

ELEVEN SOFTWARE INC.
Guest WiFi Services
STANDARD TERMS AND CONDITIONS

These Guest Wi-Fi Services Standard Terms and Conditions (“Terms and Conditions”) contain the terms and conditions that govern your access to and use of ElevenOS (as defined below) and is an agreement between Eleven Software Inc. (“Eleven”) and the entity which has accepted these Terms and Conditions through an executed document which references these Terms and Conditions (“Company”). These Terms and Conditions take effect when Company and Eleven execute the document referencing these Terms and Conditions and continue unless and until another agreement between Eleven and Company is executed (the “Term”).

1. Authorization and Services.

1. **Authorization and Territory.** The rights granted in these Terms and Conditions give Company the nonexclusive right to provide and deliver Eleven’s guest Wi-Fi platform (“ElevenOS”) and related documentation (the “Documentation”) to Wyndham locations (“Properties”) offering their visitors Wi-Fi services (“Guest Wi-Fi”).

2. **Services.** During the Term, Eleven will provide ElevenOS, and any enhancements or updates thereto (in each case, as released by Eleven for use by its customers generally or to specific customers), to Company as a service, in addition to technical support as set forth in Section 4.2 below (each a “Subscription”). Eleven may also, at Company’s request, deliver development, implementation or other services as separately contracted between the parties in writing (the “Tech Services”).

3. **License Rights.** During the Term and subject to the terms and conditions of these Terms and Conditions, Eleven hereby grants Company the limited, terminable, nonexclusive, nontransferable, non-sublicensable right, all of which may be exercised solely by Company in the Territory, to: (i) access and use ElevenOS, in each case, solely for the purposes of Company providing Guest Wi-Fi at the Properties; and (ii) access and use the Documentation, solely for the purposes of providing Guest Wi-Fi at the Properties. Company may allow its employees or third party contractors to access and use ElevenOS (subject to the terms of these Terms and Conditions), provided that, Company is and will remain liable for such employees’ or third party contractors’ use, and Company acknowledges and agrees that a breach by such employees or third party contractors of these Terms and Conditions shall automatically be deemed a breach by Company.

4. **Restrictions.**

4.1. Company may not distribute or otherwise transfer Subscriptions to any parent, subsidiary or affiliate of Company, or to any other third party without Eleven’s written consent.

4.2. In exercising its rights hereunder, Company shall not cause ElevenOS or any other Eleven software to become subject to or governed by an Excluded License. For purposes of these Terms and Conditions, an “Excluded License” means any license, such as an open source software license, that requires as a condition of use, modification or distribution of such software, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

4.3. Except as expressly authorized by Eleven herein, Company will not, and will not permit any third party to: (i) license, sublicense, lease, sell, rent, timeshare, distribute, disclose, permit access to, assign, grant a security interest in, or otherwise transfer to any third party, any rights in ElevenOS or the Documentation, whether for profit or without charge; (ii) store, reproduce, transmit, modify, adapt, perform, display (including by “framing”), or publish ElevenOS or the Documentation; (iii) circumvent any use-limitation or protection device contained in or placed upon ElevenOS, or access or attempt to access any portion of ElevenOS that Company is not authorized to access; (iv) use ElevenOS to execute denial of service attacks; (v) impair ElevenOS or any servers or systems associated with ElevenOS; (vi) upload, transmit, or otherwise publish any communication or content to or through ElevenOS that contains software viruses or any other malicious code; (vii) violate any applicable local, state, national or international law; (viii) use ElevenOS or the Documentation in any manner that violates, infringes, or misappropriates the intellectual property rights, publicity or privacy rights, or other rights of any third party; (ix) use ElevenOS in connection with life support systems, medical devices, or any application or other high risk activities where failure or malfunction could lead to possible loss of life; or (x) breach or otherwise violate Section 7 below.

2. **Property Set Up.**

Go Live. Company may set up Properties in ElevenOS at no cost to Company as long as such Property is in ElevenOS's "Trial Mode." Trial Mode is capped at three (3) concurrent Wi-Fi users (each a "Guest"). The Property's Subscription will commence once Company disables Trial Mode as set forth herein or usage exceeds the cap, whichever occurs first (the "Go Live Date"). Wyndham has the contractual relationship with the Properties governing each Property's Subscription.

