

## NORALIS

### End User License Agreement & Terms Governing Use

Last Revised: January, 2020

#### Terms

PLEASE READ THE FOLLOWING TERMS CAREFULLY BECAUSE, BY ACCESSING NORALIS.COM OR DOWNLOADING, INSTALLING AND USING SERVICES AVAILABLE ON NORALIS.COM, YOU ACCEPT AND AGREE TO THEM. PLEASE ALSO READ OUR [PRIVACY POLICY](#) TO LEARN HOW WE COLLECT AND USE INFORMATION.

#### Welcome to NORALIS!

These NORALIS Service Terms (these “*Terms*”) explain the relationship between Noralis, Inc. (“*Noralis*”, “*we*” or “*us*”) and you when you (i) access and use noralis.com software, applications, and its related domains (together, the “*Site*”) and/or (ii) download, install, use and in some cases purchase Noralis’ proprietary software applications (including all related documentation, updates and upgrades) and any other services offered through the Site (collectively, the “*Noralis Services*”).

These Terms govern visitors’ access to and use of the public areas of the Site, as well as access to and use of the Noralis Services. Unless otherwise indicated, “*Noralis Services*” as used throughout these Terms includes the public areas and the Noralis Services. For the purposes of these Terms, “*you*” or “*your*” refers to you as a visitor to or registered user of the Noralis Services.

THESE TERMS, TOGETHER WITH OUR PRIVACY POLICY, FORM AN AGREEMENT BETWEEN YOU AND NORALIS . BY USING THE NORALIS SERVICES, YOU REPRESENT TO US THAT YOU ARE LEGALLY COMPETENT TO ENTER INTO THIS AGREEMENT. IF YOU ARE USING THE NORALIS SERVICES ON BEHALF OF YOUR EMPLOYER, YOUR ACCEPTANCE OF THESE TERMS IS DEEMED AN AGREEMENT BETWEEN YOUR EMPLOYER AND NORALIS AND YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO BIND YOUR EMPLOYER TO THESE TERMS.

#### License Grant.

The Noralis Services are owned by Noralis and are licensed, not sold, to you. Subject to your payment of all applicable fees, Noralis grants to you a personal, nonexclusive, nontransferable, limited license (without the right to sublicense) to access and use the Noralis Services and Site and to access, download, install and use the Noralis Services subject to the limitations set forth in these Terms, any relevant purchase order or ordering document related to the Noralis Services (“*Order Form*”) and any and all other terms and policies set forth in the Noralis Services. You acknowledge that the source code for the Noralis Services and other trade secrets embodied in the Noralis Services have not been and will not be licensed or otherwise disclosed to you. All rights not expressly granted herein are reserved by Noralis.

#### Use of Noralis Services.

#### Registration

Unless you are visiting only the public areas of the Site, you are required to register and create an account to use the Noralis Services (“*Account*”). You agree that you will maintain and update your registration and account information to ensure it is current, complete and accurate and that we have the right to terminate your Account and use of the Noralis Services if you provide untrue, incomplete or inaccurate information.

