



Legal Issues in Contracts

November 6, 2023

Lyman Lenker, Senior Staff Attorney

Office of Legal Counsel

Board of Regents for the Oklahoma
Agricultural and Mechanical Colleges

What is a contract?

- A legally binding agreement to do, or not do, a certain thing or things
- Three elements:
 - Offer
 - Acceptance
 - Consideration



What is a contract?

- Requires parties capable of contracting
 - Must have signature authority when entering a contract on behalf of OSU
 - But...consider apparent authority—where reasonable third party believes person had authority to enter the contract
- Statute of Frauds
 - Technical term meaning certain contracts must be in writing to be enforceable
 - All contracts involving real estate
 - Contracts that cannot be performed within one year



Common Issues – Term (Length)

- State generally cannot commit funds beyond the current fiscal year
 - If contract term goes beyond that, we put in a “funding-out clause” or “non-appropriation clause”
 - Example: “This Agreement shall be contingent upon sufficient appropriations being made for future fiscal periods. Notwithstanding any language to the contrary, OSU may terminate its obligations under this Agreement if sufficient appropriations are not made by the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, Legislature, or other appropriate governing entity to pay amounts due for multiple-year agreements. OSU’s decisions as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.”


Common Issues – Automatic Renewal

- Automatic renewals:
 - No legal prohibition against automatic renewals, but use caution
 - Advise your department of the automatic renewal provision and how to cancel if department chooses not to renew (*i.e.*, notice by a certain date should be marked on calendar)
 - Best option is language requiring mutual agreement of both parties
 - Example: “This contract may be renewed upon mutual written agreement of both parties.”
- Should be a definite end date (not open-ended)

Common Issues – Confidentiality

- Oklahoma Open Records Act requires disclosure of records for public institutions *unless an exemption applies*
- Generally, there is no exemption for state contracts or bids
- Watch for clauses prohibiting disclosure of the contract itself
- Can keep certain “records” confidential (*e.g.*, confidential information exchanged as part of the contract such as research/proprietary materials or personally identifying information)



A hand holding a Capital One Visa card over a white contactless payment terminal. The background is a dark surface with various tools like a hammer and a wrench.

Common Issues – Prepayment

- Violates Oklahoma Constitution because it constitutes lending credit of the state
- 74 O.S. § 85.44B provides that payment by a state agency shall only be made after products have been provided or services rendered
- If some form of pre-payment is required, contact Purchasing or Legal


Common Issues – Freight Terms

- Standard freight term for the A&M System is “FOB Destination”
- Vendor generally arranges transport of purchased materials and should make sure the cargo is insured while in transport
- What if “FOB Origin” is the only option?
 - Evaluate risks of damage or loss and how those would be handled
 - Departmental decision to evaluate and accept risks



Common Issues – Indemnification

- **Indemnification** – the vendor is held harmless by requiring the state (or other contracting party) to bear the cost of any damages for which the vendor is liable
 - Basically, requires OSU to step in and defend the vendor
- Disallowed under Oklahoma law because it creates an unconstitutional debt (Article X, Section 23, Oklahoma Constitution)
 - Creates an obligation that is indefinite in term and uncertain in amount
- Okay for vendor to indemnify OSU!



Common Issues – Limiting Liability of Vendor

- **Limitation of liability clause** – agree not to seek damages against another party to the contract or to limit the damages sought against another party
- Allowed by the state because it does not create a debt (2012 OK AG 18)
- BUT state **cannot** agree to limit a vendor’s liability for their own fraud, willful injury to person or property, or violation of law (violates public policy)
- Example of allowable limitation of liability clause: “Vendor shall not be liable for special, indirect, or consequential damages.”

Common Issues – Insurance Provisions

- OSU is self-insured through the State of Oklahoma and generally cannot agree to carry additional or separate insurance
- State also cannot:
 - Name a third party as an additional insured
 - Waive right of subrogation
- State CAN require vendor to carry appropriate coverages



Common Issues – Insurance Provisions (Example)

- “Oklahoma State University, as a state agency of the State of Oklahoma, is self-insured. Liability coverage is provided under the State of Oklahoma Governmental Tort Claims Act, Title 51 Oklahoma Statutes, Section 151 et seq. Oklahoma State University shall be liable only to the limits of the attached Certificate of Self-Insurance.”



Common Issues – Waiver of Rights

- State cannot waive legal rights or defenses in advance of an action (1978 OK AG 256)
- This means state cannot:
 - Agree to binding arbitration
 - Example of binding arbitration language to which we cannot agree: “The parties agree that any dispute will be resolved by arbitration before the American Arbitration Association, and the parties agree that any arbitration award will be enforceable in state or federal court.”
 - Waive right to a jury trial
 - Agree to a limitations period stricter than already allowed for under applicable law (*e.g.*, contract says we must bring a claim against the vendor within one (1) year, but the applicable statute of limitations allows a party to bring a breach of contract claim for a written contract within five (5) years)

Common Issues – Late Fees

- Late fees – maximum allowed by Oklahoma law set by OMES (for example, “the FY 2023 interest rate applicable to late payments to vendors has been set at 0.97% per annum, or \$0.0027 per \$100 per day.”)
 - Examples
 - Can agree to: “Vendor may charge customer interest at no more than the maximum amount permitted by applicable law for late payments.”
 - Cannot agree to: “Vendor may charge customer a late fee of up to 15% for late payments.”




