BROKEN ARROW PUBLIC SCHOOLS
Educating Today   Leading Tomorrow

Date: 7-11-22

Contract/Agreement Vendor: NitroSell
Name of Vendor

Mike Rosa   619-374-4111
Contact Person   Phone Number

6 Robert Scott House, St. Patricks Quay
Address

Cork, T23 Y2EA   Ireland
City   State   Zip

michael.rosa@nitrosell.com
Email address

8-1-2022 to 7-31-2022
Date of services

| **IS THIS A NEW VENDOR?** IF SO, PLEASE PROVIDE : |
| **W9** _____ |
| And |
| **Vendor Registration** _____ |

Person Submitting Contract/Agreement for Review: Darci Delso   Tiger Threads - BAHS
                                                 Name   Site

Reason for Review: (New Agreement, Renewal...): Multi year contract - 3 yrs

Audience/Group to benefit from Contract/Agreement: Tiger Threads online website

Routing Approval: PLEASE SEND TO APPROPRIATE LEADERSHIP TEAM MEMBER BEFORE SENDING TO STACIE CHASE

Principal **and** Director or Administrator: _____
                                        Signature

Does this Contract/Agreement utilize technology?   No ☐   Yes ☑
Has it been reviewed by the Chief Technology Officer? No ☐   Yes ☑

If yes, Approved by: _____
                    (Signature) Technology /Approval

Leadership Team Member: _____
                            Signature

Funding Source: Fund 34   006-2199-653-000-0000-000-720
                Description   OCAS Coding

Process: **PLEASE FOLLOW ALL STEPS**

☐ 1. The Contract/Agreement is reviewed and approved by site Principal/ Director/ Administrator.

☐ 2. If Technology related, the Contract/Agreement is reviewed and approved Technology.

☐ 3. Prepare Board Agenda Memorandum and attach to Contract/Agreement.

☐ 4. Begin the requisition process and place a comment in the Notes section that says, "Please hold req pending board approval on_____"
                                                    Date of Board Meeting

☐ 5. *Attach this form with Contract/Agreement and Board Memo*

☐ 6. The appropriate Leadership Team Member will review and submit to the Contract Committee

☐ 7. Keep copy for your records

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:30a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Stacie Chase. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.

MEMORANDUM

To: Mr. Chuck Perry

From: Tara Thompson

Date: July 18, 2022

Re: NitroSell Agreement - RENEWAL

SUBJECT
Accept and approve the RENEWAL agreement between Broken Arrow Public Schools and NitroSell Limited who will provide an integrated ecommerce solution to assist with the PC America Point of Sale and Inventory Management hardware for Tiger Threads for at least twelve (12) months. The cost to the District is $2,388.00. D. Delso

ENCLOSURE/ATTACHMENTS
See attachments

SUMMARY
NitroSell will provide an integrated ecommerce solution for Tiger Threads for at least 12 months.

FUNDING
Bond 34

RECOMMENDATION
Approve

ORDER FORM

NitroSell Limited 6 Robert Scott House St Patrick's Quay Cork T23 Y2EA Cork, Ireland	Client Name: Broken Arrow Tiger Threads Authorized Representative: Darci Delso Address: 1901 E Albany St. Broken Arrow, OK Phone: +19182510689 Email: tigerthreads@baschools.org

FEES

Recurring Fees:

Software	Fee (USD)
Software as a Service (SaaS) Subscription - MSF: WebSell eCommerce *Up to 12GB bandwidth per month*	$2,388/year
Software License (On-Premises): WebSell Desktop Software *Annual Renewal*	$0/year
TOTAL MONTHLY RECURRING FEES	**$2,388**
TOTAL ANNUAL RECURRING FEES	**$0**

PAYMENT TERMS & CREDIT CARD AUTHORIZATION

Payment Terms: Net30

Credit/debit card payment terms: Client agrees to provide its credit/debit card details via NitroSell's portal; and by signing below Client authorizes NitroSell to charge the credit/debit card on file for upfront fees immediately and other respective fees when due.

EXECUTION

By signing below, Client places this Order, subject to NitroSell's standard terms and conditions, including those herein and set forth in the Software and Services Agreement for which Client will accept via NitroSell's portal, and authorizes credit/debit card charges as identified above.

