

Terms and Conditions of Use

By using the Netrix Private Cloud Services, Client agrees to the following:

- A. **ADMINISTRATION.** These Terms are part of Client's agreement with the Netrix affiliate executing the SOW for Netrix Private Cloud Services (as used hereunder, the "Vendor"). Client's use of the Netrix Private Cloud Services ("Services" or "Netrix Private Cloud Services") is governed by these Terms (including the Acceptable Use Policy ("AUP") (collectively, the "Terms"). Client agrees to use the Netrix Private Cloud Services for legal and commercial purposes only, and to permit, and require its employees and agents and customers to permit, only use by persons authorized by Client (each an "End-User") who agree to be bound by these terms. Client shall be responsible for any violations by Client, its agents or End Users, and Netrix shall be responsible for any violation by Netrix, LLC.
- B. **DEFINED TERMS.** Some words used in the Netrix Private Cloud Exhibit have particular meanings:
"Acceptable Use Policy" or "AUP" means the Netrix Private Cloud Acceptable Use Policy set forth at www.netrixllc.com/contracts.
"API" means application programming interface.
"Business Day" means Monday to Friday, excluding public and Netrix holidays, in Chicago, Illinois.
"Business Hours" means 8:00 a.m. – 5:00 p.m. on a Business Day.
"Confidential Information" means all information disclosed by one party to the other, whether before or after the effective date of the Terms, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, benchmarking tests, product development plans, non-public information of the parties relating to their business activities or financial affairs, data center designs (including non-graphic information Client may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is publicly available, or independently developed by a recipient without reference to the disclosing party's Confidential Information, or that becomes available to the receiving party other than through breach of the Terms or applicable law, shall not be "Confidential Information" of the disclosing party.
"Client Data" means all data of any kind (including Client's software, if any), and all other content that is provided by Client or Client's End-User(s) for use with the Hosted System, or otherwise processed by Client or Client's End-User(s), through the Netrix Private Cloud Services.
"Hosted System" means a combination of hardware, software and networking elements that comprise the Netrix Private Cloud.
"Product Terms" means the additional terms and conditions, if any, for the third party tools used by Netrix to provide the Netrix Private Cloud Services.
"Netrix Private Cloud Services" means the Netrix Private Cloud software and related Services licensed to Client via the applicable SOW, and any Services which Client self-provisions through administrative access or which Client utilizes via an API.
"Support" means the Netrix support system for Netrix Private Cloud Services that will be available twenty-four (24) hours per day, seven (7) days per week.
- C. **OBLIGATIONS.**
1. **General.** Client agrees to: (i) comply with applicable laws and these Terms, (ii) pay the fees for the Netrix Private Cloud Services when due, (iii) ensure that Client's user account and administrator information is true, accurate, current and complete; and (iii) cooperate with Netrix's reasonable investigation of Service outages and any suspected breach of the Terms. Client is solely responsible for its use of the Services in compliance with laws, rules, regulations or directives applicable to data privacy and security.
2. **Data Security.** Unless otherwise described in the applicable SOW, Netrix does not have knowledge of or access to Client Data stored on the Hosted System, and Client is solely responsible for:
- determining the suitability of the Netrix Private Cloud Services in light of the type of Client Data stored by Client or its End-Users or otherwise processed by Client or its End User(s) through Client's use of the Netrix Private Cloud Services;
 - Client's use of the Hosted System and the Services by any of its employees, Clients or other user(s) utilizing Client's passwords or who gains access to the Hosted System or Services as the result of Client's failure to utilize reasonable security precautions;
 - taking all reasonable steps to mitigate the risks inherent in transmitting Client Data to and from and while stored on the Hosted System using the Services, including for any Client Data loss or corruption; and
 - ensuring against bots and any other malicious use of client resources and any restrictions necessary to preserve the overall Netrix Private Cloud systems may be taken.
 - Any malicious use of Netrix Private Cloud Services may result in suspension or rate limiting of Client's Services, at Netrix's sole option and without notice.
- Reasonable steps under Sub-Section 3(B)(l)(c) shall include:
- encrypting any personal Client Data covered by any data privacy or protection law, rule, directive or regulation to which Client Data or Client is subject; and any other regulated financial, health or sensitive data; in each case while it is transmitted and while stored on the Hosted System,
 - maintaining current backups of Client Data,

