



MANAGED IT SERVICES — MASTER SERVICE AGREEMENT

Whereas, Client desires to retain the services of IT Solutions Consulting Canada, Inc. ("Consultant"), as set forth in this Agreement, and Consultant desires to provide such services.

Whereas, Any preprinted terms and conditions of any purchase order or other ordering document issued by Client in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall not be binding on Consultant and shall not be deemed to modify this Agreement.

Whereas, the parties desire to enter into a consulting contract setting forth the terms and conditions of their agreement, the parties, intending to be legally bound hereby, agree as follows:

1. Services. "Services" means the information technology services to be delivered by Consultant under this Agreement as specified in any Statement of Work and does not include Third Party Services. Services may include Hosting Services where included in a SOW. Consultant agrees to use commercially reasonable efforts to perform the Services for Client, which shall be a variety of information technology services as set forth in the quote or proposal from Consultant.

2. Definitions.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Statement of Work, unless the language or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW, and shall apply only with respect to such SOW. As used in this Agreement:

"**Agreement**" means this Master Services Agreement and all Statements of Work, schedules, and attachments attached hereto or to or otherwise made a part of this Agreement.

"**Confidential Information**" means any information furnished by Discloser to Recipient during the term of this Agreement, including, without limitation, pricing, methods, processes, financial data, lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their Clients and suppliers, concerning past, present, or future business activities of said entities. This Agreement is the Confidential Information of Consultant. All other Confidential Information must be clearly designated as "Confidential." Information provided orally will be considered confidential only if a written memorandum of such information clearly designated as marked "Confidential" is delivered to Recipient within thirty (30) days of the Disclosure. As to any particular Confidential Information, "Discloser" means the Party disclosing the Confidential Information and the "Recipient" means the Party receiving the Confidential Information.

"**Content**" means information, software, Client Data, and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Client or any of its Users create, install, upload, or transfer in or through a Client device or Client's network.

"**Client Components**" means the hardware, software, other products, and other Content including, without limitation, those specified in a SOW as being provided by Client.

"**Client Data**" means all data and information about Client's business(es), Clients, employees, operations, facilities, products, markets, assets or finances that Consultant obtains, creates, generates, collects, or processes in connection with its performance of Services and is stored in any Client device or on the Client network.

"**Disclosure**" means the release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

"**Hosting Services**" means the services delivered by Consultant under this Agreement consisting of, but not limited to, network, storage, and server devices, software programs, applications network management devices, and other items specified in a Statement of Work. Hosting Services are governed by this Master Services Agreement and Addendum B, "Terms Specific to Hosting Services" attached hereto and incorporated herein by reference.

"**PCR**" means a project change request (change order) signed by both Parties authorizing a change in the scope of the Services.

"**Products**" means any order for software, hardware, or Resold Services ("Products") made by Client pursuant to a quotation issued by Consultant ("Quotation"). Orders for Products are governed by this Master Services Agreement and Addendum A, "Terms Specific to Product Sales Only" attached hereto and incorporated herein by reference.

"**Required Consents**" means any consents, licenses, or approvals required to give Consultant, or any person or entity acting for Consultant under this Agreement, the right or license to access, use, and/or modify in electronic form and in other forms, including without limitation, derivative works, the Client Components and Content.

"**Third Party Services**" means the information technology services to be delivered by a third party under this Agreement as specified in any Statement of Work.

"**User**" means any entity or individual that receives or uses the Services, or the results or products of the Services, through Client.

3. General.

- a) **Agreement Structure.** This Agreement contains general contractual terms for all information technology services to be provided by Consultant. The specific information technology services that Consultant will provide, applicable pricing and payment terms, service level agreement, if any, and other transaction-specific provisions will be agreed upon through statements of work (each a "Statement of Work" or "SOW"). Each SOW shall be signed by both Parties and will be deemed to incorporate all of the provisions of this Agreement by reference. Each SOW will be a separate agreement between Consultant and Client.
- b) **Order of Precedence.** In the event of any inconsistencies between the terms of this Agreement and the terms of any Statement of Work, the terms of this Agreement shall control. The Parties may specify in the applicable SOW that a particular provision of the SOW is to supersede a provision of this Agreement, in which case the superseding SOW provision(s) shall be applicable only to such SOW and shall be effective for such SOW only if such provision(s) expressly references the applicable Section of this Agreement that is to be modified and clearly states that such provision(s) supersedes the conflicting or inconsistent provision in this Agreement. Unless expressly agreed to in writing by Consultant, Consultant rejects any terms and conditions contained in Client's documents (e.g. purchase orders or other order documents).

