



Master Agreement
Software License, Subscription, Services, Support and Maintenance, and Hosting Services
Agreement



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MASTER AGREEMENT TERMS AND CONDITIONS

This SOFTWARE LICENSE, SERVICES, SUPPORT AND MAINTENANCE, AND HOSTING SERVICES AGREEMENT (the "Agreement") made as of (the "Effective Date").

BETWEEN: **Silverblaze Solutions** ("COMPANY").

-and-

City of Seguin ("Organization" or "Customer")

WHEREAS, COMPANY wishes to grant the Organization a license to utilize certain Software; to provide certain Services related to said Software; to enter into an agreement for the Support and Maintenance of said Software; and to provide certain Hosting Services to Organization; and

WHEREAS, the Organization wishes to acquire a license to utilize the Software; to obtain Services related to said Software; to acquire ongoing Support and Maintenance for said Software; and to obtain Hosting Services for said Software and its system;

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), COMPANY and Organization, hereinafter referred to individually as a "Party" and collectively as the "Parties", agree as follows:

ARTICLE I: INTERPRETATION

Section 1.1 Definitions

- 1.1.1 "**Annual Hosting Fees**" refers to any Annual Hosting Fees in the SOW (Schedule "B") of this Agreement.
- 1.1.2 "**Annual Subscription Fees**" means any annual subscription fees for Software licensed on a subscription basis as set out in Schedule "A" to this Agreement.
- 1.1.3 "**Applicable Data Protection Law**" means all data privacy or data protection laws or regulations globally that apply to the Processing of Personal Information under this Agreement and Oracle's Data Processing Agreement referred to in Schedule "H-4", which may include Applicable European Data Protection Law.
- 1.1.4 "**Applicable European Data Protection Law**" means (i) the EU General Data Protection Regulation EU/2016/679, as supplemented by applicable EU Member State law and as incorporated into the EEA Agreement; (ii) the Swiss Federal Act of 19, June, 1992 on Data Protection, as amended; and (iii) the UK Data Protection Act of 2018.
- 1.1.5 "**Completion of Services**" means that the Software is operational and performing in conformity with the specifications set out herein. Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominant business system.
- 1.1.6 "**Concurrent Users**" means the total number of Users who can access the Software at any one time as detailed in Schedule "A" and further described in Article II.
- 1.1.7 "**Concurrent User License**" means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule "A".
- 1.1.8 "**Confidential Information**" means, with respect to a party hereto, all information or material which is marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking. Confidential Information of COMPANY shall include, without limitation, the Software, the Service Specifications, the terms and pricing under this Agreement, and any information with respect to the Hosting Services that COMPANY may provide to Customer from time to time, including without limitation, all information disclosed by COMPANY relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party as evidenced by its written records; (iii) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction. Confidential Information does not include any personal information that may be included in the Data. Confidential information does not include any information that is required to be disclosed or made public by any court or state or federal department or agency.
- 1.1.9 "**Customer Data.**" As between Organization and COMPANY, all Customer Data will remain the sole and exclusive property of Organization. Organization is solely responsible for ensuring the accuracy, quality, integrity, reliability,

appropriateness and right to view and use the Customer Data and shall ensure that the Customer Data will not violate any applicable law or the terms of this Agreement. Organization consents to the transfer and storage of Customer Data into the United States, if Organization is located in the United States, and in Canada, if Organization is located in Canada.

- 1.1.10 **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- 1.1.11 **“Embedded Third Party Software”** means components licensed by COMPANY for use in the Software (ex. Java, JasperSoft (Document Generation)).
- 1.1.12 **“Hosting Services”** means the services to be provided by or on behalf of COMPANY under this Agreement that includes hosting, monitoring, operating and maintaining the Software on hardware and related equipment and will permit Organization to use and access the Software via a method as determined solely by COMPANY. The Hosting Services shall also include storing all data entered and maintained by Users through use of the Hosting Services and the provision of updates, upgrades, and bug fixes related to support and maintenance of the Software.
- 1.1.13 **“License”** means the license rights granted to the Organization pursuant to Article II hereof and includes both a Concurrent User License and a Site License.
- 1.1.14 **“Personal Information”** shall have the same meaning as the term “personal data”, “personally identifiable information (PII)” or the equivalent term under Applicable Data Protection Law.
- 1.1.15 **“Professional Service(s)”** means the one-time professional services to be performed by COMPANY to configure, set-up, and implement the Software at the hosting site in accordance with this Agreement and as more particularly set out in Schedule “H-2”.
- 1.1.16 **“Release”** means an Update and an Upgrade.
- 1.1.17 **“Service Provider Content”** means content such as software (including machine images), data, text, audio, video or images that COMPANY’S service provider or any of its affiliates make available in connection with the Hosting Services to allow access to and use of the Hosting Services, including: APIs; WSDLs; documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). Service Provider Content does not include the Hosting Services or other third-party software, data, text, audio, video or images made available to Organization in conjunction with the Hosting Services. Some Service Provider Content may be provided to Organization under a separate license, such as the Apache License, Version 2.0, or other open-source license.
- 1.1.18 **“Service Specifications”** refers to the detailed description of the services to be provided to Customer under this Agreement. This includes, but is not limited to, the scope of services, performance standards, deliverables, timelines, and any other specific requirements or criteria that the services must meet as outlined in the attached Schedule A (or relevant attachment) and may be updated from time to time by mutual written agreement of the parties.
- 1.1.19 **“Site”** means solely at the production environment described in Schedule “A”.
- 1.1.20 **“Site License”** means a license that restricts the Software such that it can reside in one production environment and a reasonable number of non-production environments.
- 1.1.21 **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software.
- 1.1.22 **“Third Party Software”** means the third-party software product licensed to Organization by the applicable licensors as listed in Schedule “A” The terms and conditions for the Third Party Software are listed in Schedule “E”. Future Releases of the Software may require alternate third-party software to be licensed by Organization, which will be subject to a third-party license agreement between Organization and the relevant third-party software licensor. In such case Schedule “A” shall be amended to add any such third-party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- 1.1.23 **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality, or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
- 1.1.24 **“Upgrade”** is a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is typically designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- 1.1.25 **“User”** means any employee of Organization or any of Organization’s agents who are authorized by COMPANY pursuant to this Agreement to have access to the Software.

Section 1.2 **Currency**



All references to currency in this Agreement and the related Schedules refer to U.S. Dollars.

Section 1.3 Schedules

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement and are incorporated herein by reference:

- Schedule “A” – Description of Software
- Schedule “B” – Statement of Work (“SOW”) with attached
 - Fees & Payment Schedule
- Schedule “C” – Sample Change Order Form
- Schedule “D” – Standard Support and Maintenance Guidelines
- Schedule “E” – Third Party Terms and Conditions
- Schedule “F” – Hosting Services Availability

