

THIS AGREEMENT is made as of the 1st day of December, 2008.

BETWEEN:

Wall Street on Demand, Inc., a company incorporated in Delaware, USA, with its principal place of business at 5718 Central Avenue, Boulder, Colorado 80301

(called "**Service Provider**")

- and -

Bank of Montreal, a Canadian chartered bank, with an office at 1 First Canadian Place, 20th Floor, Toronto, Ontario, M5X 1A3

(called "**Bank of Montreal**" or "**BMO**")

RECITALS:

1. Bank of Montreal, on behalf of itself and its Affiliates, wishes to acquire from the Service Provider certain hosting services, software and support services, professional, consulting services and training services to facilitate the business activities of Bank of Montreal and its Affiliates and the Service Provider wishes to provide these services to Bank of Montreal and its Affiliates.
2. The Service Provider and Bank of Montreal, on behalf of itself and its Affiliates, wish to specify in this Agreement the terms and conditions upon which the Service Provider will provide services to Bank of Montreal and its Affiliates and upon which Bank of Montreal and its Affiliates will receive the services.

NOW THEREFORE, in consideration of the premises and the agreements contained in this Agreement and other valuable consideration (the receipt and sufficiency of which is irrevocably mutually acknowledged by the Parties), the Service Provider and Bank of Montreal agree as follows:

1.0 DEFINITIONS

- 1.1 As used in this Agreement and in the Recitals, the following terms, and their grammatical variations and cognate expressions, shall have the following meanings:

"**Acceptance Date**" and its grammatical variations, is the date of successful completion of all phases of any applicable Acceptance Test in accordance with this Agreement.

"**Acceptance Testing**" has the meaning set out in Section 4.4 of this Agreement.

"**Accountable Executive**" is the BMO individual or the Service Provider individual appointed by the respective organizations to act as the single point of escalation and coordination for the Services, providing oversight and resolving problems that arise through escalation.

"**Action Plan**" has the meaning set out in Section 14.5.

"**Affiliate**" means any entity that is directly or indirectly Controls or is Controlled by or under the common control with BMO or by the Service Provider, as the case may be.

"**Agreement**" means this Agreement, including all attached Appendices, Schedules and Exhibits signed by Bank of Montreal and the Service Provider at the time of the signing of this Agreement or at any time after the signing of this Agreement, as well as amendments, additions or modifications made under Section 18.7, as well as all Change Proposals accepted by the Parties.

"**Annual Audit**" has the meaning set out in Section 14.2.

"Annual Audit Plan" has the meaning set out in Section 14.2.

"Appendix" means an appendix attached to this Agreement or added to this Agreement in accordance with the terms of this Agreement.

"Applicable Laws" means all statutes, laws, regulations, by-laws, ordinances, orders and requirements of any Government Entity or other public authority having jurisdiction, including common law, equitable and administrative decisions.

"Approved Auditors" has the meaning set out in Section 14.2.

"Assets" means computer and telecommunications equipment, associated attachments, features, accessories, peripheral devices, and front end devices owned or leased or otherwise acquired by the Service Provider during the Term to facilitate Service Provider's provision of Services.

"Audits" has the meaning set out in Section 14.1.

"BMO Financial Group" means Bank of Montreal and Bank of Montreal Affiliates.

"BMO Financial Group Audits" has the meaning in Section 14.2.

"BMO Financial Group Data" has the meaning in Section 4.2, and for further clarity and without limiting the definition set out in Section 4.2, includes all information and data provided, submitted, stored, or processed from any vendor, supplier or proposed vendor or supplier of BMO Financial Group in relation to the Hosted Services provided by Service Provider to BMO Financial Group pursuant to this Agreement.

"BMO Financial Group Personal Information" means information that is identifiable to an individual or by which an individual can be identified, whether or not publicly available, and includes: (1) any BMO or Affiliates' employee information, or BMO or Affiliates' customer information, and (2) any information ascribed to it under the Privacy Laws.

"BMO Indemnitee" has the meaning set out in Section 16.1.

"BMO Transition Services" has the meaning in Section 4.1.

"Business Day" means any day that BMO is normally open for business.

"Business Purpose" has the meaning set out in Section 8.1.

"Changes" means: (i) additions or deletions to the Services made by the Service Provider at the request of Bank of Montreal during the Term including report requirements, (2) changes to BMO's Information Security Requirements, (3) changes to the Services Contingency Plan in accordance with Section 9.7 of this Agreement, and (4) changes that are required in order to comply with Applicable Laws under Section 12.1 (6) of the Agreement, all of which are subject to the Change Process as described in Appendix A1.

"Comparable Services" has the meaning in Section 11.4.

"Competitor" means: (i) in Canada, any bank listed as Schedule I, II or III under the *Bank Act*, S.C. 1991, c.46, as amended from time to time, (ii) in the United States, any bank with a substantial retail or commercial banking presence in Illinois that has at least seventy-five (75%) percent of equity capital of BMO's Affiliate Harris, (iii) any Affiliate of the entities in (i) or any successor entity of the entities in (i) as a result of acquisition, merger or amalgamation, or (iv) an Affiliate of the entities in (ii) that conduct banking business or any successor entity of the entities in (ii) as a result of acquisition, merger or amalgamation.

"Confidential Information" means all Documents or Information and includes, in the case of BMO and its Affiliates, BMO Financial Group Personal Information, disclosed or made available by one party, or by its third party agents or by its customers, (collectively, the **"Disclosing Party"**) to the other party including any one acting for or on behalf of the receiving party (collectively, the **"Receiving Party"**), in connection with this Agreement or the performance of the obligations under this Agreement. This includes, without limitation: (a) information about the business affairs, customers of the Disclosing Party or the products or services supplied by third parties to the Disclosing Party, and (b) information about the business affairs or customers of Affiliates of

the Disclosing Party, or products or services supplied by third parties to Affiliates.

"Contract Year" means each consecutive twelve month period starting on the Schedule Effective Agreement Date during the Term. If the initial or final Contract Year is less than twelve (12) months, then non-specific references to amounts in the Agreement or applicable Schedule shall be appropriately and equitably prorated on a 30 calendar day month basis.

"Control" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting shares or other ownership interest or by contract or otherwise.

"Customised Software" and its grammatical variations, means, the enhancements and changes to the Service Provider Software made by Service Provider at the request and expense of BMO, and may be set out in further detail in the applicable Schedule.

"Deficiency Notice" has the meaning set out in Section 14.5.

"Documents" include: any text, letter, memorandum, sound recording, videotape, film, photograph, chart, graph, map, survey, diagram, model, sketch, book of account and information recorded or stored by means of any device.

"Effective Date" is the date first written above.

"Electronic Data" has the meaning set out in Section 8.10.

"Error" means a failure to meet the applicable Specifications and Service Provider Documentation.

"Exhibit" means an exhibit attached to this Agreement or attached to a Schedule to this Agreement.

"Event of Force Majeure" means any event or circumstance occurring after the Effective Date which was beyond the reasonable control of the Party invoking such event or circumstance (including, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, epidemics, riots, civil disorders, rebellions, and which event or circumstance was either: (i) unforeseeable, or (ii) foreseeable, but could not have been avoided, prevented, or overcome through the exercise of reasonable diligence.

An Event of Force Majeure does not include: (i) any event or circumstance which was caused by the negligence (including improper equipment maintenance and absence of back-up systems and processes as required by this Agreement), or wilful act of the Party invoking an Event of Force Majeure or the employees or agents of such Party; (ii) financial inability to perform; and (iii) changes in market conditions unless such event or circumstance is caused by external parties (excluding Subcontractors) which are demonstrably beyond the control of the Service Provider.

"Exhibit" means an exhibit added or attached to a Schedule to this Agreement in accordance with the terms of this Agreement.

"Government Entity" means all federal, state, provincial, territorial, county, municipal, governmental or quasi governmental entities, agencies or regulators.

"Harris" has the meaning in Section 2.5.

"Hosted Software" means software running on a machine under the care or control of Service Provider, Service Provider Subcontractor, which may include Service Provider Software and Customized Software as may be set out in further detail in the applicable Schedule.

"Hosting Services" means those Services provided by Service Provider to BMO Financial Group in conjunction with the access and use of Software running on a machine under the care or control of Service Provider, or Service Provider Subcontractor, which may include Service Provider Software and Customized Software, accessible at the Service Provider website as may be set out in further detail in the applicable Schedule.

"Information" includes information about or related to (a) computer software, hardware or other equipment, data bases, data processing or communications networking system, practices or procedures or other internal

systems or controls (in any stage of development), used, owned, or developed (or in development) and related documentation, and (b) technical data, research, products, financial information, plans or strategies, forecasts or forecast assumptions, business practices, operations, procedures or services or marketing, merchandising or pricing information.

"Information Security Requirements" has the meaning set out in Section 8.9 and as further described in the applicable Schedule.

"Initial Term" has the meaning set out in Section 3.1 of this Agreement.

"Intellectual Property" has the meaning set out in Section 7.1.

"Intellectual Property Rights" means the exclusive ownership in and retention of, all title, rights and intellectual property rights, including, patents, copyrights, moral rights and trade secrets..

"Loss" means any and all loss, damages, liabilities, costs and expenses (including interest, penalties, costs of investigation and defence, court costs and reasonable solicitor/attorney fees) resulting from demands, claims, actions, causes of action, or assessments, brought by third parties, and includes monies paid by BMO Indemnites or the Service Provider Indemnites, as the case may be, to settle the demand, claim, action, cause of action or assessment.

"Modifications" means: (1) changes, enhancements, fixes, patches, corrections, updates or revisions made at the Service Provider's initiative to the Services and/or the Service Provider Software or hardware used to provide the Services, (2) additions or deletions to Sites, (3) changes to Service Provider's security procedures and requirements, (4) changes to the Services Contingency Plan in accordance with Section 9.7 of this Agreement, and (5) changes required to comply with Applicable Laws under Section 12.1 (5) of this Agreement, all of which are subject to the Modification Process as described in Appendix A2.

"New Releases" means those bug fixes, routine corrections, minor modifications, minor revisions, updates, upgrades, enhancements, additions and improvements to the Service Provider Software by the Service Provider and made generally available to the Service Provider's customers and made available under this Agreement as part of Support Services. New Releases exclude Customised Software.

"OSFI" means the Office of the Superintendent of Financial Institutions under the *Office of the Superintendent of Financial Institutions Act*, (Canada), as amended and re-enacted from time to time.

"Party" or **"Parties"** means, individually Bank of Montreal or the Service Provider, as the context requires, and collectively, both Bank of Montreal and the Service Provider.

"Payment Due Date" has the meaning set out in Section 11.3.

"Person" means any individual, partnership (including a limited liability partnership), corporation (including a business trust or a limited liability corporation), joint stock company, trust, unincorporated association, joint venture or other entity or any government or governmental body or any agency or subdivision of the governmental body.

"Personnel" means, as applicable Service Provider employees, agents, Subcontractors, and independent contractors who process BMO Financial Group Data and/or produce work, programs, documentation, reports and records in connection with the providing the Services under this Agreement.

"Pre-Existing Technology" means any software, hardware, networks, documents or data that was created prior to, or independent from, this Agreement.

"Prime Rate" means the prime lending rate declared by BMO from time to time to be its prime rate for Canadian dollar loans made by it in Canada.

"Privacy Laws" means: (1) the *Personal Information Protection and Electronic Documents Act* (S.C.2000, c.5) and any successor legislation or the legislation of a province if the legislation is declared to be substantially similar to the *Personal Information Protection and Electronic Documents Act*, and (2) U.S. laws regarding the protection of personal information, including, without limitation the *Gramm-Leach-Bliley Act* and any successor legislation and the *Interagency Guidelines Establishing Standards for Safeguarding Customer Information* and any successor guidelines.

"Professional Services" are those professional, consulting, training and other services that BMO has requested the Service Provider to provide. The description of the Professional Services and the Professional Service Fees payable by BMO for these Services will be set out in the applicable Schedule. Professional Services exclude Support Services but include the provision of Customised Software.

"Professional Service Fees" are the fees payable by BMO to the Service Provider for Professional Services.

"Renewal Term" has the meaning set out in Section 3.1 of this Agreement.

"Required SAS 70 Audits" has the meaning set out in Section 14.5.

"Resources" has the meaning set out in Section 4.2.

"Revised Guideline B-10" has the meaning set out in Section 14.8.

"Schedule" means a schedule attached to this Agreement or added to this Agreement in accordance with the terms of the Agreement.