Authorized Signature: _____   Name: _____

Execution Date: _____   Title: _____

SOFTWARE AND SERVICES AGREEMENT

THIS SOFTWARE AND SERVICES AGREEMENT ("AGREEMENT") IS A BINDING AGREEMENT BETWEEN CLIENT AND NITROSELL. CLIENT AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT THROUGH (I) CLIENT'S EXPRESS ACCEPTANCE OF THIS AGREEMENT OR (II) CLIENT'S DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE. IF THE CLIENT REPRESENTATIVE DOES NOT HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT OR CLIENT DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE.

1.   Definitions.

1.1   "Authorized Computer System" means a computer system owned, leased, or operated for the benefit of Client upon which NitroSell has granted Client the right to install and use the Software.

1.2   "Authorized User" means a Client employee or independent contractor working within their job responsibilities or engagement by Client or other end user for which NitroSell has granted the right to use the Software.

1.3   "Client" means the individual or entity identified on an Order and on whose behalf the Software is used.

1.4   "Desktop Software" means NitroSell's proprietary Software known as WebSell desktop software which is installed on-premises on Client's Authorized Computer System.

1.5   "Documentation" means documentation in the form of instructions, manuals, and explanatory written materials or files provided by NitroSell, including electronically via the Software, that describes the function and use of the Software.

1.6   "Intellectual Property Rights" means all present and future right, title, and interest in and to, whether by virtue of direct ownership, exclusive or non-exclusive license or otherwise, trade secrets, patents, copyrights, designs, mask works, drawings, training materials, proprietary symbols, trademarks, and service marks, trade names, logos, domain names, Universal Resource Locators (URLs), Internet Protocol (IP) addresses, and all other proprietary rights, whether registered or unregistered.

1.7   "Maintenance" means the Software maintenance services provided by NitroSell, which includes online support relating to the use and Maintenance of the Software and providing Updates as they are developed and made generally available.

1.8   "NitroSell" means NitroSell Limited dba WebSell, with offices at 6 Robert Scott House, St Patrick's Quay, Cork T23 Y2EA, Cork, Ireland.

1.9   "New Software" means additional features, modules, enhancements, versions of the Software that incorporates additional capability or functionality that NitroSell licenses for additional fees separately from Updates, or other new Software licensed from NitroSell.

1.10   "Order" means an order placed on behalf of Client via an order form, order confirmation, quotation, proposal, or other similar document for the supply of the Software and Services.

1.11   "SaaS" or "Software as a Service" means NitroSell provides Client with access, through a website or designated IP address, to its Software (WebSell eCommerce) which is exclusively maintained by NitroSell in a hosted environment.

1.12   "Services" means services provided by NitroSell in support of the Software including, but not limited to, data conversion, system configuration, installation, implementation, integration, training, design, consulting, project management, marketing, custom reporting, billable modification (i.e., ancillary modifications to the Software requested by Client), and other professional services, excluding Maintenance.

1.13   "Software" means NitroSell's proprietary software identified hereunder and/or in an Order which is licensed to Client (Desktop Software) or for which Client has access (WebSell eCommerce) in accordance with the terms of this Agreement including any Updates and New Software provided by NitroSell to Client pursuant to this Agreement.

1.14   "Third Party Materials" means third party software, products, services, materials, or other information for which Client may have access to in connection with use of the Software or SaaS.

1.15 "Update" means the latest updates, modifications, and enhancements to the Software, including corrections of errors, which relate to the operating performance or functionality of the Software and are made generally available by NitroSell.

2.   Software, Maintenance and Services. Subject to the terms and conditions of this Agreement and the payment of fees hereunder, NitroSell will provide Client with the following:

2.1   Desktop Software License. NitroSell grants to Client a non-exclusive and non-transferable license for the Desktop Software (in object code form and exclusive of source code), to be installed on Client's Authorized Computer System and for Authorized Users to use the Software in connection with Client's internal business operations within one (1) business entity and to use the Documentation in connection with the Desktop Software. Client shall have the right to make a one (1) copy of the Desktop Software, in object code form only, solely for backup purposes. If Client desires to license New Software, the terms of this Agreement will apply upon Client's payment of applicable license fees and use of the New Software.

