

Software License Agreement

This Software License Agreement (the “**Agreement**”) is effective as of the date of the applicable Order Form (as defined below) entered into by and between Convergent Information Systems Inc., an Alberta corporation with offices located at Suite 22, 601 10th Avenue SW, Calgary, Alberta, T2R 0B2 (the “**Licensor**”) and the licensee named in the Order Form (the “**Licensee**”).

WHEREAS:

- A. the Licensor is the legal and beneficial owner of the entire right, title, and interest in and to the Licensed Software and wishes to license the Licensed Software to Licensee; and
- B. the Licensee desires to obtain a license to use the Licensed Software for its internal business purposes, subject to the terms and conditions of this Agreement.

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

1. Definitions. Capitalized terms have the meanings given or referred to in this [Section 1](#):

“**Action**” has the meaning given in [Section 12.1](#).

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than 50 % of the voting securities of a Person.

“**Aggregate Data**” means Licensee Data and data from the Licensee’s use of the Services and other information relating to the Licensed Software or Services anonymized by Licensor or its Affiliates, subcontractors, agents, and third-party service providers such that individuals and Licensee are no longer identified, identifiable or otherwise ascertainable by Licensor by reference to or with the combination of other datasets.

“**Agreement**” has the meaning given in the preamble.

“**Authorized Users**” means the number of authorized users of Licensee or any Licensee Affiliate given in the applicable Ordering Form, each of which is authorized to use the Licensed Software.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which banks in Calgary, Alberta are authorized or required by Law to be closed for business.

“**Confidential Information**” has the meaning given in [Section 9.1](#).

“**Controlled Technology**” means any software, documentation, technology or other technical data, or any products that include or use any of the foregoing, the export, re-export, or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any Law.

“**Disclosing Party**” has the meaning given in [Section 9.1](#).

“**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents, or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, or technical or other components, features or requirements, of

the Licensed Software.

“Effective Date” means the effective start date of the license granted under Section 2.2, following the completion of any applicable Evaluation Period, as indicated on the Order Form.

“Evaluation Fee” means the fee for access to or use of the Licensed Software for the Evaluation Purpose (if any) stated on the applicable Order Form.

“Evaluation Option” has the meaning in Section 2.1.

“Evaluation Period” means the period commencing and ending on the dates stated in the Order Form.

“Evaluation Purpose” means the testing, demonstration, trial and other evaluative (but not any developmental or productive) use of the Licensed Software, including the assessment of the Licensed Software’s compatibility with the Licensee’s information technology infrastructure, computers, software, databases, database management and other electronic systems and networks, by an Authorized User for the purpose of Licensee’s evaluation of the Licensed Software to determine whether the Licensee will exercise the Option to enter into the Software Licence Agreement.

“Force Majeure” has the meaning given in [Section 14.1](#).

“Initial Term” has the meaning given in [Section 10.1](#).

“IP Rights” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trade-mark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, provincial, territorial, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“License Fee” has the meaning given in [Section 8.1](#).

“Licensed Software” means the software described in the applicable Order Form to which this Agreement is appended or in which this Agreement is referenced, any components and other software, programs, code, and application programming interfaces integrated into the Licensed Software under license or agreement between Licensor and another party, including Third-Party Components, and any Maintenance Releases and New Versions provided to and Licensee modifications made by or for Licensee or any Licensee Affiliate under this Agreement and all copies of the foregoing permitted hereunder.

“Licensee Data” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, graphical user interface (GUI) or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system, or network by or on behalf of Licensee or any Licensee Affiliate, including any and all works, inventions, data, analyses, and other information and materials resulting from any use of the Licensed Software by or on behalf of Licensee or any Licensee Affiliate under this Agreement, except that Licensee Data does not include the Licensed Software, Aggregate Data, or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Licensed Software without additional user input.

“Loss” or “Losses” means all losses, damages, liabilities, deficiencies, claims, Actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable legal fees, disbursements and charges and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Licensed Software, including any updated Documentation, that the Licensor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Licensed Software, but does not include any New Version.

“New Version” means any new version of the Licensed Software that the Licensor may from time to time introduce and market generally as a distinct licensed product, including premium or additional features.

“Open-Source Components” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“Open-Source License” has the meaning given in [Section 4](#).

