



**SANGOMA TECHNOLOGIES INC.  
STANDARD TERMS AND CONDITIONS**

**1 Definitions**

**1.1 “Affiliate”** means any company in which Sangoma owns, directly or indirectly, more than 50% of the outstanding, issued voting shares.

**1.2 “Customer”** means the legal person who entered into a Direct Purchase Agreement with Sangoma or one of its Affiliates.

**1.3 “Credit Terms”** means the ability to purchase products on credit without pre-payment. All credit terms are handled through the Sangoma accounting department and determined based on credit checks and credit worthiness.

**1.4 “Direct Purchase Agreement”** means the direct purchase letter agreement made between Customer and Sangoma (or one of its Affiliates), which incorporates by reference these Standard Terms.

**1.5 “Documentation”** means all Sangoma official technical manuals generally made available to Customers.

**1.6 “End User”** means a final purchaser and sub-licensee of Products for its own internal use pursuant to an End User Agreement and not for resale, remarketing or redistribution.

**1.7 “End User Agreement”** means the end user agreement contained at [www.sangoma.com](http://www.sangoma.com) for the applicable Sangoma Product.

**1.8 “Firmware”** means the software program embedded in the hardware components of the Product.

**1.9 “Hardware”** means all hardware manufactured or provided by Sangoma pursuant to this Agreement.

**1.10 “Intellectual Property”** means all intellectual and industrial property including without limitation all works in which copyright subsists or may subsist, documentation, text and other literary works, computer programs, designs, industrial designs, trade secrets, confidential information and know-how, trademarks, trade names, discoveries and inventions, and integrated circuit topographies.

**1.11 “Intellectual Property Right”** includes all rights in trademarks and trade names, patents, copyrights, industrial design rights, integrated circuit topography rights, rights in trade secrets, confidential information and know-how, and other proprietary rights.

**1.12 “Licensed Software”** means the object or source code form of all software

distributed or included in the Sangoma Products, including the Software and Open Source Software.

**1.13 “Open Source Software”** is computer software with its source code made available with a license in which the copyright holder provides the rights to study, change, and distribute the software to anyone and for any purpose.

**1.14 “Order”** means a Purchase Order or Portal Order.

**1.15 “Portal Order”** means an order for Sangoma Products made by Customer through the Sangoma Portal.

**1.16 “Products” or “Sangoma Products”** means Sangoma’s suite of products, services, software, Hardware, and Documentation licensed and/or provided by Sangoma pursuant to the Direct Purchase Agreement.

**1.17 “Purchase Order”** means a document for the ordering of Sangoma Products by the Customer, which will include: (a) identification of the Products, (b) quantity of each Product, (c) price of each Product, (d) shipping instructions, and (e) requested delivery date(s).

**1.18 “Sangoma”** means Sangoma Technologies Corporation and its subsidiaries and affiliates.

**1.19 “Sangoma Confidential Information”** has the meaning set out in section 3.

**1.20 “Sangoma Portal/Store”** is the Sangoma website where purchases for Sangoma Products may be placed and all systems and deployments are managed.

**1.21 “Sangoma Trademarks”** has the meaning set out in section 4.

**1.22 “Software”** means the software components of the Products, including, but not limited to software, Firmware and mask works, but excludes any Open Source Software.

**1.23 “Territory”** means the territory designated in the Purchase Order or Portal Order which has been expressly accepted by Sangoma.

**1.24 “Tier 1 Support”** means configuration questions and general setup enquires on the Products but excludes any support with respect to Open Source Software.

**1.25 “Tier 2 Support”** means assistance in verifying if a bug exists and opening a bug report with Sangoma’s engineering team but excludes any support with respect to Open Source Software.

**1.26 “Tier 3 Engineering Support”** means support services provided by Sangoma to Customer but excludes any support with respect to Open Source Software.

**1.27 “Warranty Period”** means the warranty period for each Product as defined on the Sangoma Website at [www.sangoma.com](http://www.sangoma.com).

