

## SALES AND SERVICE TERMS AND CONDITIONS

**THESE SALES AND SERVICE TERMS AND CONDITIONS** (these “**Terms**”) apply to all Sales, Services, or resale of Software Licenses (as each is defined below) provided by Sydenstricker Nobbe Partners’, a Missouri Corporation (the “**Dealer**”), with a principal address of 4803 South Clark Street, to Dealer’s customers (“**Customer**”) that occur on or after the Terms Effective Date (as defined below). Customer acknowledges that Customer has had the opportunity to review these Terms and agrees that such Terms are incorporated into the parties’ agreement. Customer should read these Terms in their entirety prior to requesting any Sales or Services from Dealer.

**EFFECTIVE DATE: 1/1/2016** (the “**Terms Effective Date**”). These Terms may be amended at any time for future Orders (as defined below) in accordance with Section 11.6. Customer may request a prior version of these Terms, if any, by contacting Dealer at [privacy@snpartners.com](mailto:privacy@snpartners.com)

### **SECTION 1. APPLICATION TO ORDERS.**

Pursuant to these Terms, Dealer will sell to Customer various goods and services, including but not limited to the sale of equipment, parts, supplies and other goods (collectively, the “**Sales**”), equipment repair services or any other services provided by Dealer to Customer (collectively, the “**Services**”), and the resale and assignment to Customer of software license subscriptions and any related software licensor maintenance and support packages (collectively the “**Software Licenses**”), each as may be described in separate documentation and without regard to whether such documentation is signed. Such documentation may be in the form of Dealer’s standard form of purchase order, invoice or receipt, by separate agreement between Dealer and Customer, Dealer’s standard form work ticket, repair authorization or other similar document for purposes of authorizing repairs to equipment, or as otherwise agreed between the parties (each, an “**Order**”). The resale and assignment of the Software Licenses by Dealer to Customer is contingent upon Customer’s agreement to be bound by the form of assignment as required by Dealer and the acceptance of the assignment of such Software Licenses by the software licensor (including John Deere) and any other applicable parties. Notwithstanding anything to the contrary contained herein, any agreement between Dealer and Customer for the rental of equipment will not be considered an Order.

Each Order hereby incorporates and is governed by the terms and conditions of these Terms as if these Terms were fully set forth in such Order. If there is a conflict between these Terms and the terms of an Order, the Terms will prevail, except to the extent the terms of the Order (a) expressly state that it is the intention of the parties to vary or modify these Terms or provide that the Terms are not applicable or (b) state a different payment due date than set forth in Section 2.3 below. Words and expressions defined in these Terms shall, unless the context requires otherwise, have the same meanings in each Order.

### **SECTION 2. COMPENSATION, EXPENSES AND PAYMENT.**

2.1 Compensation. In consideration of the sale of Sales or Services and resale of the Software Licenses, as applicable, Customer will pay Dealer compensation in the amount, and payable at the times and in the manner, set forth in the applicable Order.

2.2 Reimbursement of Expenses. Customer will pay Dealer for any charge, cost or expense incurred by Dealer (i) in furtherance of any Sales, Services or any resale of the Software Licenses or (ii) to the extent such charge, cost or expense is specifically set forth in the applicable Order or otherwise agreed to by the Customer.

2.3 Invoices. Dealer may submit invoices to Customer for Sales completed, Services rendered and Software Licenses resold. If Customer disputes any amount set forth in an invoice, Customer shall notify Dealer within ten (10) days after receipt of the invoice or Customer will be deemed to have accepted such invoice and waive any right to dispute any amounts stated therein. Invoices are payable within 30 days of receipt of invoice unless a different payment requirement is specifically set forth in an Order. Dealer may charge interest from the payment due date to the date of payment at a rate of 1.5% per month, but not to exceed the highest lawful rate of interest under applicable law, on any past due invoice. Customer shall reimburse Dealer for all reasonable attorneys fees and costs associated with the collection of delinquent or dishonored payments. Dealer may apply amounts received from Customer (including amounts received from the sale of Equipment upon foreclosure of the Security Interest granted herein) to any amount due from Customer to Dealer or its Affiliates in such order or in such proportions as Dealer may determine in its sole discretion. “**Affiliate**” means any other person or entity controlling, controlled by or under common control with Dealer. For purposes of the preceding sentence, the term “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of a person or entity through voting securities, contract or otherwise.

