

MASTER PRODUCTS AND SERVICES TERMS AND CONDITIONS

THESE MASTER PRODUCTS AND SERVICES TERMS AND CONDITIONS GOVERN CUSTOMER'S ACQUISITION AND USE OF TERAMACH TECHNOLOGIES, INC. ("PROVIDER") SERVICES AND DELIVERABLES.

BY EXECUTING A STATEMENT OF WORK THAT REFERENCES THESE TERMS AND CONDITIONS, CUSTOMER ACCEPTS AND AGREES TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

IF THE INDIVIDUAL ACCEPTING AND AGREEING TO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE TERM "**CUSTOMER**" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. ALL CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

Provider and Customer may be jointly referred to as the "**Parties**" and individually referred to as a "**Party**". This Agreement and all Addenda, Statements of Work, exhibits, executed Change Requests as applicable, and schedules attached hereto shall be referred to collectively as the "**Agreement**".

1. DEFINITIONS

Whenever used in this Agreement, the terms set forth below shall have the following meanings. Additional terms are defined throughout this Agreement.

- 1.1 **Affiliate.** Affiliate means, with respect to each Party, an entity that directly or indirectly shares a common owner with such Party.
- 1.2 **Defect Maintenance.** Defect Maintenance means the maintenance of Deliverables to enable them to work properly in the original environment for which the Deliverable was designed.
- 1.3 **Deliverables.** Deliverables means the tangible materials that Provider delivers to the Customer as set forth in a SOW.
- 1.4 **Manufacturer.** Manufacturer means the original manufacturer, producer or vendor of Products that Provider may deliver under this Agreement.
- 1.5 **Products.** Products means the desktop computers, servers, storage devices, networking equipment, computer software or other related hardware and/or software products manufactured or licensed by a Manufacturer.
- 1.6 **Provider Personnel.** Provider Personnel means Provider's employees and contractors who are assigned to perform Services or provide Deliverables for Customer under a SOW.
- 1.7 **Services.** Services means the work provided by Provider to Customer pursuant to and as contemplated in a SOW.
- 1.8 **Site.** Site means the facility(ies), owned, controlled or leased by Customer, in which the Customer systems are located, Services are to be performed, Products delivered, or as otherwise identified on a SOW.

- 1.9 **Statement of Work ("SOW").** Each "SOW" will include details regarding the Services, Products and/or Deliverables that Customer intends to purchase from Provider. Each Service, Product and Deliverable engagement performed under this Agreement will be defined by a SOW which: (a) is signed by an authorized representative of both Parties; and (b) describes the tasks to be performed by each Party, the Services, Products, and/or Deliverables, methods of delivery, and may include a schedule of performance dates and milestones, payment terms, service level agreements and other provisions.

- 1.10 **Support.** Support means the maintenance and support of Deliverables and/or Products for a fee and following the Defect Maintenance period.

2. TERM AND TERMINATION

- 2.1 **Term.** The Agreement will begin on the Effective Date as defined in the applicable SOW and, unless terminated in accordance with its terms, will remain in effect until the completion of the applicable SOW (the "**Term**").

- 2.2 **Termination for Breach.** A Party may terminate the Agreement and/or a SOW immediately if the other Party materially breaches the Agreement or a SOW, and fails to remedy the breach within thirty (30) days or such other reasonable time frame as the Parties may mutually agree after receiving written notice of the breach from the other Party. In addition, this Agreement and/or any SOW may be terminated effective immediately upon written notice if either Party: (a) becomes unable to pay its debts when they become due; (b) becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding; (c) is declared insolvent; or (d) makes an assignment for the benefit of creditors. To the extent applicable, Customer hereby waives Articles 2125 and 2129 of the *Civil Code of Québec*.

3. FEES

- 3.1 **Fees.** Customer will pay Provider the fees, expenses and other costs set forth in the applicable SOW. Fees must be charged: (i) as a fixed price for providing specific tasks and Services, Products, or Deliverables; (ii) as an hourly rate; or (iii) on a time and materials basis. Customer must pay time and a half for any work performed by Provider outside Monday through Friday, 8:30 AM to 5:30 PM local time or on statutory holidays which is being charged as an hourly rate or on a time and materials basis.