"Schedule Effective Date" is the date first written in a Schedule.

"Services" means those services, including Professional Services, Support Services, and Hosting Services described in the applicable Schedule that Service Provider promises to provide to BMO Financial Group under this Agreement.

"Services Contingency Plan" has the meaning set out in Section 9.1 of this Agreement.

"Service Credits" means the amounts payable by the Service Provider to the Bank of Montreal in the event the Service Provider fails to meet the Service Levels set out in the applicable Schedule.

"Service Fees" means the fees payable by Bank of Montreal to the Service Provider for the Services. The Service Fees are set out in the applicable Schedule under which the Services are described.

"Service Levels" means the performance standards set by Bank of Montreal and the Service Provider for the Services. The Service Levels are set out in the applicable Schedule under which the Services are described.

"Service Level Default" means the failure of the Service Provider to meet the Service Levels.

"Service Level Termination Event" means the ability of BMO to terminate the applicable Schedule in the event there is a Service Level Default.

"Service Provider Documentation" means information and materials in documentary form in hard copy and in readily printable electronic form created prior to or separately from any Services being developed or provided hereunder which may be further identified in a Schedule and which has been prepared by the Service Provider or obtained by the Service Provider from a Subcontractor, Third Party Software supplier or other third party and includes that (1) which will be of benefit to BMO Financial Group in the use of the Services, and/or, (2) which relates, as applicable, to the design, use, maintenance or operation of the Service Provider Software of sufficient detail to support the use of the Service Provider Software, and which may include system manuals, program manuals, test and diagnostic information, maintenance information, program listings, flow charts, application manuals, training manuals, user manuals, operating procedures..

"Service Provider Indemnatee" has the meaning set out in Section 16.2.

"Service Provider Software" means that portion of the Hosted Software that is made commercially available by Service Provider and licensed by Service Provider to BMO Financial Group and as may be set out in further detail in the applicable Schedule. Service Provider Software may include Third Party Software.

"Service Provider Transition Services" has the meaning in Section 4.1.

"Site" means the location(s) of the Service Provider and Subcontractors from which the Services shall be provided. Each Site shall be set out in the applicable Schedule.

"Software" means the Service Provider Software and the Customised Software.

"Software License" means the license to the Service Provider Software granted to BMO Financial Group pursuant to Section 7.1(3), and as further set out in the applicable Schedule.

"Software License Fee" means the fees payable for the Software License.

"Specifications" means the technical, functional, security and performance specifications which describe and reflect the design, performance and operation of the Software and which may include information regarding the compatibility of the Software with particular equipment, a particular web browser and/or operating system software. The Specifications are set out or referenced in the applicable Schedule.

"Start Date" means the date named in the applicable Schedule when the Service Provider will start to provide the Services to BMO Financial Group.

"Subcontractors" means contractors, consultants, advisors, agents of Service Provider and vendors of Service Provider, and includes, without limitation, Affiliates of Service Provider and third party service providers of Service Provider.

"Support Services" means those support Services described in Section 4.3 of this Agreement and the applicable Schedule.

"Support Services Fees" means the fees payable in respect of the Support Services.

"Term" means the aggregate of the Initial Term, all Renewal Term(s) as set out in Section 3.1 and the Termination Assistance Period.

"Termination Assistance" shall have the meaning set out in Section 3.8.

"Termination Assistance Period" shall have the meaning set out in Section 3.8.

"Termination Assistance Plan" has the meaning in Section 3.8.

"Termination Fees" are moneys payable by BMO and/or Harris in the event one or both decide to terminate a Schedule or, in the case of BMO, decide to terminate a Schedule or the Agreement.

"Third Party Software" means any computer software that is owned by a Person other than BMO or the Service Provider and licensed by the Service Provider and used to provide the Services.

"Transition Milestones" has the meaning in Section 4.1.

"Transition Plan" has the meaning in Section 4.1.

"User" means BMO Financial Group's employees, directors, officer's, agents, BMO Financial Group contractors, customers and other individuals who are authorized to access the Services.

"Warranty Period" means the period of time named in the applicable Schedule that starts to run the date after the Acceptance Date.

"Work Product" means: (1) all data, engineering records and designs and developmental specifications, related documentation, interim and final reports, operating processes and procedures, software configuration parameters, macro scripts; (2) the final version as well as all intermediate versions of the software and all routines and subroutines, as well as all program material, flowcharts, notes, outlines, work papers and the like; (3) the structure, sequence and organization of the Work Product; (4) all concepts, know-how, ideas, methodology and techniques employed by the Service Provider in performing the Services; and (5) other products, all of which result from the Services (whether or not the Services are completed) performed by the Service Provider pursuant to the terms of this Agreement.

2.0 SCOPE OF THE AGREEMENT

2.1 This is a general procurement agreement that contemplates that the Service Provider and Bank of Montreal or Harris may enter into one or more Schedules to this Agreement.

2.2 Schedules.

- (1) Each Schedule is automatically deemed to include all the terms and provisions of this Agreement, and all capitalized terms which are defined in this Agreement have the same meaning in a Schedule or Appendix, provided that: (a) the Parties may otherwise agree in writing, and (b) whenever the provisions of a Schedule conflict with the provisions of this Agreement or an Appendix, the provisions of the Schedule take precedence over the provisions of the Agreement or the Appendix but only for the purposes of that Schedule and the terms and provisions of this Agreement are not otherwise amended, modified, cancelled, waived or released.
- (2) It is acknowledged that at the time of signing the applicable Schedule one or more relevant documents in relation to the provision of the Services (for example detailed technical solution, implementation procedures, acceptance procedures) may not be finalized, in which case the Schedule shall outline the process and timelines by which such additional documentation is to be completed.

2.3 Schedules.

As of the Effective Date, this Agreement includes the following Schedules:

–[Insert list]

2.4 Exhibits and Appendices.

As at the Effective Date, this Agreement includes the following Exhibits and Appendices:

Appendix A1	Change Process
Appendix A2	Modification Process
Appendix B	Acceptance Testing
Appendix C	Services Contingency Plan
Appendix D	Governance Schedule
Appendix E	Personnel Background Check Criteria

2.5 Harris as a Signatory to a Schedule.

- (1) Service Provider hereby acknowledges and agrees that:
 - (a) Services performed for BMO under a Schedule may include providing Services for an Affiliate of BMO.
 - (b) Notwithstanding subsection (a) when one of the Affiliate of BMO is Harris N.A. (called “Harris”) and its subsidiaries and affiliates, Harris and the Service Provider shall all be signatories to that Schedule, in which case:
 - (i) Harris shall be responsible for its obligations under such Schedule and any default by Harris shall not be considered a default by BMO under the Agreement or the applicable Schedule or under any other Schedule,
 - (ii) references to “BMO” in such Schedule shall mean, with respect to such Schedule, Harris and, if applicable, its subsidiaries and affiliates, and
 - (iii) the Schedule shall set out at a minimum appropriate governance as between Harris and the Service Provider, separate Service Levels for Harris, separate Service Level Default remedies for Harris, an independent ability of Harris to terminate the Schedule the liability and indemnity obligations set out in this Agreement that will be allocated to Harris when the Services Provider is the defaulting party and to the Service Provider when Harris is the defaulting party.
- (2) BMO and the Service Provider acknowledge and agree that:

- (a) except for Harris' and Service Provider's independent causes of action as set out in Section 2.5 (1), in all other events, BMO and Service Provider shall be the Parties to any dispute resolution, arbitration or litigation instituted or defended in connection with this Agreement, and
- (b) Except as provided in Section 2.5 (1), for all other purposes the reference to "BMO Financial Group" in this Agreement shall include Harris.

2.6 The Service Provider acknowledges that its arrangements with BMO pursuant to this Agreement are not exclusive and that Bank of Montreal shall have the power and authority to engage and compensate such other service providers to provide services that are similar to the Services provided by the Service Provider under this Agreement.

2.7 Notwithstanding anything else in this Agreement, if any services, functions or responsibilities not specifically described in the applicable Schedule are reasonably required, incidental and could be reasonably interpreted to be within the scope of the Services, for the proper performance and provision of the Services described in the applicable Schedule, then they shall be deemed to be implied and included within the scope of the Services, to the same extent and in the same manner as if specifically defined in that Schedule.

2.8 *Schedule Governance.*

As of the Schedule Effective Date and continuously during the Term, each Party shall comply with the provisions in Appendix D, as those provisions may be varied under the terms of the applicable Schedule. In the event of a conflict between the terms of Article 6.0 and Appendix D, the terms of Appendix D shall prevail.

2.9 Each Schedule will be written in a form mutually agreeable to the parties and may be amended from time to time recognizing that any amendment requires the written approval by authorized representatives of all parties. The Schedules must contain the following minimum information, to the extent the information applies:

- (1) The incorporation of this Agreement by reference
- (2) A description of the Start Date and Initial Term
- (3) A description of the Software, Services, as applicable
- (4) Work Product
- (5) Specifications
- (6) Identification of key Personnel who will provide the Services
- (7) Fees Payable (Software License Fee, fees for Hosting Services, Support Service Fees, Professional Service Fees, as applicable)
- (8) Payments scheme
- (9) Invoice Address
- (10) Travel and incidental expenses
- (11) Delivery schedule
- (12) Installation responsibilities
- (13) Specifications
- (14) Acceptance Testing
- (15) Support Services
- (16) Training, if applicable
- (17) Warranty Period
- (18) Other terms and conditions agreed upon by Service Provider and BMO.

3.0 TERM AND TERMINATION

3.1 *Term.*

- (1) This Agreement shall be for a term of three (3) years commencing on the Effective Date (the "**Initial Term**") and shall automatically renew for two (2) successive one year periods (the "**Auto-Renewal Term**") on the same terms and conditions unless either party gives notice of its intent to terminate under section 3.1(3) below. After the Auto-Renewal Term, this Agreement may be renewed pursuant to Section 3.1 (2) for successive one-year periods (the "**Renewal Term**").
- (2) Subject to Section 3.1 (3), Bank of Montreal is entitled, on written notice to the Service Provider, which

notice shall be given not less than ninety (90) days prior to the expiry of the Auto-Renewal Term or the Renewal Term, as the case may be, to renew this Agreement. Bank of Montreal and the Service Provider agree that the Parties shall use their commercially reasonable efforts to negotiate and agree to the applicable Service Fees and other terms and conditions to be in effect during the next ensuing Renewal Term prior to the expiry of the Auto-Renewal Term or Renewal Term, as the case may be. Failing mutual agreement to negotiate Service Fees for a Renewal Term as at the expiry of the Auto-Renewal Term or previous Renewal Term, as the case may be, the Parties are entitled to extend this Agreement at the pricing set forth in applicable Schedule for a period of no more than ninety (90) days, unless both Parties agree to extend the time period for Service Fees pricing discussions. In the event that at the end of this time period (90 days or the extended period) there is no agreement as to Service Fees, then either Bank of Montreal or the Service Provider is entitled to provide notice to terminate the Agreement on not less than thirty (30) days prior written notice. In the event that the Parties have finalized the Service Fees, the revised Service Fees and other terms and conditions will be retroactive to the start of the Renewal Term and documented by a signed amendment to the applicable Schedule by the Parties.

- (3) Notwithstanding Section 3.1 (2), each Party, on written notice, which notice shall be given not less than ninety (90) days prior to the expiry of the Initial Term, Auto-Renewal Term or Renewal Term may terminate the Agreement.
- (4) Notwithstanding Section 3.1 (2), each Party, on written notice, which notice shall be given not less than ninety (90) days prior to the expiry of the Initial Term, Auto-Renewal Term or Renewal Term, may terminate one or more Schedules under this Agreement. The preceding sentence shall also apply to Harris when Harris has signed its own Schedule to this Agreement.

