

COOLCENTRIC™

A DIVISION OF VETTE TECHNOLOGY, LLC

MASTER PURCHASE AND CONTINUING SERVICES TERMS & CONDITIONS

The following are the terms and conditions (“Terms and Conditions”) for the sale of products and services by Coolcentric, a Division of Vette Technology, LLC and its subsidiaries (“Coolcentric”) to its customer (“Customer”) made under a Purchase Order (as defined below).

ARTICLE 1. AGREEMENT, TERM, AND DEFINITIONS

1.1 Certain Definitions. The following definitions apply to these Terms and Conditions:

(a) “Affiliate” means any entity controlling, controlled by or under common control with either party.

For purposes of these Terms and Conditions, control means operational control in which the controlling entity has either, (i) fifty one percent (51%) or more of the equity interest, or (ii) the maximum percentage of the equity interest allowed by local law, based on the entity's location or state of incorporation, as applicable, whichever is less.

(b) “Applicable Specifications” means the functional, performance, operational, compatibility, and other specifications or characteristics of a Product described in applicable Documentation and such other specifications or characteristics of a Product agreed upon in writing by the parties.

(c) “Documentation” means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Products or used in conjunction with the Services, whether distributed in print, magnetic, electronic, or video format, in effect as of the date, (i) a Product is shipped to the Customer, as applicable, or (ii) the Service is provided to Customer.

(d) “Employee” means those employees, agents, subcontractors, consultants, and representatives of Coolcentric provided or to be provided by Coolcentric to perform Services pursuant to these Terms and Conditions. The inclusion of any person within such definition for purposes of these Terms and Conditions shall not constitute an admission as against such person or any third party that such person is an employee under applicable employment laws and regulations.

(e) “Hardware” means such equipment and spare parts provided or to be provided by Coolcentric pursuant to these Terms and Conditions.

(f) “Licensed Software” means such computer programs in object code form that are provided or to be provided by Coolcentric pursuant to these Terms and Conditions.

(g) “Product” or “Products” means, individually or collectively as appropriate, such Hardware, Licensed Software, Documentation, supplies, accessories, and other commodities, that have been provided or to be provided by Coolcentric to Customer pursuant to these Terms and Conditions.

(h) “Purchase Order” means a written or electronic order submitted by the Customer and confirmed by Coolcentric in accordance with Article 2 for Products or Services to be purchased, licensed or provided under these Terms and Conditions.

(i) “Services” shall mean the services set forth in Article 4 of these Terms and Conditions.

ARTICLE 2. PURCHASE ORDERS

2.1 Submission of Purchase Orders. Customer may request information about Products and Services in order to prepare purchase orders and Coolcentric shall provide to Customer sufficiently detailed information which is responsive to the Customer’s request, including Applicable Specifications. Customer shall submit to Coolcentric written Purchase Orders identifying the Products and/or Services Customer desires to obtain from Coolcentric and specifying Coolcentric’s product identification number(s) of the Products ordered, the quantities ordered, and other necessary order information. A Purchase Order may include the provision of customized services regarding the ordered Products; such customized services shall be described in a formal Statement of Work provided by Coolcentric, according to the specific needs and requirements of the Customer. The Purchase Order must also specify the invoice and delivery addresses to be used. A Purchase Order shall be deemed submitted on the basis of the Applicable Specifications and these Terms and Conditions unless otherwise specifically agreed in writing. A Purchase Order may include other terms and conditions applicable to the Products and Services ordered; such other terms must be consistent with these Terms and Conditions or shall be necessary to place a Purchase Order, such as billing and shipping information, required delivery dates, installation locations, and Charges (as later defined in the Terms and Conditions), provided such Charges remain in effect on the date such Purchase Order is submitted. In the event of a conflict between the terms of a Purchase Order and these Terms and Conditions, these Terms and Conditions shall control.

