

ADEMERO SERVICE LEVEL AGREEMENT

Updated 03-09-18

This Service Level Agreement (“Agreement”) is made by and between Ademero, Inc. (“Service Provider”), a Florida corporation, whose principal place of business is in Lakeland, Florida, and You (“Customer”), who purchased technical support services for the Service Provider’s licensed Software (“Software”), for the term and date (“Effective Date”) indicated herein.

1. Objectives

Pursuant to the Customer’s purchase of a subscription license in the Software and desire to (1) perform document management tasks using the Software that is accessible via a Website, (2) not own or maintain a Server on which the Software is installed, (3) have the Service Provider provide access to the Software via a Website, and (4) have the Service Provider provide technical support for such Software, this Agreement sets forth the terms and conditions for the support services. This Agreement provides:

- Clarity of parameters, roles, responsibilities, and limitations;
- Clear, concise and measurable description of the support provided to the Customer; and
- Alignment of the Customer’s expected support and the Service Provider’s actual support.

2. Definitions

- 2.1 **“Authorized Contact”** means any employee, director, officer, partner, agent, or other representative of the Customer who contacts the Service Provider to request Technical Support.
- 2.2 **“Client Software”** means Software manufactured by the Service Provider that allows a Device to access the Server Software.
- 2.3 **“Community”** means contributors who answer questions posted to the Service Provider’s forum.
- 2.4 **“Confidential Information”** means nonpublic information disclosed, either orally or in writing, by Us, Our partners, or Our respective employees, contractors or agents, that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes: (a) nonpublic information relating to the terms and conditions of this Agreement, Customer Data, the Parties’ or their affiliates’ technology, Software, source code, trade secrets, customers, and other business affairs; (b) third-party information that We are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between Us or Our affiliates. Confidential Information does not include any information that: (i) is or becomes publicly available without either a breach of this Agreement or any breach of an obligation of confidentiality by someone else; (ii) can be shown by documentation to have been known to You at the time of Your receipt from the Service Provider; (iii) can be shown by documentation to have been known to the non-disclosing party at the time of the non-disclosing party’s receipt by the disclosing party; (iv) can be shown by

documentation to have been independently developed by the disclosing party without reference to or reliance on the Confidential Information; or (v) is required to be disclosed by law or a governmental body or court.

- 2.5 **“Conversion”** means the process of changing any type of data to a different format, including but not limited to data found in files, text, images, documents, photos, movies, archives, folders, emails, databases, file server contents, document management servers or other Hardware, or other document management software.
- 2.6 **“Customer”** or **“You”** means the individual or entity entering into this Agreement with the Service Provider.
- 2.7 **“Customer Data”** means any data, information, or material the Customer provides or submits to the Service Provider.
- 2.8 **“Customer Site”** means any geographical location owned or inhabited by the Customer where either a Server containing the Server Software resides or Devices are used to access Server Software.
- 2.9 **“Device”** means a personal computer, workstation, terminal, handheld computer, pager, telephone, personal digital assistant, or other electronic device.
- 2.10 **“Due Date”** means the date on which the Customer’s payment must be received.
- 2.11 **“Effective Date”** means the beginning date, or month, of this Agreement as indicated on the Support Provider’s invoice, which is provided to the Customer.
- 2.12 **“Hardware”** means machines and other physical components of a computer.
- 2.13 **“Incident”** means a specific, discrete error or unexpected behavior to the Software that can be addressed by isolating its origin to a single cause or to multiple causes.
- 2.14 **“Installation”** means placing the Software onto the Customer’s computer so that the Software can be used.
- 2.15 **“Implementation”** means integrating the Service Provider’s Software into the Customer’s computer system.
- 2.16 **“Migration”** means relocating the Software, in whole or in part, including but not limited to any data on which the Software is dependent, to another Server or Device.
- 2.17 **“New Release”** means major Software changes, such as the functionality changes, patches, bug fixes, and other modifications, provided by the Service Provider to improve the performance of the Software and related services.

