

# CASHMAN FLUIDS ANALYSIS TESTING AND ANALYSIS TERMS AND CONDITIONS

1. **Terms and Conditions.** In consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Cashman Equipment Company d/b/a Cashman Fluids Analysis ("CFA") agrees to provide the testing and analysis services (the "Services") described in that certain quote, invoice and/or oil analysis report (the "Transaction Documents") provided by CFA to customer ("Customer" together with CFA, the "Parties," and each a "Party") in accordance with the following terms and conditions. The Transaction Documents, together with these terms and conditions and any Change Orders (as defined below), exhibits, schedules, attachments and appendices to the Transaction Documents, shall constitute an agreement between the Parties to perform the Services (the "Agreement").

2. **Timing.** CFA shall use reasonable efforts to meet any performance dates specified in the Transaction Documents. Any such dates shall be estimates only.

3. **Partial Information.** Customer understands and acknowledges that CFA may perform the Services in reliance on representations made by Customer regarding, *inter alia*, the cleanliness, functionality, operational status, contents and/or nature of the property, equipment or machinery that will be the subject of the Services. Should any of the representations on which CFA relied in providing the Services be false or incomplete, or if CFA shall reasonably determine in the course of performing the Services that additional testing and analysis services are necessary to satisfy its obligations hereunder, CFA shall promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder ("Additional Work"). If Customer either declines or fails to agree to modify the Transaction Documents and scope of Services to include the Additional Work within thirty (30) days, CFA shall be entitled to terminate this Agreement in accordance with Section 23.

4. **Change Orders.** Subject to Section 3 above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. CFA shall, within a reasonable time after such request, provide a written estimate to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Services arising from the change. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 33. Notwithstanding the above, CFA may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Transaction Documents or relevant Change Order.

5. **Customer Warranties.** Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to perform its obligations under this Agreement; (iii) this Agreement will constitute Customer's legal, valid and binding obligation, enforceable against it in accordance with its terms; (iv) it is not insolvent and is paying all of its debts as they become due; (v) any payments made pursuant to this Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; and (vi) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs.

6. **Customer Obligations.** Customer shall cooperate with CFA in all matters relating to the Services and provide such directions, information, approvals, authorizations, decisions or materials that are reasonably necessary for CFA to perform the Services.

7. **Compliance with Law.** Each Party agrees to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations applicable to it and the Services.

8. **Customer's Acts or Omissions.** If CFA's performance under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, CFA shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

9. **Hazardous Substances.** Customer shall submit each sample to CFA with (i) a proper Safety Data Sheet ("SDS") and (ii) written notification (a "Notification") as to whether such sample contains Hazardous Substances (as defined below). If Customer submits any sample without an SDS and/or Notification and CFA identifies such sample as containing Hazardous Substances, CFA will notify Customer, as necessary, and hold the sample for ten (10) days for Customer to recover it. In the event Customer fails to recover such sample, CFA will properly dispose of such sample and invoice Customer for all costs incurred by CFA for said disposal. Customer shall indemnify, defend and hold CFA, its parent company and affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns from and against any and all Losses (as defined in Section 18 below) caused by such Hazardous Substances unless caused, in whole or in part, by CFA's negligence or the negligence of CFA's parent company or their respective employees, agents or assigns. For the purposes of this Agreement, "Hazardous Substances" means all regulated or hazardous substances, other than used oil, #2 diesel or coolant (including without limitation, substances identified as "Hazardous Materials" under the Resource Conservation and Recovery Act, the Toxic Substances Control Act and/or any other federal, state or local laws, rules and/or regulations purporting to deal with toxic or hazardous substances).

10. **Cancellations / Partial Work.** CFA reserves the right to charge for any cancellation by Customer of scheduled Services. Customer shall pay for partially completed work based on time and materials at CFA's prevailing rates. Additional handling and storage fees may apply to partially completed work.

11. **Fees and Expenses.** Customer shall (i) reimburse CFA for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due under this Agreement, in each case within thirty (30) days of receipt by the Customer of an invoice from CFA. Failure to notify CFA in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim.

12. **Late Payments.** All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) and the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to all other remedies available under this Agreement or at law (which CFA does not waive by the exercise of any rights hereunder), CFA shall be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder.

13. **Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes imposed on, or with respect to, CFA's income, revenues, gross receipts, personnel or real or personal property or other assets.

14. **Hours of Operation.** The Services shall be performed during CFA's publicized business hours. Services performed outside of such hours will be billed at the applicable overtime rate or, as applicable, at the double-time rate.