2.4 Taxes. Customer will be solely responsible for all foreign, federal, state and local taxes attributable to the payments from Customer to Dealer for the Sales, Services and Software Licenses; provided, however, that Dealer is solely responsible for all income taxes attributable to Dealer’s income relative to receipt of such payments. If Dealer is required or deemed responsible for the collection and remittance of any taxes which are the responsibility of Customer hereunder, Customer shall reimburse Dealer immediately upon demand for any such taxes paid or incurred by, or assessed against, Dealer, including any penalties or interest.

### **SECTION 3. TERMINATION OF ORDER(S).**

3.1 Survival of these Terms. Subject to Section 3.5, these Terms shall remain in effect with respect to the parties’ obligations relating to an Order and the parties shall remain bound by these Terms with respect to each such Order until the Order terminates due to the earliest to occur of the following: (a) Sections 3.2 and 3.3 below, (b) pursuant to the terms of the Order or (c) fulfillment of the Sales, performance of the Service or resale of the Software License.

3.2 Termination of Order by Mutual Agreement. Notwithstanding the stated term, the parties may terminate any Order at any time upon their mutual written agreement.

### 3.3 Termination of Order By Either Party upon Breach.

Notwithstanding the stated term, either party may terminate any Order upon written notice to the other party in the event that the other party materially breaches or fails to perform any obligation under the Order (including any of the Terms hereof) and fails to cure the same within fifteen (15) days after written notice of the breach or failure to perform; provided, however, Dealer may terminate any Order immediately upon written notice to the Customer due to Customer's failure to timely make any payment under the Order or any other Order.

### 3.4 Termination by Dealer Due to Third Party Vendor

Performance. Dealer may terminate an Order immediately upon written notice to Customer if any third party vendor, manufacturer or licensor through whom Dealer relies on to be able to provide Customer goods or any other products or information to fulfill Sales, Services or the Software Licenses or any right or license to be able to complete the Sales, perform the Services or resell the Software Licenses takes any action or commits any omission that, as determined in the reasonable judgment of Dealer, prevents or significantly limits the ability of Dealer to fulfill such Sales, provide such Services or resell such Software Licenses (regardless of whether Dealer could perform by incurring additional expenses or relying upon a different third party vendor, manufacturer or licensor).

3.5 Effect of Termination. Upon the termination of an outstanding Order, any and all rights and obligations of the parties related to such Order shall terminate, provided that Sections 2, 3.5 and Sections 4 through 11 of these Terms, all rights, obligations or liabilities accrued hereunder prior to termination including Customer's payment obligations to Dealer and license of data, and any other right, obligation or liability which by its nature or express duration extends beyond termination of such Order, will survive termination and continue in effect indefinitely or for that express duration, as applicable.

## **SECTION 4. LIMITED WARRANTIES AND COVENANTS.**

4.1 Dealer. Dealer represents and warrants that Dealer has the power and authority to execute, deliver and perform its obligations pursuant to these Terms and that each Order constitutes a valid and binding obligation of Dealer enforceable against Dealer in accordance with such Order's terms. WITH RESPECT TO THE RESALE OF A SOFTWARE LICENSE HEREUNDER, (I) DEALER PROVIDES NO WARRANTY TO CUSTOMER AND DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES RELATED THERETO AND (II) ANY WARRANTY RELATED TO SUCH SOFTWARE LICENSES IS LIMITED TO THE WARRANTY, IF ANY, PROVIDED BY THE APPLICABLE MANUFACTURER OR SOFTWARE LICENSOR WHICH MAY BE PASSED THROUGH BY DEALER TO CUSTOMER. With respect to each Software License, upon Customer's agreement to the form of assignment as required by Dealer and the acceptance of the assignment of Software Licenses by the software licensor (including John Deere) and any other applicable parties, Dealer will assign to Customer any end user license agreements or subscription agreements available and authorized by the software licensor, subject to all such software licensor's limitations.