Common Issues – Late Fees (Real-Life Example)

- Department was late paying an invoice (\$80,523.34) by two months (61 days)
- Contract stated interest would be charged at a rate of 1.5% per month and did not contain language limiting interest to the maximum rate allowed by applicable law
- “We understand our payment was late, subjecting us to interest charges, and we are fine paying interest for the late payment. However, we cannot pay the \$2,415.70 in interest you have outlined below, as the interest rate utilized exceeds the maximum interest rate we are allowed to pay under Oklahoma law. As a state agency of the State of Oklahoma, interest on late payments made by OSU is governed by 62 O.S. § 34.72. Pursuant to that statute, the rate of penalty interest is set by the Oklahoma Office of Management and Enterprise Services.”
- “In the current fiscal year, the interest rate for late payments is set at 0.12% per annum, which equates to \$0.0003 per \$100 per day. Therefore, the interest rate for late payments attributable to OSU is \$0.24157 per day. At 61 days, the maximum interest charge OSU may pay in accordance with Oklahoma law for the \$80,523.34 invoice is **\$14.74.**”

Common Issues – Attorneys' Fees

- Attorneys' fees – American Rule means each party bears their own attorneys' fees and expenses unless otherwise provided by law or contract
- Avoid attorneys' fee clauses unless the clause is reciprocal
 - Examples:
 - Do not agree to: "In any action to enforce the terms of this contract, Customer will pay Vendor's attorneys' fees and expenses."
 - Can agree to: "In any action to enforce this contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs."



Common Issues – Governing Law and Venue

- **Governing law** – avoid agreeing to another state’s law as governing law
 - Example: “This agreement shall be governed by the laws of the State of Oklahoma.”
- **Venue** – the geographic location of the court where a case is filed
 - OSU generally cannot agree to venue outside of Oklahoma
 - Board of Regents’ designated situs for suit is Payne County, Oklahoma
 - Example: “Any proceeding or suit arising from or incident to this agreement shall be filed in Payne County, Oklahoma, or the federal court with jurisdiction over Payne County, Oklahoma.”

Common Issues – Sovereign Immunity

- **Sovereign immunity** – in the venue/governing law section, add the following language:
 - “OSU does not waive its sovereign immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a sovereign pursuant to all applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.”

Common Issues – Miscellaneous

- Exclusivity – do not agree to contracts that require OSU to use one vendor for a service or product
- Governing Language – official agreement must be in English
- Intellectual Property – be cautious of agreements related to ownership/use of intellectual property
- Use of OSU Logo – cannot agree without approval from Brand Management
- Security Interest – cannot agree to a third party taking a security interest in OSU property (not legally impermissible to agree to one if OSU is renting/leasing property/equipment that it does *not* own)



Common Issues – Force Majeure

- A “force majeure” clause is a provision relieving the parties from performing their respective contractual obligations if certain circumstances beyond their control arise, which make performance inadvisable, commercially impracticable, illegal, or impossible



Boilerplate Clauses

- Binding Effect – once the contract is signed by all parties, it becomes effective
- Captions/Headings – the headings or captions used to mark sections are for reference only
- Counterparts – the contract may be signed in multiple counterparts that, taken together, constitute the original
- Entire Agreement – the contract contains the entire agreement between the parties and no other agreements, written or oral, apply
- Notices – sets forth who should be contacted for demands/issues with the contract

Boilerplate Clauses

- Independent Contractor – states that the vendor/contractor is independent and not an employee of OSU and vice versa
- Joint Venture/Partnership – clauses stating the parties are not partners or entering a joint venture
- Assignability – clause stating whether the agreement can, or cannot, be assigned to another entity for completion
- Severability – if any provision of the contract is not valid, the remainder of the contract stands without the invalid provision
- Waiver – if a party waives a breach of the agreement in one instance, it does not mean the party waives the ability to enforce a later breach



Breach and Remedy

- Many contracts require notice to vendor if vendor has breached and a time period to allow vendor to cure
- Recourse for breach is generally termination of contract, followed by litigation if parties cannot agree on terms
- Call Legal Counsel if there are issues!



Big Fish vs. Little Fish

Odds and Ends

- Watch for clauses you haven't seen before
 - Example: A contract that requires the parties to hold a joint press conference upon execution.
- Background checks for service providers
- Federal-contractor status
- Leases:
 - Leases are contracts and many of the same rules apply, but there are other considerations, especially for real property
 - For lease purchase, must go through Council on Bond Oversight



Now What?

- Not sure what to do because of unusual language?
- Feeling rusty with your review standards?
- Just need help?
- Contact Purchasing or the Office of Legal Counsel!



Lyman Lenker

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March 12, 2021

Brandee Hancock, Associate General Counsel

Office of Legal Counsel

Board of Regents for the Oklahoma Agricultural and Mechanical Colleges

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A handwritten signature in black ink on a white background. The signature appears to be "P. Smith" with a large, stylized initial "P" and a long, sweeping underline.

Common Issues - Term (Length)

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 - If contract term goes beyond that, have a “funding out clause”
 - Example:

“If, in the judgment of the Vice President for Finance at Oklahoma State University, at any time during the term of this Agreement sufficient funds are not appropriated or if funds become otherwise unavailable to continue the functions to be performed by this Agreement, Oklahoma State University may terminate such contract at the end of the then current fiscal year.”



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- Sovereign immunity - state cannot be sued without its consent
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Common Issues - Insurance

- Sample insurance clauses:
 - Oklahoma State University, as a state agency of the State of Oklahoma, is self-insured. Liability coverage is provided under the State of Oklahoma Governmental Tort Claims Act, Title 51 Oklahoma Statutes, Section 151 et seq. Oklahoma State University shall be liable only to the limits of the attached Certificate of Self-Insurance.
 - Oklahoma State University represents that it has statutorily prescribed liability insurance coverage for the negligent acts of its officers, employees, and agents while acting within the scope of their employment and has no liability insurance policy that can extend to any other person or entity. Subject to the provisions of the Oklahoma Governmental Tort Claims Act, including its limits of liability and exclusions therefrom, Oklahoma State University assumes those risks of personal injury and property damage attributable to the negligent acts or omissions of Oklahoma State University. Oklahoma State University does not waive its sovereign immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a sovereign pursuant to all applicable law.

