

Terms and Conditions

IT IS AGREED BETWEEN THE PARTIES THAT:

1. INTERPRETATION

1.1. In this Agreement the following capitalised terms shall have the following meanings:

“Agreement” means these Terms and Conditions together with the Mercury Agreement Summary, Statement of Work, [the Data Processing Agreement](#), [the Service Level Agreement](#), any subsequent Orders agreed between the parties, and any other document referred to in them;

“Agreement Date” means the date the Agreement Summary is fully executed by all parties;

“Agreement Summary” means the summary document which both parties sign and date to enter into the Agreement;

“Agreement Term” means the period starting from the Agreement Date together with the Initial Term and any subsequent Auto Renewal Period(s);

“Affiliate” means any entity that directly or indirectly controls, or is controlled by, or is under common control with another entity;

“Affiliate Software” means services or a software application owned and licensed by an independent third party that connects with the Product, which has been developed by the third party which may have been without Mercury’s input or support.

“Auto Renewal Period” means a 24-month period starting at the end of the Initial Term, automatically renewing for 24-month periods thereafter (each an Auto Renewal Period), unless terminated in accordance with the terms of the Agreement;

“Confidential Information” means any information, regardless of form, relating to either party, their business, finances, technology, intellectual property, or operations, whether individually confidential or in combination, disclosed in connection with this Agreement or the provision of Products or Professional Services, and which the party regards, or could reasonably be expected to regard, as confidential;

“Core User” is an individual who is authorized to use the Products (excluding Lite Users and Integration Users). This status applies even if the individual uses the Product for only part of a month;

“Customer” means the customer named in the Agreement Summary;

“Customer Data” means content and data inputted by a Customer or a User into the Products, or imported, processed, stored, or generated as the result of, or for the purpose of using the Products and Professional Services. Customer Data does not include Statistical Data;

“Customer Third Party” refers to any individual or entity that provides products, services, or support related or connected to this Agreement (including those that the Product may be contingent on, or impacted by) pursuant to a contract with the Customer, and who is not an Integration Partner or Affiliate Software provider;

“Deliverables” means all outputs, materials, work products, results, and other intellectual property created, developed, or produced by Mercury (or on Mercury’s behalf) in the course of performing Professional Services for the Customer under this Agreement;

“Environment” means a Power Platform Environment which is a container for storing, managing, and sharing a Customer’s applications and data;

“Fees” means all amounts payable by the Customer to Mercury pursuant to the Agreement, and includes the Product Fees, Service Fees, Integration Software Fees and Microsoft Fees;

“Force Majeure Event” means anything outside the reasonable control of a party, including but not limited to acts of God, natural disasters, wars, epidemics, labor issues, power outages, Internet delays or outages, transportation delays, or government actions;

“Initial Term” means the period set out in an Agreement Summary;

“Integration User” means a dedicated account provided for integration purposes;

“Integration Partner” means the owner or licensor of the Integration Software.

“Integration Software” means an integration service or software application owned or licensed by an independent third party, that connects or integrates with the Product, where the integration functionality has been developed by either Mercury or the Integration Partner with Mercury’s support. The Integration Software may be

licensed by Mercury. First-line support may be provided by either Mercury or the Integration Partner, in accordance with the [support table](#).

“Integration Software Fees” means, where it is agreed that Customer will pay Mercury directly for a license to the Integration Software, the Fees applicable for such license, as set out in the Agreement Summary or an Order;

“Intellectual Property Rights” means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trademarks, business names, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable;

“Licensing Date” means the date specified in the Agreement Summary on which Mercury makes the licenses required under this Agreement available to the Customer. From that date, the Customer is liable for the Fees in respect of all licenses made available, irrespective of usage;

“Lite User” means a Mercury approved Lite User license, where such user is granted access to a limited-functionality version of the Products;

“Malware” means any software, code, or device that disrupts computer systems, networks, or telecommunications; impairs access to or operation of programs or data; or negatively impacts user experience. This includes, but is not limited to, worms, trojan horses, and viruses;

“Mercury” means the Mercury entity named in the Agreement Summary;

“Mercury Data Processing Agreement” means the data processing agreement of Mercury, available at <https://wearemercury.com/dpa> (also referred to as **DPA**);

“Mercury Privacy Policy” means Mercury’s privacy policy, available at <https://wearemercury.com/privacy-policy/>;

“Mercury Support User” means the dedicated account allocated to Mercury personnel to access the Customer’s environment in their Microsoft account.

“Microsoft Fees” means the fees payable by the Customer to Mercury in consideration of the Microsoft Licenses, as set out in the Agreement Summary or an Order;

“Microsoft Licenses” means all Microsoft licenses provided by Mercury as a Microsoft Cloud Solution Provider (CSP) to the Customer;

“Order” means the confirmation of additional Products and/or Professional Services, agreed in accordance with clause 2 of these Terms and Conditions;

“Permitted Customizations” means the document published at <https://wearemercury.com/permitted-customisations/>;

“Personnel” means, in respect of a party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of Customer, does not include Mercury;

“Power Platform” means Microsoft’s Power Platform, owned and operated by Microsoft, which allows Mercury to build Products for Customers;

“Power Platform Requests” means any action or API call made by a User in the Customer’s Environment in Power Platform;

“Personal Data” means any information that relates to an identified or identifiable individual, including but not limited to personal information as defined under applicable state data protection laws (e.g., CCPA, VCDPA, CPA, UCPA, CTDPA).”