4. Services.

- a) **Scope of Services.** Subject to the terms and conditions in this Agreement and the applicable SOW, Consultant will use commercially reasonable efforts to perform the Services described in the applicable Statements of Work.
- b) **Designated Contact Persons.** Each Party shall designate an individual who will be a primary point of contact and will have the authority to act and make decisions in all aspects of the Services, including PCRs, on behalf of their company. Client shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by Consultant. Either Party may change its designated contact person by providing written notice to the other Party.
- c) **Changes.** In the event **Client** wishes to add additional programs, applications or data sources, systems servers, network devices of any kind (hubs, routers, switches), or otherwise requests an expansion in the scope of the Services, then **Client** shall present its request for such alterations of its network to **Consultant** for scoping. No alterations will be permitted under this Agreement without a signed PCR.

5. **Payment for Services.** Client agrees to pay Consultant for services in accordance with the billing policies and terms of sale in any SOW, and pursuant to Section 6 (Invoicing); Section 7 (Reimbursable Expenses); and Section 14 (Taxes) below.

6. **Invoicing.** Consultant shall invoice Client, at Client's address as set forth in the Billing Information section of this Agreement for the Services rendered, and Client shall pay the amount set forth on such invoices to Consultant, in accordance with the Terms of Sale. In addition, all invoices shall be due and payable within thirty (30) days after the invoice date. Payment for all invoices for deposits and on-boarding fees must be received prior to the start of work. Client agrees to pay a late payment charge at the rate of one and one-half percent (1.5%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. Consultant may apply any payment received to any delinquent amount outstanding. Without limiting the foregoing, if Client's account remains unpaid for thirty (30) days or more past the due date, Consultant reserves the right to suspend all Services without further notice until all such overdue amounts (and any applicable interest charges, as specified above) are paid. Upon payment of all outstanding fees due, Consultant shall, to the extent possible, restore the Services after validating that all components to be monitored and/or managed under any applicable SOW and associated proposals and agreements comply with Consultant's level of security, updates, and best practices. Customer agrees to pay a reactivation fee of fifty percent (50%) of monthly consultants fee to restore service. Consultant's right to suspend Services under this Section is in addition to Consultant's rights under equity or law. In the event Services are suspended, Client acknowledges that Client's IT systems will not function, any software licensing acquired from Consultant will be terminated, and Client may irretrievably lose data. In such an event, Client hereby waives, releases, and forever discharges and agreed to hold Consultant harmless from any and all claims for damages for any and all damages which Client and/or Client's officers, directors, employees, customers, agents and/or contractors may have, or which may hereafter accrue, against Consultant as a result of or in any way directly or indirectly related to the suspension of Services. In addition, Client agrees to reimburse Consultant for all expenses incurred in connection with the collection of amounts payable hereunder, including contingent fees, court costs, and reasonable attorneys' fees. All deliverables will be the property of Consultant until payment in full is received.

7. **Reimbursable Expenses.** Except as may otherwise be stated in the applicable SOW, Client agrees to reimburse Consultant all reasonable and customary pre-approved out-of-pocket expenses, including, but not limited to, airfare, rental car, mileage, tolls, and lodging expenses, incurred by Consultant in connection with the performance of services. Reimbursable expenses shall be invoiced on a monthly basis. Upon request by Client, Consultant shall provide copies of documentation for such expenses.

8. Information Security.

- a) **Security Measures.** Consultant will maintain commercially reasonable security measures that are designed to (a) ensure the security of Client Data; (b) protect against any anticipated threats or hazards to the security or integrity of Client Data; and (c) protect against any unauthorized access to or use of the Client Data.
- b) **Audits by Client.** Client shall have the right to review Consultant's security measures prior to the commencement of the Services.

9. Client Responsibilities.

- a) **Content.** Client is solely responsible for: (a) all Content including without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions, and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management, and use of any public and private keys and digital certificates it may use with the Services.

