

## FLEET SERVICES

### GENERAL TERMS AND CONDITIONS

#### Agreed terms and conditions

##### 1. Definitions and interpretation

1.1 The following definitions apply in these General Conditions. Terms used but not defined herein have the meanings given to them in the (i) MSA; or (ii) the Product & Service Conditions (as applicable); or (iii) the Order Form.

**Affiliate:** in relation to a party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that party from time to time.

**Business Day:** has the meaning given in the MSA.

**Business Hours:** the period from 8:30 am to 5:30 pm on any Business Day.

**Charges:** has the meaning given in the MSA.

**Contract:** has the meaning given in the MSA.

**Control:** has the meaning given in section 2(3) of the Canada Business Corporations Act, RSC 1985 c C-44, and "Controlled" and the expression "change of control" shall be construed accordingly.

**Customer's Equipment:** any portable or other electronic devices used by the Customer to access the Products & Services.

**Customer Data:** the data inputted into the Products & Services by or for any person that the Customer suffers or permits to use the Products & Services (including any End User) for any purpose, and the data ingested into the Products & Services from any device, software or service that the Customer or any other person suffered or permitted by the Customer (including any End User) integrates, connects or otherwise links with the Products & Services, including recorded video footage and vehicle telematic data.

**Customer Data Obligations:** include the obligation in clauses 5.5, 7.2(j) and 14.5 of these General Conditions, in addition to the other obligations of the Customer which are included in the definitions of the term 'Customer Data Obligations' (if any) in the Supplier's other terms and conditions that are incorporated into the Order.

**Data Handling Particulars:** if the Product & Services Conditions which are incorporated into the Order include a definition of the term 'Data Handling Particulars', in these General Conditions the term has the meaning given in such Product & Services Conditions.

**Deliverables:** all documents and materials developed by the Supplier or its agents, subcontractors or their respective personnel as part of or in relation to the Products & Services

in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Documentation:** the document(s) made available to the Customer by the Supplier from time to time, which set(s) out any description(s) of the Products & Services and/or any user instructions for the use of the Products & Services.

**End User:** any employee of the Customer who is specified by the Customer to the Supplier in writing from time to time, any employee of the Customer who is specified in the Order Form (if the applicable Order Form provides space for the Customer to specify employees), or any person validly authorised by the Supplier to use the Products & Services under the Order.

**Force Majeure Event:** any event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Order including an act of God, fire, flood, drought, storm, cyclone, tidal wave, lightning, earthquake or other natural disaster; war (declared or undeclared), insurrection, civil war, riot, civil disturbance or civil unrest, sabotage, blockage, vandalism, explosion, terrorist attack, military operations or imposition of sanctions; any acts or omissions (whether or not lawful) of any government or other appropriate body; interruption, breakdown, shortage or failure of machinery, equipment, supplies of power, fuel, water, transport, equipment or telecommunications service; market or other systemic failure; denial of service or malicious technological attack; interruption or failure of material(s) required for performance of the Order, trade blockage, priorities, restrictions (including of production or distribution), quarantines, licensing controls, sanctions or embargo; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce.

**General Conditions:** these terms and conditions (as updated from time to time) and, initially, the version of them that applies at the date of the Order.

**Gross Negligence:** any act or failure to act in breach of a duty of care that was intended to cause harm, or was in reckless disregard of or wanton indifference to the harmful and foreseeable consequences of such act or failure to act, but not including an act or failure to act that constituted merely a lack of due care.

**Handling:** means to collect, create, use, disclose, access, store, handle and/or manipulate. "Handled", "Handles" and "Handle" shall be construed accordingly.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in

computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Insolvency Proceeding:** means the occurrence of any of the following (or any analogous procedure or step): (a) as defined by applicable law, the party is unable (or is deemed unable) to pay its debts; (b) the party is the subject of a petition, resolution, order or any other step in relating to winding up, bankruptcy or equivalent proceedings; (c) the party stops, or threatens to stop, carrying on all or part of its business (except for the purposes of amalgamation, reconstruction or reorganization); (d) the party enters into a compulsory or involuntary liquidation, or a liquidator is appointed in relation to any of the party or its assets; (e) the party is the subject of a petition for an administration order or an application for such an order, or a notice of intention to appoint an administrator is given, or any other step is taken by any individual or entity with a view to the administration of the party under applicable law; (f) a moratorium is agreed or declared with respect to all or part of the party's debts; (g) the party enters, or proposes to enter, into any compromise or arrangement of its debts with or for the benefit of some or all of its creditors generally, or in respect of a particular type of its debts; (h) the party begins proceedings or negotiations, or proposes or agrees, to reschedule, readjust or defer its debts; (i) a liquidator, receiver, administrative receiver, administrator, manager or other similar officer is appointed in respect of the whole or any part of the party's assets; or (j) any legal proceeding, corporate action or other procedure or step is taken in connection with appointing an administrator, administrative receiver, receiver, liquidator, manager, trustee in bankruptcy or other similar officer in relation to the party of any of the party's assets.

