

Split Software Terms of Service

Last Revised: November 10, 2021

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICE OFFERED BY SPLIT SOFTWARE, INC. (“**SPLIT**”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH COMPANY WHICH REFERENCE THESE TERMS (EACH, A “**SERVICE ORDER**”) OR BY ACCESSING OR USING THE SERVICES IN ANY MANNER, YOU (“**YOU**” OR “**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT; IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ORGANIZATION OR ENTITY, REFERENCES TO “CUSTOMER” AND “YOU” IN THIS AGREEMENT, EXCEPT THIS SENTENCE, REFER TO THAT ORGANIZATION OR ENTITY. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. SCOPE OF SERVICE AND RESTRICTIONS

1.1 Access to and Scope of Service.

Subject to Split's receipt of the applicable Fees with respect to the service specified in the corresponding Service Order (the "**Service**"), Split will use commercially reasonable efforts to make the Service available to Customer as set forth in this Agreement and the Service Order. Subject to Customer's compliance with the terms and conditions of the Agreement and the Service Order, Customer may access and use the Service during the period specified in the Service Order. Any such use of the Service by Customer is solely for Customer's internal business.

1.2 Trials.

If Customer is accessing or making use of the Service on a trial basis (the "**Trial**"), Customer acknowledges and agrees that the Trial is provided on an "as-is" basis, and the Trial is provided without any indemnification, support, or warranties or representation of any kind. Further, the Trial may be subject to certain additional restrictions, modification, limitations all as determined by Split from time-to-time. Split may terminate, restrict, discontinue or limit Trials at any time and in Split's sole discretion.

1.3 No-Fee Service.

If Customer is accessing or making use of the limited Free Edition service on a no-fee basis, (the “**No-Fee Service**”), Customer acknowledges and agrees that the No-Fee Service is provided on an “as-is” basis, and the No-Fee Service is provided without any indemnification, uptime and support guarantees, or warranties or representation of any kind. Further, the No-Fee Service may be subject to certain additional restrictions, modification, limitations all as determined by Split from time-to-time. Split may terminate, restrict, discontinue or limit the No-Fee Service or any Customer Account using the No-Fee Service at any time and in Split’s sole discretion. Customer understands that additional, paid features are accessible from the No-Fee Service, but use of those features shall be limited by Split’s rights under this Section 1.3. Customer may access the Split self-help knowledge base located at: <https://help.split.io/hc/en-us/>.

1.4 Restrictions.

Customer will use the Service only in accordance with all applicable laws, including, but not limited to, laws related to data (whether applicable within the United States, the European Union, or otherwise). Customer agrees not to (and will not allow any third party to): (i) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discover

the underlying structure, ideas, or algorithms of the Service or any software used to provide or make the Service available; or (iii) rent, resell or otherwise allow any third party access to or use of the Service; (iv) modify, copy or create derivative works of the Service; (v) access the Service for the purpose of building a competitive product or service; (vi) publish any product evaluation, benchmarking or other comparative analysis of the Service without Split's prior written consent; (vii) provide access to the Service by a known direct competitor of Split; (viii) do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service; (xi) access or otherwise use the Service in any manner if you are a competitor to Split. We do not knowingly collect or solicit personal data about children under 16 years of age; if you are a child under the age of 16, please do not attempt to register for or otherwise use the Services or send us any personal data.

1.5 Ownership.

Split retains all right, title, and interest in and to the Service, and any software, products, works or other intellectual property created, used, provided or made available by Split under or in connection with the Service. Customer may from time to time provide suggestions, comments or other feedback to Split with respect to the Service ("**Feedback**"). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for Split notwithstanding anything

else. Customer shall, and hereby does, grant to Split a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Nothing in this Agreement will impair Split's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

1.6 No Software.

Customer acknowledges and agrees that no software code with respect to the Service will be provided to Customer hereunder, and that certain software libraries and tools, and updates thereto are necessary to access and use the Service (the “**Split Tools**”). The Split Tools should be available at the following URL: www.github.com/splitio under applicable open source licensing terms. Customer agrees that it is responsible for obtaining, installing and maintaining the Split Tools, and that Split makes no representations, warranties or is otherwise liable or obligated hereunder with respect to such Split tools. The Split Tools may change from time-to-time, and Split will use commercially reasonable efforts to notify Customer if material changes occur.

