

**SCOUT TALENT**  
**TERMS & CONDITIONS OF SOFTWARE AS A SERVICE AND SUPPORT**

This Software as a Service (SaaS) and Support agreement (this "**Agreement**"), effective as of the date the contract is signed (the "**Effective Date**"), is by and between SCOUT TALENT INC., a federal company with offices located at #406 - 1199 West Pender Street, Vancouver, BC V6E 2R1 ("**Scout Talent**" or the "**Provider**") and the signing client (the "**Customer**"). The Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

**WHEREAS**

- A. Scout Talent has developed certain Software which allows the Customer to manage its recruitment marketing data and other related data as set out in the Proposal;
- B. The Software is delivered as a SaaS (software as a service) subscription, as authorized and indicated in the Proposal; and
- C. The Customer wishes to use the Services in its business operations and the Provider wishes to provide access to such Services to Customer on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS AND INTERPRETATION.**

**1.1 Definitions**

- (a) **Aggregated Statistics** means data and information related to the Customer's use of the Services which is used by the Provider in an aggregate and anonymized manner, including industry-wide benchmarking, trends, sales, and marketing and to compile statistical and performance information related to the provision and operation of the Services;
- (b) **Authorized User** means the Customer's employees, consultants, contractors, and agents (i) who are authorized by the Customer to access and use the Services under the rights granted to the Customer pursuant to this Agreement; and (ii) for whom access to the Services has been purchased under this Agreement;
- (c) **Business Day** means a day that is not a Saturday, Sunday, bank holiday, or public holiday in Vancouver, BC, Canada;
- (d) **Confidential Information** shall have the meaning set out in Section 9.1;
- (e) **Customer Data** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of the Customer or an Authorized User through the Services (and for clarity, Customer Data does not include the data of candidates or job applicants);
- (f) **Delivery** or **Delivered** means a communication delivered to a Party in accordance with the Notice requirements;
- (g) **Disclosing Party** has the meaning set out in Section 9.1;
- (h) **Dispute** has the meaning set out in Section 16.2;
- (i) **Dispute Notice** has the meaning set out in Section 16.2;
- (j) **Documentation** means any manuals, instructions, or other documents or materials that the Provider provides or makes available to the Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or the Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof;
- (k) **Fees** means the fees payable by the Customer as set out in the Proposal which includes, without limitation, the User Subscription Fee and any implementation fee, training fee, or other amounts as described or defined in the Proposal;
- (l) **First Renewal Term** has the meaning set out in Section 13.2;

- (m) **Force Majeure Event** will have the meaning set out in Section 17.3;
- (n) **GST** means any goods and services tax, value added tax, consumption tax, or other similar tax including, without limitation, any tax arising out of the passage of the relevant tax codes and associated legislation or regulations;
- (o) **Initial Term** means the term stated in the Proposal;
- (p) **Intellectual Property Rights** means all intellectual property rights, including but not limited to:
  - (i) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names, and trade names and trade secrets;
  - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i) above; and
  - (iii) all rights of a similar nature to any of the rights in paragraphs (i) and (ii) above which may subsist anywhere in the world (including Canada), whether or not such rights are registered or capable of being registered;
- (q) **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, including privacy laws, specifically the *Personal Information Protection Act* of British Columbia and *Personal Information Protection and Electronic Documents Act* of Canada;
- (r) **Losses** has the meaning set out in Section 11.1;
- (s) **New Features and Functions** means any update, revision, new version, new module, or upgrade of the Software made available from the Provider from time to time (i) that adds new functions or features to the Platform and (ii) for which the Provider charges a fee to its customers in order to obtain same;
- (t) **Notice** has the meaning set out in Section 17.4;
- (u) **Personal Information** means any information that relates to an individual person and identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information that is or can be associated with that specific individual, including, but not limited to (a) first and last name; (b) home or other physical address, including street name and name of city or town and/or province or territory; (c) email address or other online information, such as a user name and password; (d) telephone number; (e) government-issued identification or other number; (f) financial or payment card account number; (g) date of birth; or (h) health information, including information regarding the individual's medical history or mental or physical condition, or medical treatment or diagnosis by a health care professional; and (i) any information that is combined with any of (a) through (h) above, as further defined in applicable privacy Laws, as amended from time to time;
- (v) **Person** means an individual, corporation, partnership, unlimited liability company, governmental authority, unincorporated organization, trust, association, or any other entity;
- (w) **Process** means to take any action or perform any operation or set of operations that the 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;
- (x) **Proposal** means the proposal or campaign engagement mutually executed by the Parties and which may be attached to this Agreement as Schedule "A";
- (y) **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 the Provider or its designee to disable the Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of the Provider;
- (z) **Provider Materials** means the Software, the Documentation, Provider's Intellectual Property Rights, 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 the Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from the

