



Penguin Computing Terms and Conditions of Sale and Service

These Penguin Computing Inc. ("**Penguin Computing**") Terms and Conditions of Sale and Service (the "**Agreement**") govern the sale, licensing and delivery of Products and Services by Penguin Computing to you (the "**Customer**") and are effective as of the date Customer places an order to Penguin Computing. Unless Customer has another valid agreement with Penguin Computing, the following terms and conditions will apply.

A. Definitions

i) "**Confidential Information**" means any information disclosed by one party to another under this Agreement which is, prior to or at the time of disclosure, identified in writing as confidential or proprietary or which from the context of disclosure ought reasonably be understood to be confidential or proprietary. Penguin Computing's Confidential Information includes the terms and conditions of this Agreement, including any prices or discounts offered by Penguin Computing, and any information regarding the Products (including without limitation performance characteristics or specifications) or otherwise about Penguin Computing's business or the Penguin Technology.

ii) "**Exhibits**" means attachments that describe or otherwise apply to the sale or license of Products or Support as attached hereto or otherwise mutually executed by the parties.

iii) "**Intellectual Property Rights**" means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, mask works, know-how, trade names, rights in trade dress and packaging, moral rights, right of privacy, publicity and similar rights of any type (including any applications, continuations, or other registrations) under the laws or regulations of any foreign or domestic governmental, regulatory, or judicial authority.

iv) "**License Fee**" means the fee or fees, if any, designated by Penguin Computing for use of Penguin Computing-developed Software.

v) "**Order**" means a purchase order for Products, Services and/or Support by Penguin Computing accepted by Penguin Computing in accordance with Section B below, or other type of finalized order document accepted by Penguin Computing.

vi) "**Penguin Software**" means any Penguin Computing-branded or Penguin Computing-developed Software or Software otherwise designated as Penguin Software.

vii) "**Penguin Technology**" means the technology, Software, designs, engineering details, schematics and similar data related to or incorporated in the Products and all copies, modifications and derivative works thereof.

viii) "**Products**" means hardware, Software, documentation and/or parts that are offered by Penguin Computing hereunder.

ix) "**Services**" means any installation, setup or other professional services ordered by Customer that relate to the Products provided by Penguin Computing directly or through a third-party.

x) "**Software**" means any software programs provided by Penguin Computing.

xi) "Software License" means the Software license grant and general license terms as outlined below or as included or downloaded with the Software. Each Software License for Penguin Software may or may not have a delineated License Fee.

xii) "Support" means hardware maintenance and repair and other standard support services provided by Penguin Computing as described in the Support Packages descriptions available at www.penguincomputing.com/Support/TechnicalSupport/SupportPackages, an applicable Penguin Computing Service Exhibit, or through the Penguin Computing customer online support portal located at www.penguincomputing.com/Support/TechnicalSupport.

xiii) "Third Party Software" means any Software that is not Penguin Software.

B. Order Acceptance

Customer may submit purchase orders specifying the Products, Services or Support requested and referencing this Agreement. Purchase orders are deemed accepted by Penguin Computing upon Penguin Computing's order confirmation or shipment of the Products or commencement of the Services. Orders must have a shipment request date of less than ninety (90) days from date of purchase order.

C. Delivery

All Products delivered pursuant to this Agreement shall be shipped Freight on Board origin to the Customer address set forth in the Order, unless otherwise mutually agreed in writing. Penguin Computing will use its best efforts to ship Products as soon as possible; however, Customer must allow up to twenty (20) business days from Order acceptance by Penguin Computing for delivery. For clarity, the foregoing does not constitute a guarantee of the timeframe for delivery.

D. Changes

Orders may not be cancelled or deliveries rescheduled without the written agreement of Penguin Computing.

E. Prices; Fees; Taxes; Security Interest

Product prices and Service fees (including License Fees) are as quoted at time of purchase. Prices and fees are valid for the period quoted by Penguin Computing, and are exclusive of all excise, value-added, sales, use, property and other taxes and duties. Penguin Computing will collect, and Customer will pay to Penguin Computing, all applicable value-added and sales taxes on the Products sold to Customer, unless Customer has provided Penguin Computing with an appropriate exemption certificate for the delivery location.