## **2 Customer is an independent contractor**

**2.1** Customer is not an employee of Sangoma and nothing herein will in any way constitute the parties as partners, joint ventures, agents, co-owners or otherwise as participants in a joint or common undertaking or agency relationship, it being understood that the relationship is solely that of independent contractors. Neither of the parties shall be or become

liable or bound by any agreement, representation, act or omission whatsoever of the other party unless specifically provided for in this Agreement.

## **2.2 Purchase and Portal Orders**

**2.2.1** Customers are required to order all products direct from Sangoma by sending a Portal Order or Purchase Order to Sangoma.

**2.2.2** All Credit Terms are handled through Sangoma's finance department.

**2.2.3** All Orders issued under this Agreement shall be subject to the terms and conditions hereof which shall supersede any terms and conditions contained in any pre-printed forms submitted by Customer as, or in connection with, any order of Sangoma Products. In the event of any discrepancy between the provisions hereof and those of any Order, the provisions hereof shall prevail, unless explicitly stated otherwise in the Order and such Order is executed by both parties in writing by duly authorized representatives.

**2.2.4** Sangoma shall review all Orders and approve or reject such orders within ten (10) days of receipt by Sangoma. An Order is not legally effective until such approval is given. Sangoma Products will require the issuance of a Purchase Order or Sangoma confirmation from the Portal Order prior to being furnished to Customer. Sangoma shall have no obligation to accept any Order for Sangoma Products placed by Customer after the date of termination of any Direct Purchase Agreement with Customer.

## **2.3 Changes and cancellations**

**2.3.1** Orders approved by Sangoma may be changed or cancelled by Customer only upon written consent of Sangoma.

## **2.4 Supply and delivery**

**2.4.1** Products are delivered F.O.B. Sangoma's applicable Warehouse. Customer shall pay all delivery charges, including without limitation transportation charges and insurance premiums and shall be responsible for all taxes, duties and other governmental assessments. Sangoma can, at the Customer's expense arrange for shipment on behalf of the Customer on an INCOTERMS 2010 DAP (Delivery at Place) basis either by FedEx courier or by freight forwarder (usually DHL Global Logistics), in which case the Products will be delivered to Customer at the location(s) shown on the applicable Order, or as otherwise agreed to by the parties.

**2.4.2** Sangoma will provide a schedule of options for shipping to Customer that includes insurance from the point of transfer to the first Carrier. Risk of loss or damage for Hardware only will pass to Customer upon Sangoma's delivery of Products to the first carrier and title to the Hardware will only pass to Customer upon Sangoma's receipt of payment in full for Products. Sangoma reserves all title and ownership to all Intellectual Property relating to the Software except for the License Software granted pursuant to and in accordance with the End User Agreement. Any loss or damage after delivery to the first carrier, including damage or loss during transportation, will be Customer's responsibility and will not relieve Customer of its payment obligation. Any claim by Customer against Sangoma for shortage of Products or damage to Products occurring prior to such delivery must be made in writing within thirty (30) days after receipt of shipment and must be accompanied by the original transportation bill signed by the carrier noting that the carrier received the Products from Sangoma in the condition claimed. Any shipments returned to Sangoma as a result of Customer's unexcused

delay or failure to accept delivery will require Customer to pay all additional costs incurred by Sangoma.

## **2.5 Pricing and payments**

**2.5.1** Pricing is exclusive of shipping and insurance charges, and federal, state and/or local excise, sales, value-added, import, use, property, reseller, occupation or similar taxes and Customer agrees to pay all such taxes due on the Products. If Customer shall be required by any laws to deduct any taxes from or in respect of any sum payable hereunder, (i) the sum payable to Sangoma shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this section), Sangoma receives an amount equal to the sum it would have received had no such deductions been made, (ii) Customer shall make such deductions, (iii) Customer shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable laws, and (iv) within thirty (30) days after the date of such payment, Customer shall furnish to Sangoma the original or a certified copy of a receipt evidencing payment thereof.

**2.5.2** Terms of payment will be due upon order unless Credit Terms have been established by Sangoma finance department. Payments shall be made in United States Dollars to Sangoma. In the event that payment is not received when due, any unpaid balance shall bear interest at the rate of twelve percent (12%) per annum effective the first day after the scheduled payment date.