3.2 Termination of the Agreement for Insolvency.

- (1) Each Party is entitled to terminate this Agreement effective immediately upon written notice to the Service Provider upon the occurrence of one or more of the following events:
 - (a) if an order is made, a resolution passed, a petition or an application is filed for the winding-up of a Party or if a Party ceases to carry on business,
 - (b) when a Party becomes insolvent, files a petition, makes an application for a bankruptcy order, makes a voluntary assignment in bankruptcy, makes a proposal under or seeks relief under any provision of any bankruptcy, insolvency, creditors' arrangement, compromise, readjustment of debt or liquidation legislation now or hereafter in force or consents to the filing of a petition or an application for a bankruptcy order against it under any such legislation,
 - (c) if a petition or an application for a bankruptcy order is filed against the Service Provider under any bankruptcy, insolvency, creditors' arrangement, compromise, readjustment of debt or liquidation legislation now or hereafter in force,
 - (d) a receiver, interim receiver, receiver-manager or other custodian is appointed over the Service Provider's assets or property.
- (2) Provided that BMO continues to perform under this Agreement and all applicable Schedules, the Service Provider expressly acknowledges and agrees that it is required by Applicable Laws to continue to provide the Services and Termination Assistance to BMO Financial Group Bank of Montreal shall use commercially reasonable efforts to ensure that the receiver, interim receiver, receiver-manager or trustee in bankruptcy and/or OSFI, as the case may be, shall pay for the Services and Termination Assistance that the Service Provider is required to provide in accordance with Section 3.8 of this Agreement. In the event the Service Provider does not receive any payment from the receiver, interim receiver, receiver-manager, trustee in bankruptcy or OSFI and no alternative arrangements have been made for the payment of Services and Termination Assistance, then the Service Provider may terminate the Services and Termination Assistance effective immediately upon written notice to BMO and to the receiver, interim receiver, receiver-manager, trustee in bankruptcy and/or OSFI, as the case may be.

- 3.3** Bank of Montreal is entitled to terminate this Agreement effective immediately when the Service Provider or an encumbrancer provides notice to Bank of Montreal that an encumbrancer has taken possession of any of the Service Provider's equipment required to provide the Services or execution or distress becomes enforceable or is levied upon such equipment.

3.4 *BMO's Termination of Agreement for Cause.*

A non-breaching Party may terminate this Agreement effective immediately upon ninety (90) days prior written notice given by the non-breaching Party to the other in accordance with Section 18.2, in the event the other Party has breached any material representation, condition, promise, covenant, term or warranty under this Agreement or has failed to perform any of its material obligations under this Agreement and the breaching Party has not cured the failure, if a cure is possible, within ninety (90) days after the breaching Party receives written notice of the failure from the non-breaching Party.

[Note to draft: issue of mutual right to terminate is revised, subject to further discussion]

3.5 *BMO Termination of Schedule for Cause.*

Notwithstanding Section 3.4, Bank of Montreal may terminate the applicable Schedule effective immediately upon the expiry of thirty (30) days after the Service Provider receives a notice to terminate the applicable Schedule in the event of the Service Provider's failure to meet any of the terms and conditions contained in the applicable Schedule or there is a Service Level Termination Event. This provision applies equally to Harris' ability to terminate its receipt of Services under a Schedule to which it is a signatory.

3.6 *Termination for Convenience.*

- (1) BMO shall have the right to terminate this Agreement and/or any Schedule for convenience by giving Service Provider at least six (6) months prior written notice.
- (2) BMO shall have the right to terminate this Agreement and any Schedule in the event of a merger or amalgamation of BMO with another financial institution, as that term is defined in the *Bank Act*, S.C. 1991, c. 46 at any time after the Effective Date of the Agreement, by giving Service Provider notice of termination that is at least six (6) months prior to the effective date of termination specified in such notice.
- (3) If the Parties agree to Termination Fees, the applicable Schedule shall set out the formula upon which Termination Fees are payable in the event that BMO exercises its right to terminate the Schedule or BMO exercises its right to terminate the Agreement (and so all of the Schedules) under this section 3.6.

3.7 *Service Provider's Termination for Non-Payment.*

The Service Provider is entitled to terminate the provision of Services under a Schedule effective immediately upon the expiry of thirty (30) days prior written notice given by the Service Provider to Bank of Montreal in accordance with Section 18.2, in the event the Bank of Montreal has failed to meet its payment obligations and the Bank of Montreal has not cured the failure within thirty (30) days after receiving written notice of the failure from the Service Provider.

3.8 *Termination Assistance.*

- (1) Upon the request of Bank of Montreal, the Service Provider expressly agrees to continue to provide the Services at the Service Fees in effect at the time of the notice of termination, and provide Termination Assistance for not more than the six (6) months at fees to be negotiated by the Parties ("**Termination Assistance Period**").
- (2) The Service Provider's obligations to provide the Services and Termination Assistance upon expiry or termination does not prohibit or otherwise restrict Bank of Montreal's remedies that it has available to it when Bank of Montreal has terminated the Agreement for cause but subject to the Service Provider's applicable limitation of liability provisions set out in Article 15.0.
- (3) The Parties will agree on a Termination Assistance Plan not more than thirty (30) days after date of the notice of termination referred to in subsection (1).

- (4) The Termination Assistance Period shall start to run on the date agreed upon in the Termination Assistance Plan; provided that the Service Provider expressly acknowledges and agrees that Termination Assistance shall include the continued provision of the Services in accordance with the Termination Assistance Plan and the terms and conditions of the applicable Schedule and this Agreement.
- (5) The Termination Plan shall designate which Assets, Intellectual Property and Changes BMO shall be entitled to acquire or license from the Service Provider or its designate. BMO, and/or BMO's Affiliate and Service Provider shall enter into such written agreements as are required to document the acquisition or license, which documentation shall be completed and signed before the expiry of the Termination Assistance Period; provided that in the event such designated Assets, Intellectual Property or Changes are owned by a third party, the Service Provider shall make commercially reasonable efforts to ensure that written documentation between BMO, and/or BMO's Affiliate and the third party owner shall be completed and signed before the expiry of the Termination Assistance Period.
- (6) Without limiting the generality of the foregoing, as part of the Termination Assistance Plan, the Service Provider shall provide BMO with a copy of all BMO Financial Group Data in a format to be agreed upon by the Parties and documented in the Termination Assistance Plan.

4.0 TRANSITION PLAN; SERVICES; SUPPORT SERVICES; SERVICE LEVELS AND REPORTING

4.1 *Transition.*

- (1) Each of the Parties shall be responsible for the transition obligations and milestones described as its responsibility in the Transition Plan. The Parties shall cooperate to minimize disruption to BMO Financial Group's business during the transition. If any transition of Services is to occur under a Schedule, the Service Provider shall be responsible for preparing a Transition Plan subject to BMO's approval in order to assure an orderly transition of the Services. This Section sets out the process to be followed by BMO and the Service Provider in preparing and implementing the Transition Plan:
 - (i) Within thirty (30) days following a Schedule Effective Date, the Service Provider shall submit for BMO's approval a final plan (the "**Transition Plan**") that specifies the milestones for completion of the applicable Transition Services (the "**Transition Milestones**") and the dates and time schedule for the transition of the Services. The Transition Plan shall state in detail the specific steps for the timing and migration methodology that will be used by the Service Provider. The Transition Plan must be approved by BMO prior to implementation of any part of such Transition Plan. The Service Provider's failure to deliver the Transition Plan before the expiry of the 30 day period named in this Section 4.1 shall be promptly escalated by BMO and the Service Provider according to Appendix D.
 - (ii) As part of the Services, the Service Provider shall perform all functions and services, including the functions and services described in the Transition Plan necessary to accomplish the migration to the Service Provider as identified in the Transition Plan (the "**Service Provider Transition Services**") and BMO shall perform all functions and services, including the functions and services described in the Transition Plan necessary to accomplish the migration to the Service Provider as identified in the Transition Plan ("**BMO Transition Services**"). The Service Provider shall perform the Service Provider Transition Services with minimal disruption to BMO Financial Group's business.
 - (iii) The Transition Plan shall include a transition readiness checklist for each, by way of illustration, function, task, process (defined in the applicable Schedule) that is transitioned and an acceptance test procedure for all Software that is transitioned.
- (2) If there is a material change in the ability of the Service Provider to meet a Transition Milestone set out in the Transition Plan, BMO may, in its discretion, use the Change Process to fix a new date to achieve the Transition Milestone; provided that BMO shall be entitled to terminate the Schedule in accordance with Section 3.5 of this Agreement after the expiry of the cure period named in Section 3.5, in the event that the Service Provider fails to meet a Transition Milestone.

4.2 *Provision of Services.*

The Service Provider shall:

- (a) be responsible for the provision of the Services in accordance with the terms of this Agreement;
- (b) provide, at Service Provider's expense, the facilities, operating infrastructure, Personnel, equipment, Service Provider Software, services training and other resources necessary to provide the Services as more particularly provided, and subject to the terms set out in the Appendices or Schedules (collectively called the "**Resources**");
- (c) to the extent necessary or appropriate to provide the Services: (i) maintain licenses for Third Party Software used in the provision of the Services; (ii) obtain maintenance and support for, upgrade, enhance and implement new versions of Third Party Software used in the provision of the Services;
- (d) provide sufficient project management resources, as determined by the Service Provider in consultation with Bank of Montreal in connection with the provision of Services, including Modifications and Changes;
- (e) logically isolate all BMO Financial Group's data, records, files, Confidential Information, input materials, output materials and other items being processed (collectively called "**BMO Financial Group Data**") from those of its other clients at all times, including under adverse conditions;
- (f) comply with BMO Financial Group rules, regulations, policies and procedures relating to access to BMO Financial Group premises as provided to Service Provider as are described in an applicable Schedule to this Agreement, as well as such rules, regulations, policies and procedures of which the Service Provider is advised and agrees in writing;
- (g) comply with any other applicable legal and government regulatory requirements of which the Service Provider is advised in writing;
- (h) be responsible for obtaining all applicable licenses, registrations, authorizations and permits required in connection with the performance of Services and in connection with otherwise carrying out its obligations under each Schedule, and shall have financial responsibility for, and shall pay, all fees and taxes associated with such licenses, registrations, authorizations and permits;
- (i) control and maintain the security of all identification codes and passwords in relation to the Services and access by any Person and promptly report to BMO any errors or irregularities in the Services or any unauthorized use of any part thereof of which it is aware;
- (j) not perform the Services outside of North America without the prior written consent of BMO;
- (k) at all times during the Term maintain and process BMO Financial Group Data within North America, unless BMO has provided its written consent, which the Service Provider acknowledges may require applicable Government Entity approval; however BMO acknowledges and agrees that BMO's approval or consent is not required with respect to where Service Provider obtains, maintains or processes any Service Provider data; and
- (l) perform or assume such other responsibilities as may be identified in this Agreement.

4.3 **Support Services.**

- (1) Where BMO Financial Group acquires Service Provider Software pursuant to a Software License, the Service Provider agrees to provide Support Services for the Service Provider Software and Customized Software to BMO as set out below and by Schedule:
 - (i) When a Schedule provides that the Service Provider shall provide Support Services, then, the Service Provider agrees to provide BMO with New Releases and agrees to provide BMO with Documentation related to the New Releases at the same time that the Service Provider delivers the New Releases to BMO.
 - (ii) BMO is entitled to conduct Acceptance Testing of the New Releases for two (2) months following delivery and installation of the New Releases. BMO is under no obligation to accept the New Releases. The Service Provider agrees to continue to support each New Release

for at least thirty (30) months after the subsequent New Release is made generally available.

- (iii) The Service Provider agrees to correct all Errors and make whatever modifications are required to ensure that the Software operates in substantial conformity with the Service Provider Documentation and applicable Specifications as set out in the applicable Schedule. The Service Provider agrees to correct all Errors identified by BMO, by the Service Provider, or by the Service Provider's other clients.
- (iv) Details as to the hours of availability of Support Services, the response times and the severity levels of Errors will all be detailed in the applicable Schedule.
- (v) The Service Provider agrees not to terminate Support Services for the Service Provider Software prior to the fifth (5th) anniversary date of the Effective Date of the Schedule under which the Service Provider Software was licensed by BMO Financial Group and thereafter to give BMO not less than one year's prior written notice of its intention to terminate the provision of Support Services at the end of that year.
- (vi) In the event that the Service Provider fails to perform its Support Services obligations under this Agreement or a Schedule, BMO may immediately terminate the Support Services under the applicable Schedule, or alternatively the Support Services under such Schedule upon thirty (30) days prior written notice to the Service Provider, which notice shall include details of the Service Provider's failure to perform. In the event of such termination, the Service Provider agrees to refund to BMO any pre-paid and unused Support Services Fees BMO paid in relation to such Support Services.
- (vii) Where a Schedule explicitly states that Support Services Fees must be paid separately by BMO, then unless otherwise stated on the applicable Schedule, the Bank on its own behalf and on behalf of its Affiliates, will pay to the Service Provider the Support Services Fees set out in a Schedule in consideration for such Support Services. Such Support Services for which separate Support Services Fees are applicable shall automatically renew every twelve-(12) months for additional twelve (12) month periods, until terminated by BMO or otherwise terminated in accordance with this Agreement.

