



# **MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Master Software License and Services Agreement (“**Agreement**”) is entered into between the vendor, Advanced Property Exposure Canada Inc. a corporation, having its principal place of business at 1755 Woodward Drive, Suite 101, Ottawa, Ontario, K2C0P9, Canada (“**APX**”) and the customer (“**Customer**”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1. Definitions.**

- 1.1. “Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.
- 1.2. “Control”**, for purposes of this Agreement, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.3. “Customer Data”** means raw, non-manipulated data, usually presented in a tabular form, collected/submitted by Customer to the Service, also referred to as “Content”.
- 1.4. “Service Fees”** means the monthly Service fees (as specified in the valid proposal) payable by Customer to APX for the right to receive and provide access to the Service to Users.
- 1.5. “Order Form”** means the ordering documents for Customer’s purchases from APX that are executed hereunder by the parties from time to time. Order Forms shall be deemed incorporated into this Agreement.
- 1.6. “Service”** means the APX Software as a Service (SaaS) offering made available on a subscription-basis through APX’s proprietary SaaS technology and platform and which provides access to APX’s software, including associated offline components.
- 1.7. “Term”** has the meaning ascribed to that term in Section 10.1.
- 1.8. “User”** means a user of the Service for whom a single user seat, Software as a Service (SaaS) subscription has been procured by Customer.

## **2. Grant of License.**

- 2.1. Provision of Service.** Conditioned on the provisions in this Section 2 and the other terms and conditions of this Agreement and payment of the

applicable fees, APX shall make the Service available to Customer during the Term on a non-exclusive, non-transferable basis for the purpose of allowing Customer and its Users to use the Service internally. Customer shall not use the Service for any other purposes.

- 2.2. User Subscriptions.** User subscriptions are for designated Users as specified by Customer. All Users must agree to the APX Terms of Service.
- 2.3. Customer Affiliates.** Customer Affiliates may use the Service and may purchase User subscriptions subject to the terms of this Agreement by executing Order Forms hereunder. Customer shall cause each Customer Affiliate to comply with the terms and conditions of this Agreement to the full extent as if such Affiliate were a party hereto, and any act or omission relating to this Agreement by such Customer Affiliate shall be deemed an act or omission of Customer. In addition, each party may use one or more Affiliates to perform its obligations under this Agreement, provided that such use shall not affect such party’s obligations hereunder and any act or omission by such Affiliate relating to this Agreement shall be deemed an act or omission of such party.

## **3. Use of the Service.**

- 3.1. APX Responsibilities.** APX shall: (i) maintain the security and integrity of the Service and the Customer Data; (ii) provide basic support to Customer at no additional charge; and (iii) use commercially reasonable efforts to make the Service available twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime (of which APX shall give at least eight (8) hours’ notice via the Service; or (b) any unavailability caused by circumstances beyond APX’s reasonable control, including without limitation, acts of God, acts of government, flood,

fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving APX employees), computer, telecommunications, Internet APX or hosting facility failures or delays involving hardware, software or power systems not within APX's possession or reasonable control, and denial of service attacks.

- 3.2. **Customer Responsibilities.** Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and notify APX promptly of any such unauthorized access or use; and (iii) comply with all applicable local, provincial, state, federal and foreign laws in using the Service.
- 3.3. **User Guidelines.** Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) use the Service to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) use the Service to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third-party privacy or publicity rights; (iv) use the Service to send or store malicious code; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.
- 3.4. **Incremental Services.** From time to time, certain additional APX or third-party functionality (such functionality being deemed not to be part of the Service) may be made available by APX to Customer (in the case of third-party functionality, such functionality being made available on a pass-through basis pursuant to terms specified by the third-party provider of such functionality), and which additional functionality may be purchased by Customer for additional fees in accordance with such terms and conditions as may be applicable to such additional functionality (such terms and conditions prevailing in the event of any inconsistency with the terms and conditions of this Agreement)
- 3.5. **Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld. Each party may include the name and logo of the other party in lists of

customers or vendors in accordance with the other party's standard trademark guidelines.