## **2.6 Sale agreement**

**2.6.1** Sangoma's only contractual obligations hereunder are to Customer under the Direct Purchase Agreement and these Standard Terms incorporated by reference herein. Any sales of Sangoma Products by Customer to End Users does not entitle the End Users to any terms of the Direct Purchase Agreement and/or these Standard Terms. All Sangoma Products sold to Customer carry different Warranty and End User License Agreements which can be found at [www.sangoma.com](http://www.sangoma.com).

**2.6.2** In the event Customer resells Sangoma Products to an End-User, Customer shall, in all cases, provide the End User with the applicable End User License Agreement and deliver all components of the Products to the End User; such components shall include, without limitation, disks or other media bearing labels, Documentation, and, at Sangoma's option, advertising and promotional materials supplied by Sangoma.

## **2.7 Returns**

**2.7.1** Customer shall bear the cost of freight and insurance to the point of repair for all Products returned to Sangoma under INCOTERMS 2010 DAP, unless it is DOA. Sangoma defines a Product as DOA when a properly installed Product does not immediately perform its primary function as detailed in the Product documentation after power is applied for the first time. Sangoma will bear shipping charges for the return of all Products to Customer under INCOTERMS 2010 DAP if Sangoma determines the returned Product was covered under a valid warranty claim. It will be the responsibility of Customer to release such products from the relevant customs agency.

**2.7.2** Customer agrees to obtain a Return Material Authorization form ("RMA") prior to returning a Product, such RMA shall include a written authorization from

Sangoma for the return of the Product and a detailed description of the error or defect of the returned Products as per the process required by Sangoma at the Sangoma Portal. If Sangoma cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid will be refunded but only after Sangoma determines after inspection that a warranty claim is valid. Where the advance RMA support options has been purchased the Customer is entitled to an advance RMA where a new or refurbished product is supplied in advance of the defective unit being returned. In such instances the Customer has ten (10) days to ensure the defective product is returned. In the event this is timeline is not met the advance RMA shall be deemed a Purchase Order for the purchase of the product and the Customer shall be responsible for payment within thirty (30) days.

## **2.8 Additional support by Sangoma**

**2.8.1** Customer is responsible for Tier 1 Support and Tier 2 Support for Sangoma Products either used internally or resold to End Users unless Customer has purchased a separate support and maintenance agreements from Sangoma or has purchased services from Sangoma for configuration changes and custom integration pursuant to a statement of work and Order.

**2.8.2** Sangoma shall provide Tier 3 Support for Sangoma Products.

## **3 Ownership and confidentiality**

### **3.1 Ownership of the Software**

**3.1.1** Sangoma will at all times remain the owner of all right, title and interest in and to the Software, including all Intellectual Property Rights. Customer shall have the right to use the Licensed Software in accordance with the applicable End User License Agreement if the Products are used internally by Customer or the right for Customer's End User to use the Licensed Software in accordance with the applicable End User License Agreement if Customer resells the Product to an End User. Sangoma reserves all rights not expressly granted in and to the Software herein.

**3.1.2** Customer shall not do (or authorize any third party to do) any act which would or might invalidate or be inconsistent with any Intellectual Property Right of Sangoma, including, but not limited to, reverse engineering, decompiling or disassembling of the Software or Firmware, and shall assist Sangoma in maintaining the validity and enforceability of the Intellectual Property Rights of Sangoma. Customer will also promptly notify Sangoma of any infringement of any trademarks or other proprietary rights relating to the Products of which Customer becomes aware.

**3.1.3** The Licensed Software may contain Open Source Software. Any Open Source Software is provided by Sangoma under version 3 of the GNU General Public License ("GPLv3") unless specifically noted otherwise, which accompanies any Open Source Software contained within the Products. Sangoma provides no warranties or indemnities on software licensed under the GPLv3 or any other open source license agreements, or for services performed in distributing the source code to the same. In the event of conflict between the GPLv3 and this Agreement, the GPLv3 shall control with respect to Open Source Software contained with the Product.