ARTICLE II: SOFTWARE LICENSES

Section 2.1 Grant of Licenses

- 2.1.1 **COMPANY Software is licensed, not sold.** Software under this Agreement may be licensed perpetually or on a subscription basis, as indicated and designated on Schedule “A.”
- 2.1.1.1 **Perpetual Licenses.** For Software licensed to Organization on a perpetual basis, as indicated on Schedule “A,” and subject to the terms and conditions of this Agreement, including without limitation the payment of the License Fees, COMPANY hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format for the number of Concurrent Users specified in Schedule “A” (the “License”). This License excludes Third Party Software, which is licensed under its terms.
- 2.1.1.2 **Subscription Licenses.** For Software licensed to Organization on a subscription basis, as indicated in Schedule “A,” and subject to the terms and conditions of this Agreement including without limitation the payment of the Subscription Fees on an ongoing basis, COMPANY hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Hosting Site and for the number of Concurrent Users specified in Schedule “A” (the “License”). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this Agreement may state otherwise.
- 2.1.2 Any Software furnished by COMPANY in machine-readable form may be copied in whole or in part by Organization for use on the Organization’s platform and operating system environment which is operating the Software (“Designated Computer System”), whether hosted or on premises. This environment can be accessed by Users from any internal or external computer terminal. To the extent that any temporary files associated with the Software are created during such use on such terminals, those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by COMPANY and all copies thereof made by Organization are and always remain the sole property of COMPANY.
- 2.1.3 Any License granted under this Agreement permits the Organization to: (i) use the Software for its reasonable business purposes including performance testing, disaster recovery, disaster testing, training, archival and backup, and (ii) use, copy, and modify the Documentation for the purpose of creating and using training materials relating to the Software, which may include flow diagrams, system operation schematics, and/or screen shots. Independent contractors of the Organization may access and use the Software if they are bound by confidentiality obligations and approved by COMPANY in advance. The Organization shall defend, indemnify and hold harmless COMPANY from claims arising from
- (i) all the actions of any independent contractor, and
 - (ii) any misuse or appropriation of the Software by any independent contractor.
- 2.1.4 The Organization may duplicate Documentation for permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- 2.1.5 Software is licensed to the Organization on multiple levels. The Software is licensed on a “Current Account Volume” and “User License” basis as set forth in Schedule “A”.

- (i) Concurrent User License permits the Organization to use the Software on the Designated Computer System (including all environments such as training, disaster recovery, etc.), provided that the number of Users who may be simultaneously using the Software is limited to the number of Concurrent Users specified for such Software on Schedule "A". A User is further defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).
- (ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and a reasonable number of non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

Organization may purchase additional licenses to use the Software as necessary at COMPANY'S then-current prices and terms.

- 2.1.6 As between COMPANY and Organization, COMPANY reserves all rights, title, and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.
- 2.1.7 Subject to the terms and conditions of this Agreement, including, without limitation, payment by Organization of the Annual Hosting Fees, COMPANY hereby grants to Organization a personal, non-exclusive, non-transferable limited right, during any Term for which Annual Hosting Fees are paid, to allow Users to access and use the Hosting Services solely in connection with its use of the Software together with any further restrictions as detailed in this Agreement.
- 2.1.8 Subject to the terms and conditions of the Agreement, Organization grants to COMPANY and its service provider a world-wide, non-exclusive, royalty-free license to access the Customer Data for the purpose of performing the Hosting Services or as necessary to comply with the law or a binding order of a government body. Access to the Data shall only be by COMPANY'S and its service provider's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, COMPANY may not access the Customer Data for any other purpose without the express written consent of Organization. Access to Customer Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law or a binding order of a government body. Unless it would violate the law or a binding order of a government body, COMPANY will give Organization notice of any legal requirement or order requiring such disclosure.
- 2.1.9 Organization grants to COMPANY a world-wide, non-exclusive, royalty-free license to aggregate or compile Customer Data with the customer data of other customers using the Hosting Services so long as such aggregation or compilation omits any data that would enable the identification of Organization, its clients, or any individual, company, or organization ("Aggregated Data"). COMPANY shall have a worldwide, perpetual, royalty-free license to use, modify, distribute, and create derivative works based on such Aggregated Data, including all reports, statistics, or analyses created or derived therefrom. Additionally, Organization grants COMPANY the right to access Data to provide feedback to Organization concerning its use of the Hosting Services.

Section 2.2 **Term**

- 2.2.1 **Term of License of Software.** This Agreement commences on the Effective Date.
 - 2.2.1.1 For any Software License(s) identified on Schedule "A" as perpetually licensed and licensed pursuant to Article 2.1.1.1, the license is perpetual and of indefinite duration, and it shall remain in force unless terminated pursuant to the terms hereof.
 - 2.2.1.2 For any Software identified on Schedule "A" as licensed on a subscription basis and licensed pursuant to Article 2.1.1.2, unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (the "Initial Term"). After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a "Renewal Term") subject to COMPANY'S then-current price structure and any modifications to the terms and conditions of this Agreement made by COMPANY upon written notice to Organization to reflect COMPANY'S then current version of this Agreement unless either party provides written notice to the other party of its intention not to renew within one hundred and twenty (120) days of the end of the then current term. The Initial Term and Renewal Term(s) are collectively referred to as the "Term". The License is subject to further restrictions as required under the Hosting Services provisions of this Agreement and the payment of any applicable fees as set forth in Schedule "B."
- 2.2.2 **Term of Services.** The term for delivery of Services hereunder shall be as set forth in any SOW appended hereto or entered into between the parties hereafter.
- 2.2.3 **Term of Support and Maintenance.** The initial term for services provided, pursuant to Article IV hereinafter, shall be for one year beginning on the due date, as detailed in the SOW (Schedule "B"). Thereafter, the Support and Maintenance provisions of this Article IV shall automatically renew annually, unless terminated by either party upon

giving to the other not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the then-prevailing Support and Maintenance Fee in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable one-year term. COMPANY shall refund neither any Support and Maintenance Fees nor any Billable Fees if the Support and Maintenance provisions of this Agreement are terminated.

- 2.2.4 **Term of Hosting Services.** The initial term for hosting services shall be for one (1) year beginning on the date fees are due, as detailed in the SOW (Schedule "B"). Thereafter, the Hosting Services license shall automatically renew annually, unless terminated by either party upon giving to the other not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the then-prevailing Annual Hosting Fees in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Annual Hosting Fees for the then applicable one-year term. COMPANY shall not refund any Hosting Services Fees paid under any circumstances. Hosting services are licensed and provided during periods for which Annual Hosting Fees have been paid.

Section 2.3 Restrictions on Use

- 2.3.1 Organization shall not, and will not allow or authorize any third party to: (i) use the Software for purposes other than Organization's primary business; (ii) disassemble, decompile, reverse engineer, or translate any part of the Software, except as permitted by law; (iii) modify or create derivative works of the Software; (iv) rent, lease, lend, or use the Software for time-sharing or hosting for others; or (v) take actions that would subject the Software to any open source license. Organization shall be wholly liable to COMPANY for any misuse of the Software.
- 2.3.2 The Software and related materials supplied by COMPANY are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software may not be resold or licensed by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by COMPANY.

2.3.3 Restrictions Specific to Any Hosting Services Purchased

- a. Organization shall not, and shall not cause or permit others to:
- (i) give away, rent, lease or otherwise sell, re-sell, sublicense, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Hosting Services to any third party, or transfer the license rights granted under this Agreement or otherwise use the Hosting Services or the Software except as expressly permitted by this Agreement and the Information Systems Agreement without the prior written consent of COMPANY;
 - (ii) modify, create derivative works of, disassemble, reverse engineer, reproduce, republish, download, or copy the Documentation or any part of the Hosting Services (including data structures or similar materials produced by programs);
 - (iii) frame or mirror any part or content of the Hosting Services, other than framing on Organization's internal networks or otherwise for Organization's own internal business purposes;
 - (iv) transmit, upload, post, distribute, store or otherwise publish, through use of the Hosting Services, any data, material or information that: (A) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (B) is false, threatening, defamatory, libelous, harassing, profane, is an invasion of privacy or violates privacy rights, offensive, obscene or harmful, promotes bigotry, racism, hatred or harm; (C) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third-party; (D) violates any law, statute, ordinance or regulation; or (E) includes unsolicited bulk e-mails, junk mail, spam or chain letters, advertisements or solicitations;
 - (v) interfere with or disrupt services or networks connected to the system used to provide the Hosting Services and shall not attempt to gain unauthorized access to the Hosting Services or such services or networks connected to the system used to provide the Hosting Services;
 - (vi) (A) perform any benchmarking or availability testing of the Hosting Services or (B) disclose the results of using the Hosting Services for the purposes of monitoring its availability, benchmarking or competitive analysis to any third party;
 - (vii) perform or disclose any performance or vulnerability testing of the Hosting Services without COMPANY prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Hosting Services;



- (viii) use the Hosting Services to harass any person, cause damage or injury to any person or property, or to perform cyber currency or crypto currency mining; or
- (ix) access or use the Hosting Services to build or support, directly or indirectly, products or services competitive to the Software, Hosting Services and Third Party Components.
- (b) In addition to its termination rights under in this Agreement, COMPANY may restrict or limit Organization's access to the Hosting Services if COMPANY determines that Organization has engaged in (whether knowingly or unknowingly) any prohibited conduct described herein. In addition to and without limiting the foregoing, COMPANY reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Organization in connection with its use of the Hosting Services that COMPANY determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to COMPANY or its service providers' network, business or other customers.

