



## SkySQL Terms of Service

These terms of service (“**Agreement**”) are entered into by the entity accepting this Agreement (“**Customer**”) and MariaDB (“**MariaDB**”) (each, a “**Party**”). This Agreement is effective as of the date accepted by Customer (“**Effective Date**”).

### Definitions

“**Affiliate**” means any company controlling, controlled by or under common control with a Party, where “control” means ownership, directly or indirectly, of the shares of a company representing fifty percent (50%) or more of the voting rights in such company.

“**BAA**” means business associate agreement governing the Parties’ respective obligations with respect to any HIPAA Data uploaded by Customer to the SkySQL Services in accordance with the terms of this Agreement.

“**Committed Database Instance**” means a designated SkySQL database instance subject to the pricing and payment terms set forth on the Order, which may include a specified instance type, region, zone, query capacity, and period of time for use.

“**Committed Database Instance Term**” means the period of time for which a Committed Database Instance order will be available to Customer unless earlier terminated by Customer.

“**Customer Data**” means (a) all data submitted by Customer to MariaDB for processing in the SkySQL Services databases and (b) Customer Confidential Information used to provision the Subscription.

“**Documentation**” means the support policies set forth at <https://mariadb.com/docs/features/mariadb-skysql>, which may be modified from time to time.

“**DPA**” means the Customer Data Processing Addendum located at <https://mariadb.com/trust> on the Effective Date of this Agreement.

“**HIPAA**” means the Health Insurance Portability and Accountability Act, as amended and supplemented.

“**HIPAA Data**” means any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.

“**Indirect Tax**” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transaction taxes, and gross receipts tax.

“**MariaDB**” means MariaDB USA, Inc., a Delaware corporation.

“**Order**” means the materials detailing the Subscriptions ordered, the Subscription Term, and applicable Fees.

“**Reseller**” means a reseller or distributor authorized by MariaDB to make available the SkySQL Services to Customer.

“**SkySQL Services**” means the hosted cloud services provided by MariaDB that include Support and access to hosted MariaDB databases and related ancillary services and tools as described in the Documentation, including MariaDB monitoring services.

“**SkySQL Sites**” means <https://mariadb.com/products/skysql> and <https://mariadb.com/legal> and any successor or related sites designated by MariaDB, as may be updated from time to time.

“**Subscription**” means the subscription for SkySQL Services acquired by Customer.

“**Support**” means the technical and consultative support included with the Subscription.

“**Termination Date**” means the effective date of termination provided in accordance with section 9 in a notice from one party to the other.

1. **Scope.** MariaDB will provide the applicable Subscriptions ordered by Customer as set forth on the Order. The SkySQL Services, including any uptime commitment, are further described in the Documentation

## 2. **Fees.**

2.1 **Fees.** Customer will pay MariaDB or Reseller the Fees set forth in the Order (the “**Fees**”). All Fees are non-refundable, non-cancelable, and exclusive of Indirect Taxes. Customer acknowledges and agrees that credit card payments will be processed by MariaDB’s third-party payment processor using the credit card on file. If you choose monthly billing by credit card, you authorize a recurring monthly charge to your credit card based on the Fees set forth in the Order. We may charge you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. MariaDB may change or add new fees and charges for SkySQL Services at any time. In the event that MariaDB changes the pricing for the SkySQL Services, the fees payable by Customer will increase or decrease in accordance with any such modification to the applicable fee schedule. MariaDB may suspend provision of the SkySQL Services for delinquent payments. Customer’s payment obligation will remain in effect during any such suspension. Customer will not be entitled to any service credits for any period of suspension. MariaDB may charge Customer interest at the rate of 1.5% per month or the highest rate permitted by law on any late payment. Customer will not chargeback any amounts paid to MariaDB by credit card and will reimburse MariaDB for any chargeback fees associated with the foregoing.

2.2 **Committed Database Instances.** Customer may request Committed Database Instances via an Order Form. If MariaDB accepts the request, Customer will pay the Fees set forth in the Order whether or not such Committed Database Instances are used by Customer and whether or not the relevant Order or Agreement is terminated by Customer. Upon expiration of the Committed Database Instance Term, Committed Database Instance pricing will expire and standard on-demand usage pricing will apply. MariaDB may change or add new fees or charges for Committed Database Instances at any time, but such changes will not apply to any previously ordered Committed Database Instances. Customer will pay all Fees, including overages and on-demand usage. If Customer does not pay by credit card, such additional Fees are due within thirty (30) days following receipt of MariaDB’s invoice.