Provider's monitoring of the Customer's access to or use of the Services, but do not include Customer Data;

- (aa) **Receiving Party** has the meaning set out in Section 9.1;
- (bb) **Renewal Term** has the meaning set out in Section 13.3;
- (cc) **Resultant Data** means information, data, and other content that is derived by or through the 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;
- (dd) **Services** means the subscription services described in the Proposal provided by the Provider to the Customer in connection with this Agreement and the Proposal;
- (ee) **Service Suspension** has the meaning set out in Section 2.4;
- (ff) **Software** means the Provider software application or applications and any third-party or other software that the Provider provides remote access to, and use of, as part of the Services, as detailed in the Proposal, and all new versions, updates, revisions, improvements, and modifications of the foregoing;
- (gg) **Subcontractor** has the meaning set out in Section 2.6;
- (hh) **Term** has the meaning set out in Section 13.3;
- (ii) **Third-Party Claim** has the meaning set out in Section 11.1;
- (jj) **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 the Provider;
- (kk) **Upgrades** includes any development, updates, upgrades, bug fixes, error corrections, additions, enhancements, and other modifications to the Software and backup copies other than New Features and Functions; and
- (ll) **User Subscription Fee** means the regular and recurring payment made by the Customer which allows the Customer access to the Services during the active subscription period, subject to the terms outlined in this Agreement.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this Agreement, and a reference to this Agreement includes any schedule to this Agreement;
- (d) a reference to a document or instrument includes the document and any amendments thereto;
- (e) a reference to CA\$, \$CA, dollar, or \$ is to Canadian currency;
- (f) a reference to time is to Pacific Time;
- (g) a reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by "including", "for example", or similar expressions;
- (i) any agreement, representation, warranty, or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur, on or by the next Business Day; and

(l) headings are for ease of reference only and do not affect interpretation.

### 1.3 Schedules

(a) Schedule A - Proposal

## **2. ACCESS AND USE.**

2.1 Provision of Access. Subject to and conditioned on the Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, the Provider hereby grants the Customer a non-exclusive, non-transferable (except in compliance with Section 17.7) right to access and use the Services and Documentation during the Term, solely for use by the Customer and its Authorized Users in accordance with the terms and conditions in this Agreement. Such use is limited to the Customer's internal use. The Provider shall provide to the Customer the necessary passwords and network links or connections to allow the Customer to access the Services. The total number of Authorized Users will not exceed the number set out in the Proposal, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable under this Agreement.

2.2 Use Restrictions. The Customer shall not, and shall not permit any other Person (including permit any of the foregoing to be done by any Person, including the Authorized Users) 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 licence agreement. For purposes of clarity and without limiting the generality of the foregoing, the 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 security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User;
- (e) input, upload, transmit, or otherwise provide to or through the Services or Provider Materials 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 Materials, or Provider's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, 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 Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (i) impersonate or falsely represent an association with any person, including as a Scout Talent representative, without the prior express, written permission of such person;
- (j) 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; or
- (k) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under Section 2.1.

2.3 Reservation of Rights. The Provider reserves all rights not expressly granted to the Customer in this Agreement. Except for the limited rights and licences expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to the Customer or any third party any intellectual property rights or other

right, title, or interest in or to the Provider's Intellectual Property Rights.