1.7 Customer Data.

Customer is solely responsible for Customer Data including, but not limited to: (a) compliance with all applicable laws and this Agreement; (b) any claims relating to Customer Data; (c) any claims that Customer Data infringes, misappropriates, or otherwise violates the rights of any third party; and (d) backing up and maintaining Customer Data. Customer hereby grants to Split a limited, worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, electronically distribute, display, store, and make derivative works of Customer Data in order to analyze such Customer Data in connection with the Service and any support or consultation services. Notwithstanding anything to the contrary, Customer acknowledges and agrees that Split may generate Aggregated Data, and freely use and make available Aggregated De-identified Data for Split's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing Split's products and services). **"Aggregated Data"** means Customer Data submitted to, collected by, or generated by Split in connection with Customer's use of the Service, but only in aggregate form which is not linked specifically to Customer or any individual. For purposes of this Agreement, **"Customer Data"** shall mean any data, information or other material provided other than Personal Information, uploaded, or submitted by Customer to the Service in the course of using the Service. Customer, not Split, shall have sole responsibility for the accuracy, integrity, and appropriateness of all Customer Data. Split is not responsible to Customer for unauthorized access to

Customer Data or the unauthorized use of the Service. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service, even if Customer did not authorize such use. Customer agrees and acknowledges that Customer Data may be irretrievably deleted if Customer's account is terminated.

Each party will comply with its obligations under Applicable Privacy Law and all applicable privacy notices when processing any information relating to an identified or identifiable natural person unless otherwise defined in Applicable Privacy Law ("**Personal Information**") under this Agreement. "**Applicable Privacy Law**" means all data protection and privacy laws applicable to the processing of Personal Information under the Agreement, including, where applicable, EU Data Protection Law. "**EU Data Protection Law**" means all applicable EU data protection and privacy laws, including (i) prior to 25 May 2018, the EU Data Protection Directive 95/46/EC and, on and after 25 May 2018, the General Data Protection Regulation 2016/679; (ii) the Privacy and Electronic Communications Directive 2002/58/EC; and (iii) any other European Union or EU Member State laws made under or pursuant to (i) and (ii); in each case as such laws may be amended or superseded from time to time.

In respect of any Personal Information that Customer discloses directly to Split, Customer will ensure that any such disclosure is in compliance with Applicable Privacy

Laws and that it has all lawfully-required consents (if necessary) to make such disclosure. If Split receives any correspondence, enquiry or complaint from a data subject, regulator or any other person relating to its processing of Personal Information, it will promptly inform Customer and provide it with full details of the same. It will not respond to such correspondence, enquiry or complaint unless authorized by Customer (such permission not to be unreasonably withheld or delayed), and Customer agrees that Split will have no obligation to respond on Customer's behalf. Nothing in the Agreement shall limit or prevent Split from collecting or using data (including Personal Information) that Split would otherwise collect and process independently of Customer's use of the Services.

To the extent Personal Information processed by Split under this Agreement is protected by EU Data Protection Law (and/or originates from United Kingdom or Switzerland) the parties agree to execute a separate Data Processing Agreement that will govern the processing of such Personal Information.

1.8 Uptime and Support.

Subject to Customer's payment of the corresponding fees, Split will use commercially reasonable efforts to make the Service available to Customer at least 99.9% of the time during each month during the applicable Service Order period, excluding downtime attributable to any scheduled maintenance (the "**SLA**"). Customer may terminate the

corresponding Service Order if: the Service does not meet the SLA for two (2) consecutive months (an “**SLA Claim**”); Customer provides Split with all information necessary to support the SLA Claim; and Customer provides Split with written notice of termination within thirty (30) days of the date of the occurrence of the SLA Claim. In addition, Split will use commercially reasonable efforts to make the Split support services as specified in the corresponding Service Order available to Customer (the “**Split Support**”).