4.4 Service Levels and Service Credits.

- (1) The Service Provider agrees that:
 - (a) on the Start Date, it will perform the Services described in the applicable Schedule, or any amendments thereto, so that they will meet each of the applicable Service Levels or any amendments thereto;
 - (b) in the event that the Service Provider fails to meet its Service Levels, the Service Provider shall to pay Bank of Montreal the Service Credits as set out in the applicable Schedule by cheque no later than the fifteenth (15th) Business Day after the Service Credits become payable, or by a credit on the following month's invoice; provided that, notwithstanding anything to the contrary in this Agreement:
 - (i) in the event that Bank of Montreal does not exercise its right to terminate the Agreement under Section 3.5, the remedy of Service Credits continues to be available to Bank of Montreal for so long as the Services remain below the Service Levels; and
 - (ii) the Service Provider expressly acknowledges and agrees that the payment of Service Credits is without prejudice to any right of Bank of Montreal to terminate this Agreement under Section 3.5, and, upon such termination to seek additional remedies available to Bank of Montreal at law or in equity but subject to the Service Provider's applicable limitation of liability provisions set out in Section 16.1. This provision applies equally to Harris' ability to terminate its receipt of Services under a Schedule to which it is a signatory.

In the event that Service Provider fails to pay Bank of Montreal in accordance with this subsection (c), Bank of Montreal is entitled to set off such amount against the next payment of Service Fees to the Service Provider under the applicable Schedule, or if no further payments are due to the Service Provider for such Services, Service Provider shall pay BMO such amounts within fifteen (15) Business Days after the end of the period in which event giving rise to the Service Credits occurred.

- (2) New Service Levels may be added or substituted upon the mutual agreement of the Parties during the Term in order to measure the Service Provider's performance of the Services as they evolve and as changes to the Services are documented through Change Process. Service Levels may be adjusted to reflect performance on an annual basis, where advances in technology make it appropriate to do so upon the mutual agreement of the Service Provider and Bank of Montreal.
- (3) Disputes in connection with the Service Provider's performance in accordance with the established Service Levels will be resolved using the escalation procedures in Appendix D.

4.5 Acceptance Testing.

Bank of Montreal shall conduct tests in accordance with Appendix B ("**Acceptance Testing**") to ensure that the Services, Modifications and Changes, as the case may be, perform in accordance with the Specifications

4.6 Reporting.

- (1) The Service Provider shall establish the necessary system or systems to enable it to prepare and provide to Bank of Montreal on a regular basis (daily, weekly, monthly or quarterly or yearly or in real time, as appropriate) management reports under which Bank of Montreal may monitor the provision of the Services, Hosted Software, if applicable, and the Service Levels.
- (2) Without limiting the generality of (1), the Service Provider shall supply to BMO such other operational and performance reports in connection with Service Provider's provision of the Services and in order for BMO Financial Group's compliance with Applicable Laws as described in the applicable Schedule.
- (3) In all events the Service Provider shall promptly report any incident or event that materially alters or will alter Service Provider's provision of Services and/or Service Levels.

5.0 CHANGES AND MODIFICATIONS

5.1 Changes.

Bank of Montreal may from time to time request Changes.

5.2 Modifications.

- (1) The Service Provider may from time to time request Modifications and agrees to provide BMO with not less than fifteen (15) Business Days prior written notice
- (2) When the Modification has the potential to impact Services and/or Service Levels or if there is a change to a Site, the BMO is entitled to conduct Acceptance Testing of the Modification in accordance with Section 5.2.; provided that in all events and despite successful Acceptance Testing, BMO has the sole discretion, acting reasonable, as to when the Modification shall be implemented into production.
- (3) When a Modification is not of the types set out in subsection (2), the Service Provider is entitled to perform Modifications with no notice to BMO when the Modification will not impact the Services and/or Service Levels.
- (4) In all events, whether or not a Modification has been Acceptance Tested or is required to be Acceptance Tested, Service Provider shall:

- (a) ensure that there are change control procedures in place to facilitate the orderly introduction of the Modifications into production which change control procedures include a fall back plan in the event the Modification cannot be implemented into production, and
- (b) to implement a Modification in accordance with the requirements and so as not to negatively impact the related established Service Levels.

5.3 Change Process/Modification Process.

- (1) BMO, the requesting party, will submit to the Service Provider, the receiving party, a Change Request in writing by utilizing the Change Request Form that forms part of Appendix A 1, detailing the Change(s) requested.
- (2) The Service Provider acknowledges and agrees that in the event a Change involves a change to any equipment, element, or component of the Services, the Service Provider agrees that the equipment, element or component of the Services shall, without any additional cost to Bank of Montreal other than the fees agreed upon in the Change Proposal, remain at all times compatible with the Services.
- (3) The Service Provider, the requesting party, will submit to BMO, the receiving party, a Modification Request in writing by utilizing the Modification Request Form that forms part of Appendix A 2, detailing the Modification(s) requested.
- (4) The Service Provider acknowledges and agrees that in the event a Modification involves a change to any equipment, element, or component of the Services, the Service Provider agrees that the equipment, element or component of the Services shall, without any additional cost to Bank of Montreal remain at all times compatible with the Services.

5.4 Mandatory Changes.

The Service Provider acknowledges and agrees that Bank of Montreal may request a Change for legal, regulatory or security reasons. The Service Provider is not entitled to refuse to affect these requests for Changes; provided that Bank of Montreal, on its own behalf, and behalf of its Affiliates, acknowledges and agrees that there may be pricing and scheduling consequences for these types of requests for Changes.

6.0 PERSONNEL

6.1 Personnel.

- (1) Service Provider will, before Personnel perform Services, perform or arrange for a background investigation search in accordance with Appendix E to this Agreement on each Service Provider Personnel.
- (2) The Service Provider agrees that the Personnel are not, nor are they deemed to be, for any purpose, the employees of Bank of Montreal. The Service Provider is solely responsible for paying the Personnel's employment insurance, workers' compensation, income tax, health tax, pension deductions and remittances, vacation pay, and any other obligations arising out of an employer-employee relations.

7.0 INTELLECTUAL PROPERTY RIGHTS; ASSET TRANSFER

7.1 Ownership of Intellectual Property and Changes.

- (1) Except as otherwise provided for in this Agreement, Service Provider shall: (1) retain all Intellectual Property Rights in all Service Provider Software, Service Provider Pre-existing Technology, Service Provider Documentation and Modifications ("**Intellectual Property**"), and (2) not be deemed to have assigned or transferred to BMO (i) all or part of its Intellectual Property Rights in such property; or (ii) any licenses to Intellectual Property which it has received from third parties.
- (2) Except as otherwise provided in this Agreement, where BMO Financial Group has acquired Hosting

Services, in consideration of the Service Fees, Service Provider hereby grants to BMO Financial Group and to Users, a non-exclusive, royalty-free license to use the Intellectual Property during the Term of the applicable Schedules.

- (3) Unless a Change Proposal expressly grants ownership of a Work Product to BMO, ownership of a Change shall vest in the Service Provider, and shall be deemed "Intellectual Property" and Service Provider hereby grants to BMO Financial Group and Users, a non-exclusive, royalty-free license to use the Changes during the Term of this Agreement. When a Change does grant ownership of a Work Product to BMO, the following provisions apply:
- (i) Service Provider expressly acknowledges and agrees that upon creation, all Intellectual Property Rights of each Work Product and all copies made of the Work Product shall, as between BMO, its Affiliates and Service Provider, vest in BMO.
 - (ii) BMO grants to Service Provider a non-exclusive license during the Term to use the Work Product solely to the extent necessary for performing the Services. Subject to other provisions of the Agreement, this Section (ii) shall be deemed to include a grant of such license or rights to use by Service Provider Subcontractor.
 - (iii) Service Provider is not permitted to sub-license or use the Work Product for the benefit of any Person other than BMO Financial Group.

Service Provider's ownership of a Work Product in all events is subject to the obligations of the Service Provider in Article 8.0

- (4) The Service Provider agrees to keep Service Provider Documentation, manuals, brochures and other materials that the Service Provider provides to facilitate the Service Provider's provision of Services, up-to-date throughout the Term of this Agreement and that it will promptly provide revised copies of Service Provider Documentation to Bank of Montreal as soon as is practicable after the changes to such Service Provider Documentation. Furthermore, with respect to Intellectual Property and Software Licenses, the license granted to BMO Financial Group and Users above includes, without limitation, BMO's ability to:
- (i) reproduce, at no additional cost, as many copies of the Service Provider Documentation as it requires to support BMO's use as permitted pursuant to this Agreement;
 - (ii) translate the Service Provider Documentation into English or French as required by BMO provided that Service Provider shall have no responsibility in respect of any such translation not effected by it, and
 - (iii) reproduce in hard copy forms from the electronic format any excerpts that BMO requires to prepare internal manuals for staff use.

7.3 BMO Financial Group Data.

- (1) The Service Provider expressly acknowledges and agrees that as between BMO, its Affiliates and the Service Provider, BMO Financial Group is at all times during the Term of this Agreement and upon expiration or termination of any applicable Schedule or this Agreement the owner of and has exclusive rights, title and interest in and to the BMO Financial Group Data and Service Provider's obligations under Article 8.0 shall apply to all BMO Financial Group Data. Each User shall be permitted electronic access to their respective BMO Financial Group Data at all times. Service Provider shall not:
- (a) possess or assert any ownership right, encumbrance or similar right in the BMO Financial Group Data;
 - (b) sell, assign, lease or otherwise dispose of, encumber, create a lien against or commercially exploit any BMO Financial Group Data; or
 - (c) except as expressly permitted by this Agreement or the applicable Schedule, disclose or copy any BMO Financial Group Data.
- (2) Upon written request by BMO or its Affiliates at any time and from time to time or upon the termination

or expiration of the applicable Schedule or this Agreement, Service Provider shall return to Bank of Montreal or its designee, or delete, according to Bank of Montreal's instructions all of the BMO Financial Group Data. In addition, during the Term, Service Provider shall also securely erase or delete any BMO Financial Group Data from any hardware, media or other material within its control that is to be no longer use in connection with the provision of Services.

8.0 CONFIDENTIALITY, PRIVACY AND INFORMATION SECURITY

A. Confidentiality

8.1 The Receiving Party shall:

- (a) use the same means it uses to protect its own confidential and proprietary information to maintain the secrecy and confidentiality of the Confidential Information and in any event, no less than a reasonable degree of care,
- (b) except as provided in this Part A, Sections 8.1(e) and (f), not disclose any Confidential Information to a third party without the prior written consent of the Disclosing Party,
- (c) not use any Confidential Information for any purposes including but not limited to "insider trading", personal profit or gain, other than to facilitate performance of its obligations under this Agreement (the "**Business Purpose**"),
- (d) disclose Confidential Information only to its employees and Affiliates, who have a need to know the information for the Business Purpose,
- (e) when the Service Provider is the Receiving Party: (I) disclose Confidential Information only to its Subcontractors (other than the Receiving Party's Affiliates): (i) who have a need to know the information for the Business Purpose, and (ii) who have signed confidentiality or non-disclosure agreements in place with the Receiving Party that include terms materially the same as those in this Article; (II) inform the employees, Affiliates and Subcontractors of the confidential nature of the Confidential Information; and (III) take reasonable steps to prevent the employees, Affiliates and Subcontractors from acting in a manner inconsistent with the terms of this Article,
- (f) when BMO is the Receiving Party: (I) disclose Confidential Information only to its contractors, consultants, advisors, agents, vendors and third party service providers: (i) who have a need to know the information for the Business Purpose, and (ii) who have signed confidentiality or non-disclosure agreements in place with the Receiving Party that include terms materially the same as those in this Article; (II) inform the employees, Affiliates, contractors, advisors, agents, vendors and third party service providers of the confidential nature of the Confidential Information; and (III) take reasonable steps to prevent the employees, Affiliates, contractors, advisors, agents, vendors and third party service providers from acting in a manner inconsistent with the terms of this Article.

8.2 Except for BMO Financial Group Personal Information where the obligations of confidentiality always apply, the obligations of confidentiality set out in Part A, Section 8.1 above do not apply to information that:

- (a) is published or has otherwise entered the public domain without a breach of this Agreement,
- (b) is obtained by the Receiving Party from a third party who has no obligation of confidentiality to the Disclosing Party, or
- (c) is independently developed or obtained without breach of this Agreement as evidenced by the written records or by other evidence of the Party.

