

## SOFTWARE AND SERVICES AGREEMENT

LAST UPDATED: JULY 22, 2021

NOTE: THIS AGREEMENT WILL ONLY APPLY TO THE EXTENT THAT NO BINDING AGREEMENT, WRITTEN OR ELECTRONIC, (THE "OTHER AGREEMENT") IS ALREADY IN PLACE BETWEEN CUSTOMER (DEFINED BELOW) AND CONDO CONTROL ("**SERVICE PROVIDER**") PERTAINING TO THE PRODUCT OR SERVICES TO WHICH THIS AGREEMENT APPLIES (AS DEFINED BELOW). TO THE EXTENT THAT ANY APPLICABLE OTHER AGREEMENT IS IN EFFECT, THEN SUCH OTHER AGREEMENT WILL GOVERN CUSTOMER'S ACCESS TO AND USE OF THE SOFTWARE AND RECEIPT OF SERVICES AND THIS AGREEMENT WILL NOT APPLY, EVEN IF YOU AFFIRM YOUR CONSENT TO THE TERMS OF THIS AGREEMENT.

BY ACCESSING OR USING THE SOFTWARE (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU SUBMIT TO CONDO CONTROL, AN ONTARIO CORPORATION ("WE" OR "SERVICE PROVIDER"), AN OFFER TO OBTAIN THE RIGHT TO USE THE SOFTWARE UNDER THE PROVISIONS OF THIS SOFTWARE AND SERVICES AGREEMENT (THE "AGREEMENT").

YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE PERSON AND/OR ENTITY (THE "CUSTOMER") WISHING TO USE THE SOFTWARE LISTED ON THE ORDER (DEFINED BELOW) WHICH CONDO CONTROL OR ONE OF ITS AUTHORIZED RESELLERS (A "RESELLER") PROVIDES TO CUSTOMER IN CONNECTION WITH THE PURCHASE OF LICENSES TO THE SOFTWARE AND RECEIPT OF SERVICES DESCRIBED BELOW. THE TERMS OF EACH ORDER WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER, BUT ALL APPLICABLE TERMS AND CONDITIONS BELOW SHALL APPLY.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, CONDO CONTROL IS UNWILLING TO PROVIDE THE SOFTWARE OR PROFESSIONAL SERVICES TO THE CUSTOMER, YOU SHOULD DISCONTINUE THE ORDER, ACCESS, DOWNLOAD AND/OR INSTALLATION PROCESS AND NOT REQUEST ANY SERVICES.

CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS A PARTY TO THIS AGREEMENT WITH CONDO CONTROL AND THAT CONDO CONTROL MAY ENFORCE THESE TERMS AND CONDITIONS AGAINST CUSTOMER EVEN IF THE ORDER HAS BEEN ISSUED AND/OR EXECUTED BY A RESELLER.

This agreement ("**Agreement**") is entered into, to be effective as of the first day you sign an Order with us (hereafter, the "**Effective Date**"), by and between you ("**Customer**"), and Condo Control ("**Service Provider**"), with its principal place of business located at 2 Carlton St, Suite 1000, Toronto, ON M5B 1J3, Canada, and its United States address located at 276 5th Avenue, Suite 704 #905, New York, NY 10001.

### RECITALS

**WHEREAS**, Customer requires hosted third-party "software as a service" (the "**Services**," as further described herein) with respect to certain of its information technology needs;

**WHEREAS**, Service Provider has experience and expertise in the business of providing the Services;

**WHEREAS**, based on Service Providers knowledge and experience relating to such Services, Customer has selected Service Provider to manage and provide the Services;

**WHEREAS**, Service Provider has agreed to provide the Services to Customer, all on the terms and conditions set forth herein.

**NOW. THEREFORE**, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

## **1. ORDERING**

Customer may order from Service Provider or one of its authorized resellers (a) licenses to the standard software offerings (in object code format) (“Software”) on a hosted basis, (b) related maintenance and support services (“Maintenance and Support”) and/or (c) consulting, training, implementation or other professional services (“Professional Services”) pursuant to the terms of this Agreement. The specifics of each Customer transaction will be set forth on a confirmation page, order form, quote, statement of work, invoice or other ordering form that references this Agreement and is mutually agreed to by the parties in writing (each, an “Order”). Customer’s execution of, or other agreement to the terms of, an Order constitutes a binding commitment to purchase the items described therein pursuant to the terms of this Agreement.