3. **Ordering, Reporting & Fulfilment.**

- 3.1. Company will follow the Go Live procedure set forth in Section 2 above. Company will order any Tech Services by issuing a binding purchase order to Eleven. Company will be responsible for provisioning its Properties' access to ElevenOS. In particular, Company acknowledges and agrees that the use of ElevenOS requires a Wi-Fi/wired network and authentication gateway functionality with which ElevenOS must be integrated, along with other third party hardware or software (collectively, "Third Party Software and Hardware"). Eleven shall have no obligation or responsibility for providing Third Party Software and Hardware to Company hereunder, and such Third Party Software and Hardware must be supplied or obtained by Company at its sole cost and expense.

4. **Property, Guest and Escalation Support.**

4.1. **Property and Property Guest Support.**

- 4.1.1. Company shall provide commercially reasonable support services to each Property. Such support services shall be provided, at a minimum, during the Property's normal business hours, and shall include at a minimum, but are not limited to, account set-up; staff training, including "how to" articles and FAQs; troubleshooting; support; service and software updates; software configuration; performance issues within the scope of Company's control; Company connectivity and Company desktop; and service availability issues within the scope of Company's control. Company shall inform Eleven of any difficulties it encounters in servicing the Property.
- 4.1.2. As between the parties, Company will be the sole point of contact for each Property for all operational or technical support questions related to ElevenOS. Company shall inform each Property and their respective Guests of Company's support processes and shall inform each Property that support is provided by Company, not Eleven.
- 4.1.3. If a Property contacts Eleven directly for support, Eleven may redirect Property to Company or, if it reasonably deems it in the parties' best interest, assist the Property to resolve the issue. If Eleven redirects the Property to Company for support, Company shall: (i) provide service and support for the Property as set forth in Section 4.1.1 above; and (ii) inform Eleven of any difficulties it encounters in servicing the Property.

- 4.2. **Eleven Technical Support.** Eleven will provide Company escalation support for technical questions or issues relating to ElevenOS that Company, after exercising its best commercially reasonable efforts, is unable to resolve on its own. Eleven technical support will be available 24/7/365. Eleven and Company will work together in good faith to identify any issues related to Guest Wi-Fi, and Eleven will use commercially reasonable efforts to resolve all ElevenOS issues as soon as reasonably practicable under the circumstances.

5. **Data Ownership and Protection.**

5.1. **Data Definitions & Ownership.**

- 5.1.1. For purposes of these Terms and Conditions:

5.1.1.1. "Property Data" means all electronic data, content and information that is transferred to Eleven through ElevenOS from a Property (or its brand parent company) and/or its Guests, or that is otherwise transferred to Eleven through ElevenOS as a result of Company's employees, agents or representatives provision of ElevenOS hereunder.

5.1.1.2. "Company Data" means all electronic data submitted by Company and not related to Properties or their Guests.

5.1.1.3. "Aggregated Data" means all data, trend or analytics data aggregated from but not containing Company or Property identifiable information.