4.2 Customer. Customer represents, warrants, and covenants to Dealer as follows: (i) Customer will promptly provide Dealer all necessary access to Customer's equipment, hardware, software, employees, location and data as requested by Dealer to provide the Sales or Services and resell the Software Licenses, (ii) Customer shall make all arrangements with and obtain any and all approvals, consents, authorizations, permits and licenses necessary for the Dealer to provide the Sales or Services and resell the Software Licenses contemplated hereunder, and (iii) Customer has the power and authority to execute, deliver and perform each Order in conformance with these Terms, and such Order shall constitute a valid and binding obligation of Customer enforceable against Customer in accordance with such Order's terms. Any person signing any Order on behalf of Customer represents, warrants, and covenants to Dealer that he or she has been properly authorized and empowered to enter into, and bind Customer to the applicable Order and these Terms.

## **SECTION 5. DISCLAIMER AND LIMITATION OF LIABILITY.**

**SUBJECT TO THE LIMITATIONS CONTAINED IN THE FOLLOWING PARAGRAPH, DEALER MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, IN CONNECTION WITH DEALER'S PERFORMANCE OF THE SERVICES OR RESALE OF THE SOFTWARE LICENSES, AND ALL WARRANTIES IN CONNECTION WITH DEALER'S PERFORMANCE OF THE SERVICES OR RESALE OF THE SOFTWARE LICENSES ARE DISCLAIMED BY DEALER. CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT DEALER HAS NO CONTROL OVER ANY GPS SIGNALS OR SERVICES OR SOFTWARE LICENSES FOR WHICH ACCESS OR USE ARE PROVIDED BY DEALER, AND DEALER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE SERVICES OR SOFTWARE LICENSES RESOLD HEREUNDER. NO PROVISION OF THESE TERMS (OR ANY ORDER) AND NO PROVISION OF SERVICES OR RESALE OF ANY SOFTWARE LICENSES HEREUNDER SHALL BE DEEMED TO MODIFY, EXPAND OR ADD TO ANY APPLICABLE REPRESENTATIONS, WARRANTIES, TERMS OF USE, OR MAINTENANCE OR SUPPORT OBLIGATIONS OF THE APPLICABLE MANUFACTURER OR SOFTWARE LICENSOR.**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO THE FOLLOWING SENTENCE, CUSTOMER ACKNOWLEDGES THAT, WITH RESPECT TO SERVICES OR SOFTWARE LICENSES, ITS SOLE AND EXCLUSIVE REMEDY AGAINST DEALER FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED, IN ANY WAY, TO AN ORDER OR THESE TERMS SHALL NOT EXCEED AMOUNTS PAID BY CUSTOMER TO DEALER FOR THE SPECIFIC SERVICES OR SOFTWARE LICENSES RESOLD BY DEALER PURSUANT TO SUCH ORDER (OR PORTION OF SUCH ORDER RELATING TO SERVICES OR SOFTWARE LICENSES) GIVING RISE TO THE CLAIM, AND NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO THE RECOVERY OF DIRECT, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SALES, LOST DATA, INJURY TO PERSON OR PROPERTY, OR ANY OTHER LOSS) SHALL BE AVAILABLE TO CUSTOMER OR ANY OTHER PERSONS OR ENTITIES, WHETHER BY DIRECT ACTION, FOR CONTRIBUTION OR INDEMNITY, OR OTHERWISE AND REGARDLESS OF WHETHER THE CLAIM OR CAUSE OF ACTION IS BASED IN CONTRACT, STATUTE, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO THE FOLLOWING SENTENCE, CUSTOMER ACKNOWLEDGES THAT ITS SOLE AND EXCLUSIVE REMEDY AGAINST DEALER FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED, IN ANY WAY, TO AN ORDER OR THESE TERMS FOR THE SALE OF GOODS SHALL NOT EXCEED THE LESSER OF (A) ANY AMOUNT RECOVERABLE UNDER THE MANUFACTURER'S WARRANTY OR**

