

IFEL GrowSpace Terms and Conditions (“Agreement”)

1. License. As an IFEL GrowSpace Member, IFEL hereby grants to you, and you hereby accept from IFEL, a revocable, non-transferable, and non-exclusive license to use space located within the space designated as GrowSpace (the “Premises”) (or such substitute premises as 550 Broad Street, L.P. may require) (except such legal holidays as may be identified by 550 Broad Street, L.P.) during the Term (as hereinafter defined). You have a license to use shared space in common with IFEL and other IFEL members. You agree to pay a Monthly Shared Space Fee (as hereinafter defined) for use of the Premises as per the level of membership purchased. Membership does not, and shall not be deemed to, provide you with a right to use or reserve any particular space within the Premises, regardless of any custom, practice, or course of dealing that may arise between the parties or between the parties and other IFEL members during the Term. Your license hereunder shall include the right to access the Premises via the Building’s common entrances, lobbies, stairs, elevators, and other common facilities, all without additional charge. This membership does not, and shall not be deemed to, constitute a lease or a conveyance of the Premises by IFEL to you, or to confer upon you any right, title, estate, or interest in the Premises. You shall have no right to assign this membership or any rights hereunder, including, without limitation, by operation of law, and any such purported assignment shall be null and void.

2. Utilities and Services.

2.1 Utilities.

(a) Heating or air-conditioning shall be furnished to the Premises from 8:00 a.m. to 6:00 p.m., Monday through Friday (except such legal holidays as may be identified by 550 Broad Street, L.P.) during the Term.

(b) Electric service shall be furnished to the Premises for purposes of lighting and the operation of ordinary business equipment (such as computers, fax machines, and photocopiers).

(c) Ordinary janitorial services shall be provided to the Premises, to the Building’s common entrances, lobbies, stairs, elevators, and other common facilities.

(d) Wireless internet and printer shall be provided to the Premises for purposes of accessing business-related e-mail accounts, internet websites, and related information and sending business-related correspondence, provided, however, that IFEL reserves the right to limit or eliminate your access to such wireless internet, copy machine and/or facsimile machine services in the event that you makes excessive use thereof or makes use thereof to send, receive, or otherwise access material deemed inappropriate by IFEL in its sole and absolute discretion.

(e) Notwithstanding anything to the contrary in this Section 2.1 or elsewhere in these Terms and Conditions, IFEL shall not be in default or breach of this Agreement, and there shall be no abatement of your Monthly Shared Space Fee or other compensation due from you to IFEL, nor shall this Agreement be affected or any of your obligations hereunder reduced, in the event of interruptions in heating, air-conditioning, and/or electric or janitorial services (a) beyond IFEL’s control, (b) necessary by reason of Force Majeure (as hereinafter defined),

emergency, repairs, alterations, replacements, or improvements, which, in the reasonable judgment of IFEL, are desirable or necessary to be made, (c) any Requirements (as hereinafter defined) or governmental standards relating to, among other things, energy conservation, or (d) failure of a third-party service or organization to provide such services to IFEL. In such event and if such failure to provide the applicable services continues for a period in excess of five (5) continuous business days and has a material adverse effect on the business operations of you, your sole remedy shall be to terminate your GrowSpace membership.

(f) In the event that you make excessive use of any heating, air-conditioning, or electrical or janitorial services provided hereunder (as determined by IFEL in its reasonable discretion), the costs of such excessive use shall be borne by you and paid to IFEL, or such other party as IFEL may designate in writing, within fifteen (15) days following the date on which IFEL provides you with a written invoice therefor.

(g) At this time, there is no parking made available to you by IFEL or by 550 Broad Street, L.P. In the event that parking is made available during the Term, any use of such parking by you shall be subject to the terms and conditions imposed by IFEL and, if applicable, 550 Broad Street, L.P., in the sole and absolute discretion of each.