“Operating Environment” means Licensee’s computer systems on which the Licensed Software is intended to be installed and operate, as stated in the applicable Order Form.

“Order Form” means an ordering document or statement of work for the purchase of licenses regarding the Licensed Software executed between the Licensor and the Licensee.

“Permitted Use” means use of the Licensed Software and Documentation by any Authorized User in or for the Licensee’s or its Affiliate’s internal business operations and during the Evaluation Period, if applicable, means the Evaluation Purpose.

“Person” means an individual, corporation, partnership, joint venture, unlimited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“Receiving Party” has the meaning given in [Section 9.1](#).

“Renewal Term” has the meaning given in [Section 10.2](#).

“Representatives” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, authorized sublicensees, sub-contractors and legal advisors.

“Services” means any of the services that Licensor is required to or otherwise does provide under this Agreement as more fully described in the body of this Agreement.

“Source Code” means the human readable source code of the Licensed Software to which it relates, in the programming language in which the Licensed Software was written, together with all related flow charts, code and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Licensed Software.

“Support Services” means the software support Services Licensor agrees to provide to Licensee under an agreement for such services.

“Term” has the meaning given in [Section 10.2](#).

“**Third-Party Components**” means any software component that is sublicensed to the Licensor under a license agreement and which is incorporated into or made available to the Licensee through the Licensed Software.

“**Third-Party License**” has the meaning given in [Section 4](#).

2. Licenses.

2.1 Evaluation License. If the Order Form includes an Evaluation Period, the terms of this Section 2.1 shall apply. In consideration of Licensee’s payment of the Evaluation Fee, Licensor hereby grants to Licensee and Licensee’s Affiliates during the Evaluation Period the right and license to use the Documentation and Licensed Software, with such enhancements, restrictions, limitations, modifications, and features enabled or disabled by the Licensor in object code form only made available to Licensee for the Evaluation Purpose, solely for the Evaluation Purpose in accordance with the terms and conditions of this Agreement. The rights and licenses granted by this Section 2.1 are non-exclusive, royalty-free, revocable, non-transferable, except as stated in [Section 15.9](#), and non-sub-licensable and will be fully paid up upon Licensee’s payment of the Evaluation Fee in accordance with the applicable Order Form. At the completion of the Evaluation Period, the Licensee shall have the option (the “**Evaluation Option**”) to license the Licensed Software on the terms of this Agreement by written notice to the Licensor and upon payment of the License Fee in accordance with the terms of the Order Form.

2.2 License Grant. In consideration of Licensee’s payment of the License Fee, Licensor hereby grants to Licensee and Licensee’s Affiliates during the Term the right and license to use the Licensed Software and Documentation for the Permitted Use in accordance with the terms and conditions of this Agreement. The rights and licenses hereby granted are non-exclusive, royalty-free, irrevocable (except as stated in [Section 10.3](#) and [Section 12.3\(c\)](#)), non-transferable, except as stated in [Section 15.9](#), and non-sub-licensable and will be fully paid up upon Licensee’s payment of the License Fee in accordance with the applicable Order Form.

2.3 Licensed Access and Use. In accordance with the license granted under [Section 2.1](#) and [Section 2.2](#), as applicable, and the terms and conditions thereof, Licensee and each of its Affiliates has the right and license to do each of the following for or in connection with the Permitted Use:

- (a) install, execute, and run the number of copies of the Licensed Software indicated in the applicable Order Form on its designated devices on Licensee’s and its Affiliates’ respective networks for use by up to the number of Authorized Users indicated on the applicable Order Form;
- (b) have Authorized Users access and use the Licensed Software by any means whatsoever from any other device;
- (c) generate print, copy, download and store all Licensee Data and other data, information and content as may result from any execution or other use of the Licensed Software;
- (d) use the Licensed Software in object code form, except that the licensed uses of the Licensed Software hereunder shall include use in both Source Code and object code form: (i) if and to the extent access to and use of Source Code may be necessary, in Licensee’s reasonable judgment, for interoperability purposes; and (ii) for any Open-Source Components, in accordance with the license therefor;
- (e) prepare and use the number of copies of the Licensed Software and Documentation indicated on the applicable Order Form as may be necessary for the Permitted Use, including for purposes of: (i) operation with other software or systems; (ii) hardware or system maintenance or repair; (iii) software, hardware, or system testing; (iv) disaster recovery; and (v) backup and archiving;
- (f) train Authorized Users in any and all uses of the Licensed Software and Documentation permitted hereunder; and

- (g) perform, and have Authorized Users perform, any other act, including the provision of any service, that is reasonably incidental to the operation of the Licensed Software for the Permitted Use in accordance with the Documentation and terms and conditions of this Agreement.