- b) **Required Consents.** Client shall obtain and keep in effect all Required Consents necessary for Consultant to perform all of its obligations as set forth in this Agreement including without limitation, those with internet circuit providers and mobile device carriers. Upon request, Client will provide to Consultant evidence of any Required Consent. Consultant will be relieved of its obligations to the extent that they are affected by Client's failure to promptly obtain and provide to Consultant any Required Consents.
- c) **Software.** All software in Client's environment must be properly licensed from authorized sources. Consultant will be relieved of its obligations to the extent that they are affected by Client's failure to provide properly licensed software specified as being required in any SOW at the level required for Consultant to perform the Services required under this Agreement. Client grants Consultant, at no charge, the right to use any Client-owned or developed application software systems required by Consultant to provide the Services specified in any SOW to Client.
- d) **Security.** Unless Consultant is providing security services under a SOW, Client shall: (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; and (b) require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Client shall not take any action or install any software that may preclude or impair Consultant's ability to access or administer its network or provide the Services.
- e) **Encryption.** Client shall encrypt at the application level Confidential Information, Client Data, and all data that is considered sensitive data or that must be treated as confidential under provincial or federal law or under Client's contractual obligations to others. This includes, but is not limited to, Social Insurance Numbers, financial account numbers, driver's license numbers, provincial identification numbers, and the like.
- 10. Hiring of Personnel.** Both parties agree that while Consultant is performing services under this Agreement and during the twelve (12) months following the completion of performance of such services or the termination of this Agreement, neither party will hire any of the other party's employees or staff that have been engaged in any efforts under this Agreement. Each party acknowledges that the other party's respective employees may be subject to non-solicitation or non-competition agreements, and each party agrees not to interfere with or otherwise cause a breach of such agreement(s) between the other party and its employee(s). Nothing in this Section 10 shall prohibit or constrain employment which was initiated by or first sought-out by the employee by applying to job opportunities posted on recruiting websites or in other publications in which one party seeks to find candidates for open positions (absent direct solicitation and/or recruitment).
- 11. Ownership Rights.**
- a) **Services.** Consultant retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Client agrees not to disclose such information to any third party without Consultant's prior permission. Consultant grants Client a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the term of the applicable SOW to use the Services.
- b) **Content.** Consultant acknowledges and agrees that all Content, including copyrights, trademarks, database rights, and other intellectual property contained in such Content are owned or licensed by Client. Client grants Consultant a license to store, record, transmit, and display the Content solely to perform Consultant's obligations under this Agreement.
- 12. Client Representative.** The person signing this Agreement on behalf of the Client shall represent the Client during the performance of this Agreement with respect to the services and deliverables as defined herein and has authority to execute written modifications or additions to this Agreement. Client may replace the Client Representative at any time upon written notice to Consultant.
- 13. Disputes.** Client agrees to notify Consultant in writing of any claims it may have with respect to the services being provided by Consultant, including alleged defects or deficiencies in Consultant's services, payment issues or other problems. Such written notification shall be furnished to Consultant by the earlier of a) fourteen (14) business days of Client's initial discovery of a claim or b) payment of invoice in dispute. Disputes raised after this time period shall be of no effect. Client shall notify and permit Consultant with reasonable access and information to resolve alleged defects or deficiencies specified in a claim. Any disputes that arise between the parties with respect to the performance of this Agreement shall be submitted first to mediation by a third-party neutral mediator selected by consent of both parties. Should the parties be unable to agree upon a mediator within thirty (30) days after Consultant first elects mediation, or if the mediator is unable to resolve the dispute to the mutual satisfaction of the parties within forty-five (45) days after the mediator is first selected, then the dispute shall be submitted to binding arbitration and the parties hereby agree to share equally in the costs of said arbitration. The final arbitration decision shall be enforceable through the courts of Ontario, Canada or any other province in which the Client resides or may be located. The venue for any and all mediation and arbitration proceedings shall be in Toronto, Canada, unless otherwise agreed mutually by Client and Consultant.
- 14. Taxes.** The amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Client shall pay all taxes levied and duties assessed by any authority based upon this Agreement, excluding any taxes based upon Consultant's income or Consultant's employer-related taxes. This provision shall not apply to any taxes for which Client is exempt and for which Client has furnished Consultant with a valid tax exemption certificate authorized by the appropriate taxing authority. Any and all taxes, except income taxes, imposed or assessed by reason of this Agreement or its performance, including but not limited to sales or use taxes, shall be paid by the Client.
- 15. Representations and Warranties.**
- a) **By Each Party.** Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Client Data and its provision or use of the Services; and (c) it has the requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement.
- b) **By Client.** Client represents and warrants to Consultant that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and

that Client has the right to grant Consultant the rights that Client purports to grant in this Agreement; (b) Consultant's possession or use of the Content or Client Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (c) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

c) By Consultant. Consultant represents and warrants to Client that:

(i) Industry Standards. The Services shall be performed in a good, workmanlike, professional, and conscientious manner by experienced and qualified employees of Consultant according to the generally accepted standards of the industry to which the Services pertain. Services will be deemed accepted by Client if not rejected for non-conformance in a reasonably detailed writing submitted to Consultant within five (5) days of performance of Services. Upon confirmation of the non-conformance, Consultant will use commercially reasonable efforts to take the steps necessary to correct the non-conformance at no charge to Client. This is Client's sole and exclusive remedy for breach of this warranty.