2.2 Payments of the Monthly Shared Space Fee

(a) During the Term, you shall pay to IFEL the monthly shared space fee associated with the level of use (the "Monthly Shared Space Fee") which shall be paid by auto debit on or before the **25th** day of each month for the month following. If your shared space use commences on a day other than on the first day of a calendar month, the Monthly Shared Space Fee for any partial month within the Term shall be prorated.

(b) No payment by you or receipt and acceptance by IFEL of a lesser amount than the Monthly Shared Space Fee, Shared Services charges, or other charges payable hereunder shall be deemed to be other than part payment of the full amount then due and payable, nor shall any communication accompanying any payment of Shared Services charges or other charges be deemed an accord and satisfaction. IFEL may accept such part payment on account, without prejudice to IFEL's right to recover the balance due and payable or to pursue any other remedy provided according to these Terms and Conditions.

(c) In addition to any other rights or remedies of IFEL hereunder, any amount due to IFEL for GrowSpace membership that is not paid within five (5) days after the due date shall bear interest, at IFEL's option, at the rate of the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law, from the date due until paid in full. A fee of Thirty-Five Dollars (\$35.00) will be charged for checks returned for insufficient funds.

(d) Your obligation to pay any and all charges which have been accrued under these Terms and Conditions shall survive the expiration or termination of your GrowSpace membership.

3. Term. This term of this Agreement shall commence on the Effective Date and continue until for 12 months (the "Term") unless earlier terminated by IFEL in accordance with the terms of this Agreement. In the event that you desire to continue using space in the Premises after the Term, the Term shall thereafter continue until the earlier of termination by you upon thirty (30)

days' prior written notice to IFEL or termination by IFEL in accordance with the terms of this Agreement. The Monthly Shared Space Fee is subject to increase at IFEL's discretion following the initial Term. Notwithstanding any of the foregoing, this Agreement shall automatically terminate upon any expiration or earlier termination of that certain Lease Agreement between IFEL and 550 Broad Street, L.P. for the Premises.

4. Advance Payment of Last Month's Monthly Shared Space Fee. On or before the date of your first use of the Premises pursuant to this Agreement, you shall pay IFEL both your first and last month's Monthly Shared Space Fee.

5. Nature of Relationship. The parties hereby acknowledge and agree that this Agreement constitutes the granting of a license, not a lease, and that the relationship of the parties hereunder in respect to use of the Premises by you is that of licensor and licensee, and not that of landlord and tenant, partners, or joint venturers. As such, no leasehold interest or other right, title, or interest in or to the Premises is created or granted to you by reason of this Agreement or otherwise, and IFEL reserves the right to terminate this Agreement if you, in IFEL's reasonable discretion, no longer meets the criteria for membership. In no event shall this Agreement be an asset of you in any receivership, bankruptcy, insolvency, or reorganization proceeding.

6. Use of Premises.

6.1 You shall use the Premises solely for general office purposes to further your business objectives. you shall not use the Premises for any illicit or illegal purposes or any purpose that violates the certificate of occupancy issued for the Premises or the Building. you shall not use the Premises for any purpose that would invalidate or increase the cost of any fire, extended coverage, or other insurance policy covering the Premises, Building, and/or property located therein. you agrees to abide by IFEL's policies and regulations concerning the use of the Premises or any Shared Services. you shall ensure that its use of the Premises and your Property contained therein does not interfere, in any manner, with use of the Premises by other members of IFEL.

6.2 You shall be solely responsible for safeguarding and insuring its owned, leased, rented, or borrowed tools, equipment, machinery, supplies, or other personal property in the Premises (collectively, "your Property"). IFEL shall have no liability for loss or damage to you's Property, and you hereby waives any right of recovery against IFEL for any such loss or damage, regardless of cause.

6.3 You shall not damage, or allow any damage to be done to, the Premises, nor shall you maintain, commit, or permit the maintenance or commission of any waste or nuisance in the Premises, or use the Premises for any unlawful purpose.

6.4 You shall comply with any and all laws, ordinances, orders, and regulations of any governmental authority that are applicable to its use of the Premises or the conduct of its business.