2.4 License Restrictions. Except as and to the extent expressly permitted, or as reasonably necessary to make any use of the Licensed Software permitted, by [Section 2.1](#), [Section 2.2](#), or elsewhere in this Agreement, Licensee shall not, and shall not permit others to:

- (a) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Licensed Software except as expressly permitted by [Section 2.3\(e\)](#);
- (b) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the Source Code of the Licensed Software, in whole or in part, except as and only to the extent: (i) this restriction is prohibited by applicable Law; (ii) such action is taken for purposes of ensuring or assessing interoperability or otherwise qualifies as a “fair dealing” under the *Copyright Act* (Canada) or other applicable Law or; (iii) with respect to Open-Source Components included in the Licensed Software, these acts are permitted under the applicable Open-Source License;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Licensed Software available to any third party;
- (d) use the Licensed Software contrary to applicable laws, including the *Personal Information Protection and Electronic Documents Act* (Canada) and any similar applicable provincial or state privacy and data security laws or regulations.

3. Export Regulation. Licensee shall not itself, or permit any third parties to, export, re-export, or release, directly or indirectly any Controlled Technology to any country or jurisdiction to which the export, re-export, or release of any Controlled Technology (a) is prohibited by applicable Law or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

4. Open-Source Licenses and Third-Party Licenses. Any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license (“**Open-Source License**”). Upon the reasonable request of the Licensee, Licensor shall provide details of the Open-Source Components and the Open-Source License regarding such components. Additionally, any use hereunder of Third-Party Components shall be governed by, and subject to, the terms and conditions of the applicable license agreement (“**Third-Party License**”) between the Licensor and the owner or licensor of such Third-Party Components. Upon the reasonable request of the Licensee, Licensor shall provide details of the Third-Party Components and the Third-Party License regarding such components.

5. Delivery and Installation.

5.1 Delivery and Installation. Within 5 Business Days before the start of the Evaluation Period, if applicable, or after the Effective Date, Licensor shall deliver and reasonably cooperate with the Licensee to facilitate the installation of the Licensed Software by the Licensee.

5.2 Documentation. Licensor shall provide Licensee with complete and accurate Documentation for all Licensed Software before or concurrently with its delivery. The Documentation shall include all technical and functional specifications and other such information as may be reasonably necessary for the effective installation, testing, use, support, and maintenance of the Licensed Software in the Operating Environment, including the effective configuration, integration and systems administration of the Licensed Software and the operation and the performance of all its functions.

6. Maintenance Releases; New Versions.

6.1 Maintenance Releases. If Support Services are included on the applicable Order Form or under an agreement between the parties, during the Term, Licensor shall provide Licensee and its Affiliates with all Maintenance Releases, each of which will constitute Licensed Software and be subject to the terms and conditions of this Agreement.

6.2 New Versions. If Support Services are included on the applicable Order Form or under an agreement between the parties, during the Term and provided that there are no overdue License Fees outstanding, Licensee and each of its Affiliates shall have the right, in its sole discretion, to receive any New Versions of the Licensed Software that the Licensor may release from time to time. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement.

6.3 Installation. Licensee has no obligation to install or use any Maintenance Release or New Version. If Licensee wishes to install any Maintenance Release or New Version, Licensee shall have the right to have such Maintenance Release or New Version installed, in Licensee's discretion, as set out in this Agreement. If Licensee requests that Licensor install any Maintenance Release or New Version, Licensor shall do so promptly at a time and location mutually acceptable to the Licensor and Licensee.

8. Fees.

8.1 License Fees. In consideration of, and as payment in full for, the rights and license to use the Licensed Software and Documentation as provided in this Agreement, Licensee shall pay to Licensor (a) the Evaluation Fee, if any, (b) the license fee for the Initial Term (the "**License Fee**") and any applicable renewal fees for the applicable Renewal Term(s) if the Term is renewed under [Section 10.2](#); (c) license fee(s) for New Versions; and (d) supplemental license fee(s) for additional licenses, in each case subject to and in accordance with the terms and conditions of this Agreement, including the applicable timetable, rates and other provisions set out in the applicable Order Form.