Section 2.4 Ownership of Software and Confidential Information

- 2.4.1 The Organization acknowledges that the Software contains proprietary information and Confidential Information that is the sole property of COMPANY.
- 2.4.2 The Organization will take reasonable care to safeguard the Software, and at least the same care as it takes to safeguard its own similar Confidential Information.

Section 2.5 Ownership and Disposition of Documents

- 2.5.1 The parties agree that no materials or documents are being created for Organization by COMPANY under this Agreement. All materials and documents which were developed or prepared by COMPANY for general use, and which are not the copyright of any other party or publicly available, including educational materials, remain the sole property of COMPANY.
- 2.5.2 Where the Organization requests custom materials or documents, the parties shall enter into a separate written agreement which shall include a duly executed statement of work and provisions for the license or ownership of said custom materials.

Section 2.6 Third Party Software

- 2.6.1 COMPANY may distribute to Organization Third Party Software which will be described as Third Party Software in Schedule "A". Organization shall pay COMPANY for the Third Party Software in the amount of the purchase price(s) listed on Schedule "B", which shall be due upon execution of the Agreement. Future Releases of the Software may require alternate third-party software to be licensed by Organization, which will be subject to a third-party license agreement between Organization and the relevant third-party software licensor. In such case Schedule "A" shall be amended in accordance with Section 6.08 to add any such third-party software and it shall be deemed "Third Party Software" for the purposes of this Agreement.
- 2.6.2 The Third Party Software is licensed to Organization by the applicable licensor listed in Schedule "A" and subject to the terms and conditions of the applicable license agreement for such Third Party Software. COMPANY makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and COMPANY accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty Organization has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement expressly states otherwise.
- 2.6.3 The parties acknowledge that the Software may also include Embedded Third Party Software components licensed by COMPANY for use in the Software. The terms and conditions of this Agreement shall inure for such third party's benefit and the license of such Embedded Third Party Software components are subject to the license and sublicense rights granted to COMPANY in connection with its use and distribution as part of the Software. The Third Party Software owner retains right, title and interest in such software, including statutory enforcement rights in the event of infringement.
- 2.6.4 Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.3 and the confidentiality obligations set out herein shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.

ARTICLE III: SERVICES



Section 3.1 **COMPANY'S Services**

To achieve Completion of Services, COMPANY agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization in accordance with the relevant Statement of Work:

- 3.1.1 Oversee and implement the conversion from the Organization's existing software applications to COMPANY'S Software.
- 3.1.2 Install the Software and perform necessary setup and configuration operations.
- 3.1.3 Provide training.
 - (i) In any training class exceeding ten (10) people, Organization may be assessed an additional charge for additional instructor(s).
 - (ii) Organization shall provide copies of the training manuals required for the training classes to each participant either by photocopy or electronic duplication. Each copy is subject to the restrictions and obligations contained in this Agreement.
 - (iii) On-line reference Documentation is delivered with each release. Organization may print or copy this Documentation solely for its internal use.
 - (iv) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Organization will be billed for any non-recoverable direct costs incurred by COMPANY that result from a cancellation by Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as COMPANY'S then current schedule permits. COMPANY is not responsible for any delay in Organization's project resulting from Organization's cancellation of Services. If upon COMPANY arrival, the Organization has not completed required tasks for such visit, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services may be cancelled at COMPANY'S discretion. If additional Services are required because the Organization was not adequately prepared, COMPANY will provide a Change Order to the Organization for said Services.
- 3.1.4 The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit.

Section 3.2 **Performance by COMPANY**

- 3.2.1 Standard of Care -- COMPANY shall perform its Services in a good, timely, thorough, and workmanlike manner, in accordance with the Agreement and in a manner consistent with the same degree of skill and care ordinarily exercised by professionals performing similar services in the same locality or industry, at the same site, and/or under the same or similar circumstances and conditions. COMPANY shall be responsible for the professional and technical accuracy and the coordination of all work furnished under this Agreement as further set forth in the associated Statement of Work. COMPANY shall furnish appropriate qualified and competent professional services for each aspect and task for which it is assigned per the Statement of Work so that detailed checking or reviewing by Organization is not necessary.
- 3.2.2 COMPANY'S Discretion -- COMPANY shall determine in its sole discretion the manner and means by which the Services shall be performed. COMPANY will consult with the Organization on its methodology, manner and means.
- 3.2.3 Conduct on Organization's Premises -- The Services shall be performed with the Organization's full cooperation as agreed, whether on the premises of the Organization or at an alternative location. When working on the Organization's premises, COMPANY personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- 3.2.4 Inquiries by Organization -- COMPANY shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- 3.2.5 Independence -- As an independent consultant, Organization retains COMPANY and its employees and agents on an independent contractor basis and not as an employee.
- 3.2.6 Coordination of Services -- COMPANY agrees to coordinate with Organization staff in the performance of Services and to be available for consultation at all reasonable times.
- 3.2.7 COMPANY'S Personnel Commitment and Obligations. COMPANY shall perform its obligations as set forth in the applicable Statement of Work. In addition, COMPANY shall: designate and provide for each Statement of Work one, unless otherwise so stated as more than one, COMPANY point of contact who shall be responsible for answering and resolving Organization questions and issues relating to the project(s) described therein; and provide sufficient, qualified, knowledgeable personnel capable of performing COMPANY'S obligations as set forth in the

applicable Statement of Work. COMPANY shall assign and meet the required staffing and resource needs for its provision of its Services. If Organization notifies COMPANY that it is dissatisfied with the services of any person supplied by COMPANY, Organization shall provide COMPANY with a written description of such unsatisfactory services, and COMPANY shall try in good faith to promptly resolve any concerns. If Organization continues to be reasonably dissatisfied with such person due to issues related to performance, workplace conduct, or behavior, COMPANY will remove that person from the situation and will assign another qualified person to Organization work as soon as possible. COMPANY agrees to use commercially reasonable efforts to maintain consistency of project personnel (subject to personnel employment status, promotion, leave of absence) and commits that replacement staffing resources will have sufficient project knowledge, qualifications and experience, without additional cost to Organization, in order to render services in accordance with this Agreement. In such a case, COMPANY will provide a replacement within a commercially reasonable time while preserving overall project timelines. COMPANY shall require each of its agents, officers, and employees to abide by any of Organization policies that are communicated or provided in writing to COMPANY, including those prohibiting sexual harassment, pandemic response, security, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on Organization property at all times while performing duties pursuant to the Agreement. COMPANY and its agents, officers, and employees performing services on Organization premises and otherwise using Organization software, hardware, or equipment, shall comply with all Organization security and information technology policies and practices.