8.3 It is not a breach of this Agreement to:

- (a) disclose Confidential Information required to be disclosed by law, judicial or arbitration process, or by Government Entities, provided that the Receiving Party first gives the Disclosing Party reasonable notice of such law, order, request or process, or
- (b) disclose the Disclosing Party's Confidential Information with the prior written consent of the Disclosing Party.

- 8.4 Each party agrees not to copy or reproduce the other's Confidential Information except as may be required for the performance of this Agreement and to otherwise not make any copies or partial copies of the other's Confidential Information without the prior written consent of the Disclosing Party. All copies will, on reproduction, contain the same proprietary and confidential notices and legends which appear on the original documents and information.
- 8.5 Each party, upon the request of the other, agrees to return all of the other party's Confidential Information and copies in its possession to the other party or to destroy such Confidential Information and copies as directed by the other party and to certify their destruction.
- 8.6 If the Receiving Party discovers that it has used or disclosed or copied in an unauthorized manner any Confidential Information, it shall immediately notify the Disclosing Party in writing.

B. Privacy

- 8.7 Without limiting the Service Provider's obligations under this Article, the Service Provider represents and it is a condition of this Agreement that:
- (a) BMO and its Affiliates shall at all times during the Term of this Agreement, as between BMO, its Affiliates and the Service Provider, retain all rights, title and interest in all BMO Financial Group Personal Information. In the event of a bankruptcy, liquidation or other insolvency event of the Service Provider and notwithstanding any other provision in this Agreement BMO shall, upon notice to the Service Provider and/or Service Provider's trustee, receiver or liquidator, immediately be entitled to the repossession of all BMO Financial Group Personal Information held with Service Provider,
 - (b) it will not request any BMO Financial Group Personal Information beyond what is necessary to fulfill the purpose(s) for which it is requested. The purposes for requesting BMO Financial Group Personal Information shall be reasonable as determined by BMO and/or its Affiliates, as the case may be,
 - (c) it shall not use, access, manage, transfer, or disclose any BMO Financial Group Personal Information to third parties or otherwise process any BMO Financial Group Personal Information beyond what is necessary to fulfill the purpose(s) for which it is made available,
 - (d) it will immediately return or destroy any and all copies of BMO Financial Group Personal Information which is no longer necessary to fulfill the Business Purpose and certify that it has done so,
 - (e) as of the Effective Date and continuously during the Term of this Agreement, it shall have in place the technological, physical and organization security safeguards to protect Confidential Information of BMO Financial Group against any anticipated threats, compromises or hazards, loss, theft, unauthorized access, disclosure, copying, use, modification, disposal and destruction,
 - (f) BMO Financial Group Personal Information while in the possession of Service Provider shall be protected as required by, and in compliance with, all Privacy Laws, this Agreement, and the Information Security Requirements.
 - (g) it shall reasonably cooperate with BMO in connection with access requests for BMO Financial Group Personal Information and correction requests in connection with BMO Financial Group Personal Information,
 - (h) it shall reasonably cooperate with BMO in connection with any employee, customer or third party complaints initiated against BMO and/or its Affiliates related to BMO Financial Group's compliance obligations under the Privacy Laws;
 - (i) it shall: (A) not send BMO Financial Group Personal Information outside Canada for management, storage, safekeeping or from being accessed from outside Canada without the prior written consent of BMO, (B) not disclose BMO Financial Group Personal Information in response to a subpoena, warrant, order, demand, or request by a court or other authority unless it is a Canadian court or other Canadian authority that has jurisdiction to compel the disclosure, (C) resist any subpoena, warrant, order, demand or request made by a out of Canada court or other out of Canada authority, (D) notify BMO of any subpoena, warrant, order, demand, or request made by an out of Canada authority or other out of Canada authority for the disclosure of BMO Financial Group Personal Information.

8.8 Service Provider agrees to provide and maintain:

- (a) access controls on Service Provider information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing BMO Financial Group Personal Information to unauthorized individuals who may seek to obtain this information through fraudulent means,
- (b) access restrictions at physical locations containing BMO Financial Group Personal Information, such as buildings, computer facilities and records storage facilities, to permit access only to authorized individuals,
- (c) support for encryption of Electronic Data, including while in transit or in storage on networks or systems, to permit access only to authorized individuals,
- (d) procedures designed to ensure that Service Provider information system modifications are consistent with BMO's and its Affiliates' Information Security Requirements,
- (e) appropriate control procedures and segregation of duties for employees with responsibilities for or access to BMO's and/or its Affiliates' information and/or to BMO Financial Group Personal Information,
- (f) monitoring systems, procedures, or software to detect actual and attempted attacks on or intrusions in Service Provider's information systems,
- (g) response programs that specify actions to be taken when Service Provider or BMO or any of its Affiliates suspects or detects that unauthorized individuals have gained access to Service Provider's information systems, including appropriate reports to regulatory and law enforcement agencies, and
- (h) measures to protect against destruction, loss or damage of BMO or its Affiliates information or BMO Financial Group Personal Information due to potential environmental hazard, such as fire and water damage or technological failure.

C. Information Security

8.9 For the purposes of this Article, "Information Security Requirements" means:

- (a) Service Provider's demonstrable commitment to, and support of, best practices with respect to Service Provider industry information security governance,
- (b) having in place a written and comprehensive set of information security policy documents, which act as the rules and guidelines for dealing with the Confidential Information of BMO Financial Group, and includes appropriate administrative, technical and physical safeguards to: (A) ensure the safety and confidentiality of Confidential Information of BMO Financial Group, including when Service Provider's business continuity and disaster recovery plans are required to be implemented, (B) protect against any unanticipated threats or hazards to the security or integrity of Confidential Information of BMO Financial Group, (C) protect against unauthorized access to or use of Confidential Information, (D) properly dispose of Confidential Information of BMO Financial Group,
- (c) promptly providing BMO with written notice and information regarding any vulnerability, failure or potential failure of any security measures, any security breaches, compromises or any security incidents related to Confidential Information of BMO Financial Group that may affect BMO, its Affiliates or any their employees or customers,
- (d) planning, providing and executing periodic, regular audits of Service Provider's physical, logical and information security controls commensurate with the Services being provided under this Agreement and promptly providing BMO with written advice of the audit results, and
- (e) providing separation of key security network zones between network and production and internet network zones, with appropriate safeguards in place to detect and prevent intrusion into each security zone.

8.10 Without limiting the Service Provider's obligations under Parts A and B of Article 8.0, the Service Provider represents and it is a condition of this Agreement that:

- (a) all Confidential Information of BMO Financial Group in an electronic format (collectively called "**Electronic Data**") transmitted by the Service Provider or Service Provider Subcontractors or received from BMO and/or its Affiliates or any third party on behalf of BMO and/or its Affiliates, will remain encrypted unless being processed in a secure environment,
- (b) it shall ensure that such Electronic Data will be maintained at a level of cryptographic integrity and strength greater than or equal to that of the originally supplied Electronic Data:
 - (i) while such Electronic Data are maintained by the Service Provider,
 - (ii) while such Electronic Data are being transferred between the Service Provider and Service Provider Subcontractor,
 - (iii) while such Electronic Data are maintained by the Service Provider Subcontractor, and
 - (iv) and will be transmitted at a level of cryptographic integrity and strength greater than or equal to that of the originally supplied Electronic Data when such Electronic Data is transmitted to BMO and/or its Affiliates or to any third party on behalf of BMO and/or its Affiliate to which BMO and/or its Affiliates instructs such Electronic Data to be sent,
- (c) as at the Effective Date, the Service Provider's existing information security processes and procedures, along with supporting standards and operating directives at a minimum, comply with the Information Security Requirements,
- (d) continuously for the Term and throughout the Termination Assistance Period the Service Provider will comply, at a minimum, with Information Security Requirements and such further additional security requirements as shall be set out in the applicable Schedule,
- (e) continuously for the Term the Service Provider shall protect all Confidential Information of BMO Financial Group, while in the possession of the Service Provider, in accordance with the Information Security Requirements,
- (f) it shall make available to BMO or, at the request of BMO, to any Government Entity and to any persons authorized by or acting on behalf of BMO Financial Group, including its independent public accountants, its internal practices, books and records relating to the use, processing, disclosure, copying, modification, disposal and destruction of Confidential Information of BMO Financial Group. In addition, BMO is entitled, on not less than twenty-four (24) hours prior written notice to Service Provider and subject to Service Provider's reasonable security requirements, to attend at one or more facilities of the Service Provider at which the Services are being provided to inspect Confidential Information of BMO Financial Group and Service Provider's compliance with the Information Security Requirements. BMO will provide the Service Provider with a written confirmation of the names of BMO's representatives who will conduct the audit with the notification to Service Provider under this clause (f),
- (g) where Services are being provided to BMO Financial Group in the United States, a Government Entity having jurisdiction over BMO and/or its Affiliates and subject to Service Provider's reasonable security requirements, is entitled to attend at one or more facilities of the Service Provider at which the Services are being provided to verify Service Provider's compliance with Government Entity legal and regulatory security requirements, and
- (f) annually during the term of this Agreement, upon BMO's written request, provide written confirmation from a senior officer of the Service Provider, confirming that the Service Provider continues to comply with the Information Security Requirements set out in this Agreement and Schedule, if applicable; provided that the Service Provider expressly acknowledges and agrees that this written confirmation in no way diminishes any Audit requirements or other remedies available to BMO in the event of the Service Provider's breach of its obligations under Article 8.0.

D. Subcontractors

- 8.11 (1) Service Provider represents and it is a condition of this Agreement that it shall not delegate, assign or otherwise arrange for the provision of all or part of the Services to be performed by an agent, contractor, supplier or vendor of Service Provider without the prior written consent of BMO. This Section 8.11 excludes contractors hired on an individual basis to supplement the Service Provider's workforce whose activities in relation to the performance of the Services are performed on Service Provider's premises or BMO's premises and who remain under the day-to-day direction, management and control of Service Provider. BMO is entitled to withhold its consent. In the event that BMO consents to such agent, contractor, supplier or vendor becoming a Subcontractor, Service Provider's written agreement with such Subcontractor shall include provisions that: (1) preserve the Intellectual Property Rights in favour of BMO Financial Group as set out in this Agreement, (2) ensure that such Subcontractor has in place the technological, physical and organization security safeguards to protect Confidential Information of BMO Financial Group against any anticipated threats, compromises or hazards, loss, theft, unauthorized access, disclosure, copying, use, modification, disposal and destruction as required by the Information Security Requirements, (3) ensure BMO Financial Group Personal Information while in the possession of the Subcontractor shall be protected in accordance with and as required by the Information Security Requirements, and (4) allow Service Provider, BMO or, at BMO's request, a Government Entity having jurisdiction over BMO and/or its Affiliates, to review Subcontractor's internal practices, books and records relating to use, processing, disclosure, copying, modification, disposal and destruction of Confidential Information of BMO Financial Group and to attend on not less than twenty-four (24) hours prior written notice, at one or more locations of the Subcontractor at which the Services are being provided to inspect Confidential Information of BMO Financial Group and Subcontractor's compliance with Information Security Requirements; provided that the Service Provider expressly acknowledges and agrees that its obligations under this Section 8.11 (1) do not relieve or otherwise diminish Service Provider's confidentiality, liability and indemnification obligations under this Agreement in the event a Subcontractor breaches the terms of Service Provider's agreement with the Subcontractor as contemplated by this Section 8.11.
- (2) BMO shall have the right to revoke its prior approval of a Subcontractor and direct Service Provider to replace such Subcontractor: (i) if the Subcontractor's performance is materially deficient; (ii) if doubts exist concerning the Subcontractor's ability to render future performance because of changes in the Subcontractor's ownership, management, financial condition, or otherwise; (iii) there have been material misrepresentations by or concerning the Subcontractor; or (iv) a Subcontractor which at the time approved is a majority owner or Affiliate of Service Provider and ceases to be an Affiliate.
- (3) Service Provider shall remain responsible for obligations, services and functions performed by Subcontractors to the same extent as if such obligations, services and functions were performed by Service Provider employees and for purposes of this Agreement, such work shall be deemed work performed by Service Provider. For the avoidance of doubt, the Service Provider expressly acknowledges and agrees that its obligations under this Part D do not relieve or otherwise diminish the Service Provider's confidentiality, liability and indemnification obligations under this Agreement in the event a Subcontractor breaches the terms of the Service Provider's agreement with the Subcontractor as contemplated by this Part D.
- (4) Service Provider shall be BMO's sole point of contact regarding the Services, including with respect to payment.