15. **Limited Warranty.** CFA warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. CFA shall not be liable for a breach of the warranty set forth above unless Customer gives written notice of the defective Services, reasonably described, to CFA within thirty (30) days of completion of the allegedly defective Services. CFA shall, in its sole discretion, either (i) use commercially reasonable efforts to cure any breach of this warranty, or (ii) credit or refund the price of any defective Services, less a deduction equal to the fees for receipt or use of such Services on a pro-rated basis. If CFA does not cure such breach or provide Customer a refund within thirty (30) days after Customer's written notice of such breach, Customer may, at its option, terminate this Agreement in accordance with Section 23. In the event this Agreement is terminated in accordance with this Section 15, CFA shall within thirty (30) days after the effective date of termination, credit or refund the price of any defective Services, less a deduction equal to the fees for receipt or use of such Services on a pro-rated basis. THE REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY ABOVE.

16. **Disclaimer of Warranties.** EXCEPT FOR THE LIMITED WARRANTY ABOVE, CFA MAKES NO WARRANTY WHATSOEVER HEREUNDER, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CFA IS NOT THE DEVELOPER OF ALL INTELLECTUAL PROPERTY USED IN THE PERFORMANCE OF THE SERVICES NOR AN AGENT THEREOF. WITHOUT LIMITING THE FOREGOING, CASHMAN MAKES NO WARRANTY (A) AS TO THE ACCURACY, VALIDITY OR CORRECTNESS OF THE RESULTS OBTAINED FROM THE ANALYSIS OF ANY SAMPLING OR (B) THAT THE USE OF ANY RESULTS WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS OR EXPECTATIONS, ACHIEVE ANY INTENDED RESULT OR BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION OR MATERIALS. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CFA OR ANY OTHER PERSON ON CFA'S BEHALF OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Any warranty by CFA shall be null and void and have no legal effect if Customer has failed to pay for the Services at issue.

17. **Limitation of Liability.** IN NO EVENT SHALL CFA BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE TEST RESULTS PROVIDED BY CFA ARE TO BE USED AS A DIAGNOSTIC AND MAINTENANCE MANAGEMENT TOOL AND ARE NOT INTENDED AS A SUBSTITUTE FOR MECHANICAL DISASSEMBLY AND INSPECTION AND ARE NOT INTENDED TO WARRANT THE FITNESS OR OPERATION OF ANY COMPONENT. TEST RESULTS RELATE ONLY TO THE SAMPLE PROVIDED AS SAMPLES DRAWN FROM THE SAME COMPONENT MAY VARY. IN NO EVENT SHALL CFA BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM THE USE OF THE TEST RESULTS. IN NO EVENT SHALL CFA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE FEES PAID TO CFA PURSUANT TO THIS AGREEMENT IN THE SIX-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND (ii) \$5,000.

18. **Mutual Indemnification.** SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 19, EACH PARTY (AS "INDEMNIFYING PARTY") SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OTHER PARTY, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY, "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES (INCLUDING ATTORNEYS' FEES) OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THAT ARE INCURRED BY INDEMNIFIED PARTY (COLLECTIVELY, "LOSSES") AS A RESULT OF ANY (i) BREACH OR NON-FULFILLMENT OF ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THIS AGREEMENT BY INDEMNIFYING PARTY; (ii) NEGLIGENCE OR MORE CULPABLE ACT OR OMISSION OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT) IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT; (iii) BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT); OR (iv) FAILURE BY INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR CODES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

19. **Exceptions and Limitations on Indemnification.** Notwithstanding anything to the contrary in this Agreement, Indemnifying Party shall not be obligated to indemnify, hold harmless or defend Indemnified Party for any Losses which result from, in whole or in part, Indemnified Party's (i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in this Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by CFA or the equipment manufacturer, as applicable.

20. **Insurance.** During the term of this Agreement, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (i) commercial general

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liability in occurrence form with a minimum limit of \$1,000,000 per occurrence, plus a minimum \$2,000,000 general aggregate limit; (ii) workers' compensation in an amount no less than the minimum required by law and employers' liability in a sum no less than \$1,000,000; and (iii) any additional insurance CFA may reasonably require, in each case with financially sound and reputable insurers. Upon either Party's request, the other Party shall provide the requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage specified above. The certificate of insurance shall name the requesting Party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days' advance written notice in the event of a cancellation or material change in the insured Party's insurance policy. Except where prohibited by law, the insured Party shall require its insurer to waive all rights of subrogation against the requesting Party and the requesting Party's insurers.