Section 3.3 Performance by Organization

- 3.3.1 Cooperation by Organization: The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to cooperate fully with COMPANY to achieve the Completion of Services expeditiously.
- 3.3.2 Project Manager: The Organization shall designate a project manager to facilitate the successful implementation.
- 3.3.3 Passwords. Organization agrees to comply with all COMPANY security policies and procedures as provided to it and amended from time to time. Organization and its Users shall be responsible for keeping any and all passwords, user ID's, log-in credentials and private keys assigned to its Users secret and confidential. User ID's, passwords, login-in credentials and private keys are for Organization's internal use only and Organization may not sell, transfer or sublicense them to any other entity or person except that Organization may disclose its private key to its agents performing work on its behalf. Organization agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Organization's or its Users' passwords and user ID's or log-in credentials and private keys, as well as any obligation that may result from such use. Organization agrees to notify COMPANY in writing if it believes that a password has been stolen or might otherwise be misused. Organization agrees to notify COMPANY immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Organization.
- 3.3.4 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by COMPANY from time to time for Users; and (iii) informing COMPANY of any information about Users' actions that may affect either the Hosting Services or third party data contained in or used by the Hosting Services, or COMPANY'S ability to provide the Hosting Services as contemplated by this Agreement.
- 3.3.5 Compliance with Laws. Organization represents and warrants to COMPANY that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- 3.3.6 Additional Organization Obligations:
 - (i) For any on premises solutions, Organization shall install all Updates within a reasonable time after notification of their availability. However, any fix or correction designated as "critical" by COMPANY shall be implemented by Organization within thirty (30) days of such notification.
 - (ii) Organization shall notify COMPANY of suspected defects in any of the Software supplied by COMPANY. Organization shall provide, upon COMPANY request, additional data to reproduce the environment in which such defect occurred.
 - (iii) Organization shall allow the use of online diagnostics on the Software supplied to Organization as requested by COMPANY. Organization shall provide to COMPANY, at Organization's expense, access to

the Designated Computer System via the Organization's firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).

- (iv) Organization personnel shall be educated and trained in the proper use of the Software in accordance with applicable COMPANY manuals and instructions. If Organization's personnel are not properly trained as mutually determined by COMPANY and Organization, such personnel will be trained by COMPANY or Organization within fifteen (15) days. If COMPANY performs such training, it shall be compensated in accordance with this Agreement.
- (v) Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. Despite anything in this Agreement or the Statement of Work to the contrary, COMPANY is absolved from any requirements regarding the backup of any data. Organization shall provide COMPANY with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- (vi) Organization shall not permit any third party to have direct access to or provide services in relation to the Software or any Third Party Software without COMPANY'S prior written consent.
- (vii) Organization shall have the sole responsibility for:
 - (a) the performance of any tests it deems necessary prior to the use of the Software (for on premises and hosted solutions);
 - (b) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods (on premises solutions only);
 - (c) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction (on premises solutions only); and
 - (d) timely upgrade and keeping current all third-party license releases and/or Software products to meet the requirements of the Software (on premises solutions only).

3.4.1 Hosting Services

- 3.4.1 COMPANY shall provide the facilities, equipment, and software to deliver the Hosting Services. COMPANY shall have the right to manage all resources used in providing the Hosting Services, as COMPANY deems appropriate.
- 3.4.2 COMPANY shall host and provide access to the Software Users, subject to scheduled periods of non-availability as described in Schedule "F".
- 3.4.3 COMPANY reserves the right to have commercially reasonable additional User security criteria that may be applied to Users prior to their ability to have access to the Software. COMPANY shall inform Organization of such criteria, but COMPANY shall be free to implement such criteria at any time without prior written warning to the Organization and/or to Users. Where Users do not accept such and/or agree to such criteria, COMPANY reserves its rights to not grant to such Users access to the Software. COMPANY reserves its rights to restrict access to the Software to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software.
- 3.4.4 The Organization, not COMPANY, shall be responsible for creating and maintaining all User account information and for performing all other application-level system administration functions that are available within the Software.
- 3.4.5 COMPANY shall comply with the terms and conditions regarding access and use of Data as set forth in this Agreement.
- 3.4.6 Organization acknowledges that in order to provide the Hosting Services, Organization may be required to purchase access to Third Party Components. Organization further acknowledges that the availability of such Third Party Components is based solely on the best information available to COMPANY and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by COMPANY to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of COMPANY'S control, then (a) COMPANY shall not be in breach hereof or otherwise liable for any failure or inability to provide the Hosting Services as a result of such unavailability of any Third Party Components; and (b) may be required to change or replace the applicable Third Party Components or otherwise attempt to mitigate the impact of the such unavailability of Third Party Components.
- 3.4.7 Additional Terms and Conditions. Organization agrees and shall cause its Users to agree to be bound by and comply with the additional terms and conditions relating to Third Party Components, if any attached to this Agreement as Schedule "E", as may be amended from time to time by COMPANY, in its reasonable discretion, upon written notice to Organization.

- 3.4.8 The Service Specifications describe and govern the Hosting Services. During the Term, COMPANY may update the Hosting Services and Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Components. If any of the terms and conditions of COMPANY'S agreement with its third-party service provider or any other provider or licensor of Third Party Components are modified by such provider, COMPANY may modify the terms and conditions of this Agreement effective immediately upon written notice to Organization. If any such modification, change or replacement of the original Third Party Components includes a material price increase with respect to the Hosting Services enabled by such Third Party Components or materially reduces the level of performance, functionality, security or availability of the Hosting Services during the then current term, Organization may terminate this Agreement by providing written notice to COMPANY within thirty (30) days after Organization's receipt of notification of such material price increase or discovery of such impairment. For clarity, Organization and COMPANY shall agree in writing to any transition services requested by Organization and the associated transition services fees payable by Organization to COMPANY in the event of such termination.

3.5 Responsibilities

- 3.5.1 Cooperation by Organization. The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to act reasonably and cooperate fully with the COMPANY to achieve the Completion of Services related to any Professional Services supplied by COMPANY. To enable COMPANY to provide effective Support Services, the Organization will establish secure remote access to COMPANY based on mutually agreed upon remote access procedures.
- 3.5.2 Project Manager. The Organization shall appoint a project manager who shall work closely with COMPANY to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Organization and their cooperation with and participation in such process during any Professional Services.
- 3.5.3 Organization Equipment. Organization agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, onsite network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Organization's facilities required for Users to access and use the Hosted Services. COMPANY shall not be responsible for the operation of any Internet, network or other communication services. The Organization further acknowledges that the operation of the Hosting Services requires the Organization's and Users' hardware to be of sufficient quality, condition and repair, and the Organization agrees to and/or ensure that Users maintain their applicable hardware in the appropriate quality, condition and repair at the Organization's sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by COMPANY.
- 3.5.4 Passwords. Organization agrees to comply with all COMPANY and its service providers' security policies and procedures as provided to it and amended from time to time. Organization and its Users shall be responsible for keeping any and all passwords and user IDs assigned to it its Users secret and confidential. Organization agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Organizations or its Users' passwords and user ID's, as well as any obligation that may result from such use. Organization agrees to notify COMPANY in writing if it believes that a password has been stolen or might otherwise be misused. Organization agrees to notify COMPANY immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Organization related to the Hosting Services.
- 3.5.5 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by COMPANY from time to time for Users; and (iii) informing COMPANY of any information about Users' actions that may affected either the Software or third party data contained in the Software or used by the Hosting Services, or COMPANY'S ability to provide Hosting Services as contemplated by this Agreement.
- 3.5.6 Compliance with Laws. Organization represents and warrants to COMPANY that it and its Users will at all times be in compliance with all applicable local, state, and federal and laws and regulations including but not limited to those laws regarding defamation, libel, harm to reputation, privacy, security, data protection,

misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition, exports, and other situations which could generate liability.