(ii) Service Levels. The Services will meet the technical standards of performance or service levels, if any, set forth in the applicable SOW. Client's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable SOW.

(iii) Staffing Placement Services. Consultant warrants that any consultant provided to Client will have the qualifications and hold the certifications represented to Client by Consultant. Consultant makes no other representations or warranties with respect to the staffing placement Services to be provided.

Client is not authorized to make, and Client shall not make, any representations or warranties on behalf of Consultant to any third party. Client shall be solely responsible and liable for any representations or warranties that Client makes to any third party regarding Consultant, the Services, or any other aspect of this Agreement. Consultant makes no representations or warranties with regard to the Third Party Services and passes through to Client the terms and conditions for the services delivered by a third party.

d) Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT, OR REPRESENTATIVE OF CONSULTANT IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF CONSULTANT. CLIENT IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE, SUBJECT TO INTERRUPTION OR DISRUPTION, AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH CONSULTANT CANNOT BE HELD LIABLE.

16. Limitation of Liability.

- a) Limit on Types of Damages Recoverable.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL (AND CONSULTANT'S SUPPLIERS AND LICENSORS WILL NOT) BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY CLAIMING THROUGH A PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST OR DAMAGED DATA, INVESTMENTS MADE, AND LOSS OF BUSINESS OPPORTUNITY OR INTERRUPTION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY SOW FAILS OF ITS ESSENTIAL PURPOSE.
- b) Limit on the Amount of Damages Recoverable.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT'S TOTAL CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CLIENT TO CONSULTANT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SOW.
- c) Non-Managed Systems.** Consultant shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement.
- d) Applicability.** The terms in this Section 16 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 16 shall apply to not limit liability for such acts and omissions but will apply for all other acts and omissions.
- e) Allocation of Risk.** EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 16 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS

AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CLIENT FOR THE SERVICES WOULD HAVE BEEN HIGHER.

17. Indemnification.

- a) **Indemnification by Consultant.** Subject to the terms and conditions in this Agreement, Consultant will, at its cost, (i) defend Client and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Client Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Client Indemnified Parties to the extent based upon (a) any breach by Consultant of any of its representations and warranties under Section 15.a. (Representations and Warranties. By Each Party); (b) real property damage or personal injury, including death, solely and directly caused by Consultant's employees or contractors in the course of performance under this Agreement; (c) any breach by Consultant of Section 18 (Confidentiality) to the extent the Disclosure is the result of actions predominantly attributable to Consultant; (d) any uncured breach by Consultant of its obligations under Section 8 (Information Security); and (e) any allegation that Client's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents as of the Effective Date, or misappropriates any of such third party's trade secrets (each an "IP Claim"); and (ii) Consultant shall pay any final award of damages (or settlement amount approved by Consultant in writing and) paid to the third party that brought any such Claim.
- b) **Indemnification by Client.** Client will indemnify, defend, and hold harmless Consultant and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Consultant or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Client of any of its representations and warranties under Section 15 (Representations and Warranties); (b) real property damage or personal injury, including death, directly caused by Client; (c) any breach by Client of Section 18 (Confidentiality) to the extent the Disclosure is the result of actions predominantly attributable to Client; (d) any breach by Client of its obligations under Section 9(b) (Required Consents) or Section 9(e) (Encryption); (e) any breach by Client of Section 29 (Export Compliance); and (f) any claim that Consultant's possession, storage, or transmission of the Content or possession or use of the Client Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret, or other intellectual property or proprietary rights of a third party.
- c) **Procedure.** A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 17. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including without limitation, any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.
- d) **Mitigation for IP Claims.** At any time after notice of an IP Claim, or if Consultant believes there is a basis for an IP Claim, Consultant has the right, at Consultant's sole option and expense, to either (a) procure the right for Client to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Consultant believes would not be subject to the IP Claim. If Consultant deems (a) or (b) not feasible or not commercially reasonable, Consultant has the right to terminate the applicable SOW. In the event of any such termination, Consultant will refund to Client the unused portion of any amounts paid by Client for the affected Service. In addition, upon any such termination, Client shall cease the use of the applicable Service.
- e) **Limitations as to IP Claims.** Notwithstanding anything to the contrary, Consultant shall have no obligations or liability under Section 17(a) (Indemnification by Consultant) if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Consultant, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Client's failure to comply with Consultant's direction to cease any activity that in Consultant's reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Consultant Service, or that does not reference a feature of function of a Consultant Service, or (e) any IP Claim for which Client does not promptly tender control of the defense thereof to Consultant.
- f) **Sole Remedy.** THE TERMS IN THIS SECTION 17 (INDEMNIFICATION) SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND CONSULTANT'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 17 (INDEMNIFICATION), CONSULTANT SHALL NOT HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY CLIENT FOR THIRD PARTY CLAIMS.