2.1.1   Installation of Desktop Software. The Desktop Software may be installed on Client's Authorized Computer System by Client, or by NitroSell upon Client's request. NitroSell shall approve the specific computer hardware configuration required to ensure that the Desktop Software will execute properly and (ii) when applicable, Client shall grant access to the Authorized Computer System as required by NitroSell for proper installation.

2.1.2   Installation of Desktop Software Updates. All Desktop Software Updates made available by NitroSell to Client shall be installed into the Desktop Software by Client in a reasonably timely manner, or by NitroSell upon Client's request. Client acknowledges that its failure to install Desktop Software Updates may render the Desktop Software unusable or nonconforming to the Documentation, and Client agrees to assume the risks arising therefrom, including possible reinstallation of the Desktop Software for which additional fees may apply. Notwithstanding the foregoing, NitroSell will continue to support the most recent four (4) prior versions of the Desktop Software.

2. 2   Software as a Service. NitroSell grants to Client a non-exclusive and non-transferable subscription for Authorized Users to access NitroSell's WebSell eCommerce platform and use the SaaS and Documentation for Client's internal business operations.

2. 3   Software Restrictions. Client will not, and will ensure its Authorized Users do not: (i) directly or indirectly decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or underlying structure, ideas, know-how or algorithms relevant to the SaaS, Software, Documentation, or any data related to the SaaS; (ii) copy (except as permitted herein), modify, enhance, or change the data structures for or create derivative works from, the Software; (iii) rent, lease, sell, sublicense, or otherwise provide access to the Software to third parties or to anyone other than Client's Authorized Users; (iv) use a standard of care other than reasonable care and protection to prevent the unauthorized use, copying, publication, or dissemination of the Software; (v) use the Software in any manner not authorized by this Agreement; and (vi) permit use of the Software by more than one (1) business entity, unless otherwise approved by NitroSell in writing.

2.4   Maintenance. NitroSell will provide Maintenance during normal business hours (9am - 9pm GMT (4am - 4pm EST/1am - 1pm PST) Monday through Friday, excluding legal holidays). Requests for support may be submitted to NitroSell by Client via NitroSell's portal at: portal.websell.io (or through other methods provided by NitroSell). Maintenance does not include: (a) custom programming services; (b) on-site support, including installation of hardware or software; (c) support of any software other than the Software supplied hereunder; (d) training; (e) expenses for third party products including, but not limited to, hardware and related supplies; (f) support of Client's computer system, software, or hardware (e.g., computer equipment, servers, printers etc.) or Third Party Materials, including problems which arise therefrom. For clarity, NitroSell is not responsible for errors or defects of Client or third party software or hardware.

2.5   Services. NitroSell will provide Client with the Services selected by Client and identified in an Order.

3.   Third Party Providers. Certain third party providers may offer products and services related to or which integrate with the Software, SaaS, or Services, such as by exchanging data with the Software or by offering additional functionality within the user interface of the SaaS through use of the application programming interface. Any exchange of data or other interaction between Client and a third-party provider, and any purchase by Client of any Third Party Materials offered by such third-party provider, is solely between Client and such third-party provider. The Third Party Materials may be subject to additional terms and conditions and/or end user agreements. Client's acceptance of this Agreement serves as Client's (i) authorization for third-party providers to perform technical support services, if applicable, and (ii) consent of such third-party terms and conditions, including, but not limited to, those which may be accessed via the Third Party Materials or the third-party provider's website.

4. Intellectual Property.

4.1   Ownership. NitroSell owns all Intellectual Property Rights in and to the (i) Software and SaaS; (ii) all Updates to the Software; (iii) any Documentation or data related to the Software and SaaS; and (iv) any software, applications, inventions, or other technology developed in connection with the Software or SaaS. For clarity, Client obtains no interest in the Software, SaaS, or Documentation except as expressly provided in this Agreement.