2.3 **Taxes.** Customer will pay directly any taxes arising out of this Agreement, including applicable local, state, federal and international sales taxes, value added taxes, withholding taxes, and any other taxes or duties of any kind, but excluding taxes on MariaDB’s net income and all employer reporting and payment obligations with respect to MariaDB’s personnel. MariaDB may charge Customer, and Customer will pay, applicable Indirect Taxes that MariaDB is legally obligated or authorized to collect from Customer. Customer will provide such information to MariaDB as is reasonably required to determine whether MariaDB is obligated to collect Indirect Taxes from Customer. MariaDB will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes a properly completed exemption certificate or a direct payment permit certificate for which MariaDB may claim an available exemption from such Indirect Tax. If any applicable law requires Customer to withhold amounts from any payments to MariaDB under this Agreement, (a) Customer will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish MariaDB with tax receipts evidencing the payments of such amounts and (b) the sum payable by Customer upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, MariaDB receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount MariaDB would have received and retained absent the required deduction or withholding.

## 3. **Subscription Access; Customer Responsibilities and Restrictions.**

3.1 **Access.** MariaDB will provide access to the SkySQL Services to Customer solely for Customer’s business operations and subject to the restrictions set forth in this Section 3. Customer must have a MariaDB account associated with a valid email address and a valid form of payment. Unless agreed to in writing by MariaDB, Customer will only create one account per email address.

3.2 **End Users.** Customer will be deemed to have taken any action that you permit, assist or facilitate any

person or entity to take related to this Agreement, Customer Data, or Customer's use of the SkySQL Services.

3.3 Beta Programs: Trial Periods. Customer may elect to participate in MariaDB's beta or early release programs (collectively, "**Beta Programs**"). Beta Programs may require Customer to provide feedback or other information to MariaDB related to use of the beta, pre-release, or evaluation services (collectively, "**Beta Materials**"), and Customer agrees to provide such feedback or information. Upon MariaDB's request, Customer agrees to return or destroy, or cease

use of all Beta Materials. Beta Materials and use of the SkySQL Services on a limited term trial basis as set forth in the Order or at the time of registration (“**Trial Services**”) are provided without warranties or indemnities of any kind. Customer will use the Trial Services solely for internal evaluation purposes. For the avoidance of doubt, use of the Trial Services for production or commercial purposes is expressly prohibited.

3.4 **Requirements.** Customer shall: (a) use the SkySQL Services in accordance with this Agreement and all Documentation; (b) be responsible for its users’ compliance with this Agreement; (c) use commercially reasonable efforts to prevent unauthorized use of or access to the SkySQL Services or any related account or password, or any copying of the SkySQL Services, and shall notify MariaDB immediately of any such unauthorized use, access or copying; and (d) be solely responsible for the accuracy and legality of Customer Data, the means by which it acquires and uses such Customer Data, including compliance with any regulations and laws applicable to the Customer Data (including, without limitation, privacy and data protection), and has obtained all rights in the Customer Data necessary to permit MariaDB’s compliance with its obligations under this Agreement.

3.5 **Benchmarking.** Customer may perform benchmarks or comparative tests or evaluations (each, a “**Benchmark**”) of the SkySQL Services. However, Customer must obtain MariaDB’s prior written approval to disclose to a third party the results of any Benchmark of the SkySQL Services.

3.6 **Restrictions.** Customer shall not, and shall not allow others to: (a) except as permitted by this Agreement, directly or indirectly distribute, sell, transfer, sublicense, rent, lease, market, use or commercialize the Subscription (or any portion thereof); (b) provide the SkySQL Services on a time sharing, hosting, service provider or other similar basis;

(c) circumvent or attempt to circumvent contractual usage restrictions, (d) send, store, access or authorize a third party to send, store or access spam, unlawful, infringing, obscene or libelous material, viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; or (e) interfere with or disrupt the integrity or performance of the SkySQL Services.

3.7 **OSS.** The SkySQL Services may include individual open source software components, each of which has its own copyright and its own applicable license conditions. Open source software is licensed to Customer under the terms of the applicable open source license conditions and copyright notices that can be found in the Documentation or other materials made available to Customer. In the event of a conflict between the licenses and restrictions set forth in this Section 3 and the terms of the open source license governing open source software, the terms of the open source software license will prevail.