#### 4. Fees & Payment.

- 4.1. **Fees.** In consideration for the receipt of the Service, Customer shall pay APX the Service Fees, all as specified and in any subsequent Order Forms submitted pursuant to this Agreement. All amounts are payable in US dollars (unless stated otherwise in a proposal). Except as otherwise specified herein or in an Order Form, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, fees paid are non-refundable, and a subscription cannot be terminated during the relevant subscription term stated in the applicable Order Form.
- 4.2. **Invoicing & Payment.** Fees for the Service will be invoiced in advance on an annual basis unless otherwise stated in an invoice, charges are due net 30 days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information on the Service.
- 4.3. **Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at APX's discretion, late charges at the rate of 1.5% of the outstanding balance per month (19.57% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 4.4. **Taxes.** Unless otherwise stated, APX's fees do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, goods and services, harmonized, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on APX's net income or property. If APX has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides APX with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 4.5. **Audit Rights.** APX shall have the right to use the capabilities of the Service to confirm the number of Users being managed by the Service and Customer's compliance with this Agreement.
- 4.6. **Suspension of Service.** If Customer's account is thirty (30) days or more overdue (except with

respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, APX reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

## 5. Proprietary Rights.

**5.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, APX reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**5.2. Restrictions.** Customer shall not (and shall not allow any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Service except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary; (b) circumvent any user limits or other timing or use restrictions that are built into the Service; (c) remove any proprietary notices, labels, or marks from the Service or User Guide; (d) frame or mirror any content forming part of the Service; (e) access the Service in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Service.

**5.3. Customer Data.** Customer owns all Customer Data. APX shall not access Customer's User accounts, except to respond to service or technical problems, or at Customer's request, or as necessary for the operation of the Service or billing. Customer grants APX a worldwide, royalty-free, and non-exclusive license to access Customer Data in order to: (i) provide the Services, including storing, hosting and management of such content; and (ii) create Pattern Data (as defined in Section 5.4 below). Together Sections 5.3(i) and (ii) constitute the "**Content License**". Customer acknowledges and understands that APX, in performing the required technical steps to provide the Service, may (a) transmit or distribute encrypted customer data over various public or private networks and in various media; and (b) make such changes to Customer Data as are necessary to conform and adapt that customer data to the technical requirements of connecting networks, devices, services or media. Customer confirms and warrants to APX that Customer has all the rights, power and authority necessary to grant the above Content License and that use of the Content in the manner contemplated herein will not breach the rights of any third party. Subject to the next sentence, by submitting, posting or displaying

Customer Data through the Service, the Customer also grants APX a worldwide royalty-free and non-exclusive license to use, host, store, monetize, reproduce, modify, create derivative works, copy, process, adapt, and provide access to (collectively, "Use") only that Customer Data which concerns information on real-world objects (a software bundle of variables and related methods) of a data entity used in a programming paradigm for "Public Good Uses", provided that APX notifies the Customer in writing with an explanation of its intentions at least 60 days prior to the Use. APX may not Use any Customer Data which contains personally identifiable information. "Public Good Uses" means Using the Customer Data in connection with a government department or agency entity or a private company associated with a smarter city initiative (a technologically modern urban area that uses different types of electronic methods, voice activation methods and sensors to collect specific data).

**5.4. Pattern Data.** "**Pattern Data**" means non-personally identifiable information, data and reports derived from or compiled through the Service, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics which may indicate frequency and type of use of the Service, type of contract, and popularity of the services. For greater certainty, Pattern Data is data that does not identify its end users (persons or vulnerability such as lock box codes). Subject to the next sentence, as between APX and Customer, all right and title to Pattern Data belongs to APX and accordingly APX is free to use Pattern Data for any purpose including the improvement of the Service of its software applications to their customers. APX agrees that under no circumstances will it process, analyze, manipulate or otherwise de-aggregate the Pattern Data to derive personally identifiable information or end user identities.

**5.5. Suggestions.** APX shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Service.

## 6. Confidentiality.

**6.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party (the "**Disclosing Party**") disclosed to the other party (the "**Receiving Party**"), whether orally or in

writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that:

(i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; (iv) is received from a third party without breach of any obligation owed to the Disclosing Party; or (v) is not protectable from public disclosure under Wisconsin's public-records law, Wis. Stat. §19.31 through §19.37. All information disclosed to Customer by APX shall be presumed to be a public record, unless prior to disclosure the Parties agree in writing that the information is protectable under the public records law.

**6.2. Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission, or as required by applicable law.

**6.3. Protection.** Each party (1) agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

**6.4. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.5. Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality requirements in this Agreement, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

## 7. Warranties & Disclaimers.

**7.1. Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. APX represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof.

