

## SOFTWARE AS A SERVICE SUBSCRIPTION LICENSE AGREEMENT

CAUTION: YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE USING THE SOFTWARE PRODUCTS AND DOCUMENTATION THIS AGREEMENT RELATES TO. BY ACCEPTING THIS AGREEMENT YOU ARE CONSENTING TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND ACKNOWLEDGING YOUR AUTHORITY TO DO SO ON BEHALF OF YOUR COMPANY (IF APPLICABLE).

### 1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, personal identification number (PIN) or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Hosted Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, investigative, regulatory or other, whether at Law, in equity or otherwise.

“**Affiliate**” of a Person means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the first Person.

“**Availability Requirement**” has the meaning set forth in [Section 5.1](#).

“**Available**” means the Hosted Services are available for access and use by Customer and its Users over the internet and operating in material accordance with the Specifications.

“**Backup Policy**” has the meaning set forth in [Section 6](#).

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banks located in the City of Toronto are authorized or required by law to be closed for business.

“**Confidential Information**” has the meaning set forth in [Section 10.1](#).

“**Control**” (and the terms “**Controlled by**” and “**under common Control with**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Customer Data**” means, other than Resultant Data, information, data and other content, in any form or medium that is collected, downloaded or otherwise received, directly or indirectly from Customer or an User by or through the Hosted Services.

“**Customer Failure**” has the meaning set forth in [Section 4.2](#).

“**Customer Indemnitee**” has the meaning set forth in [Section 13.1](#).

“**Customer Systems**” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), networks and internet connectivity, whether operated directly by Customer or through the use of third-party services.

“**Disclosing Party**” means a party that discloses Confidential Information under this Agreement.

“**Documentation**” means any manuals, instructions or other documents or materials listed in the Order form that Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Effective Date**” means the date first set forth in the Order Form.

“**Exceptions**” has the meaning set forth in [Section 5.1](#).

“**Fees**” has the meaning set forth in [Section 8.1](#).

“**Force Majeure Event**” has the meaning set forth in [Section 15.1](#).

“**Governmental Authority**” means any federal, provincial, territorial, municipal or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, trojan

horse, worm, backdoor, malware or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any: (i) computer, software, firmware, hardware, system or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby; or (b) prevent Customer or any User from accessing or using the Hosted Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

“**Hosted Services**” has the meaning set forth in [Section 2.1](#).

“**HST**” means harmonized sales tax, or goods and services tax, imposed under the HST Act (or any provincial or territorial legislation imposing sales tax or harmonized sales tax).

“**HST Act**” means Part IX of the *Excise Tax Act* (Canada).

“**Indemnitee**” has the meaning set forth in [Section 13.3](#).

“**Indemnitor**” has the meaning set forth in [Section 13.3](#).

“**IP Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trade-mark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection in any part of the world.

“**Law**” means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.

“**Losses**” mean all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including legal fees, disbursements and charges, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Permitted Use**” means any use of the Services by an User for the benefit of Customer solely in or for Customer’s internal business operations.

“**Person**” means an individual, corporation, partnership, unlimited liability company, Governmental Authority, unincorporated organization, trust, association or any other entity.

“**Personal Information**” means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. Personal Information includes any definition pursuant to the privacy laws of the Territory.

“**Proposal**” means the proposal for the Services set forth in the Order Form.

“**Privacy and Security Policy**” has the meaning set forth in [Section 7.1](#).

“**Process**” means to take any action or perform any operation or set of operations that the Hosted Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy, and “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Disabling Device**” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer’s or any User’s access to or use of the Hosted Services automatically with the passage of time or under the positive control of Provider or its designee.

“**Provider Indemnitee**” has the meaning set forth in [Section 13.2](#).

“**Provider Materials**” means the Service Software, Specifications, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data or other content derived from Provider’s monitoring of Customer’s access to or use of the Hosted Services, but do not include Customer Data.

“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.

“**Provider Systems**” means the information technology infrastructure used by or on behalf of Provider in performing the Hosted Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

“**Receiving Party**” means a Party that receives or acquires Confidential Information directly or indirectly under this Agreement.