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- State cannot waive legal rights or defenses in advance (1978 OK AG 256)
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Common Issues - Venue and Jurisdiction

- **Venue** - the geographic location of the court where a case is filed
 - OSU cannot agree to venue outside of Oklahoma
 - Board of Regents' designated situs for suit is Payne County, Oklahoma
- **Jurisdiction** - the court's authority to hear a case
- **Governing law** - avoid agreeing to another state's law as governing law
 - Example:
 - "This agreement shall be governed by the laws of the State of Oklahoma. Any proceeding or suit arising from or incident to this agreement shall be filed in Payne County, Oklahoma, or the federal court with jurisdiction over Payne County, Oklahoma."
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Common Issues - Force Majeure

- A “force majeure” clause is a provision relieving the parties from performing their respective contractual obligations if certain circumstances beyond their control arise, which make performance inadvisable, commercial impracticable, illegal, or impossible
- Suggested language: No party hereto will be held liable for delay, loss, damage or non-fulfillment of the terms of this contract if and to the extent such delay, loss, damage or non-fulfillment is caused by an occurrence - even if foreseeable - that (1) would make either party’s performance under this contract impossible or impracticable; and (2) is beyond the reasonable control of such party. For purposes of this contract, occurrences that will make a party’s performance impossible or impracticable include, but are not limited to, delay of transportation services or accident to means of transportation, natural disasters, floods, fires, earthquakes, tornadoes, riots, strikes, epidemics, pandemics, quarantines, acts of God, war (declared or undeclared) compliance with any act, regulation, order or request of any governmental authority or agency, including declarations of a state of emergency, whether local or national, or any other causes, whether direct or indirect, not within the reasonable control of such party, and which by the exercise of reasonable diligence such party is unable to prevent such delay, loss, damage or non-fulfillment of the provisions of this contract or otherwise to be rendered by a party hereto. The party invoking the force majeure rights set forth in this section shall notify the other party as soon as practically possible. In the event any of the above-cited circumstances would make either party’s performance of its obligations hereunder impracticable or impossible, both parties shall be relieved of all liability and responsibilities pursuant to this contract and the contract shall be deemed rescinded.

Boilerplate Clauses

- Binding Effect - once the contract is signed by all parties, it becomes effective
- Captions/Headings - the headings or captions used to mark sections are for reference only
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- Notices - sets forth who should be contacted for demands/issues with the contract
- Severability - if any provision of the contract is not valid, the remainder of the contract stands without the invalid provision

Boilerplate Clauses

- Time is Of the Essence - time is essential to performance of the agreement
- Waiver - if a party waives a breach of the agreement in one instance, it does not mean the party waives the ability to enforce a later breach

Breach and Remedy

- Many contracts require notice to vendor if vendor has breached and a time period to allow vendor to cure
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- Watch for clauses you haven't seen before
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- Leases:
 - Leases are contracts and many of the same rules apply, but there are other considerations, especially for real property
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Other Resources

- Common “Red Flags” in Agreements
 - <https://research.okstate.edu/urs/site-files/docs/commonredflagsinagreements.pdf>

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Basic Contract Clauses Checklist

- Term/Length**
 - Does the contract have a set length?
 - Does the contract include provisions for auto-renewal?
 - If yes, have you calendared the date to provide notice not to renew?
 - Suggested: *This contract may be renewed upon mutual written agreement of both parties*
 - If the contract is more than one year, is there a funding out clause?
 - Suggested: *If, in the judgment of the Vice President for Finance at Oklahoma State University, at any time during the term of this Agreement sufficient funds are not appropriated or if funds become otherwise unavailable to continue the functions to be performed by this Agreement, Oklahoma State University may terminate such contract at the end of the then current fiscal year.*
- Late payment fees capped at maximum allowed by Oklahoma law**
- No confidentiality provision**
 - Suggested: *Oklahoma Open Records Act requires disclosure of records for public institutions unless an exemption applies*
- No prepayment requirement**
- Freight terms**
 - Request shipping terms as; FOB Destination
 - If the vendor will only agree to “FOB Origin” or “FOB Shipping Point,” has the department evaluated the risks of damage or loss and made a decision to accept those risks?
- OSU does not indemnify vendor**
- Liability of vendor – OSU/A&M cannot limit liability for vendor’s own fraud, willful injury to person or property or violation of law**
- Insurance**
 - OSU does not name vendor as additional insured
 - OSU is not required to carry insurance beyond OSU’s self-insurance through the State of Oklahoma
 - Add or Change to: *Oklahoma State University, as a state agency of the State of Oklahoma, is self-insured. Liability coverage is provided under the State of Oklahoma Governmental Tort Claims Act, Title 51 Oklahoma Statutes, Section 151 et seq. Oklahoma State University shall be liable only to the limits of the attached Certificate of Self-Insurance.*
- No binding arbitration**
- No waiver of right to jury trial**
- No non-reciprocal attorney fee provisions**

- Can agree to: *In any action to enforce this contract, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.*

□ **Governing law is Oklahoma and Venue is in Payne County, Oklahoma, or the federal court with jurisdiction over Payne County**

- Change to: *This agreement shall be governed by the laws of the State of Oklahoma. Any proceeding or suit arising from or incident to this agreement shall be filed in Payne County, Oklahoma, or the federal court with jurisdiction over Payne County, Oklahoma.*

□ **Add sovereign immunity language**

- *OSU does not waive its sovereign immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a sovereign pursuant to all applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.*

□ **A “force majeure” clause**

Is a provision relieving the parties from performing their respective contractual obligations if certain circumstances beyond their control arise, which make performance inadvisable, commercial impracticable, illegal, or impossible.