## **2. THE SERVICES.**

### **2.1 Purpose; Term.**

This Agreement sets forth the terms and conditions under which Service Provider agrees to license certain hosted “software as a service” and provide all other services, data import/export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for Customer’s productive use of such software (the “**Services**”), as further set forth in one or more attachments to Exhibit A (each of which is sequentially numbered (i.e. A.1, A.2, A.3 and so on) and is substantially in the form of Attachment A.1 to the Exhibit A).

**2.1.1 Authorized Users.** Unless otherwise limited on an Exhibit A and with the exception of any individuals who may interact with any web site created using the Services, Customer and any of its employees, shareholders, owners, agents, contractors, or suppliers of services that have a need to use the Services for the benefit of Customer shall have the right to operate and use the same. Customer shall be responsible for all user identification and password change management, initial setup and data import excluded.

### **2.2 Control of Services.**

The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Customer.

### 2.3 **Time of Service Provider Performance of Services.**

Service Provider shall provide the Services in accordance with the applicable Service Levels, each as described in an Attachment to Exhibit A time being of the essence.

### 2.4 **Backup and Recovery of Customer Data.**

As a part of the Services, Service Provider is responsible for maintaining a backup of Customer Data, for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in an Exhibit A, Service Provider shall maintain a backup of Customer Data that can be recovered within four (4) hours at any point in time. Additionally, Service Provider shall: (i) store a backup of Customer Data in an off-site data center facility no less than daily, maintaining the security of Customer Data, the security requirements of which are further described herein and in any event will be reasonable; and (ii) within thirty (30) days of the end of each calendar year, provide to Customer upon receipt of the Customer's request, a backup of the Customer Data as of the last day of the year. The fee for this service is \$150 per request.

### 2.5 **Non-exclusively.**

Nothing herein shall be deemed to preclude Customer from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Service Provider hereunder.

### 2.6 **Sub-processors.**

Service Provider may enter into agreements for the performance of specific parts of the Services, but may not assign or transfer any of its rights or obligations under this Agreement, without Customer's prior written consent and any attempt to do so shall be void and without further effect. At Customer's request, Service Provider will disclose to Customer all sub-processors being used to provide the Services who have or may have access to elements of the Customer's Data. Customer's knowledge of or consent to Service Provider's use of any sub-processor shall not relieve Service Provider of any of its duties or obligations under this Agreement, and Service Provider shall indemnify and hold Customer harmless from any payment required to be paid to any such sub-processors.

## 3. **TERM AND TERMINATION.**

### 3.1 **Term.**

Unless this Agreement is terminated earlier in accordance with the terms set forth in this Section, the initial term (the "**Initial Term**") shall commence on the Effective Date and continue for twelve (12) months thereafter. Following the Initial Term, this Agreement shall automatically renew for successive one-year terms (each, a "**Renewal Term**"). "Term" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term(s).

Customer agrees that the Initial Term starts immediately as of the Effective Date and runs concurrently with any Professional Services which are included in this Agreement such as onboarding, setup or training services.

Unless otherwise set out in writing in the applicable Attachment, each Attachment to Exhibit A will be for an initial term of twelve (12) months and will renew automatically for further periods of twelve (12) months unless the Attachment is terminated earlier in accordance with this Agreement.

The renewal of this Agreement or any Attachment may be prevented: (i) by Customer giving Service Provider written notice at any time with thirty (30) calendar days' notice; or (ii) by Service Provider giving Customer written notice of non-renewal at least ninety (90) days prior to the last day of the Initial Term or then current Renewal Term (as applicable).

The contract shall end twelve (12) months after the Effective Date (the "**Termination Date**").

### 3.2 **Suspension.**

Service Provider may suspend Professional Services, Maintenance and Support, and/or Customer's license (a) with respect to the Software, in order to prevent damage to, or degradation of, Service Provider's network integrity; (b) if Customer has breached this Agreement in a way that affects Service Provider's provision of the Software; (c) if Customer infringes intellectual property rights, (d) if Customer has failed to pay any amounts for ten (10) days after their due date; or (e) if Customer violates applicable laws or regulations or a court order requires suspension. If suspended, the Service Provider will promptly restore Customer's services and license after the event giving rise to the suspension has been resolved to the Service Provider's reasonable satisfaction.