**(B) AMOUNTS PAID BY CUSTOMER TO DEALER FOR THE SPECIFIC GOODS PURSUANT TO SUCH ORDER (OR PORTION OF SUCH ORDER RELATING TO GOODS) GIVING RISE TO THE CLAIM, AND NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO THE RECOVERY OF DIRECT, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SALES, LOST DATA, INJURY TO PERSON OR PROPERTY, OR ANY OTHER LOSS) SHALL BE AVAILABLE TO CUSTOMER OR ANY OTHER PERSONS OR ENTITIES, WHETHER BY DIRECT ACTION, FOR CONTRIBUTION OR INDEMNITY, OR OTHERWISE AND REGARDLESS OF WHETHER THE CLAIM OR CAUSE OF ACTION IS BASED IN CONTRACT, STATUTE, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE.**

#### **SECTION 6. INDEMNITY.**

Customer will indemnify, hold harmless and defend Dealer and its affiliates, and their respective officers, directors, managers, owners, employees, agents, consultants, advisors and other representatives (collectively, "Indemnified Parties"), from and against, and will reimburse the Indemnified Parties with respect to, any and all claims, demands, causes of action, proceedings, losses, damages, debts, expenses or costs, including reasonable attorney fees, at any time and from time to time asserted against or incurred by any of the Indemnified Parties to the extent arising out of, in connection with, resulting from or by reason of any breach of any Order, including these Terms, by the Customer.

#### **SECTION 7. DATA.**

7.1 Data Defined. Customer may provide Dealer, either directly or indirectly (including access to, by, or through John Deere's Network), access to various data about the Customer or its operations (collectively the "Customer Data") and information that is generated by, collected by or stored on Customer's equipment or any hardware or device interfacing with Customer's equipment, which may be provided directly through such equipment, hardware or device or indirectly when reported to Dealer (collectively, "Machine Data" and together with Customer Data, "Data"). Customer Data may include, without limitation, personal data such as Customer's name and contact information, transaction data such as purchases Customer has made with Dealer, demographic data such as information provided by Customer about its preferences, interests and goals and financial information provided related to purchases of goods from Dealer or when applying for financing.

7.2 License. Customer hereby agrees to grant Dealer access to such Data collected or stored by third parties, including John Deere and take all measures necessary or useful for Dealer to access such Data collected or stored by third parties. Further, Customer hereby grants to Dealer a royalty-free, non-exclusive, perpetual license to access and use the Data, whether collected or stored by third parties or Dealer, for Dealer's business purposes, including, but not limited to: (i) to provide or offer products and services to Customer, (ii) to check, maintain, diagnose, update or repair Customer's equipment, machinery or hardware, (iii) to enable the Dealer or a third party to improve or develop Dealer's products and services or components thereof, (iv) to comply with or enforce legal or contractual requirements (or based upon Dealer's good-faith belief that disclosure is necessary to comply with such legal or contractual requirements), (v) to comply with a request from Customer, or (vi) to disclose the Data to a third party necessary to accomplish (i) through

(v). CUSTOMER WARRANTS THAT IT HAS OBTAINED ANY NECESSARY CONSENT FROM ITS EMPLOYEES OR ANY OTHER THIRD PARTIES TO COMPLY WITH ANY APPLICABLE PRIVACY LAWS OR CONTRACTUAL AGREEMENTS WITH SUCH EMPLOYEES OR THIRD PARTIES AND TO PERMIT DEALER TO ACCESS AND USE THE DATA AS SET FORTH IN THESE TERMS. Customer acknowledges and agrees that if it disallows Dealer access to and use of the Data, such action may prevent Dealer from providing remote machine diagnostics, remote machine servicing or other Sales, Services, or Software Licenses provided to Customer. Customer acknowledges that Dealer will have no obligation to contact Customer or otherwise provide Services to Dealer as a result of Dealer's receipt of, or access to, Data, unless such obligation is separately stated in an Order. Dealer will have the right, but not the obligation, to store the Data indefinitely.

