Terms and Conditions for Managed Automation Services

These are the Terms and Conditions ("Terms") governing the Managed Automation Services ("MAS") to which you subscribe under a separate, signed Order. These Terms are co-dependent of the Terms and Conditions for the proprietary software, OpCon or OpCon Cloud, offered separately.

Scope. These Terms provide the MAS Customer with access to the full range of services as identified in the Order linked to these Terms. These Terms set out your rights and obligations regarding our provision of services. Your utilization of MAS is conditioned on your acceptance of and compliance with these Terms. If you disagree with any part of these Terms, then you may not utilize the services offered by SMA Technologies in the form of MAS.

1. **Definitions.** For purposes of these Terms, the following capitalized words or phrases will have the specified meaning:

   (a) **"Agreement"** means these Terms together with the MAS Order that you execute with us.

   (b) **"Company"** (or "we" or "our") means Unisoft International, Inc., dba SMA Technologies, or, if different, the entity executing the Order with you.

   (c) **"Confidential Information"** is defined in Section 10 below.

   (d) **"Customer"** (or "you" or "your") means the entity identified as the "Customer" in the Order.

   (e) **"Data Protection Addendum" (or "DPA")** means the document that describes the Company's policies in place to protect data which is incorporated by reference and is located at https://smatechnologies.com/DPA.

   (f) **"IP Rights"** means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how and trade secrets relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the OpCon Solution applied, developed, or performed as part of the services provided under the MAS Order, and arising in each foregoing case under any jurisdiction in the world.

   (g) **"Managed Automation Services (MAS)"** means the subscription-based service that allows for a team of experts employed by Company to manage the day-to-day operation and maintenance of the OpCon Solution for the subscribing Customer.

   (h) **"Order"** for the purposes of these Terms, means the ordering document for MAS executed by Company and Customer that incorporates these Terms among other terms agreed to for the OpCon Solution. Each Order, once mutually signed, is incorporated into and forms part of the Agreement for all purposes.

   (i) **"SOW"** means a statement of work attached to an Order which contains the details of Company's consulting services related to the MAS subscription that is over and above the normal contracted duties.

   (j) **"Support"** means those support and maintenance services provided by Company's MAS team for the OpCon Solution under these Terms.

(k) "Service Level Agreement (SLA)" refers to the document that outlines the level of service availability provided by SMA and the service credits available to Customer should the SLAs not be met.

(l)"User" means the employees of either the Company or Customer and the respective employees of their majority-owned affiliates, representatives, consultants, contractors, or agents.

2.   License.

This MAS Agreement is contingent upon the execution of a related but separate order for the OpCon Solution software. For clarity, the OpCon Solution software may be housed on-premises at your site or hosted in the Cloud. Refer to https://smatechnologies.com/terms-conditions for the online terms and conditions for the OpCon Solution software.

3. Term and Termination.

(a) Term. This Agreement continues until this MAS Order expires or has been terminated (whichever is earlier) as provided below. For added clarity, a MAS Order is only valid in conjunction with an OpCon or OpCon Cloud agreement.

(b) Termination for Cause. Either Party may terminate this Agreement or an SOW for cause with no fee or penalty, upon the occurrence of any of the following events: (i) if the other Party is in material breach of this Agreement (or SOW) and such breach is not cured within thirty (30) days after written notice from the non-breaching Party; (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation, or assignment for the benefit of creditors; (iii) if the other Party abandons its obligations hereunder; (iv) if the other Party assigns its rights or obligations under this Agreement in violation of Section 17(c) herein; (v) if the other Party has unnecessarily delayed performance in violation of the Services or SLA located at https://smatechnologies.com/mas_sla, or has caused the affected Party to have an unnecessary delay that would not have occurred otherwise; or (vi) the Services do not comply with applicable law or regulation.

(c) Termination for Service Level Breach. Should Company fail to achieve Service Level targets over a calendar month, Company and Customer shall work together to determine the root cause of such failure. In the event that Company fails to achieve targets for a second consecutive month, or for any three (3) non-consecutive months during a calendar year, Customer shall be able to terminate this Agreement/Order for Service Level Breach with no fee or penalty.