“Product” means all Mercury applications provided to the Customer under this Agreement during the Agreement Term, included in the Agreement Summary or any subsequent Orders;

“Product Fees” means the fees payable for Products, as set out in an Agreement Summary and as adjusted in accordance with the Agreement;

“Professional Services”, means all services ancillary to the Products, to be provided by Mercury to the Customer pursuant to this Agreement, such as project management, configuration, data engineering, support, maintenance, consulting, training, or any other professional services, as specified during the Agreement Term in an Agreement Summary or

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subsequent Order;

“Service Fees” means the fees payable for the Professional Services, as set out in an Agreement Summary, and as adjusted in accordance with the Agreement;

“Service Levels” means the service levels set out in the Service Level Agreement;

“Service Level Agreement” means Mercury’s service level agreement, available at <https://wearemercury.com/SLA>;

“Service Principal” means a dedicated account which grants Mercury access to the Customer’s applications in their specific tenant;

“Statement of Work” means the statement of work attached to the Agreement Summary;

“Statistical Data” means aggregated, anonymized data derived from the Customer and User’s use of the Products which does not identify any personal information or Customer Confidential Information;

“Target Go-Live Date” means the target go-live date set out in each Agreement Summary, on which the Products should “go live”;

“Third Party Product” means any goods, services or software applications owned or licensed by an independent third party which the provision of the Product may be contingent on, or impacted by, and includes Microsoft Licenses, a Customer Third Party, Affiliate Software and Integration Software;

“User” means Customer’s Personnel permitted to access and use the Product including “Core Users” and “Lite Users” and system-to-system access by any “Integration Users”;

1.2. Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all.

1.3. All other genders and references to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof and shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.6. A reference to writing or written excludes email unless an email is explicitly included.

1.7. References to clauses, paragraphs and schedules are to the clauses and schedules of this Agreement.

1.8. The words and phrases “including” and “in particular” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.

2. PROVISION OF THE PRODUCTS AND PROFESSIONAL SERVICES

2.1. The Customer engages Mercury, and Mercury agrees to provide the Products and Professional Services to the Customer, in accordance with the terms of this Agreement during the Agreement Term, with the provision of the Products to commence on the Licensing Date.

2.2. Upon request, the Customer may purchase one (1) Lite User as part of this Agreement.

2.3. The Services will be provided as described in each Agreement Summary and Statement of Work. Any Target Go-Live Date for the provision of the Products is an estimate only, and Mercury may change this date, including where:

(a) the Customer changes its requirements or provides new instructions after the Professional Services have commenced;

(b) Mercury’s ability to provide the Professional Services is delayed by any act or omission of the Customer in breach of the Customer’s obligations under this Agreement;

(c) the parties mutually agree to extend the Target Go-Live Date; and/or;

(d) applicable third party makes changes that adversely affect the operation or functionality of Products or Power Platform, subsequently impacting Mercury’s ability to deliver Products or Professional Services to agreed timescales.

2.4. Customers and Customer Affiliates agree to adhere to Mercury’s Permitted Customizations document.

2.5. To ensure optimal performance and security, the Customer agrees to routinely accept all Mercury releases and updates. Which will be detailed in the quarterly Mercury release schedule. To allow for efficient management and installation of releases and updates from Mercury, a Service Principal should manage the installation of releases and updates from Mercury. We are not responsible for any compatibility issues or for our inability to provide full technical support where we have been unable to apply updates due to reasons beyond our control, including where the Customer has impeded or delayed the update process.

2.6. A sandbox environment is recommended to be purchased by the Customer in order to have early access to forthcoming releases and maintain continuous functionality. A sandbox environment is required to perform Permitted Customizations.

2.7. The Customer may request to purchase additional Products or Professional Services during the Agreement Term. Where Mercury is willing to provide such additional Products or Professional Services, Mercury will provide the Customer with a quotation and Statement of Work where appropriate, setting out (among other things) the items requested and any Fees associated with the additional Products or Professional Services. Once the quotation has been signed by the Customer, it will be considered an Order binding on the parties. Each Order will be subject to, and will be governed by, this Agreement. To the extent of any ambiguity or discrepancy between an Order and these Terms and Conditions, the Terms and Conditions will prevail.

3. LICENSE TO USE THE PRODUCT AND PROFESSIONAL SERVICES

3.1. Subject to payment of the Fees, Mercury grants the Customer a renewable, non-exclusive, non-transferable, revocable, worldwide right for the Customer and its Users to access and use the Products and Deliverables (including any associated Intellectual Property Rights and Confidential Information of Mercury contained therein) from the Licensing Date for the Customer’s own operational purposes during the Agreement Term.

3.2. The Customer may authorize its Affiliates to access and use the Products and Deliverables for such Affiliates’ own business purposes during the Agreement Term or terms equivalent to those set out in the Agreement, provided that prior to any Affiliate using the Products or Professional Services, the Customer:

(a) notifies Mercury in writing and provides full details of the relevant Affiliate;

(b) provides the terms of the Agreement to the relevant Affiliate and ensures that such Affiliate agrees in writing to be bound by such terms (and for this purpose references to the ‘Customer’ shall be interpreted as references to the relevant Affiliate and reference to ‘Users’ shall be interpreted as references to Users of the relevant Affiliate);

(c) agrees to remain jointly and severally liable with the Affiliate for any breach of the Agreement terms by the Affiliate or its Users; and

(d) hereby agrees to indemnify Mercury against all loss and damage caused to Mercury or its Affiliates, resulting from the Affiliate’s or its Users’ breach of the terms of the Agreement.