**Liability:** any and all liability howsoever arising including out of, or in connection with, a breach of contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise. "Liable" and "Liabilities" shall be interpreted accordingly.

**Master Services Agreement:** the master services agreement made, using the Supplier's standard Fleet Services Master Services Agreement template, between the Supplier and the Customer, and which establishes the process by which the Customer may request and the Supplier may agree to supply the Products & Services, and the term "MSA" shall have the same meaning.

**Order:** the order for the Products & Services that is documented by the Order Form that these General Conditions are incorporated into, and the related variation of the Contract by the application of terms and conditions in accordance with clause 2.7 of the MSA.

**Order Form:** has the meaning given in the MSA but, where used in the Product & Services Conditions, refers to the Order Form made using the Order Form Template specified by such Product & Services Conditions.

**Order Form Template:** has the meaning given in the MSA.

**Ordered Products:** has the meaning given in the MSA.

**Personal Information:** as defined under Privacy Law.

**Privacy Breach:** means the loss of, unauthorized access to or unauthorized disclosure of Personal Information. Such activity is unauthorized if it occurs in contravention to Privacy Law.

**Privacy Laws:** means all applicable federal, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Personal Information including, without limitation, the Personal Information Protection and Electronic Documents Act, SC 2000, c 5, and substantially similar provincial privacy laws.

**Products & Services:** the Ordered Products described and referred to in the Order Form into which these General Conditions are incorporated.

**Supplier:** If the Customer is resident in Canada for tax purposes, then Brigade Electronics (Canada) Limited; and if the Customer is resident in the United States for tax purposes, then Brigade Electronics, Inc.

**Supplier's Provider:** has the meaning given in clause 3.1.

**Virus:** any thing or device (including any software, code, file or computer program), including worms, trojan horses, viruses and other similar things or devices, which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect any user experience.

**Vulnerability:** any weakness in any service or software or hardware components that, when exploited, results or may result in any negative impact to confidentiality, integrity, operation or availability of the Products & Services or any data handled by them, and the term "Vulnerabilities" shall be construed accordingly.

1.2 Except where expressly stated to the contrary, the following rules of interpretation set out in this clause 1.2 apply in the Contract (including any Order Form), and each of the Supplier's standard terms and conditions that are incorporated into any Order Form.

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of the terms and conditions set out therein.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- (d) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (e) A reference to legislation or a legislative provision shall include all regulations made from time to time under that legislation or legislative provision.
- (f) A reference to writing or written includes email but not fax.
- (g) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (h) A reference to the Contract or to any other agreement or document is a reference to the Contract or such other agreement or document, in each case as varied from time to time.
- (i) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Application and Order of precedence

- 2.1 The Customer acknowledges that these General Conditions apply to all of the Products & Services that form part of Supplier's "Fleet Services". The Customer acknowledges and agrees that the General Conditions (as updated from time to time), together with any applicable Product & Services Conditions (as updated from time to time) are incorporated into and govern the Customer's applicable Order, and Customer's use of such Products & Services signifies its agreement to be bound by the Applicable Conditions (as defined in the MSA).
- 2.2 Except to the extent expressly agreed in writing by the Supplier, no terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract or the Order.
- 2.3 The Customer acknowledges that the Supplier may update these General Conditions from time to time upon notice, including for reasons set out in clause 3 below. Updates to

these General Conditions are effective as of the date of posting, and Customer's continued use of the Products & Services after any such update signifies its agreement to be bound by the updated General Conditions.

- 2.4 If there is any conflict or ambiguity between the terms of the Contract, unless a document of lower precedence expressly states otherwise, the order of precedence is as follows: (1) the Order Form; (2) the MSA; (3) the Product & Services Conditions; (4) the schedules to the Product & Services Conditions; (5) these General Terms.

## 3. Suppliers, sub-contractors and delegation

- 3.1 The Customer agrees that the Supplier may at any time change the third party service provider from which the Supplier obtains, or to which the Supplier sub-contracts or otherwise delegates supply or performance of, or on which the Supplier relies on to supply or perform, any of the Products & Services or any part of them (or any replacement or similar such products and/or services) (each a "**Supplier's Provider**"), and that from time to time the terms and conditions upon which any Supplier's Provider supplies or performs for the Supplier may change.
- 3.2 The Customer acknowledges and agrees that any such change of Supplier's Provider or the terms and conditions on which it supplies or performs for the Supplier may result in a change to or replacement of the General Conditions or any Product & Services Conditions (or any other terms and conditions of the Supplier that are incorporated into any relevant Order Form) to take account of the related change to or replacement of the terms and conditions that apply between the Supplier and its new Supplier's Provider.