18. Confidentiality.

- a) **Restrictions on Use; Non-Disclosure.** Recipient agrees that it will use the same care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to disclose, publish, or disseminate (but in no event less than a reasonable degree of care). Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not: (a) use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers,

agents, and consultants who (i) have a need to know to further the purpose of this Agreement; and (ii) are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

- b) **Exceptions.** The obligations set forth in this Section 18.1 shall not apply to Confidential Information that: (a) before the time of its Disclosure, was already in the lawful possession of the Recipient; (b) at the time of its Disclosure to Recipient, was already available to the general public, or after Disclosure to Recipient by Discloser, becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of this Agreement.
 - c) **Disclosures Required by Law.** If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.
 - d) **Disposal of Confidential Information.** Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall promptly certify to Discloser that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Consultant will return to the Client, all Client Data in its possession at the date of termination in its then-existing format and on its Client-supplied media, however, Consultant may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Consultant in order to discharge its obligations under this Section 18 shall be at Client's expense.
 - e) **Remedies.** The Parties acknowledge and agree that a breach of this Agreement by either Party may cause continuing and irreparable injury to the other's business as a direct result of any such violation for which the remedies at law may be inadequate and that Discloser shall therefore be entitled and to seek to obtain a temporary restraining order and injunctive relief against the other Party, without posting a bond or other security, to prevent any violations thereof, and, in addition, any other appropriate equitable relief.
 - f) **Duration.** The obligations set forth in this Section 18 shall apply during the term of this Agreement and for a period of one (1) year thereafter.
- 19. Governing Law and Jurisdiction.** The validity, construction and interpretation of this Agreement and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the Province of Ontario, excluding its conflict of laws principles.
- 20. Severability.** If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions of this Agreement, all of which shall be liberally construed in favor of Consultant in order to effect the provisions hereof.
- 21. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, and successors. This Agreement and any rights pursuant hereto shall not be assignable by either Party, except by operation of law, without the prior consent of the other Party; provided, however, that either Party may assign its rights under this Agreement, without such consent, to any bona fide entity that acquires all or substantially all of the business or assets of such party to which this Agreement pertains, whether by merger, reorganization, acquisition, or sale. In the event of such transaction by Client, Client shall retain any and all obligations under this Agreement, including the obligation of payment, unless and until an appropriate joinder or transfer document is executed between Consultant and the entity acquiring Client.
- 22. Microsoft Software Licensing.** Under Microsoft's license terms regarding the New Commerce Experience (NCE) under the Cloud Solution Provider (CSP) program, Clients who purchase Office 365/Microsoft 365 licensing subscriptions under an annual or multi-year term option are required to accept that cancellation or reduction to licensing quantity of the subscription will not be allowed after the first 7-days of the term, and Client must accept responsibility of payment in full, under any circumstance, regardless of whether the product or service is in use in any production or development environment, after the subscription has been purchased.
- Accordingly, (a) Client must submit to Consultant any request to cancel, adjust or otherwise reduce the licensing quantity of an annual or multi-year term licensing subscription under the NCE licensing program, within the first 7-days of Client's submittal of the subscription order to Consultant. Following this 7-day window, Client shall pay in full for such subscription, under any circumstance, regardless of whether the product or service is in use; and (b) For Client's purchase of Office 365/Microsoft 365 licensing or add-on subscriptions (as applicable), under an annual or multi-year term option, Client shall pay in full for such purchase, under any circumstance, regardless of whether the client is using the product or service, and regardless of the date of client separation should separation not coincide with annual or multi-year term licensing subscription expiration date(s).
- 23. Remote Services.** In the course of providing services to the Client, Consultant may access the Client's network remotely. Client understands that remote monitoring services do not in any way guarantee that network or computer problems will not occur. Client also understands that the Consultant will not necessarily be alerted to any such problems prior to the Client experiencing the problem. Remote monitoring of the Client's network does not, in any way, alter the limitation of liability portions of this Agreement.
- 24. Insurance.** Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located, and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

25. Term; Termination. The term of the Agreement shall continue for the term stated on the quote or proposal by Consultant from start date of Onboarding (the "Initial Term") or until termination of the Agreement as provided herein in this Section 25. Upon the expiration of the Initial Term, this Agreement shall automatically renew from year-to-year (the "Renewal Term(s)"), unless either party terminates the Agreement in accord with this Section 25.