Suggested language: *No party hereto will be held liable for delay, loss, damage or non-fulfillment of the terms of this contract if and to the extent such delay, loss, damage or non-fulfillment is caused by an occurrence – even if foreseeable – that (1) would make either party’s performance under this contract impossible or impracticable; and (2) is beyond the reasonable control of such party. For purposes of this contract, occurrences that will make a party’s performance impossible or impracticable include, but are not limited to, delay of transportation services or accident to means of transportation, natural disasters, floods, fires, earthquakes, tornadoes, riots, strikes, epidemics, pandemics, quarantines, acts of God, war (declared or undeclared) compliance with any act, regulation, order or request of any governmental authority or agency, including declarations of a state of emergency, whether local or national, or any other causes, whether direct or indirect, not within the reasonable control of such party, and which by the exercise of reasonable diligence such party is unable to prevent such delay, loss, damage or non-fulfillment of the provisions of this contract or otherwise to be rendered by a party hereto. The party invoking the force majeure rights set forth in this section shall notify the other party as soon as practically possible. In the event any of the above-cited circumstances would make either party’s performance of its obligations hereunder impracticable or impossible, both parties shall be relieved of all liability and responsibilities pursuant to this contract and the contract shall be deemed rescinded.*



Support and Maintenance Terms

Support and Maintenance on GreenFeed units is a requirement. It is in addition to and separate from the limited warranty set forth in the GreenFeed Hardware Purchase Terms and Conditions.

The annual support and maintenance fee entitles Customer to the following:

- **Customer Portal Access.** Access to real time raw and processed data via C-Lock's cloud-based customer portal.
- **Software Updates.** Includes Updates to online software and customer portal capabilities, from time to time.
- **Support.** A support line to contact C-Lock for technical questions or to report problems.
- **Data access.** Access to processed and raw data via download or via customer portal.
- **Ongoing Monitoring and Protocol Design Assistance.** C-Lock helps customers develop feeding regimes and program the units to dispense according to customer requirements. If a customer wants to repurpose units, C-Lock offers reprogramming at no additional cost.
 - **Data alerts.** C-Lock works with customers to create protocol specific email alerts to warn customer's team immediately if experimental protocols are not being met
 - **Reporting.** Reporting is available for download from the customer portal and may be formatted to user specifications. Customized reporting available for an additional fee at a reduced rate.
 - **Periodic oversight of Hardware.** C-Lock may periodically review data from customers' units to determine if the units are operating within specifications
- **Repairs.** C-Lock will cover parts and repair of Hardware that has failed due to normal wear and tear outside the applicable warranty period. If C-Lock and Customer determine that repairs can be performed by Customer, then C-Lock will ship parts and be available to help via phone. If it is jointly determined that a C-Lock service technician must come on site to handle the repair, then C-Lock will cover up to 50% of the Service Commitment annual fee or \$1,000 of costs, whichever is less, including the service technician's time and travel expenses, related to the repairs in any one year term that this Service Commitment is in effect.
- **Normal Wear and Tear.** Normal wear and tear associated with handling, use and operation of the Product, within the intended use of the Product as set forth in the manufacturer specifications, is not considered abuse.
- **Damaged Product.** If C-Lock determines that the Product is damaged in the ordinary course (other than due to abuse) and requires replacement, such replacement will be shipped to the Customer location. If damage is due to abuse, Customer is responsible for any replacement and eligible for discounted replacement parts.
- **Lost Product.** Customer is responsible for any lost or stolen Product.
- **Abuse.** Abuse is identified when Products exhibit failures or characteristics of damage caused by:
 - a. Reckless, abusive, willful, or intentional harmful conduct associated with handling, use or operation of the Products.
 - b. Insertion of foreign objects.
 - c. Unauthorized repairs and/or replacement parts.
- **10% off replacement parts.** If repairs to the Hardware are necessary due to abuse (as defined above), C-Lock offers discounted replacement parts.
- **10% off accessories**



DEFINITIONS

“**C-Lock**” means C-Lock, Inc.

“**Customer**” means party defined in the Order.

“**Hardware**” means any hardware appliance manufactured, developed or sourced by C-Lock and provided to customers of C-Lock to operate and maintain at Customer’s premises.

“**Order Effective Date**” means the date upon electronic acceptance or full execution of an Order.

“**Product**” means hardware, software and/or services that are offered by C-Lock and Customer may select to receive from C-Lock under the Agreement and as specified in the Order.

“**Service Commitment**” means these terms and conditions that apply to C-Lock’s support and maintenance of the Product.

“**Services**” means support and maintenance services to Customer at the prices set forth in an Order and upon these terms and conditions and as necessitated by the normal use of the Product.

“**Software**” means C-Lock’s proprietary software integrated with the Hardware including any Updates (as defined below).

“**Update**” means any error correction, bug or defect fix, enhancement, modification, patch, alteration, improvement, correction, addition, localization, or revision, including successor and new versions.

GENERAL C-Lock agrees to provide the Services set forth in this Service Commitment to Customer. C-Lock will not be obligated to provide support and maintenance services if the Product and/or its parts and accessories are damaged by (a) abuse, misuse or negligent acts, (b) failures of Customer provided hardware and/or software, (c) power surges or failures, (d) an operating environment not in conformance with the manufacturer’s specifications for electrical power, air quality, humidity or temperature, (e) events other than normal wear and tear, (f) acts of God or natural disasters, (g) foreign objects such as tools, (h) the use of unauthorized parts, supplies, components or consumables, or (i) repair services not authorized by C-Lock.

FEES

The fees for Services are set forth in an Order. If payment terms are not set forth in an Order, Customer shall pay maintenance charges in accordance with the payment terms set forth on the applicable invoice. All fees charged by C-Lock pursuant to this Service Commitment are exclusive of all taxes, duties and similar fees now in force or enacted in the future (“Taxes”). If C-Lock is required to pay any Taxes in connection with the Services, other than Taxes based on C-Lock’s net income, such Taxes will be invoiced to and paid by Customer.

CUSTOMER OBLIGATIONS

Customer agrees to provide a suitable place for use of the Product as specified by the manufacturer.