### 3.3 **Termination for Cause.**

If either party materially breaches any of its duties or obligations hereunder, including two periods of successive failure of Service Provider to meet a Service Level, and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, then the non-breaching party may terminate this Agreement or an Attachment to Exhibit A for cause as of a date specified in such notice.

### 3.4 **Payments Upon Termination.**

Upon the expiration or termination of this Agreement or an Attachment to Exhibit A for any reason, Customer shall pay to Service Provider all amounts due and payable hereunder in relation to the terminated Attachments to Exhibit A.

## 4. **TERMINATION ASSISTANCE SERVICES.**

Provided that this Agreement or an Attachment to Exhibit A has not been terminated by Service Provider due to Customer's failure to pay any undisputed amount due Service Provider, Service Provider will provide to Customer and/or to the supplier selected by Customer (such supplier shall be known as the "**Successor Service Provider**"), at Customer's sole cost and expense, assistance reasonably requested by Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to Customer or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during the ninety (90) calendar day period prior to the expiration or termination of this Agreement or an Exhibit A, in whole or in part (such period shall be known as the "**Termination Assistance Period**"). Provided that Service Provider and Customer agree as to price and scope of Service Provider's provisioning of

Termination Assistance Services, such Termination Assistance Services include exporting of all of the Customer's data in Excel format, and other activities upon which the parties may agree. Termination Assistance Services are provided at an hourly rate of \$125 per hour, with a minimum of two (2) hours.

The provisions of this Section shall survive the termination of this Agreement.

## **5. SERVICES LEVELS.**

### **5.1 Service Levels Reviews.**

Service Provider and Customer will meet as often as shall be reasonably- requested by Customer, but no more than monthly, to review the performance of Service Provider as it relates to the Service Levels further described in Exhibit A.

### **5.2 Failure to Meet Service Levels.**

As further described in Exhibit A, in the event Service Provider does not meet any of the Service Levels applicable to any Service, Service Provider shall: (a) reduce the next annual invoice to Customer by the amount of the applicable Performance Credits as a credit; and, (b) use its best efforts to ensure that any unmet Service Level is subsequently met. Notwithstanding the foregoing, Service Provider will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.

## **6. FEES AND EXPENSES.**

### **6.1 Billing Procedures.**

Unless otherwise provided for in the applicable Attachment to Exhibit A, Service Provider will invoice Customer for the fees for any Service (and any applicable taxes) annually in advance. Service Provider's invoices shall contain: (a) Customer purchase order number, if any, and an invoice number; (b) description of Services to be rendered; (c) the Services fee or portion thereof that is due; (d), taxes, if any; (e) any credits owed by Service Provider to Customer which are being applied; and, (f) total amount due. Service Provider will provide electronic invoices via email or web hyperlink only in Adobe PDF format. No hardcopy invoices will be issued.

Customer shall be responsible for and shall pay all undisputed invoices issued in accordance with this section within thirty (30) days after receipt by Customer.

All payments will be via cheque or PAD direct debit. All invoices are net 30, and payment of the Setup Fee and Subscription Fee must be received before the system can launch.

### **6.2 Interest Charged on Late Payments.**

Any amounts not paid by the due date indicated on the invoice will be subject to interest charges of Prime Rate + 3%, compounded monthly. Interest will accrue until the date when payment is received.

### **6.3 Cost of Collections Included.**

Customer agrees that any costs incurred by the Service Provider related to collection of amounts due under this Agreement, including any costs incurred by use of third-party debt collection services, will be added to the fees due under this agreement.

### **6.4 Auditable Records.**

Service Provider shall maintain accurate records of all fees billable to, and payments made by, Customer in a format that will permit audit by Customer for a period of not less than three (3) years. For such period, upon Customer's written request, Service Provider shall provide Customer with a copy of any annual audit reports prepared by auditors of Service Provider, if so prepared. This Section shall survive the termination of this Agreement.

## **7. CUSTOMER RESOURCES AND SERVICE PROVIDER RESOURCES.**

In accordance with the terms set forth in Exhibit A, each party shall provide certain resources (Customer Resources and Service Provider Resources, as the case may be) to the other party as Customer and Service Provider may mutually deem necessary to perform the Services.