2.4 Service Suspension. Notwithstanding anything to the contrary in this Agreement, the Provider may temporarily suspend the Customer's and any Authorized User's access to any portion or all of the Services if: (i) the Provider reasonably determines that (A) there is a threat or attack on any of the Provider's Intellectual Property Rights, (B) the Customer's or any Authorized User's use of the Provider Materials disrupts or poses a security risk to the Provider Materials or to any other customer or vendor of the Provider, (C) the Customer, or any Authorized User, is using the Provider's Intellectual Property Rights for fraudulent or illegal activities, (D) subject to applicable Law, the Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, or (E) the Provider's provision of the Services to the Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of the Provider has suspended or terminated the Provider's access to or use of any third-party services or products required to enable the Customer to access the Services; or (iii) there is any non-payment of Fees in accordance with Section 6.1 (any such suspension described in this section is a "**Service Suspension**"). The Provider shall use commercially reasonable efforts to provide Notice of any Service Suspension to the Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. The Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. The Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that the Customer or any Authorized User may incur as a result of a Service Suspension.

2.5 Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, the Provider may monitor the Customer's use of the Services and collect and compile Aggregated Statistics. As between the Provider and the Customer, all right, title, and interest in Aggregated Statistics, and all Intellectual Property Rights to such Aggregated Statistics, belong to and are retained solely by the Provider. The Customer acknowledges that the Provider may compile Aggregated Statistics based on Customer Data inputted into the Services. The Customer agrees that the Provider may (i) make Aggregated Statistics publicly available in compliance with applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable Law; provided that such Aggregated Statistics do not identify the Customer or the Customer's Confidential Information.

2.6 Subcontractors. The 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. The 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 the Customer, any Authorized User, or any other Person, without incurring any resulting obligation or liability, if: (a) the Provider receives a government authority that expressly or by reasonable implication requires the Provider to do so; or (b) the Provider believes, in its sole discretion, that: (i) the Customer or any Authorized 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; (ii) the Customer or any Authorized 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 the Provider's other rights or remedies, whether at Law, in equity or under this Agreement.

### 3. **CUSTOMER RIGHTS AND OBLIGATIONS.**

3.1 Customer's Rights. The Customer has a right to use the Services in accordance with the terms and conditions of this Agreement, the Law, and good practice.

3.2 Customer Obligations. The Customer is responsible and liable for all uses of the Services and Documentation resulting from access of the Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, the Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by the Customer will be deemed a breach of this Agreement by the Customer. The Customer shall use all reasonable efforts to make all Authorized Users aware of this Agreement's provisions applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

### 4. **SUPPORT, TRAINING, UPGRADES, FEATURES.**

4.1 Support. The Services granted to the Customer under this Agreement entitles the Customer to certain support services described in the Proposal for the period set out in such Proposal. Thereafter, the Customer may purchase enhanced support services separately at the Provider's then-current rates.

4.2 Training. The Provider shall provide training to the Authorized Users throughout the implementation phase as set out in the Proposal. Such training may encompass both in-person/on-site sessions and remote/online modules. Should the Customer require further training, the Customer may purchase supplemental training at the prevailing standard hourly rate of the Provider, as detailed in the Proposal.

4.3 Upgrades. The Customer agrees that its entry into this Agreement is not contingent on the delivery of any future functionality or features by the Provider. The Provider may, from time to time and in its sole discretion, update the Provider Materials (including the underlying server software or hardware) or otherwise offer Upgrades, which Upgrades will form part of the Services provided hereunder without further payment by the Customer. The Provider will use commercially reasonable efforts to (a) ensure that such Upgrades are compatible with and will not adversely affect or reduce the functionality, performance, availability, and accessibility of the Services, and (b) to the extent that such Upgrades do so adversely affect the Services and the Customer notifies the Provider of same, restore or reinstate the Software or parts of it causing the adverse effects to its or their status prior to the Upgrade, as soon as may be reasonable and practicable in the circumstances.

4.4 New Features and Functions. The Provider may, from time to time and in its sole discretion, develop and offer New Features and Functions that will not form part of the Services licensed under this Agreement. During the Term, the Provider may inform the Customer of any New Features and Functions, which may then be provided and licensed separately to the Customer for an additional fee. For clarity, in no event will the Provider be obligated to provide any New Features and Functions free of charge.

## 5. SOFTWARE AVAILABILITY

5.1 Availability Requirement. The Provider will use commercially reasonable efforts to make the Services available at least 99.5% of the time (the "**Availability Requirement**") as measured over the course of each calendar quarter during the Term (each such calendar quarter, a "**Service Period**"), excluding unavailability as a result of any of the exceptions described below in this Section 5.