(d) Termination for Regulatory Disapproval. Customer may terminate this Agreement without penalty if a regulatory agency with supervision, investigation and/or penalty authority over Customer (a "Regulator") communicates a Disapproval of the Services, Deliverables, or this Agreement (or SOW). A Disapproval shall include, without limitation, the Regulator's written determination that the Services, Deliverables, or this Agreement (or SOW): (i) violates applicable law/regulation/written regulatory interpretation; (ii) does not meet industry standards required of Customer; (iii) creates an unsafe and unsound practice for Customer; or (iv) is unacceptable for any other reasonable position taken by the Regulator. To the extent permissible by law/regulation, Customer will either (a) share such Disapproval with Company (or paraphrase such document if sharing the full Disapproval would be prohibited by applicable law or the Regulator); or (b) provide a sworn affidavit to the effect that a Disapproval has been received by Customer and specifies which of the reasons (i) through (iv) that has been cited by the Regulator.

(e) Notice of Termination. Except for expiration of the Term as defined in this Section 3(a), a 60-day written notice is required for all other types of termination. Such notice shall be sent according to Section 17(l) herein and shall contain a detailed reason for termination, contact name, phone number, and email address.

4. Services.

In the unlikely event that expenses are incurred as part of the MAS Agreement, Customer shall reimburse Company for reasonable expenses incurred by Company that are necessary to perform obligations under this Agreement. Any such expense shall be approved in advance by Customer. Expenses may include airfare, lodging, meals, and rental car. Expenses shall not include any hourly fee associated with travel time by employees of Company or local travel. Upon request, Company shall submit copies of receipts for all expenses to Customer.

5. Compliance with Laws and Regulations.

This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable Federal and state laws and regulations as may be enacted and amended from time to time.

6. Legal Fees.

Each Party agrees if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party, or its successors in interest, shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief which may be available.

7. Warranties. Company warrants that:

(a) Service will substantially conform to the requirements of this Agreement;

(b) Company will perform the Services in a timely, professional and workmanlike manner and with a degree of quality consistent with applicable industry standards;

(c) its personnel are properly trained and qualified, as determined by Company, to perform the services described in this Agreement and with the standard of care and skill of an expert regularly rendering services of the type required by this Agreement, and in conformance with all applicable federal, state and local law, regulation, ordinance and license as may be enacted or amended;

(d) it has the legal right and authority to enter into this Agreement and perform obligations under this Agreement without the requirement of any third-party consent; provided, however, Customer's sole remedy with respect to any claims of infringement;

(e) it possesses all individual and corporate licenses, permits, permissions or any other authorization required to provide the Services, Deliverables, and/or related materials under this Agreement; provided, however, Customer's sole remedy with respect to any claims of infringement or misappropriation is set forth in Section 11(b);

(f) Company implements commercially reasonable policies, procedures, and toolsets, designed to ensure that the Services and Deliverables will not contain any viruses, worms, backdoors, spyware, Trojan programs, time bombs, drop-dead device, malware, or other destructive elements (collectively "Malicious Code"), if any such Malicious Code

is detected, Company shall take prompt steps for remediation. Remediation shall include, but not be limited to, immediately eliminate all Malicious Code and reversing their adverse effects. Additionally, Company shall test all materials using the most recent version of a reputable, commercially available anti-virus checking software to ensure Malicious Code does not exist;

(g) Company will correct, repair, or replace, at no cost to Customer, any nonconformity that prevents the Services provided under this Agreement from conforming and performing as so warranted under this Agreement within thirty (30) days of receipt of notice from Company of such non-conformity. In the event Company fails to make the Services conforming within such fifteen (15) day period, Customer may immediately terminate the applicable Order, and Company will refund to Customer all fees paid (but not yet earned by Company) for the corresponding Services within ten (10) days of termination. THIS SECTION 7(G) CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND COMPANY'S SOLE LIABILITY FOR ANY BREACH OF THIS SECTION 7; and

(h) EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 7, COMPANY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Security Requirements. Company will provide Customer with notice via Escalation Process of any confirmed unauthorized access, acquisition, use, disclosure, or loss of any Customer or Consumer Information (a "Security Breach") within twenty-four (24) hours following the discovery thereof.

(a) Attestation of Security Practices. Company agrees to the following and will provide evidence of the same upon Customer's request, which may be requested no more than once (1) per year and as requested in the event of a security breach or privacy complaint:

i. Company has implemented and maintains commercially reasonable administrative, technical and organizational controls and procedures that are in each case designed to (1) detect, prevent and respond to attacks, intrusions, or the introduction of third-party malicious software, and (2) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer environment hosting Customer Data;

ii. Company regularly tests and monitors the effectiveness of such controls, systems, and procedures; and

iii. Company designates an employee or employees to coordinate implementation and maintenance of its security measures.