“**Reimbursable Expenses**” has the meaning set forth in [Section 8.3](#).

“**Renewal Term**” has the meaning set forth in [Section 11.2](#).

“**Representatives**” means, with respect to a party, that party, its Affiliates, and their respective employees, officers, directors, consultants, agents, independent contractors, subcontractors and legal advisors.

“**Resultant Data**” means information, data and other content that is derived by or through the Hosted Services from

Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

“**Scheduled Downtime**” has the meaning set forth in [Section 5.3](#).

“**Service Level Failure**” means a material failure of the Hosted Services to meet the Availability Requirement.

“**Service Manager**” has the meaning set forth in [Section 2.4](#).

“**Service Period**” has the meaning set forth in [Section 5.1](#).

“**Service Software**” means the Provider software application or applications and any third-party or other software that Provider provides remote access to, and use of, as part of the Hosted Services, as detailed in the Order Form and all new versions, updates, revisions, improvements and modifications of the foregoing.

“**Services**” has the meaning set forth in [Section 2.1](#).

“**Specifications**” means the specifications or Proposal for the Services set forth in the Order Form.

“**Subcontractor**” has the meaning set forth in [Section 2.6](#).

“**Support Schedule**” has the meaning set forth in [Section 5.4](#).

“**Support Services**” has the meaning set forth in [Section 5.4](#).

“**Taxes**” means any commodity tax, including sales, use, excise, value-added, goods and services tax, HST, consumption or other similar tax, including penalties and interest, imposed, levied or assessed by any Governmental Authority.

“**Term**” has the meaning set forth in [Section 11.1](#).

“**Territory**” means Province of Ontario.

“**Third-Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

“**User**” means the employees, and independent contractors authorized to use the Hosted Services by the Customer under [Section 3.1](#)

## 2. Services.

2.1 Services. Subject to and conditional on compliance with the terms and conditions of this Agreement by Customer and its Users, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Users the services described in the Order Form and this Agreement (collectively, the “**Services**”) in accordance with the Specifications and terms and conditions hereof, which may include an initial configuration, testing, and deployment, host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Users (collectively, the “**Hosted Services**”) in substantial conformity with the Specifications 24 hours per day, seven days per week, every day of the year, except for:

- (a) Scheduled Downtime in accordance with [Section 5.3](#);
- (b) Service downtime or degradation due to a Force Majeure Event;
- (c) any other circumstances beyond Provider’s reasonable control, including use by Customer or any User of Third-Party Materials, misuse of the Hosted Services or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and
- (d) any suspension or termination of access to, or use, of the Hosted Services by Customer or any User, as permitted by this Agreement.

2.2 Additional Services If Additional Services during the Term are requested by the Customer, such Additional Services will be provided by Provider at additional cost in accordance with the rates defined in the Order Form upon the mutual agreement in writing between Provider and the Customer.

2.3 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

- (a) Provider has and will retain sole control over the hosting, operation, provision, management and maintenance of the Services and Provider Materials, including the: (i) Provider Systems; (ii) location(s) where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of

Support Services and Service maintenance, upgrades, corrections and repairs; and  
(b) Customer has and will retain sole control over the operation, management and maintenance of, and all access to and use of, the Customer Systems, and sole responsibility for all access to, and use of, the Hosted Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any User, including any: (i) information, instructions or materials provided by any of them to the Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use.

Notwithstanding anything to the contrary in this Agreement, all Services, including all Processing of Customer Data by or on behalf of Provider, shall be provided solely from within, and on computers, systems, networks and other infrastructure located in Canada.

**2.4 Service Management.** Each Party shall, throughout the Term, maintain within its organization a service manager to serve as such Party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services (each, a "**Service Manager**"). Each Service Manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Agreement. Each Party shall ensure that its Service Manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. Each Party shall use reasonable best efforts to maintain the same Service Manager in place throughout the Term. If either Party's Service Manager ceases to be employed by such Party or such Party otherwise wishes to replace its Service Manager, such Party shall promptly name a new Service Manager by written notice to the other Party.