TERMINATION

This Service Commitment will automatically be renewed each year at the rate set forth in an Order unless cancelled in writing on 45 days written notice. Either party may cancel the Services at anytime upon thirty (30) days written notice to the other party. Upon termination, Customer will no longer receive the Services including Updates, access to C-Lock’s cloud-based customer portal, monitoring and protocol Design Assistance, or repairs for any reason.

BREACH OR DEFAULT

- (a) If Customer does not pay all charges for Services as provided hereunder, promptly when due: (i) C-Lock may refuse to support and maintain the Product or immediately terminate this Service Commitment upon written notice to Customer, and (ii) Customer agrees to pay all costs and expenses of collection, including, without limitation, applicable legal fees.



- (b) If Customer uses parts or supplies which are defective or not acceptable for the use in the Product, and cause abnormally frequent service calls or service problems or damage to the Product, then C-Lock may, at its option, (i) charge Customer at its then current rates for such service and/or damage or (ii) immediately terminate this Service Commitment upon written notice to Customer. It is a condition of this Service Commitment, however, that the Customer use only manufacturer approved or provided parts or supplies.
- (c) Customer declaring any form of bankruptcy will immediately terminate these terms and conditions.

DISCLAIMER OF WARRANTIES AND LIMITATIONS ON LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE SET FORTH HEREIN, THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY SOFTWARE, HARDWARE, ACCESS, OR DATA, ARE PROVIDED "AS IS" AND C-LOCK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. C-LOCK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT AND THIS SERVICE COMMITMENT, C-LOCK MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY SOFTWARE, HARDWARE, ACCESS, OR DATA, OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL C-LOCK BE LIABLE (REGARDLESS OF THE CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION, OR OTHERWISE (AT LAW OR IN EQUITY)) FOR ANY (A) LOSS OF PROFITS OR LOSS OF BUSINESS, (B) DEPLETION OF GOODWILL OR SIMILAR LOSSES, (C) LOSS OF ANTICIPATED SAVINGS, (D) LOSS OF USE, (E) LOSS OR CORRUPTION OF DATA OF INFORMATION (WHETHER ANY OF THE LOSSES SET OUT IN (A) TO (E) ARE DIRECT OR INDIRECT), OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, C-LOCK'S PROVISION OF OR FAILURE TO PROVIDE THE SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH THE AGREEMENT AND THIS SERVICE COMMITMENT, AND EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES, OR THE REMEDIES OTHERWISE PROVIDED UNDER THE AGREEMENT AND THIS SERVICE COMMITMENT AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANY DIRECT DAMAGES THAT CUSTOMER MIGHT INCUR FOR ANY REASON WHATSOEVER, THE ENTIRE LIABILITY OF C-LOCK IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION, OR OTHERWISE (WHETHER AT LAW OR IN EQUITY) ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, DOCUMENTATION, THE AGREEMENT, OR THIS SERVICE COMMITMENT WILL IN NO CASE EXCEED THE ACTUAL DAMAGES UP TO THE FEES PAID BY CUSTOMER TO C-LOCK DURING THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

INDEMNITY

Customer shall defend and indemnify C-Lock against, and hold C-Lock harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' and expert witness fees (each a "Claim"), arising out of, connected with, or resulting from a Product including, but not limited to, the delivery, control, possession, use, operation, maintenance, or return



of the Products. Customer recognizes and agrees that included in this indemnity clause, but not by way of limitation, is Customer's assumption of any and all risk and liability for any Claim of injury, disability, and death of workmen and other persons caused by the operation, use, control, handling, or transportation of any Products.

GOVERNING LAW, JURISDICTION

This Service Commitment and the legal relations of the parties hereto shall in all respects be governed by and construed in accordance with the laws of the State of South Dakota, without regard to principles regarding the choice of law. Customer hereby consents and submits to the exclusive jurisdiction of the courts of the State of South Dakota and the federal district court for the District of South Dakota for the purposes of any suit, action, or other proceeding arising out of its obligations hereunder, and expressly waives any objections that it may have to the venue of such courts. Customer hereby expressly waives any right to trial by jury in any action brought on or with respect to this Service Commitment. Service of process by the Customer in connection with any such dispute shall be binding on the Customer if sent to the Customer either by email or regular mail at the address specified in this Service Commitment or at such address as otherwise specified by the Customer from time to time. Any action by Customer against C-Lock for any cause of action relating to this Agreement shall be brought within one year after any such cause of action first arises.

ASSIGNMENT

Neither the Agreement, this Service Commitment nor any Order shall be assigned, transferred, pledged, hypothecated, encumbered, interest given, or disposed of in any manner by Customer without C-Lock's prior written consent. Customer shall direct any person who desires to use or obtain Products through Customer to C-Lock, and shall not enter into an agreement directly with such person for the use or resale of the Products. The Customer designated on the Agreement is the sole Customer for this Service Commitment and is responsible for all Customer obligations contained in this Service Commitment. C-Lock may assign the Agreement or this Service Commitment without notice. Subject to the foregoing, the Agreement and this Service Commitment inures to the benefit of, and is binding upon, the heirs, successors, and permitted assigns of the parties hereto.

DISPUTE RESOLUTION

If, at any time, any question, dispute or difference whatsoever shall arise between the Customer and C-Lock upon, in relation to, or in connection with the contract, either of the parties may give to the other notice in writing of the existence of such question, dispute, or difference. The Parties will engage in the dispute resolution process set forth in this Section if a dispute or claim arises under this Service Commitment:

Informal Resolution. In the event of a Dispute, a Party will notify the other Party of the Dispute with as much detail as possible. The Parties' business representatives will use good faith efforts to resolve the Dispute within 10 business days after receipt of a Dispute notice. If the Parties' business representatives are unable to resolve the Dispute, or agree upon the appropriate corrective action within 15 business days then either Party may pursue any course of action available to them. Pending resolution of the Dispute, both Parties will continue, without delay, to carry out all their respective responsibilities under this Service Commitment.

