

# OpptyGo Services Agreement

## 1. Terms of Service.

This Agreement governs your acquisition and use of OpptyGo services. Unless otherwise provided for in the Order Form, the Services are purchased and provided as a subscription.

By accepting this Agreement, either by clicking a box indicating your acceptance or by executing an Order Form referencing this Agreement, you agree to the terms of this Agreement.

If you are entering this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind said entity and its affiliates to these terms and conditions, in which case “you”, “your” and “Client” shall refer to such entity and its affiliates. If you do not have such authority or you do not agree with these terms and conditions, you must not accept this Agreement and you may not use the Services.

You may not access the Services if you are a direct OpptyGo competitor, except with OpptyGo’s prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

## 2. Evaluation Product; Development Services.

**(a) Evaluation Product.** If the Services are provided to Client under an evaluation grant (the “Evaluation Product”), the client may use the Evaluation Product solely for the purpose of evaluating the suitability of the Evaluation Product for licensing on a fee basis or demonstrating the Evaluation Product internally within the Client’s organization, as applicable. The Evaluation Product is provided “as is” without indemnification, support or warranty of any kind, whether express, implied, statutory or otherwise. Notwithstanding anything to the contrary herein, Company has no duty to provide support for the Evaluation Product, and COMPANY BEARS NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE OF THE EVALUATION PRODUCT. This warranty applies only to the Evaluation Product and does not extend to the life of the Services once it is no longer in this Evaluation period. Client acknowledges that its rights in and to the Evaluation Product are solely the right to evaluate and assess the Services pursuant to this Agreement and does not include any rights of ownership in any of the Services. All provisions of this Agreement apply to the Evaluation Product except as otherwise specified in this Section 2.

**(b) Commercial Purposes.** If Client is satisfied with the Evaluation Product and/or if Client begins using the Services directly or indirectly in connection with any business, or other undertaking intended for profit (“Commercial Purpose”), then the Services will be provided to Client on a Subscription basis pursuant to the remaining terms herein.

**(c) Development Services.** From time to time, Client may request Company to provide certain additional Development Services for Client, for example to extend or customize the Services. However, Client has no obligation to request Company to perform any services, and if such a request is made by Client, Company has no obligation to agree to perform such services. Client's request will specify the services to be performed and

the specific results to be achieved by use of a SOW agreed to in writing by the parties and attached hereto. Upon agreement between Company and Client on the nature of the Development Services, intellectual property rights, compensation and completion date terms as set forth in a SOW, Company will perform the Development Services using its best efforts.

### 3. Company Obligations.

(a) **Company Responsibilities.** Company will use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Company will, if possible, provide reasonable advance electronic notice, and (ii) any unavailability caused by circumstances beyond Company's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-OpptyGo Application, or denial of service attack.

(b) **General Support Services.** During the term of this Agreement, representatives of Client will provide customer support and technical support directly to the end users of the Software (the "End Users") ("First Level Support"). In the event that Client is unable to answer any question or request posed by any End User, and in the event that Client is the End User and needs support, and such question or request relates directly to the functionality or performance of the Software, representatives of Company will provide support to Client's support staff with regard to any such question or request ("Second Level Support"). Second Level Support will be available to Client between 9am and 5pm Pacific Standard Time, Monday through Friday (excluding holidays).

(c) **Client Responsibilities.** Client will (a) be responsible for End Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Client Content and the means by which Client acquired Client Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Company promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-OpptyGo Applications with which Client uses Services.

### 4. License Grants.

(a) **Access to and Use of Services.** Client has the right to access and use the Services subject to the terms of applicable Order Forms, this Agreement and the Documentation.

(b) **Client Content License.** Subject to the terms and conditions of this Agreement, Client hereby grants to Company, and Company hereby accepts, a worldwide, non-exclusive license to use Client Content, as defined below, solely for the purpose of (i) developing the Services, (ii) providing Client Content to End Users by means of the Services, and (iii) otherwise performing the services described herein.

(c) **License to Use Feedback.** Client grants Company and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Company and/or Company's affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by Client or End Users relating to the operation of Company or Company's affiliates' Services.

**(d) End User Licenses.** Client acknowledges and agrees that any End Users who access the Services will be required to agree to click-through terms of service governing their use of the Services. An End User's password may not be shared with any other individual except when reassigned to a new individual replacing one who will no longer use the Services. End Users may only access the Services as provided on the Order Form.