**2.5 Changes.** Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable Law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such requested changes in writing. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties.

**2.6 Subcontractors.** Provider may, from time to time, in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

**2.7 Suspension or Termination of Services.** Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny access to, or use of, all or any part of the Services or Provider Materials by Customer, any User or any other Person, without incurring any resulting obligation or liability, if: (a) Provider receives a Governmental Order that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any User has failed to comply with, any material term of this Agreement, accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) Customer or any User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This [Section 2.7](#) does not limit any of Provider's other rights or remedies, whether at Law, in equity or under this Agreement.

### **3. License Grant and Customer Restrictions.**

**3.1 License Grant.** Subject to and conditional on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby grants to you, the Customer, ("**Licensee**") a limited, non-exclusive, non-transferable (except as provided in [Section 16.8](#)), non-sublicensable right and license during the Term to use the Provider's software set out in the Order Form solely for the Permitted Use in the Territory and through authorized Users in accordance with the

Specifications. The Customer may use only for the number of Users set forth on the Order Form as expressly authorized by the Provider for each annual period.

3.2 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or Provider Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, or any part thereof;
- (d) bypass or breach any Provider Disabling Device, security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an User through the use of his or her own then-valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the Services or Provider Systems any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trade-marks, Specifications, Documentation, warranties or disclaimers, or any copyright, trade-mark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- (h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any IP Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law;
- (i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage;
- (j) access or use the Services or Provider Materials in, or in association with, the design, construction, maintenance or operation of any hazardous environments, systems, applications or products, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or
- (k) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under [Section 3.1](#).

#### 4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term:

- (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used;
- (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; and
- (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this

## Agreement.

4.2 Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by [Section 3.2](#), Customer shall, and shall cause its Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

4.4 Non-Solicitation. During the Term and for two years after, Customer shall not, and shall not assist any other Person to, directly or indirectly, in any manner recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior six months employed or engaged by Provider or any Subcontractor and involved in any respect with the Services or the performance of this Agreement. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this [Section 4.4](#), and the hiring of any such employees or independent contractor who freely responds thereto shall not be a breach of this [Section 4.4](#).

4.5 Breach of Non-Solicitation. In the event of a violation of [Section 4.4](#), Customer shall, on demand, pay to Provider as liquidated damages a sum equal to one year's basic salary or fees payable by Provider or any Subcontractor to that employee, worker or independent contractor plus the recruitment costs incurred by Provider or Subcontractor in replacing such person.

## 5. Service Levels.

5.1 Service Levels. Subject to the terms and conditions of this Agreement:

(a) Provider will use commercially reasonable efforts to make the Hosted Services Available at least 99.7% of the time as measured over the course of each calendar year during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this [Section 5.1](#) (the "**Availability Requirement**").

(b) For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Hosted Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Users to access or use the Hosted Services that is due, in whole or in part, to any:

- (i) act or omission by Customer or any User/access to or use of the Hosted Services by Customer or any User, or using Customer's or an User's Access Credentials, that does not strictly comply with this Agreement and the Specifications;
- (ii) Customer Failure;
- (iii) Internet connectivity of Customer or its User;
- (iv) Force Majeure Event;
- (v) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Provider under this Agreement;
- (vi) Scheduled Downtime; or

(vii) disabling, suspension or termination of the Services under [Section 2.7](#).

5.2 Service Level Failures and Remedies. In the event of a Service Level Failure, the Customer will provide immediate notice to Provider, and Provider will take immediate steps to remedy the issue. This [Section 5.2](#) sets forth Provider's sole obligation and liability, and Customer's sole remedy, for any Service Level Failure.

5.3 Scheduled Downtime. Provider will use commercially reasonable efforts to; (a) schedule downtime for routine maintenance of the Hosted Services after 9 a.m. and 5 p.m. Eastern Standard Time; and (b) give Customer at least five business days prior notice of all scheduled outages of the Hosted Services (the "**Scheduled Downtime**").