## Your Responsibilities

- i. You are responsible for providing the equipment and services that you need to access, download, install and use the Noralis Services. Noralis does not guarantee that the Noralis Services are accessible on any particular equipment or device or with any particular software or service plan.
- ii. You are responsible for all activities that occur through your Account, whether or not authorized by you. Please do not share your Account or any of its information with any other person.
- iii. You must at all times when using the Noralis Services comply with the terms of this Agreement.
- iv. You will use the Noralis Services only for your internal business purposes and in accordance with applicable laws, rules and regulations. You are responsible for all of your activities that occur within, through or as a result of your use of the Noralis Services. You agree that you will not use the Noralis Services for unlawful purposes or to engage in any illegal, offensive, indecent or objectionable conduct, including violation of any third party privacy or other rights. You agree that you will not use the Noralis Services if you are under the age of majority in your place of residence or otherwise not fully able and competent to agree to these Terms.
- v. If you use the Noralis Services on your mobile device, you are solely responsible for all message and data fees charged by your wireless service provider. Please contact your mobile service provider for pricing plans and details. Noralis is not liable for any delays, interruptions or other transmission errors related to your device, service or wireless service provider.
- vi. Except as specifically permitted in these Terms or expressly authorized in writing by Noralis, you agree that you will not directly or indirectly: (a) distribute, sell, assign, encumber, transfer, rent, lease, sublicense, modify or time-share the Noralis Services; (b) use any of the Noralis Services in any service bureau arrangement or on behalf of any third party; (c) reproduce, adapt, create derivative works of, translate, localize, port or otherwise modify any of the Noralis Services; or (d) permit any third party to engage in any of the acts described in clauses (a) through (c).
- vii. You are not permitted to: (a) remove or alter any copyright, trademark, patent or other proprietary rights' notice or restrictive rights legend contained or included in any of the Noralis Services; (b) decompile, disassemble, reverse compile, reverse assemble, reverse translate or otherwise reverse engineer any of the Noralis Services; (c) use any means to discover the source code of the Noralis Services or to discover the trade secrets in the Noralis Services; (d) otherwise circumvent any functionality that controls access to or otherwise protects the Noralis Services; (e) use the Noralis Services beyond the scope of the license granted above; or (f) combine the Noralis Services or any part thereof with, or incorporate the Noralis Services or any part thereof in, any other programs.
- viii. You are responsible for complying with all laws, rules and regulations (including those relating to internet, data and email privacy) that apply to your use of the Noralis Services.

## Our Responsibilities:

Noralis is responsible for providing the Noralis Services in accordance with these Terms and all applicable laws, rules and regulations.

- i. We will maintain commercially reasonable administrative, physical and technical safeguards intended to protect the security, confidentiality and integrity of information that you provide to or through the Noralis Services (including Your Content as defined below).
- ii. Noralis reserves the right but is not obligated to improve, enhance or modify the Noralis Services. We will notify you in advance of changes to the Noralis Services that may significantly adversely affect the manner in which you use the Noralis Services or the manner in which the Noralis Services perform.
- iii. Noralis is not responsible for the content of Other Services or for losses, liabilities, actual or pending claims, actions, damages, expenses, costs of defense and reasonable attorneys' fees ("**Claims**") arising from your use of content, information, web sites, software, services and other materials of third parties with which you may interact when you use the Noralis Services (collectively, "**Other Services**"). **YOU ACCESS OTHER SERVICES ENTIRELY AT YOUR OWN RISK AND YOU ARE RESPONSIBLE FOR COMPLYING WITH TERMS AND CONDITIONS APPLICABLE TO YOUR ACCESS AND USE OF OTHER SERVICES.**

- iv. Availability: We use commercially reasonable efforts to make the Noralis Services available to you 24 hours per day, seven (7) days per week, excluding scheduled maintenance time, unavailability caused by you or any software, hardware or service not provided by us, emergency maintenance and/or any cause beyond our reasonable control (including without limitation natural disasters, wars, terrorist act, civil disturbances, acts of any government or agency thereof, strikes or other labor problems, Internet service or other third party service providers' failures or delays and systemic electrical, telecommunications or other utility outages or failures).
- v. Limitations: Noralis Services are subject to reasonable limitations and other limitations, as specified within the Noralis Services or the applicable Order Form(s).

#### **Your Content.**

The Noralis Services allow you to upload, transmit and use information and other content to and through the Noralis Services (collectively, "**Your Content**"). You are solely responsible for the accuracy, quality, legality and means by which you acquired Your Content. You understand that Noralis will use Your Content to provide the Noralis Services to you. You have or will obtain all rights necessary to provide Your Content to Noralis and you hereby grant Noralis a worldwide license to use, reproduce, transmit, display and adapt your Content as necessary for Noralis to provide the Noralis Services to you in accordance with these Terms.

