



SOFTWARE AS A SERVICE AGREEMENT

IMPORTANT – READ THIS SOFTWARE AS A SERVICE AGREEMENT (THIS “**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS RELATED TO AND DEEMED INCORPORATED INTO THE ACCOMPANYING ORDERING DOCUMENT (“**PURCHASE AGREEMENT**”) BETWEEN EASTBAY I.T. CONSULTING INC. (“**EASTBAY**”) AND THE CLIENT SPECIFIED IN THE PURCHASE AGREEMENT (“**CLIENT**”). CLIENT’S EXECUTION OF A PURCHASE AGREEMENT REFERENCING THIS AGREEMENT SHALL BE DEEMED CLIENT’S AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. DEFINITIONS

For purposes of this Agreement, the terms below shall have the meanings defined below. Additional terms are defined in the preamble above and throughout this Agreement.

- (1) “**Client Content**” means any data, information, trade-marks, logos, files, images, text or other content that may be provided by Client or its authorized users for use in conjunction with the Software or Services.
- (2) “**SaaS Term**” means the period during which the Services and access to the Software will be provided by Eastbay to Client, including the Initial Term and any Renewal Terms (as each is defined in Section 5(1)).
- (3) “**Services**” means the hosting, maintenance, system administration, system management and other services provided by Eastbay pursuant to this Agreement.
- (4) “**Software**” means the Eastbay’s proprietary software specified in the Purchase Agreement.
- (5) “**User Documentation**” means the Eastbay user documentation relating to the Software.

2. WEB-BASED LICENCE

Eastbay grants to Client, and Client accepts, a non- transferable, non-exclusive licence and right to access the Software via the Internet and use the Software and the User Documentation only as authorized in this Agreement, for its own purpose and operations, during the SaaS Term. Client acknowledges that its access and use of the Software will be web-based only. The Software will not be provided to Client in CD-ROM form (or any other form of media) and, subject to the Purchase Agreement, will not be installed on any servers or other computer equipment owned or otherwise controlled by Client. Instead, the Software will be hosted by Eastbay (as described in Section 3) and accessed and used by Client through the use of the Internet and Client’s computers.

3. ACCESSIBILITY

Eastbay will make the Software available for Client's use during the SaaS Term on Client's computer systems that meet the Eastbay's system recommendations. Eastbay will provide Client with secure access to the latest supported version of the Software via the Internet from the hosting facility that Eastbay either owns or leases from a third party hosting vendor (the "**Hosting Site**") on a 24/7 basis, except for scheduled system back-up or other on-going maintenance as required and scheduled in advance by Eastbay. Eastbay will provide a single administrator user account for secure administrator access. Eastbay will also provide this administrator user the necessary tools to create other users for access to the Software.

4. FEES AND PAYMENT

- (1) **Subscription Fee.** Client shall pay a "**Subscription Fee**" on a monthly basis (but billed annually) during the SaaS Term as described in the Purchase Agreement. The Subscription Fee is fixed for the Initial Term (defined below). The Subscription Fee for any Renewal Term (defined below) may be subject to an inflationary adjustment defined at the time of renewal, not to exceed five percent (5%) per year.
- (2) **Additional Storage Space Fee.** Eastbay shall include a default maximum of storage space, including the backup and off-site storage, to the Client as described in the Purchase Agreement. Eastbay will monitor disk usage on a regular basis, and will increase Client's commitment for disk space in 1 GB increments, as per the price in the Purchase Agreement, when disk utilization exceeds the next pending threshold.