### **7.1 Service Provider Resources.**

In addition to any Service Provider Resources described in an Exhibit A, the Service Provider shall, at a minimum, provide all of the resources necessary to ensure that the Services continue uninterrupted, considering the applicable Service Windows and Service Levels, that Customer Data is secure to the standards and satisfaction of Customer, and provide for an optimal response time for Customer's users of the Services. Where Service Provider fails to provide such minimal Service Provider Resources, Customer shall have the right to immediately terminate this Agreement or the applicable Attachment to Exhibit A, in whole or in part, without liability.

## **8. REPRESENTATIONS AND WARRANTIES.**

### **8.1 Mutual Representations and Warranties.**

Each of Customer and Service Provider represent and warrant that:

- 8.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state or province of incorporation;
- 8.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 8.1.3 this Agreement, when executed and delivered, shall be a valid. and binding obligation of it enforceable in accordance with its terms;
- 8.1.4 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

- 8.1.5 it shall comply with all applicable federal, provincial, local, international, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement, and,
- 8.1.6 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavourably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

## 8.2 **By Service Provider.**

Service Provider represents and warrants that;

- 8.2.1 Service Provider possess superior knowledge with respect to the Services;
- 8.2.2 Service Provider knows the particular purpose for which the Services are required;
- 8.2.3 the Services to be performed under this Agreement shall be performed in a competent and professional manner and in accordance with the highest professional standards;
- 8.2.4 Service Provider has the experience and is qualified to perform the tasks involved with providing the Services in an efficient and timely manner. Service Provider acknowledges that Customer is relying on Service Provider's representation of its experience and expertise, and that any substantial misrepresentation may result in damage to Customer;
- 8.2.5 the Services will achieve in all material respects the functionality described in any Attachment to Exhibit A and the documentation of Service Provider, and that such functionality shall be maintained during the Term;
- 8.2.6 Service Provider will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, the "**Virus**") are introduced into Customer's computer and network environment while performing the Services. However if Service Provider transfers such Virus to Customer through the Services, the Service Provider shall have no liability for cost incurred by Customer to remove or recover from the Virus;
- 8.2.7 the Services and any other work performed by Service Provider hereunder shall be its own work, and shall not infringe upon any Canadian or foreign copyright, patent, Trade Secret, or other proprietary right, or misappropriate any Trade Secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement; and,
- 8.2.8 in connection with any Confidential Information disclosed by the Customer to the Service Provider, or otherwise accessed or compiled by or transferred to the Service Provider for handling under this Agreement on behalf of the Customer in the course of the Service Provider performing the Services, that the Service Provider: (i) has in place the appropriate technical and organizational security measures to protect such Personal Information against accidental or unlawful destruction or unauthorized disclosure or access; (ii) has maintained and will continue to maintain suitable records in commercially reasonable detail with respect to such Confidential Information; (iii)

will not use such Confidential Information for any purpose other than as set out in this Agreement; (iv) will not transfer such Personal Information to any third party except to those employees, subcontractors, or agents of the Service Provider who require access to such information in order to fulfill such purposes; (v) will not transfer such Personal Information to any foreign jurisdiction outside of Canada and as otherwise agreed to in writing by the other Party; and (vi) will comply with all applicable Privacy Laws.

## **9. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.**

The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

### **9.1 Meaning of Confidential Information.**

**“Confidential Information”** means any and all information and materials, which: (i) are designated in writing, as confidential at the time of disclosure, or (ii) if disclosed orally or visually, is designated as confidential at the time of disclosure, or (iii) a reasonable person, having regard to the nature of the materials and the circumstances, would regard as confidential. Without limiting the foregoing, Confidential Information includes all Customer Data. The term **“Confidential Information”** (unless it is also Personal Information) does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality at the time of disclosure; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity’s proprietary rights and without use of the disclosing party’s Confidential Information; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through or on behalf of, the receiving entity or any other person who has a duty of confidentiality in respect of that information).

**“Personal Information”** means any personal information which is required to be protected pursuant to PIPEDA or any other laws and regulations pertaining to the protection of personal information. For clarification, Personal Information is a subset of Confidential Information.