3.8 **HIPAA Data.** Customer agrees not to upload to the SkySQL services any HIPAA Data unless Customer has entered into a BAA with MariaDB. Unless a BAA is in place, MariaDB will have no liability under this Agreement for HIPAA Data, notwithstanding anything to the contrary in this Agreement or in HIPAA. If Customer is permitted to submit HIPAA Data to the SkySQL Services, then Customer may submit HIPAA Data to MariaDB and/or the SkySQL Services only by uploading it as Customer Data. Upon mutual execution of the BAA, the BAA is incorporated by reference into this Agreement and is subject to its terms.

3.9 **Prohibited Data.** Customer agrees not to store unmasked credit card and social security data in the SkySQL Services. Customer agrees that Customer’s use of the SkySQL Services complies with applicable requirements of the Payment Card Industry Data Security Standards.

#### **4. Customer Data; Security.**

4.1 **Processing of Customer Data.** Customer grants MariaDB the non-exclusive right to access and process the Customer Data for the sole purpose and only to the extent necessary to provide the SkySQL Services. MariaDB agrees not to use, access, disclose or process any Customer Data, except to: (i) perform the obligations permitted by Customer under this Agreement; and (ii) comply with applicable laws.

4.2 **Data Protection.** To the extent the parties execute a DPA due to the processing of Personal Data (as defined in the DPA), which would be contained in the Customer Data, the terms of such DPA shall be

incorporated into this Agreement by reference.

4.3 Security. Company will maintain commercially reasonable administrative, physical and technical safeguards and controls for the availability, security, confidentiality and integrity of Customer Data stored in the SkySQL Services. Company's security policy is set forth in the Documentation.

4.4 Aggregated Data. Customer acknowledges and agrees that MariaDB may collect anonymized, aggregate, and/or de-identified statistical and other performance information related to Customer's use of the SkySQL Services, which information will not include personal information, and MariaDB may use such information for its own legitimate business purposes, including, among other things, Support, reporting, research, improvements to the SkySQL Services, industry collaboration, and other reasonable business purposes.

## 5. **Publicity and Confidentiality.**

5.1 Publicity. MariaDB will be permitted to reference its relationship with Customer on its website, during discussions with analysts and reporters and in customer briefings and regulatory filings. MariaDB will comply with Customer's publicly available trademark usage policies.

5.2 Confidential Information. For purposes of this Agreement, the party disclosing Confidential Information is the "**Discloser**," and the party receiving Confidential Information is the "**Recipient**." Confidential Information means all information that is marked or identified as confidential or proprietary at the time of disclosure or that would be reasonably understood to be confidential based on the nature and circumstances surrounding disclosure. Confidential Information excludes information that is: (a) known to Recipient without restriction before receipt from Discloser; (b) publicly available through no fault of Recipient; (c) rightfully received by Recipient from a third party without a duty of confidentiality; or (d) independently developed by Recipient. If Confidential Information is required to be produced by law, court order, or governmental authority, Recipient must (unless legally prohibited) notify Discloser in advance and only disclose the information required. Recipient will use Discloser's Confidential Information only for the purposes provided and as directed by Discloser. Confidential Information may not be disclosed to any third party other than Recipient's and its Affiliates' employees and contractors that need to access such information for purposes consistent with this Agreement and that are subject to obligations of confidentiality to Recipient no less restrictive than the terms set forth herein. At Discloser's request, all written, recorded, graphical, or other tangible Confidential Information, including copies, must be returned to Discloser or destroyed by Recipient. MariaDB will store Confidential Information in accordance with data retention policies unless a longer period is required by law. At the request of Discloser, Recipient will certify in writing that any Confidential Information not returned to Discloser has been destroyed.

## 6. **Intellectual Property.**

6.1 Ownership. MariaDB will own all intellectual property and proprietary rights in the SkySQL Services, Documentation, and related works, including but not limited to any modifications and derivative works of the foregoing. Customer owns all right, title, and interest in and to the Customer Data.

6.2 Trademark License. MariaDB grants Customer a non-exclusive, non-transferrable, royalty-free, revocable license during the Subscription Term to use MariaDB's trademarks and service marks ("**MariaDB Marks**") solely in connection with Customer's use of the SkySQL Services. All goodwill created by the use of such MariaDB Marks is for the sole benefit of MariaDB.