## **3.2 Non-Disclosure**

**3.2.1 “Sangoma Confidential Information”** means any and all trade secrets, confidential, private, or secret information of Sangoma regardless of form and whether or not recorded with the term “Confidential Information” and includes without limitation the following information of Sangoma and its customers, suppliers, licensors and other third parties which has been disclosed and/or may be disclosed or provided to Customer (i) the Intellectual Property owned or in the possession of Sangoma including all Intellectual Property contained in or used to produce the Products, (ii) compilations of data, information, and software (including object and source code) embedded in the Products, (iii) pricing, business methods and practices, (iv) information relating to actual or prospective services, products, plans, activities, know-how, research and development, or commercial relationships of Sangoma, (v) Sangoma customer lists or Sangoma lists of potential customers, (vi) information, products, specifications, data and software of third persons to whom Sangoma owes a duty of confidence, (vii) the terms of this Agreement, and (viii) such information as Sangoma may from time to time designate as being confidential.

**3.2.2** At all times, Customer shall maintain the confidentiality of the Sangoma Confidential Information and, without limiting the generality of the foregoing, Customer shall (i) not disclose any confidential, secret, or private information of Sangoma including any Sangoma Confidential Information to any person other than for Sangoma’s purposes without Sangoma’s prior written consent, and (ii) not use any such information for its own purposes or for any purposes other than those of Sangoma, including the solicitation of any new business separate from its duties to Sangoma hereunder.

**3.2.3** The provisions of this section do not apply to information which: (i) was in the public domain at the time of disclosure to Customer; (ii) becomes part of the public domain after disclosure to Customer through no fault of Customer; (iii) was in the possession of Customer prior to the time of disclosure to Customer without any obligation of confidence or any breach of confidence; (iii) was received after disclosure to Customer from a third party who had a lawful right to disclose such information to Customer; (iv) was independently developed by Customer without reference to the confidential information of Sangoma; or (v) was ordered to be disclosed by a court, administrative agency, or other governmental body with jurisdiction over the parties hereto, provided that Customer will first have provided Sangoma with prompt written notice of such required disclosure and will take reasonable steps to allow Sangoma to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, Customer will promptly co-operate with and assist Sangoma in connection with obtaining such protective order.

**3.2.4** Customer recognizes and acknowledges that any breach by Customer’s confidentiality obligations hereunder may cause irreparable harm and damage to Sangoma, the monetary amount of which may be impossible to ascertain. As a result, Sangoma will be entitled to seek an injunction from any court of competent jurisdiction enjoining and restraining violation of any or all Customer’s confidentiality obligations hereunder, either directly or indirectly, and that such right to an injunction shall be cumulative and in addition to whatever other remedies Sangoma may possess.

**3.2.5** Upon Sangoma’s request, Customer shall return any Sangoma Confidential Information and all instructions, notes, memoranda or records, plans, drawings,

and all other materials, Documentation and Intellectual Property of Sangoma existing or stored in any physical, written, electronic, or another form which may have been made by or have come into Customer's possession or control will be immediately surrendered to Sangoma and Customer shall not make or retain any copies or extracts of any of the foregoing.

#### **4 Trademarks**

**4.1** Customer shall not alter or remove any trademark or trade name applied to the Sangoma Products or which Sangoma may adopt from time to time (the "**Sangoma Trademarks**") and nothing herein grants to Customer any right, title, or interest in the Sangoma Trademarks (either alone or in association with other trademark, trade names, words or names), or any part thereof or in any other trademark or trade name adopted by Sangoma or its related companies or in any copyright or goodwill of Sangoma or related companies, nor is any permission or right given hereby to Customer to use any such trademark or trade name in connection with its corporate firm trade name or trade style. Customer shall not attempt to register any of Sangoma Trademarks in any other jurisdiction.