(b) Company shall adhere, in all respects, to applicable security standards in the provision of the Services hereunder.

(c) Company's information security program complies with GDPR, applicable laws, statutes and standards applicable to the Services provided hereunder regarding the protection of Customer or Customer Data.

(d) Company, at least bi-annually, at its expense, will conduct industry security audits performed by one or more independent and reputable organizations qualified to conduct information security audits. Company shall retain sole and exclusive control over the selection of such organization and frequency of such audits.

(e) Company shall provide, upon request, to Customer one or more summaries of the results of Company's relevant independent security audits, solely as relates to the Services. These summaries shall be considered Company's Confidential Information and treated as such by Customer.

(f) Company shall document, maintain, and follow industry practices related to security incident notification and response plans.

(g) Company will conduct, or cause to have conducted, a comprehensive background investigation on any of its employees or contractors that are in either case used to provide Services ("Personnel"). Company's background investigation shall be conducted in accordance with Company's standard policy on background investigations, which is in accordance with applicable industry standards and regulations. Company shall, in its contracts with all subcontractors in the provision of Services to Customer, flow down the foregoing requirements (or background checks in accordance with such subcontractor's policies subject to requirements under applicable regulations). Company shall not permit any Personnel to perform Services under this Agreement and/or access Customer's Environment or Data if such Personnel has failed to pass such background check. All such Personnel will be located On-Shore within the US.

(h) Only Company provided systems and equipment will be used in support of the Services. No personal equipment, devices, laptops, phones etc., will be allowed on Customer's network.

(i) All Company provided systems will take the appropriate care to adhere to industry security standards that a company providing managed services would implement including but not limited to; personal firewalls, virus protection, devices with appropriate lock-screen timing, no sharing of passwords. Company will attest to or provide evidence of such security measures when requested by Customer at no cost to Customer.

9. Audit.

(a) Financial. Company shall provide to Customer upon request summarized invoicing records for the preceding year. Company shall also provide upon request, but no more than once per year, summarized versions of its audited financial statements, i.e., Income Statement and Balance Sheet.

(b) Regulatory Audit. Company agrees to be available and to assist Customer during any regulatory audit conducted by the Customer or its regulatory authorities that includes operations managed by Company as part of this Agreement. Company agrees to provide on behalf of Customer, system reports, files, or any other information in connection with any Service performed by Company, as part of its services. Company shall also provide to Customer or other regulatory agency regulating Customer, any information which may be required by any governmental agency regulating it in connection with an agency review or audit. Company allows for up to four (4) hours of audit assistance per year at no additional charge to Customer. All audit assistance over the allotted free hours will be deducted from the Customer's contracted service hours as provided in the Order.

(c) Due Diligence Third Party Risk Reporting. Not more than once in any twelve-month period unless requested as part of a security breach event, Company will provide as reasonably requested by Customer in writing, including in electronic format, any due diligence/third party risk information electronically through Customer's contract management system of record or by other method as agreed upon by the Parties. In no event shall Company be required to provide any information that would violate Company's legal obligations or threaten or jeopardize the security or integrity of Company's software, systems, networks, or computing environments.

(d) On a bi-annual basis, Company shall provide Customer with a copy of its internal or independent SOC 2 reports upon request.

10. Confidentiality and Privacy.

(a) For the purpose of this Agreement, the term "Confidential Information" means all information, including, but not limited to, the trade secrets and know-how of the respective parties, that a reasonable person in the parties' industries would regard as being proprietary or confidential, and any information marked "Confidential" or "Proprietary" and, in the case of Company, the provisions of any MAS offering; provided, however, Confidential Information shall not mean any information that: (i) is known to the receiving party at the time of disclosure by the disclosing party; (ii) is developed independently by the receiving party without use of the disclosing party's Confidential Information; (iii) is within, or later falls within, the public domain without breach of this Agreement by the receiving party; (iv) is publicly disclosed with written approval of the disclosing party; or (v) becomes lawfully known or available to the receiving party without restriction from a source having the lawful right to disclose the information without breach of this Agreement by the receiving party. The receiving party shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in subsections (i) to (v) above.

(b) During the Term and indefinitely thereafter, the recipient agrees that it will use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind, (but not less than reasonable care) to: (a) not disclose or otherwise make available Confidential Information of the disclosing party to any third party without the prior written consent of the disclosing party, provided that the recipient may disclose the Confidential Information of the disclosing party to its, and its affiliates', officers, employees, consultants and legal advisors who have a "need to know," who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 10; and (b) use the Confidential Information of the disclosing party only as reasonably necessary to fulfill the terms of this Agreement. To the extent legally permitted, recipient shall notify disclosing party of any actual or threatened breach or legally required disclosure of Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with discloser's reasonable, lawful efforts to resist, limit, or delay disclosure.