- 2.18 **“Normal Business Hours”** means 8:30am-5:00pm Eastern Standard Time, Monday thru Friday (excluding bank and other public holidays in the United States).
- 2.19 **“Parties”** or **“Or”** or **“Us”** or **“We”** means both the Service Provider and the Customer who has purchased a subscription license in the Software.
- 2.20 **“Pre-Production Phase”** means Software that has not been implemented or installed.
- 2.21 **“Post-Production Phase”** means an Implementation and Installation of the Software that has passed the Customer’s testing, has been fully deployed, and is in regular use by one or more users.
- 2.22 **“Server”** means a computer that manages access to a centralized resource or service in a network.
- 2.23 **“Server Software”** means Software manufactured by the Service Provider that resides on a Server and handles requests from users and devices on a network.
- 2.24 **“Software”** means Ademero Software product purchased by the Customer, as listed on the Customer’s invoice, including end-user documentation, other accompanying documentation, add-ons, extensions, libraries, fixes, plug-ins and other related materials and to any and all copies, updates, modifications, functionally-equivalent derivatives, documentation or any parts or portions thereof.
- 2.25 **“Service Provider”** means Ademero, Inc. and its affiliates.
- 2.26 **“Subscription Period”** means
- 2.27 **“Support Request”** means a request for Technical Support initiated by the Customer or an Authorized Contact of the Customer.
- 2.28 **“Support Specialist”** means an employee of the Service Provider who provides Technical Support.
- 2.29 **“Target Response Time”** means communication from the Service Provider to the Customer in person or via email, fax, phone, or mail acknowledging a Support Request, which may or may not include a workaround, resolution, or request for additional information required by the Service Provider to diagnose an Incident.
- 2.30 **“Technical Support”** means remote assistance from the Service Provider to resolve Incidents reported by the Customer.
- 2.31 **“Third-Party Hardware”** means Hardware that is not manufactured by the Service Provider.

- 2.32 **“Third-Party Software”** means computer programs and other related technology that is not manufactured by the Service Provider.
- 2.33 **“Update”** means minor Software changes, such as the functionality changes, patches, bug fixes, and other modifications, provided by the Service Provider to improve the performance of the Software and related services.
- 2.34 **“Workaround”** means a temporary resolution to an Incident that allows the Customer to use the Software.
- 2.35 **“Website”** means an internet webpage created by the Service Provide for the Customer to access and perform document management tasks.

3. Service Level Agreement Scope

The following detailed service parameters are the guidelines in the ongoing Technical Support services of this Agreement.

3.1 Support Scope

The Customer shall receive the following service under this Agreement:

- Unlimited email, telephone, live chat, private portal, and forum support;
- Remote assistance using online software, such as Zoho Assist;
- Technical Support to an unlimited number of Authorized Contacts employed by or partnered with the Customer; and
- Technical Support to an unlimited number of Customer Sites.

3.2 Support Availability

Telephone Support:

- Customer Support Numbers:
 - (US Toll-Free) 1-888-276-2914
 - (US Toll-Free) 1-863-937-0272
 - (International) +1 863-937-0272
- Telephone Support Hours: 24 hours/day, 7 days/week
- Customer support calls received from the Customer during Normal Business Hours will be attended to by the first available Support Specialist.
- Except for Severity 1 Incidents, Customer support calls received from the Customer outside of, or when a Support Specialist is unavailable during, Normal Business Hours will be considered received on the business day in which Normal Business Hours are next resumed, and such calls will be forwarded to an automated voicemail system. Best efforts will be made to respond to the calls within the time period specified in the applicable Target Response Time (see Subsection 4.2 below).

Email Support:

- Customer Support Email Address: **support@ademero.com**
- Email Support Hours: 24 hours/day, 7 days/week
- Customer support emails received from the Customer during Normal Business Hours will be attended to by the first available Support Specialist.
- Except for Severity 1 Incidents, Customer support emails received from the Customer outside of, or when a Support Specialist is unavailable during, Normal Business Hours will be considered received on the business day in which Normal Business Hours are next resumed. Best efforts will be made to respond to the emails within the time period specified in the applicable Target Response Time (see Subsection 4.2 below).