5.2 Exceptions. For purposes of calculating the Availability Requirement, the following are exceptions to the Availability Requirement:

- (a) any act or omission by the Customer or any Authorized User that does not strictly comply with this Agreement;
- (b) any delay or failure of performance caused in whole or in part by the Customer's delay in performing, or failure to perform, any of its obligations under this Agreement;
- (c) internet connectivity of the Customer or its Authorized User;
- (d) a Force Majeure Event;
- (e) any failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by the Provider under this Agreement;
- (f) during scheduled downtime as defined in Section 5.3 below; or
- (g) disabling, suspension, or termination of the Services under Sections 2.4 or 2.7.

5.3 Scheduled Downtime. The Provider will use commercially reasonable efforts to (a) schedule any required downtime for routine maintenance of the Services between the hours of 9 p.m. (21:00) and 6 a.m. (06:00); and (b) give the Customer at least 24 hours prior Notice of all scheduled outages of the Services.

## 6. PRICE & INVOICING

6.1 Fees. The Customer shall pay the Provider the User Subscription Fee and all other Fees set out in the Proposal in accordance with this Section 6.

6.2 Taxes. All Fees and other amounts payable by the Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, the Customer is responsible for all GST; 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 the Customer hereunder, other than any taxes imposed on the Provider's income.

6.3 Payment. Unless otherwise stated in the Provider's invoice, invoices rendered pursuant to this Agreement or a Proposal (the "**Invoice**") shall be due and payable on the 7<sup>th</sup> Business Day following the Delivery of such Invoice. The Customer shall make all payments hereunder by cheque, wire transfer, or electronic funds transfer. The Customer shall make payments to the address or account specified in the Proposal or such other address or account as the Provider may specify in writing from time to time.

6.4 Late Payment. If the Customer fails to pay the Invoice within 30 days from Delivery of such Invoice, then, in addition to all other remedies that may be available to the Provider:

- (a) the Provider may charge interest on the past due amount at the rate of 2.5% calculated daily and compounded monthly;
- (b) the Customer shall reimburse the Provider for all reasonable costs incurred by the 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 30 days following Notice thereof, the Provider may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to the Customer or any other Person by reason of such suspension.

6.5 No Deductions or Set-Offs. All amounts payable to the Provider under this Agreement shall be paid by the Customer to the 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).

6.6 Fee Increases. The Provider reserves the right to increase the User Subscription Fee by five percent (5%) after the expiration of the Initial Term or during any Renewal Period. After such increase, the pricing sections of the Proposal will be deemed amended accordingly.

## 7. **INTELLECTUAL PROPERTY**

7.1 Reservation of Rights. The Customer acknowledges that any and all right, title, and interest in and to the Services, Provider Materials, and Third-Party Materials (including any Intellectual Property Rights therein), and any modifications, improvements, or enhancements made thereto, are and remain the sole property of the Provider or respective rights holders in the Third-Party Materials. The Customer acknowledges and agrees that it has no right, licence, or authorization with respect to any of the Services or Provider Materials (including any Intellectual Property Rights therein). The Customer must not during or at any time after the expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or dispute the ownership of the Intellectual Property Rights of the Provider or the applicable Third Party. In the event that any Intellectual Property Rights to such Services, Provider Materials, or Third-Party Materials vest for any reason in the Customer, the Customer hereby assigns such Intellectual Property Rights to the Provider or the holders in the Third-Party Materials, as applicable.

7.2 Customer Data. The Provider does not claim ownership of, and assumes no liability or responsibility with respect to, any Customer Data. As between the Provider and the Customer, all right, title, and interest (including Intellectual Property Rights) in and to Customer Data will at all times be fully vested in the Customer, except that by posting, uploading, inputting, providing, submitting, entering, or otherwise transmitting Customer Data to the Provider or any third party using the Provider Materials, the Customer agrees as follows:

- (a) the Customer will have thereby granted to the Provider a royalty-free, non-exclusive, worldwide, fully paid-up limited license to use, copy, distribute, transmit, display, edit, delete, publish, and translate such Customer Data to the extent reasonably required by the Provider in connection with the functionality of the Provider Materials and the performance of this Agreement as well as to ensure adherence to or enforce the terms of this