- c. implementing and maintaining privacy protections and security measures within any applications provided by Client, or on Client's behalf, for use in Client's instance of the Hosted System, including but not limited to establishing appropriate access control and intrusion prevention mechanisms, and
 - d. designating authorized administrators and End-Users under Client's account and establishing controls for appropriate access and use of login credentials associated with Client's account.
 - e. Client agrees to immediately notify Netrix via the Netrix administration site of any unauthorized use of Client's Services or account or the Hosted System, or of any other breach of security. Client also agrees to timely cooperate with any investigation of security-related breaches.
 3. **Client Data Backup.** Client shall maintain at least one (1) current offsite backup copy of Client's Client Data and programs stored on the Hosted System. Client may purchase backup services from Netrix.
- D. ACCESS TO THE NETRIX PRIVATE CLOUD SERVICES.**
1. Client may access the Netrix Private Cloud Services via an Netrix-provided user interface. Netrix may modify its user interface at any time. By using the Netrix Private Cloud Services, Client agrees that Netrix may establish new procedures for Client's use of the Netrix Private Cloud Services, including as Netrix deems necessary for the optimal performance of the Netrix Private Cloud Services.
 2. Client does not acquire any ownership interest in or right to possess any part of the Hosted System or the Netrix Private Cloud Services, and Client has no right of physical access to the Hosted System. Client agrees that Netrix may migrate the Hosted System or Client's Client Data within or between locations, including if Netrix determines in its reasonable judgment that migration is required to remediate service degradation or shared resource constraints.
 3. Netrix may limit traffic speed to maximum of 5 Mbs in and 5 Mbs out sustained traffic at any time and without notice.
- E. DUTIES UPON TERMINATION.** Before termination or expiration of Client's subscription Client shall retrieve a copy of the Client Data and delete Client Data from the Hosted System. Client will not have access to the Hosted System or to Client Data stored on the Netrix Private Cloud Services during a suspension or following termination or expiration. Client acknowledges that if Client terminates the Services or deletes instances through Client's Control Panel, API or other means, the Client Data contained thereon may no longer be recoverable.
- F. SUSPENSION OF SERVICES.**
1. **Grounds for Suspension.** Netrix may suspend the Services without liability if:
 - a. Netrix reasonably believes that the Services are being used (or have been or will be used) in breach of the Terms (including the AUP);
 - b. Netrix discovers that Client is, or is affiliated in any manner with, a person or entity who has used similar services abusively in the past;
 - c. Client doesn't cooperate with Netrix's reasonable investigation of any suspected breach of the AUP;
 - d. Netrix reasonably believes that the Services have been accessed or manipulated by a third party without Client's consent;
 - e. Netrix reasonably believes the suspension of the Services is necessary to protect the Hosted System or any Netrix Clients;
 - f. Netrix is not receiving payment for the Services; or
 - g. Netrix is required by law or a regulatory or government body to suspend Client's Services.
 2. **Notice of Suspension.** Netrix will give Client at least 5 days' advance notice of a suspension and a chance to cure the grounds on which the suspension are based, unless Netrix determines in its reasonable commercial judgment that an immediate suspension is necessary to protect Netrix or its other Clients from imminent and significant operational, legal, or security risk. In such event, Netrix will provide notice as promptly as reasonably practicable following suspension.
 3. **Fees and Remedies.** If the suspension was based on Client's breach of the Terms, then Netrix may continue to charge Client the fees for the Services during the suspension, and may charge a reasonable reinstatement fee at Netrix's discretion upon reinstatement of the Services. If the suspension was based on a vulnerability or defect that is within Client's environment or otherwise within Client's control, then Client must address the vulnerability or defect prior to Netrix placing the Services back in service. Netrix's exercise of its right to suspend service does not prejudice or waive any other rights it may have under this Terms.
- G. TERMINATION FOR BREACH.**
1. **Netrix right to terminate.** Netrix may terminate Client's subscription for breach upon written notice if:
 - a. Netrix discovers that any information provided by Client is materially inaccurate or incomplete and impairs Vendor or Netrix's ability to provide the Services, as applicable;
 - b. Payment of any invoiced amount is overdue and remains unpaid four or more Business Days following receipt of written notice;
 - c. Client fails to comply with any obligation stated in the Terms and does not remedy the failure within thirty (30) days of written notice by Netrix to Client describing the failure;
 - d. Client breaches these Terms more than once even if Client remedies each breach;
 - e. a credit report indicates that Client no longer meets Vendor or Netrix's reasonable credit criteria, provided that Netrix will give Client at least ten days to migrate Client's environment out of Netrix in an orderly fashion before Netrix terminates on these grounds; or