## 4. Infrastructure and communications

- 4.1 The Customer acknowledges and agrees that the Supplier uses and relies on third-party Supplier's Providers (including providers of telecommunications, electrical power, computing hardware, hosting, app marketplaces, apps, Software as a Service and computing services) to enable it to provide the Products & Services, and that such products and/or services and supply and performance by Supplier's Providers shall not be uninterrupted and shall not operate free from error, fault or defect.
- 4.2 In the event that any supplies or services from any Supplier's Provider(s) are unavailable or fail to perform in accordance with their specifications or without error, fault or defect at any time during the continuance of the Order, the Supplier's responsibility to the Customer shall be limited to the Supplier exercising its rights (if any) under its contract with the relevant Supplier's Provider by requesting that the Supplier's Provider resume the availability of the relevant supplies or services or (as applicable) provide a workaround or fix to resolve to the failure to perform and so that the relevant supplies or services operate in accordance with their specifications.

## 5. Products & Services

- 5.1 The Customer's use of the Products & Services shall be subject to the terms and conditions of the Contract (as varied by the Order), as updated from time to time by the Supplier.
- 5.2 The Customer shall use and ensure that its authorised employee(s) use, the Products & Services in accordance with the Contract. Upon such use the Customer shall be deemed to accept the Products & Services.
- 5.3 The provision of the Products & Services is subject at all times to (i) the Customer having and procuring (or, if such is included in the scope of the particular Products & Services, the Supplier's Providers providing) sufficient and appropriate connectivity services (including bandwidth, signal reception, data coverage, signal and service quality, and usage allowances) for the Customer and its End Users to use the Products & Services; and (ii) the adequacy of the Customer's Equipment. The Customer recognises that there may be areas and time periods in which the foregoing are (for example) slower or unavailable and as such the Supplier is not Liable for any failure, delay or error in delivery in the Products & Services nor for any consequential losses arising from such circumstances.
- 5.4 The Supplier will, as part of the Products & Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Business Hours. Supplier may charge for customer support services that are in excess of Supplier's standard support, as determined by Supplier.
- 5.5 The Customer acknowledges and agrees that the Products & Services do not include any data storage services (unless specified in the relevant Order Form, and then only to the extent so specified) and do not include any back up services and, as the Services operate using finite storage resources, any data or information (including Deliverables, Customer Data, any data generated by or through use of the Products & Services, and End User data) may be overwritten at any time. Customer is responsible for making any and all back ups of any data, including Customer Data, as required.
- 5.6 The Customer acknowledges and agrees that it shall be legally responsible for any use of any data (including Customer Data) by the Customer or any person that it permits to use the Products & Services (including End Users).
- 5.7 If the Customer requires any change to the Products & Services an applicable Order Form and there are any additional Charges resulting from or in connection with such change, such change shall be effected by a new Order Form. If the Customer requires any change to an applicable Order Form or the Products & Services under it and there are no additional Charges resulting from or in connection with such change, such change shall be effected in writing in accordance with clause 19.2 of these General Conditions. If the Customer or any person authorised by it uses the relevant Products & Services after any such change is applied in or to such Products

& Services (or part of them) the Customer shall be deemed to accept the relevant change.

## 6. Supplier's obligations

- 6.1 The Supplier shall supply the Products & Services to the Customer in accordance with the Contract and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Products & Services contrary to the Supplier's instructions, or modification or alteration of the Products & Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Products & Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1
- 6.3 Notwithstanding clauses 6.1 and 6.2, the Supplier:
- (a) does not warrant that:
    - (i) the Customer's use of the Products & Services will be uninterrupted, error-free or available on a 24 hours a day, 365 days a year basis;
    - (ii) the Products & Services, the data or information obtained by the Customer through the Products & Services, or the usage, usability or performance of the Products & Services will remain unchanged or will meet the Customer's requirements;
    - (iii) the Products & Services will be free from Vulnerabilities or Viruses; or
    - (iv) the Supplier or any Supplier's Provider shall capture, transmit, store, retain, back up or preserve any Deliverables, Customer Data or End User data or any other data or information processed by, intended to be processed by, or relating to any Product & Service (or part thereof), vehicle or person.
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data (including Customer Data and any data generated by or through use of the Products & Services) over communications networks and facilities, including but without limitation, the internet, and the Customer acknowledges that the Products & Services may be subject to limitations,

delays and other problems inherent in the use of such communications facilities.