Arbitration. Disputes will be submitted to binding arbitration and will be administered and conducted in South Dakota under the arbitration rules and procedures of American Arbitration Association ("AAA") before a single arbitrator. Where permitted pursuant to such rules, the arbitration shall be governed by the AAA's expedited arbitration procedures and may be conducted by telephonic means. Each party shall bear its own costs and attorneys fees. Each party will bear equally the costs of the arbitration. The findings, the reasoning, and the decision by the arbitrator must be in writing. A judgment upon the arbitration award may be entered in any court having jurisdiction.



Injunctive Relief. Nothing contained in this Section will limit or delay the right of either Party to seek injunctive relief from a court of competent jurisdiction, whether or not the Party has pursued informal resolution in accordance with this Section.

In any dispute concerning or arising under the Agreement or this Service Commitment or any transaction relating hereto, the prevailing party will be entitled to reasonable attorneys' fees.

RELATIONSHIP OF PARTIES

Neither party is the agent or authorized representative of the other, and neither party has any authority to bind the other party except as expressly set forth in the Agreement or this Service Commitment.

NOWAIVER

No failure on the part of a party to exercise and no delay in exercising, any right or remedy, hereby shall operate as a waiver thereof unless such waiver is in writing signed by the party waiving its right; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

EXPENSES OF ENFORCEMENT, ATTORNEYS FEES

In the event of Customer's Default, Customer shall pay C-Lock a sum equal to all expenses, including attorneys' and expert witness fees and collection costs, if any, incurred by C-Lock in connection with the enforcement of any of C-Lock's remedies and all expenses of storing, repairing, or selling the Product together with interest on such amount at the maximum rate allowable by law or eighteen percent (18%), whichever is less, from the date such amount is paid by C-Lock.

ENTIRE AGREEMENT

The Agreement, this Service Commitment and the applicable Order constitute the entire, final and complete agreement between the parties pertaining to the Agreement, this Service Commitment or to a particular Order. Neither the Agreement nor this Service Commitment shall not be amended, altered, or changed in any way except in a writing signed by C-Lock and Customer. The Agreement and this Service Commitment supersedes any prior oral or written statements, agreements, or representations with respect to the subject matter hereof. In the event of conflict between the provisions of the Agreement or the applicable Order hereunder, the provisions of the Agreement shall control and prevail over the Order.

SEVERABILITY

Any provisions of this Agreement or this Service Commitment which are unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability and in any jurisdiction shall not render unenforceable such provisions in any other jurisdiction.

FORCE MAJEURE

C-Lock shall not be in Default or otherwise liable for any delay in or failure of its performance under the Agreement if such delays or failures arise by any reason beyond its reasonable control, including, but not limited to, any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or any act or failure to act by another party. C-Lock shall promptly inform and consult with Customer as to any of the above causes, which in its judgment may or could be the cause of a delay in the performance of the Agreement or this Service Commitment.



Support and Maintenance Terms

Support and Maintenance on GreenFeed units is a requirement. It is in addition to and separate from the limited warranty set forth in the GreenFeed Hardware Purchase Terms and Conditions.

The annual support and maintenance fee entitles Customer to the following:

- **Customer Portal Access.** Access to real time raw and processed data via C-Lock's cloud-based customer portal.
- **Software Updates.** Includes Updates to online software and customer portal capabilities, from time to time.
- **Support.** A support line to contact C-Lock for technical questions or to report problems.
- **Data access.** Access to processed and raw data via download or via customer portal.
- **Ongoing Monitoring and Protocol Design Assistance.** C-Lock helps customers develop feeding regimes and program the units to dispense according to customer requirements. If a customer wants to repurpose units, C-Lock offers reprogramming at no additional cost.
 - **Data alerts.** C-Lock works with customers to create protocol specific email alerts to warn customer's team immediately if experimental protocols are not being met
 - **Reporting.** Reporting is available for download from the customer portal and may be formatted to user specifications. Customized reporting available for an additional fee at a reduced rate.
 - **Periodic oversight of Hardware.** C-Lock may periodically review data from customers' units to determine if the units are operating within specifications
- **Repairs.** C-Lock will cover parts and repair of Hardware that has failed due to normal wear and tear outside the applicable warranty period. If C-Lock and Customer determine that repairs can be performed by Customer, then C-Lock will ship parts and be available to help via phone. If it is jointly determined that a C-Lock service technician must come on site to handle the repair, then C-Lock will cover up to 50% of the Service Commitment annual fee or \$1,000 of costs, whichever is less, including the service technician's time and travel expenses, related to the repairs in any one year term that this Service Commitment is in effect.
- **Normal Wear and Tear.** Normal wear and tear associated with handling, use and operation of the Product, within the intended use of the Product as set forth in the manufacturer specifications, is not considered abuse.
- **Damaged Product.** If C-Lock determines that the Product is damaged in the ordinary course (other than due to abuse) and requires replacement, such replacement will be shipped to the Customer location. If damage is due to abuse, Customer is responsible for any replacement and eligible for discounted replacement parts.
- **Lost Product.** Customer is responsible for any lost or stolen Product.
- **Abuse.** Abuse is identified when Products exhibit failures or characteristics of damage caused by:
 - a. Reckless, abusive, willful, or intentional harmful conduct associated with handling, use or operation of the Products.
 - b. Insertion of foreign objects.
 - c. Unauthorized repairs and/or replacement parts.
- **10% off replacement parts.** If repairs to the Hardware are necessary due to abuse (as defined above), C-Lock offers discounted replacement parts.
- **10% off accessories**



DEFINITIONS

“**C-Lock**” means C-Lock, Inc.

“**Customer**” means party defined in the Order.