5.4 Service Support. The Services include Provider's standard customer support services (the "**Support Services**") in accordance with the Provider service support as set out in the Order Form. Provider may amend the Support Schedule from time to time in its sole discretion.

6. Data Backup. The Provider Systems are programmed to perform routine data backups (the "**Backup Policy**"). Provider will deliver to Customer its then most current backups of Customer Data as and when requested by the Customer in writing.

## 7. Security.

7.1 Provider Systems and Security Obligations. Provider will employ security measures in accordance with applicable industry practice and laws of the Territory (the "**Privacy and Security Policy**").

7.2 Data Breach Procedures. Provider maintains a data breach plan in accordance with all Laws and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

7.3 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any User in connection with the Services; (c) Customer Systems; (d) the security and use of Access Credentials if Customer and its Users; and (e) all access to and use of the Hosted Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

7.4 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to, or use of, the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

## 8. Fees; Payment Terms.

8.1 Fees. Customer shall pay Provider the fees set forth in the Order Form (the "**Fees**") in accordance with this [Section 8](#).

8.2 Fee Increases. Provider may increase Fees by providing written notice to Customer at least sixty (60) calendar days before the commencement of the Renewal Term, and the Order Form will be deemed amended accordingly.

8.3 Reimbursable Expenses. Customer shall reimburse Provider for out-of-pocket expenses incurred by Provider in connection with performing the Services (the "**Reimbursable Expenses**").

8.4 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all HST, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, provincial or territorial governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

8.5 Payment. Customer shall pay all Fees and Reimbursable Expenses on or before the due date set forth in the Order Form. Customer shall make all payments hereunder in Canadian dollars by cheque, wire transfer or electronic funds transfer. Customer shall make payments to the address or account specified in the Order Form or such other address or account as Provider may specify in writing from time to time.

8.6 Late Payment. Except for invoiced payments that Customer has successfully disputed, if Customer fails to make any payment when due, then, in addition to all other remedies that may be available:

(a) Provider may charge interest on the past due amount at the rate of 1% calculated daily and compounded monthly;

(b) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including legal fees on a solicitor-and-client basis, court costs and collection agency fees; and

(c) if such failure continues for sixty (60) days following written notice thereof, Provider may suspend performance of the Services until all past due amounts have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

8.7 No Deductions or Set-Offs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any set-off, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

## 9. IP Rights.

9.1 Reservation of Rights. All right, title and interest in and to the Services, Provider Materials and Third-Party Materials, including all IP Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer acknowledges and agrees that it has no right, license or authorization with respect to any of the Services, Provider Materials or Third-Party Materials (including any IP Rights therein) except as expressly set forth in [Section 3.1](#) or the applicable third-party license, in each case subject to [Section 3.2](#). All other rights in and to the Services, Provider Materials and Third-Party Materials are expressly reserved by Provider and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title and interest in and to the Resultant Data, including all IP Rights relating thereto.

9.2 Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all IP Rights relating thereto, subject to the rights and permissions granted in [Section 9.3](#).

9.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services and to develop enhancements of the Services; and (b) to Provider as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

## 10. Confidentiality.

10.1 Confidential Information. In connection with this Agreement each party (as the “**Disclosing Party**”) may



disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). Subject to [Section 10.2](#), “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including, information consisting of, or relating to, the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing: all Provider Materials are the Confidential Information of Provider and the terms and existence of this Agreement are the Confidential Information of each of the parties.

10.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records:

- (a) was rightfully known to the Receiving Party without restriction on use or disclosure before such information’s being disclosed or made available to the Receiving Party in connection with this Agreement;
- (b) was or becomes generally known by the public other than by non-compliance with this Agreement by the Receiving Party or any of its Representatives;
- (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or
- (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

10.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with [Section 10.4](#), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this [Section 10.3](#); and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this [Section 10.3](#);
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ non-compliance with, the terms of this [Section 10](#).