6.4 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence for the Order (or the Contract more generally).

## 7. Customer's obligations

7.1 The Customer shall not use the Products & Services:

- (a) to facilitate illegal activity; or
- (b) in a manner that is unlawful, causes damage or injury to any person or property; or
- (c) for any fraudulent, illegal or unauthorised use; or
- (d) in a manner that damages the reputation of the Supplier or causes the Supplier to be Liable for any costs, losses, expenses, damages or suffer any Liability, and the Supplier reserves the right, without Liability or prejudice to its other rights to the Customer, to suspend, without notice, the supply of the Products & Services for any material breach of this clause 7.1.

7.2 The Customer shall (and shall ensure that each of its employees, contractors, workers, persons that it permits to use the Services including End Users, and other staff shall):

- (a) ensure that each item of the Customer's Equipment is at all times in good working order and suitable for the purposes for which it is used in relation to the Products & Services, and is installed before the date on which the Products & Services are to start, and is at all times maintained and configured in accordance with needs of the relevant Products & Services and the Supplier's requirements from time to time;
- (b) provide the Supplier with:
  - (i) all necessary co-operation in relation to the Order (and the Contract more generally); and
  - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Products & Services;

- (c) ensure that all End Users shall use the Products & Services reasonably and in accordance with this Contract, and that each End User shall not send or allow any malicious code or Virus access which could harm any Supplier software or systems or

exploit or seek to exploit any Vulnerability. The Customer shall also adhere to any Supplier's fair usage policy which may apply from time to time;

- (d) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) appoint a Customer point of contact for the Service as identified in the Order Form. That person shall have the authority to receive all notifications issued by the Supplier under the Order and to contractually bind the Customer on matters relating to the Products & Services (including with respect to the Supplier's invoices);
- (f) ensure that persons that the Customer permits to using the Products & Services (including End Users) use the Products & Services in accordance with the terms and conditions of the Order (or the other terms and conditions of the Contract) and shall be responsible for any breach of the Order (or the Contract more generally) by any such persons;
- (g) obtain and maintain all necessary licences, consents and permissions and, without affecting its other obligations under the Contract, comply with all relevant laws and regulations as required, to enable the Supplier and any Supplier's Providers to provide the Products & Services, in all cases before the date on which the Products & Services are to start;
- (h) be solely responsible for procuring, maintaining and securing its network connections and telecommunications links in order to use the Products & Services as intended;
- (i) ensure that any usage policy or other related guidance or instructions from the Supplier are provided to all End Users; and
- (j) be solely responsible, at all times prior to the expiry or termination of the applicable Order and the provision of the Products & Services, for exporting, storing and backing up all Deliverables, Customer Data, End User data and other data or information that is Handled by or use the Products & Services and that it wishes to access or keep.

7.3

If the Supplier's performance of its obligations under the Order (or the Contract more generally) is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise

directly or indirectly from such prevention or delay;

- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

## 8. Data protection

8.1 This clause 8 applies if any Product & Service Conditions include a definition of the term 'Data Handling Particulars'. If this clause 8 applies, it is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Privacy Law.

8.2 The Data Handling Particulars set out the scope, nature and purpose of such Handling by the Supplier, the duration of such Handling and the types of Personal Information and categories of persons.

8.3 The Customer is responsible for ensuring that the instructions and factual particulars in the Data Handling Particulars is complete, accurate and kept up to date. The Customer warrants, as a continuing warranty that is repeated on each day throughout the continuance of the Order, that the Data Handling Particulars (together with this clause 8) state the complete, accurate, up-to-date and final instructions of the Customer to the Supplier in relation to the Handling by the Supplier of Personal Information.

8.4 The Customer agrees that it shall not require the Supplier to provide new or changed functionality or other changes to the Products & Services.

8.5 The Customer acknowledges and agrees that any further or additional instructions which are outside the scope of the Supplier's standard Data Handling Particulars or this clause 8 shall require or be subject to (1) additional terms and conditions and Charges, (2) prior written agreement between the parties, and/or (3) prior approval from, or prior written agreement between the Supplier and, any relevant sub-processor(s) used by the Supplier to Handle any Personal Information.

8.6 The Customer will ensure that it has obtained all necessary consents for the collection of Personal Information, including location data. The Customer will further ensure that it has all necessary and appropriate consents, legal bases, exceptions and notices in place including, but not limited to, privacy and CCTV notices provided to its employees and other relevant persons, to ensure that the transfer of the Personal Information to the Supplier and the Handling of it by or for the Supplier, for the duration of the Order and the purposes stated in the Data Handling Particulars, shall be lawful. The Customer agrees to comply with its obligations as a Controller under Privacy Law.