3.3. The Customer may only modify Products as described in the Permitted Customizations document, but not create derivative works from the Products. No additional implied rights are granted beyond those specifically mentioned in clause 5.

3.4. The Customer may not, except as expressly permitted in this Agreement:

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- (a) lease, loan, resell, assign, license, distribute or otherwise permit access to the Products and Deliverables;
- (b) use the Products or Deliverables for any other purpose not contemplated by the Agreement, including to provide ancillary services related to the Products or Deliverables;
- (c) permit access to or use of the Products or Deliverables by or on behalf of any third party;
- (d) attempt to copy, modify, duplicate, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Products in any form or media or by any means;
- (e) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products;
- (f) access all or any part of the Products in order to build a product or service which competes with the Products;
- (g) use the Products to provide products similar to the Products to third parties, which for the avoidance of doubt shall not prevent the Customer from providing recruitment services to its customers as part of its normal course of business;
- (h) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Deliverables available to any third party; or
- (i) attempt to obtain, or assist third parties in obtaining, access to the Products, other than as provided under this clause 3; and or assist or permit any User to do so.
- (j) The Customer shall use commercial reasonable efforts to prevent any unauthorized access to, or use of, the Products and, in the event of any such unauthorized access or use, promptly notify Mercury.
- (k) The Customer must at all times during the Agreement Term allow Mercury (and its Personnel) via the Service Principal or Mercury Support User account with all necessary (remote) access to its systems in order to perform the Professional Services. Mercury agrees to follow any reasonable requirements of the Customer with respect to verifying the identity of any Personnel seeking to access its systems pursuant to this clause.
- (l) To perform its obligations under the Agreement, Mercury may need to install solution files, transfer data or conduct a remote diagnosis using a Service Principal or Mercury Support User account. Where this is required, the Customer agrees to provide necessary access via Service Principle and assistance for such installations, data transfers or diagnosis. If the Customer fails to provide such necessary access and assistance, it shall reimburse Mercury for all additional costs that Mercury incurs due to the Customer's omission under this clause.

4. THIRD PARTY INTEGRATIONS

- 4.1. The Customer acknowledges and agrees that:
 - (a) Mercury's Products and Professional Services may interact with, or enhance the usage, of Third Party Products;
 - (b) the Customer's use of any part of the Third-Party Products may be subject to the license terms and/or support terms imposed by such third parties;
 - (c) subject to clause 4.2, they are solely responsible for paying all fees related to the Third Party Products;
 - (d) they shall (and shall ensure that its Personnel) comply with all third-party terms applicable to its integration with the Product and the Third-Party Product itself; and
 - (e) subject to clauses 4.2 and 4.3, Mercury does not, and cannot, exercise any control over such Third Party Products or the terms on which their software applications are licensed, maintained or supported, and Mercury has no liability whatsoever to the Customer or any User in respect of any Third Party Product.
- 4.2. Where it is agreed that Mercury will license the Integration Software to the Customer on behalf of the Integration Partner, the Customer agrees:
 - (a) to pay Mercury the Integration Software Fees in accordance with the agreed payment terms;
 - (b) to comply with any additional terms and conditions relating to the Integration Software license, as may be set out in the Agreement Summary or an Order;
 - (c) that Mercury acts solely as an intermediary in the licensing process and is not responsible for the functionality, performance, or support of the Integration Software beyond what is explicitly agreed upon in the support table;
 - (d) not to modify, reverse engineer, decompile, or create derivative works based on the Integration Software without prior written consent from us or the Integration Partner; and
 - (e) that the Integration Software license may be subject to change or termination by the Integration Partner, and that Mercury will provide reasonable notice of any such changes where possible. Where the Integration Software is discontinued or ceases to integrate with the Product, the Customer will no longer be liable to pay the Integration Software Fees, however the Product will continue to be supplied in accordance with the Agreement, and the remaining Fees (less the Integration Software Fees) will still be payable by the Customer.
- 4.3. The Customer acknowledges and agrees that Mercury's level of support for the Product (to the extent that the support relates to an integration between a Third-Party Product and the Product) varies depending on the type of integration, and the Customer agrees that:
 - (a) for Integration Software, Mercury and the Integration Partner are jointly responsible for the development, ongoing maintenance, and support of the Integration Software's integration with the Product, to ensure the integration's functionality and performance. However, Mercury is not responsible for any underlying issues with the Integration Partner's service itself, which is the sole responsibility of the Integration Partner;
 - (b) for Affiliate Software Mercury may in good faith provide assistance to ensure compatibility, functionality, and a smooth user experience, but Mercury is not responsible for the development, ongoing maintenance, or support of the Affiliate Software, and any issues arising from the Affiliate Software is the sole responsibility of the third-party provider of such software; and
 - (c) for any products, software or services provided by a Customer Third Party, Mercury has no control over the integration, maintenance, or provision of the Customer Third Party or its integration with the Product, and is not responsible for providing any support for the same. The Customer assumes full responsibility for managing such integrations and ensuring its continued functionality of the Customer Third Party with the Product.
- 4.4. The Customer acknowledges and agrees that any contract entered into by the Customer with any third parties in respect of a Third-Party Product is entered into by the Customer at its own risk. Mercury recommends that the Customer refers to the third party's terms and conditions and privacy documents prior to using the relevant Third-Party Product. Mercury does not endorse or approve any Third-Party Product nor the content of any of the third party websites made available via the Products.
- 4.5. If the Customer builds or utilizes an integration, connecting a Customer Third Party to the Product, the Customer agrees that:
 - (a) it is responsible for ensuring that it has paid and instructed the Customer Third Party to cooperate with Mercury (if applicable);
 - (b) Mercury has no liability whatsoever to the Customer for any problems with any interface or integration resulting from acts or omissions of the Customer or a Customer Third Party;
 - (c) Mercury shall have no liability or obligation whatsoever to the Customer in relation to the content on, or use of, or connection with any Customer Third Party's system made available via the use of the Products;