“**Hardware**” means any hardware appliance manufactured, developed or sourced by C-Lock and provided to customers of C-Lock to operate and maintain at Customer’s premises.

“**Order Effective Date**” means the date upon electronic acceptance or full execution of an Order.

“**Product**” means hardware, software and/or services that are offered by C-Lock and Customer may select to receive from C-Lock under the Agreement and as specified in the Order.

“**Service Commitment**” means these terms and conditions that apply to C-Lock’s support and maintenance of the Product.

“**Services**” means support and maintenance services to Customer at the prices set forth in an Order and upon these terms and conditions and as necessitated by the normal use of the Product.

“**Software**” means C-Lock’s proprietary software integrated with the Hardware including any Updates (as defined below).

“**Update**” means any error correction, bug or defect fix, enhancement, modification, patch, alteration, improvement, correction, addition, localization, or revision, including successor and new versions.

GENERAL C-Lock agrees to provide the Services set forth in this Service Commitment to Customer. C-Lock will not be obligated to provide support and maintenance services if the Product and/or its parts and accessories are damaged by (a) abuse, misuse or negligent acts, (b) failures of Customer provided hardware and/or software, (c) power surges or failures, (d) an operating environment not in conformance with the manufacturer’s specifications for electrical power, air quality, humidity or temperature, (e) events other than normal wear and tear, (f) acts of God or natural disasters, (g) foreign objects such as tools, (h) the use of unauthorized parts, supplies, components or consumables, or (i) repair services not authorized by C-Lock.

FEES

The fees for Services are set forth in an Order. If payment terms are not set forth in an Order, Customer shall pay maintenance charges in accordance with the payment terms set forth on the applicable invoice. All fees charged by C-Lock pursuant to this Service Commitment are exclusive of all taxes, duties and similar fees now in force or enacted in the future (“Taxes”). If C-Lock is required to pay any Taxes in connection with the Services, other than Taxes based on C-Lock’s net income, such Taxes will be invoiced to and paid by Customer. **Customer is tax exempt and upon request will provide C-Lock with a current tax exemption certificate and any other documentation required by the appropriate taxing authority.**

CUSTOMER OBLIGATIONS

Customer agrees to provide a suitable place for use of the Product as specified by the manufacturer.

TERMINATION

This Service Commitment will automatically be renewed each year at the rate set forth in an Order unless cancelled in writing on 45 days written notice. Either party may cancel the Services at anytime upon thirty (30) days written notice to the other party. Upon termination, Customer will no longer receive the Services including Updates, access to C-Lock’s cloud-based customer portal, monitoring and protocol Design Assistance, or repairs for any reason.

BREACH OR DEFAULT

- (a) If Customer does not pay all charges for Services as provided hereunder, promptly when due: (i) C-Lock may refuse to support and maintain the Product or immediately terminate this Service Commitment upon written notice to Customer, and (ii) Customer agrees to pay all costs and expenses of collection, including, without limitation, applicable legal fees.



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TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL C-LOCK BE LIABLE (REGARDLESS OF THE CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION, OR OTHERWISE (AT LAW OR IN EQUITY)) FOR ANY (A) LOSS OF PROFITS OR LOSS OF BUSINESS, (B) DEPLETION OF GOODWILL OR SIMILAR LOSSES, (C) LOSS OF ANTICIPATED SAVINGS, (D) LOSS OF USE, (E) LOSS OR CORRUPTION OF DATA OF INFORMATION (WHETHER ANY OF THE LOSSES SET OUT IN (A) TO (E) ARE DIRECT OR INDIRECT), OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, C-LOCK'S PROVISION OF OR FAILURE TO PROVIDE THE SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH THE AGREEMENT AND THIS SERVICE COMMITMENT, AND EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES, OR THE REMEDIES OTHERWISE PROVIDED UNDER THE AGREEMENT AND THIS SERVICE COMMITMENT AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANY DIRECT DAMAGES THAT CUSTOMER MIGHT INCUR FOR ANY REASON WHATSOEVER, THE ENTIRE LIABILITY OF C-LOCK IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION, OR OTHERWISE (WHETHER AT LAW OR IN EQUITY) ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, DOCUMENTATION, THE AGREEMENT, OR THIS SERVICE COMMITMENT WILL IN NO CASE EXCEED THE ACTUAL DAMAGES UP TO THE FEES PAID BY CUSTOMER TO C-LOCK DURING THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

INDEMNITY

~~Customer shall defend and indemnify C-Lock against, and hold C-Lock harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' and expert witness fees (each a "Claim"), arising out of, connected with, or resulting from a Product including, but not limited to, the delivery, control, possession, use, operation, maintenance, or return~~



~~of the Products. Customer recognizes and agrees that included in this indemnity clause, but not by way of limitation, is Customer's assumption of any and all risk and liability for any Claim of injury, disability, and death of workmen and other persons caused by the operation, use, control, handling, or transportation of any Products.~~

GOVERNING LAW, JURISDICTION

This Service Commitment and the legal relations of the parties hereto shall in all respects be governed by and construed in accordance with the laws of the State of ~~Oklahoma~~ ~~South Dakota~~, without regard to principles regarding the choice of law. ~~Any proceeding or suit arising from or incident to this Agreement shall be filed in Payne County, Oklahoma, or the federal court with jurisdiction over Payne County, Oklahoma. Customer hereby consents and submits to the exclusive jurisdiction of the courts of the State of South Dakota and the federal district court for the District of South Dakota for the purposes of any suit, action, or other proceeding arising out of its obligations hereunder, and expressly waives any objections that it may have to the venue of such courts.~~ Customer does not waive its sovereign immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a sovereign pursuant to all applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity. ~~Customer hereby expressly waives any right to trial by jury in any action brought on or with respect to this Service Commitment. Service of process by the Customer in connection with any such dispute shall be binding on the Customer if sent to the Customer either by email or regular mail at the address specified in this Service Commitment or at such address as otherwise specified by the Customer from time to time. Any action by Customer against C-Lock for any cause of action relating to this Agreement shall be brought within one year after any such cause of action first arises.~~