(c) Confidential Information shall be returned to the disclosing party, upon request or upon the expiration or termination of this Agreement, or shall be properly, immediately, permanently, and irretrievable deleted, erased, destroyed, and disposed of as specified in our Terms and Conditions for the OpCon Solution which are located at https://smatechnologies.com/terms-conditions, as well as any other applicable laws and regulations, once the services contemplated by the Agreement have been completed or otherwise terminated.

(d) The recipient may disclose Confidential Information of the disclosing party to the extent compelled by law to do so, provided the recipient gives the disclosing party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. If the recipient is compelled by law to disclose the disclosing party's Confidential Information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not contesting the disclosure, the disclosing party will reimburse the recipient for its reasonable cost of compiling and providing secure access to that Confidential Information.

(e) Any feedback, comments, suggestions, or proposed modifications to the services provided by Customer to Company may be freely used by Company without limitation, notice, or duty of accounting.

10. Indemnification.

(a) Mutual Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other Party, and its respective affiliates, officers, directors, Personnel, and agents (the "Indemnified Party") from and against any and all third party actions, claims, demands, damages, costs of investigating a claim, liabilities, judgments, costs and expenses (including reasonable attorneys' fees), settlements, and expenses (collectively, "Claims") arising from or related to: (i) any gross negligent or intentional action or inaction of the Indemnifying Party; and/or (ii) the Indemnifying Party's violation of applicable law or regulation.

(b) Company Indemnification. Company shall (i) defend and hold harmless Customer and its affiliates, officers, directors, employees, contractors and agents (collectively, "Indemnitees") from and against any and all claims, actions or lawsuits brought by a third party against the Indemnitees (each, a "Claim") and arising from an allegation that the receipt and use of the Deliverable as authorized and intended by this Agreement infringes and/or violates (based upon statute and/or common law) any patent, trademark, service mark, copyright, trade secret and/or any other intellectual property right, and (ii) indemnify against and pay costs and damages agreed to in settlement by Company or awarded against the Indemnitees by a court of competent jurisdiction in favor of the third party bringing such Claim(s). If the use of said item is, or is likely to be, enjoined as a result of a Claim, Company, at no expense to Customer, may obtain for Customer the right to use said item or substitute an equivalent item acceptable to Customer and extend this infringement indemnity thereto. If neither of the foregoing alternatives is commercially reasonable in Company's judgement, Company may terminate this Agreement, and upon return of the allegedly infringing Deliverables, shall refund a pro-rated amount of the fees paid for the term or quarter. This Section sets forth Customer's exclusive remedy and Company's sole obligation with respect to any third party claims of infringement or misappropriation.

(c) Indemnification Procedures. The party seeking indemnification hereunder will promptly notify the indemnifying party in writing of a claim for which it seeks indemnification hereunder and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party will immediately take control of the defense and investigation of the claim and will employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party will not settle any claim hereunder in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 11(b) will not relieve the indemnifying party of its obligations under this Section 11 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

(d) In the event the Indemnifying Party materially breaches its indemnification obligations in accordance with this Section 11, fails to promptly indemnify and defend such Claims and/or pay the indemnified Party's expenses as provided in this Section, the Indemnifying Party shall reimburse the Indemnified Party for all of its reasonable attorney's fees, costs and damages incurred in settling or defending such Claims.

12. Injunctive Relief. The Parties agree that the disclosure of Confidential Information or other breach could cause irreparable harm and that the amount of which would be difficult to ascertain. Accordingly, it is understood and agreed that monetary damages may not be a sufficient remedy for such breach and that specific performance and injunctive relief shall be appropriate remedies for such breach or any threat of such breach, and nothing contained in this Agreement shall limit either Party's right to seek such relief.

13. Limitation of Liability.

(a) Exclusion of Certain Damages. NEITHER PARTY IS LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE SERVICE (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, AND LOST PROFITS), EVEN IF A PARTY HAS BEEN ADVISED OF SUCH DAMAGES OR THEY WERE FORESEEABLE.

(b) Limit of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CUSTOMER OR COMPANY EXCEED THE AMOUNT PAID OR PAYABLE TO COMPANY BY CUSTOMER PURSUANT TO THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM (THE "GENERAL CAP").