1.9 Service Suspension.

Split may suspend Customer’s access to or use of the Service as follows: (a) immediately if Split reasonably believes Customer’s use of the Service may pose a security risk to or may adversely impact the Service; (b) immediately if Customer become insolvent, has ceased to operate in the ordinary course, made an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (c) following thirty (30) days written notice if Customer is in breach of this Agreement or any Service Order (and has not cured such breach, if curable, within the thirty (30) days of such notice); or (d) Customer has failed to pay Split the Fees with respect to the Service. If any amount owing by Customer is thirty (30) or more days overdue (or 10 or more days overdue in the case of invoices to be paid by credit card), Split may, without limiting any rights and remedies, accelerate Customer’s

unpaid fee obligations to become immediately due and payable, and suspend the provision of the Service to Customer until the overdue amounts are paid in full. Split will give Customer at least ten (10) days' prior notice that its account is overdue before suspending services to Customer due to overdue amounts.

2. FEES AND TAXES

2.1 Fees.

Customer shall pay to Split the fees as set forth in each applicable Service Order(s) (collectively, the "Fees") and will provide accurate and updated billing contact information. Minimum commitments as set forth in Service Orders are (a) based on the Service purchased and not actual usage; (b) non-cancelable; and (c) cannot be decreased during the specified term set forth in such Service Order. Fees paid for minimum commitments and actual usage are not refundable. Customer's payments of Fees are neither (x) contingent on the delivery of any future functionality or features, nor (y) dependent on statements not set forth in this Agreement.

2.2 Invoicing Terms.

If the Service Order specifies that payment will occur by a method other than a credit card, Customer shall provide a purchase order number in the applicable amount (or reasonable alternative proof of Customer's ability to pay

the fees specified in a Service Order), and promptly notify Split of any changes necessary for payment of an invoice. Split will invoice Customer either monthly or according to the billing frequency stated in the Service Order. Invoices to be paid by credit card are due on the invoice date, all other invoices are due pursuant to the corresponding Service Order. If any invoiced amount is not received by Split by the due date, then without limiting Split's rights or remedies: (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and (b) Split may condition future renewals and Service Orders on shorter payment terms. If Customer is paying for the Service by credit card, Customer will provide Split with valid credit card information and promptly notify Split of any changes necessary to charge the credit card. The provision of credit card information to Split authorizes Split to charge the credit card for the Service(s) specified in a Service Order, and any renewal(s). If Split is required to initiate legal action due to nonpayment of fees, Customer shall bear all costs resulting from the collection of such fees.

2.3 Taxes.

Any and all payments made to Split in accordance with this Agreement are exclusive of any taxes that might be assessed against Customer by any jurisdiction. Customer shall pay or reimburse Split for all value-added, sales, use, property and similar taxes; all customs duties, import fees,

stamp duties, license fees and similar charges; and all other mandatory payments to government agencies of whatever kind, except taxes imposed on the net or gross income of Split. All amounts payable to Split under this Agreement shall be without set-off and without deduction of any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation, value added tax, customs duty and withholding tax.

3. TERM AND TERMINATION

3.1 Term.

The term of this Agreement shall commence on the Effective and unless terminated earlier according to this Section 3, will end on the last day of the term specified in a last Service Order (the “**Term**”). Each Service Order will renew automatically at the end of the applicable term unless either party provides to the other advance written notice with respect to non-renewal at least thirty (30) days prior to the end of the then current term.

3.2 Termination.

This Agreement and the Service Orders hereunder may be terminated: (a) by either party if the other has materially breached this Agreement, within thirty (30) calendar days after written notice of such breach to the other party if the breach is remediable or immediately upon notice if the

breach is not remediable; or (b) by Split upon written notice to Customer if Customer (i) has made or attempted to make any assignment for the benefit of its creditors or any compositions with creditors, (ii) has any action or proceedings under any bankruptcy or insolvency laws taken by or against it which have not been dismissed within sixty (60) days, (iii) has effected a compulsory or voluntary liquidation or dissolution, or (iv) has undergone the occurrence of any event analogous to any of the foregoing under the law of any jurisdiction.

3.3 Effect of Termination.

Upon any expiration or termination of this Agreement, Customer shall (i) immediately cease use of the Service, and (ii) return all Split Confidential Information and other materials and information provided by Split. Any termination or expiration shall not relieve Customer of its obligation to pay all Fees accruing prior to termination. If the Agreement is terminated due to Section 3.2 (a), Customer shall pay to Split all Fees set forth in the corresponding Service Order(s).