- 3.2 **Taxes.** In addition, Customer shall pay or reimburse Provider for any tax, tariff, customs duty, surcharge, or other fee imposed by applicable law or regulation from time to time due to the performance of the Services, and which Provider is required to pay to any taxing or other regulatory or municipal authority (excluding income taxes based on Provider's income) (collectively "**Taxes**") unless Customer provides a valid exemption certificate. Customer shall indemnify Provider for all Taxes which may be levied upon Provider as a result of Customer's failure to promptly provide a valid exemption certificate.

- 3.3 **Idle Time.** Should Provider Personnel assigned to perform the applicable Services or Deliverables incur idle time as a result of the fault of Customer, or other third party under the direction of Customer, (e.g. not having resources available as outlined in the applicable SOW), Provider will charge by the hour for that idle time.

Unless a specific rate is set forth for idle time in the applicable SOW, all idle time will be charged at the regular hourly rate set forth in the SOW for a maximum of eight (8) hours per occurrence. If Provider Personnel incur eight (8) hours of idle time each day for three (3) consecutive business days, Provider Personnel will exit the Site and not return until the project has been rescheduled, and Customer will also be responsible for all direct travel and per diem expenses incurred as a result. For the purposes of this Agreement, "business day" means any day of the year on which banks are open for business in Toronto, Ontario, Canada but excludes Saturday, Sunday and any other day which is a statutory holiday in Toronto, Ontario, Canada.

3.4 Invoicing. All fees specified in a SOW will be invoiced by Provider as set forth in the SOW. All prices are based on Canadian Dollars ("CAD") and all payments will be made in CAD unless otherwise specifically agreed to in writing by both Parties. Provider may invoice for Products (if any) as they are delivered during the development or implementation process. Unless otherwise specified in the SOW, payment, whether for Services, Deliverables or Products or any reimbursement, which Customer is required to make under this Agreement must be made within thirty (30) days after Customer has received Provider's invoice. Past due balances will accrue interest per month at 1.5% or at the maximum applicable statutory rate, whichever is lower. If Customer disputes the accuracy of an invoice (a "Billing Dispute"), Customer will notify Provider in writing no later than thirty (30) days following the date of such invoice of the nature of the Billing Dispute. Customer may withhold the amount disputed, however, all undisputed amounts must be paid when due. An invoice will be deemed to have been accepted if Customer does not present a Billing Dispute on or before the date when the payment is due. The Parties will make commercially reasonable efforts to resolve the Billing Dispute within a reasonable amount of time.

4. PRODUCT TERMS

4.1 Product Shipment. Product is shipped F.O.B. Origin freight prepaid and charged back unless otherwise expressly agreed in writing. Products will ship to Customer directly from the Manufacturer of the Products, an authorized distributor of Provider, or from Provider's third-party warehouse or Provider's integration center(s). Title, risk of loss, damage or destruction to the Products shall pass to Customer at the point the Product is received by the common carrier. Provider reserves the right, in its sole discretion to select the means of shipment, point of shipping, and routing.

4.2 Acceptance of Products. All Products delivered hereunder shall be deemed accepted by Customer upon delivery (including electronic delivery or availability for download in the case of software), and Customer shall have no right to revoke acceptance, unless such right is specifically set forth in a SOW.

4.3 Product Returns. Subject to applicable Manufacturer terms and conditions, Customer may return any Product that, upon delivery, is: (i) damaged; (ii) defective (breach of warranty), or (iii) errant. Software may not be returned. Subject to terms of the Manufacturer or distributor, Provider may impose a restocking fee at its discretion. Refunds will not be given but credits will be applied. All returns require a Return Merchandise Authorization ("RMA") to be filled out and returned by the

Customer within five (5) days of receipt of the Product. The RMA is available upon request.

4.4 Maintenance Services for Products. Maintenance services may be available from the Manufacturer. Where Customer purchases such maintenance services through Provider, Provider shall pass through the maintenance agreement directly to Customer (unless otherwise agreed by Customer and Provider in writing), and all terms and conditions of the Manufacturer's maintenance agreement shall apply. Provider shall not be liable for any deficiencies, breach or other issues with the Manufacturer's maintenance services, and Customer shall look solely to the Manufacturer or Manufacturer's maintenance service provider with respect thereto.