- i. Without limiting the terms of our Privacy Policy, you understand that we do not guarantee that your use of the Noralis Services and/or Your Content will be private or secure and we are not responsible or liable to you for any lack of privacy or security that you may experience. Information collected by your internet or mobile service provider and other third parties is used, stored, transferred and disclosed pursuant to your internet or mobile service provider's or the third party's terms, policies and practices.
- ii. We encourage you to carefully consider disclosure of any information that might be accessible to others. You are fully responsible for taking precautions and providing security measures best suited for your situation and intended use of the Noralis Services.
- iii. You acknowledge that Noralis's license to Your Content permits Noralis to collect, store, and use, without payment or further condition, metadata, aggregated information, and metrics generated by the Noralis Services for any purpose. No other terms of such usage are agreed except as stated herein.

#### **Compliance Measures.**

- i. Noralis Services may contain technological copy protection or other security features designed to prevent unauthorized use of the Services, including features to protect against any prohibited use of the Noralis Services. You shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.
- ii. On Noralis' reasonable written request, You shall certify to Noralis in a written instrument signed by you that you are in full compliance with this Agreement or, if Licensee discovers any noncompliance, you shall immediately remedy such noncompliance and provide Noralis with written notice thereof. You shall provide Noralis with all access and assistance as Noralis requests to further evaluate and remedy such noncompliance.

#### **Fees.**

Should you purchase a Noralis Quarterly, Monthly or Annual Subscription directly through the site <https://noralis.com/> with a credit or debit card, you shall pay Noralis for the Noralis Services at the then-current rates as described at [noralis.com/pricing](https://noralis.com/pricing) ("**Fee Schedule**"). Noralis reserves the right to change the Fee Schedule upon thirty (30) days advance notice to you. Should your Noralis Quarterly, Monthly or Annual Subscription(s) have been purchased via a Master Services Agreement or Statement of Work, you shall pay Noralis for the Noralis Services at the rates as described in the applicable Master Services Agreement and/or Statement of Work.

- i. Noralis does not store, process or transmit any of your credit card data but relies entirely on third parties to handle these functions. You must comply with such third party's terms made available to you.
- ii. Your Noralis Services will not be activated until your first payment is received. Payments are due in accordance with the Fee Schedule annually or monthly in advance. Annual or monthly fees are automatically charged to the credit card that you provided when you registered for the Noralis Services. Additional Fees will be charged to you on a pro rata basis in the event that you add any additional licenses or seats or upgrade your Noralis Services during a Noralis Service subscription term.
- iii. If payment in full of any amount owed to Noralis under these Terms is not received by Noralis after such payment has become due, such amounts will thereafter bear interest at the rate 0.05% per day or the maximum rate permitted by applicable law, whichever is less. If any payment due Noralis is collected at law or through an attorney at law or under advice therefrom or through a collection agency, you agree to pay all costs of collection, including, without limitation, all court costs and reasonable attorneys' fees.

#### **Warranties.**

We warrant that we have validly entered into these Terms and have the legal power to do so. You warrant that (i) you have validly entered into these Terms and have the legal power to do so and (ii) you have all necessary rights, licenses, consents and permissions to use Your Content with the Noralis Services.

- i. THE NORALIS SERVICES ARE LICENSED "AS-IS," "WHERE IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR ALL RISK OF USING IT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NORALIS, ON BEHALF OF ITSELF AND ITS SERVICE PROVIDERS, ITS RESPECTIVE AFFILIATES, VENDORS, AGENTS, AND SUPPLIERS ("**DISTRIBUTORS**"), EXPRESSLY DISCLAIMS ALL WARRANTIES, GUARANTEES, OR CONDITIONS UNDER OR IN RELATION TO THE NORALIS SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS. NORALIS AND ALL DISTRIBUTORS EXCLUDE ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NORALIS DOES NOT WARRANT THAT (A) THE NORALIS SERVICES WILL MEET YOUR REQUIREMENTS, (B) OPERATION OF THE NORALIS SERVICES WILL BE UNINTERRUPTED OR VIRUS- OR ERROR-FREE, (C) THAT THE NORALIS SERVICES WILL OPERATE OR BE COMPATIBLE WITH ANY OTHER APPLICATIONS OR ANY PARTICULAR SYSTEMS OR DEVICES, (D) DEFECTS IN THE NORALIS SERVICES WILL BE CORRECTED OR (E) THAT THE NORALIS SERVICES WILL BE AVAILABLE FOR REINSTALLS ON THE SAME OR MULTIPLE DEVICES. ANY ORAL OR WRITTEN ADVICE PROVIDED BY NORALIS OR ITS AUTHORIZED AGENTS WILL NOT BE DEEMED TO CREATE ANY WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO SOME OR ALL OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### **Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NORALIS' LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THE DELIVERY, USE OR PERFORMANCE OF THE NORALIS SERVICES OR THESE TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT; PROVIDED THAT IN NO EVENT SHALL NORALIS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING LIMITATION WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS.