- 3.5.7 Export. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Hosting Services. Such export laws govern use of the Hosting Services (including technical data) and any Hosting Services deliverables provided under this Agreement, and Organization agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations, restrictions on exports including the U.S. Export Administration Regulations, end-user, end use and destination restrictions by Canadian, U.S. and other governments related to COMPANY and its service provider's products, services and technologies). Organization agrees that no data, information, software programs and/or materials resulting from the Hosting Services (or direct product thereof) will be exported, directly or indirectly, in violation of export laws and regulations of the United States and any other relevant local export laws and regulations applicable to the Services (including technical data), or will be used for any purpose prohibited by these laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. Organization acknowledges that the Hosting Services are designed with capabilities for Organization and its Users to access the Hosting Services without regard to geographic location and to transfer or otherwise move the Data between the Hosting Services and other locations such as User workstations. Organization is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of the Data.
- 3.5.8 Managed Services. COMPANY shall provide any services identified in an SOW as "Managed Services" in accordance with accepted industry standards. Please see the table below for additional information on other division of responsibilities:

Item	Notes	Responsibility
Power Supply	All data center infrastructure is backed by redundant power sources and maintain generator backups in case of widespread electrical outage.	COMPANY
Internet Feeds & Networking at the Hosting Facility	All data center infrastructure is backed by high-speed redundant network and internet connectivity.	COMPANY
Internet Feeds & Networking at the Customer Site	The Organization is responsible for monitoring and maintaining network and internet connectivity at the customer site relating to the hosted environment. For general usage, 10 to 20 Mbps upload/download dedicated to enQuesta throughput will meet or exceed the needs of most customers.	Organization
Disk Failover in Data Center	Multiple copies of data are stored redundantly across multiple storage servers with built-in repair mechanisms.	COMPANY
On-Premises (Organization) Network	Set-up and maintenance of all network components, including firewall configuration and network connectivity.	Organization
VPN Tunnels	For all hosted systems, an IPsec VPN tunnel is required to provide secure connectivity between the Organization and the cloud hosting environment. The hosting environment tunnel is to be a co-managed; each party is responsible for notifying each other in the event of any changes that may require any type of coordination.	Organization & COMPANY
Back-Ups	Daily backups occur each evening and are retained for 5 business days. The Recovery Point Objective (RPO) for enQuesta is to recover from the most recent of these evening backups to minimize data loss. Selecting the Data Guard option makes your Production RPO point-of-failure (a.k.a. real-time). RTO for enQuesta is 12 hours. Often recovery time is 4 hours or less, but this is dependent on the type of failure that may have occurred. Complete server and data backups are taken at a 24 hour our interval and replicated to a different Oracle data center facility should any type of backup ever be required. This back-up can be made available to the	COMPANY

	Organization at any point. Higher frequency back-ups may be requested at the then available COMPANY rates.	
Disaster Recovery	Set-up, maintenance and restoration from backups – typical recovery time is less than 24 hours for enQuesta production – extreme cases can take up to 72 hours for enQuesta production. The number one priority will be enQuesta, once it’s up, the same timelines would then apply to Capricorn & enQuesta Link.	COMPANY
Operating System Maintenance	COMPANY is responsible for the following Operating System Level changes: General O/S maintenance, O/S-level application configuration, and systematic semi-yearly O/S patching.	COMPANY
Database Maintenance	COMPANY is responsible for Database maintenance and tuning as required by the enQuesta Software. Please note that this does not include manual data manipulation for ad-hoc billable projects or corrective measures in the case of Organization error.	COMPANY
Workstations	The Organization is responsible for the management and maintenance of all workstations, PCs, devices used to connect to the enQuesta Software.	Organization
Any Hardware On-Premises (e.g Kiosks, Handhelds Scanners, etc)	The Organization is responsible for the configuration, management and maintenance of any additional hardware installed on-premises.	Organization
Printers	Organization is responsible for all printer configuration and support of printers (beyond the six (6) that are included as part of the original contract).	Organization
System Monitoring	Alerting of critical instances: Tablespace Capacity, JBOSS, Back-Up Completed/Failed, Hosting Services Up/Down, Web Portal Availability (Production Instance Only)	COMPANY
Other	The Organization is responsible for enQuesta user maintenance and general system administration. The Organization is also responsible for any file or report import/export to non-enQuesta servers.	Organization

3.5.9 Data Security. Organization acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Organization’s and its Users’ (as well as COMPANY’S and its service providers’) computer systems, networks and any and all information stored therein. Organization is solely responsible for ensuring that (i) Organization’s computer systems are secure and protected from unwanted interference (such as “hackers” and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to COMPANY’S and/or its service providers’ servers; and (iii) Data is encrypted. Some content may be subject to governmental regulations or may require security measures beyond those specified by COMPANY for an offering. Organization remains solely responsible for Organization’s regulatory compliance in connection with Organization and its Users’ use of the Hosting Services. Organization is responsible for making COMPANY aware of any technical requirements that result from Organization or its Users’ regulatory obligations prior to entering into this Agreement. COMPANY will cooperate with Organization’s efforts to determine whether use of the standard COMPANY Hosting Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by COMPANY and its service provider or changes to the Hosting Services. Organization will not input or provide such content unless COMPANY has first agreed in writing to implement additional required security measures. By using the Hosting Services, Organization acknowledges that it meets Organization’s requirements and Data (including Personal Information) processing instructions. Organization is solely responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from the Data, including any viruses, Trojan horses, worms or other harmful programming routines contained in the Data, and any use by Organization or its Users of the Hosting Services in a manner that is inconsistent with the terms of this Agreement. To the extent that Organization discloses or transmits the Data to a third party, COMPANY and its service providers are not responsible for the security, integrity or confidentiality of such content outside of COMPANY’S and its service providers’ control.

- 3.5.10 Unless otherwise agreed to by COMPANY in in this Agreement, the Data may not include any sensitive or special data that imposes specific security or data protection obligations on COMPANY and its service provider in addition to or different from those specified in the Service Specifications. If available for the Hosting Services, Organization may purchase additional service from COMPANY designed to address specific data security or data protection requirements applicable to such sensitive or special data Organization seeks to include in its Data.
- 3.5.11 COMPANY AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY USE BY ORGANIZATION OR ANY USER OF ORGANIZATION'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION, NOR FOR ANY THIRD-PARTY ACTIONS OR OMISSIONS
- 3.5.12 Should the unlikely event of any type of unsolicited activity occur (e.g. even if it's due to suspicious activities by Organization's employee) COMPANY reserves the right to immediately block off entry to all parties until root cause is assessed via all activity logs (network, database, and application). The Organization also reserves the right to ask COMPANY to turn off access to all at any point, in the unlikely event that this should be deemed required.
- 3.5.13 Current datacenter infrastructure standards are available at the links set out in Schedule "E".

ARTICLE IV: SUPPORT AND MAINTENANCE

Section 4.1 Delivery of Support Services

- 4.1.1 Method of Delivery. COMPANY shall provide software support via telephone and electronic transmission, with site visits only when necessary. The support services will be provided during the hours of operation as described in Schedule "D" hereto, effective on the date support services fees are due, as detailed in the SOW (Schedule "B"). Such services may be modified at COMPANY'S sole discretion. Organization will establish auto remote access procedures compatible with COMPANY'S current practices.
- 4.1.2 Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by COMPANY in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with COMPANY, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
- 4.1.3 Source Code Escrow. COMPANY maintains an escrow agreement with a third party under which is placed the source code for each major release of its Software. Organization may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee. Organization will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the COMPANY Software is strictly governed by the terms of the escrow agreement. No escrow in Third Party Software is provided.
- 4.1.4 COMPANY shall have the right to terminate ongoing Support and Maintenance pursuant to this Agreement immediately if:
- i) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with this Agreement; or
 - ii) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Section 5.1 Warranty of Performance

- 5.1.1 Software Warranty. The Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Completion of Services if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs and the hardware meets the requirements. The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.
- 5.1.2 Hosting Services Warranty. During the duration of this Agreement, Provider warrants to Organization that the Hosting Services shall be performed at the level and shall reasonably meet the requirements as stated in any Provider manuals and other documentation provided. Organization's sole recourse in the event the Hosting Services do not conform to the warranty provided is for the right to terminate those Hosting Services upon providing thirty (30) days' written notice to Provider

- 5.1.3 In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by COMPANY, provided Organization has ongoing Support and Maintenance with COMPANY pursuant to Article IV of this Agreement, COMPANY will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of Article IV. COMPANY reserves the right to correct any defects about which it is made aware and to produce in its sole discretion Releases at a time of COMPANY'S own choosing.
- 5.1.4 COMPANY warrants that services performed pursuant to this Agreement will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Section 5.2 **Exclusions to Warranty**

COMPANY shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of COMPANY, including:

- 5.2.1 where the installation, integration, modification or enhancement of the Software was not done by COMPANY or its authorized agent, or where Organization has taken any action which is prohibited by the Documentation or this Agreement;
- 5.2.2 any use or combination of the Software with any software, equipment or services not supplied by or on behalf of COMPANY;
- 5.2.3 user error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted herein;
- 5.2.4 Organization's failure to install a new Update necessary to cure an error or bug, for security or legislative compliance purposes or for such other reasons as COMPANY may determine in its sole discretion; or
- 5.2.5 any other event of force majeure.