4.5 Purchase Orders. Customer may submit purchase orders to Provider regarding Products that Customer intends to purchase from Provider. Each purchase order represents a separate order by Customer and is subject to the terms and conditions as set forth herein. Any terms and conditions contained in Customer's purchase order, whether or not such terms are acknowledged by Provider will be null and void.

5. DELIVERABLES

5.1 Acceptance Testing. Deliverables are subject to an Acceptance Testing Period of ten (10) business days unless otherwise specified in the SOW. The Acceptance Testing Period will begin the first business day following the day on which Provider first offers the applicable Deliverable to Customer for acceptance. During the Acceptance Testing Period, Customer should complete any testing as Customer desires to otherwise determine the functionality, performance and conformance of the Deliverable to the specifications contained in the SOW. In the event of any dispute between Customer and Provider, the failure of Customer to perform such tests shall preclude Customer from raising issues of functionality, performance and nonconformance to the specifications established in the SOW. Should Customer discover any non-conformance of the Deliverables, Customer shall give Provider a written letter specifying the nonconformance with particularity (the "Deficiencies"). Such letter shall specify the particular criteria or requirement(s) detailed in the SOW, with which the Deliverable does not comply. In the event of any alleged Deficiencies, Provider shall proceed in a commercially reasonable manner to correct at its own expense such Deficiencies, if they so exist. After the Deficiencies have been corrected by Provider, Customer may again run such acceptance tests as it desires and thereupon deliver to Provider a list of any additional Deficiencies within ten (10) business days of such subsequent notice. If Customer (a) begins use of the Deliverable in a production environment before acceptance, or (b) fails to timely notify Provider of its acceptance or non-acceptance of the Deliverable in accordance with this Section, Customer shall be deemed to have accepted the Deliverable and shall have no further recourse against Provider.

5.2 Defect Maintenance. If set forth in a SOW, Provider will provide Defect Maintenance for Deliverables for thirty (30) days from the date of final acceptance of the Deliverables at no additional cost to Customer. Thereafter, Provider may provide Support for the Deliverables for an additional fee. Notwithstanding the foregoing, any Support (whether during the initial thirty

(30) day period or thereafter) that is necessitated by any change, modification, editing or repairs made on the Deliverables by Customer or any third party, shall be at an additional cost to Customer.

6. CHANGE CONTROL

6.1 Change Requests. If Customer desires to make any changes to an executed SOW, Customer shall provide Provider with a written document specifying the requested changes in the requirements (the "**Change Request**"). Customer acknowledges that any changes to a SOW may require increased work by Provider necessitating a reasonable adjustment in the fees due to Provider. Customer agrees to negotiate such increases in good faith and to accept any delays to the delivery of Deliverables, Products, and/or Services caused by such negotiations. Acceptance of the proposed Change Request shall be at Provider's sole discretion. If Provider accepts the proposed Change Request and Customer accepts any associated adjustments in schedule and fees payable, the Parties shall execute the proposed Change Request, which shall detail the change in the Deliverables, Products, or Services and other related adjustments. After both Parties execute the Change Request the terms of the Change Request shall prevail over the SOW to which the change applies, to the extent they are inconsistent. If Provider does not accept the proposed Change Request and/or Customer does not accept the related adjustments to the schedule and/or fees, the proposed Change Request shall be null and void and the applicable SOW shall continue to govern without change. If the Customer requests changes while work is in process under a SOW and the changes do not warrant the effort of the use of the change control process described in this Section then Provider will, upon Customer's written approval, charge for the work on a time and materials basis at Provider's hourly rate set forth in the applicable SOW.

6.2 Time and Materials. In the case of time and materials work, the following definitions are used to apply normal time and overtime rates. Normal business hours are defined as eight (8) hours performed within a single twenty-four (24) hour period beginning at 7:00 AM and concluding at 6:00 PM Monday through Friday excluding statutory holidays. Hours worked beyond eight (8) hours in a single weekday or hours worked on weekends or statutory holidays are considered overtime hours.