Agreement;

- (b) the Customer, and not the Provider, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and Intellectual Property Rights of all Customer Data, and the Provider will not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Customer Data; and
- (c) the Customer will have thereby confirmed, represented, and warranted to the Provider that the Customer has obtained all required consents and has obtained all rights, titles, and interests (including all Intellectual Property Rights as well as the power and authority necessary to do so) to grant the license to such Customer Data as set out above in paragraph 7.2(a). The Customer shall ensure it maintains such rights and consents during the Term and any renewal thereof. Notwithstanding the foregoing, any Personal Information collected by the Customer must be made subject to the Customer's standard privacy policies which, at minimum, will disclose to the individuals from which the Customer collected such Personal Information: (i) what personally identifiable information is collected and how it will be used by the Customer; (ii) the identity of all parties (including the Provider) collecting the personally identifiable information; and (iii) that such personally identifiable information is shared with the Provider in accordance with this Agreement.

## 8. PRIVACY

8.1 Personal Information. The Provider acknowledges and agrees that Customer Data may contain sensitive information, and in connection therewith (a) the Provider will comply with all applicable Laws relating to personal information privacy, including the British Columbia *Personal Information Protection Act*, and will adhere to the Provider's data privacy and security policy, which forms an integral part hereof and is incorporated herein by reference; (b) the Provider will use industry-standard management practices, technologies, and security to protect the integrity, safety, and security of Customer Data in both physical and electronic form; (c) the Customer acknowledges and agrees that its use of the Provider Materials will utilize, in whole or in part, the public Internet and third party networks to transmit communications, which transmissions may be intercepted by other parties or stored, cached, routed, transmitted, or received in jurisdictions outside of the jurisdiction of the Customer, (d) the Provider will not use Customer Data for any purpose other than to provide the functionality of the Provider Materials to the Customer and its Authorized Users, to ensure adherence to or enforce the terms of this Agreement, or (only in aggregate form) for metrics; and (e) the Provider reserves the right to modify the Provider's privacy policies and security policies in its reasonable discretion from time to time, subject to any applicable Laws.

## 9. CONFIDENTIALITY

9.1 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 9.2 below, "**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 (including but not limited to information, data, drawings, specifications, documentation, software listings, source or object code), 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 and the financial terms and existence of this Agreement are the Confidential Information of the Provider, and Customer Data is the Confidential Information of the Customer. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees or advisors who have a need to know the Confidential Information in order for the Receiving Party to exercise its rights or perform its obligations hereunder.

9.2 Required Disclosures. Notwithstanding Section 9.1 above, each Receiving Party may disclose Confidential Information of the Disclosing Party to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable Law, provided that the Party making the disclosure pursuant to the order shall first have given Notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings.

9.3 Excluded Information. Confidential Information does not include information that:

- (i) at or prior to the time of disclosure by the Disclosing Party to the Receiving Party is (a) already in the public domain (or subsequent to receipt by the Receiving Party, in the public domain through no disclosure or breach by the Receiving Party or its representatives) or (b) known to the Receiving Party prior to it being disclosed to it, or
- (ii) at any time is (a) rightfully obtained by the Receiving Party on a non-confidential basis from a third party or (b) independently developed by the Receiving Party without the use of any of the Disclosing Party's Confidential Information.

## 10. LIMITED WARRANTY AND WARRANTY DISCLAIMER

10.1 Limited Warranty. The Provider warrants that the Services will conform in all material respects to the service levels set out in Section 5 when accessed and used in accordance with the Documentation. The Provider does not make any representations or guarantees regarding uptime or availability of the Services unless specifically set out in Section 5. If the Customer discovers a material error which substantially affects the Customer's use of the Software, the Provider may at its sole option:

- (a) refund the Fees; or
- (b) use all reasonable endeavors to correct by patch or new release (at its option) that part of the Software which does not so comply provided that such non-compliance has not been caused by (i) any modification, variation, or addition to the Software not performed by the Provider or (ii) its incorrect use, abuse, or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible.