E. Liability and Indemnity for Breach

- 8.12 In the event BMO breaches its obligations under Part A, BMO agrees that it shall be liable to the Service Provider and, where appropriate, the Service Provider's Affiliates, shareholders, directors, officers, employees and agents for all actual, provable and direct damages suffered by the Service Provider or incurred by the Service Provider as a result of BMO's breach of Part A, or BMO's negligent or willful acts or omissions in performing its obligations under Part A.
- 8.13 In the event of the Service Provider breaches its obligations under Parts A, B, C and/or D, the Service Provider agrees that it shall be liable to BMO and/or its Affiliates and, where appropriate, their respective shareholders, directors, officers, employees and agents for all actual, provable and direct damages suffered by the BMO and/or its Affiliates or incurred by BMO and/or its Affiliates as a result of the Service Provider's breach of Parts A, B, C and/or D, or the Service Provider's negligent or willful acts or omissions in performing its obligations under Parts A, B, C and/or D; provided that the Service Provider shall be liable under this Part E, Section 8.13 for its Subcontractors' breach of their obligations or Subcontractors' negligent or willful acts or omission in performing their obligations under Parts A, B, C and/or D.

- 8.14 In addition to and not in lieu of any indemnification obligations set out elsewhere in this Agreement and for the avoidance of any doubt, notwithstanding the provisions of Part E, Section 8.13 above, the Service Provider shall defend, indemnify and hold harmless BMO and its Affiliates, their respective shareholders, directors, officers, employees and agents, from any and all actions, claims, liability, costs, damages, penalties, fines, fees, amounts paid in settlement of claims and expenses (including legal fees and disbursements on a complete indemnity) that BMO or its Affiliates are legally obliged to pay to employees, customers or third parties as a result of: (1) the Service Provider's breach of Part B, and/or Part C, and/or Part D or the Service Provider's negligent or willful acts or omissions in performing its obligations under Part B and/or Part C and/or Part D, and/or (2) the Subcontractors' breach of their obligations to Service Provider under Part D.

F. *Publicity*

- 8.15 The Service Provider agrees not to use BMO's or Affiliate(s)' name, trademark or logo in any way in any of its advertising or other written material provided to third parties, shall not create a link, either directly or indirectly between the Service Provider's web site and BMO's or Affiliates' web sites. The Service Provider agrees to seek approval from a Vice-President of Corporate Marketing and Communications of BMO or equivalent department of each Affiliate to issue any news release or public communication in which BMO or Affiliates, as applicable, or its activities with the Service Provider are mentioned.

9.0 SERVICES CONTINGENCY PLAN

- 9.1 The Parties agree that Appendix C sets out the full and complete copy of the Service Provider's disaster recovery and contingency plans and procedures as of the Effective Date in connection with providing the Services under this Agreement ("**Services Contingency Plan**").
- 9.2 During the Term and throughout the Termination Assistance, the Service Provider shall be obligated to maintain and comply in all respects with the Services Contingency Plan at the Service Provider's sole cost and expense, including without limitation, conducting regular tests of the Services Contingency Plan.
- 9.3 The Service Provider acknowledges and agrees that the Services Contingency Plan shall only be acceptable to Bank of Montreal when it includes all Sites; provided that, when a new Site is introduced by Change Request, the Services Contingency Plan will be promptly updated by the Service Provider to include the new Site.
- 9.4 The Service Provider agrees to release information respecting the provision of Services necessary to allow Bank of Montreal to develop its own disaster recovery and contingency plans for BMO.
- 9.5 Bank of Montreal agrees to release information respecting its disaster recovery and contingency plans in connection with BMO's receipt of the Services necessary to allow the Service Provider to develop and enhance the Services Contingency Plan.
- 9.6 Notwithstanding the obligations set out in Article 9.0, the Service Provider, at its expense, shall:
- (1) notify BMO of any material change or modification in the Services Contingency Plan;
 - (2) promptly notify BMO of the results of the Services Contingency Plan testing described in Section 9.2; and
 - (3) at the request of Bank of Montreal and upon Bank of Montreal providing the Service Provider with at least one (1) month's advance notice, but not more than two (2) times per calendar year, participate, at the Service Provider's own expense Site contingency and disaster recovery tests.
- 9.7 In addition, and notwithstanding anything else in Article 9.0, not more than twice (2) per calendar year during the Term, Bank of Montreal and the Service Provider shall conduct a joint review of the contents of the then current Services Contingency Plan, including incidental reports and network maps to ensure the accuracy and currency of the contents of the Services Contingency Plan. If Bank of Montreal, acting reasonably, considers there to be a deficiency, the Service Provider agrees to work with Bank of Montreal to fix the deficiency. If the deficiency is an omission, then the cost to remedy the omission shall be at the Service Provider's expense; if the deficiency requires an enhancement to the Services Contingency Plan, then the cost shall be at Bank of Montreal's expense.

- (1) The applicable Schedule sets out the basis upon which the Service Fees will be computed for Services to be provided to BMO.
- (2) The Service Fees shall remain in effect for the Initial Term of the Agreement; provided that in the event of a Change that results in an increase to the Service Fees, the Parties agree that the change in Service Fees will be agreed upon and documented by a Change Proposal Form signed by duly authorized representatives of the Parties and upon signature will be governed by this Article 11.0.

11.2 Invoices.

- (1) The Service Provider shall prepare and issue detailed invoices to Bank of Montreal in accordance with the billing detail set out in the applicable Schedule.
- (2) The Service Provider shall invoice Bank of Montreal in arrears on a monthly basis for the Service Fees, taxes and any other applicable charges.
- (3) In addition to the Audit requirements under Article 14.0, the Service Provider agrees to maintain complete backup information during the Term and throughout the Termination Assistance Period of this Agreement and for one (1) year after termination or expiry of the Agreement for all invoice billings and provide the information to Bank of Montreal upon request.

11.3 Payments.

- (1) Bank of Montreal shall pay the Service Fees, taxes and any other applicable charges within forty (40) days of the date of receipt of the invoice (the "**Payment Due Date**") at the place and in the manner specified by the Service Provider in the applicable invoice.
- (2) Should Bank of Montreal fail to pay any amount required to be paid by Bank of Montreal to the Service Provider, the Service Provider is entitled to charge Bank of Montreal interest at the Prime Rate calculated and accrued monthly, not in advance, starting on the forty-first (41st) day after the date of receipt of the invoice until the date payment is made.
- (3) Notwithstanding subsections (1) and (2), Bank of Montreal is entitled to review the invoices. In the event Bank of Montreal disputes the accuracy or applicability of any fee, charge, credit or other financial arrangement described in this Agreement or Schedule, Bank of Montreal shall notify the Service Provider of such dispute in writing with a reasonably detailed explanation of the basis of the dispute as soon as practicable after the alleged discrepancy has been discovered. Bank of Montreal shall pay the undisputed portion of the invoice but is under no obligation to pay any part of the invoice until the resolution of the dispute. Bank of Montreal and Service Provider will work in good faith to resolve such dispute expeditiously using the escalation procedures set out in Appendix D. Upon resolution of the dispute, in the event Bank of Montreal is obliged to pay the Service Provider, the provisions of Section 11.3 will apply. Service Provider agrees it shall continue to provide the Services and is not entitled to terminate this Agreement nor any applicable Schedule during such dispute.

11.5 Taxes.

- (1) Bank of Montreal is responsible for paying all sales, use, excise, goods and services, value added, and like taxes, except taxes on income, personal property taxes, payroll taxes or similar taxes which the Service Provider is required to collect or pay for the Services.
- (2) If any charges under this Agreement are exempt from such tax liability, Bank of Montreal will provide the Service Provider with evidence of tax exemption acceptable to the relevant taxing authority. Any penalty or liability imposed on the Service Provider by such taxing authority should such exemption not be applicable shall be at the expense of Bank of Montreal.
- (3) Bank of Montreal is not required to pay, nor is it liable or responsible for, and the Service Provider agrees to indemnify and hold Bank of Montreal and its employees, officers, directors, agents and contractors and their successors and assigns harmless against, any penalty, additional taxes, costs or interest that may be assessed or levied resulting from the failure of the Service Provider to file any return, form or information statement that may be required by any taxing authority.

Personnel consistent with the Personnel's responsibilities in providing the Services under this Agreement and Appendix E;

- (c) the Service Provider Documentation, manuals, procedures, and brochures that the Service Provider provides to BMO to facilitate providing and obtaining the Services accurately describe the operation, maintenance capacity, performance and functionality of the Services, Modifications, and Changes, as the case may be;
- (d) it: (1) has authority to allow Bank of Montreal and its Affiliates to use any copyright, trade secret, trademark, service mark, data or proprietary information that forms part of the Services, as may be reasonably required by Bank of Montreal and its Affiliates, to facilitate Bank of Montreal and its Affiliates obtaining the Services during the Term and throughout the Termination Assistance Period of this Agreement and the provision of Services and Termination Assistance upon the termination or expiry of the Agreement or a Schedule, (2) will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any copyright, trade secret, trademark, service mark, proprietary information or non-disclosure rights of any Person by the Service Provider that is not otherwise being infringed upon by Bank of Montreal or any of BMO's other vendors independent of this Agreement; (3) there is currently no actual or threatened lawsuit or claim by any Person based on an alleged infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, design right, proprietary information or non-disclosure rights or any other intellectual property of any Person by the Service Provider that impacts the provision of Services;
- (e) it: (1) will maintain all registrations and filings necessary for it to perform and provide the Services as described in the applicable Schedule, (2) will at all times comply with all Applicable Laws to the extent that the failure to comply with all Applicable Laws would have a materially adverse effect on the Service Provider's ability to perform and provide the Services, and (3) it will advise Bank of Montreal immediately if, at any time, a lapse occurs in a registration or filing in any jurisdiction in which it carries on business which would have a materially adverse effect on the Service Provider's ability to perform and provide the Services; provided that, in the event the Service Provider breaches its obligations under this Section 12.2 (e) (1) with the result that BMO is no longer permitted under Applicable Laws or by a Government Entity to obtain the Services from the Service Provider under this Agreement, and without limiting the remedies Bank of Montreal has on behalf of itself and its Affiliates at law or in equity, Bank of Montreal is entitled to terminate this Agreement in accordance with Section 3.4.

12.3 Mutual Representations.

Each of Bank of Montreal and the Service Provider represent that:

- (a) it has all requisite corporate power and authority to enter into, and fully perform pursuant to, this Agreement,
- (b) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated under this Agreement have been duly and properly authorized by all requisite corporate action on the part of such Party, and
- (c) this Agreement has been duly executed and delivered by such Party.

SOFTWARE LICENSE, SUPPORT SERVICES AND WORK PRODUCT WARRANTIES

12.4 The Service Provider warrants, represents and promises that:

- (a) it is highly skilled and has the experience needed to develop and provide the particular Work Product described in each Schedule to this Agreement. The Service Provider acknowledges that BMO is relying upon the skill and expertise of the Service Provider for the performance of the Professional Services and Support Services under this Agreement;
- (b) it will, without additional charge to BMO, use reasonable commercial efforts to make such additions, modifications, or adjustments to the Work Product) as may be necessary to ensure it operates in accordance with the applicable Specifications ;

- (e) "All Risk" property insurance in an amount equal to the full replacement value of the premises, equipment, and network used to provide the Services; and
 - (f) Crime insurance policy covering employee dishonesty and computer fraud for loss arising out of or in connection with fraudulent or dishonest acts committed by the Personnel of Service Provider, as well as employees of Subcontractors acting alone or in collusion with others, in a minimum amount of \$250,000 per loss.
- (2) The Service Provider shall maintain in full force and effect, during each Term and throughout the Termination Assistance Period and for a period of one (1) year thereafter, the professional liability insurance in satisfaction of its obligation pursuant to Section 13.1 (1) (c). If for any reason such policy insurer cancels or fails to renew such policy, the Service Provider shall immediately purchase a replacement policy containing substantially the same terms as such policy and including a prior acts coverage Endorsement effective from the Effective Date.