3.4 Survival.

The following provisions will survive termination of this Agreement: Sections 1.4 (Ownership), 3.3 (Effect of Termination), Section 3.4 (Survival), Section 4 (Confidentiality), Section 7 (Limitation of Liability), Section 8 (Miscellaneous).

4. CONFIDENTIALITY

During the term of this Agreement, either party may provide the other party with confidential and/or proprietary materials and information (“**Confidential Information**”). All materials and information provided by the disclosing party and identified at the time of disclosure as “Confidential” or bearing a similar legend, and all other information that the receiving party reasonably should have known was the Confidential Information of the disclosing party, shall be considered Confidential Information. This Agreement is Confidential Information, and all pricing terms are Split Confidential Information. The receiving party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of the disclosing party. The receiving party will only use the Confidential Information internally for the purposes contemplated hereunder. The obligations in this Section shall not apply to any information that: (a) is made generally available to the public without breach of this Agreement, (b) is developed by the receiving party independently from and without reference to the Confidential Information, (c) is disclosed to the receiving party by a third party without restriction, or (d) was in the receiving party’s lawful possession prior to the disclosure and was not obtained by the receiving party either directly or indirectly from the disclosing party. The receiving party may disclose Confidential Information as required by law

or court order; provided that, the receiving party provides the disclosing with prompt written notice thereof and uses the receiving party's best efforts to limit disclosure. At any time, upon the disclosing party's written request, the receiving party shall return to the disclosing party all disclosing party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof.

5. INDEMNIFICATION

5.1 Indemnification by Customer.

Customer will defend, indemnify, and hold Split, its affiliates, suppliers and licensors harmless and each of their respective officers, directors, employees and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim with respect to: (a) Customer Data; (b) breach of this Agreement or violation of applicable law by Customer; or (c) alleged infringement or misappropriation of third-party's intellectual property rights resulting from Customer Data.

5.2 Indemnification by Split.

Split will defend, indemnify, and hold Customer harmless from and against any third party claims, damages, losses, liabilities, costs, and expenses (including reasonable

attorneys' fees) arising from claims by a third party that Customer's use of the Service directly infringes or misappropriates a third party's United States (or Berne Convention signatory country) intellectual property rights (an "**Infringement Claim**"). Notwithstanding any other provision in this Agreement, Split shall have no obligation to indemnify or reimburse Customer with respect to any Infringement Claim to the extent arising from: (a) the combination of any Customer Data with the Service; (b) the combination of any products or services, other than those provided by Split to Customer under this Agreement, with the Service; or (c) non-discretionary designs or specifications provided to Split by Customer that caused such Infringement Claim. Customer agrees to reimburse Split for any and all damages, losses, costs and expenses incurred as a result of any of the foregoing actions.

5.3 Notice of Claim and Indemnity Procedure.

In the event of a claim for which a party seeks indemnity or reimbursement under this Section 5 (each an "**Indemnified Party**") and as conditions of the indemnity, the Indemnified Party shall: (a) notify the indemnifying party in writing as soon as practicable, but in no event later than thirty (30) days after receipt of such claim, together with such further information as is necessary for the indemnifying party to evaluate such claim; and (b) the Indemnified Party allows the indemnifying party to assume full control of the defense of the claim, including retaining counsel of its own choosing. Upon the assumption by the

indemnifying party of the defense of a claim with counsel of its choosing, the indemnifying party will not be liable for the fees and expenses of additional counsel retained by any Indemnified Party. The Indemnified Party shall cooperate with the indemnifying party in the defense of any such claim. Notwithstanding the foregoing provisions, the indemnifying party shall have no obligation to indemnify or reimburse for any losses, damages, costs, disbursements, expenses, settlement liability of a claim or other sums paid by any Indemnified Party voluntarily, and without the indemnifying party's prior written consent, to settle a claim. Subject to the maximum liability set forth in Section 7, the provisions of this Section 5 constitute the entire understanding of the parties regarding each party's respective liability under this Section 5, including but not limited to Infringement Claims (including related claims for breach of warranty) and each party's sole obligation to indemnify and reimburse any Indemnified Party.

