to the Service and/or the uploaded data, and you agree to indemnify ExaVault from any third party claim alleging actions that would be in breach of this Section 15

Notwithstanding any other provision in this Agreement, ExaVault shall have the right to terminate this Agreement immediately upon the determination by ExaVault that Customer is not in compliance with US export laws or violates any government privacy and/or data protection laws.

16. Compliance with EU Law

For purposes of the GDPR, the parties agree that you are the data controller for the Customer Data, and ExaVault is the data processor. ExaVault is data controller for registration, contact, payment, and other information relating to the administration of your account, but not Customer Data. For your rights relating to the information for which ExaVault is the data controller, please see our privacy policy.

The data processing addendum located at <https://www.exavault.com/dpa/> is incorporated into this Agreement by reference, and governs all processing of personal data of data subjects who are in the European Union, or other data governed by the GDPR which you upload to ExaVault. By agreeing to these Terms of Service, you are also agreeing to the terms of the Data Processing Addendum for such data. The Data Processing Addendum does not pertain to data you upload which is not subject to the GDPR. The Standard Contractual Clauses (for processors) are also included with the Data Processing Addendum, in its Annex 2.

ExaVault also complies with the EU-US Privacy Shield Framework as set forth by the US Department of Commerce regarding the collection, use, and retention of personal information from European Union member countries. ExaVault has certified that it adheres to the Privacy Shield Principles of Notice, Choice, Accountability for Onward Transfer, Security, Data Integrity and Purpose Limitation, Access, and Recourse, Enforcement and Liability. If there is any conflict between the policies in this privacy policy and the Privacy Shield Principles, the Privacy Shield Principles shall govern. To learn more about the Privacy Shield program, and to view our certification page, please visit <https://www.privacyshield.gov/>

17. Third Party Interaction; Links to Third Party Sites

In connection with your use of the Service, you may encounter links to third party sites that are not under the control of ExaVault. Any such sites and any terms, conditions, warranties or representations associated with such sites are solely between you and the applicable third party. ExaVault shall have no liability, obligation or responsibility for any such third party sites. ExaVault is providing these links to you only as a matter of convenience, and in no event shall ExaVault be responsible for any content, products or other materials on or available from such third-party sites.

18. Modifications to this Agreement

We may modify these terms or any additional terms that apply to the Service to, for example, reflect changes to the law or changes to our Service. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted at <https://www.exavault.com/terms> and after we have sent an email to the email address provided as part of your Customer Account data. However, changes addressing new functions for the Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified Agreement, you should discontinue your use of the Service.

19. Privacy

Use of the Service shall be subject to the ExaVault Privacy Policy which is available at <https://www.exavault.com/privacy/>, and by entering into this Agreement you also agree to the terms of the Privacy Policy.

20. Dispute Resolution

- **Governing Law.** These Terms will be governed by the laws of the State of California.
- **Agreement to Arbitrate.** You and ExaVault agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Service (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an "IP Protection Action"). The exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties consents to the exclusive and personal jurisdiction of such courts.
- **Class Action and Jury Trial Waiver.** You acknowledge and agree that you and ExaVault are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and ExaVault otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. This "Dispute Resolution" section will survive any termination of these Terms.
- **Arbitration rules.** The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the

Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at <https://www.adr.org/sites/default/files/Commercial%20Rules.pdf> or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

- Arbitration process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at https://www.adr.org/sites/default/files/Consumer_Demand_for_Arbitration_Form_1.pdf.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.
- Arbitration location and procedure. Unless you and ExaVault otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and ExaVault submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.
- Arbitrator's decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. ExaVault will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).
- Fees. Each party will bear its own AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules or as determined by the arbitrator.

21. Additional Terms

Customer and ExaVault are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void. For all purposes of this Agreement and the operation of the Service, ExaVault shall be entitled to rely on its reasonable and good faith determination of an individual's or administrator's authority to act on behalf of Customer. Neither party will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control, but only for so long as such conditions persist. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities and civil commotions; activities of local exchange carriers, telephone carriers, wireless carriers, Internet service providers and other third parties; explosions and fires; embargoes, strikes and labor disputes; governmental decrees; and any other cause beyond the reasonable control of a party. If at any time continued provision of the Service would compromise the security of the Service due, without limitation, to hacking attempts, denial of service attacks, discovery of security vulnerabilities, mail bombs or other malicious activities, Customer agrees ExaVault may temporarily suspend the Service. ExaVault may provide Customer with any notice under this Agreement via email, regular mail and/or postings on the ExaVault website. Notice provided by email will be considered received when sent to the email notice provided by you in association with the Customer Account. The failure of a party or ExaVault in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s). If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement, and the other provisions shall remain in full force and effect. In this case, the parties agree to comply with the remaining terms of this Agreement in a manner consistent with the original intent of the Agreement. Captions and headings are used herein for convenience only. Captions and headings are not a part of this Agreement and shall not be used in interpreting or construing this Agreement. The English language version of this Agreement shall be the controlling version and is incorporated by reference into any translation of this Agreement. Any translation or other language version of this Agreement shall be provided for informational purposes only. Pronouns contained in this Agreement shall apply equally to the feminine, neuter and masculine genders. The singular shall include the plural, and the plural shall include the singular.