- i. IN NO EVENT WILL NORALIS BE LIABLE TO YOU OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO: COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, GOODWILL, OR PROFITS; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; AND BUSINESS INTERRUPTION), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE NORALIS SERVICES OR THESE TERMS AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF NORALIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING DISCLAIMER OF LIABILITY WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. YOU AGREE NOT TO SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM ANY DISTRIBUTOR.
- ii. You agree that the above limitations of liability, together with the other provisions in these Terms that limit liability, are essential terms of these Terms and that Noralis would not be willing to grant you the rights set forth in these Terms but for your agreement to these limitations of liability.

#### **Ownership.**

The Noralis Services, including the “look and feel” (e.g., text, graphics, images, logos), content and other material, are protected under copyright, trademark and other laws. You acknowledge and agree that Noralis owns all right, title and interest in and to the Noralis Services (including without limitation any and all patent, copyright, trade secret, trademark, show-how, know-how and any and all other intellectual property rights therein or related thereto) and you agree not to take any action(s) inconsistent with such ownership interests. You do not acquire any rights or licenses under any of Noralis’ copyrights, patents, patent applications, copyrights, trade secrets, trademarks or other intellectual property rights on account of these Terms. Any and all (a) suggestions for correction, change and modification to the Noralis Services, evaluation data, evaluations and other feedback (including but not limited to quotations of written or oral feedback, information and reports provided to Noralis by you (collectively, “*Feedback*”)), and all (b) improvements, updates, modifications or enhancements, whether made, created or developed by Noralis or otherwise relating to the Noralis Services (collectively, “*Revisions*”), are and will remain the property of Noralis. You acknowledge and expressly agree that any contribution of Feedback or Revisions does not and will not give or grant you any right, title or interest in the Noralis Services or in any such Feedback or Revisions. All Feedback and Revisions become the sole and exclusive property of Noralis and Noralis may use and disclose Feedback and Revisions in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to Noralis any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights, and any and all other intellectual property rights) that you may have in and to any and all Feedback and Revisions. Upon request by Noralis, you will execute any document, registration or filing required to give effect to the foregoing assignment. In addition, Noralis shall have the right to copy, use, distribute, and display any information, analysis, statistics and other data generated by the Noralis Services (or derived from your use of the Noralis Services), including compilation of aggregated statistics about the Noralis Services; provided, however, that Noralis shall not publicly disclose or distribute any such data unless such data is in an aggregated form that would not permit a third party to identify the data as associated with you.

#### **Indemnification.**

You agree to indemnify and defend Noralis and its affiliates, directors, officers, employees and agents from and against all Claims brought against Noralis by any third party arising from your use of the Noralis Services or any violation of these Terms, the rights of a third party or applicable law. Your indemnification obligations apply to any applicable actions taken under your Account. Noralis reserves the right, at its own expense, to assume

the exclusive defense and control of any matter subject to indemnification hereunder. In any event, no settlement that affects the rights or obligations of Noralis may be made without Noralis' prior written approval.

#### **Modifications to Terms.**

We may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Noralis Services. Your continued access or use of the Noralis Services after the modifications become effective is deemed your conclusive acceptance of the modified Terms.

#### **Term & Termination.**

This Agreement will begin on the Effective Date of the Agreement, and continue through the initial term, unless earlier terminated pursuant to this Agreement. Thereafter it will be automatically renewed for consecutive one (1) year renewal Terms, pursuant to terms and conditions, including pricing, as set forth in an applicable Statement of Work, unless terminated by either party pursuant to i. or ii. of this Section.