8.7 The Supplier shall, in relation to any Personal Information Handled in connection with the performance by the Supplier of its obligations under the Order:

- (a) ensure that it has in place appropriate technical and organisational measures to protect Personal Information;
- (b) (to the extent that the Personal Information is only accessible to the Supplier and is not accessible to the Customer or any End User) assist the Customer, at the Customer's cost, in responding to any request from a person in exercise of their privacy rights under Privacy Law;
- (c) (to the extent that compliance by the Customer is not possible without assistance from the Supplier) provide the Customer with the following reasonable assistance for the purpose of compliance with Privacy Law:
  - (i) information about the cause of any Privacy Breach on the Products & Services, and the scope of Personal Information affected by such Privacy Breach;
  - (ii) contribute, at the Customer's cost, to any assessment or consultation relating to the Products & Services;
  - (iii) provide single factor authentication using username and password for End Users to log in to the Products & Services;
  - (iv) the Products & Services present an authenticated user with access to Personal Information within the Customer's account, not within the account(s) of other customers of the Supplier; and
  - (v) encryption technology is used.
  - (vi) notify the Customer without undue delay on becoming aware of a Privacy Breach affecting the Products & Services;
  - (vii) at the written direction of the Customer, delete Personal Information and copies thereof from the Products & Services upon expiry or termination of the Order unless required by applicable law to store the Personal Information (but the Customer acknowledges that the Supplier shall have no obligation to return such Personal Information

because it shall be accessible to the Customer, and the Customer shall be solely responsible for discharging the Customer Data Obligations); and

- (viii) maintain records and information to demonstrate its compliance with this clause 8 and (at the Customer's cost and expense) allow for audits by the Customer or the Customer's designated auditor on reasonable notice and conducted remotely during the Supplier's normal business hours without access to the premises, networks or devices used by the Supplier.

8.8 The Customer consents to the Supplier engaging any third party vendor, contractor or service provider ("**Subprocessor**") for the purpose of Handling Personal Information in connection with its Products & Services. The Customer hereby grants the Supplier general authorisation to change the Supplier's Subprocessors, as necessary.

## 9. Intellectual property

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Products & Services, Deliverables and the Documentation. Except as expressly stated in the Order, the Customer is granted no rights to, or in, and shall not enjoy the benefit or use of (or permit any other person so to enjoy) any Intellectual Property Rights or any other rights or licences in respect of the Products & Services, Deliverables or the Documentation.

9.2 Without prejudice to the generality of this Clause 9, the Customer shall own all rights, title and interest in and to all of the Customer Data. The Customer hereby grants to the Supplier the right to use such Customer Data and any data generated by or through use of the Products & Services to the extent necessary to provide or improve the Services.

## 10. Indemnity

10.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use in breach of the Contract, abuse or misuse of the Products & Services and/or Documentation, including claims sustained by or made against Supplier arising out of or in connection in any way with the inability of the Customer, the End User, or any other person to use the Products & Services, or any failure or interruption to the Services, provided that:

- (a) the Customer is given prompt notice of any such claim;

- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- (c) the Customer is given sole authority to defend or settle the claim.

## 11. Charges and payment

11.1 In consideration of the provision of the Products & Services by the Supplier, the Customer shall pay the Charges.

11.2 The Supplier may elect to increase all or any of the Charges with effect from 1 February each year, and the Supplier shall give the Customer no less than one month's prior notice in writing of the proposed changes.

11.3 The Customer shall pay each invoice submitted to it by the Supplier by the end of the month immediately following the month of invoice.

11.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under the Order (or the Contract more generally) on the due date:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 11.4(a) will accrue (both before and after judgment) on the amount unpaid at the highest rate allowed by law, until payment in full is made (for the purposes of calculating interest any part of a month being treated as a full month); and

- (b) the Supplier may suspend all or part of the Products & Services until payment has been made in full (including all accrued interest).

11.5 The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

11.6 All sums payable to the Supplier under the Order (and the Contract more generally) are exclusive of applicable taxes. Customer shall pay the sums set out in the applicable Order, plus any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, and similar taxes levied or assessed by any local and/or governmental authority (collectively, "Taxes"). Any applicable Taxes shall be computed based on the Customer's address listed on the applicable Order and Customer confirms that Supplier can rely on the sold-to name and address set forth in the Order as being the place of supply for sales tax purposes. In addition pay an amount equal to all custom duties and value added taxes imposed on those sums on delivery of invoice;