8.2 Service Fees. In consideration of Licensor providing the Services as required hereunder, Licensee shall pay to Licensor the fees stated in the applicable Order Form, as applicable, subject to and in accordance with the terms and conditions of this Agreement and this [Section 8](#).

8.3 Invoices. Licensor shall invoice Licensee for all License Fees and fees for Services in accordance with the invoicing schedule and requirements stated in the applicable Order Form. Licensor shall submit each invoice in electronic format, via such delivery means and to such address as are specified by Licensee in writing from time to time.

8.4 Payment. Subject to the terms and conditions of this [Section 8.4](#), Licensee shall pay all properly invoiced fees within 30 days after Licensee's receipt of a proper invoice therefor. Invoices shall be paid within 30 days of receipt by Licensee in the payment method indicated in the applicable invoice. Except for invoiced payments that the Licensee has successfully disputed, all late payments will be charged interest at the lesser of the rate of 2% per month (24% per annum) or the highest rate permissible under applicable law, calculated daily and compounded monthly. The Licensee shall reimburse Licensor for all reasonable costs for collecting any late payments, including legal (on a solicitor-client basis) and collection fees.

8.5 Form of Payment. All payments hereunder shall be in Canadian dollars or United States dollars, as applicable according to the currency stated in the applicable Order Form and made in immediately available funds. Payments shall be made to the address or account specified by Licensor in writing from time to time.

8.6 Fee Changes. All Fees and other pricing stated in the Order Form applicable to this Agreement are firm and will not be increased, except as otherwise expressly provided in this [Section 8.6](#). Unless indicated in the

applicable Order Form, the License Fee will not be increased at any time during the Term, except for the addition of Authorized Users, the fees for which licenses will also remain firm in accordance with the Fees stated in the applicable Order Form. Licensor has the right to increase the License Fee for a Renewal Term provided that Licensor gives not less than 90-days notice of the increase to the Licensee prior to the commencement of the Renewal Term, and any such increases shall be immediately effective upon commencement of the Renewal Term.

8.7 Taxes. All fees stated in this Agreement are exclusive of taxes. Licensee shall be responsible for all goods and services, harmonized sales, sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal or provincial government or regulatory authority on any amounts payable by Licensee hereunder other than any taxes imposed on, or with respect to, Licensor's income or real or personal property or other assets.

8. IP Rights.

8.1 Ownership Rights in Licensed Software and Data.

(a) Licensed Software, Documentation, and Aggregate Data. Subject to the rights and licenses granted by Licensor to Licensee in this Agreement, as between the Parties the Licensor and its Affiliates and their respective licensors, as applicable, reserve and retain the entire right, title, and interest in and to all IP Rights arising out of or relating to the Licensed Software, Documentation, and Aggregate Data. None of the Licensee, Licensee Affiliates, or Authorized Users acquire any ownership of IP Rights in or to the Licensed Software, Documentation, or Aggregate Data as a result of this Agreement. Without limiting the foregoing, the Licensor may use Aggregate Data to (i) provide, improve, and enhance the Services and the Licensed Software, (ii) for development, diagnostic, and corrective purposes, (iii) to develop and distribute benchmarking and other relevant metrics for its customers to better understand trends related to their industry, and (iv) for any other lawful business purpose.

(b) Licensee Data. Subject to the rights and licenses granted by Licensee to Licensor in this Agreement, as between the Parties the Licensee and its Affiliates and their respective licensors, as applicable, reserve and retain the entire right, title, and interest in and to all IP Rights arising out of or relating to Licensee Data; provided, however, that Licensee grants to Licensor a non-exclusive, royalty-free, irrevocable, non-transferable (except as stated in [Section 15.9](#)), and non-sub-licensable license to use the Licensee Data for the purposes of this Agreement and to improve and enhance the Services and the Licensed Software and for development, diagnostic, and corrective purposes. The Licensee Data are the Confidential Information of Licensee and its Affiliates, and Licensor does not have and will not:

(i) have, acquire, or claim any right, title, or interest in or to any Licensee Data as a result of this Agreement or any interest in the Licensed Software or any Open-Source Components; or

(ii) have any right or license to, and shall not, use any Licensee Data except solely as necessary to provide the Licensed Software to the Licensee according to the licenses and terms of this Agreement and to perform the Services.