2.2 Acceptance of Purchase Orders. Coolcentric may only accept Purchase Orders by providing to Customer a

written confirmation of such Purchase Order. Coolcentric shall, as a matter of policy, confirm Purchase Orders which do not establish new or conflicting terms and conditions from those set forth herein. Coolcentric may also accept Purchase Orders incorporating terms and conditions which have been separately agreed to in writing by the parties. Coolcentric may reject a Purchase Order which does not meet these Terms and Conditions by providing Customer notice and a written explanation of the reasons for such rejection. Coolcentric may accept a written alteration to the originally issued Purchase Order if such alteration remedies the items set forth in Coolcentric's written rejection and in such case a written confirmation will be provided by Coolcentric. Any Purchase Order for which Coolcentric does not provide a written confirmation shall be deemed as pending review by Coolcentric or rejected by Coolcentric unless Coolcentric provides conforming Products and/or Services in accordance with Articles 3 and/or 4 of these Terms and Conditions.

2.3 Alterations to Purchase Orders. No later than thirty (30) days prior to scheduled shipment, Customer may submit a request for an alteration to a Purchase Order regarding Products in order to, (i) change a location for delivery, (ii) modify the quantity or type of Products to be delivered or performed, (iii) implement any change or modification as required or permitted in these Terms and Conditions, or (iv) correct typographical or clerical errors in such Purchase Order. Any such request for an alteration is subject to acceptance by Coolcentric in the same manner as specified with respect to a Purchase Order in Section 2.2. Upon acceptance by Coolcentric, the alterations shall be considered effective, and references to the Purchase Order shall mean the Purchase Order as so altered. Customer agrees to reimburse Coolcentric for any additional costs associated with alterations of a Purchase Order including additional costs in shipping, storage or resale of Products. Coolcentric reserves the right to change the scheduled shipment date as a result of any alteration made by Customer to a Products Purchase Order. Any alteration to a Products Purchase Order which results in the need for Coolcentric to restock Products associated with such Purchase Order shall result in a restocking charge assessed at 25% of the total Product net sales price and shall be paid by the Customer according to these Terms and Conditions. Products Purchase Order cancellations made by Customer less than thirty (30) days prior to scheduled shipment are subject to a Product Purchase Order cancellation charge not to exceed the value of the original order, at the sole discretion of Coolcentric. No later than twenty (20) days prior to scheduled provision of Services, Customer may submit a request for an alteration to a Purchase Order regarding a Service in order to, without limitation, (i) modify the type of Services to be performed, (ii) implement any change or modification as required by or permitted in these Terms and Conditions, or (iii) correct typographical or clerical errors in such Purchase Order. Any such request for an alteration is subject to acceptance by Coolcentric in the same manner as specified with respect to a Purchase Order in Section 2.2. Upon acceptance by Coolcentric, the alterations shall be considered effective, and references to the Purchase Order shall mean the Purchase Order as so altered. Customer agrees to reimburse Coolcentric for any additional costs associated with alterations of such a Purchase Order including non-refundable costs associated with travel, accommodations and or the reassignment of Coolcentric employees.

ARTICLE 3. PROVISION OF PRODUCTS

All shipments from Coolcentric will be made EXW (Ex Works) as per Incoterms 2000, from Coolcentric's shipping docks or it's Affiliates' or suppliers' shipping docks to such destinations as Customer may state in a valid Purchase Order. Product prices are quoted EXW, and are subject to change with 30 days prior written notice by Coolcentric. All prices are exclusive of any sales, use, state, federal, or local taxes, import/export duties, or customs fees unless otherwise indicated by Coolcentric. Where required by law, Coolcentric shall be entitled to charge and collect any such taxes, duties or fees. In the event that any shipping costs, import/export fees or taxes are pre-paid by Coolcentric, Customer shall reimburse Coolcentric for all shipping costs, import and export costs as well as incidental costs incurred by Coolcentric in shipping the Products to Customer or its Affiliates. If Customer is a reseller or distributor of Coolcentric Products or Services, then Customer shall be responsible for charging and collecting any such applicable taxes, duties or fees, and shall bear all risk of loss in any such resale or distribution, with respect to Coolcentric. Upon transfer of Products from Coolcentric to a common carrier, title shall pass to the Customer. Customer assumes all risks of loss or damage of Products during transit.

If specific environmental conditions are required for installation, warranty or maintenance of Products, Coolcentric shall, upon confirmation of a Purchase Order for the Products, provide to Customer sufficient information or Documentation which describes such required conditions.