6.3 Customer Data License. During the Subscription Term and for as long as MariaDB processes Customer Data, Customer grants to MariaDB a nonexclusive, non-transferable, royalty-free license to access, host, use, display and process Customer Data solely for the purpose authorized by Customer in connection with the SkySQL Services.

6.4 Feedback. In the event that Customer provides MariaDB with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback (collectively, "**Communications**"), Customer grants MariaDB a royalty-free, worldwide, transferable, sub-licenseable, irrevocable, perpetual license to use, modify, and distribute such Communications in any manner without compensation to Customer or attribution of any kind.

## **7. Warranties and Disclaimers.**

7.1 Service Warranty. Except for Beta Programs, Beta Materials, or Trial Services, MariaDB warrants that the SkySQL services will operate in substantial conformity with the applicable Documentation. If Customer believes there has been a breach of this warranty, Customer must notify MariaDB in writing promptly following delivery of such Support stating in

reasonable detail the nature of the alleged breach. As MariaDB's sole obligation and Customer's exclusive remedy, MariaDB will correct or re-perform, at no additional charge, any non-conforming Support. Customer represents and warrants that it and its use of the SkySQL Services will at all times comply with applicable laws.

7.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PROVIDED BY APPLICABLE LAWS, THE SKYSQL SERVICES, BETA PROGRAMS, BETA MATERIALS, AND TRIAL SERVICES, INCLUDING ALL UPDATES, BUG FIXES, WORK AROUNDS, OR ERROR CORRECTIONS, ARE PROVIDED TO CUSTOMER "AS-IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, NON-INFRINGEMENT, TITLE, PERFORMANCE, AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. MARIADB DOES NOT WARRANT THAT USE OF THE SKYSQL SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. MARIADB SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS. MARIADB DOES NOT MAKE ANY WARRANTIES AND SHALL HAVE NO OBLIGATIONS WITH RESPECT TO THIRD-PARTY APPLICATIONS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## **8. Limitation of Liability.**

8.1 IN NO EVENT WILL MARIADB OR ITS AFFILIATES BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, RELIANCE, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED EVEN IF MARIADB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.2 MARIADB AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, SKYSQL SERVICES, BETA PROGRAMS, BETA MATERIALS, OR TRIAL SERVICES INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE GREATER OF (I) THE TOTAL AMOUNT OF FEES ACTUALLY PAID (OR WITH RESPECT TO CLAIMS FOR FEES DUE, PAYABLE) TO MARIADB BY CUSTOMER PURSUANT TO THE ORDER GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE TIME THE CLAIM AROSE AND (II) US \$100.00.

8.3 THE PROVISIONS OF THIS SECTION 8 ALLOCATE RISKS UNDER THIS AGREEMENT BETWEEN CUSTOMER AND MARIADB AND MARIADB'S FEES FOR THE SUBSCRIPTIONS REFLECT THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

## **9. Term and Termination.**

9.1 Term; Termination. This Agreement will be in effect until all outstanding Orders have expired or it has been terminated in accordance with this Agreement. Each Order will be effective for the term specified therein ("**Subscription Term**"). During the Subscription Term, Customer may purchase Subscriptions and such Subscriptions will be co-terminus with the then-current Subscription Term. Either party may elect not to renew an Order by providing the other party with no less than thirty (30) days' prior written notice (which notice may be by email). Either party may terminate all Orders with immediate effect: (a) in the event that the other party breaches this Agreement and does not cure such breach within thirty (30) days following written notice of such breach, (b) in the event that the other party ceases business, becomes insolvent or bankrupt or if a receiver, examiner, administrator or administrative receiver is appointed over any part of that party's business or if anything analogous occurs in relation to that party under the laws of another jurisdiction, or (c) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings in relation to



such party. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 9.

9.2 Effect of Termination: Customer Data Retrieval.

a) Upon termination of this Agreement, (i) except as provided in section 9.2(b), Customer's rights to use the SkySQL Services will immediately cease, and (ii) unless Customer terminates due to MariaDB's material, uncured breach, all Fees incurred through the Termination Date will become immediately due and payable.

b) The Services provide Customer with controls that Customer may use to retrieve or delete Customer Data. Up to the Termination Date, Customer will continue to have the ability to retrieve or delete Customer Data in accordance with this Section. Except with respect to Trial Service, for 30 days following the Termination Date (the “**Wind Down Period**”), Customer may retrieve or delete any remaining Customer Data from the Services, subject to the terms and conditions set out in the Agreement, unless prohibited by law or the order of a governmental or regulatory body or it could subject MariaDB to liability. Customer will be charged for data maintenance during the Wind Down period in accordance with the applicable fee schedule. No later than the end of the Wind Down Period, Customer will close all MariaDB accounts. MariaDB will then delete Customer Data. For the avoidance of doubt, MariaDB may delete Customer Data stored in connection with Trial Services at any time without notice, and will have no liability therefor.