Section 5.03 **No Other Warranties**

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith. COMPANY, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, COMPANY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM. COMPANY AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

Section 5.4 **Required Programs and Hardware**

- 5.4.1 The Organization acknowledges that the use of the Software may require that the Organization obtain and install additional required software programs (the "**Required Programs**"), as detailed in the attached Schedule "A". The Organization agrees that the acquisition of the Required Programs (including the cost for future updates) shall be at its sole cost and that the cost thereof is not included in the fees herein.
- 5.4.2 Organization's hardware shall be maintained in sufficient quality, condition and repair at Organization's sole cost and expense to support the Software licensed and supported herein. If COMPANY determines that Organization's hardware is not of sufficient quality, condition and repair, COMPANY shall so notify



Organization, and Organization will use reasonable efforts to remedy any hardware deficiencies within thirty (30) days.

- 5.4.3 Organization shall provide no less than one hundred eight (180) days' notice where the Organization anticipates changing any of the third-party software or hardware products in use on the Designated Computer System so that COMPANY may assess whether the Software will function with the different software or hardware. Where COMPANY determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization's sole risk. COMPANY and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

ARTICLE VI: FEES AND PAYMENT

Section 6.0 Terms applicable to all invoices.

Disputed invoices. If Organization disputes all or a portion of any invoice, Organization shall inform COMPANY in writing of the nature of the dispute as soon as practicable after invoice receipt but in no event later than thirty (30) days from receipt thereof. COMPANY will resubmit an invoice with only undisputed amounts listed, and upon resolution of any items under dispute, COMPANY will resubmit those resolved items on a separate invoice which Organization agrees to pay within 30 days of original invoice receipt date. The Organization's written notice to COMPANY of a dispute must contain reasonable detail so that COMPANY can investigate the issue. COMPANY shall respond to Organization's notice within ten (10) business days with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in Organization's notice and Organization shall pay such resolved invoice within ten (10) days from resolution. The Parties will make reasonable efforts to resolve all remaining issues, if any.

Section 6.1 Fees and Payments for Licenses

- 6.1.1 The Organization agrees to pay COMPANY total License fees detailed in Schedule "B" (the "License Fees"), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule are outlined in the attached Schedule "B". The License is subject to the full payment of the License fees. All payments for License fees are non-refundable.
- 6.1.2 Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this Agreement, Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule "B" to pay COMPANY the applicable License Fee.
- 6.1.3 Prices are for quoted products only. However, to the extent permissible under governing law and Organization's regulations and practices, this Agreement may function as a cooperative purchasing agreement for future Organization purchases. Pricing for future and additional purchased products or pursuant to any cooperative purchasing agreement will be at COMPANY then-current pricing and not based upon pricing in this Agreement.

Section 6.2 Fees and Payments for Services and Subscription Licenses

- 6.2.1 The Organization agrees to pay COMPANY total fees as delineated in the SOW (Schedule "B"). The fee structure and payment schedule for Services are outlined in the SOW (Schedule "B"). All payments for Services are non-refundable.
- 6.2.2 Annual Subscription for Subscription Licenses
- 6.2.1.1 The Organization agrees to pay COMPANY the Annual Subscription Fees, which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule are outlined in the SOW (Schedule "B"). The License is subject to the full payment of the Annual Subscription Fees in accordance with the payment terms set out in SOW (Schedule "B").
- 6.2.1.2 The Annual Subscription Fee will be billed annually in advance beginning as set forth in the SOW (Schedule "B") and thereafter on the anniversary or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Annual Subscription Fee to its fiscal year or any other period it may request, then COMPANY will issue a prorated invoice for the portion of the year remaining during the initial term. COMPANY may change the Annual Maintenance

Fee from time to time in relation to each renewal term, but Organization shall only be billed once per year.

- 6.2.2 The Organization agrees to reimburse COMPANY for its travel and lodging per diem and other out of pocket expenses as set out in the attachment to the SOW (Schedule “B”).
- 6.2.3 During the term of this Agreement, COMPANY shall, from time to time, deliver invoices to Organization. Each invoice is due and payable upon receipt.
- 6.2.4 In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies COMPANY has under this Agreement or otherwise, COMPANY shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any late charges.
- 6.2.5 COMPANY shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax COMPANY may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in the SOW (Schedule “B”) and such sums (including the payment of the taxes) shall be payable upon receipt of invoice. Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Services, Support Services or Licenses or that are in relation to income taxes payable by COMPANY employees.
- 6.2.6 Change Orders. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of COMPANY applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, timelines governing, and the Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample Change Order is presented in Schedule “C”.

Section 6.3 Fees and Payments for Support and Maintenance and Any Hosting Services

- 6.3.1 In consideration for the support services provided hereunder, Organization shall pay the “Support and Maintenance Fee” and the “Annual Hosting Fees” as detailed in the SOW (Schedule “B”). The Support and Maintenance and Annual Hosting Fees will be billed annually in advance on the due date, as detailed in the SOW (Schedule “B”), and thereafter on the anniversary of this date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee and Annual Hosting Fees to its fiscal year or any other period it may request, then COMPANY will issue a prorated invoice for the portion of the year remaining during the initial term. COMPANY may change the Support and Maintenance Fee and Hosting Services Fees from time to time in relation to each renewal term, but Organization shall only be billed once per year.
- 6.3.2 In addition to the Support and Maintenance Fee, Organization shall reimburse COMPANY for its direct expenses in providing support services (“Billable Fees”) pursuant to this Agreement which include:
 - (i) its direct travel expenses which are excluded from the total fees amount described in the Statement of Work, including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees;
 - (ii) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;
 - (iii) a per diem rate of \$70.00 for weekdays and a \$140.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided);
 - (iv) a mileage charge based on the current U.S. Internal Revenue Service recommended rate per mile, long distance telephone calls; and
 - (v) all other reasonable expenses incurred in the performance of COMPANY'S duties including courier services and documentation copying or production.

COMPANY may update its reimbursement policies and rates related to the Billable Fees from time to time, in which case such updated policies shall apply for purposes of this Agreement, provided that such updated reimbursement policies must generally apply to all clients of COMPANY.

- 6.3.3 COMPANY shall supply all Upgrades to Organization at no additional charge other than the payment of ongoing Support and Maintenance Fee. Upgrades may require additional services to be performed by COMPANY outside of the scope of those services provided by COMPANY, including additional training not covered by this Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the COMPANY then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Statement of Work that will be subject to the terms of this Agreement.
- 6.3.4 All Updates of the Software and all those services listed in the Statement of Work which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.
- 6.3.5 All payments for Support and Maintenance and Annual Hosting Fees shall be net of any taxes, tariffs or other governmental charges. COMPANY shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax COMPANY may be required to collect or pay upon the sale, use or delivery of support and maintenance services shall be paid by Organization and such sums shall be due and payable to COMPANY upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization.