Penguin Computing shall retain a first-priority purchase money security interest in all Products sold to Customer until the purchase price has been paid in full. Penguin Computing is authorized to file this Agreement, any Order or purchase order submitted under this Agreement, and any other forms, financing statements or other documents necessary to perfect Penguin Computing's security interest. Customer agrees to provide any information (e.g., copies of its certificate of incorporation to confirm location for UCC purposes), and execute any such documents, and otherwise assist Penguin Computing, to perfect such interest without charge to Penguin Computing. Customer hereby ratifies any such filings previously made by Penguin Computing in connection with security interests in Products.

F. Payment Terms

Unless otherwise specified or set forth in an Exhibit, subject to credit approval by Penguin Computing, all payments are due thirty (30) days from date of invoice. Payment may be due in full upon order confirmation by Penguin Computing and Penguin Computing reserves the sole right to request payment in advance of shipment, in which event Penguin Computing shall promptly notify Customer and may delay shipment until payment is received.

Any payment not made when due shall be subject to a late payment charge on the past due balance in the amount of one and one half percent (1½%) per month or the legal maximum, whichever is less. Customer shall reimburse Penguin Computing for all costs, including collection agency costs, reasonable attorney fees, and court costs incurred to collect any unpaid or disputed amounts. For the purpose of this provision, past due balance shall include, but is not limited to, any set-offs taken by Customer, refunded amounts or failure to make timely payments.

G. Electronic Business

Customer and Penguin Computing agree that business conducted electronically in a mutually-agreed manner will be subject to the same rights, obligations and terms as are delineated in this Agreement.

H. Shipping Charges

Unless otherwise specified on an Exhibit or otherwise in writing by Penguin Computing, shipping and handling charges will be paid by Customer.

I. Title and Risk of Loss

Title and risk of loss for hardware Products (other than any Software and any Services work product) shall pass to the Customer upon shipment from Penguin Computing or delivery to Customer's carrier. Title to Software and Services work product and all copies thereof shall remain with Penguin Computing or the applicable licensor(s).

J. Intellectual Property Rights

Notwithstanding anything to the contrary in this Agreement, except for the limited rights expressly provided herein, Penguin Computing and its suppliers have and will retain all rights, title and interest (including without limitation all Intellectual Property Rights) in and to the Penguin Technology.

Customer shall not (and shall not allow any third party to): (i) decompile, disassemble or otherwise reverse-engineer the Software or other Products or attempt to reconstruct or discover any underlying ideas, source code, algorithms, file formats or programming interfaces by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Penguin Computing); (ii) distribute, sell, sublicense, rent, lease or use the Software for time sharing, hosting, service provider or like purposes; (iii) remove any product identification, proprietary, copyright or other notices in or on the Products; (iv) modify or create a derivative work of any part of the Products, or incorporate any part of the Products into or with other software or hardware, except to the extent expressly authorized in writing by Penguin Computing; (v) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Products; or (vi) copy Penguin Software onto any public or distributed network.

Penguin Computing may use any feedback or suggestions Customer provides to Penguin Computing regarding the Products.

K. Returns

No Product returns are permitted except as expressly set forth in Section R (Limited Warranty) or an Exhibit.

L. Product Change/Discontinuance

Penguin Computing reserves the right to alter Product offerings at any time. Penguin Computing shall put forth all reasonable efforts to adhere to Customer specifications, but due to technological advancements and fluctuations in supplier availability, substitute conforming goods may be used to ensure quality, functionality and performance.

M. Confidential Information

A party receiving Confidential Information (“**Receiving Party**”) must keep it confidential using the same standard of care that it exercises with respect to its own information of like importance, and may use or disclose it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees or contractors with a need to know and obligated in writing to the Receiving Party under similar confidentiality restrictions. The Receiving Party shall remain responsible for such persons’ compliance with such confidentiality restrictions.

The provisions of this Section M shall not apply to information that the Receiving Party already lawfully knew, that is or becomes public through no fault of the Receiving Party, that was independently developed by the Receiving Party or that was rightfully obtained by the Receiving Party from a third party. The Receiving Party may make disclosures to the extent required by law, provided the Receiving Party notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

The parties acknowledge that unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone may not be a sufficient remedy. In event of actual or threatened use or disclosure by the Receiving Party, the other party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or otherwise.

N. Data Privacy

Customer agrees to allow Penguin Computing to store and use Customer's contact information in connection with the business relationship between Customer and Penguin Computing, including processing of orders, support information, and providing information on new products, promotions and events.

O. Geographic Scope and Governing Law

This Agreement covers sales within the United States only. This Agreement and any Order issued hereunder shall be governed by the laws of the State of California. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The parties hereby agree and consent that any dispute relating to the Products sold hereunder shall be subject to exclusive jurisdiction and venue of the state and federal courts in San Francisco County, California.