3.1 Returns. Customer must obtain written permission from Coolcentric in the form of a Return Materials Authorization ("RMA") number prior to returning any Products for warranty return, credit or any other

reason whatsoever. The terms of any warranty returns or associated credits shall be in strict accordance with Coolcentric's Limited Product Warranty as in effect from time to time. Return freight charges, plus the risk of loss or damage, whether or not it occurs during the shipment back to Coolcentric, will be borne solely by the Customer.

ARTICLE 4. SERVICES TERMS AND WARRANTIES

4.1 Description and Authorization of Services. Following submission and acceptance of a Purchase Order for Services pursuant to these Terms and Conditions, Coolcentric agrees to perform such Services as specified in such Purchase Order. Coolcentric may perform additional Services related to the Purchase Order as requested by Customer or its Affiliates from time to time. In such event, Coolcentric and Customer shall agree in writing upon the payment milestones and scope of work for such services prior to Customer submitting a Purchase Order for such Services.

In addition to the compensation set forth in a Purchase Order, Coolcentric shall be reimbursed for such reasonable expenses incurred for the benefit of Customer in the performance of the Services. Coolcentric shall only be reimbursed for expenses for which the Customer provides a written pre-approval and when Coolcentric produces a printed receipt. All expenses are subject to review and acceptance by Customer or its Affiliates. Acceptance shall not be unreasonably withheld. Expenses may include parts, equipment, materials, special tools, sourcing costs and other items of a direct or out-of-pocket nature.

4.2 Service Warranties and Liabilities. Coolcentric warrants that the Services to be performed under a Purchase Order shall be performed in accordance with recognized professional standards customary in the industry in which the Services are being performed. Should the Services performed by Coolcentric fail to comply with such standards, Coolcentric agrees to re-perform such deficient Services at no cost to Customer.

Notwithstanding any other provision of these Terms and Conditions to the contrary, Coolcentric's total aggregate liability from any and all claims arising out of or in connection with its Service warranty hereunder, shall be limited to those claims of which Coolcentric has received written notification within thirty (30) days following the completion of the specific Services giving rise to the claim and shall not exceed the compensation received by Coolcentric for the specific Services giving rise to such claim.

THE ABOVE SERVICE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO SERVICES RENDERED HEREUNDER, AND COOLCENTRIC EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 5. HARDWARE AND SOFTWARE

5.1 Limited Product Warranty. Coolcentric warrants all Hardware and Licensed Software delivered under these Terms and Conditions to the extent, for the period and under the other terms set forth in Coolcentric's applicable "Limited Product Warranty" as in effect from time to time and posted on Coolcentric's internet website at www.coolcentric.com.

5.2 No Other Warranties. COOLCENTRIC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, FOR PRODUCTS SOLD OR SERVICES FURNISHED HEREUNDER OTHER THAN AS SPECIFICALLY SET FORTH IN COOLCENTRIC'S LIMITED PRODUCT WARRANTY. COOLCENTRIC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTION AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS. COOLCENTRIC'S EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED, OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, COOLCENTRIC'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS. SUCH WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES.

ARTICLE 6. LICENSE AND RESTRICTIONS

6.1 Licensed Software Grant. Coolcentric hereby grants to Customer and its Affiliates a non-exclusive, nontransferable, license (a "License"), to use the Licensed Software to support itself and the Products purchased by it. Title to and ownership of all Licensed Software shall remain with Coolcentric or its suppliers. Customer agrees that it shall not engage in any timesharing, Internet or service bureau-type distribution of the Licensed Software.

6.2 Trademarks. Neither Customer nor its Affiliates have any right to incorporate any Vette Technology or Coolcentric trademark into Customer's or any Affiliates company name or trade name. Neither Customer nor its Affiliates shall alter, cover, obfuscate or remove any trademarks placed by Vette Technology or

Coolcentric on the Products or any material contained therein.

6.3 Copies and Derivatives. Customer shall not modify, create derivative works or translate, copy, disassemble, reverse engineer or decompile the Products in whole or in part.