7.3 Restrictions on Disclosure. Notwithstanding any other provision hereof, Dealer will not provide any of the Data in a form that is capable of being personally identified with Customer except as follows: (i) to third parties upon the consent, authorization or request of the Customer, (ii) to third parties assisting Dealer in the provision, administration, and management of Dealer's products and services generally or products and services that Customer requests, (iii) to third parties that support Dealer's business operations or provide marketing or advertising services on Dealer's behalf, (iv) to comply with or enforce legal or contractual requirements (or based upon Dealer's good-faith belief that disclosure is necessary to comply with such legal or contractual requirements), (v) to protect Dealer's rights or property, (vi) to enforce these Terms or any Order, or (vii) as otherwise permitted in Dealer's privacy policy(ies), if any, or similar guidelines or policies as amended or updated by Dealer.

#### **SECTION 8. CONFIDENTIALITY.**

Customer acknowledges and agrees that the terms and conditions of any Order are confidential. Accordingly, Customer agrees not to disclose the terms, including any price terms, of any Order to any other party other than Customer's employees or agents who have a need to know such information. In the event of a breach or threatened breach by Customer of this Section 8, Dealer shall be entitled to an injunction restraining Customer from such breach or threatened breach, in addition to Dealer's right to recover damages from Customer.

#### **SECTION 9. SECURITY INTEREST; DAMAGE TO CUSTOMER'S EQUIPMENT.**

To secure the payment of all amounts due or to become due on account of any Sales, Services, or Software Licenses ordered, authorized or purchased by the Customer from Dealer, under any Order or otherwise, and also to secure all other indebtedness, obligations or liabilities of the Customer to Dealer or an Affiliate, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Dealer (collectively, all of the foregoing shall hereinafter be called the "Obligations"), Customer hereby grants a security interest to Dealer (the "Security Interest") in Customer's equipment, hardware or other personal property for which Dealer provides any repair, maintenance or other services and in any work performed (including materials, supplies or parts used in the completion of such work) by Dealer (for purposes of this Section referred to collectively as the "Equipment").

Customer agrees that, upon Customer's failure to make any timely payment to Dealer, Dealer has the option to declare any and all Obligations of Customer to Dealer immediately due and payable without notice or demand and may enforce its Security Interest pursuant to the Uniform Commercial Code provisions in the laws of the state identified in the "Governing Law; Venue" provision below, and Dealer is not responsible for any loss or damage to the Equipment that may occur while it is in the possession of Dealer or located on the dealership property, including loss or damage due to weather events, theft, vandalism or the negligent acts or omissions of Dealer or its employees, agents and contractors. Customer agrees that Dealer has no obligation to store Equipment indoors, underneath a covered area (or otherwise protect it from the elements) or in a secure area and acknowledges that Dealer has no responsibility to Customer for deterioration in the condition of the Equipment due to its storage or possession by Dealer. If Dealer stores Customer's Equipment on Dealer's property for more than 60 days after Customer has been notified that Dealer's work on such Equipment has been completed, Customer agrees to pay Dealer a storage fee equal of \$2/day until Customer pays for and picks up the equipment. Customer agrees that all storage costs and Dealer's costs and expenses in collecting payment for Dealer's work and/or enforcing the Security Interest or any related lien, including reasonable attorneys' fees, costs of sale, advertising costs and any repairs to the equipment to improve it prior to sale, will be secured by the Security Interest. In addition, Dealer shall specifically have the right to take immediate and exclusive possession of the Equipment and every part thereof, wherever it may be found, and also may enter any of the premises of the Customer, with or without process of law, without force, wherever the Equipment may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove and sell, and dispose of, such Equipment, or any part thereof, at public auction or private sale, with or without notice for cash or on credit, as the Dealer may elect at its option. Dealer reserves the right to bid and become the purchaser at any such sale. The Customer shall remain liable for any deficiency resulting from a sale of the Equipment and shall pay any such deficiency forthwith on demand. Customer specifically waives any right to judicial proceeding prior to Dealer's exercise of its right of repossession. From time to time upon Dealer's request, Customer will execute such financing statements or other documents that Dealer may request to evidence or perfect the Security Interest granted herein. The Security Interest is in addition to, and not in lieu of, any additional rights or remedies Dealer may have due to Customer's non-payment under any Order or otherwise, including any rights or remedies in connection with repair liens, mechanic's liens or similar liens granted to Dealer under applicable law.