21. **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the CFA in the course of performing the Services (collectively, the "Deliverables") shall be owned by CFA. CFA hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

22. **Confidentiality.** From time to time during the term of this Agreement, either Party (as "Disclosing Party") may disclose or make available to the other Party (as "Receiving Party") non-public proprietary and confidential information that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and promptly thereafter is summarized in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 22; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Receiving Party shall (x) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to Receiving Party's representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section 22.

23. **Term and Termination.** This Agreement shall commence as of the date on which CFA begins performance of the Services and shall continue until the completion of the Services, unless sooner terminated pursuant to this Section 23. Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party (i) fails to pay any amount when due under this Agreement; (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iii) otherwise breaches this Agreement, and such breach is either incapable of cure or is not cured within sixty (60) days of receipt of notice of such breach. CFA may terminate this Agreement at any time upon thirty (30) days' written notice to Customer.

24. **Force Majeure.** CFA shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement to the extent such failure or delay is caused by or results from acts or circumstances beyond CFA's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

25. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, regarding such subject matter. The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Change Order, the terms and conditions of this Agreement shall supersede and control unless the Change Order expressly states that the terms and conditions of such Change Order shall control. No purchase order in connection with the Services shall be binding on CFA unless accepted by CFA in writing. The provision of the Services to Customer shall not constitute acceptance of any terms and conditions contained in any request for proposal, purchase order or otherwise, nor does it serve to modify or amend this Agreement. Any such document shall create a separate contract consisting of the terms of this Agreement and any additional terms proposed by such document; if the terms of such document conflict with the terms of this Agreement, the terms of this Agreement shall control.

26. **Communications.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Communication") must be in writing and addressed to the other Party at its address set forth the Transaction Document or such other address that the receiving Party has designated in accordance with this Section 26. Unless otherwise agreed, all Communications must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A Communication is effective only on receipt by the receiving Party if the Party giving the Communication has complied with the

requirements of this Section 26. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PT) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

27. **Applicable Law/Venue.** This Agreement (and all matters arising out of or relating to this Agreement) will be governed in all respects by the laws of the State of Nevada without regard to any choice or conflict of law provisions. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in Clark County in the State of Nevada and waives all claims that such courts lie in an inconvenient forum.

28. **Waiver of Jury Trial.** EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

29. **Dispute Resolution.** Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation in the County of Clark, Nevada with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in the County of Clark, Nevada in accordance with the commercial arbitration rules of the American Arbitration Association. Each Party shall share equally the cost of the arbitration and shall bear its own attorneys' fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to award any punitive damages.

30. **Enforcement.** Subject to Section 29, Customer shall pay all costs CFA may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

31. **Data Sharing.** Data generated by the Services, including data related to the condition of Customer's equipment, may be collected and transmitted to the equipment manufacturer, its affiliates and/or its dealers, including CFA and its affiliates. BY ENTERING INTO THIS AGREEMENT, CUSTOMER ACKNOWLEDGES RECEIPT AND REVIEW OF THE CASHMAN DATA GOVERNANCE STATEMENT AS INCORPORATED HEREIN BY REFERENCE AND AVAILABLE AT [www.CashmanEquipment.com/terms](http://www.CashmanEquipment.com/terms).

32. **Severability.** If any provision of this Agreement shall be deemed invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

33. **Amendments.** No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless in a writing signed by an authorized representative of each Party.

34. **No Waiver.** No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity will be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds).

35. **Assignment.** CFA may assign all or any portion of its rights and obligations under this Agreement without notice or consent. If an assignee agrees to assume the obligations of CFA, Customer agrees that CFA shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of CFA. Any purported assignment or delegation in violation of this Section 35 shall be null and void *ab initio*. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement.

36. **No Third Party Beneficiaries.** This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

37. **Headings.** Headings are for reference only and do not affect the interpretation of this Agreement.

38. **Future Services.** The terms of this Agreement will apply to all additional services provided by CFA to Customer (except that the fees for such services will be the published rates as of the date of such service), unless provided pursuant to a separate written agreement.

39. **Interpretation.** Any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

40. **Survival.** Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 16 (Disclaimer of Warranties), 17 (Limitation of Liability), 18 (Mutual Indemnification), 19 (Exceptions and Limitations on Indemnification), 20 (Insurance), 22 (Confidentiality), 27 (Applicable Law/Venue), 28 (Waiver of Jury Trial), 29 (Dispute Resolution), 30 (Enforcement), 32 (Severability), 33 (Future Services) and 40 (Survival).

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