**7.2. Important Disclaimer on Use of the Service.** The Service is intended for use as a tool for assisting first responders to receive access to critical data for emergency response. Customer acknowledges and agrees that Customer understands that the utility of the Service for first responders is dependent on a number of factors including the accuracy and up to date status of the Customer Data and the connectivity of the devices receiving the Service. The Service is not fault-proof and may not be available continuously, accordingly Customer should ensure that other means of communicating key data are made available to Users as a backup in case of any unavailability the Service from time to time, including unavailability for routine maintenance. APX will not be responsible or in any way liable to Customer or its Users for failure to ensure that appropriate backup measures are in place when using the Service for emergency responding.

**7.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, APX MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, INCLUDING ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8. Mutual Indemnification.

**8.1. Indemnification by APX.** Subject to this Agreement, APX shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) awarded to a third party against Customer by a court of competent jurisdiction in any claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the

use of the Service as contemplated hereunder infringes the intellectual property rights of a third party (“**IP Claims**”); subject to the condition that Customer (a) promptly gives written notice of each IP Claim to APX; (b) gives APX sole control of the defense and settlement of each IP Claim (provided that APX may not settle or defend any IP Claim unless it unconditionally releases Customer of all liability); and (c) provides to APX, at APX’s cost, all reasonable assistance in respect to each IP Claim.

**8.2. Indemnification by Customer.** Subject to this Agreement, Customer shall defend, indemnify and hold APX harmless against any loss, damage or costs (including reasonable attorneys’ fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against APX by a third party (i) alleging that the Customer Data, or Customer’s use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party, or (ii) as a result of any representations, warranties or other commitments made by Customer to any third party (including Users) in respect to the Service (any claims, demands, suits, or proceedings within (i) and (ii) hereinafter referred to as “**Customer Claims**”); provided, that APX (a) promptly gives written notice of each Customer Claim to Customer; (b) gives Customer sole control of the defense and settlement of each Customer Claim (provided that Customer may not settle or defend any Customer Claim unless it unconditionally releases APX of all liability); and (c) provides to Customer, at Customer’s cost, all reasonable assistance in respect to each Customer Claim.

**8.3. Mitigation.** If (a) APX becomes aware of an actual or potential IP Claim, or (b) Customer provides APX with notice of an actual or potential IP Claim, APX may (or in the case of an injunction against Customer, shall), at APX’s sole option and determination: (I) procure for Customer the right to continue to use the Service; or (II) replace or modify the Service with equivalent or better functionality so that Customer’s use is no longer infringing; or (III) if (I) or (II) are not commercially reasonable, terminate provision of the Service and refund to Customer any pre-paid Service fees for any periods after the termination of the Service, less any outstanding moneys owed by Customer to APX.

**8.4. Exclusions.** The indemnity in Section 8.1 does not extend to (1) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property

right by the combination of the Service furnished by APX with other products, software or services not provided by APX; (2) any IP Claim related to any Customer Data, or (3) any IP Claim related to any use or exercise of any other right in respect to the Service outside the scope of the rights granted in this Agreement.

## **9. Limitation of Liability.**

**9.1. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$250,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

**9.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.3. Certain Damages Not Excluded.** NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY’S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) DAMAGES ARISING FROM INFRINGEMENT AND/OR MISAPPROPRIATION OF A PARTY’S INTELLECTUAL PROPERTY RIGHTS; OR (III) ANY CLAIMS FOR NON-PAYMENT.

## **10. Term & Termination.**

**10.1. Term of Agreement.** This Agreement shall commence as of the Effective Date and shall continue in effect for an initial term of one (1) year (such initial term referred to in this Agreement as

the “Initial Term”). Thereafter, the term of the Agreement shall be automatically renewed annually on the anniversary of the Effective Date for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this Agreement as a “Renewal Term”), unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the Initial Term or any Renewal Term hereof. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the “Term”.

- 10.2. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, APX shall refund Customer any prepaid fees for any periods after the termination of the Agreement. Termination or expiration of this Agreement will cause termination of any User subscriptions that are then active.
- 10.3. Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to APX prior to the effective date of termination.
- 10.4. Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 4 through 11.

## 11. General Provisions.

- 11.1. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 11.2. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 11.3. Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email. Notices to APX shall be addressed to the attention of the Legal Department. Notices to Customer shall be addressed to Customer’s signatory of this Agreement unless otherwise designated below.
- 11.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 11.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.6. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, each party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.7. Governing Law.** This Agreement shall be governed by the laws of the State of Wisconsin, without regard to its conflict of law principles. No choice of laws rules of any jurisdiction shall apply to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.
- 11.8. Venue; Waiver of Jury Trial.** The Wisconsin State Circuit Court for Waukesha County shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 11.9. Force Majeure.** Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labor problems (other than those involving the employees of the affected party), computer,

telecommunications, Internet APX or hosting facility failures or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.