(c) Exclusions. NOTWITHSTANDING SECTION 13(a) OR SECTION 13(b), ANY LIMITATIONS ON EITHER PARTY'S LIABILITY SHALL BE INAPPLICABLE IF ANY SUCH DAMAGE, LOSS, OR CLAIM ARISES FROM (I) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY OR ITS PERSONNEL, AND/OR (II) A PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 11.

(d) Secondary Cap. NOTWITHSTANDING THE FOREGOING, CUSTOMER OR COMPANY'S AGGREGATE LIABILITY ARISING FROM A BREACH OF SECTION 8 OR SECTION 10 SHALL IN NO EVENT EXCEED THREE TIMES THE GENERAL CAP.

14. Ownership of Deliverables (Software & Customer Owned).

(a) Company and its licensors retain ownership of the Services and any design, software, documentation, processes, algorithms, or user interfaces, and all intellectual property rights embodied in any of the foregoing ("Company Technology"). To the extent that Company performs any development, consulting or other labor services that result in the provision or delivery to Customer of other software ("Software Deliverables"), such Software Deliverables shall constitute Company Technology and Company shall retain ownership of all such Software Deliverables. Customer is granted a nonexclusive, nontransferable and royalty-free license to such Software Deliverables during the Term. The Software Deliverables constitute Company Confidential Information and may only be used in connection with the authorized use of Company's software licensed pursuant to a separate agreement. Customer may not remove or modify any proprietary marking or restrictive legends from the Company Technology. Company reserves all rights not expressly granted in this Agreement.

(b) The parties may from time to time enter into one or more statements of work expressly referencing these Terms for additional development work to be provided by Company (each, an "SOW"). Customer shall own all Customer-Owned Deliverables that are delivered pursuant to an SOW and according to such acceptance criteria and acceptance period as stated within that SOW. Each such Customer-Owned Deliverable shall constitute a work made for hire. "Customer-Owned Deliverable" means any software developed and delivered with respect to an SOW that is clearly, expressly, and conspicuously marked in the SOW as a Customer-Owned Deliverable.

(c) It is expected that during the regular course of the Agreement, the Customer will request routine work to be done that falls within the scope of this Agreement (each, a "Ticket"). Each Ticket will be processed through the Company's Ticket monitoring program and tracked accordingly. All Tickets will be handled independently from an SOW as described in this Section 14, however, should development work be required in order to complete a Ticket, the Company may suggest that an SOW be executed. All work done under a Ticket is considered a Customer-Owned Deliverable and is subject to the SLA.

(d) Customer Obligation. Customer acknowledges that the completion of a Deliverable described may depend on and/or require Customer's commitment to certain resources. Customer agrees to provide such resources and not to withhold its acceptance of a Deliverable where Company's failure to complete such Deliverable within the agreed upon period of performance is a direct result of Customer's failure to provide such resources

15. General:

(a) Governing Law and Forum. These Terms are governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these Terms. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the jurisdiction of the main address of the defendant in such proceedings, and each party submits to this personal jurisdiction and venue. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

(b) Entire Agreement. This written Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior offers, negotiations, and other agreements pertaining to MAS.

(c) Enforceability. If any provision of these Terms is found to be invalid or unenforceable, the other terms remain in effect.

(d) Force Majeure. Neither party is liable for events beyond their control, including without limitation force majeure events, due to contingencies beyond its control whether directly or indirectly, including but not limited to, fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic or catastrophe, or other conditions beyond the control of such party.

(e) No Additional Terms. No additional or conflicting terms of a Customer purchasing document shall be applicable to the Agreement.

(f) Survival, CISG. Any terms that by their nature survive termination of these Terms for a party to assert its rights and receive the protections of these Terms, will survive.

(g) Relationship of the Parties. The parties are independent contractors with respect to each other.

(h) Subcontractors. Company shall not subcontract any work without Customer written consent. Company will be deemed to have performed any work performed by a subcontractor and remain responsible and liable for any work performed by a subcontractor as if Company had provided the work itself.

(i) Binding Nature. This Agreement shall be binding upon, and inure to the benefit of, Company and Customer and their respective successors and assigns.

(j) Third-Party Beneficiaries. Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the Parties and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

(k) Waiver. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this Agreement, or take advantage of its rights under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

(l) Notices. Unless otherwise agreed to by the parties, all notices required under these Terms (except those relating to OpCon Solution pricing, changes, and upgrades) will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, (iii) overnight mail, addressed and sent to the address in the Order, or (iv) electronic mail to the contact listed in the Order.