P. Exports

Customer agrees that Products, Support, Services work product, Penguin Technology, tools and technical data delivered to Customer by Penguin Computing may be subject to U.S. export controls or the trade laws of other countries. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Products: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

Customer shall request written confirmation of Penguin Computing's ability to fulfill orders for international destinations prior to order placement, and agrees to incur and be responsible for all applicable shipping costs, duties and taxes.

Q. Resale

Customer agrees and represents that purchases are for internal use only, and not for resale. Customer warrants that it will not transfer title of Products to another party by any means for a minimum of one year from the date of invoice. Customer agrees to follow required licensing transfer terms or restrictions for any Software transferred with Products after the one-year period. For clarity, the foregoing applies to individual purchases by Customer only. Any general commercial resale of multiple units of Products shall be conducted under a separate written reseller agreement with Penguin Computing.

R. Limited Warranty

(i) Hardware Warranty

Penguin Computing warrants hardware Products to be free from defects in material or workmanship, unless otherwise specified on the Order, for a period of three (3) years from date of invoice, for Products designated as customer installable, or from date of installation, for Products requiring installation by Penguin Computing. In the event that Customer schedules or delays installation by Penguin Computing of such Products for more than thirty (30) days after shipment, then the warranty period shall commence on the thirty-first (31st) day after shipment. Penguin Computing will, at its option, repair or replace the affected Products, provided that Customer agrees to follow the RMA Process as outlined in the Penguin Computing Base Warranty available at www.penguincomputing.com/support/StandardWarranty. This subsection (i) sets forth Customer's sole remedy and Penguin Computing's entire liability for any breach of the hardware warranty set forth herein.

(ii) Software Warranty

Penguin Computing warrants that any Penguin Software shall substantially conform to its specifications when properly installed and used on a Product for the applicable warranty period (which, unless otherwise specified by Penguin Computing, will be ninety (90) days from delivery). During the warranty period, Penguin Computing shall provide defect-related support at no charge, provided the Customer follows the Support Procedures described in the Penguin Computing Base Warranty available at www.penguincomputing.com/support/StandardWarranty. Penguin Computing warrants that any Penguin Software disks provided will be free from defects

in material and workmanship for a period of ninety (90) days from date of invoice. PENGUIN COMPUTING'S RESPONSIBILITY FOR DEFECTS IN MATERIAL AND WORKMANSHIP IS LIMITED TO REPAIR OR REPLACEMENT.

For any Third Party Software that is included in or provided with the Products, Penguin Computing makes no claims or warranties and has no liability whatsoever.

This section (ii) sets forth Customer's sole remedy and Penguin Computing's entire liability for any breach of the software warranty set forth herein.

(iii) Warranty Transfer

Subject to Section Q above, if Customer transfers a Product to another end-user, warranty service is available to that end-user for the remainder of the warranty period.

(iv) Warranty Exclusions

Any warranty expressed or implied shall not apply to defects or malfunctions arising from:

- ☐ products, services or software supplied by a third party or Customer,
- ☐ improper or inadequate maintenance by Customer,
- ☐ unauthorized modification to Products or Services work product,
- ☐ unsuitable physical or operating environment
- ☐ loss or damage in transit

Adding or changing any components against the advice of a Penguin Computing technical support representative shall void the warranty of the affected Product. Any indication that the serial number of a Product has been altered or tampered with shall also void the warranty.

Penguin Computing does not warrant that the operation of Products will be uninterrupted or error-free. Under no circumstances shall Penguin Computing be held responsible for the loss of data or software.

The warranties provided herein will apply only to those Products which are branded by Penguin Computing. Penguin Computing does not warrant any non-Penguin-branded products supplied by Penguin Computing to Customer; however, Penguin Computing shall pass through to Customer any applicable warranty terms and license terms in the case of Third Party Software, from the original manufacturers, to the extent available.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES IN THIS SECTION (R) ARE THE EXCLUSIVE WARRANTIES FOR THE PRODUCTS, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION (R), THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, IS HEREBY EXCLUDED.

(v) Disposition of Materials Subject to Warranty Exclusion

In the event that Penguin Computing determines a defect in a Product results from any cause listed in Section (iv) (Warranty Exclusions) above, Penguin Computing shall use reasonable efforts to notify the Customer of such determination within three (3) business days of receipt, at which time Penguin Computing will dispose of excluded components, or if elected by Customer, return them at Customer's expense.