8.2 Rights in Open-Source Components. Ownership of all IP Rights in Open-Source Components shall remain with the respective owners thereof, subject to Licensee's rights under the applicable Open-Source Licenses.

9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to

Section 9.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, Licensee Data and the terms and existence of this Agreement are the Confidential Information of Licensee and the terms and existence of this Agreement are the Confidential Information of both parties.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure before such information was disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ non-compliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to, or use of, any Confidential Information.

9.3 Protection of Confidential Information. As a condition of being provided with any disclosure of or access to Confidential Information, the Receiving Party shall, regarding Confidential Information that is not a trade secret under applicable laws, for 5 years, and regarding Confidential Information that is a trade secret under applicable laws, indefinitely, from the date of this Agreement:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with [Section 9.4](#), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this [Section 9.3](#); and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms stated in this [Section 9.3](#);
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and, in no event, less than a reasonable degree of care; and
- (d) ensure that its Representatives comply with, and be responsible and liable for, any of non-compliance by its Representatives with, the terms of this [Section 9](#). The Receiving Party shall be responsible for any breach of or non-compliance with this [Section 9](#) by any of its Representatives.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information, then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and before such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek an injunction, protective order or other remedy or waive its rights under [Section 9.3](#); and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking an injunction, protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this [Section 9.4](#), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party’s legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party’s request, shall use

commercially reasonable efforts to obtain assurances from the applicable court or other competent authority that such Confidential Information will be afforded confidential treatment.

9.5 Return of Confidential Information. Upon termination of this Agreement for any reason or upon request of the Disclosing Party at any time, the Receiving Party shall: (i) return to the Disclosing Party all documents and tangible materials containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information; and (ii) permanently erase the Disclosing Party's Confidential Information from its computer systems, except, in each case, to the extent that the Receiving Party requires, or will require, such Confidential Information to exercise any of its surviving rights or to perform any of its surviving obligations under this Agreement; and (iii) certify in writing to the Disclosing Party that it has complied with the requirements of this subsection.

10. Term and Termination.

10.1 Term. Following any applicable Evaluation Period, the initial term of this Agreement commences as of the Effective Date and will continue in effect until the time indicated in the applicable Order Form unless terminated earlier under any of its express provisions (the "**Initial Term**").

10.2 Renewal. Unless this Agreement is terminated earlier under any of its express provisions and unless otherwise stated in an applicable Order Form, this Agreement shall automatically renew for additional successive one (1) year terms unless and until either party provides written notice of non-renewal at least 90-days days before the end of the then-current term (each, a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

10.3 Termination. In addition to any other express termination right given elsewhere in this Agreement:

(a) This Agreement shall terminate at the end of the Evaluation Period if the Licensee has not exercised its Evaluation Option under and according to Section 2.1.

(b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

(c) Either party may terminate this Agreement, effective immediately, if the other party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (iii) has issued against it a bankruptcy order or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has appointed a receiver, receiver-manager, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.4 Effect of Expiration or Termination. If this Agreement or any Services are terminated early for any reason, Licensee shall pay Licensor all unpaid amounts, if any, payable as License Fees for all other Services received before the effective date of such termination.

10.5 Survival. The provisions stated in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: [Section 8](#); [Section 9](#); [Section 10.4](#) this [Section 10.5](#); [Section 12](#); [Section 13](#); [Section 14](#); and [Section 15](#).

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is incorporated and validly existing as a corporation under the Laws of the jurisdiction of its incorporation;
- (b) it has the corporate power and capacity to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;
- (c) the execution of the Order Form applicable to this Agreement by its representative has been duly authorized by all necessary corporate action of such party; and
- (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Additional Licensor Representations and Warranties. Licensor further represents, warrants, and covenants to Licensee that:

- (a) Licensor is the legal and beneficial owner or controller of (by ownership, license or otherwise) of the entire right, title, and interest in and to the Licensed Software and Documentation, including all IP Rights relating thereto;
- (b) when used by Licensee or any Authorized User in accordance with this Agreement and the Documentation, no Licensed Software or Documentation as delivered or installed by Licensee in accordance with the Documentation does or will:
 - (i) infringe, misappropriate, or otherwise violate any IP Right or other right of any third party; or
 - (ii) fail to comply with any applicable Law;