7. INTELLECTUAL PROPERTY

7.1 Background Intellectual Property. Nothing in this Agreement is to be construed as giving Customer any right, title, or interest, express or implied, in or to any intellectual property of Manufacturer, Provider, or its subcontractor(s), if any, existing prior to the Effective Date as defined in the applicable SOW or created independent of the Deliverables under this Agreement ("**Background Intellectual Property**"). Customer understands and acknowledges that the Background Intellectual Property contains the valuable trade secrets of Manufacturer, Provider or its subcontractors, as applicable, and constitutes Provider's Confidential Information (defined below). Customer shall not attempt to modify, reverse engineer or decompile the Background Intellectual Property or Products supplied by Provider. Customer shall not separately use or exploit any Background Intellectual Property even if such Background Intellectual Property is incorporated in or otherwise utilized as a part of Deliverables or Customer Owned Deliverables.

7.2 Right to Deliverables and Customer Owned Deliverables. Upon payment in full of all fees due to Provider, Customer will have a non-exclusive, non-transferable, object code only, perpetual license to use the Deliverables, including any Background Intellectual Property incorporated therein, solely for Customer's internal use, and subject to and consistent with the SOW pursuant to which the Deliverable was created. Except in the case of Customer Owned Deliverables, Provider reserves all right, title and interest in and to the Deliverables, and shall retain ownership of all intellectual property embodied in the Deliverables.

7.3 Intellectual Property and Licensing of Deliverables. Certain Deliverables may be expressly designated in a SOW as "**Customer Owned Deliverables**". In such case, upon payment in full of all relevant SOW fees, Provider will assign to Customer all right, title, and interest in the Customer Owned Deliverables, with the exception of any Background Intellectual Property that may be incorporated therein. Upon Customer's request and at Customer's expense, Provider will execute such documents as may be necessary to perfect Customer's rights in the Customer Owned Deliverables. In addition, Customer hereby grants Provider a non-exclusive, royalty-free, perpetual, world-wide license to use the Customer Owned Deliverables in connection with Provider's business, including, but not limited to, the provision of services, deliverables and products to its customers. Except with regard to Customer Owned Deliverables, if any, nothing in this Agreement is to be construed as giving Customer any right, title, or interest, express or implied, in or to any of the Deliverables except as granted in accordance with Section 7.1 and 7.2.

7.4 Intellectual Property and Licensing of Products. Nothing in this Agreement will be construed as transferring any rights, title, or interest, whether express or implied, in the intellectual property of any Product unless expressly stated in the SOW pursuant to which the Product was purchased. In addition, Provider does not grant any third-party licenses to Customer for any Products purchased from Provider. Provider however shall assist Customer in obtaining a license to use the Products from the applicable Manufacturer, subject to such Manufacturer's terms and conditions and at Customer's sole expense.

8. CONFIDENTIALITY

During the course of this Agreement, each Party may disclose to the other certain non-public information or materials relating to a Party's products, intellectual property, business, marketing, customers, pricing, and other confidential information and trade secrets ("**Confidential Information**"). Confidential Information does not include information that: (a) is or becomes publicly available through no breach by the receiving Party; (b) was previously known to the receiving Party prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired by the receiving Party from a third party without any breach of any obligation of confidentiality; (d) was independently developed by a Party hereto without reference to Confidential Information of the other Party; or (e) is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, provided, however, that the Party receiving such subpoena or order shall promptly inform the other Party in writing and provide a copy thereof, and shall only disclose that Confidential Information necessary to comply with such subpoena or order. Except as expressly provided herein, the receiving Party will not use or disclose any Confidential Information of the disclosing Party without the disclosing Party's prior written consent,

except disclosure to and subsequent uses by the receiving Party's employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the receiving Party's obligations under this Section. Subject to the foregoing nondisclosure and non-use obligations, the receiving Party agrees to use at least the same care and precaution in protecting such Confidential Information as the receiving Party uses to protect the receiving Party's own Confidential Information and trade secrets, and in no event less than reasonable care. Each Party acknowledges that due to the unique nature of the other Party's Confidential Information, the disclosing Party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party shall be entitled to injunctive relief to prevent such unauthorized use or disclosure.