- 5.1.2. As between Eleven, Company and Property: (i) all right, title and interest in the Property Data is and shall remain the property of Property (or its brand parent company); (ii) all right, title and interest in the Company Data is and shall remain the property of Company; and (iii) all right, title and interest in the Aggregated Data and any other data provided by Eleven is and shall remain the property of Eleven.
- 5.1.3. Company is solely responsible for the content of any Company Data and/or Property Data, and for securing any rights and/or consents to such Company Data and Property Data necessary to transfer such Company Data and Property Data to Eleven through ElevenOS, in each instance, without violating the intellectual property rights or other proprietary rights of any third party, or otherwise creating any obligation or liability on the part of Eleven to Company, Property or to any third party.
- 5.1.4. During the Term, Company hereby grants to Eleven (and each of Eleven's vendors, contractors or agents that assist Eleven in providing ElevenOS), a royalty-free, fully-paid right and license to use such Company Data and Property Data as required to provide ElevenOS under these Terms and Conditions.
- 5.2. **Data Privacy and Security.** In performing its obligations and responsibilities hereunder, Company will:
 - 5.2.1. Comply with all applicable laws in connection with its provision of ElevenOS hereunder, including all applicable laws regarding data privacy and security.
 - 5.2.2. Use the Property Data solely in connection with its obligations and responsibilities under these Terms and Conditions and for no other purpose. In particular, Company shall not sell, license, lease, or otherwise transfer any Property Data to any third party except as otherwise expressly authorized by Eleven in writing.
 - 5.2.3. Adopt, implement and maintain appropriate administrative, physical and technical safeguards for the protection of the availability, security, confidentiality and integrity of such Property Data, and any associated servers, systems and databases owned or controlled by Company.
 - 5.2.4. Promptly inform Eleven of any unauthorized use, breach or disclosure of Property Data.
 - 5.2.5. Provide sufficient notice to, and obtain sufficient consent and authorization from, each Property and each of their respective Guests (and any other party providing personal data to Company and Eleven hereunder) to permit the processing of Property Data by Company and Eleven as contemplated by these Terms and Conditions.
- 5.3. Where applicable, Company shall comply with General Data Protection Regulation applicable in the European Union, European Economic Area and their member states, Switzerland, and United Kingdom ("GDPR"). The terms of the Data Processing Addendum ("DPA"), attached to the document referencing these Terms and Conditions form part of these Terms and Conditions.
- 5.4. **Governmental Requests.** Company will only disclose Property Data (including the content of any communications transmitted through ElevenOS) to law enforcement or other governmental authorities to the extent required by applicable law. If Company receives a request from any law enforcement or governmental authority to disclose Property Data, either directly or as redirected to Company by Eleven, then Company will, to the extent permissible under applicable law, redirect such law enforcement or governmental authority to request the Property Data directly from the Property. If compelled to disclose Property Data to a law enforcement or other governmental authority, then Company will promptly notify and provide a copy of the demand to the Property, unless legally prohibited from doing so.
- 6. **Warranties.**
 - 6.1. **Mutual Warranties.** Each party represents, warrants and covenants to the other that: (i) it is a duly organized business entity validly existing under the laws of its respective jurisdiction of organization; (ii) it will strictly comply with all applicable national, state, regional and local laws and regulations in connection with the performance of its respective obligations and responsibilities hereunder; (iii) it has the full power and authority to enter into these Terms and Conditions and perform its obligations under these Terms and Conditions; (iv) these Terms and Conditions form a legal, valid, and binding obligation, enforceable in accordance with its terms; and (v) the signing of any document referencing these Terms and Conditions and the performance by each party of its obligations under these Terms and Conditions will not: (a) breach any agreement with any third party, or give any person the right to accelerate any obligation; (b) violate any law, judgment, or order; or (c) require the consent, authorization, or approval of any person, including without limitation any governmental body.
 - 6.2. **ElevenOS Warranty.**

- 6.2.1. Eleven represents and warrants to Company that it will use commercially reasonable efforts to ensure that ElevenOS is available for use and/or access by Company and/or the Properties on an uninterrupted basis. However, Company acknowledges and agrees that ElevenOS will not always be available, as a result of, among other things, scheduled maintenance, system downtime, failures of the Internet generally, and other causes. In the event ElevenOS becomes unavailable for access and/or use (other than as a result of scheduled maintenance and/or system downtime), Eleven will use commercially reasonable efforts to restore such availability. THE FOREGOING REMEDY IS COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR THE BREACH OF THE WARRANTY SET FORTH IN THIS SECTION AND FOR ANY UNAVAILABILITY OF ELEVENOS UNDER THESE TERMS AND CONDITIONS. COMPANY ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE SET FORTH HEREIN, ELEVEN WILL HAVE NO LIABILITY TO COMPANY AND/OR TO ANY THIRD PARTY WITH RESPECT TO ANY SUCH UNAVAILABILITY. THE REMEDY SET FORTH IN THIS SECTION, ALONG WITH ANY OTHER LIMITATIONS AND/OR REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS, WILL APPLY NOTWITHSTANDING ANY FAILURE OR ALLEGED FAILURE OF ESSENTIAL PURPOSE.
- 6.2.2. Any instructions, directions, guarantees, warranties or other statements made by Company to a Property regarding the use of ElevenOS must be consistent with Eleven's written warranties, online services terms, and the Documentation. Except as set forth in the preceding sentence, Company will not make any representations, guaranties, conditions or warranties regarding the use, characteristics, qualities, efficacies, functionality or features of ElevenOS, except as otherwise pre-approved by Eleven in writing.
- 6.2.3. **Disclaimer.** ELEVENOS, THE DOCUMENTATION AND THE TECH SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS. ELEVEN DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND IN RELATION TO ANY AND ALL GOODS OR SERVICES PROVIDED UNDER OR RELATING TO THESE TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Intellectual Property.