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- (d) the successful operation of any interface or integration is dependent upon the technical set-up of the Customer Third Party's systems, and the Customer agrees that Mercury cannot be held liable for any failures in the operation of the interface or integration; and
 - (e) the Customer and Customer Third Party are responsible for ensuring any Power Platform Requests are sufficient for its operation and will not cause issues with the Products.
- 4.6. If an issue arises concerning the effective operation of an Integration Software, Mercury will use commercially reasonable efforts to resolve the issue at the earliest opportunity.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. All Intellectual Property Rights and title to the Products, Deliverables, its related processes, instructions and techniques, and in any other materials created or originated in connection with or related to the provision of the Products, (save to the extent these incorporate any Customer Data, Customer Intellectual Property Rights or third party owned item) remain vested in Mercury and/or its licensors and subcontractors. The Customer is not allowed to remove any proprietary marks or copyright notices from the Products. All rights not expressly granted are reserved by Mercury.
- 5.2. The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and Customer Intellectual Property Rights and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants Mercury a non-exclusive, license to use Customer Data, Customer Intellectual Property Rights and any third party owned item for the Agreement Term to the extent required for the provision of the Products and Professional Services to the Customer.
- 5.3. The Customer grants Mercury a non-exclusive, non-transferable, worldwide, revocable license to use the Customer's name, logo and trademarks, as designated and/or amended by the Customer from time to time in order to provide the Products and Professional Services and/or in the promotion of Mercury (including on its website). Mercury shall comply with Customer's provided trademark guidelines.
- 5.4. Mercury and its licensors and subcontractors reserve the right to electronically monitor the Customer's use of the Products and Professional Services to ensure its compliance with this clause 5.
- 5.5. Mercury may create and use Statistical Data, and retains all its Intellectual Property Rights in and to such data.
- 5.6. The Customer assigns all rights, title and interest in any feedback about the Products and Professional Services to Mercury. If for any reason such assignment is ineffective, the Customer hereby grants Mercury a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sub-license, distribute, modify and exploit such feedback without restriction.

6. MICROSOFT LICENSING & POWER PLATFORM

- 6.1. When using the Power Platform the Customer acknowledges and agrees:
- (a) to follow Microsoft processes that identify Mercury as Microsoft's official partner for providing Power Platform services. Currently PAL (Partner Admin Link) and DPOR (Digital Partner of Record);
 - (b) that the Products and Professional Services are wholly reliant upon the correct functioning, provision, limitations and requirements of the Power Platform for more information refer to: <https://learn.microsoft.com/en-us/power-apps/limits-and-config>
 - (c) that where Customer has engaged Mercury for Microsoft Licenses, Mercury will log any issues with the Power Platform or Dynamics 365 or Microsoft 365 with Microsoft. If a Microsoft case is opened, the Customer must be available to collaborate with Microsoft's support engineer to resolve the issues;

- (d) that Microsoft (not Mercury) provide availability, security, backup, data privacy etc. for Environments in the Power Platform; and
- (e) that Microsoft dictates that further data storage capacity must be purchased and that the Power Platform may not function correctly if the Customer is not within the capacity and certain actions cannot be performed. Details on Microsoft's Dataverse Storage Capacity can be found at: <https://learn.microsoft.com/en-us/power-platform/admin/capacity-storage>.
- (f) Mercury cannot be held accountable for any issue arising with the Products or Professional Services caused by Microsoft;

- 6.2. The Customer acknowledges that the Products are provisioned as a Power Platform application in the Customer's Environment inside the Customer's own Microsoft tenant with data going to Mercury's multi-tenanted integration layer in Mercury's Microsoft tenant.
- 6.3. Upon termination of this Agreement, the Customer agrees to cease the use of all Products in their Environment and allow Mercury to remove them.
- 6.4. Where Mercury agrees to supply Microsoft Licenses to Customer under the Agreement Summary or an Order:
- (a) in consideration of the Microsoft Fees, Mercury will provide the applicable Microsoft Licenses to the Customer as a Microsoft Cloud Service Provider (CSP);
 - (b) the Customer must accept the Microsoft Customer Agreement: <https://www.microsoft.com/licensing/docs/customeragreement>;
 - (c) the Customer acknowledges and agrees that the Microsoft Licenses may have a different subscription length to other Products, as set out in the Agreement Summary or the relevant Order; and
 - (d) if the Agreement is terminated before the Microsoft Licenses purchased terminate, the Microsoft Licenses shall continue for the remainder of the term purchased by the Customer. If the Customer wishes to prevent the Microsoft Licenses from automatically renewing after the expiry of the Agreement Term, a termination notice must be validly given at least 7 days before the anniversary of the renewal date, or the Microsoft Licenses will automatically renew.