#### **5 Limitation of liability and Sangoma indemnity**

**5.1** SUBJECT TO SECTION 5.2, FOR ANY BREACH OF THESE STANDARD TERMS OR ANY OTHER CLAIM ARISING FROM OR RELATED TO THE DIRECT PURCHASE AGREEMENT GIVING RISE TO LIABILITY, SANGOMA'S ENTIRE LIABILITY, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT, PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE VALUE OF THE SANGOMA PRODUCTS PURCHASED AND PAID FOR BY CUSTOMER UNDER THE DIRECT PURCHASE AGREEMENT. IN NO EVENT SHALL SANGOMA BE LIABLE FOR LOSS OF PROFITS, LOSS OF BUSINESS REVENUE, LOSS OF DATA, FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS OR FOR ANY ECONOMIC LOSS, OR FOR INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL LOSSES OR DAMAGES, OR FOR ANY CLAIM AGAINST CUSTOMER BY ANY OTHER PERSON, EVEN IF SANGOMA HAS BEEN ADVISED OF OR COULD REASONABLY FORESEE THE POSSIBILITY OF ANY SUCH DAMAGE OCCURRING.

**5.2** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 5 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, INCLUDING A BREACH OF A CONDITION OR FUNDAMENTAL TERM OR FUNDAMENTAL BREACH OR BREACHES.

#### **5.3 Sangoma Indemnity**

**5.3.1** Subject to Sections 5.3.2, 5.3.3 and 5.3.4 below, Sangoma will defend any third party claim or action against Customer to the extent such suit or action is based on a third party claim that use of the Sangoma Product infringes a third party U.S. or Canadian registered patent issued as of the date Sangoma delivered the Sangoma Products to Customer, and Sangoma will pay those damages and costs finally awarded against Customer (subject to the Indemnification Procedures below) or in any monetary settlement approved by Sangoma in writing for such suit or action which are specifically attributable to such claim.

**5.3.2** The foregoing obligation of Sangoma does not apply with respect to

Sangoma Product or portions or components thereof (i) that are not supplied by Sangoma, (ii) that are used in violation of these Standard Terms or in a manner not provided for or described in documentation accompanying the Sangoma Product, or used in combination with any other software, hardware, network or system, (iii) that are modified after shipment by Sangoma, if the alleged infringement relates to such modification, (iv) that are combined with other products, processes or materials where the alleged infringement relates to such combination, (v) with respect to which Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer' use of the Sangoma Product is incident to an infringement not resulting primarily from the Sangoma Product.

**5.3.3** If any Sangoma Product or any portion of a Sangoma Product becomes, or in Sangoma's opinion is likely to become, the subject of a claim of infringement, then Sangoma may, at its option and expense, (i) procure for Customer the right to continue using the Sangoma Product or portion of a Sangoma Product, as the case may be, or (ii) replace or modify the affected Sangoma Product or portion of a Sangoma Product, as the case may be so that it becomes non-infringing.

**5.3.4 THE FOREGOING STATES SANGOMA'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.**

#### **5.4 Indemnification Procedures**

**5.4.1** Sangoma's indemnity obligations with respect to any third party claim, action or proceeding shall be conditioned upon Customer:

- a) providing prompt written notice of such claim, action or proceeding,
- b) permitting Sangoma to assume and solely control the defense of such claim, action or proceeding and all related settlement negotiations;
- c) cooperating at Sangoma's request and expense with the defense or settlement of such claim, action or proceeding which cooperation shall include providing reasonable assistance and information; and
- d) Customer not agreeing to any settlement without the prior written consent of Sangoma.

### **6 Representations and warranties**

#### **6.1 Customer Representations and Warranties**

**6.1.1** Customer represents and warrants that:

- a) it is duly organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization;
- b) it has the requisite corporate power and authority and all necessary governmental approvals to carry on its business in the as it is now being conducted;
- c) it is duly qualified or licensed to do business, and is in good standing (to the extent applicable) in each jurisdiction within the Territory where the nature of its business makes such qualification or licensing necessary;
- d) it has the right, power and authority to enter into the Direct Purchase Agreement and to fully perform its obligations thereunder, including these Standard Terms incorporated by reference therein;



e) the entering into and performance of the Direct Purchase Agreement by Customer does not violate, conflict with, or result in a material default under any other contract or agreement to which Customer is a party, or by which it is bound; and

f) the provisions of the Direct Purchase Agreement, and the rights and obligations of the parties thereunder, are enforceable under the laws of the jurisdictions in which Customer does business.