13.2 General Insurance Requirements.

- (1) All insurance policies that the Service Provider is required to carry pursuant to this Article 13.0 shall:
- (i) be primary as to the Service Provider's negligence and non-contributing with respect to any other insurance or self-insurance Bank of Montreal, on its own behalf and on behalf of its Affiliates, may maintain;
 - (ii) be provided by reputable and financially responsible insurance;
 - (iii) and require the insurer to notify Bank of Montreal in writing at least thirty (30) days in advance of any cancellation or modification to any policy. The Service Provider shall cause its insurers to issue to Bank of Montreal on or before the Effective Date and within a reasonable period following each policy renewal date certificates of insurance evidencing that the coverages and policy endorsements required by this Article 13.0 are in effect; and
 - (iv) the Service Provider will promptly notify Bank of Montreal of its intention to cancel or modify each policy.
- (2) The insurance coverages referred to in Section 13.1 (1) (a) and (b) above shall name Bank of Montreal, its Affiliates, and their respective officers, directors and employees as additional insureds in respect of, and as such Parties' interests may appear with respect to this Agreement.

13.3 Risk of Loss.

As of the Effective Date, each Party shall be responsible for risk of loss of, and damage to, any equipment, software or other materials in its possession or under its control.

14.0 AUDITS

14.1 General Audit Requirements.

- (1) Service Provider shall assist BMO and its Affiliates in meeting their audit and regulatory requirements as those audit and regulatory requirements relate to Service Provider and the Services to enable BMO, its Affiliates, Government Entities and BMO Financial Group's Approved Auditors to conduct appropriate audits under this Agreement.
- (2) Service Provider shall at all times during the Term and throughout the Termination Assistance Period maintain records and supporting documentation, in accordance with generally accepted accounting principles, of all financial and non-financial transactions under this Agreement and all Schedules sufficient to permit the Annual Audits, and BMO Financial Group Audits (each as defined below, and collectively, the "Audits") of such financial and non-financial transactions in accordance with this Article.

14.2 BMO Financial Group Audit Requirements.

- (1) At the beginning of each Contract Year, the Relationship Managers will determine the timing and schedule for Audits during that Contract Year and agree upon the audit guidelines and scope (the "Annual Audit Plan"). All changes or additions to the Annual Audit Plan will be proposed on at least sixty (60) days advance notice except where shorter notice periods are required by a Government Entity. Notwithstanding the previous statement Service Provider acknowledges and agrees that a

Government Entity may require an Audit without prior notice to BMO, its Affiliates or Service Provider.

- (2) BMO and/or its Affiliates are entitled to conduct their own audits or conduct audits required by Government Entities ("**BMO Financial Group Audits**") according to the Annual Audit Plan, unless additional BMO Financial Group Audits are required.
- (3) Service Provider agrees that it will include in its agreements with Subcontractors, provisions to permit BMO Financial Group Audits of Subcontractors, where relevant, on substantially the same terms as BMO or its Affiliates are entitled to perform BMO Financial Group Audits of Service Provider under this Section.
- (4) BMO is entitled to choose the auditors to conduct the BMO Financial Group Audits ("**Approved Auditors**") which Approved Auditors shall have the reasonable access as set out in Section 5(a) below. BMO and its Approved Auditors shall not have access to other Service Provider data and systems, data of other Service Provider customers, Service Provider internal or third party costs or cost structure, or Service Provider employee personal data, including salary, performance or other private data. Approved Auditors shall observe such procedures as Service Provider may reasonably require in order to protect the confidentiality and security of Confidential Information of Service Provider and that of its other customers. BMO agrees that Approved Auditors shall perform planning, entry and exit interviews in accordance with the agreed audit guidelines and BMO agrees to provide Service Provider with copies of portions of the Audit reports reflecting or based upon information obtained from Service Provider.
- (5)
 - (a) Service Provider shall provide BMO and Approved Auditors with access at reasonable times and after reasonable notice (unless circumstances reasonably preclude such notice) to:
 - (i) parts of any Sites at which Service Provider is providing the Services,
 - (ii) Service Provider Personnel providing the Services, and
 - (iii) all data and records relating to the Services,for the purposes of: (A) performing audits and inspections of BMO Financial Group and its business, (B) verifying the integrity of data and reports, (C) examining the systems that process, store, support and transmit the BMO Financial Group Data, and (D) examining Service Provider's Service Fees and performance of the Services under this Agreement and any Schedule.
 - (b) The foregoing Audit rights shall include, without limitation, and when applicable, audits: (i) of practices and procedures, (ii) of systems, (iii) of general controls and security practices and procedures, (iv) of disaster recovery and backup procedures, (v) of costs (to the extent Services are provided by Service Provider as third party costs), (vi) of Service Fees, and (vii) procedures developed and implemented by Service Provider to ensure BMO Financial Group's compliance with Applicable Laws, all of which Audit rights are necessary to enable BMO Financial Group to meet Applicable Law requirements, and for any other reasonable purpose.
 - (c) Service Provider shall provide full cooperation to such Approved Auditors, inspectors, Government Entities and representatives, including the installation and operation of audit software (provided that such installation and operation of audit software can be done without compromising, and shall be subject to, Service Provider's information system and security procedures).
 - (d) Notwithstanding the foregoing, if BMO has reason to suspect any fraud on the part of Service Provider, BMO and Service Provider will work together to undertake such audits to identify, and stop the fraudulent process and put in place processes to preclude the recurrence of the incident.
 - (e) The Parties acknowledge and agree that the provisions of this Section 14.2 are subject to any additional or replacement BMO Financial Group Audit requirements that may be set out in a Service Agreement. In the event of a conflict between this Section 14.2 and a Schedule, the BMO Financial Group Audit requirements set out in the Schedule shall control and take

precedence to the extent of the inconsistency.

14.3 BMO Financial Group Information Security Audits.

Without limiting the Service Provider's obligations else where under this Article 14.0, Service Provider represents and it is a condition of this Agreement that:

- (a) it shall make available to BMO or, at the request of BMO, to any Government Entity and to persons authorized by or acting on behalf of BMO Financial Group, including its independent public accountants, its internal practices, books and records relating to use, processing, disclosure, copying, modification, disposal and destruction of Confidential Information of BMO Financial Group. In addition, BMO is entitled, on not less than twenty-four (24) hours prior written notice to Service Provider and subject to Service Provider's reasonable security requirements, to attend at one or more facilities of Service Provider at which the Services are being provided to inspect Confidential Information of BMO Financial Group and Service Provider's compliance with the BMO Financial Group Security Policies and Practices. BMO will provide Service Provider with a written confirmation of the names of BMO's representatives who will conduct the audit with the notification to Service Provider under this clause (a), and
- (b) where Services are being provided to BMO Financial Group at Sites located in the United States, a Government Entity having jurisdiction over BMO and/or its Affiliates and subject to Service Provider's reasonable security requirements, is entitled to attend at one or more facilities of Service Provider at which the Services are being provided to verify Service Provider's compliance with Government Entity legal and regulatory security requirements.

14.4. Payments.

If an Audit reveals that errors have been made in connection with the Service Fees and taxes, then the Parties will work together to correct the error. However, if repeated Audits reveal that there are consistent errors in connection with Charges and taxes, this problem will be escalated through the Relationship Managers.

14.5 Service Provider Audit Scope and Process.

- (1) In addition, Service Provider will supply BMO with other internal Service Provider audit reports at least once per Contract Year (the "Annual Audits").
- (2) Upon completion of any Annual Audit, Service Provider shall provide BMO, and, upon request, BMO Financial Group auditors (who shall execute a form of confidentiality agreement) with: (1) a copy of the Annual Audit report, and (2) written notice and detail of any deficiencies that Service Provider auditors (whether internal or external) found through the Annual Audit (the "Deficiency Notice").
- (3) Service Provider acknowledges and agrees that BMO and its Approved Auditors, upon receiving a copy of the Annual Audit report shall have the right to review the auditor work papers at the auditor premises, as well as interview the auditor personnel who did the actual audit work in the event BMO or Approved Auditors require clarification on the Annual Audit report and work papers.
- (4) Service Provider shall provide BMO and its Approved Auditors with a plan of action to correct the deficiencies set out in the Deficiency Notice, which plan of action shall at the minimum include: (1) details of actions to be taken by Service Provider and/or Service Provider Subcontractors to correct the deficiencies, and (2) target dates for successful correction of the deficiencies ("Action Plan"). Service Provider shall provide the Action Plan within thirty (30) days after Service Provider provided BMO with the Deficiency Notice.
- (5) If requested by either Party, the Parties shall discuss the results of any Audit performed pursuant to this Agreement and, if any objective deficiency is identified, then Service Provider shall pay to correct such deficiency, otherwise the Parties will use Change Process to address any other Changes to the Services, including without limitation changes to Subcontractors.

14.6 Audit Costs.

The costs of Audits shall be borne as follows:

- (a) Service Provider shall be responsible for its costs to perform, including its Subcontractor audit costs and for its Annual Audits, and its reasonable cooperation and provision of access for BMO Financial Group Audits; and
- (b) BMO shall be responsible for all costs associated with BMO Financial Group Audits, other than Service Provider's reasonable cooperation and provision of access.

14.7 Records Retention.

- (1) Service Provider shall maintain records relating to the Services and Service Fees in accordance with Service Provider's generally accepted accounting principles and business practices.
- (2) Notwithstanding (1), during the Term, the Parties will use Change Process to implement any changes in applicable records retention practices and procedures to satisfy BMO Financial Group's regulatory and business requirements, provided that BMO agrees to pay the reasonable costs and charges associated with any additional records retention services or other changes to Service Provider's standard practices and procedures, including any required records retention after the Term.

14.8 Revised OSFI Guideline B-10.

Service Provider expressly acknowledges and agrees that: (a) in December 2003 OSFI published a revised guideline that sets out OSFI's expectations for federally regulated financial institutions as well as its subsidiaries and affiliates when outsourcing certain business functions to a third party ("**Revised Guideline B-10**"), (b) BMO Financial Group is obliged to comply with Revised Guideline B-10, and (c) the following provisions shall apply:

- (1) OSFI shall be entitled to exercise the contract rights of BMO Financial Group relating to the audit and inspection rights pursuant to this Agreement and accompany BMO Financial Group (or Approved Auditors) in BMO Financial Group's exercise of its audit and inspection rights,
- (2) OSFI shall have access to and make copies of any internal audit reports (and associated working papers and recommendations) prepared by or for Service Provider in respect of the Services, subject to OSFI agreeing to sign appropriate confidentiality documentation in form and content satisfactory to the Service Provider, and
- (3) Service Provider agrees to provide, upon BMO's commercially reasonable request, such written confirmations and/or attestations in relation to the performance of the Services and BMO Financial Group requirements to comply with the requests of any Government Entity or Applicable Law, including Revised Guideline B-10.

15.0 LIMITATION OF LIABILITY

15.1 General Intent.

Subject to the liability restrictions below, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching party as a result of the breaching Party's failure to perform its obligations in the manner required by the Agreement. Service Provider's limitations of liability under this Article 15.0 and its promises to indemnify as set out in this Agreement apply severally under the Agreement and under the applicable Schedule. BMO's limitations of liability under this Article 15.0 and its promises to indemnify as set out in Article 16.0 apply to any Service Provider claim severally under the Agreement and applicable Schedule.

15.2 Use of Insurance.

Any limitation of liability set out in this Agreement shall not affect Service Provider's obligations to pay BMO or its Affiliates the amount of a loss that BMO and/or its Affiliates may suffer when such loss is covered by the

insurance provisions set out in this Agreement and notwithstanding that such loss is greater than the limitation of liability.