7. FEES AND INVOICING

- 7.1. Mercury shall invoice the Customer the Fees, and the Customer agrees to pay the Fees using the method and currency set out in the Agreement Summary and subsequent invoice.
- 7.2. The Customer shall be liable to pay any applicable federal, state, or local sales tax in addition to the Fees.
- 7.3. During the Initial Term or any subsequent Auto Renewal Period, Mercury shall be entitled to increase the Product Fees once per annum by giving the Customer not less than 30 days' written notice, provided that such increase shall not result in an increase in the Fees greater than that of the US Consumer Price Index (CPI), as published by the US Bureau of Labor Statistics, for the period 12 calendar months immediately preceding the date the increase is given to the Customer.
- 7.4. Effective from the expiry of the Initial Term or Auto Renewal Period, Mercury reserves the right to remove any discounts applied to the Initial Term or Auto Renewal Period. To maintain a discount, the Customer can sign a new Agreement Summary with greater or equal to the Initial Term in the original Agreement Summary.
- 7.5. In addition to clause 7.4, on the expiry of the Initial Term, and on the expiry of each Renewal Term, Mercury may increase the Fees with written notice to the Customer. If the Customer does not agree with the increased Fees, the Customer may terminate the Agreement with written notice to Mercury prior to the expiry of the Initial Term or then-current Auto Renewal Term (as applicable).
- 7.6. Mercury may increase the Microsoft Fees and Integration

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Software Fees where Microsoft or the Integration Partner (as applicable) increases its fees to Mercury. Any such increase in the relevant Fees shall be proportionate to the increase imposed by Microsoft or the Integration Partner on Mercury. Mercury shall provide the Customer with written notice of any such Fee increase at least 30 days prior to the effective date of the increase, and the increased Microsoft Fees and/ or Integration Fees shall apply to all invoices issued on or after the effective date specified in the notice.

7.7. The Customer shall be entitled:

- (a) on each anniversary of the Licensing Date, to reduce the number of Core Users, provided that: (i) no such decrease shall exceed a number equal to 10 per cent of the then-current number of Core Users; (ii) the total number of Core Users shall not be less than those purchased and set out in the Agreement Summary (excluding Lite Users); and (iii) notice to reduce the number of Core Users is given to Mercury in writing at least 30 days before any anniversary of the Licensing Date; and
- (b) to increase the number of Core Users at any time by (i) giving at least 3 days' prior written notice to Mercury, or (ii) increasing the number of Core Users directly, using the Power Platform. The Product Fees for the remainder of the Agreement Term will be increased for each additional Core User on and from the date that each new Core User is added (unless and until the number of Core Users subsequently decreased, as set out above). Where a Core User is added during a month for which the Product Fees have been prepaid, the Product Fees for the additional Core User will be calculated on a pro-rate basis for their first month and added to the next invoice.

7.8. If any Third Party Product provider increases its charges to Mercury, Mercury shall be entitled to pass such increases on to the Customer immediately, and the Customer shall pay such sums in accordance with this Agreement. In the case of any third party other than Microsoft, any increase in charges shall not exceed the annual increase in the US Consumer Price Index (CPI), as published by the US Bureau of Labor Statistics, without the prior written consent of the Customer.

7.9. The fees for any Professional Services required by the Customer in addition to the original scope of the requirements set out in a Statement of Work, and the fees for Mercury's assistance shall be calculated according to Mercury's then current charging rates, and chargeable to the Customer as part of the Fees.

7.10. Reasonable travel, accommodation and subsistence expenses incurred by Mercury in providing any Professional Services shall be reimbursed by the Customer, following prior written approval. In respect of such expenses, the Customer agrees:

- (a) in instances where the duration of a single flight exceeds 5 hours, Mercury reserves the right to upgrade the employee to a minimum of premium economy or its equivalent.
- (b) in cases where Mercury is required to procure visas, the associated costs shall be chargeable to the Customer; and
- (c) in the event that Mercury is requested to provide in-person training and support, Mercury retains the right to refuse the request if it determines that the travel poses a significant risk to the individual.

8. PAYMENT

8.1. The Customer agrees to pay the Fees in accordance with the payment terms, as set out in the Agreement Summary or the applicable Order. Where payment terms are not expressly set out in an Agreement Summary or Order, all Fees are payable within 14 days of the date of each invoice.

8.2. If the Customer believes that any invoice is incorrect, it must notify Mercury in writing within 7 days of the invoice date and refer the matter for dispute resolution pursuant to clause 24 of these Terms and Conditions.

8.3. In the event that the Customer raises a bona fide dispute in relation to any Fees, the Customer shall remain obligated to settle all outstanding Fees and invoices, and continue making

payment of the Fees in accordance with the agreed payment terms. Where Mercury (or a court of appropriate jurisdiction, in accordance with clause 24) reasonably determines that the Customer is entitled to a refund of part or all of the Fees, Mercury shall promptly reimburse the relevant amounts accordingly.

8.4. Where the Customer fails to pay the Fees in by the due date for payment according to the payment terms set out in the Agreement Summary or an Order Mercury may, without prejudice to any other rights and remedies it may have against the Customer:

- (a) where the Fees are more than 7 days overdue, suspend or terminate the Customer's access to all or part of the Products and Professional Services without liability to the Customer, and Mercury shall be under no obligation to provide any or all of the Products or Professional Services while the invoice(s) concerned remain unpaid; and

8.5. charge interest on overdue amounts at a rate of 1.5% per month or the maximum rate permitted under applicable law in the governing US state, whichever is lower. Mercury is not entitled to charge interest under clause 8.4 in respect of any sum which is the subject of a bona fide dispute, provided that:

- (a) the Customer pays any Fees in accordance with this Agreement;
- (b) the Customer notifies Mercury of any such dispute within 7 days of the invoice date and refers the matter for resolution by recourse to the dispute resolution procedure specified in clause 25; and
- (c) Mercury shall continue to provide the applicable Products and Professional Services the subject of the bona fide dispute, pending resolution of any such bona fide dispute.