6.5 You agree that IFEL, 550 Broad Street, L.P. and their respective officers, directors, employees, agents, contractors, and other representatives shall have the right to enter the Premises at all reasonable hours for the purpose of examining the same or for making such

repairs, improvements, or alterations therein as deemed necessary or advisable or as necessary for the safety and preservation thereof.

6.6 You shall not operate coin machines or retail operations on the Premises.

7. **Default and Remedies for Default.**

7.1 Default. The following shall constitute events of default under this Agreement:

(a) if you shall assign, transfer, encumber, or sublet its rights pursuant to this Agreement or otherwise permit the use of the Premises by others.

(b) if you shall default in the payment when due of its Monthly Shared Space Fee, Shared Services charges, or any other sums payable under this Agreement and such default shall continue for five (5) business days after IFEL gives you written notice of such nonpayment;

(c) if you shall default in the performance of or compliance with any of the terms of this Agreement other than those referred to in any of the other subparagraphs in this Section and such default shall continue for a period of ten (10) days after IFEL gives you written notice thereof, or if the default cannot be cured within such ten (10) day period, you fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such ten (10) day period to continue with reasonable diligence all necessary curative actions;

(d) if you shall fail to obtain and maintain any insurance required under this Agreement;

(e) if you or any guarantor of your obligations under this Agreement (each, if any, a "Guarantor") shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver, or liquidator of itself or of all or any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay debts generally as they become due;

(f) if a petition shall be filed against you or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation and shall not be dismissed or vacated within thirty (30) days from the date of such filing, or if in connection with any such event any trustee, receiver, or liquidator of you or such Guarantor or of all or any substantial part of any of your or such Guarantor's property, shall be appointed without its consent or acquiescence and such appointment shall not be dismissed or vacated within thirty (30) days following such institution or appointment; or

(g) you make, or have made, or furnishes, or has furnished, any warranty, representation or statement to IFEL in connection with this Agreement, or any other agreement

to which you and IFEL are parties, which is or was knowingly false or intentionally misleading in any material respect when made or furnished.

7.2 Remedies. In the event of a default under this Agreement, IFEL shall have the right to terminate this Agreement, upon three (3) days' prior written notice, without further action on the part of IFEL and without prejudice to its right to recover from you all membership fees, Shared Space Fees, Shared Services charges, and any other sums due hereunder and unpaid up to the date of the termination, and you immediately shall quit the Premises, removing all your Property therefrom, but shall remain liable for damages as provided herein or pursuant to law.

7.3 Remedies Cumulative. All rights and remedies of IFEL hereunder shall be cumulative, and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

8. **Holdover.** If this Agreement expires or is earlier terminated for any reason, you shall vacate the Premises by the expiration date or the date provided in the notice of termination, as the case may be. For each day that you continue to use the Premises beyond such date, you shall be liable for an amount equal to its Monthly Shared Space Fee. You shall also be liable for all costs, legal and otherwise, incurred by IFEL in facilitating your vacating the Premises.

9. **Insurance.**

9.1 You shall obtain and maintain at its sole cost and expense, throughout the Term of this Agreement and for a period of two (2) years thereafter, for the mutual benefit of IFEL and you:

(a) Workers' Compensation insurance in accordance with New Jersey statutory limits;

(b) Employer's Liability insurance, including all occupational diseases, having a minimum limit of at least Five Hundred Thousand Dollars (\$250,000.00) per employee/accident;

(c) Commercial General Liability insurance, including premises, completed operations, products liability, contractual liability, and property damage coverage, against claims for personal injury, death, property damage, and property destruction, having minimum limits of at least One Million Dollars (\$1,000,000.00), combined single limit, per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate;

(d) Fire legal liability insurance having a minimum limits of at least One Hundred Thousand Dollars (\$100,000.00) to cover you's Property in the Premises; and

(e) Personal property insurance covering your Property in the Premises, you hereby acknowledging that IFEL will not carry insurance on your Property.