## **6.2 Sangoma Representations and Warranties**

### **6.2.1 Sangoma represents and warrants that:**

a) it has the right, power and authority to enter into the Direct Purchase Agreement and to fully perform its obligations thereunder, including these Standard Terms incorporated by reference therein; and

b) the entering into and performance of the Direct Purchase Agreement does not violate, conflict with, or result in a material default under any other contract or agreement to which Sangoma is a party, or by which it is bound.

## **7 Dispute resolution**

**7.1** Sangoma and Customer agree that should a dispute arise with respect to the Direct Purchase Agreement, it will be resolved in the following manner:

**7.1.1** The parties shall use all reasonable efforts to resolve any controversy or claim through good faith negotiations. However, if such good faith negotiations do not resolve the controversy or claim, the following shall apply: if such a controversy or claim should arise, senior designated representatives of the parties (“Designated Representatives”) will attempt to resolve the matter within fourteen days of the matter being referred to them, or any other period agreed upon by the parties; in the event that the Designated Representatives are unable to resolve the matter within fourteen days of the matter being referred to them, or any other period agreed upon, such matter will initially be attempted to be resolved by mediation pursuant to section 7.1.2 below.

**7.1.2** Any controversy or claim, whether based on contract, tort or other legal theory (including, but not limited to, any claim of fraud or misrepresentation, but other than in respect of equitable relief that may be sought), arising out of or relating to the Direct Purchase Agreement, including its interpretation, performance, breach of or termination (a “Dispute”) not resolved by good faith negotiations, as provided in this Section 7, will initially be attempted to be resolved by mediation in accordance with the following provisions:

a) Either party, by written notice, may initiate mediation which will be conducted under the auspices of an Ontario-based mediator, mutually agreeable to the parties;

b) The parties shall share the cost of the mediation equally;

c) All discussions, negotiations, findings or other statements by the mediator and/or the parties in connection with the mediation, whether oral or written, will be privileged and confidential and will not be admissible in evidence in any subsequent arbitration or litigation;

d) If the parties are unable to settle the Dispute pursuant to mediation within one hundred and twenty (120) days after notice of mediation, the party asserting the Dispute can proceed with legal action.

## **8 General**

**8.1** Sangoma will not be liable to Customer, for any delay or failure to deliver the Sangoma Products or support services by reason of any contingencies beyond Sangoma's control or beyond the control of Sangoma's suppliers including but not limited to force majeure; strikes; labor disputes; lockouts or other labor trouble; failure of third party telecommunications networks; fire; earthquake; flood; civil commotion; war; riot; act of God; casualties; accidents; shortages of transportation facilities; detention of goods by custom authorities or cause beyond the reasonable control of or occurring without the fault of Sangoma or of Sangoma's suppliers, or otherwise unavoidable, or because Sangoma's volume of orders at any time renders deliveries in the ordinary course of business impractical.

**8.2** The Direct Purchase Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Customer shall not assign the Direct Purchase Agreement without first obtaining the written consent of Sangoma. Any change in the voting control of the Customer shall constitute an assignment hereunder and shall be subject to the approval of Sangoma as set forth above.

**8.3** Unless otherwise indicated in this Agreement, all amounts set forth herein are stated and payable in lawful money of the United States.

**8.4** Neither party will issue any publicity or general marketing communications concerning this relationship without the prior written consent of the other party.

**8.5** These Standard Terms and the Direct Purchase Agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario. Customer hereby submits to the exclusive jurisdiction of the courts of Ontario for any legal action arising out of these Standard Terms and the Direct Purchase Agreement or the performance of any obligations with respect thereto.

**8.6** These Standard Terms and the Direct Purchase Agreement shall not be modified unless agreed to in writing by both parties. Any consent by a party to, or waiver of breach by the other, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Except as otherwise provided herein, no term or provision will be deemed waived and no breach excused.

**8.7** These Standard Terms and the Direct Purchase Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. In the event that any one or more provisions contained in these Standard Terms and/or the Direct Purchase Agreement are held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provisions therein and the remaining terms shall be construed as if such invalid, illegal or enforceable provision had never been contained herein.