**11.10. Export.** Customer acknowledges and agrees that the Service may be subject to export and import controls under the regulations of Canada, the United States and other countries, and Customer shall comply with all export and import control regulations of such countries. Customer shall not use the Service for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any subsequent export, import or use of the Service.

**11.11. Entire Agreement.** This Agreement, including all schedules, exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any schedule, exhibit or addendum hereto or any Order Form, the terms of such schedule, exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**11.12. Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.



## Master Software Service Level Agreement

**General:** Subject to the full payment of the monthly Software and maintenance license fees and being a user in good standing, technical support for software shall be provided by telephone, e-mail and via the Vendor's web site to up to 5 individuals representing the authorized users per organization. Technical support is available Monday to Friday (except public holidays) between the hours of 8.00 am – 5.00 pm EST.

**Registered user:** The registered user of the Software licensed will receive from time-to-time notifications about Software upgrades including: new versions, service packs, patches and instructions for applying the upgrades that are supplied by the Vendor during the period of the subscription agreement. The Vendor is not obligated but may at their own discretion support previous versions of the Software as the customer will receive at no additional cost to them the latest version of all product improvements under their Software as a Service License agreement.

**Defect:** Defects will be addressed in accordance with the assigned priority level.

(a) Priority Level 1: complete loss of all service of the Product and the situation is an emergency. The Vendor will acknowledge within 1 working hour from the time that the call was logged with the Vendor and shall remedy defects and/or provide a workaround within 1 working day of notification of the problem, with a permanent solution within an agreed timeframe. If a permanent solution to a Priority 1 Defect is not provided within five (5) business days of the reported issue, then Vendor shall refund to Customer a credit equal to ten percent (10%) of the annual Service Fee for each day in excess of five days that a resolution is not provided.

(b) Priority Level 2: severe loss of service of the Product however, operation can continue in a restricted fashion. The Vendor will acknowledge within 2 working hours from the time that the call was logged with the Vendor and shall remedy defects and/or provide a workaround within 3 working days. If a permanent solution to a Priority 2 Defect is not provided within five (5) business days of the reported issue, then Vendor shall refund to Customer a credit equal to ten percent (10%) of the annual Service Fee for each day in excess of five days that a resolution is not provided.

(c) Priority Level 3: a minor loss of service of the Product, the impact is an inconvenience. The Vendor will acknowledge 1 working day from the time that the call was logged with the Vendor and shall remedy defects in the next release of the software or within 2 months.

(d) Priority Level 4: no loss of service of the Product; the result is a minor error, incorrect behaviour, or a documentation. The Vendor will acknowledge within 1 working day from the time that the call was logged with the Vendor and the Vendor shall use its reasonable efforts to remedy defects and/or provide a workaround in the next release.

**Exclusions:** If a problem is found to be caused by one or more of the following excluded factors then the Vendor may not provide support or if it chooses to provide support and the Vendor may charge the Customer at the Vendor's current rates of \$150.00/hour for such services for all reasonable costs. The Vendor shall notify the Customer as soon as they become aware that a fault may be due to one of the following exclusions:

(a) Altered, damaged, or modified Products by the user(s) (save for those alterations or modifications made by the vendor.

(b) Products that are not at a supported release level or for which the Customer does not have a current support and maintenance contract.

(c) Defects or errors caused by incorrect use of the Products or operator error;

(d) Defects caused by failure to implement reasonable recommendations in respect of or solutions to defects provided by the Vendor.

(e) Products installed in a hardware or operating environment not supported by the Vendor.

(f) Third party software not licensed through or supported by the Vendor.

(g) Defects or errors caused by any fault or error in the equipment, programs, applications or products used in conjunction with the Products, or otherwise resulting from causes beyond the reasonable control of the Vendor.

**Customer's Support Service Obligations:** The Customer shall provide cooperation and assistance to the Vendor in the Vendor's efforts to provide support. Such cooperation and assistance shall include but not be limited to:

(a) The timely transmittal and release to the Vendor of appropriate and accurate documentation and information.

(b) Remote access to Customer's environment (if required) where the defect can be reproduced and traced.

(c) If the fault cannot be replicated via the remote access, the Customer may require the Vendor's staff to attend site and shall pay for the time and expense charges involved in attending this site or other locations.