9. LIMITED WARRANTIES

Provider represents and warrants: (i) that it is competent, experienced and trained to provide all Services set forth in the SOW; and (ii) that the Services will be provided in a professional and workmanlike manner; ((i) through (ii) collectively the "**Service Warranties**"). NOTWITHSTANDING THE ABOVE, PROVIDER DOES NOT WARRANT OR GUARANTEE IN ANY FORM THE RESULTS OR ACHIEVEMENTS OF THE SERVICES IT PROVIDES. Customer shall provide Provider with written notice of all claims for breach of Service Warranties within thirty (30) days of the applicable Service completion. ALL WARRANTY CLAIMS NOT MADE IN WRITING WITHIN SUCH THIRTY (30) DAY PERIOD WILL BE DEEMED WAIVED. In the event that any claim under this Section 9 is substantiated, Provider will use commercially reasonable efforts, at its sole option and expense, to: (i) promptly refund Customer for any and all fees related to the non-conforming Service; or (ii) correct or modify the non-conforming Service to make such Service conforming. The foregoing remedies in this Section 9 are Customer's sole and exclusive remedies for claims related to breach of the Service Warranties. The Service Warranties are solely for the benefit of Customer and Customer will have no authority to extend such warranties to any third party.

10. DISCLAIMER OF WARRANTIES

10.1 EXCEPT FOR AS PROVIDED IN SECTION 9 (LIMITED WARRANTIES), THE SERVICES, PRODUCTS AND DELIVERABLES ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THE WARRANTIES SET FORTH IN SECTION 9 CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY PROVIDER WITH RESPECT TO ANY SERVICES, PRODUCTS AND DELIVERABLES PROVIDED BY PROVIDER UNDER THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW PROVIDER DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT OR REPRESENT THAT THE SERVICES, PRODUCTS OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY. PROVIDER WILL IN NO WAY BE HELD RESPONSIBLE OR LIABLE FOR DAMAGES, MONETARY OR OTHERWISE, BY

CUSTOMER, OR ANY OTHER AFFECTED PARTY, IN THE EVENT OF SECURITY BREACHES OR NETWORK SECURITY-RELATED OUTAGES, DAMAGES, OR LOSSES AND PROVIDER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES AND CONDITIONS WITH REGARD TO THE PROVISION OF ANY SERVICES RELATING TO SYSTEMS OR DATA SECURITY OR PRIVACY.

10.2 PROVIDER MAKES NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY PRODUCTS, CONTENT, SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "**THIRD-PARTY ITEMS**"). TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE/NON-INFRINGEMENT WITH REGARD TO PRODUCTS OR ANY THIRD-PARTY ITEMS. CUSTOMER SHOULD CONSULT THE RESPECTIVE MANUFACTURERS OF THE THIRD-PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING HEREIN SHALL BE CONSTRUED AS PROVIDER'S EXPANSION IN ANY WAY OF A MANUFACTURER'S STANDARD END-USER WARRANTY.

10.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PROVIDER'S MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER BASED IN CONTRACT, TORT OR EXTRA-CONTRACTUAL LIABILITY, AND INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), WILL NOT EXCEED THE LESSER OF: (A) THE AGGREGATE AMOUNT OF THE FEES PAID TO PROVIDER UNDER THE APPLICABLE SOW TO WHICH THE DAMAGES RELATE DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY; OR (B) THE AMOUNT OF RECOVERABLE INSURANCE PROCEEDS FROM THE INSURANCE POLICIES MAINTAINED BY PROVIDER IN ACCORDANCE WITH THIS AGREEMENT WITH RESPECT TO THE APPLICABLE SOW TO WHICH THE DAMAGES RELATE.

10.4 EXCEPT FOR BREACHES OF CONFIDENTIALITY, IN NO EVENT, WHETHER BASED IN CONTRACT, TORT, OR EXTRA CONTRACTUAL LIABILITY (INCLUDING STRICT LIABILITY AND NEGLIGENCE) WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF DATA, LOSS OF REVENUE, LOSS OF BUSINESS OR GOODWILL, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS, OR ANY OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT AND ALL SOWS ISSUED HEREUNDER, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. INSURANCE

Provider is currently insured and will maintain the following insurance coverage during the Term:

- i. Workers' Compensation/Employer's Liability Insurance: in accordance with applicable provincial statutory requirements and not less than \$1,000,000 USD per accident for bodily injury by accident, \$1,000,000 USD policy limit by disease and \$1,000,000 USD per employee for bodily injury by disease.
- ii. Commercial General Liability Insurance written on an occurrence form including coverage for bodily injury, property damage, products and completed operations, personal injury, advertising injury and contractual liabilities arising out of any and all Services provided under this Agreement with minimum limits of \$1,000,000 USD per occurrence and \$2,000,000 USD annual aggregate.
- iii. Automobile Liability Insurance with a limit of not less than \$1,000,000 USD per accident.
- iv. Professional Liability/Errors and Omissions coverage of not less than \$3,000,000 USD each claim and annual aggregate.
- v. Umbrella/Excess Liability with policy limits of not less than \$2,000,000 USD per occurrence and annual aggregate, as excess over general liability, automobile liability and employer's liability.