**“PIPEDA”** means the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, as amended from time to time.

### **9.2 Obligation of Confidentiality.**

The recipient of the disclosing party’s Confidential Information will:

- (a) use the disclosing party’s Confidential Information only in accordance with the Agreement and only for the purpose of fulfilling its obligations and exercising its rights under the Agreement and will not use, manipulate or exploit the disclosing party’s Confidential Information in any other manner;
- (b) use the same degree of care to protect the disclosing party’s Confidential Information as the recipient uses to protect its own confidential information of a like nature and in any event using a standard no less than a reasonable degree of care,



taking into account the sensitivity of any applicable items of Confidential Information;

- (c) disclose the disclosing party's Confidential Information only to the recipient's representatives who have a need to know for purposes described in paragraph (a) above and are obligated to keep the Confidential Information of third parties confidential at least to the same extent as set forth in the Agreement;
- (d) not make copies of the disclosing party's Confidential Information or modify it other than to the extent necessary to enable the recipient to exercise any rights or perform any obligations under the Agreement;
- (e) upon demand, inform the disclosing party of the location of the Confidential Information and the measures that the recipient has taken to preserve its confidentiality; and
- (f) take such measures as may be reasonably required in the circumstances, taking into account the sensitivity of any applicable items of the Confidential Information, to prevent any access, use or disclosure of any Confidential Information by any unauthorized person; and
- (g) within ten (10) business days of the termination or expiration of this Agreement, the recipient will, to the extent reasonably feasible: (i) either return or destroy the disclosing party's Confidential Information and all copies thereof, regardless of form; and (ii) furnish to the disclosing party, a certificate signed by an executive of the recipient attesting to such return or destruction. If such return or destruction is not feasible, the provisions of this Agreement pertaining to the protection of Confidential Information will extend and limit further uses and disclosures of the disclosing party's Confidential Information to those purposes that make its return or destruction infeasible, for as long as the disclosing party's Confidential Information is within the recipient's possession and control.

### **9.3 Cooperation to Prevent Disclosure of Confidential Information.**

Each party shall promptly inform the other party immediately upon becoming aware that any unauthorized access, copying, disclosure, use or disposition of the other party's Confidential Information has occurred or is likely to occur and shall use reasonable efforts to: (i) limit the scope and consequences of any such access, copying, disclosure, use or disposition; and (ii) investigate the breach. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information intends to violate the terms of this Agreement, and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

### **9.4 Remedies for Breach of Obligation of Confidentiality.**

Service Provider acknowledges that breach of Service Provider's obligation of confidentiality may give rise to irreparable injury to Customer and the customers of Customer. Accordingly, Customer or customers of Customer may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, at the sole election of Customer, the immediate termination, without penalty to Customer, of this Agreement in whole or in part.

9.5 The provisions of this Section shall survive the termination of this Agreement.

## **10. PROPRIETARY RIGHTS.**

### **10.1 Pre-existing Materials.**

Customer acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the “Pre-existing Materials”) and that same shall remain the sole and exclusive property of Service Provider.

### **10.2 Data of Customer.**

“**Customer Data**” means any information or materials provided to Service Provider by or on behalf of Customer or any User in conjunction with its use of the Services and any information or materials derived from such. Customer Data shall also be known and treated by Service Provider as Customer’s Confidential Information and shall be and remain the sole and exclusive property of Customer. Service Provider is provided a license to Customer Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display Customer Data only to the extent necessary in the provisioning of the Services.

### **10.3 No License.**

Except as expressly set forth herein, no license is granted by either party to the other with respect the Confidential Information, Pre-existing Materials, or Customer Data, Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or Customer Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or Customer Data.

10.4 The provisions of this Section shall survive the termination of this Agreement.

## **11. INFORMATION SECURITY.**

### **11.1 Undertaking by Service Provider.**

Without limiting Service Provider’s obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining an information security program that is designed to: (i) ensure the security and confidentiality of the Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (iii) protect against unauthorized access to or use of the Customer Data; (iv) ensure the proper disposal of Customer Data; and, (v) ensure that all subcontractors of Service Provider, if any, comply with all of the foregoing.

### **11.2 Right of Audit by Customer.**

Customer shall have the right to review Service Provider’s information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the performance of the Services, on an ongoing basis from time to time and without notice, Customer, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider’s information security program. In lieu of an on-site audit, upon request by Customer, Service Provider agrees to complete,

within forty-five (45) days of receipt of Customer's request, an audit questionnaire provided by Customer regarding Service Provider's information security program.

## **12. INSURANCE.**

12.1 Service Provider shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts stated herein, with responsible insurance carriers duly qualified in those provinces (locations) where the Services are to be performed, covering the operations of Service Provider, pursuant to this Agreement.