**(e) License Exclusions.** Except as expressly authorized herein, Client will not cause or permit any:

**(i)** copying or modification or creation of a derivative work of the Services or related documentation;

**(ii)** reverse engineering, decompilation, translation, disassembly, or attempt or actual discovery of the source code of all or any portion of the Services;

**(iii)** distribution, disclosure, marketing, rental, leasing or transfer to any third party of the Services or related documentation, or use of the Services for any dial-up, remote access, interactive, Internet-based or other on-line service from which Client receives compensation from subscription fees;

**(iv)** removal of any proprietary notices or labels; or

**(v)** removal or export from the United States or allowance of the export or re-export of the Services, Services or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services and documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## 5. Invoicing and Payment.

**(a) Monthly Subscription Fee.** Company will invoice Client, and Client agrees to pay Company, a monthly subscription fee in arrears in the amount set forth in the Order Form. The monthly subscription fee shall not increase for a period of 12 months from the later of the Effective Date of this agreement or from most recent Order Form renewal date, except as otherwise specified in the Order Form.

**(b) Payment.** All payments for the Services shall be made in United States dollars to Company at the address designated by Company. Client will remit payment by certified check, wire transfer or ACH bank transfers. If Client provides credit card information to Company, then Client authorizes Company to charge such credit card for all Services listed in the Order Form for the Service Term. Unless otherwise provided for in the Order Form, invoiced charges are due net thirty (30) days from the invoice date.

**(c) Penalties for Late Payment.**

(i) **Interest.** Interest shall accrue on any delinquent amounts owed to Company by Client at the lesser of 1.5% per month or the maximum rate permitted by applicable usury law.

(ii) **Suspension of Service and Acceleration.** If any amount owed by Client for Services is thirty (30) or more days overdue, Company may, without limiting Company's other rights and remedies, accelerate Client's unpaid fee obligations so that all such obligations become immediately due and payable, and suspend the Services until such amounts are paid in full. Company will provide at least ten (10) days' prior notice that Client's account is overdue, before suspending services.

(d) **Client Inquiries.** If Client believes that Company has billed Client incorrectly, Client must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

(e) **Taxes.** The fees listed on this Schedule exclude any taxes or duties payable in respect of the Services in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Company, Client agrees to pay to Company the amount of such taxes or duties in addition to the fees listed.

## 6. Ownership and Proprietary Rights.

(a) **Ownership of Services and Work.** Company has and retains all right, title and interest in and to, and all Intellectual Property Rights in and to, the Services, including any and all derivative works, improvements, enhancements, and extensions of the Services (except for Client Content incorporated therein) and any newly developed features, additional functionality or other work Software resulting from Special Development Services. Client has no rights in the Services as delivered to Client, other than the rights explicitly granted in this Agreement and rights to Client Content provided by Client for the purpose of utilizing the Services. "Intellectual Property Rights" means any patent rights, copyrights, copyright registrations, trade secrets, trade names, trademarks, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing rights now or hereafter in force.

(b) **Ownership of Client Content:** Client shall own all right, title and interest in any Client Content. "Client Content" includes electronic data and information submitted by or for Client to the Services, excluding content provided by OpptyGo Services and other non-OpptyGo applications. Client grants to Company, its affiliates, and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Client Content, and employ any applications and customizations created by Client or for Client for use by Client with the Services, as reasonably necessary by Company to provide the Services in accordance with this Agreement.

## 7. Privacy and Security Measures

**(a) Compliance with Privacy Laws.** Each party will comply with applicable privacy and data protection laws regarding the collection, processing and use of individually identifiable information about an individual End User collected online (“Personal Data”) in connection with its role as described in the Agreement.

**(b) Security Measures.** Each party has established and implemented reasonable information security practices regarding the protection of Personal Data. Company will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Client Content.

**(c) Security Claims.** Company will, at its expense, defend or settle any third-party claim against Client caused by Company’s failure to comply with Section 7(a) (Compliance with Privacy Laws), 6(b) (Security Measures) to the extent such failure results in a confirmed, unauthorized acquisition by a third-party of Personal Data directly provided by Client to Company (“Security Claim”). Company will pay Client the losses that are directly attributable to a Security Claim and are either finally awarded by a court of competent jurisdiction against Client; assessed by a government agency or regulator; or agreed to in a written settlement agreement signed by Company.

**(d) Conditions.**

**(i)** Company will have no liability for any Security Claim to the extent such claim arises from any of the Client obligations specified in Section 7(a) (Compliance with Privacy Laws), 6(b) (Security Measures).

**(ii)** Company’s obligations under Section 7(c) (Security Claims) are conditioned upon Client (to the extent permitted by applicable law): (1) promptly notifying Company of any claim in writing; (2) cooperating with Company in the defense of the claim; (3) granting Company sole control of the defense or settlement of the claim; and (4) refraining from making any admissions about the claim.