All insurance policies shall be issued by companies licensed to do business in the provinces/countries where the Services are delivered and will be rated "A-" or better by A.M. Best. Upon request by Customer, Provider will add Customer as an additional insured under its insurance plan and provide Customer with a copy of a Certificate of Insurance reflecting such addition.

12. INDEMNITY

- 12.1 Customer agrees to defend, indemnify and hold Provider harmless from and against any and all damages, costs and expenses (including reasonable attorneys' fees), claims and liabilities arising out of any suit, claim, or action by any third party relating to: (i) gross negligence, misrepresentation, error or omission on the part of Customer or its representatives; (ii) Customer's material breach of any agreement between Provider and Customer; and (iii) use of the Deliverables or Products in combination with third-party products, including hardware and software, that are not provided by Provider, (iv) modifications or maintenance of the Deliverables or Products by a party other than Provider, (v) failure to use the Deliverables or Products in accordance with the terms of this Agreement or any SOW, (vi) specifications, materials or any intellectual property provided by Customer or its agents, (vii) failure of Customer to implement any improvement or updates to the Deliverables or Products, if the infringement claim would have been avoided by the use of the improvement or updates, and (viii) distribution to or use of the Deliverables or Products by any third party ((iii) - (viii) collectively the "Exclusions"). Provider shall (a) give Customer prompt written notice of any such claim; (b) cooperate in the defense of any such claim, at Customer's expense; and, (c) not enter into any settlement or compromise of any such claim without Customer's prior written approval.
- 12.2 Provider agrees to defend, indemnify and hold Customer harmless against any and all damages, costs and expenses (including reasonable attorneys' fees), claims and liabilities arising out of any suit, claim, or action by any third party relating to (i) Provider's breach of this Agreement or any SOW; (ii) Provider's negligence, unlawful or willful misconduct; or (iii) any claim of

infringement of a third party's U.S. patent, trade secret, or copyright asserted against Customer by virtue of Customer's licensed use of the Deliverables as delivered by Provider hereunder; provided that Provider is given prompt notice of any such claim and right to control and direct the investigation, preparation, defense and settlement of each such claim. Customer shall reasonably cooperate with Provider in connection with the foregoing. Notwithstanding anything contained herein to the contrary, Provider assumes no liability or indemnity obligation for claims of infringement of intellectual property rights arising from any or all of the Exclusions.

- 12.3 If the Deliverables become or, in Provider's opinion, are likely to become, the subject of a claim of infringement for which Provider is obligated to indemnify Customer under this Section, Provider may, at its option and expense either (a) procure for Customer the right to continue to use the Deliverables as contemplated under this Agreement, or (b) replace or modify the Deliverables and/or modify the use of such Deliverables so that they are no longer infringing, without loss of material functionality. If neither option is reasonably available to Provider, then this Agreement may be terminated at the option of either Party hereto without further obligation or liability. In the event termination under this Section occurs during the first twelve (12) months from the date of initial delivery of the infringing Deliverable(s), Provider will refund the fees paid, if any, for the infringing Deliverables, prorated over such twelve (12) month period. The indemnification and remedies in this Section constitute Customer's sole and exclusive remedies and Provider's sole and exclusive liability with regard to claims of infringement relating in any way to the Services, Products and/or Deliverables.