Notwithstanding any of the foregoing, IFEL shall have the right, in its reasonable discretion, from time to time during the Term, to require you to carry greater amounts of insurance than set forth above.

9.2 You shall not use the Premises until IFEL has been provided with certificates for all required insurances, which certificates shall identify IFEL and 550 Broad Street, L.P. (and, if IFEL requests, 550 Broad Street, L.P.'s mortgagee(s), if any) as additional insureds (except with respect to your Workers' Compensation insurance), provide for thirty (30) days' prior notice to IFEL and 550 Broad Street, L.P. of any cancellation and/or termination of the subject policies, and state that such insurance is primary to all other available coverages. It is expressly understood and agreed by you that failure to obtain the necessary certificate(s) of insurance identifying IFEL and 550 Broad Street, L.P. (and, if IFEL requests, 550 Broad Street, L.P.'s mortgagee(s), if any) as additional insureds, and not merely certificate holders, shall constitute a material breach of this Agreement. All required insurance coverages shall be written in a form reasonably satisfactory to IFEL, by a good and solvent insurance company of recognized standing that is admitted to do business in the State of New Jersey and reasonably satisfactory to IFEL. Any deductible in excess of Ten Thousand Dollars (\$10,000.00) shall be subject to the prior written approval by IFEL.

10. Non-Liability of IFEL; Release; Indemnification.

10.1 As-Is; Assumption of Risk. You shall use the Premises in its current "AS IS" condition. Use of the Premises by you shall be at your sole risk, cost, and expense, and you hereby expressly assumes all risks of loss, by theft or otherwise, in or about the Premises and hereby waives, for itself and its successors, permitted assigns, officers, employees, agents, contractors, representatives, and invitees, any right to make a claim against IFEL arising out of any loss of or damage to your Property or the property of any such successor, assign, officer, employee, agents, contractor, representative or invitee. IFEL and its officers, directors, members, employees, agents, contractors, representatives, and invitees shall not be liable for any personal injury, death, property damage, property destruction, or other loss to persons or property occurring in or about the Premises caused by the use, negligence or misconduct of you, other members of IFEL, other tenants of the Building, 550 Broad Street, L.P. or their respective officers, employees, agents, contractors, representatives, or invitees.

10.2 Release. IN ORDER TO INDUCE IFEL TO PERMIT YOU TO USE THE PREMISES AS SET FORTH IN THIS AGREEMENT, YOU, ON BEHALF OF ITSELF AND ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES, AND INVITEES HEREBY EXPRESSLY **RELEASES AND FOREVER DISCHARGES** IFEL AND ITS OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONTRACTORS FROM ANY AND ALL LOSSES, COSTS, EXPENSES, DEMANDS, ACTIONS, SUITS, CLAIMS, OBLIGATIONS, OR LIABILITIES OF WHATSOEVER NATURE, ARISING OUT OF OR IN CONNECTION WITH THE USE OF, AND/OR PRESENCE IN OR ABOUT THE PREMISES BY YOU AND ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES, AND INVITEES.

10.3 Indemnification. You shall indemnify, hold harmless, and defend (with counsel reasonably satisfactory to IFEL) IFEL, its officers, directors, members, employees, agents, contractors, representatives, and invitees from and against any and all liens, losses, costs, expenses, demands, actions, suits, claims, obligations, or liabilities of whatsoever nature, including without limitation attorney's fees and expenses, resulting from any injury or death to any person or any property damage or destruction arising out of or in any way related to (a) your

use of or presence in or about the Premises; (b) any failure of the you to comply with any of its covenants or obligations under this Agreement or the Requirements; and (c) any other action or omission of you and its officers, employees, agents, contractors, representatives, and invitees.