- 11.7 The Customer is responsible for paying all Taxes associated with the Products & Services, unless the Customer is entitled to an exemption or reduction from the payment of any Taxes, for which the Customer shall promptly provide Supplier with legally sufficient documentation or certification for each tax jurisdiction for which it claims an exemption or reduction of Taxes.
- 11.8 All fees shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.9 All fees charged by the Customer's bank and/or payment service provider(s) for remitting funds in payment of any Charges shall be borne by the Customer.
12. **Limitation of liability**
- 12.1 The limitation of liability set out in this clause 12 apply to, every liability, except for Customer's payment obligations, arising under or in connection with the Contract, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. If the applicable Product & Services Conditions set out limitations on liability, those limits will apply to the Products & Services thereunder, in addition to the limitation of liability set out in this Clause 12.
- 12.2 Nothing in this Contract shall limit or exclude the Supplier's or the Customer's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees;
  - (b) Gross Negligence or willful misconduct, including fraud or fraudulent misrepresentation;
  - (c) indemnification obligations under this Contract; or
  - (d) any other liability which cannot be limited or excluded by applicable law.
- 12.3 Subject to clause 12.2:
- (a) in no event, whether in contract or tort (including negligence), as a result of breach of warranty, strict liability, indemnity or under any other theory of liability whatsoever, will either party be liable to the other under this Contract for: (i) any indirect, consequential, incidental, exemplary, punitive or special damages; or (ii) for any damages, whether direct, indirect, consequential, incidental, exemplary, punitive or special, characterized as lost revenue, lost savings or lost profits; even if such party has been advised of the possibility of such damages in advance. Regardless of whether such losses are deemed to be direct or indirect damages, Supplier shall not be liable to Customer for any damages relating to a loss of data, and Customer is responsible for the backup of its data; and
- (b) the Supplier's total liability to the Customer arising under or in connection with the Products & Services provided under the applicable Order Form shall be limited to an amount as set out in the applicable Product & Services Conditions.
- 12.4 Except as expressly and specifically provided to the contrary in the Order:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Products & Services and the Documentation by the Customer or any person that the Customer suffers or permits to use the Products & Services (including End Users), and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any Documentation, information, instructions, etc., provided to the Supplier by the Customer in connection with the Products & Services, or any actions taken by the Supplier at the Customer's direction; and
  - (b) the Products & Services and any Deliverables and Documentation are provided to the Customer on an "as is" basis and all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Order (and the contract generally).
- 12.5 The Customer acknowledges and agrees that the Supplier shall not be responsible nor have any Liability for any delay or failure to provide the Products & Services to the extent that it arises out of or is contributed to by:
- (a) any failure of the infrastructure, software, computer systems or network systems used by the Customer and not provided by the Supplier; or
  - (b) any faults, failures, connections or defects from a third party supplier of the Supplier, including, without limitation, IT security breaches, data breaches, cyber-attacks (including ransomware and hack attacks), transmission of Viruses, data connectivity problems, service degradation and slow systems due to high usage; or
  - (c) the improper use or operation by or for the Customer of the Products & Services; or
  - (d) the use of the Products & Services by or for the Customer in breach of the Contract (including the Order); or
  - (e) the fraudulent, illegal or unauthorised use of the Products & Services by or for the Customer; or
  - (f) failure or cessation of business of any of the Supplier's suppliers.

### 13. Termination and Suspension

13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract (or the applicable Order Form) with immediate effect by giving notice to the other party in accordance with these General Conditions if:

- (a) The other party commits a material breach of any term or condition of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in accordance with these General Conditions to do so; or
- (b) the other party (i) enters bankruptcy or insolvency proceedings; (ii) or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (iii) is unable to pay its debts as they become due.

13.2 Without affecting any other right or remedy available to it, the Supplier may in its sole discretion (i) suspend providing any Product & Service; or (ii) suspend or terminate the Contract or any part thereof (including any Order Form), with immediate effect by giving notice to the Customer in accordance with these General Conditions if:

- (a) the Customer or any person that the Customer permits to use the Products & Services (including any End User) breaches any term of the Contract (including any Order Form) and in the Supplier's view the breach is incapable of remedy or (if such breach is in the Supplier's view remediable) the Customer fails to remedy the breach within fourteen (14) days of being notified in writing to do so;
- (b) the Customer fails to make payment of the Charges specified in the applicable Order Form when due;
- (c) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract (including any Order Form) has been placed in jeopardy;
- (d) the Customer enters an Insolvency Proceeding;
- (e) there is a change of Control of the Customer;
- (f) any Supplier's Provider terminates or suspends any services (as a whole, or relating to any Products & Services) relied upon by the Supplier for providing the Products & Services, including due to any act or omission by the Customer or any person that the Customer permits to use the Products & Services (including any End User);
- (g) the Customer breaches clause 28 of these General Conditions (Modern Slavery and Anti-Bribery & Corruption).