- f. Client's use of the Services is in violation of these Terms and Client fails to remedy the breach within ten (10) days of written notice.
 2. Termination for insolvency. Either party may terminate the Terms with immediate effect on written notice if the other party (i) is unable to pay its debts; (ii) enters into compulsory or voluntary liquidation; (iii) holds or disregards a meeting of its creditors; (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any action which means that it may be unable to pay its debts (each an "Insolvency Event"). Notwithstanding anything to the contrary in the Terms, in the event of a termination by Netrix the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.
 3. Actions. In the event of any breach of these Terms by Netrix Client agrees to enforce these terms and take action solely against Netrix, LLC.
- H. DISCLAIMERS.
1. Netrix disclaims all warranties not expressly stated in these Terms to the maximum extent permitted by law including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
 2. Any services that Netrix is not contractually obligated to provide but that Netrix may perform for Client at Client's request are provided on an AS IS basis without warranties of any kind, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
 3. Some of the Services may be designed to help Client comply with various regulatory requirements that may be applicable to Client. However, Client is responsible for understanding the legal and regulatory requirements applicable to Client and Client's use of the Services, and for selecting and using those Services in a manner that complies with Client's obligations under the applicable legal and regulatory requirements. Except as may be specifically set forth in a SOW, Client shall not hold Netrix, Vendor, Netrix or any Netrix affiliate liable for any failure of Netrix to comply with laws applicable to Client but not to Netrix's business generally, including but not limited to data privacy and protection laws.
 4. Netrix personnel may from time to time recommend third-party software or other products and services for Client's consideration and may also make available to Client third-party products or services, including third-party applications through deployment or implementation tools. Netrix makes no representation or warranty regarding third party products and services but shall instead pass through available manufacturer warranties, if any.
- A. EXPORT MATTERS. Client represents and warrants that it is not located in or a national of any country that is embargoed or restricted under export regulations or are otherwise a person or entity to whom Netrix is legally prohibited to provide the Services. Client represents and warrants and undertake that it will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by Netrix or any Client data in any manner which would cause Netrix or its affiliates or other Clients or End-Users to breach any applicable export control laws, rules, or regulations of any jurisdiction worldwide. Without limitation, Client represents and warrants and undertakes that it will not provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) located in or is a national of any country that is embargoed or restricted under applicable export laws, rules or regulations worldwide.
- B. CONFIDENTIAL INFORMATION. Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, the exercise of its respective legal rights under the Terms, or as may be required by law. Each party may disclose the other's Confidential Information (a) to a law enforcement or government agency if requested or if the receiving party reasonably believes, in good faith, that the other's conduct may violate applicable criminal law; (b) as required by law; (c) in response to a subpoena or court SOW or other compulsory legal process, provided that the receiving party agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this Section 10 (or prompt notice in advance of disclosure, if seven (7) days' advance notice is not reasonably feasible), unless the law forbids such notice; or to its respective employees, service providers, Affiliates, suppliers, agents and representatives ("Representatives"), provided such Representatives agrees to confidentiality measures that are at least as stringent as those stated in this Terms.
- C. LIMITATION ON DAMAGES. The maximum aggregate liability of Netrix and any of its affiliates and Vendor for claims of loss or damages in connection with the Netrix Private Cloud Services under any theory of law shall not exceed the lesser of (i) the amount of fees paid to Netrix Private Cloud for the Service causing the claim in the six (6) months prior to the occurrence of the event giving rise to the claim, or (ii) five thousand US dollars (US\$5000.00).
1. Neither Netrix nor Vendor shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damages of any kind; any loss of profit or income or business or business opportunity; any loss or corruption of data; any anticipated savings or revenue; any punitive damages; any loss of goodwill or reputation; or any other loss that could have been avoided by the damaged party's use of reasonable standards of care, even if Netrix has been advised or should be aware of the possibility of such damages.
 2. The parties agree that the limitations on damages above are agreed allocations of risk constituting in part the consideration for Netrix's provision of the Services, and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy.
 3. Nothing in this Terms limits or excludes either party's liability for (i) death or personal injury caused by its gross negligence; (ii) fraud or fraudulent misrepresentation; and (iii) any loss or damages where such limitation or exclusion is expressly prohibited by applicable law.