ARTICLE 7. INDEMNIFICATION AND LIMITATION OF LIABILITIES

7.1 Indemnification. Customer shall hold Coolcentric and its directors, officers, employees, agents and Affiliates harmless and indemnify the same against any loss or damage to property or personal injury or death and caused by and to the extent of the actions or omissions of Customer. Coolcentric shall hold Customer and its directors, officers, employees, agents and Affiliates harmless and indemnify the same against any claim by any Employee of Coolcentric incurred in providing Services hereunder.

Notwithstanding anything in these Terms and Conditions to the contrary, the maximum aggregate liability of Coolcentric and its Affiliates, officers or directors shall not exceed the lesser of (i) the proceeds actually recovered from those insurance policies required pursuant to 7.4 hereof or (ii) the amounts actually paid to Coolcentric for the Services under the applicable Purchase Order giving rise to such claim.

7.2 Limitation of Liability. NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, ECONOMIC, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 Applicability of Limitations of Liability. The limitations on liability, releases from liability, and waiver and indemnity provisions expressed in these Terms and Conditions shall apply to the full extent permitted by law, even in the event of a party's fault, negligence (in whole or in part), strict liability, or other basis of liability, and whether liability is founded in contract, tort, or otherwise, and shall extend to the party, its affiliated companies and its Affiliates, and their respective directors, officers, employees and agents.

7.4 Insurance. Coolcentric shall, at Coolcentric's sole expense, maintain the following insurance:

(a) Commercial General Liability Insurance including contractual coverage: The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit \$1,000,000

General Aggregate Limit \$2,000,000

Products-Completed Operations Aggregate Limit \$1,000,000

Personal and Advertising injury Limit \$1,000,000

(b) Business Automobile Liability Insurance: Should the performance of these Terms and Conditions involve the use of automobiles, Coolcentric shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Coolcentric shall maintain limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined.

(c) Workers' Compensation Insurance: Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverage is elective in that state.

(d) Employers Liability Insurance: Such insurance shall provide limits of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each annual period for bodily injury by accident, and \$1,000,000 each employee for bodily injury by disease.

The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. Coolcentric and Customer may agree upon higher limits or other types of insurance coverage(s) as necessary for specific projects. Any such agreement shall be in writing and signed by both parties prior to the commencement of any work, service, sale, or fulfillment of duties outlined herein.

Coolcentric shall provide at Customer's written request certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Coolcentric shall require all insurers to endeavor to provide Customer with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement.

7.5 Survival of Article VII. The provisions of this Article VII shall survive the term or termination of these Terms and Conditions for any reason.

ARTICLE 8. PAYMENT

8.1 Charges, Prices, and Fees for Products and Services. Charges, prices, and fees ("Charges") for Products and Services shall be determined as set forth in a Purchase Order that has been confirmed by Coolcentric, or as otherwise agreed upon by the parties, unless modified as set forth in this Agreement.

8.2 Payment. Method of payment for the Products and Services (including taxes, shipping charges and insurance) is by wire transfer, money order or check net thirty (30) days from Coolcentric's invoice date. Restrictive endorsements or other statement on checks will not apply. A finance charge of 25% of the U.S. Federal Prime Rate will be charged per month by Coolcentric for all overdue accounts. If Coolcentric places an overdue account in the hands of an agency or attorney for collection by legal action, Customer will pay an additional charge equal to the cost of collection including agency and attorney fees and court costs incurred to the extent permitted by laws governing these transactions.

8.3 Taxes. Unless Customer provides evidence of exemption, Customer shall pay or reimburse Coolcentric, where Customer is liable under applicable tax statute, amounts equal to taxes which are imposed upon Customer's acquisition of Products or Services including federal excise taxes, or sales or use taxes; provided, however, Customer shall not be obligated to pay or reimburse Coolcentric for any taxes attributable to the sale of any Products or Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Coolcentric.

8.4 Security Interest. Customer hereby grants to Coolcentric or its assignee a purchase money security interest in the Products to secure payment of the Charges therefor until the same are paid in full. Customer agrees to execute and deliver all documents reasonably requested by Coolcentric to protect and maintain its security interest. Customer appoints Coolcentric as its agent to sign and file a financing statement to protect Coolcentric's security interest.