### 14. Consequences of termination

14.1 On termination (or expiry) of the Contract, howsoever arising, each Order Form then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Order Form, unless terminated earlier in accordance with the terms of such Order Form. The terms of the Contract will continue to apply to such Order Form for the remainder of its term.

14.2 The termination of any Order Form shall not affect any other Order Forms or the Contract.

14.3 Termination of the Contract (or any Order Form) shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

14.4 On termination of the Contract (or the applicable Order Form):

- (a) the Customer shall immediately cease all use of the Products & Services and the Documentation and ensure that all persons that the Customer permits to use the Products & Services (including End Users) cease all such use;
- (b) the Customer shall immediately pay to the Supplier all Charges up to the effective date of the termination, including any outstanding unpaid sums (notwithstanding any period of credit which may have been agreed), together with any accrued interest under clause 11.4(a). Supplier may submit an invoice, in respect of the Products & Services supplied but for which no invoice has been submitted, which shall be payable immediately on receipt; and
- (c) the Supplier may destroy or otherwise dispose of any Customer Data (and any data generated by or through use of the Products & Services) hosted or stored as part of the Products & Services or otherwise in its possession.

14.5 Upon the expiry or termination of the Order, the Supplier shall have no responsibility to retain, and may permanently delete or destroy (or permit the permanent deletion or destruction of) any data or information (including Deliverables, Customer Data, any data generated by or through use of the Products & Services, and End User data) provided by the Customer or any person that the Customer permits to use the Products & Services (including any End User), or acquired or used by the Customer or any person that the Customer suffers or permits to use the Products & Services (including any End User), or processed by any of the Products & Services. It is the Customer's responsibility, at any time prior to each such expiry or termination, to export from the Products & Services and store separately, any Deliverables, Customer Data, End User data and other data or information it wishes to access or keep.

- 14.6 On termination of the Contract, the following clauses shall continue in force: clause 1 (Definitions and interpretation), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 15 (Confidentiality), clause 29 (Governing law), and clause 30 (Jurisdiction), and any other clause by its nature or import that is intended to survive, will survive.
15. **Confidentiality**
- 15.1 In connection with this Contract, “**Confidential Information**” means all information disclosed by or on behalf of a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), in whatsoever form or media, whether communicated visually, orally, electronically, in writing or otherwise, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. Confidential Information includes, but is not limited to, any data or information that relates to either party or any of either party's existing or contemplated business activities, technology, developments, software, methods, trade secrets, and clients, where such data or information is not otherwise publicly available. For clarity, Confidential Information of Supplier includes the terms of this Contract, pricing, any details relating to the Product & Services and any details relating to the Supplier's and its Affiliates' contractors, sub-contractors and suppliers and their respective performance and compliance.
- 15.2 Notwithstanding the foregoing, Confidential Information is deemed not to include information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no act or omission of the Receiving Party; (iii) is rightfully communicated to the Receiving Party by persons that, to the best of the Receiving Party's knowledge, are not bound by confidentiality obligations with respect thereto; (iv) is already in the Receiving Party's possession free of any confidentiality obligations with respect thereto; (v) is independently developed by the Receiving Party without use of any Confidential Information; or (vi) is approved for release or disclosure by the Disclosing Party in writing without restriction.
- 15.3 The Receiving Party may disclose the Disclosing Party's Confidential information to its employees, officers or advisers (and the Supplier may disclose the customer's Confidential Information to its contractors, subcontractors or suppliers) who have a need to know such information for the purposes of exercising its rights or carrying out its obligations under or in under the Contract. Each party shall ensure that its employees, officers, contractors, subcontractors, suppliers or advisers to whom it discloses the Disclosing Party's Confidential Information comply with this clause 15, or are party to an agreement that requires them to comply with substantially obligations as those set out in this clause 15.
- 15.4 Notwithstanding the foregoing or any other provision of this Contract, each party may retain electronic copies of the other party's Confidential Information that have been made in the normal course of business, which shall continue to be subject to the obligations of confidentiality set out in clause 15.
- 15.5 The Customer shall be responsible for all acts and omissions of its employees and other staff and persons who receive or obtain Confidential Information from or via the Customer.
16. **Force majeure**
- 16.1 If the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract (or any Order Form) or otherwise making the Products & Services available to the Customer by a Force Majeure Event or the performance of the Supplier's obligations becomes materially more expensive as a result of a Force Majeure Event, the Supplier shall not be in breach of the Contract (or the applicable Order Form) or otherwise liable for any failure or delay in the performance of such obligations.
- 16.2 The Supplier shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - (b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.3 For the avoidance of doubt the Charges shall continue to be payable in full by the Customer during any Force Majeure Event.
- 16.4 If the Force Majeure Event affects the Supplier's performance of its obligations under the Order Form for a continuous period of more than four (4) weeks, if (1) the Customer has first met with the Supplier and considered means proposed by the Supplier by which the Supplier may perform its obligations under the Order Form notwithstanding the Force Majeure Event, or (2) the Supplier reasonably concludes and has notified the Customer that no such means are viable, in such circumstances the Customer shall be entitled to terminate the applicable Order Form by written notice to the Supplier.
- 16.5 If performance by the Supplier of its obligations under the Order Form is affected by a Force Majeure Event, the Supplier may, at its sole discretion, delay the performance of the Products & Services or cancel the whole or any part of the Contract or the Products & Services being provided thereunder, and the Supplier shall bear no liability to the Customer in respect of such early cancellation.
17. **Assignment and other dealings**
- 17.1 The Customer shall not assign, transfer, charge, subcontract, sub-licence, share use or benefit of, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract (including any Order Form).