8.6. Mercury reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.

9. WARRANTIES

9.1. Each party warrants and represents that:

- (a) it has the full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;
- (b) the execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
- (c) it shall comply with all applicable laws, regulations, governmental orders and court orders, which are applicable to such party based on its role and performance under this Agreement.

9.2. Mercury warrants that:

- (a) it has the right to license the use of the Products and Deliverables to the Customer;
- (b) it will provide the Professional Services in a good and workmanlike manner;
- (c) it will take reasonable commercial measures (including, by way of example, the use of appropriate security procedures and reputable and up-to-date security software) to prevent contamination by Malware of data or computer systems owned or operated by the Customer or any User via systems owned or operated by Mercury and used or accessed in the performance of this Agreement;
- (d) it will maintain for the Agreement Term all licenses, consents, and permissions necessary for the provision of the Products to the Customer and Users, and the performance of its obligations under this Agreement.

9.3. Mercury's warranties in clauses 9.1 and 9.2 do not cover deficiencies or damages relating to:

- (a) any breach by Customer of the Agreement;
- (b) any third party components not provided by Mercury (including Third Party Products);
- (c) any third party provided connectivity necessary for the provision or use of the Products and Professional Services;

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- (d) compliance with third party software or applications, non-Mercury programs or data used in combination with the Product or Professional Services, except as set out in the description of Mercury;
 - (e) modifications made to the Product not carried out by Mercury, unless modifications were authorized by Mercury.
- 9.4. No warranty is made regarding the results the Customer can achieve from using the Product and Professional Services, or that the Product will operate uninterrupted, error-free or completely securely.
- 9.5. All third party content or information provided by Mercury via the Product or Professional Services, is provided “as is”. Mercury provides no warranties in relation to such content or information and shall have no liability whatsoever to the Customer for its use or reliance upon such content or information and the Customer’s use of the content or information is at its own risk.
- 9.6. The Customer acknowledges that the Products should not be used for high-risk applications where precise locations or features on maps are essential to the Customer, for example, use of the Product by the emergency services.
- 9.7. Mercury does not and cannot control the flow of data to or from its network and other parts of the internet. Such flow depends largely on the performance of internet services provided or controlled by third parties. At times, acts or omissions of such third parties can impair or disrupt connections to the internet (or parts thereof). Although Mercury will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Mercury cannot guarantee that such events will not occur. Accordingly, Mercury disclaims any and all liability resulting from or related to such events.
- 9.8. The Customer warrants that:
- (a) it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement;
 - (b) it (and its Users) shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Products and Deliverables granted under this Agreement is limited as set out under this Agreement. In particular the Customer and Users shall treat any identification, password or username or other security device for use of the Products and Deliverables with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorized persons. Any breach of the above shall be immediately notified to Mercury in writing. The Customer shall be liable for any breach of this Agreement by a User;
 - (c) it shall ensure that its network, infrastructure, and systems comply with the system requirements set out by Microsoft for the Power Platform;
 - (d) it shall not use or permit the Products to be used to access, store, distribute or transmit any Malware, or any material that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability; or (vi) in a manner that is otherwise illegal or causes damage or injury to any person or property; and Mercury reserves the right, without liability or prejudice to its other rights to the Customer, to disable access by the Customer to any material that breaches the provisions of this clause;
 - (e) any software, data, equipment or other materials provided by the Customer to Mercury or employed by the Customer in its use of or receipt of the Products shall not infringe any Intellectual Property Rights of any third party; and
 - (f) it will fulfil any training requirements agreed with Mercury in accordance with the timetable set by Mercury.
- 9.9. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE PRODUCTS ARE PROVIDED ‘AS IS.’ MERCURY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 9.10. In the event of any breach of any of the Customer’s representations or warranties, in addition to any other remedies available at law or in equity, Mercury will have the right to suspend immediately the provision of any related Products or Professional Services if reasonably deemed necessary by Mercury to protect the proper interests of Mercury or its other customers. If practicable and depending on the nature of the breach, Mercury may (in its absolute discretion) give the Customer an opportunity to remedy the breach. In such case once the Customer has cured the breach, Mercury will promptly restore the suspended Products or Professional Services.
- ## 10. LIMITATION OF LIABILITY
- 10.1. TO THE MAXIMUM EXTENT ALLOWED BY LAW, MERCURY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION; AND LOST PROFITS, REVENUE, OR ANTICIPATED COST SAVINGS), EVEN IF IT KNOWS OF THE POSSIBILITY OR FORESEEABILITY OF SUCH DAMAGE OR LOSS.
- 10.2. TO THE MAXIMUM EXTENT ALLOWED BY LAW, MERCURY’S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.
- 10.3. The Customer shall be liable for any breaches of this Agreement caused by itself or its Affiliates. For the avoidance of doubt, Mercury’s limitations on liability set out in this clause 10 apply to claims made by the Customer and its Affiliates. In the event that the Customer authorizes any Affiliate to access and use the Products or Professional Services, Mercury’s liability to the Customer and all authorized Affiliates in aggregate shall not exceed the amounts set out in this clause 10.
- 10.4. The Customer will effect and maintain such insurance as is suitable having regard to its particular circumstances and the terms of this clause 10. Mercury shall effect and maintain levels of insurance commensurate with its contractual obligations under this Agreement.
- ## 11. TERM AND TERMINATION
- 11.1. The Agreement shall commence on the Agreement Date, and will continue for the Agreement Term, unless terminated earlier in accordance with the terms of the Agreement.
- 11.2. On the expiry of the Initial Term (and on the expiry of each Auto Renewal Period), the Agreement will be automatically renewed for the Auto Renewal Period, unless either party provides 12 months written notice to the other party that it does not wish the Agreement to renew.
- 11.3. For the purposes of this clause 11, the following events shall be deemed “acts of default”:
- (a) if the Customer fails to pay any monies due under this Agreement within 7 days of the due date for payment;
 - (b) if a party commits any material breach of any term of this Agreement and, in the case of a breach capable of being remedied, fails to remedy that material breach within 14 days of a written request by the other party to do so; or
 - (c) a party files, or states in writing an intent to file, a petition under the U.S. Bankruptcy Code or any comparable federal or state law; has such a petition filed against it that is not dismissed within 60 days; makes a general assignment for the benefit of creditors; has a receiver, trustee, custodian, or similar officer appointed for it or for a substantial part of its property for more than 30 days; adopts a plan of liquidation, dissolution, or winding-up of its business; or admits in writing