Live Chat Support:

- Customer Support Live Chat Line:
 - **Ademero Website – Visit <http://www.ademero.com>, then click “Live Chat.”**
 - **Content Central – Click “Live Chat,” then click “Get Live Help.”**
- Live Chat Support Business Hours: 24 hours/day, 7 days/week
- Customer live chat requests received from the Customer during Normal Business Hours will be attended to by the first available Support Specialist.
- Except for Severity 1 Incidents, Customer support live chat requests received from the Customer outside of, or when a Support Specialist is unavailable during, Normal Business Hours will be considered received on the business day in which Normal Business Hours are next resumed. Best efforts will be made to respond to the requests within the time period specified in the applicable Target Response Time (see Subsection 4.2 below).

Private Portal Support:

- Private Portal Support Access:
 - **Visit <http://www.support.ademero.com>, then click the “Add ticket” icon.**
- Private Portal Support Hours: 24 hours/day, 7 days/week
- Customer private support requests received from the Customer during Normal Business Hours will be attended to by the first available Support Specialist.
- Except for Severity 1 Incidents, Customer private support requests received from the Customer outside of, or when a Support Specialist is unavailable during, Normal Business Hours will be considered received on the business day in which Normal Business Hours are next resumed. Best efforts will be made to respond to the requests within the time period specified in the applicable Target Response Time (see Subsection 4.2 below).

Forum Support:

- Forum Support Access:
 - Visit <http://www.support.ademero.com>, then click the “Community” icon.
- Forum Support Hours: 24 hours/day, 7 days/week
- Customer forum questions posted by the Customer may be answered by the Community. If the Community is unable to answer such questions, a Support Specialist shall provide an answer.
- Customer forum questions received from the Customer during Normal Business Hours will be attended to by the first available Support Specialist.
- Except for Severity 1 Incidents, Customer forum questions received from the Customer outside of, or when a Support Specialist is unavailable during, Normal Business Hours will be considered received on the business day in which Normal Business Hours are next resumed. Best efforts will be made to respond to the questions within the time period specified in the applicable Target Response Time (see Subsection 4.2 below).

3.3 Customer Responsibilities

The Customer agrees to the following responsibilities under this Agreement:

- Promptly report to the Service Provider all problems with the Software;
- Implement any corrective procedures provided by the Service Provider reasonably promptly after receipt;
- Demonstrate the errors and unexpected behavior of the Software or Hardware (purchased from the Service Provider only);
- Provide all data required by the Service Provider to resolve an Incident, including, but not limited to, usernames, passwords, system data, log files, database dumps, program scripts, descriptions of the Hardware and Software environment, examples of inputs, and expected and actual outputs;
- Provide access to the Server or Devices running or accessing the Software required by the Service Provider, including, but not limited to file transfer and remote assistance capabilities;
- Use commercially reasonable efforts to provide an active voice telephone line and email address when required to address a Support Request;
- Install Server Software on a Server that meets the minimum requirements for the Software as published by the Service Provider (available at <https://learn.ademero.com/frequently-asked-questions>);
- Install Client Software on a Device that meets the minimum requirements for the Software as published by the Service Provider (available at <https://learn.ademero.com/frequently-asked-questions>);

- Maintain Third-Party Software, and Hardware (not purchased by the Service Provider) that are associated with either the Server that runs the Server Software or the Device(s) that access the Server Software, including, but not limited to, installing patches, bug fixes, security updates, and addressing errors or unexpected behavior;
- Monitor storage capacity on the Server running the Server Software and add additional storage as necessary;
- Plan, distribute, and install Updates and New Releases;
- Update Software releases that are older than six (6) months to the most recent release;
- Use reasonable diligence, no less than the degree of care which the Customer uses in respect to its own confidential and proprietary information of like nature, to prevent the unauthorized disclosure, reproduction or distribution of Confidential Information to any other individual, corporation or entity; and
- Protect and maintain an up-to-date and restorable backup of any and all databases, files, utilities, scripts, code, software and other systems in which the Service Provider's staff may directly access, including Software licensed from the Service Provider, at all times, including all service functions performed by the Service Provider pursuant to this Agreement and undertaken on the Customer's local installation of the Software.