ARTICLE 9. TERMINATION

9.1 Termination for Cause. Except as provided in Section 9.3, in the event that either party materially or repeatedly defaults in the performance of any of the provisions of these Terms and Conditions, and such default is not substantially cured within thirty (30) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving written notice thereof to the defaulting party, terminate these Terms and Conditions and any Purchase Order as of a date specified in such notice of termination.

9.2 Termination for Insolvency or Bankruptcy. Either party may immediately terminate these Terms and Conditions and any associated Purchase Order by giving written notice to the other party in the event of, (i) the liquidation or insolvency of the other party, (ii) the appointment of a receiver or similar officer for the other party, (iii) an assignment by the other party for the benefit of all or substantially all of its creditors, (iv) entry by the other party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (v) the filing of a petition in bankruptcy by or against the other party under any bankruptcy or debtors' law for its relief or reorganization, which is not dismissed within 30 days of the filing thereof.

9.3 Termination for Nonpayment. Coolcentric may terminate a Purchase Order, or any portion thereof, if Customer fails to pay when due any amounts due pursuant to such Purchase Order and such failure continues for a period of thirty (30) days after written notice is given to Customer.

9.4 Termination of Software License. Customer may terminate any License for any reason by providing written notice to Coolcentric. If Customer elects to so terminate a License, Customer shall return to Coolcentric and destroy any and all copies of the Licensed Software and Documentation in Customer's possession, which is the subject of the terminated License, except as may be necessary for archival purposes.

9.5 Rights upon Termination. Unless specifically terminated as set forth in this Article, any Purchase Orders which require performance or extend beyond the term of these Terms and Conditions shall be so performed and extended and shall continue to be subject to the Terms and Conditions of this Agreement.

ARTICLE 10. MISCELLANEOUS

10.1 Binding Nature, Assignment, and Subcontracting. These Terms and Conditions shall be binding on the parties and their respective successors in interest and assign. Neither party shall have the power to assign, except to an affiliate of such party, these Terms and Conditions without the prior written consent of the other party, which consent shall not be unreasonably withheld. Coolcentric may subcontract work to be performed under these Terms and Conditions but shall retain responsibility for any such work.

10.2 Counterparts. These Terms and Conditions may be executed in several counterparts, all of which taken

together shall constitute one single agreement between the parties.

10.3 Headings. The Article and Section headings used in these Terms and Conditions are for reference and convenience only and shall not enter into the interpretation hereof.

10.4 Relationship of Parties. Coolcentric is performing pursuant to these Terms and Conditions only as an independent contractor. Coolcentric has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in these Terms and Conditions, except as otherwise agreed upon by the parties. Nothing set forth in these Terms and Conditions shall be construed to create the relationship of principal and agent between Coolcentric and Customer. Coolcentric shall not act or attempt to act or represent itself, directly or by implication, as an agent of Customer or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Customer.

10.5 Confidentiality. Each party acknowledges that in the course of performance of its obligations pursuant to these Terms and Conditions, such party, may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: information relating to development plans, designs, costs, finances, marketing plans, equipment configurations, data, documentation, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of these Terms and Conditions; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Each party agrees that, for a period of two (2) years following its receipt of Confidential Information from the other party, whether before or after the Effective Date, such recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of these Terms and Conditions, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the Customer of the Confidential Information to a third party (other than an affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or a subpoena so long as the recipient party provides the other party with timely prior written notice of such requirement or subpoena.

10.6 Electronic Communications. If Coolcentric and Customer mutually agree, business communications between the parties, including, but not limited to, Purchase Orders, invoices, and payment may be submitted electronically. In such case, the parties shall mutually agree in writing upon supplemental terms and conditions, including technical standards, for the electronic exchange of such items including refresh frequency.

10.7 Notices. Wherever one party is required or permitted to give notice to the other pursuant to these Terms and Conditions, such notice shall be deemed given when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, or when sent by a third party courier service where receipt is verified by the receiving party's acknowledgement, and addressed as follows:

In the case of Customer:

Attn: _____

In the case of Coolcentric:

Coolcentric
33 Bridge Street
Pelham, NH 03076
USA

Attn: Corporate Controller

Either party may from time to time change its address for notification purposes by giving the other party written notice of the new address or the date upon which it will become effective; first class, postage

prepaid mail shall be acceptable for provision of change of address notices.