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- an inability to pay its debts as they come due or ceases paying material debts in the ordinary course.
- 11.4. If the Customer commits an act of default, Mercury may:
- suspend the provision of the Products and Professional Services (or any of them or any part of them) forthwith, and no such suspension shall be deemed a breach of any term or provision of this Agreement or give rise to any service credits; and/or
 - immediately terminate this Agreement by giving notice in writing.
- 11.5. If Mercury commits an act of default, the Customer may immediately terminate this Agreement by giving notice in writing to Mercury.
- 11.6. Where Mercury terminates the Agreement due to the Customer's act of default, the Customer shall pay the Fees that would have been payable but for the act of default, from the actual date of termination of the Agreement up to the earliest date on which the Agreement would have expired or could have been terminated by the Customer during the Initial Term or any Auto Renewal Period, to compensate Mercury for their losses resulting from the early termination.
- 11.7. Termination of this Agreement for any reason shall not affect the accrued rights of the parties arising under this Agreement, and in particular, without limitation, the right to recover damages against the other. And all clauses which by their nature should survive expiry or termination of this Agreement shall survive and remain in full force and effect.
- 11.8. Termination of this Agreement for any reason shall not affect the accrued rights of the parties arising under this Agreement and in particular without limitation the right to recover damages against the other. And all clauses which by their nature should survive expiry or termination of this Agreement shall survive and remain in full force and effect.
- 11.9. On termination of this Agreement for any reason:
- all licenses (except any Microsoft Licenses) granted under this Agreement shall terminate on the effective date of termination of the Agreement;
 - Mercury shall cease providing the Products and Professional Services to the Customer from the effective date of termination of the Agreement;
 - each party shall at the other party's request return and make no further use of any equipment, property, Confidential Information and other items (and all copies of them) belonging to the other party or, if requested, destroy all originals and copies of documentation and information and provide a written certificate that the same has been destroyed;
 - Customer agrees to grant Mercury prompt and reasonable access to Customer's systems for the sole purpose of removing the Mercury environment and associated components, and Customer agrees to promptly cooperate with Mercury to facilitate this removal process;
 - Customer acknowledges and agrees that it acquires no right to use, access, or continue benefiting from Mercury's Intellectual Property after termination of this Agreement, and any continued use of Mercury's Intellectual Property after termination shall be considered a breach of this Agreement;
 - Mercury shall destroy or otherwise dispose of Customer Data in its possession unless required to keep part or all Customer Data pursuant to law, or if Mercury receives, no later than 30 days after the effective date of the termination of the Agreement, a written request from the Customer asking for a copy of the most recent backup of the Customer Data in a common machine-readable format. Mercury shall, free of charge, use commercially reasonable efforts to deliver one copy of the backup to the Customer within 30 days of receipt of such a written request, provided that the Customer has, at that time the request is made, paid all invoiced fees and charges outstanding at and resulting from termination (whether or not due at the effective date of termination; and
- (g) unless otherwise agreed in writing, no refunds or prorated adjustments to Product or Service Fees will be granted if the Customer requests the return or deletion of their Customer Data before the end of the Agreement Term. The Customer remains responsible for paying the full amount due for the entire Agreement Term, regardless of any return or deletion of their Customer Data or cessation of their use of the Products. This obligation to pay all amounts due under the Agreement continues until the end of the Agreement Term, even if the Customer stops using the Products or requests the return of their Customer Data.
- ## 12. CONFIDENTIALITY AND DATA PROTECTION
- 12.1. Each party may use the Confidential Information of the other only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.
- 12.2. Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- 12.3. Confidential Information does not include information which:
- is or comes within the public domain other than through a breach of this clause 13; or
 - is in the recipient's possession (with full right to disclose) before receiving it from the other party; or
 - is lawfully received from a third party (with full right to disclose); or
 - is independently developed by the recipient without access to or use of the Confidential Information.
- 12.4. Subject to the other provisions of this clause 12, nothing in this Agreement shall prevent Mercury from using know-how gained in the course of performing any services under this Agreement in the course of providing services to any third party.
- 12.5. The Customer acknowledges that details of the Products, and the results of any performance tests of the Products, constitute Mercury's Confidential Information.
- 12.6. Mercury shall not be liable for any loss, destruction, alteration or disclosure of Confidential Information of the Customer caused by any third party, who is not Mercury's sub-contractor.
- 12.7. Customer Data is Confidential Information of the Customer and will be archived in accordance with the Back-Up Policy defined by Microsoft (<https://docs.microsoft.com/en-us/power-platform/admin/backup-restore-environments>), as such policy may be amended by Microsoft in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Mercury to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Microsoft in accordance with the archiving procedure described in Microsoft's Back-Up Policy. Mercury shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Mercury to perform services related to Customer Data maintenance and back-up).
- 12.8. Each party undertakes to comply with its obligations under applicable state data protection laws, including but not limited to the CCPA, VCDPA, CPA, UCPA, CTDPA.
- 12.9. To the extent that personal data is processed when the Customer or Users use the Products or Professional Services, the parties acknowledge that Mercury is a data processor and the Customer is a data controller and the parties shall comply with their respective obligations under applicable data protection law and the terms of the Data Processing Agreement.