13. BACKGROUND CHECKS

Provider shall conduct, or has conducted, a criminal background check at its own expense on each of Provider Personnel prior to the commencement of Services hereunder. Provider Personnel shall not be eligible to perform Services for Customer if he or she, to Provider's knowledge, (1) has been convicted of any crime involving dishonesty, theft, computer crimes or financial crimes including, but not limited to, check kiting or passing bad checks; embezzlement, identity theft, fraud, money laundering; and/or (2) has been convicted of any sex or violent crime including but not limited to rape, child molestation, terrorism or battery. Provider will conduct background checks which verify personnel information and review applicable records for Provider Personnel from the previous ten (10) years, unless a shorter period is required by federal, provincial, or local law. Should Customer require additional background checks or other related checks for Provider Personnel, any such additional background checks will be performed at Customer's expense.

14. GENERAL PROVISIONS

- 14.1 Assignment. Neither Party may assign this Agreement or any part thereof without the other Party's prior written consent. Notwithstanding the foregoing, Provider may assign this Agreement, in whole or in part, without Customer's consent, to an Affiliate, or in connection with a merger, acquisition, divestiture, corporate reorganization, or sale of all or substantially all of its assets. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 14.2 Governing Law, Venue and Limitation of Actions. This Agreement shall be governed in all respects by and construed under the laws of the Province of Ontario,

Canada and the federal laws applicable therein, without reference to choice of law or conflict of law principles. In addition, the Parties agree and consent that the courts of Ontario, Canada will have exclusive jurisdiction and will be the exclusive venue for any legal actions relating to this Agreement or the Services provided under any Statement of Work.

- 14.3 Compliance with Laws.** Provider shall comply with all federal, provincial and local laws, rules and regulations applicable to Provider as a provider of the Services, Products and Deliverables. Customer shall comply with all federal, provincial and local laws, rules and regulations applicable to Customer's access, collection, use, storage, transmission and provision to Provider of Customer's data, and Customer's access, receipt and use of the Services, Products and Deliverables. The Parties further agree to comply with all applicable provincial and federal employment laws, including, but not limited to, the *Civil Code of Québec, Act Respecting Labour Standards* (Québec), the *Labour Code* (Québec), the *Act Respecting Occupational Health and Safety* (Québec), the *Act Respecting Industrial Accidents and Occupational Diseases* (Québec), the *Charter of Human Rights and Freedoms* (Québec), the *Pay Equity Act* (Québec), all as amended, as well as all applicable workers' compensation and safety laws.
- 14.4 Disclosure of Personal Information.** Customer shall not cause Provider to come into contact with, control, or otherwise access personal data of any kind, including but not limited to Customer's personal data, without prior written notice to Provider and the express identification of the personal data as such. Customer's failure to properly notify Provider pursuant to this Section shall be deemed a material breach of this Agreement.
- 14.5 Anticorruption Laws.** Each Party hereby represents warrants and covenants to the other that such Party shall comply with the requirements of the applicable federal, provincial or international anti-corruption laws and regulations, including the Canadian *Corruption of Foreign Public Officials Act*. Each Party hereby represents, warrants and covenants to the other that such Party has not, and agrees that it will not, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving the other Party, make, promise or offer to make any payment or transfer anything of value, directly or indirectly: (i) to any foreign government official or to an intermediary for payment to any foreign government officials; or (ii) to any political party. No payments or transfer of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business.
- 14.6 Applicable Data Protection Laws.** If the Services performed in relation to this Agreement or any associated SOWs, involves, or is expected to involve, the processing of personal data as governed by (i) the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, (ii) Canadian privacy and data protection laws, or (iii) other applicable data protection laws, the terms of Provider's Data Protection Addendum as provided online by Provider or otherwise furnished to Customer shall apply to this Agreement; Customer's agreement to these Terms and Conditions signifies Customer's acceptance of and agreement to Provider's Data

Protection Addendum. In the event of a conflict between the terms of this Agreement and the terms of the Data Protection Addendum, the terms of the Data Protection Addendum shall prevail in relation to the processing of such personal data. If such personal data is to be processed in connection with this Agreement or any associated SOW, Customer shall notify Provider in writing before any personal data is disclosed to Provider. In addition, if this Agreement or any associated SOW will involve processing, analysis, management or transformation of data, in order to enable Provider to provide continuous support, such personal data may be processed by those Provider teams or Affiliates in the United States, Canada and/or the United Kingdom (the "**Third Countries**"). Customer consents to (a) the Provider Affiliates and teams processing Customer personal data in the Third Countries on Customer's behalf, and (b) Provider's transfer of such data to those Provider Affiliates will be deemed a Restricted Transfer as defined in the Data Protection Addendum between Customer and Provider. Notwithstanding the foregoing, Customer's personal data will remain primarily hosted in the United States and/or Canada, unless otherwise agreed in a SOW or as otherwise agreed between Customer and Provider.