- 7.1. Company acknowledges and agrees that ElevenOS, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts used to provide ElevenOS, are valuable intellectual property owned by Eleven, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. Company will not copy, modify, create a derivative work of, reverse engineer or assemble, disassemble, decompile or otherwise attempt to discover or copy ElevenOS or any ElevenOS functionality. Except for the rights set forth in these Terms and Conditions, no other intellectual property right or license of any kind is granted, and Company agrees that Eleven owns and will continue to own, all right, title and interest in and to all intellectual property rights associated with ElevenOS, including without limitation, any patents, trademarks, trade names, inventions, copyrights, know-how and trade secrets relating to the design, manufacture, operation and service of ElevenOS. Company will not develop methods to enable unauthorized parties to use ElevenOS and will not modify ElevenOS or incorporate any portion of ElevenOS into any other software or create a derivative work of any portion of ElevenOS. Company will not and will not authorize or permit any of its employees, agents, representatives, or any third party to, access or use ElevenOS in order to build any product or service that is competitive with ElevenOS, or that copies or emulates any features, functions or graphics of ElevenOS, in each case, without the express written permission of Eleven. In the event that Company is developing any such product or service during the Term, Company will be required to demonstrate, upon Eleven's request, that all such product and service development has occurred independently of Company's access to or use of ElevenOS or other exercise or performance of its rights, obligations and responsibilities under these Terms and Conditions, and such proof will be through written evidence of Company's internal and external development procedures. Company will not remove any copyright or other proprietary notices displayed through Company's use of or placed in conjunction with ElevenOS or the Documentation. Eleven reserves all rights not expressly granted hereunder. The rights granted herein do not constitute a sale of any software or tangible product. Company agrees not to challenge Eleven's ownership of or rights in and to ElevenOS and related

materials, including without limitation, all copyrights and other proprietary rights associated therewith or embodied therein.

- 7.2. Company acknowledges and agrees that any violation of the terms of this Section would irreparably harm Eleven, who may enforce the terms of these Terms and Conditions through injunctive relief, without limitation to any other rights and remedies available.
- 7.3. If Company provides any product or service ideas to Eleven, Company agrees that Eleven may use such ideas in its products and services without any compensation or claim by Company, and Company may equally commercialize such ideas as part of its own products and services.

8. **Confidentiality.** Each party (the “Discloser”) may, in connection with these Terms and Conditions, disclose certain confidential information (“Confidential Information”) to the other party (the “Recipient”). Recipient will not use Discloser’s Confidential Information other than in performing and/or exercising its rights, obligations and/or responsibilities under these Terms and Conditions, and will not disclose, transfer or disseminate the Discloser’s Confidential Information to any third party other than with the written permission of the Discloser. Recipient will prevent the unauthorized access, use or disclosure of any of Discloser’s Confidential Information to third parties using the same measures that it uses to prevent the unauthorized access, use or disclosure of its own confidential and proprietary information, but in no event using less than a commercially reasonable standard of care. Recipient will promptly inform Discloser of any unauthorized access, use or disclosure of Discloser’s Confidential Information of which Recipient becomes aware. Subject to Section 5 above and notwithstanding this Section 8, Recipient’s obligations of confidentiality and non-use will not apply to information that: (a) if disclosed orally, is not clearly prefaced as being confidential by Discloser and if disclosed in writing, is not marked with an appropriate confidentiality legend at the time of disclosure to Recipient of such information; (b) is already in Recipient’s possession at the time of disclosure thereof; (c) is or later becomes part of the public domain through no fault of Recipient; (d) is received from a third party having no obligations of confidentiality to Discloser; or (e) is independently developed by Recipient. In the event Recipient is required by law or regulation to disclose any of the Discloser’s Confidential Information, then Recipient will have the right to disclose the Discloser’s Confidential Information without violation or breach of this Section 8, provided that, Recipient will first provide reasonable advance notice to Discloser so as to allow Discloser to assert whatever exclusions or exemptions that may be available to it under such law or regulation. For purposes of these Terms and Conditions, ElevenOS and the Documentation will automatically be deemed Eleven’s Confidential Information. Recipient’s obligations of non-use and confidentiality as set forth in this Section 8 will survive the termination or expiration of these Terms and Conditions for a period of three (3) years, provided that, for any of Discloser’s Confidential Information that constitutes the trade secret information of the Discloser, Recipient’s obligations of non-use and confidentiality with respect to such trade secret information will continue for so long as such information remains a trade secret of Discloser.