10.4 Compelled Disclosures.

- (a) If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information, then, to the extent permitted by applicable Law, the Receiving Party shall:
  - (i) promptly, and before such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under [Section 10.3](#); and

(ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking an injunction, a protective order or other limitations on disclosure.

(b) If the Disclosing Party waives compliance or, after providing the notice and assistance required under this [Section 10.4](#), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## 11. Term and Termination.

11.1 Term. The term of this Agreement commences as of the Effective Date on the Order Form and, unless terminated earlier under any of this Agreement's express provisions, will continue for three years or the duration of the term as specified on the Order Form (the "**Term**").

11.2 Renewal. This Agreement will automatically renew for up to one additional successive term unless earlier terminated under this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 180 days before the expiration of the then-current term (each together with the Initial Term, the "**Term**").

11.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer:

- (i) fails to pay any amount when due hereunder, and such failure continues more than sixty (60) days after Provider's delivery of written notice thereof; or
- (ii) breaches any of its obligations under [Section 3.2](#) (Use Limitations and Restrictions) or [Section 10](#) (Confidentiality).

(b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) fails to pay its debts generally as they become due or otherwise acknowledges its insolvency; (ii) ceases to carry on business in the ordinary course; (iii) makes a general assignment for the benefit of its creditors; (iv) has issued against it a bankruptcy order or otherwise becomes subject to any involuntary proceeding under any domestic or foreign bankruptcy law; (v) commences or institutes any application, proceeding or other action under any Law relating to bankruptcy, insolvency, winding-up, reorganization, administration, plan of arrangement, relief or protection of debtors, compromise of debts or similar Laws, seeking: (A) to have an order for relief entered with respect to it; (B) to adjudicate it as bankrupt or insolvent; (C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, compromise, arrangement, stay of proceedings of creditors generally, or other relief with respect to it or its assets or debts; or (D) appointment of a receiver, interim receiver, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets.

11.4 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as

expressly otherwise provided in this Agreement:

- (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;
- (b) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and at Customer's written request return, erase, or destroy, all documents and tangible materials containing Customer Data
- (c) Customer shall immediately cease all use of any Services or Provider Materials and
  - (i) return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information;
  - (ii) permanently erase all Provider Materials from all computer systems that Customer directly or indirectly controls; and
  - (iii) certify to Provider in a certificate of a senior officer of Customer that it has complied with the requirements of this [Section 11.4\(c\)](#);
- (d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control:
  - (i) the Receiving Party may retain the Disclosing Party's Confidential Information in its then current state and solely to the extent and for so long as required by applicable Law;
  - (ii) Provider may retain Customer Data in its then current state and solely to the extent and for so long as required by applicable Law;
  - (iii) Provider may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and
  - (iv) all information and materials described in this [Section 11.4\(d\)](#) will remain subject to all confidentiality, security and other applicable requirements of this Agreement;
- (e) Provider may disable all Customer and User access to the Hosted Services and Provider Materials;
- (f) if Customer terminates this Agreement under [Section 11.3\(b\)](#), Customer will be relieved of any obligation to pay any Fees attributable to the period after the Effective Date of such termination;
- (g) if Provider terminates this Agreement under [Section 11.3\(a\)](#) or [Section 11.3\(b\)](#), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefor; and
- (h) subject to [Section 11.4\(d\)](#), Provider shall, following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Provider, *provided that* Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Provider's services in transferring such Customer Data.

11.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: [Section 3.2](#), [Section 10](#), [Section 11.4](#), this [Section 11.5](#), [Section 12](#), [Section 13](#), [Section 14](#) and [Section 16](#).

## 12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is a corporation incorporated and validly existing in the jurisdiction of its incorporation;

- (b) it has all required corporate power and capacity to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;
- (c) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action; and
- (d) when executed and delivered by each of the parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2 Additional Provider Representations, Warranties and Covenants. Provider represents, warrants and covenants to Customer that it will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

12.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Provider that Customer owns or otherwise has, and will have, the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any IP Rights, or any privacy or other rights of any third party or violate any applicable Law.