6.4 **Piggyback Procurement**

The Organization reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the Organization's state as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this proposal and will provide usage information, which may be requested. A copy of the contract pricing and the proposal requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own Agreement with COMPANY, and this Agreement shall be binding only upon the principals signing such an Agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any Agreement shall be the responsibility of the participating jurisdiction or agency that entered into that Agreement. Disputes must be resolved solely between the participating agency and COMPANY. Organization does not assume any responsibility other than to obtain pricing for the specifications provided.

ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY

Section 7.1 Remedies and Liability

- 7.1.1 Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done prior to said termination.
- 7.1.2 The Organization and COMPANY recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of COMPANY arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and COMPANY'S liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
 - (i) EXCEPT FOR DAMAGES ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY OR COMPANY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.3, BOTH PARTIES AGREE THAT COMPANY'S ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE FEES PAID UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE DATE UPON WHICH ANY DISPUTE AROSE. (SEE SECTION 8.4, BELOW).
 - (ii) IN ADDITION TO THE FOREGOING, COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT

OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ORGANIZATION HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (ii) CLAUSE (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 7.2 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 7.3 Intellectual Property Indemnity

- 7.3.1 In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trademark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, COMPANY shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by COMPANY on Organization's behalf. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to COMPANY of the applicable claim except with COMPANY'S prior written consent, (ii) COMPANY has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement, (iii) Organization assists and provides information to COMPANY throughout the action or proceeding, and (iv) Organization has not modified the Software in any manner whatsoever except with the prior written consent of COMPANY.
- 7.3.2 COMPANY liability for any claims under this Section 7.3 shall be reduced to the extent such claim arises from;
 - (i) alterations or modifications to the Software by Organization or a third party in any manner whatsoever except with the prior written consent of COMPANY;
 - (ii) combination, integration or use of the Software with software, hardware or other materials not approved by COMPANY where such claim would not have arisen but for such combination, integration or use;
 - (iii) use of the Software other than in compliance with this Agreement;
 - (iv) compliance with the Organization's written instructions or specifications; or
 - (v) use of the Software after notice from COMPANY that it should cease due to possible infringement.
- 7.3.3 Any breach by Organization of its covenants under this Section 7.3 shall nullify this indemnity but not the sole right of COMPANY to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing or COMPANY deems that it may be held to be infringing, Organization agrees that the only remedy available to it is that COMPANY shall be, at COMPANY'S election, for COMPANY to: (i) procure for the Organization the right to continue use of the Software; or (ii) modify or replace the Software so that it becomes non-infringing.
- 7.3.4 The foregoing states COMPANY'S entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trademark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- 7.3.5 Organization may, at Organization's sole cost and expense, retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances related to the proceeding.
- 7.3.6 The indemnity provisions of this Section 7.3 shall not apply to Third Party Software and COMPANY shall have the right to substitute the licensor of the Third Party Software to perform COMPANY'S obligations



hereunder and the Organization agrees to release COMPANY from any obligations related to such Third Party Software.

Section 7.4 **Remedies**

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of COMPANY arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VIII: GENERAL

Section 8.1 **Confidentiality**

- 8.1.1 Duty Owed to the Organization: COMPANY acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, COMPANY agrees:
- (i) to maintain this information in confidence;
 - (ii) not to use this information other than in the course of this Agreement;
 - (iii) not to disclose or release such information;
 - (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of COMPANY; and
 - (v) to take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with COMPANY, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- 8.1.2 Duty Owed to COMPANY: The parties agree that if the Organization breaches any term of Section 2.3 or Section 2.4 then COMPANY shall have the right to terminate this Agreement and the grant of Licenses herein forthwith without giving notice as set forth in Section 8.2.1.

Section 8.2 **Termination**

- 8.2.1 If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to (i) issue a written notice disputing the alleged default within such thirty (30) day period, or (ii) to correct the default or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, this will constitute an “Event of Default” and the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- 8.2.2 If Organization has failed to pay the license fees in accordance with Article VI, then COMPANY shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization.

Section 8.3 **Procedure on Termination**

- 8.3.1 If this Agreement is terminated prior to the Completion of Services or for products licensed on a subscription basis, then within thirty (30) days following such termination, the Organization shall either return to COMPANY or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify in writing that all of the Organization’s copies of the Software have either been returned to COMPANY or deleted.
- 8.3.2 If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with



respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.

8.3.3 All warranties related to the Software terminate upon the termination of this Agreement.

8.3.4 Termination Provisions Specific to Hosting Services. In the event of termination or expiration of Hosting Services pursuant this Agreement:

- (i) All rights to use the Hosting Services granted to COMPANY in this Agreement shall immediately terminate and Organization will immediately cease to perform or provide said Hosting Services.
- (ii) Organization will pay all amounts due under this Agreement for the Hosting Services up to and through the date of termination and all costs reasonably incurred in collecting the amounts due to COMPANY (including court costs, attorney fees, and repossession charges to the extent not prohibited by law).
- (iii) Return of Data. Conditional upon Organization's payment of all Fees that are due to COMPANY, COMPANY will furnish the COMPANY with a copy of Organization's Customer Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The preparation of a copy of the Customer Data will be billed at COMPANY'S then current daily rate. Upon receipt of notice from COMPANY confirming receipt of the Customer Data, COMPANY shall destroy all copies of the Customer Data and delete all Customer Data on the database and an Officer of COMPANY shall certify the destruction and deletion to the Organization. Subject to any legal requirement that COMPANY must retain a copy of the Customer Data, COMPANY shall not delete the Customer Data for 90 days from the date of termination except: (i) where COMPANY has provided the Customer Data to COMPANY pursuant to this Subsection; or (ii) where it has received written instructions from Organization to delete the Data. Following 90 days from the date of termination if Organization has not communicated with COMPANY regarding the Customer Data, COMPANY shall have the right to delete all Customer Data at any time as either required by law or as determined by COMPANY in its sole discretion. Notwithstanding the foregoing, COMPANY shall be permitted to delete all Customer Data without providing notification to Organization and COMPANY shall not be required to adhere to the time frames detailed above where COMPANY is required by law to delete such Customer Data.

Section 8.4 **Insurance**

COMPANY agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until this Agreement is otherwise considered completed as a matter of law, Contractor shall, at its sole expense, provide and maintain Commercial General Liability insurance that meets or exceeds the industry standard for providers in Contractor's field of employment and for the type of products and services that are being performed by COMPANY under this Agreement. Such insurance coverage shall include the City as co-insured. This insurance coverage shall cover all perils arising from the activities of COMPANY, its officers, directors, employees, agents or sub-contractors, relative to this Agreement. COMPANY shall be responsible for any deductibles stated in the policy. A copy of the current Certificate of Liability Insurance is attached hereto as Exhibit "A".

So long as this Agreement is in effect, Contractor shall not cause such insurance to be canceled nor permit such insurance to lapse.

Section 8.5 **Notices**

Any notice, consent, demand, or request required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered personally or by a nationally recognized courier service, e-mailed, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth on the signature page hereof or to any other address as either Party may designate in a written notice to the other.

Section 8.6 **Assignment**

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, and sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

Section 8.7 **Reorganizations**



The Organization acknowledges that the License, Services, and Support Fees set out in this Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any corporate reorganization or transition (a “Reorganization”), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Concurrent Users or sites, COMPANY shall be entitled to receive, and the Organization shall pay, an additional License, Support or other fee based on the then prevailing License, Support and other COMPANY fee schedule in effect. The provisions of this Section 8.7 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 8.7 shall not apply where the Organization undergoes a Reorganization involving only other organizations that already have a valid License to use the same Software.