4.2   Client Data. Client shall retain all right, title, and interest in and to the data which is Client created or owned and provided to NitroSell or to which NitroSell has access in connection with Client's use of the Software or entered or submitted by Client by means of the SaaS ("Client Data"). Client grants to NitroSell a royalty-free, non-exclusive, non-transferable license for the term of this Agreement to use Client Data to the extent necessary to provide the Software, SaaS, and Services. Client is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data. Client will not send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious data or material, including data or material that violates third party privacy or intellectual property rights, includes malicious code, or that will interfere with the integrity of the Software or SaaS; and in such an event, NitroSell will have the right to remove the foregoing from the Software. If Client stores such Notwithstanding anything to the contrary, NitroSell shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the SaaS and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and NitroSell will be free (during and after the term hereof) to: (i) use such information and data to improve and enhance the SaaS and for other development, diagnostic and corrective purposes in connection with the SaaS and other NitroSell offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

4.3   Third Party Materials. As between NitroSell and Client, all intellectual property rights in and to Third Party Materials are deemed owned by the respective third party provider. For clarity, Client obtains no interest in the any Third Party Materials except as expressly provided in this Agreement or any applicable third party provider agreement.

5.   Fees and Payment.

Client agrees to pay all fees set forth in the Order via credit or debit card, or within thirty (30) days of the invoice date when such alternative payment method is approved in advance by NitroSell and stated in an Order. Client authorizes NitroSell to charge the credit or debit card on file for the respective fees when due. This authorization will remain in effect during the term of this Agreement until cancelled. Customer will reimburse NitroSell for all costs associated with rejected credit or debit card payments and collection of past due amounts. With regard to any amount that is not paid when due, NitroSell reserves the right to charge, and Client agrees to pay, a late payment fee on the unpaid balance, from the due date until paid, equal to the lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. After the Initial Term (defined below), NitroSell may increase the fees on an annual basis or anytime at NitroSell's discretion due to increased resource usage by Client, including, but not limited to, server bandwidth, web order volume, support request volume, support request time consumption, systems administration time consumption, and/or unbilled software engineering resources. All fees are non-refundable, except as otherwise explicitly stated in this Agreement.

6.   Term and Termination.

6.1   This Agreement shall commence on the Order execution date and will continue for a term of one (1) year ("Initial Term"). Thereafter, this Agreement shall automatically renew from year-to-year (each, a "Renewal Term") unless either party provides written notice to the other party at least thirty (30) days prior to the expiration of the then current term. The Initial Term and any Renewal Term are collectively referred to as the "term" of this Agreement.

6.2   Termination. Either party may terminate this Agreement immediately upon written notice if the other party breaches any material provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof.

6.3   Effect of Termination. Upon termination of this Agreement, Client's subscription to the SaaS will end and Client shall immediately cease using all Software in any form whatsoever and, if applicable, certify to NitroSell, within thirty (30) days after termination, that Client has deleted the Software and any backup copy thereof from Client's computer system, and has deleted or destroyed any copies of Documentation in its possession.

6.4   Suspension or Termination of Service. NitroSell may suspend or terminate Maintenance of the Software and terminate Client's access to the SaaS if Client fails to (i) pay any fees when due which remain unpaid for thirty (30) days after receipt of

notice or (ii) install Updates as required by this Agreement. NitroSell reserves the right to temporarily suspend the SaaS based on its good faith belief that it is necessary to protect the integrity of the Software or SaaS.

7. Confidentiality.

7.1 Confidential Information. Each party (the "Disclosing Party") may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party") certain information relating to trade secrets, data, designs, drawings, documentation, software (regardless of form or media), prototypes, processes, methods, concepts, research, development, facilities, employees, vendors, clients, marketing, financials, business activities, and other confidential or proprietary information (collectively "Confidential Information"). To the extent practicable, the Disclosing Party shall mark and/or identify Confidential Information as confidential or proprietary at the time of disclosure; provided however, this Agreement shall also apply to information which, based on its nature, is reasonably expected to be deemed confidential. In addition, the terms of this Agreement shall be deemed Confidential Information. Furthermore, whether or not so marked or identified, the Software, Documentation and any related data, and any quantitative analysis of the Software or performance of the Software are deemed the Confidential Information of NitroSell, and the Client Data is deemed the Confidential Information of Client.