4. Neither party will be in breach of the Terms if the failure to perform the obligation is due to an event beyond its control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.
- D. INDEMNIFICATION.
1. In the event of a claim against Vendor or Netrix or their affiliates, or any employees, agents, or suppliers of Netrix or Vendor or affiliates (collectively, the "Indemnitees") arising out of: Client's actual or alleged negligence; breach of law or these Terms; breach of any legally required security obligation; failure to meet Client's privacy or data protection obligations under applicable law; any claim by an End-User; any claim by a third party arising out of Client's instance of the Hosted System; or breach of any terms between Client and End-Users, then Client shall hold harmless, defend and indemnify the Indemnitees (including payment of reasonable legal fees) and pay any damages award, fine, or other amount that is imposed on the Indemnitees as a result of the claim. Client's obligations under this section include claims arising out of the acts or omissions of Client's employees, End-Users or agents, any other person to whom Client have given access to the Services, and any person who gains access to the Services as a result of Client's failure to use reasonable security precautions, even if the acts or omissions of such persons are not authorized by Client. The grounds for indemnification stated above also include any claim brought by Client's Clients or end users arising out of Client's resale of the Services.
 2. In lieu of Client's defense, each Indemnitee may choose legal counsel to defend the claim, and Client shall pay such expenses directly provided that these decisions must be reasonable and must be promptly communicated to Client. Client shall comply with Netrix's reasonable requests for assistance and cooperation in the defense of the claim. If Client defends, it may not settle the claim without Indemnitees' consent, although such consent may not be unreasonably withheld, delayed or conditioned.
 3. Client must pay reasonable legal fees, and expenses, due under this Section as Indemnitees incur them. Client shall also pay reasonable legal fees and other expenses Indemnitees incur in connection with any dispute between persons having a conflicting claim to control Client's Netrix Private Cloud account, or any claim by Client's End-Users arising from an actual or alleged breach of Client's obligations to them.
- E. INTELLECTUAL PROPERTY.
1. Ownership of Intellectual Property. Each party retains all rights, titles and interests in and to its respective trade secrets, inventions, trademarks, copyrights, and other intellectual property. Any intellectual property developed by Netrix during the performance of the Services shall belong to Netrix. Netrix does not acquire any ownership interest in or right to the Client Data.
 2. Third Party Products. All third party products that Netrix provides for Client's use is subject to the Product Terms, as applicable. Client may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear through the Services. Client may not reverse engineer, decompile or disassemble any software Netrix provides except and to the extent that Client is expressly permitted by applicable law to do this, and then following at least ten (10) days' advance written notice to Netrix. In the event that Netrix distributes any open source software to Client as part of the Services (including for example Linux based software, OpenStack software, and software licensed under the Apache, GPL, MIT or other open source licenses) then such open source software is subject to the terms of the applicable open source license. There are no warranties provided with respect to any open source software and all implied warranties are disclaimed. In the event of any conflict between these Terms and the applicable open source license with respect to any open source software, the terms of the applicable open source license shall control.
 3. Client Provided Licenses. If Clients use any non-Netrix provided software on Client's portion of the Hosted System Client represents and warrants to Netrix that Client have the legal right to use the software in that manner. If Netrix has agreed to install, patch or otherwise manage Client-provided software in reliance on Client's license therefore, then Client represents and warrants that Client's Terms with the software vendor permits Netrix to perform these activities. On Netrix's request Client will certify in writing that Client is in compliance with the requirements of this section and any other software license restrictions that are part of the Terms, and will provide evidence of Client's compliance as Netrix may reasonably request. If Client fails to provide the required evidence of licensing, Netrix may, at its option, either: (i) charge Client its standard fee for the use of the software in reliance on Netrix's licensing Terms with the vendor, if any, until such time as the required evidence is provided; or (ii) suspend or terminate the Service.
 4. Intellectual Property Infringement. If Netrix or any of its Clients is faced with a credible claim that the Services infringe the intellectual property rights of a third party, and Netrix is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Netrix may terminate the Services on notice of at least thirty (30) days, and will not have any liability on account of such termination except to refund amounts paid for unused Services, if any, as of the time of termination.
- F. SUPPORT. Netrix will only provide Support to Client and the authorized contacts identified in Client's Netrix control panel. Client will be the first line of support for Client's End Users, including basic troubleshooting for the Services, and Client agrees that Client will not refer Client's End Users to Netrix for direct support.
- G. SECURITY OF HOSTED SYSTEM AND PRIVACY
1. Security of Hosted System. Subject to Sections 3 and 11, and as further described in this Section 15(A), Netrix shall implement reasonable and appropriate technical and organizational measures to protect Client's instance of the Hosted System against unauthorized access. Netrix's security obligations with respect to Client Data are limited to those obligations described in this section 15(A). Netrix makes no other representation regarding the security of Client Data. Netrix is not responsible to Client for