17.2 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, sub-licence, share use or benefit of, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Contract (including any Order Form).

## 18. Entire agreement

18.1 The Contract (as varied from time to time) constitutes the entire agreement between the parties in relation to their subject matter, and supersede and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## 19. Variation

19.1 Except for variations arising from the Ordering Process, no variation of the Contract shall be effective unless it is in writing and executed by the parties (or their authorised representatives).

19.2 Notwithstanding clause 19.1, and in addition to its rights in clause 3, the Supplier retains the general right to vary the Order, by notice to the Customer from time to time, so long as such variation does not adversely affect the function of the Products & Services to the Customer. Except as permitted by this clause 19.2, no variation of the Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 20. Waiver

20.1 A waiver of any right or remedy under the Contract (including any Order) or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 If the Supplier waives any right or remedy provided under the Contract or by law in relation to the Customer, or takes or fails to take any action against the Customer, that does not affect the Supplier's rights in relation to any other person.

## 21. Rights and remedies

21.1 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## 22. Severance

22.1 If any provision or part-provision of these the Contract (including any Order Form) is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

22.2 Any modification to or deletion of a provision or part-provision under this clause 21 shall not affect the validity and enforceability of the rest of the Contract.

## 23. No partnership or agency

23.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 24. Notices

24.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address specified in the Order Form.

24.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address; or

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission or, if this time falls outside business hours in the place of receipt, when business hours resume, provided that (in any case) a copy of such email is also sent in accordance with clause 24.1(b). In this clause (c), business hours means from 8:30am to 5:30pm Monday to Friday on a day that is a Business Day.

- 24.3 Either party may at any time change its addresses for notifications by giving notice to the other party confirming the new address(es). Any such change shall take effect on and from the date of receipt by the other party of such notice.
25. **Counterparts**
- 25.1 Each Order Form may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Order Form.
26. **Digital execution**
- 26.1 Each party agrees that each Order Form may be signed by electronic signature (whatever form the electronic signature is selected by the Supplier) and that this method of signature is as conclusive of the parties; intention to be bound by the Order Form as if signed by each party's manuscript signature.
27. **Third party rights**
- 27.1 The Contract does not give rise to any rights to any third party.
28. **Modern Slavery and Anti-Bribery & Corruption**
- 28.1 Each party hereby agrees that it shall comply with all applicable anti-slavery, anti-forced and child labour, and human trafficking laws, statutes, regulations from time to time in force. Each party hereby represents and warrants that it has not been convicted of any offence involving slavery, forced or child labour, and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with the same.
- 28.2 Each party agrees that it shall comply with all applicable anti-bribery and corruption laws, statutes, regulations from time to time in force. The Customer represents and warrants that:
- (a) it is not nor has it at any time been engaged in any activity, practice or conduct which would constitute an offence under any anti-corruption laws;
- (b) it has not been convicted of any offence involving bribery or corruption; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with bribery or corruption.
- 28.3 The Customer shall indemnify the Supplier against any losses, liabilities, damages, costs and expenses incurred by, or awarded against, the Supplier as a result of any breach of this clause 28 by the Customer.
29. **Further Assurances**
- 29.1 The parties agree to execute any and all such further documents and do such further acts and things as may be necessary or desirable to give full effect to this Contract.
30. **Governing law**
- 30.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Province of Ontario.
31. **Jurisdiction**
- 31.1 Each party irrevocably agrees that the courts located in the City of Toronto shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. Each party hereby irrevocably waives, to the fullest extent permitted by law, all rights to trial by jury in any action, proceeding or counterclaim, whether in contract, tort (such as negligence), or otherwise, relating to this Contract.