7.2 Exceptions. Confidential Information shall not include information that: (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party not under an obligation of confidentiality; (c) was lawfully possessed by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party, as evidenced by the Receiving Party's records; or (d) the Receiving Party can demonstrate was independently developed by Receiving Party without use of the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information pursuant to applicable law, regulation, court order, or other legal process; provided, (i) if allowed by law, the Receiving Party has given the Disclosing Party prompt written notice of such required disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy and (ii) the Receiving Party discloses only that portion of the requested Confidential Information that, in the opinion of its legal counsel, it is required to disclose.

7.3 Non-Disclosure and Non-Use. The Receiving Party agrees that it shall not use Confidential Information, or disclose any Confidential Information to any third party, except as expressly permitted under this Agreement. The Receiving Party shall not provide access to the Confidential Information to anyone other than those of its employees, contractors, and financial and legal advisors who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. The Receiving Party shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care.

8. Representations and Warranties.

8.1 Limited Warranty. NitroSell warrants the Software will perform substantially in accordance with the Documentation for a period of ninety (90) days after delivery. This warranty will not apply if: (i) the Software is used on a system other than the Authorized Computer System with the configuration approved by NitroSell; (ii) the Software is not used in accordance with NitroSell's instructions or the Documentation; (iii) the newest Updates provided to Client by NitroSell have not been installed into the Software; (iv) the Software has been altered, modified, or converted by anyone other than NitroSell; or (v) non-conformance is caused by (a) a defect in the operating system, database server, web server, or other hardware or software in Client's computer system or (b) Client's negligence, willful misconduct, or misuse or misconfiguration of the Software. Client's exclusive remedy, and NitroSell's sole liability, for breach of this warranty shall be for NitroSell to use commercially reasonable efforts to correct errors affecting conformance, provided that Client has given written notice of non-conformance to NitroSell. NitroSell shall, to the extent reasonably possible and permissible, pass-through or assign to Client all available warranties it receives from a third party provider for Third Party Materials provided by NitroSell to Client under this Agreement.

8.2 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE, SAAS, MAINTENANCE, SERVICES, DOCUMENTATION, AND THIRD PARTY MATERIALS, IF ANY AND AS APPLICABLE, ARE PROVIDED "AS IS", AND NITROSELL DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE SOFTWARE, SAAS, MAINTENANCE, SERVICES, DOCUMENTATION, AND THIRD PARTY MATERIALS, IF ANY AND AS APPLICABLE, WILL MEET ALL OF CLIENT'S REQUIREMENTS.

8.3   Client Representations. Client represents that it is fully responsible for: (a) the content of any Client Data; (b) selection and implementation of controls, including settings and policies, regarding access rights and use of the Software by Client and its Authorized Users; and (c) Client's computer system, software, and hardware (e.g., computer equipment, servers, printers etc.). NitroSell assumes no responsibility for the correctness or performance of, or any resulting incompatibilities with, current or future releases of the Software if Client has made changes to the system hardware/software configuration or modifications to any supplied source code which changes affect the performance of the Software and were made without prior notification and written approval by NitroSell. NitroSell assumes no responsibility for the operation or performance of any Client or third party hardware or software.

9.   Indemnification.

9.1   NitroSell will indemnify and defend Client against any claim, action, suit, or proceeding brought by a third party ("Claim") to the extent Client's use of the Software within the scope of this Agreement directly infringes a patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided, Client notifies NitroSell promptly in writing of such Claim and provides NitroSell with the sole control, authority, information and assistance necessary to defend or settle such Claim.

9.2   In the event of an infringement Claim, or NitroSell believes that such a Claim is likely, then NitroSell shall at its expense: (i) procure the right for Client to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (iii) if neither (i) or (ii) is commercially practical, then, at NitroSell's sole option, terminate this Agreement and refund depreciated license fees paid hereunder based on five year straight line depreciation.