<b>TYPE OF INSURANCE</b>	<b>LIMITS OF LIABILITY (Minimum Amounts)</b>
Commercial General Liability	\$5,000,000 CAD per occurrence
Products - Completed Operations (PCO)	\$5,000,000 CAD aggregate
Technology Errors and Omissions	\$500,000 CAD per occurrence

12.2 Upon Customer's request, Service Provider shall provide Customer with certificates of insurance evidencing all of the above coverage, and on request, shall provide Customer with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) days prior to the effective date of such renewal or substitution. The administrative cost for this service is \$50 per year.

## **13. LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT FOR THE TERM IN WHICH THE DAMAGES OCCURRED. This Section shall survive the termination of this Agreement.

## **14. GENERAL.**

### **14.1 Relationship between Customer and Service Provider**

Service Provider represents and warrants that it is an independent contractor with no authority to contract for Customer or in any way to bind or to commit Customer to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Customer. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of

Customer in recognition of Service Provider's status as independent contractor, Customer shall carry no Workers' Compensation insurance or any health or accident Insurance to cover Service Provider or Service Provider's agents or staff, if any. Customer shall not pay any contributions to CPP, Employment Insurance, federal or provincial withholding taxes, any other applicable taxes whether federal, provincial, or local, nor provide any other contributions or benefits which might, be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall -be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Customer.

#### **14.2 Governing Law.**

If Customer's primary location is in Canada, this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada. Service Provider hereby consents and submits to the jurisdiction and forum of the provincial and federal courts in the Province of Ontario in all questions and controversies arising out of this Agreement.

If Customer's primary location is in the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of New York and the federal laws of the United States. Service Provider hereby consents and submits to the jurisdiction and forum of the provincial and federal courts in the State of New York in all questions and controversies arising out of this Agreement.

#### **14.3 Dispute Resolution.**

In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereunder, the party raising the dispute will give the other party written notice of the dispute. Within five (5) days of such a notice being sent and received, a representative of Customer and a representative Service Provider will meet for the purpose of resolving the dispute. They will meet as often as the parties reasonably deem necessary in order to thoroughly investigate the existence of one or more resolutions to the dispute that are agreeable to the parties. The parties may mutually agree to appoint a neutral advisor to facilitate negotiations and, if requested by both parties, to render non-binding opinions. No formal proceedings for the judicial resolution of any dispute may be commenced until sixty (60) calendar days following the date on which notice of the dispute was given or for such shorter period as the parties may mutually agree to in writing. Either party may then seek whatever remedy is available in law or in equity.

For clarification, the provisions of this section shall not limit or restrict the right of either party to seek injunctive relief or to bring any action in any court of law with respect to any dispute, controversy or claim relating to the improper use, misappropriation or infringement of intellectual property rights, or breach of confidentiality or privacy, nor shall it prevent either party from seeking an injunction or other equitable relief in order to prevent any continuing or ongoing breach of the Agreement.

#### **14.4 Compliance.**

With Laws; Customer Policies and Procedures, Both parties agree to comply with all applicable federal, provincial, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with Customer policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.

#### 14.5 **Cooperation.**

Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any Customer supplier performing services, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.

#### 14.6 **Force Majeure.**

Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labour difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of Customer Data. Configuration changes, other changes, viruses or malware, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for Customer to use the Services shall not constitute a force majeure event.

#### 14.7 **Advertising and Publicity.**

Service Provider shall not refer to Customer directly or indirectly in any advertisement, news release, or publication without prior written approval from Customer.

#### 14.8 **No Waiver.**

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

#### 14.9 **Notices.**

Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or nationally recognized overnight courier to the addresses appearing at the end of this Agreement, or by email, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice sent by overnight courier shall be deemed effective on the

business day following its having been sent by overnight courier to the addressee. Notice given by Email shall be deemed effective as of the date the recipient confirms receipt of the message.

**14.10 Assignment of Agreement.**

Neither party may assign this Agreement without the prior written consent of the other party (which will not be unreasonably withheld).

**14.11 Counterparts; Facsimile.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile or electronically scanned signature may substitute for and have the same legal effect as the original signature.

**14.12 Severability.**

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect: (a) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or (b) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

**14.13 Entire Agreement.**

This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Customer and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

**14.14 Cumulative Remedies.**

All rights and remedies of Customer herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.