#### **SECTION 10. ELECTRONIC CONTRACTING; ONLINE ACCOUNT; AND COMMUNICATION.**

10.1 Electronic Contracting. Customer consents to contract electronically with Dealer for subsequent Sales, Services or Software Licenses that Customer requests in accordance with these Terms and understands that Customer is entering into a legal agreement by agreeing to an Order and intends to be legally bound by such agreement. Any termination of Customer's consent to conduct business electronically shall not affect the legal enforceability of any Order provided to Customer prior to such withdrawal.

10.2 Online Account. If Dealer provides an online account to Customer, Customer agrees that it will provide accurate and complete information and is responsible for safeguarding access to and the confidentiality of such account and any login credentials related to the same. Customer agrees to notify Dealer if Customer becomes aware or suspects any unauthorized use or potential use by any third party to such online account. Customer is solely responsible for any claims, losses, damages, expenses and costs incurred by each and every use of Customer's login credentials.

Dealer shall be entitled to rely on any representation or consent obtained using the proper credentials from Customer's online account prior to receipt of any notice of such unauthorized use of Customer's online account. Dealer reserves the right to reset any login credentials as deemed necessary by Dealer. Dealer shall have no liability or responsibility to monitor the use of Customer's user name and password.

10.3 Electronic Communication. Customer agrees that Dealer may provide communications related to any Sales, Services or Software Licenses in electronic form provided by one or more of the following methods: (1) via e-mail; (2) by access to a secure website that Dealer designates in advance for such purpose; (3) via text message or mobile message service; or (4) other electronic methods. With respect to such communications, Customer's carrier or provider may charge Customer a fee for receiving such communications which are solely Customer's responsibility. Customer may opt out of electronic communications by contacting Dealer by emailing [privacy@snpartners.com](mailto:privacy@snpartners.com). Any withdrawal of Customer's consent to receive electronic communications will be effective only after a reasonable period of time for Dealer to process such withdrawal.

10.4 Website. Dealer's website may contain additional terms and conditions applicable to users of such website, including Customer's use of such website. In the event of any conflict with such other terms, these Terms shall control with regard to any of Customer's activities to the extent such activities are related to an Order, Sales, Services, or Software Licenses.

10.5 Right to Request Copy of Terms. Customer may request in writing to receive a copy of these Terms and Customer's Orders from Dealer. Such request may be subject to a processing and administrative fee not to exceed the lesser of fifty dollars (\$50) per Order or the amount permitted by law.

#### **SECTION 11. GENERAL PROVISIONS.**

11.1 Binding Nature of Agreement; Assignment. All the terms and provisions of these Terms (including each Order) will be binding upon and will inure to the benefit of the parties and their respective successors, heirs, personal representatives and permitted assigns. Neither party may assign, delegate or transfer to any third party its rights or obligations under these Terms (including any Order) without the prior written consent of the other party; provided, however, that Dealer may assign any Order (and its rights and obligations under these Terms) to any purchaser of substantially all of its assets for its entire business or any business location of Dealer from which Sales, Services, or Software Licenses under any Order or these Terms are provided. Notwithstanding the foregoing, Dealer shall be allowed to delegate its responsibilities or otherwise use its affiliates, contractors and business partners to ensure completion of the Sales, Services and Software Licenses under any Order.