(vi) Warranty Repair Shipment Charges

Warranty Repairs within Thirty (30) Days of Product Shipment: Shipment fees for the return of defective Product to Penguin Computing and return of repaired or replacement Product to

Customer shall be borne by Penguin Computing, provided Customer follows the RMA Process as outlined in the Penguin Computing Base Warranty available at www.penguincomputing.com/support/StandardWarranty.

Warranty Repairs after Thirty (30) Days of Product Shipment: Customer shall pay for shipment fees for the return of defective Product to Penguin Computing. Penguin Computing shall ship repaired or replacement Product at its expense, provided Customer follows the RMA Process as outlined in the Penguin Computing Base Warranty available at www.penguincomputing.com/support/StandardWarranty.

Warranty Repairs for Products Exported by Customer: Customer agrees to incur and pay all shipping costs, duties and taxes for Products sent to Penguin Computing for repair or replacement, including costs incurred to send repaired/replaced items back to Customer.

(vii) No Fault Found

In the event that Penguin Computing determines “no fault found” for components or Products returned to Penguin Computing for warranty repair or replacement, Penguin Computing shall notify the Customer of said condition and return the components or Products to the Customer. Penguin Computing shall reserve the right to invoice the Customer for costs incurred for component testing, and shall return the components at Customer’s expense.

S. Installation and Acceptance

Products are deemed to be installable by Customer, unless deemed otherwise in writing by Penguin Computing. For Products deemed Customer-installable, acceptance by Customer is deemed to be the date of shipment from Penguin Computing. For Products where installation is included in the purchase price or the Services, acceptance by Customer is deemed to occur upon completion of installation by Penguin Computing. If Customer schedules or delays installation for more than thirty (30) days after shipment, then Customer acceptance shall be deemed to occur on the thirty- first day after shipment.

T. High Risk Applications

Products are not designed or tested for use in high-risk activities. Penguin Computing shall not have any liability for, and Customer shall indemnify and hold Penguin Computing harmless from all loss, damage, expense or liability, Penguin Computing incurs in connection with the Customer’s use of Products in any high risk activity, including, but not limited to, the operation of nuclear facilities, medical systems, life support systems, weapons systems, aircraft navigation or communication systems, or air traffic control.

U. Limitation of Liability and Remedies

PENGUIN COMPUTING DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA. PENGUIN COMPUTING SHALL NOT BE LIABLE FOR LOST PROFITS, LOST BUSINESS, LOST SOFTWARE OR DATA, OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES. UNDER NO CIRCUMSTANCES SHALL PENGUIN COMPUTING BE LIABLE FOR ANY THIRD-PARTY CLAIMS AGAINST THE CUSTOMER. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCT, PENGUIN COMPUTING IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AMOUNT INVOICED FOR THE APPLICABLE PRODUCT.

V. Software

(i) License

For Penguin Software: Subject to the terms and conditions of this Agreement (including, without limitation, Section J (Intellectual Property Rights)), Penguin Computing grants Customer a non-exclusive and non-transferable (except as permitted in Section V(iii)) license to use Penguin Software provided to Customer for its internal use in connection with the hardware Products only, subject to any restrictions outlined in the supplemental license terms accompanying the Penguin Software, such as, but not limited to, number of users and number of CPUs. By installing or downloading the Penguin Software, or using the Penguin Software that has been preloaded or embedded on a system, Customer agrees to be bound by the terms of this Agreement and any supplemental license terms accompanying the Penguin Software. Further, Customer agrees not to: (i) decompile, disassemble, or reverse engineer the Penguin Software (except to the extent these restrictions are limited by applicable law); (ii) except as permitted in this Agreement, distribute, sell, sublicense, rent, lease or use the Penguin Software on behalf of third parties; (iii) remove any proprietary notices contained in the Penguin Software; or (iv) modify or create a derivative work of the Penguin Software unless expressly authorized in writing by Penguin Computing.

For Third Party Software: Third Party Software is subject to the licensing terms or other allocation of Intellectual Property Rights determined by the original manufacturer. Third Party Software may include open source software and be subject to open source software license terms. Penguin Computing makes no warranty and has no responsibility or liability for any Third Party Software, but may provide support for Third Party Software if separately agreed. Terms and conditions applicable to Third Party Software may also be set forth in an Exhibit.

(ii) Copying

Penguin Computing authorizes Customer to copy Penguin Software for archival purposes, including a backup copy for disaster recovery. Customer must reproduce all copyright and other proprietary notices, and maintain a record of all copies made, which Penguin Computing may audit upon reasonable notice and confidentiality procedures.