5. TERM AND TERMINATION

- (1) **Initial Term; Renewal Terms.** The SaaS Term will commence on the "**Commencement Date**" indicated in the notice delivered by Eastbay to Client when Eastbay begins making the Software available to the Client via the Internet (the "**Commencement Notice**"). The SaaS Term shall continue in effect for a period of twelve (12) months following the Commencement Notice (the "**Initial Term**"), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, the SaaS Term shall automatically renew for successive renewal terms of twelve (12) months each (each a "**Renewal Term**") unless sooner terminated as provided in this Agreement, or unless either party gives written notice of termination to the other party at least ninety (90) days prior to the end of the Initial Term or any Renewal Term. The number of current active licenses also cannot be reduced during the Renewal Term unless the Client gives at least ninety (90) days prior written notice to Eastbay. Automatic Renewal Terms shall continue each twelve month period unless given the required written 90 day notice prior to each Renewal Term
- (2) **Termination for Breach.** Notwithstanding Section 5(1), either Client or Eastbay may terminate the SaaS Term as a result of a material breach of this Agreement by the other party, if: (a) such party provides written notice to the other party of the material breach; and (b) such material breach is not resolved within thirty (30) days of notification, or, in the case of a failure to pay fees in a timely manner by Client, a ten (10) day period. For purposes of this Section 5(2), a material breach by Eastbay shall include, but not be limited to, a failure to provide at least 99.5% availability in three (3) calendar months of any calendar year and for which credits have been applied under Section 7(2) below.
- (3) **Effect of Termination.** In the event the SaaS Term is terminated by Client for convenience or by Eastbay as a result of a material breach by Client prior to the completion of the Initial Term or any Renewal Term, Client shall pay any amounts owed to Eastbay under this Agreement, including the Subscription

Fees owed for the entire Initial Term or any Renewal Term(s), as the case may be. Both parties acknowledge that this payment represents a reasonable estimate of Eastbay's damages in the event of an early termination. In the event of termination of the SaaS Term for any reason, Client's access and use of the Software shall cease immediately, Eastbay will transmit a copy of the Client's database file to Client, and the provisions of Sections 13, 16, 17 and 18 shall survive.

6. MAINTENANCE WINDOWS

Eastbay and/or its third party hosting or telecommunications vendor(s) may perform system maintenance, from time to time ("**Maintenance Windows**"), and Eastbay will announce all planned Maintenance Windows ten (10) days in advance. Notifications of planned system Maintenance Windows shall be delivered to Client's primary contact (designated per Section 11 below) via electronic mail. Client understands and agrees that there may be instances where Eastbay and/or its third party hosting or telecommunications vendor(s) need to interrupt access to the Software without notice in order to protect the integrity of the Software or Services due to security issues, virus attacks, spam issues or other unforeseen circumstances.

7. AVAILABILITY

- (1) **Commitment Level.** Eastbay will provide 99.9% "availability" to the Software during the SaaS Term, calculated on a monthly basis. If Eastbay provides 99.7% or less availability in any given calendar month, Eastbay shall credit ten (10%) percent of the Subscription Fee for such month to the Client to be applied against the Subscription Fee for the next Renewal Term. If Eastbay provides 99.5% or less availability in any given calendar month, Eastbay shall credit twenty (20%) percent of the Subscription Fee for such month to the Client to be applied against the Subscription Fee for the next Renewal Term.
- (2) **Credit Rights.** Client must notify Eastbay in writing of both the date and the amount of time the Software was unavailable (excluding any Maintenance Windows) within five (5) business days of the end of the month in which unavailability occurred. Eastbay will confirm the information provided in such notice. If Eastbay cannot confirm the time that the Software was unavailable, then Client and Eastbay agree to refer the matter to executives at each company for resolution. If Eastbay confirms that Eastbay is out of compliance with its availability commitment, Client will receive the credit set forth in Section 7(1). The credits described above shall be the sole and exclusive remedy to Client for any unavailability. Except as expressly set forth herein, any remedy Client may receive pursuant to this Section 7 does not relieve Client, or allow a set-off, of any other payment obligations to Eastbay under this Agreement.
- (3) **System Monitoring.** Eastbay will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain application performance. Eastbay will use an internal system to measure whether the Software is available, and Client agrees that this system will be the sole basis for resolution of any dispute that may arise between Client and Eastbay regarding this Agreement. Eastbay will not systematically monitor Client Content, but Eastbay reserves the right to review Client Content from time to time in its discretion to ensure the performance of the systems, network infrastructure and the Software.

8. BACKUPS

Eastbay shall provide fully restorable, Client data backups in accordance with the following: data backups stored off-site will be made available within ten (10) days of the date of the retrieval request to Eastbay. Expedited requests will incur a fee.