- a) **Termination for Convenience.** Either party may terminate this Agreement for any reason by providing written notice of termination to the other party at least 60-days prior to the expiration of the Initial Term, or 60-days prior to the expiration of any Renewal Term. If there are any active Statements of Work, termination shall be effective upon the expiration or termination of the last Statement of Work. If there are no active Statements of Work, termination shall be effective upon receipt of the written notice.
- b) **Termination for Financial Insolvency.** Either party may terminate this Agreement and SOWs upon written notice if the other party (i) fails to make payment properly due to vendors, contractors, or suppliers which provide work, services, or components for this Agreement, (ii) makes a general assignment for the benefit of its creditors or files a petition in bankruptcy, or (iii) has a receiver appointed on account of its insolvency or inability to meet its obligations; then the insolvent party will provide a written notice to the other party that the insolvent party has ceased to conduct its business in the normal course of business. Termination shall be effective upon receipt of the written notice.
- c) **Termination for Breach.** Either Party may terminate this Agreement or any individual SOW in accordance with subsection 25(c)(i) (in certain circumstances where an opportunity to cure must be provided) or subsection 25(c)(ii) (in certain circumstances where an opportunity to cure is not available).
 - (i) **Cure.** If the other Party breaches any material provision of this Agreement or any SOW and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"), then a Party can provide notice of termination. The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.
 - (ii) **No Opportunity to Cure.** If: (a) the other Party breaches any representation or warranty in this Agreement, subject to the limitation set forth in Section 15(c)(ii) (Service Levels); (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information), then a Party can provide notice of termination. The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.
- d) **Final Payment.** Within thirty (30) days after any termination of this Agreement or individual SOW, Consultant will submit to Customer a final itemized invoice for all fees and expense due and owing by Customer. Customer shall pay the invoice in accordance with Section 6 (Invoicing).
- e) **Effects of Termination.** Upon termination of this Agreement or an individual SOW and Consultant's receipt of payment by Client of the final invoice described in Section 25(d) (Final Payment), Consultant will, to the extent applicable, exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Client. For the avoidance of doubt, Consultant shall have no obligation to cooperate in any transition and shall have no obligation to supply any information to Client and/or its new service provider, including, without limitation, user IDs, passwords, etc., until all outstanding fees, including any early termination fees, are paid to Consultant. Any transition services requested by Client shall be provided by Consultant on a time and material basis. Consultant reserves the right to require prepayment for any transition services.
- f) **Survival.** Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, Sections 11 (Ownership Rights); 15 (Representations and Warranties); 16 (Limitation of Liability); and 17 (Indemnification); shall survive any termination of this Agreement.

26. Force Majeure. Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

27. Export Compliance. Client agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder.

28. Security. The physical security of all electronic equipment, computers, servers, and network is the responsibility of Client. While Consultant may make recommendations regarding the electronic security of IT equipment, computers, servers, and networks, it in no way is responsible for the security of said items, whether or not Consultant's recommendations are followed, as no security measures are 100% effective. THEREFORE, CLIENT AGREES TO HOLD CONSULTANT HARMLESS FROM ANY LOSS, INJURY, OR DAMAGE TO CLIENT OR ANY HARDWARE, SOFTWARE, AND/OR COMPUTER DATA OF CLIENT CAUSED BY MALICIOUS ACTIVITIES. Consultant is not responsible for criminal acts of third parties, including but not limited to hackers, phishers, crypto-locker, and any network environment subject to ransom. CLIENT AGREES TO PAY RANSOM OR HOLD CONSULTANT HARMLESS FOR ANY ACTIVITY AFFECTING NETWORK SECURITY ON CLIENT'S ENVIRONMENT RELATED TO THIRD-PARTY CRIMINAL ACTIVITY, NETWORK SECURITY, OR PRIVACY. Consultant recommends, and has advised Client, of the importance of using active firewalls and up-to-date virus and malware protection. Client understands that any attacks on Client's computer networks and/or computers as a result of malicious software, viruses, worms, social engineering, phishing, and other hacker threats to exploit Client's networks and computers are not the responsibility of Consultant, and that while Consultant does recommend certain security measures,

it is not responsible for failure to comply with said recommendations or the failure of the recommended measures to protect Client's systems, as no such measures are 100% effective.