The remedies set forth in this Section 10.1 are the Customer's sole remedies and the Provider's sole liability under the limited warranty set forth in this Section 10.1. THE FOREGOING WARRANTY DOES NOT APPLY, AND THE PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

10.2 AS IS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 10, THE PROVIDER MATERIALS ARE PROVIDED "AS IS" AND THE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THE PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER'S INTELLECTUAL PROPERTY RIGHTS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET THE CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

## 11. INDEMNIFICATION

### 11.1 Provider Indemnification.

- (a) The Provider shall indemnify, defend, and hold harmless the Customer from and against any and all losses, damages, liabilities, costs (including reasonable legal fees) ("**Losses**") incurred by the Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's Canadian Intellectual Property Rights, provided that the Customer promptly notifies the Provider in writing of the claim, cooperates with the Provider, and allows the Provider sole authority to control the defense and settlement of such claim.
- (b) If such a claim is made or appears possible, the Customer agrees to permit the Provider, at the Provider's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for the Customer to continue use. If the Provider determines that neither alternative is reasonably available, the Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on Notice to the Customer.
- (c) This Section 11.1 will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by the Provider or authorized by the Provider in writing; (B) modifications to the Services not made by the Provider; or (C) Customer Data; or (D) third-party products.

11.2 Customer Indemnification. The Customer shall indemnify, hold harmless, and, at the Provider's option, defend the Provider from and against any Losses resulting from any Third-Party Claim that Customer Data, or any use of Customer Data in accordance with this Agreement, infringes or misappropriates such third party's Canadian intellectual property rights and any Third-Party Claims based on the Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by the Provider or authorized by the Provider in writing; or (iv) modifications to the Services not made by the Provider, provided that the Customer may not settle any Third-Party Claim against the Provider unless the Provider consents to such settlement, and further provided that the Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defence thereof by counsel of its own choice.

11.3 Sole Remedy. THIS SECTION 11 SETS FORTH THE CUSTOMER'S SOLE REMEDIES AND THE PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL THE PROVIDER'S LIABILITY UNDER THIS SECTION 11 EXCEED \$10,000.

## 12. LIMITATIONS OF LIABILITY

IN NO EVENT WILL THE PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER THE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL THE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE LESSER OF (i) THE TOTAL AMOUNTS PAID TO THE PROVIDER UNDER THIS AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (ii) \$10,000.

## 13. TERM

13.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier under any of this Agreement's express provisions, will continue in effect until the end of the term set out in the Proposal (the "**Initial Term**").

13.2 First Renewal. At the end of the Initial Term, unless either Party gives the other Party a Notice of non-renewal at least 60 days before the expiration of the Initial Term, this Agreement will automatically renew at the Provider's then current fees for one (1) additional successive term equal in length to the Initial Term (the "**First Renewal Term**"), unless terminated earlier under any of this Agreement's express provisions.

13.3 Subsequent Renewals. At the end of the First Renewal Term, this Agreement will automatically renew for additional successive one (1) year terms at the Provider's then current fees (each, a "**Subsequent Renewal Term**", and collectively with the Initial Term and the First Renewal Term, the "**Term**") unless:

- (a) terminated earlier under any of this Agreement's express provisions, or
- (b) either Party gives the other Party a Notice of voluntary termination of a Subsequent Renewal Term, which Notice is effective 90 days after receipt of such Notice by the Other Party, in which case the Customer is required to pay all previously-accrued but not yet paid Fees on receipt of the Provider's invoice therefor and all Fees that are payable during the aforementioned 90 day period of that final Subsequent Renewal Term, up to and including the date of termination.

## 14. TERMINATION

14.1 Termination by Provider. The Provider may terminate this Agreement:

- (a) effective upon 30 days' Notice to the Customer, provided that the Provider will refund the Fees paid in advance by the Customer for Services that the Provider has not performed as of the effective date of termination;
- (b) effective immediately upon Notice to the Customer, if the Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than seven (7) days after the Provider's delivery of Notice thereof; or (B) breaches any of its obligations under Section 2.2 (User Restrictions) or Section 9 (Confidentiality);
- (c) effective immediately upon Notice to the Customer, if the Customer: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;
- (d) effective immediately upon Notice to the Customer, if the Customer has a change in direct or indirect control of its ownership, or voting or controlling interest, whether by merger, transfer, sale, or otherwise, unless the Customer has already provided at least 30 days' prior Notice to the Provider of a pending change in direct or indirect control.