10.4 Not Limited by Insurance. Your obligations, indemnities, and liabilities hereunder shall not be limited by the amounts of any insurance coverage required of you pursuant to this Agreement. IFEL makes no representation that the insurance coverage limits required to be carried by you hereunder are adequate to protect you against your undertakings under this Section 10. In the event that you believes that any such insurance coverage is insufficient, you may provide, at its own expense, such additional insurance as you deems adequate.

10.5 Survival. The obligations of you assumed in this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Care for the Premises.

11.1 You shall not make any alterations, additions, improvements, or changes to the Premises, including by means of attaching fixtures.

11.2 You shall remove any or all of your Property from the Premises if IFEL demands that you effect such removal. In the event that such removal is demanded, you shall repair any and all resulting damages to the Premises and restore the Premises to the condition in which they were prior thereto.

11.3 You shall not use the Premises for any purpose that would qualify the Premises as an "Industrial Establishment" under the Industrial Site Recovery Act, N.J.S.A. 13:1k-6 et seq. ("ISRA"), and you shall not bring into or store or dispose at the Premises flammable materials, hazardous materials, controlled substances or other materials or substances that a reasonable person would consider to be dangerous or poisonous (collectively, "Prohibited Materials") without the prior written consent of IFEL. If IFEL so consents and you brings into or stores or disposes at the Premises Prohibited Materials, you shall be solely and strictly liable for all losses, costs, expenses, demands, actions, suits, claims, obligations, or liabilities arising out of or in connection with the presence of any such Prohibited Materials on the Premises, in the common areas or elsewhere.

11.4 In the event that the Premises, the Building, or any equipment or other personal property therein or thereat is damaged or destroyed by you or its officers, employees, agents, contractors, or invitees, you shall be responsible any and all replacement or repair costs with respect thereto. In the event that any repair or normal maintenance is required in the Premises, you shall notify IFEL, which is the only entity authorized to arrange for such repair or maintenance. The cost for any unauthorized repair or maintenance ordered by you shall be borne solely by you.

12. Damage or Destruction of the Premises. If, during the Term of this Agreement, the Premises or the Building is so damaged by fire or other casualty that the Premises are rendered unfit for use and cannot be repaired within two hundred seventy (270) days following the casualty, you shall have the option to terminate this Agreement from the date of such casualty by

giving thirty (30) days' advance written notice, with any such notice by you to be given within ten (10) days following receipt of IFEL's notice that the Premises cannot be repaired within two hundred seventy (270) days. If the damage is such that the Premises can be repaired within such two hundred seventy (270) days, this Agreement shall remain in full force and effect except that use of the Premises shall be suspended, in part or whole as appropriate, while the repairs are being made. Neither IFEL nor 550 Broad Street, L.P. shall in no event be obligated to make any repairs or replacement of any of your Property.

13. Subordination. This Agreement shall be subject and subordinate at all times to the lien of any mortgage or encumbrances which may now or which may at any time hereafter be made a lien upon the Premises and/or the Building. Within ten (10) days of any request therefore, you shall execute and deliver such further instrument or instruments subordinating this Agreement to the lien of any such mortgage or encumbrance as shall be desired by any mortgagee or party secured or proposed mortgagee or party proposed to be secured, and you hereby appoints IFEL the attorney-in-fact of you, irrevocably, to execute and deliver any such instrument or instruments in the event that you fails to do so.

14. Compliance with Requirements

14.1. You shall comply with all applicable IFEL and 550 Broad Street, L.P. rules and regulations, all applicable federal, state, and local laws, ordinances, codes, rules, permits, licensing conditions, and regulations, including any amendments thereto, all requirements imposed by the fire or liability insurance carriers providing insurance for the Premises and/or the Building, and all requirements of the Board of Fire Underwriters, (collectively, the "Requirements"), in its use of the Premises, including those regarding the handling, release, and disposal of hazardous substances, and shall obtain any and all licenses, permits, insurance, and government approvals necessary for the operation of its business.

14.2 You covenant and agree that it will not commit any nuisance or waste in the Premises nor permit the emission of any objectionable sound, noise or odors in or from the Premises, including any which may be violative of any applicable governmental rule or regulation or would per se create a nuisance.