12. Indemnification.

12.1 General Indemnification.

(a) Subject to the Licensee's indemnity obligations stated in this Agreement, the Licensor shall defend, indemnify, and hold the Licensee, its Affiliates, and their officers, directors, employees, agents, and sub-contractors (each of the foregoing Persons, a "**Licensee Indemnitee**") harmless from and against any and all Losses incurred by the Licensee arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an Affiliate of the Licensee) to the extent that such Losses arise out of or result from: (a) a claim that the Licensed Software infringes or misappropriates third-party IP Rights; or (b) the gross negligence, fraud, or wilful misconduct of the Licensor. Provided, however, that the Licensor's indemnity obligations hereunder shall not apply to any modification of the Licensed Software that was not performed by the Licensor or any use of the Licensed Software outside the scope of the Permitted Use.

(b) Licensee shall defend, indemnify and hold harmless Licensor and each of Licensor's Affiliates under this Agreement, and their respective officers, directors, employees, agents, permitted successors and permitted assigns (each of the foregoing Persons, a "**Licensor Indemnitee**") from and against any and all Losses incurred by the Licensor or its Affiliates arising out of or relating to any Action by a third party (other than an Affiliate of the Licensor) to the extent that such Losses arise out of or result from: (a) Licensee's breach of any representation, warranty, covenant, or obligation of Licensee under this Agreement; (b) use of Licensee Data; or (c) the gross negligence, fraud, or wilful misconduct of the Licensee.

12.2 Indemnification Procedure. The party seeking indemnity shall promptly notify the other party in writing of

any Action for which such party believes it is entitled to be indemnified under [Section 12.1](#) and co-operate with the other party, at the first party's sole cost and expense. The indemnifying party shall immediately take control of the defence and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights or assets, or restrains or interferes with the business or operations of, the indemnified party or any other Licensee Indemnitee or Licensor Indemnitee, as applicable, without Licensee's prior written consent, which shall not be unreasonably withheld or delayed. A party's failure to perform any obligations under this [Section 12.2](#) will not relieve the other party of its obligations under this [Section 12](#) except to the extent that such party can demonstrate that it has been materially prejudiced as a result of such failure. Licensee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.3 Mitigation.

(a) If any Licensed Software or any component thereof, is or in Licensor's opinion is likely to be claimed to infringe, misappropriate, or otherwise violate any third-party IP Right, or if Licensee's use of any Licensed Software or any component thereof is enjoined or threatened to be enjoined, Licensor shall, at Licensor's sole cost and expense:

(i) obtain the right for Licensee to continue to use such Licensed Software materially to the full extent contemplated by this Agreement; or

(ii) modify or replace the materials that infringe or are alleged to infringe (the "**Allegedly Infringing Materials**") to make the Licensed Software and all of its components (as so modified or replaced) non-infringing while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Licensed Software under this Agreement.

(b) If neither of the foregoing ([Section 12.3\(a\)\(i\)](#) or [Section 12.3\(a\)\(ii\)](#)) is possible notwithstanding Licensor's commercially reasonable efforts, then Licensor may, by written notice to Licensee, direct Licensee to cease any and all use of materials that have been enjoined or finally adjudicated as infringing, *provided that* Licensor shall:

(i) refund or credit to Licensee a pro rata portion of all amounts paid by Licensee in respect of such Allegedly Infringing Materials proportionate with the extent to and period during which Licensee's exercise of its rights under this Agreement respecting the Allegedly Infringing Materials have been and will be materially impaired; and

(ii) in any case, at its sole cost and expense, secure the right for Licensee to continue using the Allegedly Infringing Materials for a transition period of up to 6 months to allow Licensee to replace the affected features of the Licensed Software without disruption.

(c) If none of the remedies given in [Section 12.3\(a\)](#) or [Section 12.3\(b\)](#) is reasonably available with respect to the Allegedly Infringing Materials, Licensor may terminate this Agreement, including the rights and licenses granted under [Section 2](#), and Licensee shall promptly return to Licensor the original copy and all other partial and complete copies of the Licensed Software and Licensor shall refund to Licensee:

(i) a pro rata share of the License Fee paid hereunder that corresponds to the percentage of the remaining Term after the effective date of such termination; and

(iii) all prepaid fees for other Services to the extent such other Services have not been provided.