9.3   NitroSell will not be liable for any infringement Claim based upon any (i) use of a version of the Software that was not, at the time that the Claim arose, the current unaltered version of the Software provided by NitroSell hereunder, including, without limitation, failure of Client to install Updates containing modifications to make the Software non-infringing; (ii) combination, operation, integration, or interfacing of the Software with other products, equipment, devices, software, systems, or data not supplied by NitroSell, or which the Software was not intended to operate as specified in the Documentation, to the extent such Claim would not have arisen but for such combination, operation, integration, or interfacing (regardless of whether or not NitroSell has advised Client that such use would likely result in a Claim of infringement by a third party); (iii) use of the Software in a manner other than as authorized by the Documentation or this Agreement; (iv) NitroSell's compliance with the designs, plans, or specifications furnished by or on behalf of Client; (v) modifications to the Software made by anyone other than NitroSell; or (vi) Client's failure to accept any procured right to continue using the Software.

9.4   THE FOREGOING STATES NITROSELL'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CLIENT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

9.5   Client shall defend and indemnify NitroSell from and against any and all Claims, liabilities, damages, costs, and expenses, including reasonable legal fees, arising from or related to the exclusions set forth in Section 9.3 or any violation of Sections 2.3 or 4.

10.   Limitation of Liability.

10.1   Neither party shall be liable for any indirect, incidental, consequential, exemplary, special, or punitive damages including, without limitation, any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, even if a party has been advised of the possibility of such damages.

10.2   NitroSell's entire liability under this Agreement or in any way related to the Software, SaaS, Maintenance, or Services will be limited to direct damages in an amount equal to the fees paid by Client pursuant to this Agreement during the twelve (12) month period immediately preceding the Claim.

11.   General.

11.1   Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of Ireland without regard to conflicts of law principles. The parties exclude the operation of the United Nations Convention on Contracts for the International Sale of Goods.

11.2   Compliance with Laws. Each party will comply with all applicable laws, rules, regulations, and orders of government authority in performing its obligations under this Agreement.

11.3   Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, 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 hereof shall be unaffected and remain in full force and effect.

11.4   Modification and Waiver. Any modification, amendment, supplement, waiver, or other change to this Agreement must be in writing and signed by duly authorized representatives of each party. Any waiver or failure to enforce any provision of this Agreement on any occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion.

11.5   Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, which shall not be unreasonably withheld; provided, however, either party may assign this Agreement in its entirety, without the other party's consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the respective parties.

11.6   Remedies. The parties agree that monetary damages are an inadequate remedy for breach of Sections 4 and 7, and further recognize that any such breach would cause irreparable injury for which there would be no adequate remedy at law; therefore, the parties agree that the non-breaching party may seek equitable remedies, including, without limitation, injunctive relief and specific performance (without obligation to post a bond) from a court of competent jurisdiction, in addition to other remedies available at law or in equity.

11.7   Survival. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.

11.8   Force Majeure. Neither party shall be in breach of this Agreement, nor liable for delay in performing or failure to perform any of its obligations under this Agreement, if such delay or failure result from unforeseeable events, circumstances, or causes beyond its reasonable control, including, but not limited to: natural hazards or acts of nature (such as floods, fires, earthquakes, hurricanes, or explosions); governmental acts or omissions (such as expropriation, condemnation, and changes in laws or regulations); acts of war (whether declared or undeclared); acts of the public enemy and terrorism; strikes and labor disputes; civil commotion; epidemics, pandemics and quarantine; infrastructure failures (such as transportation, energy, or breakdown of communication facilities); and delays of either party's suppliers for like causes; provided, that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.

11.9   Headings. The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.

11.10   Notices. All notices under this Agreement shall be in writing and shall be deemed given upon personal delivery, delivery by prepaid overnight courier, facsimile or electronic mail transmission with receipt acknowledged, or three (3) business days after deposit in the mail via first class mail postage prepaid to the intended recipient at its designated address (in the case of NitroSell, the address listed above and, in the case of Client, the address on file with NitroSell when the Order is placed) or other such address as the parties may indicate in writing.

11.11   Entire Agreement. This Agreement, including the Order, any schedules, or other attachments hereto and any amendments or written documentation executed by the parties, are the final, complete, and exclusive agreement between the parties relating to the subject matter hereof, and supersede all prior or contemporaneous proposals, understandings, representations, warranties, promises, and other communications, whether oral or written, relating to such subject matter.