9. SUPPORT

Client shall have the option of purchasing support services from Eastbay, wherein Eastbay will provide online, telephone, email and onsite support to Client during the SaaS Term.

10. UPGRADES

- (1) **Minor Upgrades.** Eastbay will install minor upgrades/releases of the Software that are generally made available to its other subscribers, including patches and/or fixes, as they are made available, at no charge during the SaaS Term. Eastbay will determine and provide notice to the Client of the Maintenance Window for all planned upgrades as described in Section 6 of this Agreement.
- (2) **Major Upgrades.** Upgrades to major releases and related conversions require careful planning and data decisions that must be managed jointly by Client and Eastbay, and may require the engagement of Eastbay consulting services that will be contracted via separate agreement. Software installation of major releases will be performed by Eastbay on a mutually agreed upon schedule not to exceed one (1) year after a major release of the Software at no charge for the SaaS Term. Additional services related to conversions to major releases (e.g., data conversion, report and software customizations, data cleanup) are outside the scope of the Services and this Agreement.

11. CLIENT PRIMARY CONTACT

Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the “**Primary Contact**” with whom Eastbay should communicate matters regarding the Software and Services, such as maintenance notifications, and who has the authority to make Services requests including release of Client data, both internally to Eastbay and to the Client, restoration of data, and other configuration changes. By default, the individual who signs the Purchase Agreement becomes the Primary Contact.

12. CLIENT RESPONSIBILITIES

Client is responsible for maintaining its user desktops and providing users network access to the Software. Client is also responsible for ensuring that its users comply with this Agreement with respect to use of the Software and Services. Client shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access to Software hosted at the Hosting Site. Eastbay shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, used by Client in accessing the Internet to access the Software. Client shall provide adequate industry “best practice” standards to ensure reasonable security for integration between the Client’s location(s) and Software hosted by Eastbay. Client shall provide accurate input information in the manner reasonably prescribed by Eastbay in connection with the Software and Services provided under this Agreement. Client shall advise Eastbay of any changes to Client's operations, Primary Contact, or other information that would require a change in the support, operation or configuration of the Software or

delivery of the Services. Client shall configure necessary user accounts via the administrator account provided by Eastbay. Client shall be responsible for ensuring that any Client Content is accurate, not corrupt in any way, and does not contain any viruses.

13. INTELLECTUAL PROPERTY RIGHTS

Client agrees that the Software, User Documentation and Services are proprietary products and services and that all right, title and interest in and to the Software, User Documentation and Services, including all associated intellectual property rights, are and shall at all times remain with Eastbay and its third party licensors. The Software contains trade secret and proprietary information owned by Eastbay or its third party licensors and is protected by copyright laws and international trade provisions. Client must treat the Software like any other copyrighted material and Client may not copy or distribute the Software or the User Documentation, electronically or otherwise, for any purpose. Client hereby grants to Eastbay a non-exclusive right to use all Client Content as necessary solely for the purposes of providing the Software and Services to Client and its authorized users pursuant to this Agreement.

14. OTHER RESTRICTIONS

Use of the Software and Services is restricted to use by the Client only, and only for Client's internal business purposes. Client may not use the Software for the benefit of any third parties or provide other access or use of the Software to third parties. Client may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Software, Services (or any portion thereof, including without limitation any capacity) or the User Documentation, or any portions thereof, to any third party, and any attempt to do so is null and void. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Software. Software and Client Content shall not be used for any commercial purpose beyond the functionality driven by the Software. Client will not use the Software or Services to take any actions that: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (c) are defamatory, trade libelous, threatening, harassing or obscene; or (d) constitute unauthorized entry to any machine accessible via the network. Client shall not interfere with or disrupt network users, services or equipment with the intent to cause an excessive or disproportionate load on Eastbay's or its third party vendor(s)'s infrastructure by means of (but not limited to) distribution of unsolicited bulk emails or chain letters, viruses, Trojan horses, worms, or other similar harmful or deleterious programming routines. Eastbay may, in its discretion, revise these service use restrictions upon thirty (30) days' prior notice to Client.