9. **Termination.**

9.1. **Default and Termination.** These Terms and Conditions may be terminated as follows:

9.1.1. Eleven may terminate these Terms and Conditions, upon written notice to Company effective immediately and without opportunity to cure, in the event Company breaches or otherwise violates Sections 1.4, 5.2, 5.3, 6.2.2, 7 or 8 of these Terms and Conditions.

9.1.2. Either party may terminate these Terms and Conditions, upon written notice to the other party effective immediately, in the event the other party materially breaches any Section of these Terms and Conditions (other than a breach governed by Section 9.1.1 above) (a “Default”), which Default will not have been cured within thirty (30) days after receiving written notice specifying such Default from the non-defaulting party.

9.2. **Effect of Termination or Expiration.** Upon the termination or expiration of these Terms and Conditions, all rights, obligations and responsibilities of the parties hereunder (including all Subscriptions) will immediately and automatically cease, and each party will within twenty (20) days’ return to the other party, or destroy (and certify the destruction thereof), the other party’s Confidential Information. Notwithstanding the preceding sentence: (i) the termination or expiration of these Terms and Conditions will not affect or impair any right or liability of either party that accrued prior to the effective date of such termination or expiration; and (ii) upon the termination or expiration of these Terms and Conditions, Eleven may, but is not obligated to: (a) keep Company’s account open with limited access to ElevenOS for a reasonable time to complete processing of all administration of the account termination; (b) upon written request by Company within thirty (30) days after the effective date

of termination or expiration, Eleven will make available for Company to download a file of Company Data in xml or other agreed upon format; and (c) after such thirty (30) day period, Eleven will have no obligation to maintain or provide any Company Data and may thereafter, unless legally prohibited, delete all Company Data in its systems or otherwise in its possession or under its control.

10. Limitation of Liability. EXCEPT FOR A PARTY'S BREACH OF SECTION 8, A BREACH BY COMPANY OF SECTIONS 1.4, 5.2, 5.3 OR 6.2.2, OR A VIOLATION BY COMPANY OF ELEVEN'S INTELLECTUAL PROPERTY RIGHTS PURSUANT TO SECTION 7 OR OTHERWISE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE PERFORMANCE OR BREACH HEREOF, INCLUDING WITHOUT LIMITATION, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF PROFIT, OR LOSS OF GOODWILL, REGARDLESS OF THE THEORY OF LIABILITY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND REGARDLESS OF WHETHER OR NOT THE PARTY FROM WHOM SUCH DAMAGES ARE ALLEGED TO BE OWED KNEW OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A PARTY'S BREACH OF SECTION 8, A BREACH BY COMPANY OF SECTIONS 1.4, 5.2, 5.3 OR 6.2.2, OR A VIOLATION BY COMPANY OF ELEVEN'S INTELLECTUAL PROPERTY RIGHTS PURSUANT TO SECTION 7 OR OTHERWISE, IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY EXCEED \$100,000.