- 29. Waiver.** The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights and the obligations of the Party with respect to such future performance and shall continue in full force and effect.
- 30. Agreement Binding On Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of the respective Parties.
- 31. Relationship of Parties.** The Parties hereto are independent contractors, and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, Consultant may, from time to time, request that the Client execute such instruments and documents appointing Consultant an agent of the Client for a specific limited purpose. An officer of Client shall, in a timely manner, execute and deliver to Consultant or the third party requiring the same, such instruments designating Consultant as Client's agent to the extent required by Consultant to manage and perform to Services provided by it under this Agreement.
- 32. Subcontractors.** Consultant may engage subcontractors to perform services under any SOW. Except as provided herein, Consultant shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.
- 33. Notices.** Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given if hand delivered or sent by first-class certified or overnight delivery mail, postage prepaid:

If to Consultant:

IT Solutions Consulting Canada, Inc.
Attn: General Counsel
475 Cochrane Dr Unit 4
Markham, ON L3R 9R5, Canada

If to Client, then to the person executing this Agreement on behalf of Client at the address indicated on the first page of this Agreement.

A Party may change its address for notices by sending a change of address notice using this notice procedure.

- 34. Active Negotiations.** Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 35. Captions.** The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 36. Amendments.** No waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed by the Party to be charged.
- 37. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.
- 38. Publicity.** Nothing contained in this Agreement shall be interpreted so as to prohibit Consultant or Client to publicize its business relationship with the other Party or the nature of the Services performed for Client, without the other Party's prior written consent.
- 39. No Third Party Beneficiaries.** Except as provided in Section 17 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.
- 40. Assignment.** Neither party may assign its rights or delegate its duties or obligations under this Agreement without the other party's prior written consent, such consent which shall not unreasonably be withheld. Notwithstanding the forgoing, Consultant may assign this Agreement without the prior written consent of Customer in connection with the acquisition of Consultant or the sale of all or substantially all of its assets.
- 41. Complete Agreement.** This Agreement (including any addenda) contains the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Consultant by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein. In the event of a conflict in the provisions of any addenda hereto and the provisions set forth in this Agreement, the provisions of such addenda shall govern.

ADDENDUM A:

TERMS SPECIFIC TO PRODUCT SALES ONLY

This Addendum A: Terms Specific to Product Sales Only ("Addendum A") applies to any order for software, hardware, or Resold Services ("Products") made by Client, for its own internal use and not for resale, pursuant to a quotation issued by Consultant ("Quotation"). As used in this Addendum A, the term "Resold Services" refers to services (e.g. Software as a Service), which although ordered from Consultant, are procured from and supplied by a third party (i.e., Consultant does not directly perform or control the work) and are therefore considered Product. Any such orders shall be subject to the terms and conditions of this Addendum A.

1. Product Returns and Warranty Assistance.

- (a) Client acknowledges that Consultant is reselling all Products purchased by Client and that Products are manufactured and/or delivered by a third party.
- (b) To the extent available, Consultant shall pass through to Client the manufacturer's warranties for each Product and agrees to facilitate the manufacturer's return policies. Products shall not be accepted for return to Consultant without Consultant's written approval. In no event will Consultant provide return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return may be subject to restocking fees.
- (c) Client acknowledges that the terms and conditions governing the use of Products (e.g., EULAs) shall be solely between Client and the manufacturer of such Products.

2. Product Use and Product Warranty Disclaimer.

Client will not use the Products for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Client agrees that Consultant is not liable for any claim or damage arising from such use.

CONSULTANT MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PRODUCTS. CONSULTANT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

3. **Shipment and Risk of Loss for Product Sales.** All shipments of Products to Client will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Client's identified point of delivery will be the responsibility of Client. Risk of loss will pass to Client upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or Client's representative at the point of shipment.
4. **Procurement of Equipment and Software.** ACH is available as a payment option for hardware and software purchases. Client may sign up through the accompanying Payment Authorization Form. Client is solely responsible for the selection, procurement, compatibility, use, and legal operation of the software and components attached to the Client's network.
5. **Product Security Interest.** Client grants Consultant a security interest in the Products detailed in each Quotation, as security for payment in full. Client authorizes Consultant to file and/or record any documents it deems necessary to perfect this security interest.
6. **Permitting Compliance for Product Sales.** Client will obtain all licenses, permits, and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.
7. **Price and Payment.** The prices set forth in any Quotation are exclusive of all taxes, duties, licenses, and tariffs, payment of which shall be Client's obligation. Prices quoted are firm for thirty (30) days unless otherwise specified in the Quotation. Payment is due prior to delivery of the Products. In the event Client chooses to finance its purchase using a third party, Client remains liable for payment to Consultant until Consultant receives complete payment from such third party. All payments will be made in Canadian currency. Client will pay interest in the amount of one and one-half percent (1.5%) per month, or the maximum allowed by law whichever is lower, on any outstanding balance owed. Without limiting the foregoing, if Client's account remains unpaid for thirty (30) days or more past the due date, Consultant reserves the right to suspend all Products until all such overdue amounts (and any applicable interest charges, as specified above) are paid. In addition, Client agrees to reimburse Consultant for all expenses incurred in connection with the collection of amounts payable hereunder, including contingent fees, court costs, and reasonable attorneys' fees.
8. **Export.** Client agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder. Notwithstanding any sale of Products by Consultant, Client acknowledges that it is not relying on Consultant for any advice or counseling on export control requirements. Client agrees to indemnify, to the fullest extent permitted by law, Consultant from and against any fines, penalties and reasonable attorney fees that may arise as a result of Client's breach of this Section.
9. **Cancellation.** The purchase of Products may be canceled by Client only upon written approval of Consultant and upon terms that indemnify Consultant against all losses related to such cancellation.
10. **Limitation of Liability.** NO MONETARY RECOVERY IS AVAILABLE FROM CONSULTANT FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL CONSULTANT'S LIABILITY TO CLIENT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. CONSULTANT WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, OR IN ANY WAY CONNECTED TO THIS ADDENDUM A, EVEN IF CONSULTANT HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.
11. **Survival.** Those provisions that by their nature should survive termination of this Addendum A, will survive termination. Without limiting the generality of the foregoing statement, Sections 1 (Product Returns and Warranty Assistance), 2 (Product Use and Product Warranty Disclaimer), 6 (Price and Payment), 7 (Export), and 9 (Limitation of Liability) shall survive any termination of this Agreement.