(iii) License Transfer

Customer's Software License for Penguin Software is transferable after a one-year period in connection with a transfer of the Products as further set forth in Section Q (Resale), or with Penguin Computing's prior written approval. Customer shall notify Penguin Computing of such transfer, and the transferee must agree in writing to the terms of Customer's Software License. Customer's Software License shall automatically terminate upon transfer.

(iv) License Termination

Penguin Computing may terminate Customer's or any transferee's Software License upon evidence of failure to comply with any of its terms. Upon notification, Customer or transferee must return or destroy all copies of the Software and certify in writing to Penguin Computing of Customer's compliance with this obligation.

(vi) Commercial Software Notice

If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor, then the Government's rights in Software and accompanying documentation are only as set out in this Agreement; this is in accordance with 48 CFR 227.7201 through 227.7204-4 (for Department of Defense acquisitions) and with 48 CFR 2.101 and 12.212 (for non-DOD acquisitions).

Unless otherwise specified by Penguin Computing, Customer will have a license right to use any work product delivered as part of the Services under the same terms as the license to use Penguin Software.

X. Assignment; Subcontractors

Except as set forth in Section V(iii), neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party and any attempt to do so will be void. Notwithstanding the foregoing, Penguin Computing may assign this Agreement without Customer's consent to an affiliate or any other entity in connection with a reorganization, merger, consolidation, acquisition, or other restructuring involving all or substantially all of the voting securities or assets of Penguin Computing. Penguin Computing may use subcontractors in the performance of its obligations, in which case Penguin Computing will remain responsible for the performance of its subcontractors.

Y. Agreement Termination/Modification

This Agreement will have an initial term of one (1) year and will automatically renew on an annual basis, unless either party provides written notification to the other of its intent to cancel at least ninety (90) days prior to the anniversary date of the agreement. Penguin Computing may modify the terms of this Agreement prospectively by providing ninety (90) days written notice of the change and effective date; however, any changes will apply only to new orders received after the effective date.

Either party may terminate this Agreement if the other does not comply with any of its material terms, provided the other has notified the party who is not complying in writing of the material breach and given sufficient time, but not more than thirty (30) days, to remedy the breach. In addition, Penguin Computing may terminate this Agreement effective immediately by written notice (i) upon liquidation, dissolution, merger, consolidation, or sale of substantially all of the assets of Customer or upon any material change in the management or control, direct or indirect, of Customer, or (ii) in the event that any proceedings are commenced against Customer or if Customer seeks protection under bankruptcy, insolvency, or other debtor's relief law, and such proceedings are not dismissed within sixty (60) days after the date of commencement thereof.

The following provisions will survive any expiration or termination of this Agreement: all unpaid fee obligations, Section I (Title and Risk of Loss), Section J (Intellectual Property Rights), Section M (Confidential Information), Section O (Geographic Scope and Governing Law), Section P (Exports), Section Q (Resale), the disclaimers and exclusions in Section R (Warranty), Section T (High Risk Applications), Section U (Limitation of Liability and Remedies), all Software use restrictions and limitations in Section V (Software), and Sections X through AA (Assignment; Subcontractors, Agreement Termination/Modification, Force Majeure, Entire Agreement; General).

Z. Force Majeure

If the performance of this Agreement, or any obligation hereunder, except the making of payments hereunder, is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, including, but not limited to, acts of God, acts of civil or military authority, failure or interruption of utilities, fires, floods, earthquakes, riots, wars, sabotage, or governmental actions, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

AA. Entire Agreement; General

This Agreement, along with any Exhibits, if any, constitutes the entire, final, complete and exclusive agreement between the parties regarding the subject hereof and supersedes any and all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may not in any way be modified, changed or amended except by a written instrument duly executed by an authorized officer of each party. Any terms and conditions of Customer's purchase orders or other like documentation shall have no force or effect. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. If any provision of this Agreement is adjudicated to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

The relationship established by this Agreement is that of independent contractors. Customer may not incur any obligation or commitment on behalf of Penguin Computing unless specifically approved in writing, in advance by an authorized Penguin Computing executive. Customer is responsible for all of its employees and agents and its labor costs and expenses.

Except as otherwise specified, all notices shall be in writing and may be delivered by facsimile, USPS, or overnight delivery service, to the applicable address indicated on the invoice or to such other address as the parties shall specify by written notice. Any such notices to Penguin Computing shall be sent to the attention of the Chief Financial Officer.