15. WARRANTIES

(1) **Mutual Warranties.** Each party warrants that: (a) it has the right and power to enter into this Agreement; and (b) it will comply with any applicable laws and regulations pertaining to this Agreement.

(2) **Eastbay Limited Warranty.** During the SaaS term, Eastbay warrants that:

- (i) the Software will perform substantially in accordance with the functional specifications contained in the User Documentation or otherwise provided to the Client (the “**Software Warranty**”).

- (ii) the Services shall be provided by qualified professionals and performed in a professional and workmanlike manner in accordance with recognized industry standards (the “**Services Warranty**”).
- (3) **Remedies.** During the SaaS Term, if the Software fails to comply with the Software Warranty, Eastbay's entire liability and Client's exclusive remedy will be to repair or replace the Software. This limited warranty is void if failure of the Software has resulted from accident, abuse, misuse or negligence of any kind in the use, handling or operation of the Software, including any use not consistent with the User Documentation or Eastbay training. Eastbay's entire liability and Client's exclusive remedy for any breach of the Services Warranty shall be Eastbay repeating the Services performed.
- (4) **Disclaimers.** EXCEPT AS PROVIDED IN THIS SECTION 15, THE SOFTWARE AND THE SERVICES HEREUNDER ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY WHATSOEVER. CLIENT RECOGNIZES THAT THE “AS IS” CLAUSE OF THIS AGREEMENT IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH EASTBAY WOULD NOT HAVE AGREED TO ENTER INTO THIS AGREEMENT. EASTBAY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CLIENT IN USING THE SOFTWARE OR THE SERVICES, OR THAT THE SOFTWARE OR THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND THE DELIVERY OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. EASTBAY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND THE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, REGARDING THE SOFTWARE OR THE SERVICES SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF EASTBAY WHATSOEVER. CLIENT ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN THIS AGREEMENT.

16. CONFIDENTIAL INFORMATION

- (1) **Definition.** The term “**Confidential Information**” shall mean: (a) any and all information which is disclosed by either party (“**Owner**”) to the other (“**Recipient**”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (b) the terms, including without limitation, the pricing of the Software and/or the Services and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of Owner's past, current or possible future programs, and confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing and/or software (including third party software).
- (2) **Treatment of Confidential Information.** Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party, except as authorized by the Owner. This Agreement imposes no obligation upon the parties with respect to Confidential

Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

- (3) **Rights and Duties.** The Recipient shall not obtain, by virtue of this Agreement, any rights, title or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of the SaaS Term, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned or used solely as the Owner so directs.
- (4) **Survival.** The terms of this Section 16 shall survive termination of the SaaS Term. If the parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with entering into the Purchase Agreement (and thereby, this Agreement), those separate confidentiality terms shall remain in full force to the extent they do not conflict with this Agreement.

17. INDEMNITY

- (1) **By Eastbay.** Eastbay shall indemnify and defend Client against any third party claims that the Software or other Work Product (defined below) made available to Client by Eastbay infringes any Canadian patent or copyright during the SaaS Term, provided that Eastbay is given prompt notice of such claim and is given information, reasonable assistance and the sole authority to defend or settle said claim. In the defence or settlement of any claim relating to infringing Software or other Work Product, Eastbay shall, in its reasonable judgment and at its option and expense: (a) obtain for Client the right to continue using the Software or other Work Product; (b) replace or modify the Software or other Work Product so that it becomes non-infringing while giving substantially equivalent functionality; or (c) if Eastbay determines the remedies in (a) or (b) are not commercially reasonable, as its sole obligation, terminate the SaaS Term. Eastbay shall have no liability to indemnify and defend Client to the extent: (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Client; (ii) the alleged infringement is the result of a modification made by anyone other than Eastbay; or (iii) Client uses the Software or other Work Product other than in accordance with this Agreement or any documentation delivered by Eastbay. This Section 17(1) states Eastbay's entire liability and Client's sole and exclusive remedy for claims relating to infringement.
- (2) **By Client.** Client shall indemnify and defend Eastbay against any third party claims: (a) resulting from Client's use of the Software or Services; (b) that any Client Content infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licences; or (c) arising from or relating to Client's or its users' failure to comply with this Agreement.
- (3) **Mutual Indemnity.** Each party ("**Indemnifying Party**") shall indemnify and hold the other party ("**Indemnified Party**") harmless against any third party claim, including costs and reasonable lawyer's

fees, in which the Indemnified Party is named as a result of the negligent or the intentional acts or omissions by the Indemnifying Party, its employees or agents, while performing its obligations under this Agreement. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defence of such action, and sole authority to defend or settle such claim.