14.3 In case you shall fail or neglect to comply with the Requirements or with Section 14.2 above, IFEL shall have the right to take all necessary action in order to ensure such compliance at the cost and expense of you. This provision is in addition to the right of IFEL to terminate this Agreement by reason of any default on the part of you in the manner provided for herein.

15. Force Majeure. This Agreement and the obligations of you to pay Shared Services charges hereunder or to comply with all of its other obligations hereunder, shall not be affected, impaired or excused because of IFEL's failure to comply with any of its obligations hereunder, or IFEL's failure to make any repair, replacement, or alteration to the Premises, if IFEL is prevented from so doing by reason of accident, emergency, strike, labor troubles, material shortages, riots, acts of God, or any other cause reasonably outside of IFEL's control, including without limitation governmental preemption in connection with a national emergency, any rule, order, or regulation of any department or subdivision of any government agency, or conditions of supply and demand which are affected by war or any other emergency (collectively, "Force Majeure"). The time

given to IFEL to comply with any obligation under this Agreement shall be extended for the period of time equal to the period of delay resulting from any Force Majeure.

16. Employee Non-compete. During the Term and for a period of six (6) months thereafter, you shall not solicit for hire, or knowingly allow any of its officers, employees, agents, or representatives to solicit for hire, any employee(s) of IFEL or any other IFEL member without the express written permission of the relevant IFEL member.

17. Use of and Access to the Premises by IFEL and 550 Broad Street, L.P. IFEL and its officers, directors, employees, agents, contractors, representatives, and invitees shall have the right to use the Premises at any time, provided, however, that, in the exercise of these rights, IFEL shall not unreasonably interfere with use of the Premises by you in accordance with these Terms and Conditions. IFEL and 550 Broad Street, L.P. shall also have the right at any and all times to enter the Premises to inspect the same, to supply janitor service and any other service to be provided hereunder, to show said Premises to prospective purchasers, mortgagees, or tenants, or to alter or repair the Premises or any portion of the Building.

18. Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision of this Agreement.

19. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and delivered by registered mail with return receipt requested or by recognized overnight courier or facsimile transmission providing proof of receipt, addressed to IFEL at 550 Broad Street, 15th floor, Newark, New Jersey 07102, Attention: Jill Johnson and to you at the address provided by you during the intake process. Either party may specify a different address or additional parties for notice purposes by providing written notice to the other party pursuant to this Section 19.

20. Waivers. No provision of this Agreement shall be waived by either party except by a writing signed by the party against whom the waiver is sought to be enforced. The waiver by either party of any breach of any provisions of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision of this Agreement.

21. Binding Effect; Modification. This Agreement shall bind the parties hereto and their respective successors and permitted assigns. This Agreement may not be modified or amended in any respect whatsoever unless such modification is reduced to writing and signed by each of the parties.

22. Choice of Law. This Agreement shall be governed by the laws of the State of New Jersey, without regard to such State's choice of law requirements.

23. Entire Agreement. The terms of this Agreement (including, without limitation, the Exhibits hereto) are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding, or negotiation (whether oral or written). The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial

proceeding involving this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against any party by reason of such party having drafted such language.

24. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

23. Authority. You represent, warrant, and covenant that: (i) it is a business entity duly organized, validly existing and in good standing under the laws of the State of New Jersey; (ii) it has the full corporate power and authority to comply with this Agreement; (iii) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action; (iv) this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms (subject to bankruptcy, creditors' rights, and general principles of equity); (v) there are no judicial or administrative actions, proceedings, or investigations pending or threatened against it that would question the validity of this Agreement or any action taken by it in connection with this Agreement; and (vi) there is no litigation, proceeding or governmental investigation pending or threatened, or any order, injunction, or decree outstanding against it that, if adversely determined, would have a material adverse effect upon its ability to perform its obligations under this Agreement.