14.2 Termination by Customer. The Customer may terminate this Agreement at any time, effective immediately, upon Notice to the Provider and upon payment of (i) all previously accrued but not yet paid Fees on receipt of the Provider's invoice therefor and (ii) all Fees that would have become payable had the Agreement remained in effect until expiration of the current Term.

14.3 Termination by Either Party. Either Party may terminate this Agreement, effective immediately, upon Notice to the other Party, if the other Party has materially breached this Agreement and such breach: (A) is incapable of cure; or (B) is capable of being cured, but remains uncured 30 days after the non-breaching Party provides the breaching Party with Notice of such breach.

14.4 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) all rights, licences, consents, and authorizations granted by either Party to the other hereunder will immediately terminate;
- (b) the Provider may disable the Customer's account and access to all Provider Materials;
- (c) the Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and permanently erase all Customer Data and Customer's Confidential Information from the Provider's systems, provided that, for clarity, the Provider's obligations under this Section 14.4(c) do not apply to any Resultant Data;
- (d) the Customer shall immediately cease all use of any Services or Provider Materials and
  - (i) 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 and Provider's Confidential Information from all computer systems that the Customer directly or indirectly controls; and
  - (iii) upon the Provider's request, certify to the Provider in a certificate of a senior officer of the Customer that it has complied with the requirements of this Section 14.4(d).

14.5 Retention of Customer Data. Notwithstanding anything to the contrary in this Agreement, the Provider may retain Customer Data in its then current state and solely to the extent and for so long as required by applicable Law and in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; provided that all information and materials described in this Section 14.5 will remain subject to all confidentiality, security, and other applicable requirements of this Agreement.

14.6 Request for Customer Data. Subject to Section 9 (Confidentiality) at all times, if the Customer requests in writing, at least seven (7) days before the effective date or expiration or termination, a copy of the most recent version of Customer

Data maintained by the Provider, then the Provider shall, within a commercially reasonable period following such expiration or termination, deliver to the Customer in CSV format the then most recent version of Customer Data maintained by the Provider, provided the Customer has at that time paid all Fees 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 the Provider's services in transferring such Customer Data.

14.7 **No Refund.** No expiration or termination will (a) affect the Customer's obligation to pay the Fees that may have become due before such expiration or termination or (b) entitle the Customer to any refund.

14.8 **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 2.2 (User Restrictions), Section 9 (Confidentiality), Section 14.4 (Effect of Expiration or Termination), this Section 14.8, Section 10 (Limited Warranty and Disclaimer), Section 11 (Indemnification), Section 12 (Limitation of Liability), Section 16 (Dispute Resolution), and Section 17 (Miscellaneous).

## 15. **NON-SOLICITATION**

15.1 **Non-Solicitation.** During the Term and for 12 months after such expiration or termination of such Term, the 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 12 months, employed or engaged by the Provider or any Subcontractor and involved in any respect with the Services or the performance of this Agreement.

15.2 **Breach of Non-Solicitation.** In the event the Customer violates Section 15.1 above, the Customer shall, on demand by the Provider, pay to the Provider as liquidated damages (and not as a penalty) a sum equal to one year's remuneration that would have been payable by the Provider (or any Subcontractor) to that employee, worker, or independent contractor plus all recruitment costs incurred by the Provider or Subcontractor in replacing such Person.

## 16. **DISPUTE RESOLUTION**

16.1 **No Commencement of Court Proceedings.** Each Party covenants that neither of them may initiate court proceedings, excluding interlocutory relief, until the Parties have attempted (and failed) to resolve the Dispute in the manner set out in this Section 16.

16.2 **Notice of Dispute.** If a Party asserts the existence of a dispute, difference, or question arising from this agreement (a "**Dispute**"), such Party shall give Notice of such Dispute to the opposing Party (a "**Dispute Notice**") detailing the specifics of the Dispute.