unauthorized access to Client's Client data or the unauthorized use of the Services that does not directly result from Netrix's failure to meet its security obligations stated in the Terms.

2. **Client Data Privacy.** Client warrants that Client shall process any Client Data in compliance with all applicable data protection or privacy laws and regulations. Client shall, or Client shall require Client's end user(s) to, implement those technical and organizational measures required by the applicable data protection and privacy laws relative to Client's use of the Services and the nature and the volume of the Client Data stored on the Hosted System or processed through Client's use of the Services. Client is responsible for providing any necessary notices to individuals and for obtaining any legally required consent from individuals in relation to provision of any Services to Client or Client's processing of any Client Data. Client is responsible for any losses or other consequences arising from Client's failure to implement reasonable security measures as set forth herein. Client will not provide Netrix with regulated Data (including personally identifiable or health information) via email, support ticket, or other means other than by uploading such Data into its instance unless Netrix has agreed otherwise in writing.
- H. **IP ADDRESSES.** Upon expiration or termination of the Terms, Client must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Client by Netrix in connection with Services, including pointing the DNS for Client's domain name(s) away from Netrix Services. Client agrees that Netrix may, as it determines necessary, make modifications to DNS records and zones on Netrix managed or operated DNS servers and services.
- I. **SERVICES MANAGEMENT AGENT.**
 1. Client agrees that Client will not interfere with any services management software agent(s) that Netrix installs with respect to Client's Services. Netrix agrees that its agents will not interfere with Client's use of the Services. Netrix will use the agents to track system information so that it can more efficiently manage various service issues. Netrix may also use the agents to identify security vulnerabilities. Client's Services will become "Unsupported", as described below, if Client disables or interferes with Netrix's services management software agent(s). Client agrees that Netrix may access Client's Services to reinstall services management software agents if Client disables them or interferes with their performance.
- J. **ADDITIONAL TERMS FOR ELECTED ADDITIONAL SERVICES.**
 1. **Cloud Server Images.** If Client provisions a Netrix Private Cloud server or other Service using an image snapshot provided by Client or non-standard installation then Netrix shall have no obligation to provide support for that Service, and any Support provided shall be on an AS IS and hourly basis at additional charge. Client agrees that if Client uses the Services to share or receive an image, then such image sharing or receipt is at Client's sole risk. Notwithstanding Sub-sections 12(A) and (B) above, Client agrees to indemnify and hold harmless the Indemnitees for any loss (whether direct or indirect/consequential), damage, injury or other costs or expense (including reasonable legal fees) suffered by the Indemnitees arising from Client's unlawful or unlicensed sharing or receipt of the image, including in respect of unlawful or unlicensed sharing or receipt of software, Client Data or personally identifiable or personal health information. Client may not import or export images without permission of the image owner.
 2. **Role-Based Access Control.** Client's designated account administrator is responsible for role administration. Client may self-manage role administration via the Netrix control panel or API. When making permission changes with role-based access control services, there may be a delay before the implementation of changes, including self-managed changes. Netrix is not responsible for any loss that may occur due to the delayed implementation of changes.
 3. **Test Services.** If Client uses any Services that have been designated as a "beta" service, limited release, pilot test, early access program, preview or with similar designation, then Client's use of that Service is subject to the terms of Netrix's Beta Test Agreement, a copy of which is available upon request.
 4. **Unsupported Configuration Elements or Services.** If Client requests implementation of hardware, software or a cloud-related service in a manner that is not customary at Netrix, or that is in "end of life" or "end of support" status Netrix may designate the item or service as "unsupported", "non-standard" or "as is," or using a similar term (an "Unsupported Service"). Netrix makes no representation or warranty whatsoever regarding the Unsupported Service, and Client agrees that Netrix shall not be liable to Client for any loss or damage arising from the provision of the Unsupported Service. Service Level Guarantees shall not apply to the Unsupported Service, or to any other aspect of the Services that is adversely affected by the Unsupported Service. Client acknowledge that Unsupported Services may not interoperate with Netrix's other services, including backup or monitoring.
- K. **NOTICES.**
 1. Client's routine communications to Netrix regarding the Netrix Private Cloud Services, including any notice of non-renewal, should be sent to Client's Netrix cloud account team using Client's Netrix cloud control panel. If Client wants to give a notice to Netrix, it must be sent by electronic mail to notice@netrixllc.com and via overnight delivery prepaid with delivery receipt to: Anthony Donato and General Counsel, Netrix, LLC, 2801 Lakeside Drive, Bannockburn, IL 80015.
 2. Netrix's routine communications regarding the Netrix Private Cloud Services and legal notices will be sent to the individual(s) Client designate as Client's contact(s) on Client's account either by electronic mail or overnight courier. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day as of the beginning of the first Business Day following the time delivered, except that notices of AUP revisions are deemed delivered at the time that revised AUP is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.
- L. **GOVERNING LAW AND JURISDICTION.**