9.3 Suspension. MariaDB may suspend Customer’s access to the SkySQL Services immediately if MariaDB reasonably determines that there is a risk to MariaDB, the SkySQL Services or any third party, or that Customer’s use of the Services violates applicable laws. Additionally, MariaDB may suspend access to the SkySQL Services in the event that Customer makes publicly available the SkySQL Services or any component thereof. For the avoidance of doubt, payment obligations are not suspended or terminated if MariaDB suspends access to the SkySQL Services.

9.4 Survival. Sections 2 (Fees), 3.4 (Benchmarking), 3.5 (Restrictions), 4.4 (Aggregated Data), 5 (Confidentiality), 6 (Intellectual Property), 7.2 (Warranty Disclaimer), 8-11 (Limitation of Liability, Term and Termination, Indemnification, and General) and Definitions will survive the expiration or termination of this Agreement.

## **10. Indemnification.**

Customer, at its own expense, will defend or settle any third party claims, actions and demands brought by a third party against MariaDB or its Affiliates, arising from: (a) Customer Data; (b) Customer’s breach of Section 3.6 of this Agreement; or (c) Customer failure to comply with applicable laws, rules or regulations in its performance of this Agreement.

## **11. General.**

11.1 Applicable Law and Jurisdiction. This Agreement and any dispute relating to, or arising out of this Agreement or its formation or termination or actions or omissions contemplated by this Agreement, will be governed by and in accordance with the laws of California, without giving effect to the conflict of laws provisions. For all disputes arising out of this Agreement, the parties consent to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to, or govern, this Agreement. If Customer is located in Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement be drafted in English. Les parties contractantes confirment qu’elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais. Except for Customer’s obligations to pay Fees, no claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

11.2 Notices. We may provide any notice to Customer under this Agreement by (a) posting a notice to the SkySQL Sites or (b) sending a message to the email address associated with the Customer’s account. Notices provided by posting on the MariaDB Site will be effective upon posting and notices provided by email will be effective when MariaDB sends the email. It is Customer’s responsibility to keep its email address current. Customer will be deemed to have received any email sent to the email address associated with Customer’s account when MariaDB sends the email, whether or not Customer actually receives the email. To provide MariaDB with notice of termination of this Agreement, Customer must email SkySQL-term-notice@mariadb.com. All other notices to MariaDB will be in writing and will be mailed (via registered or certified mail, return receipt requested), delivered by a nationally recognized express courier service with

the ability to track shipments, or personally delivered to the other party at the address set forth above (or at such other address as either party may designate in writing to the other party).

11.3 This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature whatsoever. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to an Affiliate or as a result of a merger or a sale of all or substantially all of such party's assets or stock without the prior approval of the other party. There are no third-party beneficiaries to this Agreement.

11.4 This Agreement, including any linked terms set forth herein, together with all Orders, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. All amendments to this Agreement must be in writing, provided that MariaDB amend this Agreement at any time by posting a revised version on its website, in the customer portal, or by providing notice to Customer by email. By continuing to use the SkySQL Services after the effective date of the amendment, Customer agrees to be bound by the amended Agreement. Additionally, MariaDB may modify the SkySQL Services, provided that MariaDB not materially reduce such SkySQL Services during the then-current Subscription Term. Purchase orders issued by Customer will be for the sole purpose of defining quantities, prices and describing the SkySQL Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected.

11.5 Failure to enforce any provision of this Agreement will not constitute a waiver thereof. No waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power, or remedy, the waiver will not waive any successive or other right, power, or remedy the party may have under this Agreement. If any provision is found to be unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

11.6 Neither party will be liable for failures or delays in performance due to causes beyond its reasonable control, including, but not limited to, any act of God, fire, earthquake, flood, storm, natural disaster, accident, pandemic, labor unrest, civil disobedience, act of terrorism or act of government; however, the inability to meet financial obligations is expressly excluded.