3.4 Service Provider Responsibilities

The Service Provider agrees to the following responsibilities under this Agreement:

- Assist with Installation and use of the Software and Hardware (purchased from the Service Provider only);
- Provide the Customer with access to a Website, which is operated and hosted by the Service Provider, to access and retrieve the Customer's documents;
- Use commercially reasonable efforts to diagnose and resolve errors and unexpected behaviors encountered while using the Software or Hardware (purchased from the Service Provider only);
- Provide the amount of disk storage and memory capacity that the Customer purchased at the time of sale;
- Provide the Customer with Updates and New Releases, when necessary;
- Provide training videos and electronic and online documentation for the Software and Hardware (purchased from the Service Provider only);
- Provide the Customer, on an as-available basis in a machine-readable format, with New Releases of Software already licensed to the Customer;
- Perform Software Updates to resolve Severity 1 and Severity 2 Incidents, if necessary, upon the Customer's request;
- Maintain security of the Software and use such access only for the purposes of this Agreement;
- Comply with the Customer's standard security procedures;

- Take commercially reasonable measures to prevent unauthorized access to the Website, including, without limitation, any documents and/or data thereon, and any databases or other sensitive material generated from or used in conjunction with the Website;
- Immediately notify the Customer of any known security breaches or holes, which are reasonably likely to impact the Website or any documents and/or data; and
- Use reasonable diligence, no less than the degree of care which the Service Provider uses in respect to its own confidential and proprietary information of like nature, to prevent the unauthorized disclosure, reproduction or distribution of Confidential Information to any other individual, corporation or entity.

3.5 Services Beyond Support Scope

Technical support services not covered under this Agreement shall not be provided to the Customer.

4. Incident Procedure and Resolution

4.1 Incident Procedure

The following steps provide the general procedure of the management of Incidents:

1. The Customer reports the Incident to the Service Provider via one of the several support channels (see Subsection 3.2).
2. Except when using the Forum Support Channel, immediately following the Customer's report, the Customer receives a case number, unless no email is associated with the Customer.
3. A Support Specialist is assigned to triage the Customer's case, prioritizing it based on complexity and severity (see Subsection 4.2), in which the Support Specialist has sole discretion in such determination.
4. The Support Specialist contacts the Customer regarding the Incident in the Target Response Time (see Subsection 4.2)
5. The Support Specialist uses reasonable commercial effort to resolve the Incident.
6. The Support Specialist contacts the Customer regarding the resolution (see Subsection 4.3).

4.2 Severity Rating and Target Response Times

The Service Provider shall work to accurately define the severity of the Incident to ensure a timely response as outlined as below.

Severity Rating	General Description	Characteristics	Target Response Time (for 90% of Incidents)
Severity 1 (Critical)	Extremely serious, system-wide interruption to normal operations	<ul style="list-style-type: none"> • Incident has affected, or will affect, every user. • Software tasks that should be executed immediately cannot be executed because of a complete and total Software malfunction. • Data integrity is at risk. 	< twenty-four (24) hours

Severity 2 (Urgent)	Serious interruption to normal operations	<ul style="list-style-type: none"> • Incident may have affected, or will affect, some or every user. • Important, essential Software tasks cannot be performed; however, some processing can continue in a restricted manner. • Data integrity may be at risk. 	< forty-eight (48) hours
Severity 3 (Important)	Moderate interruption to normal operations	<ul style="list-style-type: none"> • Incident may have affected, or will affect, some or every user. • Software has minor degradation in performance or user efficiency; however, important, essential tasks may be performed. • Data integrity is not at risk. 	< three (3) days
Severity 4 (Minor)	Minimal to no interruption to normal operations	<ul style="list-style-type: none"> • Incident may have affected, or will affect, some or every user. • Incident (1) hinders deployment of the Software during Pre-Production Phase or (2) produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from the Service Provider in a Post-Production Phase. • Data integrity is not at risk. 	< five (5) days

The severity level of an Incident shall be determined by Support Specialist in its sole discretion.