**(e) Sole and Exclusive Remedy.** The remedies in Section 7(c) (Security Claims) are Client’s sole and exclusive remedies and Company’s sole liability regarding the subject matter giving rise to any claim related to this Section 7.

**(f) Privacy Policy.** In connection with Client’s use of the Services, each party will conspicuously display a privacy policy or other notice, from the primary interface with End Users, that:

**(i)** discloses such parties’ privacy practices;

**(ii)** identifies the collection and use of information gathered in connection with the Services; and

**(iii)** offers individuals an opportunity to opt out of (or opt-in if applicable law requires) the collection or use of data gathered in connection with the Services.

**(g) Sensitive Personally Identifiable Information (Sensitive PII).** Client agrees not to transmit, disclose, or make available Sensitive PII to Company except as specifically provided in the Order Form.

(h) **Data Collection.** Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Content and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

## 8. Term and Termination.

(a) **Term.** This Agreement will commence upon the Effective Date and continue in full force and effect for a period of one (1) year or until such other date as may be mutually agreed upon in writing by the parties. The Agreement shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

### (b) Termination.

(i) **Breach.** In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Client will pay in full for the Services up to and including the last day on which the Services are provided.

(ii) **Cessation of Business or Insolvency.** Notwithstanding anything contained herein to the contrary, either party may terminate this Agreement immediately by providing written notice to the other if (a) the other ceases to carry on its business, or otherwise terminates its business operations, except as a result of a permitted assignment of this Agreement; or (b) the other becomes insolvent, admits in writing its inability to pay debts as they mature or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within sixty (60) days).

(a) **Escrow Agent.** Upon (i) the cessation of Company or insolvency, or (ii) an acquisition of the Company where the acquiring corporation does not continue to provide the Services in nearly the same manner that it the Services are provided to Client under this Agreement, then Client may request for Company to place the source code of the Services in escrow for the benefit of Client, and to have the escrow agent release said source code subject to the foregoing events.

### (c) Effect of Termination.

(i) **General.** Upon termination of this Agreement, Company will make all Client Content available to Client for electronic retrieval for a period of thirty (30) days, but thereafter Company will delete Client Content except for copies maintained in accordance with legal or recordkeeping requirements or as part of the Company’s archiving system. Upon termination, each party will promptly destroy or turn over to the other party all documents, paper, electronic copies or other matter in its possession or under its control

that contain the Confidential Information of the other party. Upon termination of this Agreement for any reason other than Company's cessation of business or insolvency pursuant to Section 8(b)(ii), all licenses granted hereunder shall immediately terminate.

**(ii) Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, indemnification, confidentiality obligations, warranty disclaimers, limitations of liability, and any right of action for breach of this Agreement that may have arisen prior to termination.

## 9. Independent Contractor.

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Company will determine, in Company's sole discretion, the manner and means by which Services are provided, subject to the requirement that Company shall at all times comply with applicable law. The Client has no right or authority to control the manner or means by which Services are accomplished.

## 10. Representations, Warranties and Indemnifications.

**(a) Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**(b) Infringement, Indemnification by Company.** Company shall hold harmless and indemnify Client, including payment of reasonable attorney fees, against any third-party claim alleging that the Services infringes any United States copyright, United States trademark, United States patent, or the protected trade secrets of any third persons, provided that Company is given prompt written notice of such claim and is given information, reasonable assistance and sole authority to defend or settle the claim. In the defense or settlement of the claim, Company may obtain for Client the right to continue using the Services or replace or modify the Services so that its use is noninfringing. Company disclaims any and all other liability for patent and copyright infringement, including any consequential, incidental, indirect or special damages. If none of the foregoing alternatives provide an adequate remedy, Company may terminate all or any part of this Agreement and return subscription fees paid for the infringing Services prorated over a twelve (12) month term from the initial delivery of Services. Company will have no liability for any claim of infringement based on (i) use of a superseded or altered release of the Services, except for such alteration(s) or modification(s) which have been made by Company or under Company's direction, if such infringement would have been avoided by the use of a current, unaltered release of the Services that Company provides to Client; or (ii) the combination, operation or use of any software furnished under this Agreement with programs or data not furnished by Company if such infringement would have been avoided by the use of the Services without such programs or data. This section states the Company's entire liability and Client's exclusive remedy for infringement.