12.4 DISCLAIMER OF CONDITIONS AND WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, SECTION 12.2 AND SECTION 12.3, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED “AS IS” AND PROVIDER HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (a) MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS; OR (e) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

### 13. Indemnification.

13.1 Provider Indemnification. Provider shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any Action by a third party (other than an Affiliate of Customer) alleging that Customer’s use of the Services (excluding Customer Data and Third-Party Materials) in compliance with this Agreement (including the Specifications) infringes an IP Right protected in Canada. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to, or use of, the Services or Provider Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by Provider;
- (b) modification of the Services or Provider Materials other than: (i) by or on behalf of

Provider; or (ii) with Provider's written approval in accordance with Provider's written specification; or  
(c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider.

13.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party (other than an Affiliate of a Provider Indemnitee) to the extent that such Losses arises out of or relates to any:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any User to the extent prepared without any contribution by Provider;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or wilful misconduct) by Customer, any User or any third party on behalf of Customer or any User, in connection with this Agreement.

13.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified under [Section 13.1](#) or [Section 13.2](#), as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defence and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this [Section 13.3](#) will not relieve the Indemnitor of its obligations under this [Section 13](#) except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13.4 Mitigation. If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party IP Right, or if Customer's or any User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Services and Provider Materials as contemplated by this Agreement;
- (b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or
- (c) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the Services and Provider Materials or any specified part or feature thereof.

THIS [SECTION 13](#) SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY

## THIRD PARTY IP RIGHT.

### 14. Limitations of Liability.

14.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA; (d) BREACH OF DATA OR SYSTEM SECURITY; OR (e) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED CONTRACT FEES. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### 15. Force Majeure.

15.1 No Breach or Default. In no event will Provider be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including: (a) acts of God; (b) flood, fire, earthquake, tsunami or explosion; (c) war, terrorism, invasion, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes, labour stoppages or slowdowns or other industrial disturbances; (g) passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, or any complete or partial government shutdown; (h) national or regional shortage of adequate power or telecommunications or transportation facilities; or (i) any other event that is beyond the reasonable control of such party. (each of the foregoing, a "**Force Majeure Event**").

15.2 Affected Party Obligations. A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.3 Non-Affected Party. During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

### 16. Miscellaneous.

16.1 Further Assurances. Each Party shall, upon the reasonable request, and at the sole cost and expense, of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

16.2 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or

other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

16.3 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other Party's trademarks, trade dress, brand names, logos, corporate names and domain names or other similar designations of source, sponsorship, association or origin, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, *provided that* Provider may, without Customer's consent, include Customer's name in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

16.4 Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (in either case, 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 (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated in the Order Form or at such other address for a Party as shall be specified in a notice given in accordance with this [Section 16.4](#).

16.5 Interpretation. For purposes of this Agreement: (a) the words "include", "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Unless otherwise stated, all dollar amounts referred to in this Agreement are stated in Canadian currency.

16.6 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

16.7 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any exhibit, schedule, attachment or appendix, the following order of precedence shall govern: (a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

16.8 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily,

involuntarily, by operation of law or otherwise, without Provider's prior written consent, which consent Provider shall not unreasonably withhold or delay/may give or withhold in its sole discretion. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this [Section 16.8](#) is void. This Agreement is binding upon and enures to the benefit of the Parties hereto and their respective permitted successors and assigns.

16.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.10 Amendment and Modification: Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by an authorized representative of each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.11 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality 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.

16.12 Governing Law: Forum Selection. This Agreement and all exhibits and schedules attached hereto and all matters arising out of or relating to this Agreement are governed by and construed in accordance with the Laws of the province of Ontario and the federal laws of Canada applicable therein. Any Action arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the Province of Ontario, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Action. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any Action brought in any such court. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

16.13 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under [Section 10](#) or, in the case of Customer, [Section 3.2](#), or [Section 4.3](#), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the non-breaching Party 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.

16.14 Choice of Language. The Parties confirm that it is their express wish that this Agreement, as well as any other documents related to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

16.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement



delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.