The Target Response Time above represents the response time for 90% of Incidents. The Service Provider shall use make best efforts to maintain these target response times, but actual response time will depend on the complexity and severity of the Incident and the Support Request volume.

4.3 Incident Resolution

An Incident shall be deemed to be resolved when the Customer receives any one of the following:

- Notice that the Incident has been resolved by the Service Provider;
- Information that resolves the Incident;
- Notice that the Incident can be resolved by updating to a newer release of the Software or Third-Party Software, or by installing additional Third-Party Software or Third-Party Hardware;
- Notice that the Incident is not reproducible; or
- Information that identifies that the Incident is caused by any of the following:
 - A known incompatibility with other Third-Party Software or Third-Party Hardware (for Incidents with a Severity of 3 or 4 only);
 - A known, unresolved flaw in the Software (for Incidents with a Severity of 3 or 4 only);

- Third-Party Software, including but not limited to software developed exclusively for the Customer, antivirus, antimalware, firewall, proxy, or other security software;
- Hardware not purchased from the Service Provider;
- Intermittent, slow, or failed network connectivity;
- Unauthorized customizations or modifications to the data, database, configuration files, settings files, scripts, code, or other software components and related technology on which the Software or Hardware it is dependent; or
- Failure by the Customer to meet the Customer Responsibilities (see Subsection 3.3).

5. Exclusions

5.1 General Exclusions

The Service Provider shall be excluded from providing technical support services for Incidents caused by or arising out of the following:

- Modifications or changes to the Software, except for any modifications or changes made by the Service Provider or by the Customer as directed by the Service Provider;
- Use of the Software that is not authorized in this Agreement or any agreement or material referenced herein;
- External physical factors, such as inclement weather conditions, which affects the ability to provide technical support services and which may cause electrical stress or failure of electric power, air conditioning or humidity control, neglect, misuse, operation of the Software with other media not in accordance with the Software, or causes other than ordinary use; and
- Problems solely arising from Third-Party Software and Third-Party Hardware.

5.2 Professional Service Exclusions

The following Professional Services are expressly excluded under this Agreement:

- Conversions;
- Migrations;
- One-time or recurring backups;
- Data recovery or restoration;
- Custom programming;
- Custom software modifications;
- Distribution and Installation of Updates or New Releases to the Software;
- Remote or in-person training;
- Performance monitoring;
- On-site technical support services;
- Software configuration or Implementations;

- Hardware (not purchased from the Service Provider) Installation, diagnosis, and resolution; and
- Third-Party Software Installation, diagnosis, and resolution.

The Customer may request for the Service Provider to perform these services; however, these services are considered Professional Services, which are outside the scope of this Agreement and require a distinct agreement from this Agreement.

6. Agreement Term, Payment, Renewal, Termination, Refund and Reinstatement

6.1 Term

Unless otherwise stated, the term for this Agreement shall commence on the Effective Date and remain in effect for one (1) month.

6.2 Payment

The Customer shall pay the fee agreed upon by the Parties by the Due Date indicated in the applicable invoice.

6.3 Renewal

This Agreement does not automatically renew. To maintain technical support, the Customer must purchase another support agreement from the Service Provider before the term of this Agreement expires. It is the Customer's responsibility to request and review any modification to the service level agreement before renewing the agreement.

6.4 Termination

This Agreement shall remain in force for the term agreed upon so long as, and to the extent that, the Customer pays the Service Provider the price agreed upon, the Customer maintains a subscription license in the Software, and the Customer is in full compliance with this Agreement. This Agreement shall terminate automatically, with or without notice of termination, at the end of its term unless the Customer renews according to Subsection 6.3. The Service Provider reserves the right to terminate this Agreement, with or without notice, if any payment owed by the Customer is past due. Upon termination of this Agreement, all outstanding fees owed by the Customer shall become immediately due and payable. The Service Provider shall have no further obligation to provide any technical support services to the Customer upon the termination of this Agreement. Under no circumstances shall the Service Provider be obligated to provide technical support services beyond the end of the term for this Agreement.