11. Indemnification.

- 11.1. Each party (the "Indemnitor") will fully indemnify, hold harmless and defend the other party (and its directors, officers, employees, agents, stockholders and affiliates) (the "Indemnitee") for, from and against any and all third party claims of any kind, which arise out of or relate to (a "Claim(s)"): (a) the Indemnitor's breach or violation of these Terms and Conditions or applicable law; or (b) the Indemnitor's negligent or willful misconduct.
- 11.2. Company will fully indemnify, hold harmless and defend Eleven (and its directors, officers, employees, agents, stockholders and affiliates) for, from and against any and all Claims arising from or relating to Company's provision of ElevenOS hereunder, except to the extent based on a breach by Eleven of its obligations and responsibilities set forth herein.
- 11.3. The foregoing indemnification obligations arises only upon prompt notice by the party to whom indemnity is owed (the "Indemnified Party") to the party owing indemnity (the "Indemnifying Party"), but in no event more than thirty (30) days after learning of such Claim, provided that, the failure to provide such notice will not waive the Indemnified Party's rights to indemnification unless the delay materially prejudices the Indemnifying Party's ability to defend or settle the Claim. The Indemnifying Party will have the right, at its cost and expense, to control the defense and/or settlement of any such Claim, provided that: (i) the Indemnified Party will have the right to participate in, but not control, the defense and/or settlement of any such Claim using counsel of its choosing, but at its cost and expense; and (ii) the Indemnifying Party will not, without the Indemnified Party's prior written consent, settle any Claim under terms that would require any affirmative action or conduct on the part of the Indemnified Party (including the payment of any money damages that are not fully indemnified hereunder), or that would require an admission or statement of liability or fault on the part of the Indemnified Party. The Indemnified Party will reasonably cooperate with the Indemnifying Party in its defense and/or settlement of the Claim, at the request of the Indemnifying Party and at the Indemnifying Party's sole cost and expense.
- 11.4. **Infringement Claims.** In the event ElevenOS is, or in the opinion of Eleven is likely to be, held by a court of competent jurisdiction to infringe, violate or misappropriate any third party intellectual property right, then Eleven may, at its option: (i) modify ElevenOS so that it is non-infringing; (ii) acquire all necessary rights so as to permit the continued use of the ElevenOS; or (iii) terminate these Terms and Conditions. The rights and/or remedies of Company under this Section 11 will be Company's sole and exclusive rights and/or remedies with respect to any third party intellectual property infringement claims.

12. General Provisions.

- 12.1. **Notice.** Notice under these Terms and Conditions may be provided to each party at the physical and electronic addresses set forth in the document referencing these Terms and Conditions.

- 12.2.**Entire Agreement, Modification, and Waiver.** These Terms and Conditions, together with the document referencing these Terms and Conditions, replace and supersedes any prior agreements between the parties and sets forth the entire agreement between the parties with respect to the subject matter hereof, and may not be modified or amended except by written agreement executed by the parties hereto. No terms contained in any purchase order, order acknowledgement, invoice, or payment method will be binding on either party. No waiver, consent, modification, or change of any terms of these Terms and Conditions shall be binding unless the same is in writing and signed by both parties and all necessary approvals have been obtained. Such express waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing.
- 12.3.**Force Majeure.** Neither party will have a claim against the other for any failure of performance by such party, if such failure of performance is caused by or the result solely of causes beyond the reasonable control of such other party (a “Force Majeure”).
- 12.4.**Severability.** The parties intend that in the event any provision of these Terms and Conditions is held unenforceable, such provision will be modified to best accomplish its original intent and all remaining provisions will stay in effect unless doing so would frustrate the purpose of these Terms and Conditions.
- 12.5.**Governing Law; Venue.** Delaware law governs these Terms and Conditions, excluding its conflicts of law principles that would require the application of the laws of any other state, and each party submits to the exclusive jurisdictions of the federal or district court in Wilmington, Delaware or the county of Company’s U.S. headquarters. The prevailing party in any such action will be entitled to recover attorneys’ fees and expenses from the losing party. The United Nations Convention on the International Sale of Goods does not apply to these Terms and Conditions.
- 12.6.**No Assignment.** Neither party will (except through merger or acquisition) assign or transfer these Terms and Conditions without the written consent of the other party.