16.3 **Escalation Procedure.** The Parties shall diligently engage in attempts to amicably resolve any Dispute through a graduated negotiation process as outlined below:

- (a) Upon receipt of a Dispute Notice, the designated representatives of each Party shall make commercially reasonable efforts to settle the Dispute.
- (b) Should the Dispute remain unresolved five (5) Business Days subsequent to the issuance of the Dispute Notice, the matter shall be elevated to the chief executive officer or equivalent of each respective Party, who shall then endeavor to reach a resolution.

16.4 **Dispute Resolution.** Should the Dispute persist beyond a period of 10 Business Days following the issuance of the Dispute Notice, the Parties may commence court proceedings or mutually agree to alternative means of resolving the Dispute such as mediation or arbitration.

16.5 **Continuing Obligations.** Notwithstanding the existence of a Dispute, the obligations of the Parties under this Agreement shall remain in full force and effect, including either Party's right of termination under Section 14.

16.6 **Costs.** Each Party shall bear its own costs related to fulfilling the obligations in this section.

## 17. MISCELLENEOUS

17.1 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related schedules, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

17.2 Priority of Terms. If the terms of a Proposal directly and materially conflict with the terms of this Agreement, then the terms of the Proposal will control, but only regarding that particular Proposal. Notwithstanding the foregoing, if the conflicting terms modify the Provider's liability (or any limitations of liability) or modify any warranties provided by the Provider under this Agreement, then the terms of this Agreement will control unless the Proposal specifically acknowledges that particular conflict and specifically states that the Proposal will control on that issue. The termination of one Proposal will not, by itself, cause the termination of any other then-existing Proposal.

17.3 Force Majeure. Except for the Customer's obligations to make payments under this Agreement (which are always applicable and are not subject to any deferral, delay (including due to force majeure), or set-off), in no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, epidemic, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labour stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposition of an embargo.

17.4 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set out on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand at the address of the receiving Party set out on the first page of this Agreement (or such other address that may be designated by the receiving Party in accordance with the Notice provisions hereunder); (b) when received, if sent by a nationally recognized overnight courier with a signature requirement at the point of delivery; (c) when sent, if by fax or email (to the last known fax number or e-mail address of the receiving Party, as evidenced by prior received transmissions, or as designated by the receiving Party from time to time in accordance with the Notice provisions hereunder) if sent during the addressee's normal business hours, and on the next Business Day if sent after the addressee's normal business hours; and (d) on the 7<sup>th</sup> Business Day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

17.5 Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain in full force and effect.

17.6 No Waiver. Any waiver of a right provided under this Agreement or a breach of this Agreement must be expressed and written and signed by the Party claimed to have waived or consented. The waiver by either of the Parties of any breach of any provision hereof by the other Party will not be construed to be a waiver of any succeeding breach of such provision or a waiver of the provision itself. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach excused. Selection by a Party of a specific remedy does not constitute, and will not be interpreted to constitute, a waiver of any other remedy of such Party, and failure to select a specific remedy does not constitute, and will not be interpreted to constitute, a waiver of such remedy.

17.7 No Assignment. Neither Party may assign this Agreement, or any of its rights or obligations hereunder, in whole or in part, without receipt of the prior written consent of the other Party, such consent not to be unreasonably withheld.

17.8 Amendment. This Agreement may not be modified unless agreed to in writing by both Parties.

17.9 Governing Law. This Agreement shall be exclusively governed by the laws of the Province of British Columbia and the laws of Canada, as applicable. The Parties hereby irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

17.10 Agreement Interpretation. Any titles and headings used herein are for convenience of reference only and will not

be used in this Agreement's construction or interpretation. This Agreement was negotiated between the Parties, each of whom had the opportunity to consult with legal counsel and will not be interpreted against either Party as the "drafter" thereof.

17.11 Relationship. This Agreement does not create any joint venture, partnership, or other fiduciary relationship between the Parties.

17.12 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 9 (Confidentiality) or Section 16 (Dispute Resolution) 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 other Party will be entitled to 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.

17.13 Publication. The Provider reserves the right to decline the acceptance for publication of a notice or résumé, or to remove such content from its sites, should it deem that such notice or résumé has the potential to infringe upon the rights of any individual or fail to adhere to the legal requirements of the laws of the Province of British Columbia or the laws of Canada, as applicable.

17.14 Counterparts. The Parties may execute and deliver this Agreement and any Proposal in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be a single document.