1. These Terms are governed by the laws of the State of Illinois, exclusive of any choice of law principles, and the USA. The Terms shall not be governed by the United Nations Convention on the International Sale of Goods. Each party agrees that any dispute or claim, including, statutory, contract or tort claims, relating to or arising out of the Terms or the alleged breach of the Terms, shall, upon timely written request of either of us, be resolved first by at least one meeting between an officer of both parties within 30 days from the notice of the dispute, and if that is unsuccessful, any legal action shall be filed in a court of competent jurisdiction located in Chicago, Illinois, and each party hereby waives its right to assert any other venue. Each party waives any right to a trial by jury. Each party shall pay its own attorney fees, except that in an action to collect amounts due hereunder, Client shall reimburse Netrix's costs of collection including reasonable attorney fees and court costs.
2. Each party agrees that it will not bring a claim under the Terms more than one year after the time that the claim accrued.
3. In the event of a dispute between the parties regarding the interpretation of applicable law or the AUP, Netrix's reasonable determination shall control.

M. GENERAL.

1. Changes to Terms on website. These Terms may have been incorporated in Client's SOW by reference to a page on the Netrix web site. In the event that Netrix revises the Terms on such website, those revisions will be effective as of the date of posting. In addition, if over time Client sign multiple SOWs for a single account, then the Terms last incorporated into a SOW will govern the entire account.
2. Complete Terms. These Terms constitute the complete and exclusive understanding between Client and Netrix and supersedes and replaces any prior understanding or communication, written or oral. Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Netrix which is not set out in the Terms.
3. Execution. Client's acceptance of these Terms shall be via the first to occur of either use or acceptance via an online click-through.
4. Interpretation. The headings or captions in the Terms are for convenience only and are not part of the Terms. The use of the word "including" in the Terms shall be read to mean "including without limitation".
5. No Partnership. The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, nor does either party has the right to bind the other to any Terms with a third party.
6. No Waiver. Each party may enforce its respective rights under the Terms even if it has waived the right or failed to enforce the same or other rights in the past.
7. Survival. Sections 5, 8 – 13, 15, 19, 20 and 21 D, E, F and H and all other provisions of the Terms that by their nature are intended to survive expiration or termination of the Terms shall survive expiration or termination of the Terms.
8. Unenforceable Provisions. If any part of the Terms is found unenforceable by a court or other tribunal, the rest of the Terms will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Terms.