6.5 Refund

The Customer shall not receive a refund or cancel a payment for technical support services purchased from the Service Provider.

6.6 Reinstatement

If this Agreement lapses, or terminates, the Service Provider may assess a reinstatement fee to reinstate the Agreement.

7. Warranty, Disclaimer, and Limitation of Liabilities, Damages and Remedy

7.1 Warranty and Disclaimer

The Service Provider shall use commercially reasonable efforts to provide a resolution to Incidents that are covered under this Agreement. While it is the Service Provider's goal to provide an acceptable resolution for Incidents, the Service Provider cannot guarantee that all problems or issues can be resolved.

7.2 General Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS," WITH ALL FAULTS, AND, EXCEPT FOR THE LIMITED EXPRESS WARRANTY IN SUBSECTIONS 3.4 AND 7.1, THE SERVICE PROVIDER AND ITS AGENTS AND PARTNERS DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF NONINTERFERENCE, OF ACCURACY, OF SYSTEM INTEGRATION, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE SERVICE PROVIDER DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE CUSTOMER'S NEEDS OR BE VIRUS FREE, OR THAT THE CUSTOMER'S OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE SERVICE PROVIDER, ITS AGENTS, OR ITS PARTNERS SHALL CREATE A WARRANTY.

7.3 Limitation of Liabilities

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL THE SERVICE PROVIDER, ITS AGENTS, OR ITS PARTNERS BE LIABLE TO THE CUSTOMER FOR LOSS OF PROFITS, FOR LOSS OF CONFIDENTIALITY, FOR LOSS OF GOODWILL, FOR LOSS OF SALE OR BUSINESS EXPENDITURE, FOR BUSINESS INTERRUPTION, FOR VIRUSES THAT MAY INFECT THE CUSTOMER'S DEVICE(S), FOR COST OF SUBSTITUTE INTELLECTUAL PROPERTY, FOR PERSONAL INJURY, FOR NEGLIGENCE, OR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE SOFTWARE OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND EVEN IF THE SERVICE PROVIDER, ITS AGENTS, OR ITS PARTNERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.4 Limitation of Damages and Remedy

NOTWITHSTANDING ANY DAMAGES THAT THE CUSTOMER MAY INCUR FOR ANY REASON, THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE LIMITED TO THE GREATER OF THE AMOUNT THE CUSTOMER ACTUALLY PAID FOR SUPPORT UNDER THIS AGREEMENT OR \$5.00 (USD).

8. General Provisions

8.1 End-User License Agreement

This Agreement, and any agreement or material referenced herein, shall be subject to the terms and conditions of the **Ademero End-User License Agreement (Subscription License)** that is provided with the Customer's initial or renewal invoice for the licensed Software and/or upon the Software Installation.

8.2 Applicable Law

The Parties agree that this Agreement shall be governed by, construed, and interpreted in accordance with the laws of Florida.

8.3 Severability

If any term or provision of this Agreement is found to be unenforceable or invalid under applicable law, such term(s) or provision(s) shall be limited, narrowed and modified to the least extent necessary to render it(them) enforceable and valid. If necessary, the unenforceable or invalid term(s) or provision(s) shall be eliminated from this Agreement, and the remaining provisions shall remain in full force and effect.

8.4 Waiver

No waiver of any right under this Agreement will be deemed effective unless contained in writing signed by the party against whom the waiver is to be asserted. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future rights arising out of this Agreement.

8.5 Assignment

No party shall assign, without the prior written consent of the non-assigning party, its rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, that is not a party of this Agreement.

8.6 Entire Agreement

This Agreement, and any agreement or material referenced herein, constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both Parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.