Section 8.8 **Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. There are no other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of COMPANY by any of its employees or agents, or contained in any sales materials or brochures. This Agreement may not be modified except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by COMPANY, with such provisions being deemed deleted. The parties have both had the opportunity to review this Agreement with counsel, and this Agreement shall not be construed in favor of or against either Party on account of drafting.

Section 8.9 **Section Headings**

Section and other headings in this Agreement are for reference purposes only and do not describe, interpret, define or limit the scope or extent of any provision hereof.

Section 8.10 **Governing Law**

This Agreement shall be governed by the laws of the State of Texas, without reference to the conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement. The Parties agree that the appropriate Venue shall be in the federal court for Guadalupe County, Texas; provided, however, that if subject matter jurisdiction is improper in said federal court, it shall be had in the state court for Guadalupe County, Texas.

Section 8.11 **Trial by Jury**

Organization and COMPANY hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or to any acts or omissions of COMPANY in connection to this Agreement.

Section 8.12 **Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant. Any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render it valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 8.13 **Waiver**

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under this Agreement or by law despite such forbearance or notice.

Section 8.14 **Counterparts**

This Agreement may be executed in counterparts (whether by via emailed PDF or otherwise), each of which shall constitute an original and all of which shall constitute one Agreement.

Section 8.15 **Further Assurances**



The parties shall do all such things and provide all such reasonable assurances as may be required to consummate this Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary.

Section 8.16 Allocation of Risk

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Organization and COMPANY and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 8.17 Relationship

The parties are and shall remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between them. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible.

Section 8.18 U.S. Government End-Users

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of COMPANY for the purposes of the Freedom of Information Act; (iii) is “commercial computer software” subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to COMPANY or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is N. COMPANY Computer Corporation, 1 Antares Drive, Suite 400, Ottawa, ON K2E 8C4.

Section 8.19 Equitable Relief

Organization acknowledges and agrees that it would be difficult to compute the monetary loss to COMPANY arising from a breach or threatened breach of this Agreement and that, accordingly, COMPANY will be entitled to specific performance, injunctive or other equitable relief in addition to monetary damages in the event of a breach or threatened breach of this Agreement by Organization.

Section 8.20 Language

The parties confirm that it is their wish that this Agreement, as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

Section 8.21 Force Majeure

No default, delay or failure to perform on the part of COMPANY shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, pandemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 8.22 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Article II, Article VII, and Article VIII and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder. All warranties expire upon termination of this Agreement.



IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

Silverblaze Solutions

DocuSigned by:
Douglas Lee
E8334EA4793F4D7...

Name Doug Lee
Date December 16, 2025

Address for Legal Notices:

1 Antares Dr.
Nepean, ON. Canada
K2E 8C4

City of Seguin

Name
Date

Address for Legal Notices:

205 N River Street
Seguin, TX. 78155
United States

Schedule “A” - Description of Software

Please refer to the Statement of Work (SOW) provided under separate cover.



Schedule “B” – Statement of Work (“SOW”)

Please refer to the Statement of Work (SOW) provided under separate cover.



Schedule "C" – Sample Change Order Form



Schedule “D” – Standard Support and Maintenance Guidelines

Please refer to the Support and Maintenance Guidelines provided under separate cover.



Schedule “E” – Third Party Software Licenses and Third Party Software Terms

Schedule “E-1”

Third Party Components Additional Terms



SERVICES AVAILABILITY

1. Availability Requirement.

Harris shall use commercially reasonable efforts to make the Services Available 100% of the time of the time in any given calendar month as measured over the course of the total number of days in each calendar month during the Term (each such calendar month, a “Service Period”), excluding un-Availability as a result of any of the Exceptions described below in this Section 1 (the “Availability Requirement”). “Service Level Failure” means a material failure of the Services to meet the Availability Requirement. “Available” means the Services are available for access and use by Customer in a production environment. For the purposes of calculating the Availability Requirement, the Services will not be considered un-Available and no Service Level Failure will be deemed to have occurred in connection with any failure to meet the Availability Requirement that is due, in whole or in part, to any: (a) Customer Cause; (b) Customer's Internet connectivity; (c) a force majeure event (as described in Section 20(m)); (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Harris pursuant to this Agreement; (e) Routine Scheduled Downtime; (f) any interruption to the access or use of the Services that occurs in a non-production environment; (g) Emergency Work; or (i) disabling, suspension, or termination of the Services for cause by Harris. For clarity, references to “Customer” in this Schedule B include Authorized Users.

2. Customer Cause.

For the purposes of this Schedule B, “Customer Cause” means any of the following causes: (a) any negligent or improper use, misapplication, misuse or abuse of, or damage to, the Services by Customer or its representatives; (b) any interference or modification to or alteration of the Services by Customer or its representatives; (c) any use of the Services by Customer or its representatives in a manner inconsistent with the then-current Documentation; (d) any use by Customer or its representatives of any third party products that Harris has not provided or caused to be provided to Customer; or (e) any use by Customer of a non-current version or release of Third Party Components, notwithstanding notice from Harris that updates, fixes or patches are required.

3. Service Level Failures and Remedies.

(a) In the event of a Service Level Failure, Harris shall issue a credit to Customer in the amounts set out in the table below (a “Service Level Credit”), provided however, that Harris has no obligation to issue any Service Level Credit unless Customer: (i) reports the Service Level Failure to Harris immediately on becoming aware of it; and (ii) requests such Service Level Credit in writing within ten (10) days of the Service Level Failure.

Service Period Availability	Service Level Credit (Percentage of Monthly Payment of Annual Subscription Fee)
Equal to or greater than 99%	0%
Equal to or greater than 98%	3%
Equal to or greater than 97%	5%
Equal to or greater than 95%	10%
Less than 95%	15%

The Service Period Availability is calculated by subtracting the total number of minutes that the Services are un-Available in a Service Period from the total number of minutes in a Service Period and then dividing the difference by the total number of minutes in a Service Period.

(b) Any Service Level Credit payable to Customer under this Agreement will be issued to Customer in the last calendar month of the Term. This Section 3 sets forth Harris' sole obligation and liability and Customer's sole remedy for any Service Level Failure.

4. Routine Scheduled Downtime.

For the purposes of this Schedule B, “Routine Scheduled Downtime” means a period of time during which Harris conducts routine system maintenance and for which Harris has provided Customer written notice



a minimum of three business days prior to such period, which will be between 6PM and midnight Central Time on weekdays and or any time on weekends, as agreed by the parties.

5. Factors Outside Harris’s Reasonable Control.

For the purposes of this Schedule B, outages due to force majeure events include power surges or network or device failure external to Harris’ data centers. In the event of a force majeure event, Harris shall be entitled to take any actions determined, in its sole discretion, necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security, or like concern to Harris’ hosting infrastructure resulting from such force majeure event (“**Emergency Work**”). Harris shall provide advance notice of such Emergency Work to Customer when practicable and possible. Harris shall not be held responsible for any deterioration of performance or un-Availability during such force majeure events or Emergency Work.

6. Unauthorized Actions.

Harris shall not be responsible for any un-Availability that results from Customer’s unauthorized action or lack of action when required, or from Customer’s employees, agents, contractors, or vendors, or anyone gaining access to the Services by means of Customer passwords or equipment, or otherwise resulting from Customer failure to follow appropriate security practices. Although Harris will use commercially reasonable efforts to mitigate the effects of any such events, Harris cannot guarantee that such events will not occur. Accordingly, Harris disclaims any and all liability resulting from or relating to such events.

7. Failure to Adhere to Requirements.

Harris shall not be responsible for any un-Availability which results from Customer’s failure to adhere to any required configurations, follow any policies for acceptable use, or use of the Services in a manner inconsistent with the features and functionality of the Services (for example, attempts to perform operations that are not supported, exceeding prescribed quotas, if applicable, or suspected abusive behavior) or inconsistent with Harris’ published guidance.