(4) **Survival.** The terms of this Section 17 shall survive termination of the SaaS Term.

18. LIMITATION OF LIABILITY

EXCEPT FOR THE INDEMNIFICATION FOR THIRD PARTY CLAIMS PROVIDED IN SECTION 17, EASTBAY'S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT, CONTRACT OR OTHER FORM OF LIABILITY, SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT DURING THE ONE-YEAR PERIOD PRECEDING NOTICE TO EASTBAY OF CLIENT'S LOSS. IN NO EVENT SHALL EASTBAY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, LOSS OF USE, GOODWILL, BUSINESS INTERRUPTION, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS, HOWEVER ARISING, EVEN IF EASTBAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. CLIENT ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT EASTBAY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

19. SOFTWARE MODIFICATIONS

Client shall not make any modifications to the Software. Any modifications that Client makes to the Software will void any warranty obligations contained in this Agreement.

20. RIGHTS TO WORK PRODUCT

Any expression or result of Eastbay's Services, such as findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software, and other technical information (collectively "**Work Product**") created by Eastbay in the course of performing the Services hereunder are the property of Eastbay and are licensed to Client, without further licence fees, pursuant to the licence in this Agreement, provided, however, Work Product does not include, and Client shall retain title to: (a) Confidential Information of Client; and (b) all Client Content, including without limitation all proprietary rights of Client. Client shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.

21. AUDIT RIGHTS

Eastbay shall have the right to audit Client's use of the Software and compliance with this Agreement at Client's premises from time to time in Eastbay's sole discretion. Client agrees to permit Eastbay to have access to its facilities and personnel during normal business hours for the purpose of conducting such audits. In the event such audit reveals Client is exceeding the scope of use permitted by this Agreement, then Client shall pay Eastbay's additional fees for such use (at the then-current list price) and reimburse Eastbay for the costs of the audit.

22. GENERAL

- (1) **Notices.** Any notice or other communication required or permitted to be given in this Agreement shall be in writing and shall be delivered in person, transmitted by electronic mail or sent by registered mail, charges prepaid, to the addresses contained in the Purchase Agreement. Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted or, if mailed, on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of electronic mail as described. Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 22(1).
- (2) **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent will may be unreasonably withheld. Any purported assignment in contravention of this Section 22(2) is null and void. Subject to the foregoing, this Agreement will bind and enure to the benefit of any permitted successors or assigns.
- (3) **Entire Agreement.** This Agreement together with the Purchase Agreement (including any reference to such other agreements, documents, and/or policies incorporated therein) constitutes the entire agreement between the parties with respect to all of the matters herein and that this Agreement supersedes all prior agreement or contemporaneous agreements or representations, written or oral, regarding such matters.
- (4) **Amendments.** Except as expressly provided in this Agreement, no amendment, supplement, restatement, replacement or termination of any provision of this Agreement is binding unless it is in writing and signed the parties.
- (5) **Waiver.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement entitled to grant the waiver. No failure to exercise and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.
- (6) **Severability.** If any Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Section or portion thereof shall be severed from the remainder of this Agreement.
- (7) **Governing Law.** All questions concerning the validity, interpretation and performance of this Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement shall be governed by and decided in accordance with the laws of the Province of Ontario, as such laws are applied to contracts between Ontario residents that are entered into and performed entirely within the Province of Ontario.
- (8) **Jurisdiction and Venue.** The parties hereby submit and consent to the exclusive jurisdiction of any court located within the Province of Ontario and irrevocably agree that all actions or proceedings

relating to this Agreement, shall be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

(9) **Headings for Convenience Only.** The division of this Agreement into sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(10) **Number and Gender.** Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.