This Agreement and the license granted hereunder shall remain in effect until terminated as set forth herein:

- i. Either party may terminate this Agreement by providing ninety (90) day notice prior to the next renewal period.
- ii. Either party may terminate this Agreement for cause upon thirty (30) days written notice provided that there is a material breach that is not cured.

In the event of termination, You will cease all use of the Noralis Services and will destroy any copy (full or partial) of any and all parts of the Noralis Services in your possession or control. Termination will not limit any of Noralis' other rights or remedies at law or in equity.

#### **Export Laws.**

You agree that you will not export or re-export, directly or indirectly, the Noralis Services and/or other information or materials provided by Noralis hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. You are responsible for and hereby agree to comply at your sole expense, with all applicable United States export laws and regulations. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

#### **U.S. Government Restricted Rights.**

The Noralis Services are "commercial computer software" and "commercial computer software documentation" as such terms are used in United States Federal Acquisition Regulations Section 12.212. Any use, duplication or disclosure of the Noralis Services by or on behalf of the U.S. Government is subject to restrictions as set forth in these Terms.

#### **Taxes.**

You are solely responsible for any and all duties, taxes, levies or fees (including any sales, use or withholding taxes) imposed on or in connection with these Terms or the Noralis Services by any authority.

## **Remedies.**

You agree that a breach or a threatened breach of these Terms will cause injury to Noralis for which money damages will not provide an adequate remedy and Noralis will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

## **Notice to California Residents.**

Under California Civil Code Section 1789.3, California residents are entitled to the following specific consumer rights information: The provider of the website is noralis.com.

## **Miscellaneous.**

- i. Except as otherwise expressly set forth in these Terms, these Terms may not be modified except by a writing executed by the duly authorized representatives of Noralis. No other act, document, usage or custom will be deemed to modify or amend these Terms.
- ii. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.
- iii. These Terms will inure to the benefit of and will be binding upon each party's successors and assigns. These Terms and the licenses granted hereunder may be assigned by Noralis, but you may not assign or otherwise transfer them without the prior express written consent of Noralis, which Noralis may give or withhold at its sole discretion.
- iv. If any provision hereof is or becomes, at any time or for any reason, illegal, unenforceable or invalid in any jurisdiction, such illegality, invalidity, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- v. If either party fails to perform any term hereof and the other party does not enforce such term, the failure to enforce on any occasion will not constitute a waiver of any term and will not prevent enforcement on any other occasion.
- vi. Nothing contained in these Terms will be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
- vii. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these Terms due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, or air conditioning, loss and destruction of property, or any other circumstances or causes beyond the reasonable control of the party invoking this provision, the affected party's performance will be extended for the period of delay or inability to perform due to such occurrence.
- viii. The headings and captions contained herein are for convenience only.
- ix. These Terms are governed by and construed and enforced in accordance with the internal laws of the State of Texas, without giving effect to the principles of conflicts of laws of such state and is binding upon the parties hereto in the United States and worldwide.
- x. You and Noralis agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the interpretation or construction of these Terms.

- xii. Any litigation by one party against the other arising under these Terms or concerning any rights under these Terms will be commenced and maintained in any state or federal court located in Travis County, Texas, and both parties hereby submit to the jurisdiction and venue of any such court.
- xiii. For disputes involving an amount less than \$10,000, the parties agree to resolve the dispute through binding arbitration to be held in Travis County, Texas, under the rules of the American Arbitration Association. Any claim arising out of these Terms, the Noralis Services must be brought within one (1) year of the date on which the claim arose.
- xiv. These Terms, together with our Privacy Policy, contain the entire understanding of the parties with respect to the matters contained herein and there are no promises, covenants or undertakings other than those expressly set forth herein; provided, however, that if you execute a Master Services Agreement and/or Statement of Work with Noralis and there is a conflict between such documents, the terms of the Master Services Agreement shall control.