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12.10. Where Mercury collects personal data as a data controller when providing the Product and Professional Services to the Customer or Users, such collection and processing shall be in accordance with the Mercury Privacy Policy.

12.11. For the avoidance of doubt, this clause 12 shall survive termination of the Agreement, however arising.

13. FORCE MAJEURE

13.1. Except with respect to the Customer's obligation to pay the fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to a Force Majeure Event, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure Event.

13.2. A party affected by a Force Majeure Event shall give immediate notice to the other party upon becoming aware of a Force Majeure Event, providing details of the circumstances of the Force Majeure event.

13.3. Where a Force Majeure Event continues for more than 30 days, the party not in default is entitled to terminate this Agreement without penalty, by giving written notice to the other party. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event, but such termination shall not affect the pre-existing rights or obligations of either party.

14. CONFLICT

In the event of any inconsistency between the documents making up the Agreement, the provisions of the Agreement Summary shall prevail, followed by the other documents in the following order: the Statement of Work, the Terms and Conditions, the Mercury DPA, an Order, and the Service Level Agreement.

15. VARIATION

The terms of this Agreement may not be varied except by a written amendment signed by both parties.

16. WAIVER, RIGHTS AND REMEDIES

Failure to exercise, or any delay in exercising, any right or remedy under this Agreement, or at law or equity, shall not be a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. NOTICES

17.1. All notices to be sent under this Agreement must be sent in writing (which includes email, unless explicitly stated otherwise in this Agreement). Notices shall be deemed to have been duly given if sent:

- (a) by registered post or courier to a party at their address stated in the Agreement Summary; or
- (b) by email, (where expressly permitted) to the email address of the receiving party listed as a point of contact in the Agreement Summary (or otherwise communicated to the other party).

17.2. Notices shall be deemed received on the second business day (excluding weekends and state-recognized holidays) after sending, where sent by registered mail and on the first business day after sending, where sent by email.

18. PUBLICITY

No announcement or information concerning this Agreement or any ancillary matter shall be made or released or authorized to be made or released in any advertising publicity promotional or other marketing activities by either of the parties without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). However, Mercury may use the Customer's name and trademarks (logo only) to list the Customer as a client of Mercury on its website and in other marketing materials and information, in conformance with any Customer provided trademark guidelines.

19. INVALIDITY AND SEVERABILITY

Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid

provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

20. ENTIRE AGREEMENT

20.1. This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

20.2. Each of the parties acknowledges and agrees that in entering into this Agreement it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

20.3. No terms/conditions contained in attached to or referenced in any purchase order issued by the Customer relating to the subject matter of this Agreement shall have any effect and Mercury rejects and additional or conflict terms on such purchase order. A purchase order shall be accepted by Mercury for the sole purpose of referencing invoices.

21. SUCCESSORS AND NO THIRD-PARTY RIGHTS

21.1. This Agreement shall be binding upon and inure for the benefit of the permitted successors in title of the parties.

21.2. Unless otherwise expressed to the contrary in this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person other than a party to this Agreement, their successors and permitted assignees.

22. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall be construed as creating any partnership, agency or joint venture between the parties, and neither party shall have the authority to act in the name of, or on behalf of, or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Mercury and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

23. ASSIGNMENT AND SUBCONTRACTING

23.1. No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, however, Mercury shall be entitled to assign the Agreement to any Affiliate, or as part of a merger or sale of all or substantially all its businesses, assets, not involving a competitor of the other party.

23.2. Mercury may sub-contract the performance of its obligations under this Agreement. Mercury shall be liable for all acts and omissions of sub-contractors in breach of the terms of this Agreement as if Mercury had caused the breach itself.

24. DISPUTE RESOLUTION

24.1. The parties shall attempt to resolve any dispute or issue relating to this Agreement through negotiations conducted in good faith between the primary contacts named in the Agreement Summary. If any dispute is not resolved within 10 working days (in the jurisdiction of the referring party) of it first being referred to either of them in writing, either party may refer the dispute to the escalation contacts named in the Agreement Summary who will use commercially reasonable efforts to resolve the dispute within 10 working days (in the jurisdiction of the receiving party) of receiving a written request from either party. The parties may by agreement in writing vary the time periods in relation to any discussions to be undertaken pursuant to this clause 25.1.

25. GOVERNING LAW AND JURISDICTION

25.1. This Agreement is governed by the laws of the State of Delaware (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this Agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts in the State of Delaware, and each party submits to this personal jurisdiction and venue. Nothing in this Agreement prevents either party from seeking injunctive relief in a court of competent

jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that an electronic signature may substitute for and have the same legal effect as an original signature.