ADDENDUM B:

TERMS SPECIFIC TO HOSTING SERVICES ONLY

This Addendum B: Terms Specific to Hosting Services Only ("Addendum B") applies to any order for services consisting of, but not limited to, network, storage, and server devices, software programs, applications network management devices, and other items specified in a Statement of Work ("Hosting Services"). Any such orders shall be subject to the terms and conditions of this Addendum B.

1. Definitions.

- 1.1. **"Hosted Data"** is Client Data including all data and information about Client's business(es), Clients, employees, operations, facilities, products, markets, assets, or finances that Consultant obtains, creates, generates, collects, or processes in connection with its performance of Services and is stored in the Hosting Environment.
- 1.2. **"Hosting Environment"** means Consultant's hosting environment for the delivery of Hosting Services.

2. Information Security.

- 2.1. **Security Measures.** Consultant will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Hosted Data stored by Consultant in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Hosted Data stored by Consultant in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Hosted Data as stored by Consultant in the Hosting Environment.
- 2.2. **Notification and Prevention Obligations.** Upon becoming aware, Consultant shall promptly notify Client of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Hosted Data. This notification will state in reasonable detail the Hosted Data at risk. Consultant agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Consultant further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Client to address the breach. Consultant shall not be responsible or liable for any security breach caused by Client.
- 2.3. **Audits by Consultant.** Consultant will conduct an annual audit of its security measures. Upon Client's written request, Consultant shall provide a copy of its most recent audit report. The report is to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of Consultant.

3. Client Responsibilities

- 3.1. **Acceptable Use.** Client is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Client agrees, and will ensure its Users agree, to act responsibly and not use the Consultant Hosting Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. Consultant has the right to investigate potential violations of this Section. If Consultant determines that a breach has occurred, then Consultant may, in its sole discretion: (a) restrict Client's and Users' access to the Hosting Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, Consultant will attempt to notify Client by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Client will promptly notify Consultant of any event or circumstance related to this Agreement, Client's or any User's use of the Hosting Services, or Content of which Client becomes aware, that could lead to a claim or demand against Consultant, and Client will provide all relevant information relating to such event or circumstance to Consultant at Consultant's request. Consultant agrees to allow Client complete and unrestricted access at all times to Client's software applications, devices, equipment, hardware, and all Services-related license files so that Client can audit its Users' compliance with the terms of this Agreement.
 - 3.2. **Access.** Client agrees not to access the Hosting Environment by any means other than through the interface that is provided by Consultant for use in accessing the Hosting Environment.
 - 3.3. **Capacity Planning.** Client is solely responsible for determining whether the Hosting Environment and related Content meet Client's capacity, performance, or scalability needs. Client is responsible for planning for and requesting changes to the Hosting Environment and services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.
4. **Indemnification.** Client will indemnify, defend and hold harmless Consultant and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Consultant or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Client of its obligations under Section 2.1 and Section 3.1 of this Addendum B and (f) any claim that Consultant's possession, storage, or transmission of the Content or possession or use of the Client Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.
5. **Survival.** Those provisions that by their nature should survive termination of this Addendum B, will survive termination. Without limiting the generality of the foregoing statement, Sections 3.1 (Acceptable Use) and 4 (Indemnification) shall survive any termination of this Addendum B.