**(b) Indemnification by Client.** Client shall hold harmless and indemnify Company from and against all claims, damages, losses and expenses, including court costs and reasonable fees and expenses of attorneys, expert witnesses, and other professionals, arising out of or resulting from any claim by a third party that Client Content infringes or misappropriates a third party's intellectual property rights, or arising from Client's use of the Services or Content in violation of Applicable Law, the Agreement, the Documentation or

Order Form. Client further indemnifies Company against all claims originating from Client's current or former employees, contractors and customers. At Company's option, Client will defend against any such action by a third party against Company. "Applicable Law" means any applicable statute, treaty, rule, regulation or common law and any applicable decree, injunction, judgment, order, formal interpretation or ruling issued by a court or governmental entity.

**(c) Performance Warranty.** Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the maintenance in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY HEREBY DISCLAIMS WITH RESPECT TO THE SERVICES, SUPPORT SERVICES AND OTHER DELIVERABLES PROVIDED HEREUNDER, ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. TO THE EXTENT COMPANY MAY NOT, AS A MATTER OF APPLICABLE LAW, DISCLAIM ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH LAW. For any breach of warranty above Client's sole and exclusive remedies are those described under "Term and Termination" above.

## 11. Limitation of Liability.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CLIENT AND CLIENT'S AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CLIENT AND CLIENT'S AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "INVOICING AND PAYMENT" SECTION ABOVE.

## 12. Nondisclosure.

The parties acknowledge that in order to perform under this Agreement each party will acquire information and materials from the other party and knowledge regarding the business, products, finances, future plans, customers, clients, employees, and consultants of, and that all such knowledge, information and materials acquired are and will be the trade secrets and confidential and proprietary information of Company (collectively, the "Confidential Information"). Notwithstanding the above, the non-disclosing party will not have liability to the disclosing party with regard to any Confidential Information of the other which: (i) was generally known and available in the public domain at the time it was disclosed or becomes generally known and available in the public domain through no fault of the non-disclosing party; (ii) was known to non-disclosing party at the time of disclosure as shown by the files of non-disclosing party to be in existence at the time of disclosure; (iii) is



disclosed with the prior written approval of the disclosing party; (iv) was independently developed by non-disclosing party without any use of the Confidential Information and by employees or other agents of non-disclosing party who have not been exposed to the Confidential Information; (v) becomes known to non-disclosing party from a source other than the disclosing party without breach of this Agreement by non-disclosing party and otherwise not in violation of the disclosing party's rights; or (vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body. Both parties mutually agree to hold all such Confidential Information in strict confidence, not to disclose it to others or use it in any way, commercially or otherwise, except in performing the services, and not to allow any unauthorized person access to it, either before or after expiration or termination of this Agreement. The parties further agree to take all action necessary to protect the confidentiality of the Confidential Information including, without limitation, implementing and enforcing operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information. Client acknowledges that violation of the provisions of this Section would cause irreparable harm to Company not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

### 13. Governing Law.

This Agreement shall be governed by the laws of the State of California and shall be deemed to be executed in San Francisco, California.

### 14. Arbitration.

Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination or validity of this Agreement will be submitted to arbitration as prescribed herein. Any arbitration related to this Agreement will be governed by and construed in accordance with the terms of Section 13 above. The parties will agree on a single arbitrator engaged in the practice of law within thirty (30) days of receipt of a notice of intent to arbitrate. Such arbitrator will be knowledgeable about the computer software industry and computer software law and will conduct the arbitration under the current rules of the American Arbitration Association (“AAA”), unless otherwise provided herein. The arbitrator will be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration will be conducted in Portland, Oregon. There will be no discovery other than the exchange of information that is provided to the arbitrator by the parties. The arbitrator's decision and award will be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereon. Any duty to arbitrate under this Agreement will remain in effect and enforceable after termination of this Agreement for any reason. Because both parties to this Agreement have been represented by legal counsel, and the parties have had the opportunity to negotiate individual provisions of this Agreement, the arbitrator will not construe any ambiguity that may exist in this Agreement in favor of or against either party.

### 15. Notice.

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

## 16. Severability.

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision will be enforced to the maximum extent possible and the remaining provisions of this Agreement will continue in full force and effect to the maximum extent permissible without being impaired or invalidated in any way.

## 17. Assignment.

Neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either party without the express prior written consent of the other party or its successors which consent will not be unreasonably withheld provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Company will refund to Client any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## 18. Waiver and Amendment.

No waiver, amendment or modification of any provision hereof or of any right or remedy hereunder will be effective unless made in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced and this Agreement may only be amended by a writing signed by both parties. No failure by any party to exercise, and no delay by any party in exercising, any right, power or remedy with respect to the obligations secured hereby will operate as a waiver of any such right, power or remedy.

## 19. Publicity.

The parties acknowledge and agree that Company shall be permitted to use the Client's name as a reference account. Specifically, Company shall be permitted to use the Client's name as a customer in any of its marketing or advertising materials.