- 14.7 Publicity.** Either Party may publicly refer to the other by name as a provider or customer, as applicable, and may disclose the general nature and existence of the Agreement, but not any of its specific terms or performance information. Neither Party will issue a press release regarding the Agreement or the relationship without the other Party's prior review and written consent.
- 14.8 Independent Contractor.** The Parties agree that Provider will perform its duties under this Agreement as an independent contractor. Nothing herein shall be deemed to establish a partnership, joint venture, association, agency or employment relationship between the Parties. Personnel employed by or retained by Provider who perform duties related to this Agreement will remain under the supervision, management and control of Provider. Each Party's obligations to the other hereunder are exclusively contractual in nature. Neither Party shall be responsible for the acts or defaults of the other Party or any of the other Party's employees or agents.
- 14.9 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable or invalid, the provision shall be severed or modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
- 14.10 Affiliates and Subcontractors.** The rights and obligations of Provider may be, in whole or in part, performed by Provider's Affiliates, agents, subcontractors, and providers, provided that (a) any such party is bound by confidentiality provisions at least as restrictive as those specified in this Agreement; and (b) Provider remains primarily liable to Customer for all Services provided by any such parties.
- 14.11 Third-Party Beneficiary.** There are no third-party beneficiaries to this Agreement, except Affiliates where expressly stated.

- 14.12 Waiver.** The waiver by either Party of a breach or default of any provision of this Agreement by the other Party will not be construed as a waiver of any succeeding breach of the same or any other provision, nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party. No waiver will be effective unless made explicit and in writing.
- 14.13 Counterparts and Originals.** This Agreement, Services Addenda and SOWs hereto may be executed and delivered in counterparts, which together will constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g. pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature.
- 14.14 Force Majeure.** Except for Customer's payment obligation, if either Party is unable to perform any of its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, governmental action, declared states of emergency, terrorism, riots, war, strikes, lockouts, prolonged shortage of utilities, fire, explosion, failure of the internet or acts of God, such Party's performance will be excused and the time of performance will be amended for the period of delay or inability to perform due to such occurrences.
- 14.15 Notices.** Notices will be in writing, addressed to the signatories at the addresses indicated in the applicable SOW and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after first class mailing; (iii) the first business day after sending via a reputable overnight carrier; or (iv) the first business day after sending via email (provided email shall not be sufficient for notices of termination, breach, or an indemnity claim).
- 14.16 Entire Agreement; Amendment.** This Agreement, together with all Statements of Work hereunder and any Change Request executed by both Parties, contains the full understanding between the Parties with regard to the subject matter hereof, and supersedes all prior or contemporaneous representations, whether oral or written with respect to the subject matter. Except as set forth herein, this Agreement may not be modified except by a writing that is signed by both Parties.
- 14.17 Order of Precedence.** Each SOW shall be governed by the terms of this Agreement, the Addenda and the terms set forth in the SOW. In the event of any conflict or inconsistency between the provisions of this Agreement, and Addendum and a SOW, such inconsistency shall be resolved by giving precedence in the following order: (a) the SOW; (b) the Addendum; and (c) this Agreement.
- 14.18 Non-Exclusive Relationship.** Provider expressly reserves the right to contract with other third parties to provide Services substantially similar or identical to the Services under this Agreement. Customer expressly reserves the right to contract with other third parties to receive Services substantially similar or identical to the Services provided under this Agreement.
- 14.19 Survival.** The following sections shall survive any termination of this Agreement: Section 2 (Term and Termination), Section 7 (Intellectual Property), Section 8 (Confidentiality), Section 9 (Limited Warranties), Section 10 (Disclaimer of Warranties), Section 12 (Indemnity) and Section 14 (General Provisions).
- 14.20 Language.** The Parties acknowledge that they have expressly required that this Agreement and all related documents be drafted in the English language. *Les parties reconnaissent avoir expressément exigé que la présente convention et tous les documents connexes soient rédigées en langue anglaise.*