ASSIGNMENT

Neither the Agreement, this Service Commitment nor any Order shall be assigned, transferred, pledged, hypothecated, encumbered, interest given, or disposed of in any manner by Customer without C-Lock's prior written consent. Customer shall direct any person who desires to use or obtain Products through Customer to C-Lock, and shall not enter into an agreement directly with such person for the use or resale of the Products. The Customer designated on the Agreement is the sole Customer for this Service Commitment and is responsible for all Customer obligations contained in this Service Commitment. C-Lock may assign the Agreement or this Service Commitment without notice. Subject to the foregoing, the Agreement and this Service Commitment inures to the benefit of, and is binding upon, the heirs, successors, and permitted assigns of the parties hereto.

DISPUTE RESOLUTION

If, at any time, any question, dispute or difference whatsoever shall arise between the Customer and C-Lock upon, in relation to, or in connection with the contract, either of the parties may give to the other notice in writing of the existence of such question, dispute, or difference. The Parties will engage in the dispute resolution process set forth in this Section if a dispute or claim arises under this Service Commitment:

Informal Resolution. In the event of a Dispute, a Party will notify the other Party of the Dispute with as much detail as possible. The Parties' business representatives will use good faith efforts to resolve the Dispute within 10 business days after receipt of a Dispute notice. If the Parties' business representatives are unable to resolve the Dispute, or agree upon the appropriate corrective action within 15 business days then either Party may pursue any course of action available to them. Pending resolution of the Dispute, both Parties will continue, without delay, to carry out all their respective responsibilities under this Service Commitment.

~~**Arbitration.** Disputes will be submitted to binding arbitration and will be administered and conducted in South Dakota under the arbitration rules and procedures of American Arbitration Association ("AAA") before a single arbitrator. Where permitted pursuant to such rules, the arbitration shall be governed by the AAA's expedited arbitration procedures and may be conducted by telephonic means. Each party shall bear its own costs and attorneys fees. Each party will bear equally the costs of the arbitration. The findings, the reasoning, and the decision by the arbitrator must be in writing. A judgment upon the arbitration award may be entered in any court having jurisdiction.~~



Injunctive Relief. Nothing contained in this Section will limit or delay the right of either Party to seek injunctive relief from a court of competent jurisdiction, whether or not the Party has pursued informal resolution in accordance with this Section.

In any dispute concerning or arising under the Agreement or this Service Commitment or any transaction relating hereto, the prevailing party will be entitled to reasonable attorneys' fees.

RELATIONSHIP OF PARTIES

Neither party is the agent or authorized representative of the other, and neither party has any authority to bind the other party except as expressly set forth in the Agreement or this Service Commitment.

NOWAIVER

No failure on the part of a party to exercise and no delay in exercising, any right or remedy, hereby shall operate as a waiver thereof unless such waiver is in writing signed by the party waiving its right; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

EXPENSES OF ENFORCEMENT, ATTORNEYS FEES

In the event of Customer's Default, Customer shall pay C-Lock a sum equal to all expenses, including attorneys' and expert witness fees and collection costs, if any, incurred by C-Lock in connection with the enforcement of any of C-Lock's remedies and all expenses of storing, repairing, or selling the Product together with interest on such amount at the maximum rate allowable by law or eighteen percent (18%), whichever is less, from the date such amount is paid by C-Lock.

ENTIRE AGREEMENT

The Agreement, this Service Commitment and the applicable Order constitute the entire, final and complete agreement between the parties pertaining to the Agreement, this Service Commitment or to a particular Order. Neither the Agreement nor this Service Commitment shall not be amended, altered, or changed in any way except in a writing signed by C-Lock and Customer. The Agreement and this Service Commitment supersedes any prior oral or written statements, agreements, or representations with respect to the subject matter hereof. In the event of conflict between the provisions of the Agreement or the applicable Order hereunder, the provisions of the Agreement shall control and prevail over the Order.

SEVERABILITY

Any provisions of this Agreement or this Service Commitment which are unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability and in any jurisdiction shall not render unenforceable such provisions in any other jurisdiction.

FORCE MAJEURE

No party hereto will be held liable for delay, loss, damage or non-fulfillment of the terms of this Agreement if and to the extent such delay, loss, damage or non-fulfillment is caused by an occurrence – even if foreseeable – that (1) would make either party's performance under this contract impossible or impracticable; and (2) is beyond the reasonable control of such party. For purposes of this Agreement, occurrences that will make a party's performance impossible or impracticable include, but are not limited to, delay of transportation services or accident to means of transportation, natural disasters, floods, fires, earthquakes, tornadoes, riots, strikes, epidemics, pandemics, quarantines, acts of God, war (declared or undeclared) compliance with any act, regulation, order or request of any governmental authority or agency, including declarations of a state of emergency, whether local or national, or any other causes, whether direct or indirect, not within the reasonable control of such party, and which by the exercise of reasonable diligence such party is unable to prevent such delay, loss, damage or non-fulfillment of the provisions of this Agreement or otherwise to be rendered by a party hereto. The party invoking the force majeure rights set forth in this section shall notify the other party as soon as practically possible. In the event any of the above-cited circumstances would make either party's performance of its obligations hereunder impracticable or impossible, both parties shall be relieved of all liability and responsibilities pursuant to this Agreement and the Agreement shall be deemed rescinded. ~~C-Lock shall not be in Default or otherwise liable for any delay in or failure of its performance under the Agreement if such delays or failures arise by any reason beyond its reasonable control, including, but not limited to, any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or any act or failure to act by another party. C-Lock shall promptly inform and consult with Customer as to any of the above causes, which in its judgment may or could be the cause of a delay in the performance of the Agreement or this Service Commitment.~~