10.8 Force Majeure. The term "Force Majeure" shall be defined to include fires or other casualties or accidents, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, embargoes, or the enactment of any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency which materially impairs the operation by Coolcentric of its business.

(a) A party whose performance is prevented, restricted, or interfered with by reason of a Force Majeure condition shall be excused from such performance to the extent of such Force Majeure condition so long as such party provides the other party with prompt written notice describing the Force Majeure condition and takes all commercially reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.

(b) If, due to a Force Majeure condition, the scheduled time of delivery or performance is or will be delayed for more than thirty (30) days after the scheduled date, the party not relying upon the Force Majeure condition may terminate, without liability to the other party, the Purchase Order or any portion thereof covering the delayed Products or Services.

10.9 Severability. If, but only to the extent that, any provision of these Terms and Conditions is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that these Terms and Conditions shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of these Terms and Conditions is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

10.10 Waiver. Any waiver of these Terms and Conditions or of any covenant, condition, or agreement to be performed by a party under these Terms and Conditions shall, (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

10.11 Remedies. The remedies set forth in these Terms and Conditions shall be the exclusive remedies of the parties and shall constitute each party's exclusive liability and sole remedies for claims arising out of these Terms and Conditions.

10.12 Survival of Terms. Termination or expiration of these Terms and Conditions for any reason shall not release either party from any liabilities or obligations set forth in these Terms and Conditions which, (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration, including without limitation the right to be paid the purchase price for Products or Services. Notwithstanding the foregoing, any claim or dispute arising under these Terms and Conditions must be brought or asserted within two (2) years after the cause of action arises.

10.13 Governing Law and Dispute Resolution. **THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THESE TERMS AND CONDITIONS SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THOSE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE STATE OF NEW HAMPSHIRE, UNITED STATES OF AMERICA.**

If during the term of these Terms and Conditions a dispute arises between the parties, or one party perceives the other as acting unfairly or unreasonably, or a question of interpretation arises hereunder, then Coolcentric's and Customer's respective project managers shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of the issue. If the managers are unable to resolve the issue within twenty (20) business days, the matter shall be referred within two (2) business days of the lapse of the aforementioned twenty (20) business days to the parties' responsible corporate officers for resolution. Neither party shall seek arbitration or judicial resolution of any dispute arising in connection with these Terms and Conditions until both parties' responsible corporate officers, who shall be identified by each party from time to time, have had at least twenty (20) business days to resolve the dispute following referral of the dispute to such responsible corporate officers. Notwithstanding the foregoing, the parties shall not be required to resolve the matter in accordance with the above procedures if the sole issue relates to the payment of an uncontested purchase price for Products or Services if and to the extent previously delivered or rendered,

as the case may be.

Any controversy or claim arising out of these Terms and Conditions not resolved pursuant to the above process shall be determined by arbitration under the commercial arbitration rules and procedures of the American Arbitration Association. The arbitrator(s) shall issue a written decision setting forth the facts and the legal theories upon which such decision is based, and such decision shall be final and non-appealable. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration proceeding shall be filed in the regional office of the American Arbitration Association located in Boston, Massachusetts and shall be heard in Boston, Massachusetts.

10.14 Entire Agreement. These Terms and Conditions constitute the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to these Terms and Conditions that are not fully expressed in these Terms and Conditions. These Terms and Conditions shall not be amended except by a written agreement signed by both parties. All appendices, documents, and schedules referenced in these Terms and Conditions or attached to these Terms and Conditions, and each Purchase Order is an integral part of these Terms and Conditions. In the event of any conflict between the terms and conditions of these Terms and Conditions and any such appendices, documents, Purchase Orders or schedules, the terms of these Terms and Conditions shall be controlling. Any other terms or conditions included in any agreements, quotes, invoices, acknowledgements, bills of lading, or other forms utilized or exchanged by the parties (except for software licenses or shrink-wrap licenses, which are binding on the parties) shall not be incorporated in these Terms and Conditions or be binding upon the parties unless the parties expressly agree in writing or unless otherwise provided for in these Terms and Conditions.