6. WARRANTY

6.1 Warranty.

The Service, when used by Customer in accordance with the provisions of this Agreement and in compliance with the applicable Documentation, will perform, in all material respects, the functions described in the Documentation during the Term.

6.2 Exclusive Remedies.

Customer shall report to Split, pursuant to the notice provision of this Agreement, any breach of the warranties set forth in this Section 6. In the event of a breach of warranty by Split under this Agreement, Customer's sole and exclusive remedy, and Split's entire liability, shall be prompt correction of any material non-conformance in order to minimize any material adverse effect on Customer's business.

6.3 Disclaimer of Warranty.

Split does not represent or warrant that the operation of the Service (or any portion thereof) will be uninterrupted or error free, or that the Service (or any portion thereof) will operate in combination with other hardware, software, systems or data not provided by Split, except as expressly specified in the applicable Documentation. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1, SPLIT MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICE OR SERVICES, OR THEIR CONDITION. SPLIT IS FURNISHING THE WARRANTIES SET FORTH IN SECTION 6.1 IN LIEU OF, AND SPLIT HEREBY EXPRESSLY EXCLUDES, ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, WHETHER UNDER COMMON LAW, STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, SATISFACTORY QUALITY OR
NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

7. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL SPLIT BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. SPLIT'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM.

8. MISCELLANEOUS

8.1 Export Control.

Customer hereby certifies that Customer will comply with all current US Export Control laws. Customer agrees to defend, indemnify and hold Split harmless from any liability for Customer's violation of U.S. Export Control laws.

8.2 Compliance with Laws.

Customer shall comply with all applicable laws and regulations in its use of any Service, including without limitation the unlawful gathering or collecting, or assisting in the gathering or collecting of information in violation of any privacy laws or regulations. Customer shall, at its own expense, defend, indemnify and hold harmless Split from and against any and all claims, losses, liabilities, damages, judgments, government or federal sanctions, costs and expenses (including attorneys' fees) incurred by Split arising from any claim or assertion by any third party of violation of privacy laws or regulations by Customer or any of its agents, officers, directors or employees.

8.3 Assignment.

Neither party may transfer and assign its rights and obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Split may transfer and assign its rights under this Agreement without consent from the other party in connection with a change in control, acquisition or sale of all or substantially all of its assets.

8.4 Force Majeure.

Neither party shall be responsible for failure or delay in performance by events out of their reasonable control, including but not limited to, acts of God, Internet outage, terrorism, war, fires, earthquakes and other disasters (each a “**Force Majeure**”). Notwithstanding the foregoing:

(i) Customer shall be liable for payment obligations for Service rendered; and (ii) if a Force Majeure continues for more than thirty (30) days, either party may terminate this agreement by written notice to the other party.

8.5 Notice.

All notices between the parties shall be in writing and shall be deemed to have been given if personally delivered or sent by registered or certified mail (return receipt), or by recognized courier service.

8.6 No Agency.

Both parties agree that no agency, partnership, joint venture, or employment is created as a result of this Agreement. Customer does not have any authority of any kind to bind Split.

8.7 Governing Law.

This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of laws provisions. The federal courts of the United States in the Northern District of California and the state courts of the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to

the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any Purchase Order issued under this Agreement.

8.8 Publicity.

Customer hereby grants Split the right to identify Customer as a Split Customer, and use Customer's name, mark and/or logo on Split's website and/or in Split's marketing materials with respect to the same. In addition, Customer agrees to participate in certain publicity activity, such as a case study, customer quote, and joint press release all as further described in the corresponding Service Order.

8.9 Updated Agreement.

Split reserves the right to update this Agreement at any time. The terms and conditions of the updated version of the Agreement shall apply to all Service Orders placed following the date of publication of the updated version on Split's website at the following URL: www.split.io. If Customer does not agree with any terms of the updated Agreement, Customer may not use or access the Service in any manner.

8.10 Entire Agreement.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Any term or provision of this Agreement held to be illegal or unenforceable shall be, to the fullest extent possible, interpreted so as to be construed as valid, but in any event the validity or enforceability of the remainder hereof shall not be affected. In the event of a conflict between this Agreement and the Service Order document, the terms of this Agreement shall control.