13. Limitations of Liability and Disclaimers.

13.1 EXCLUSION OF INDIRECT DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE OR EXEMPLARY DAMAGES.

13.2 CAP ON MONETARY LIABILITY. OTHER THAN REGARDING FEES OWED TO LICENSOR UNDER THIS AGREEMENT, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID BY LICENSEE TO LICENSOR IN THE PRECEDING 12 MONTHS. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT THE LICENSED SOFTWARE AND ALL OTHER SERVICES ARE PROVIDED "AS IS". THE LICENSOR SPECIFICALLY EXCLUDES ANY AND ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

THE WARRANTIES CONTAINED IN THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE LICENSEE AND NO OTHER THIRD-PARTY. UNLESS EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT OR BY WRITTEN AGREEMENT BETWEEN THE PARTIES, THE LICENSOR DOES NOT WARRANT THAT (A) THE OPERATION OF THE LICENSED SOFTWARE OR SUBSCRIPTION SERVICES WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE, (B) ANY ERRORS IN THE LICENSED SOFTWARE CAN OR WILL BE CORRECTED, OR (C) THE LICENSED SOFTWARE OR THE FUNCTIONS CONTAINED THEREIN, OR ANY RESULTS OF THE USE THEREOF, WILL MEET THE LICENSEE'S REQUIREMENTS, INCLUDING FOR RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, SUITABILITY, ACCURACY OR COMPLETENESS. THE LICENSOR WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DELAYS, INTERRUPTIONS, DELIVERY OR SERVICE FAILURE, OR ANY OTHER PROBLEMS OR DAMAGES ARISING FROM THE LICENSEE'S USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR ANY OTHER SYSTEMS.

14. Force Majeure.

14.1 Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent that such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including: acts of God, flood, fire, earthquake, tsunami, explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labour stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Licensee may terminate this Agreement if a Force Majeure Event affecting Licensor continues substantially uninterrupted for a period of 30 days or more.

14.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt notice to the other party, stating the period of time the occurrence is expected to continue and use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. Miscellaneous.

15.1 Effect of Licensor Bankruptcy. Licensor acknowledges and agrees that, if Licensor or its estate shall become subject to any bankruptcy or similar proceeding:

(a) all rights and licenses granted to Licensee under this Agreement will continue subject to the respective terms and conditions hereof and thereof, and will not be affected, even by Licensor's rejection of this Agreement; and

(b) Licensee shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in Licensee's possession, shall be promptly delivered to Licensee, unless Licensor elects to and does in fact continue to perform all of its obligations under this Agreement.

15.2 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.4 Public Announcements. During the Term, the Licensee agrees that the Licensor may use the Licensee's name and logo as a customer who uses the Services. The Licensor and Licensee agree that during the Term they will collaborate on press releases and other joint communications regarding the Licensee's use of the Services. With the prior consent of the Licensee, the Licensor during or after the Term may use the Licensee's use of the Services as a marketing case study, provided that the confidentiality obligations in this Agreement are upheld in doing so.

15.5 Notices. Except as otherwise expressly stated in this Agreement all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party at the address(es) stated in this Agreement (or to such other address or such other person that such party may designate from time to time in accordance with this [Section 15.5](#)). Notices sent in accordance with this [Section 15.5](#) will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next Business Day, if sent after the addressee's normal business hours; and (d) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.6 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were stated verbatim herein.

15.7 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of

this Agreement.

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

15.9 Assignment.

(a) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent, which consent shall not be unreasonably withheld or delayed.

(b) Any purported assignment, delegation, or transfer in violation of this [Section 15.9](#) is void. This Agreement is binding upon and enures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

15.11 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly stated in writing and signed by the party so waiving. Except as otherwise stated in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.12 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15.13 Governing Law; Forum. This Agreement is governed by and construed in accordance with the Laws of the province of Alberta and the federal Laws of Canada applicable therein. Any Action arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the province of Alberta, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such Action. Service of process, notice or other document sent by mail to such party's address stated in the applicable Order Form shall be effective service of process for any Action brought in any such court.

15.14 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under [Section 10](#) would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

15.15 Execution. This Agreement is deemed to be executed on the date that the applicable Order Form is executed between the parties.