11.2 Independent Contractor Status. Dealer is an independent contractor for each Order, and nothing herein creates, or will be construed to create, a partnership, joint venture, agency or employment relationship between Customer and Dealer or between Customer and any of Dealer's employees or contractors. Neither Dealer nor Customer will have authority to enter into agreements of any kind on behalf of the other, or otherwise bind or obligate the other in any manner to any third party, by virtue of the relationship contemplated by any Order or these Terms.

11.3 No Third Party Beneficiaries. The terms and provisions of every Order, including these Terms, are intended solely for the benefit of each party and their respective successors, heirs, personal representatives and permitted assigns and it is not the intention of the parties to confer third-party beneficiary rights upon any other individual or entity.

11.4 Governing Law; Venue. The terms and provisions of every Order, including these Terms, will be governed by and will be construed, interpreted, and enforced in accordance with the laws of the State of Missouri, without reference to principles of conflicts of law. All disputes arising out of or relating to an Order, or the breach or default under any Order, will be determined solely by a state or federal court located in the State of Missouri, and the parties hereby consent to the exclusive jurisdiction of those courts.

11.5 Force Majeure. Except for Customer's payment obligations under each Order, as set forth in the Order or these Terms, neither party is liable for its failure or delay to perform its obligations under any Order or these Terms due to strikes, wars, revolutions, acts of terrorism, fires, floods, explosions, earthquakes, parts or labor shortages, government regulations, GPS signal or service loss or errors, or other causes beyond its reasonable control, however, that in any such event both parties agree to make a good faith effort to meet their respective obligations hereunder.

11.6 Amendments. These Terms may be amended by Dealer at any time, with or without notice, by posting the same to the Dealer's website or other location available to Customer. Any amendment to these Terms shall apply to any Orders entered into after the effective date of such amendment and may retroactively apply to prior Orders by a written agreement between Customer and Dealer. Any Order, including any term or condition of these Terms that was incorporated into such Order, may only be amended, superseded, cancelled, renewed or extended, and the terms hereof may only be waived, by a written instrument signed by Customer and Dealer or, in the case of a waiver, by the party waiving compliance.

11.7 Notices. All notices or other communications required or permitted under any Order or these Terms will be in writing and will be delivered by hand or overnight courier service, by certified mail, or sent by confirmed fax, using the recipient party's address as set forth in an Order or these Terms; provided, however, that any notice to Customer required or deemed advisable by Dealer may, when permitted by law, be sent by Dealer to Customer at the primary email address associated with Customer's account as of the date of the notice unless Customer has opted out of electronic communications pursuant to Section 10.3. A party may change its contact information for notice by sending written notice to the other party pursuant to this Section. All notices and other communications given to a party in accordance herewith will be considered to have been given on the date of receipt.

11.8 Miscellaneous. Each Order, including these Terms as incorporated therein, contains the entire agreement among the parties with respect to the subject matter thereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, with respect to that subject matter. The express terms of an Order control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof. If Dealer prevails against Customer, in whole or in part, in any action to enforce any provision of these Terms, Dealer shall be entitled to its reasonable attorneys' fees and other costs. No failure or delay by any party in exercising any right, power, or privilege under an Order will operate as a waiver of any right, power, or privilege hereunder. No waiver of any default on any one occasion will constitute a waiver of any subsequent or other default. No single or partial exercise of any right, power, or privilege will preclude the further or full exercise thereof. Each and every term and provision of an Order, including the terms of these Terms, will be considered severable, and the invalidity or unenforceability of any one or more of the provisions will not affect the validity and enforceability of the other provisions of such Order. An Order may be executed in one or more counterparts and each counterpart to an agreement under the laws of the state identified in the with a mark demonstrating intent to be bound by the terms "Governing Law; Venue" provision above is considered an original thereof, whether an original handwritten signature, electronic original and all counterparts shall constitute one and the same acknowledgement, or any other mark accepted to bind parties instrument.