15.3 Liability Restrictions.

- (1) Except as otherwise provided in the Agreement or in a Schedule in no event, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), shall a Party be liable for any indirect, consequential, exemplary, punitive, incidental, or special damages or lost profits, event if such Party has been advised of the possibility of such damages in advance.
- (2) Except as otherwise provided in the Agreement or in a Schedule, each Party's total liability to the other, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to an amount equal to the total charges payable to Service Provider pursuant to the Agreement (including all Schedules current and in place at the time the cause of action arose) for proper performance of the Services for the twelve months prior to the month in which the cause of action (except for the purposes of including the charges and other amounts for a particular Schedule that has not been in existence for 12 months before the cause of action arose, then the charges and other amounts payable under that Schedule for the number of months following a Schedule Effective Date for that particular Schedule, divided by the number of months the Schedule was in effect before the cause of action arose, multiplied by 12) immediately preceding the month in which the event giving rise to the liability occurred.
- (3) Service Credits do not count against and do not reduce the amounts available under the foregoing limitations.
- (4) Where Service Provider is the defaulting Party, the limitations set out in Section 15.3 shall not apply with respect to: (1) damages occasioned by the willful misconduct or gross negligence of the Service Provider, Service Provider Affiliates, Subcontractors and their respective officers, directors, employees and agents, (2) claims that are the subject of indemnification, (3) damages occasioned by breach of Service Provider, Service Provider Affiliates, Subcontractors and their respective officers, directors, employees and agents obligations with respect to confidentiality, privacy or information security, (4) damages occasioned by Service Provider's breach of its obligations with respect to compliance with Applicable Laws, (5) damages occasioned by improper or wrongful termination of the Agreement or the abandonment of the work by Service Provider, (6) damages arising under Section 16.1 (a) (7) personal injury or death to a BMO Indemnitee or damage to BMO's and/or its Affiliates' real property or tangible personal property to the extent caused by the negligence, omission or misconduct of Service Provider, Service Provider Affiliates, Subcontractors and their respective officers, directors, employees and agents, and (8) taxes assessed against BMO Financial Group.
- (5) Where BMO is the defaulting Party, the limitations set out in Section 15.3 shall not apply with respect to: (1) damages occasioned by the willful misconduct or negligence of BMO, (2) claims that are the subject of indemnification, (3) damages occasioned by BMO's breach of its obligations with respect to confidentiality, (4) personal injury or death to a Service Provider Indemnitee or damage to Service Provider's or its Affiliates' real property or tangible personal property to the extent caused by the negligence, omission or misconduct of BMO, and (5) Service Fees owing by Bank of Montreal under this Agreement (taking into account credits and other amounts for which Bank of Montreal is entitled to be reimbursed).

15.4 Duty to Mitigate.

Each Party shall have a duty to mitigate damages for which the other Party is responsible.

- 15.5** The provisions of this Article 15.0 shall apply whether the damages, claims, demands, actions taken or losses suffered by one Party arises as of result of contract, (including without limitation, fundamental breach, tort, (including without limitation negligence or gross negligence)), or any other statutory, legal or equitable grounds.

16.0 INDEMNIFICATION

16.1 Indemnity by Service Provider.

In addition to Service Provider's other obligations to indemnify BMO Indemnitees as set out elsewhere in this Agreement or in any Schedule, Service Provider will indemnify, defend and hold harmless each member of the BMO Financial Group and their respective officers, directors, employees, agents, and contractors and their respective successors and assigns (each a "**BMO Indemnitee**") from and against any and all claims and Losses based upon, resulting from, or allegations of the following:

- (a) infringement of any patent or any copyright, trademark, service mark, trade name, trade secret, Confidential Information or similar intellectual property right, whether conferred by contract or arising under Applicable Laws, by equipment, materials and other resources (including without limitation any information technology, information management and communications services, Service Provider Documentation, and/or equipment, used or provided by Service Provider and Subcontractors in the performance of the Services; provided, however, that Service Provider will have no obligation with respect to any claims or Losses to the extent arising out of or in connection with: (i) a BMO Indemnitee's modification of any software, hardware, Service Provider Documentation or similar resource; (ii) BMO's Indemnitee's combination, operation or use of the equipment, software, Service Provider Documentation or other resources provided by Service Provider, with devices, data, programs or other resources not furnished by Service Provider; (iii) any additional, not preexisting, features of the Services implemented at the request of a BMO Indemnitee where an infringement was necessary in order to follow such specifications (a "BMO Requested Feature"); or (iv) any use by a BMO Indemnitee of devices, data, programs or other resources furnished by Service Provider in a manner contrary to this Agreement, including Service Provider's express instructions or documentation provided pursuant to this Agreement, except to the extent in each case that any of the activities described in Sections (i), (ii), (iii) or (iv) above was at the written request or direction of, or in accordance with specifications required by, Service Provider, in which case Service Provider has the obligation to indemnify, defend and hold harmless; and provided that in the case of (iv) Service Provider is required to provide BMO Indemnitee with a reasonable time period to stop the contravening use; and provided that Service Provider is not liable to indemnify for any infringement to the extent that such infringement by a BMO Indemnitee is not related to the Services, Documentation or Software provided by Service Provider; and provided with respect to (iii) BMO is not liable to indemnify Service Provider or any Service Provider customer with respect to the use by Service Provider or Service Provider's customer of any BMO Requested Feature;
- (b) personal injuries or death to any individual or damage to any tangible personal or real property of third parties including employees and independent contractors of Service Provider and Subcontractors and caused by the tortious conduct, negligence, omission or willful misconduct of Service Provider, its employees and Subcontractors; provided that Service Provider will have no obligation under this Section 16.1 (b) to the extent the same arises out of or in connection with the tortious conduct, negligence, omission or willful misconduct of a member of the BMO Financial Group; and
- (c) Service Provider breaches of its obligations under Section 12.1.

16.2 Indemnity by BMO

BMO will indemnify, defend and hold harmless Service Provider, its Affiliates and their respective officers, directors, employees, agents, and contractors of each of them, and the successors of such officers, directors, employees, agents and contractors and their respective successors and assigns, (each a "**Service Provider Indemnitee**") from and against any and all claims and Losses based upon, resulting from or allegations of the following:

- (a) personal injuries or death to any individual or damage to any tangible personal or real property of third parties including employees and independent contractors of BMO Financial Group and caused by the tortious conduct, negligence, omission or willful misconduct of BMO Financial Group, its employees and agents; provided that BMO will have no obligation under this Section 16.2 (b) to the extent the same arises out of or in connection with the tortious conduct, negligence, omission or willful misconduct of a Service Provider Indemnitee.

16.3 The provisions of this Article 16.0 shall apply whether the Loss or claims, demands, actions taken or losses suffered by one Party arises as of result of contract, (including without limitation, fundamental breach, tort, (including without limitation negligence or gross negligence)), or any other statutory, legal or equitable grounds.

16.4 The reciprocal indemnification obligations set out in Article 16.0 shall survive termination or expiry of this

Agreement and any Schedule.

17.0 DISPUTE RESOLUTION

17.1 *Disputes.*

Any dispute arising under this Agreement or Schedule shall be dealt with in accordance with the escalation process set out in Appendix D.

17.2 *Arbitration.*

If the dispute is submitted to arbitration, the dispute shall be settled by arbitration pursuant to the provisions of the *Arbitration Act, 1991* (Ontario), as amended from time to time. For the avoidance of doubt, the Parties agree to have the arbitration in front of one arbitrator with expertise in outsourcing arrangements and expertise in the functionality of the software in the financial services industry. The arbitration proceedings shall take place in the Municipality of Metropolitan Toronto provided that the arbitration panel may, for the convenience of the Parties and without changing the venue of the arbitration proceeding, take evidence outside of the Municipality of Metropolitan Toronto. In addition to the rules governing such arbitration, the Parties shall have at their disposal the broadest pre-trial document discovery rights as are then available under the laws and judicial rules of the Province of Ontario, provided that any dispute between the Parties relating to discovery shall be submitted to the arbitration panel for resolution. The unsuccessful Party agrees to reimburse the successful party for legal fees and disbursements as directed by the arbitrator.

17.3 *Continued Performance.*

Both Parties shall continue to perform their respective obligations and responsibilities under this Agreement and any Schedule while any dispute is being resolved in accordance with this Article 17.0, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement or the applicable Schedule.

17.4 *Equitable Relief.*

Notwithstanding anything to the contrary in this Agreement, either Party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that Party pending the resolution of the claim, including without limitation, in the event a limitation period is close to expiring.

17.5 *Court Proceedings.*

The provisions of Section 17.1 are not mandatory to be followed for disputes involving a breach of confidentiality, security or privacy, or matters involving Intellectual Property Rights or when BMO or Harris elect to terminate a Schedule under Section 3.5.

18.0 GENERAL

18.1 *Assignment.*

Except as otherwise provided, neither Party may, without the consent of the other (which consent may be withheld for any reason or no reason) assign this Agreement or any of its rights under this Agreement, in whole or in part. Any such proposed assignment or delegation in contravention of this Section shall be null and void. Notwithstanding the foregoing BMO may assign this Agreement to an Affiliate, or to any entity formed under an amalgamation, merger or corporate reorganization involving BMO, including a bank holding company under the *Bank Act* (Canada) upon notice to Service Provider provided such assignee agrees in writing to assume BMO's rights and obligations set out in this Agreement.

18.2 *Notices.*

Any notice, request, demand, consent or other communication required or permitted under this Agreement is to be given in writing by personal delivery, transmitted by facsimile transmission (with evidence of receipt of the facsimile confirmed by the sending party) or sent by registered or certified mail, during normal postal conditions,

postage prepaid, written receipt requested, addressed to the addressees noted below and sent to the address set out on the first page of this Agreement for which it is intended and addressed as follows:

BMO: Bank of Montreal
Attention:
Fax:
Service Provider: Wall Street on Demand, Inc.
5718 Central Avenue
Boulder, CO 80301
Attention: James Tanner
Fax: (303) 444-2586

Either Party may change its address for purposes of receipt of communications by giving not less than ten (10) calendar days prior written notice of the change to the other Party in the manner prescribed above.

Any notice so given is deemed to have been received on the second Business Day following the date it was hand delivered or transmitted by telegram or facsimile machine, or if mailed on the fifth Business Day next following the mailing of the notice during normal postal conditions.

Where notice is given by facsimile the hard copy of the original notice shall be sent by prepaid regular mail within two Business Days after the original notice was sent.

18.3 Waiver of Breach.

No term or provision of this Agreement is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the Party claiming to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.

18.4 Governing Law.

This Agreement shall be governed by, construed and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

18.5 Severability.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, all other provisions will nevertheless continue in full force and effect.

18.6 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, unless they are expressly incorporated by additional reference in the Agreement. The terms and conditions of this Agreement supersede all other terms and conditions submitted by Bank of Montreal or the Service Provider each to the other.

18.7 Agreement Amendments.

This Agreement will not be changed or amended except in writing duly executed by the duly authorized representatives of both Parties.

18.8 Headings.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way are to be construed as defining, limiting, or describing the scope or intent of this Agreement.

18.9 Successors and Assigns.

This Agreement is binding upon and enures to the benefit of the Parties and their respective successors and permitted assigns.

18.10 Cumulative Remedies.

Unless otherwise set out in this Agreement the rights and remedies granted to each Party under this Agreement are cumulative and are in addition to each Party's rights provided by law or otherwise. Each Party may exercise its rights concurrently or separately and the exercise of one remedy is not deemed an exclusive election of that remedy or preclude the exercise of any other remedy.

18.11 Time is of the Essence.

Time shall be of the essence for the time periods referred to in this Agreement.

18.12 Survival.

Any terms and conditions of this Agreement which by their nature extend beyond the term or expiry of this Agreement shall survive the termination or expiry of this Agreement.

18.13 Execution in Counterparts.

This Agreement may be executed in counterparts, each of which is deemed to be an original and all of which together are deemed to be one and the same instrument.

18.14 Third Party Beneficiary.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer on any Person who is not a Party to this Agreement any rights or remedies by reason of this Agreement. This provision does not apply to Harris when Harris has signed a Schedule to this Agreement. In that event and in connection with the applicable Schedule signed by Harris, each of Harris and the Service Provider are entitled to rely on the promises, rights and remedies set out in this Agreement as if Harris has signed the Master Services Agreement, including the Appendices and Exhibits.

18.15 Independent Arrangement.

Bank of Montreal and the Service Provider agree that in performing their obligations under this Agreement, they are acting solely as independent contractors. Nothing in this Agreement constitutes or should be construed as creating a partnership, joint venture or any employer-employee relationship between Bank of Montreal and/or its and the Service Provider and/or its Affiliates.

18.16 Public Announcements.

All media releases, public announcements and other disclosures by either Party relating to this Agreement or any Schedule or the subject matter hereof including promotional or marketing materials shall be coordinated with and approved by the other Party prior to release.

18.17 Use of Trademarks.

No license or right, either directly or by implication is granted by one Party to use the other Party's trade names, trademarks, service marks, slogans, logos or designs for any advertising, promotional or other purpose unless such right is granted in a Schedule or otherwise by separate agreement.

18.18 Currency.

Unless otherwise indicated, all dollar amounts referred to in this Agreement and in the Schedules are in Canadian funds.

18.19 Language.

The Parties have requested that this Agreement and all documents contemplated by this Agreement be drawn up in English. Les parties à la présente ont exigé que cette entente et tous autres documents envisagés par la présente soient rédigés en anglais.

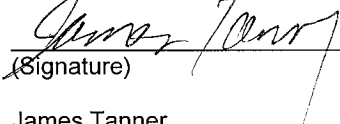
18.20 United Nations Convention.

The application of the United Nations Convention on Contracts for the International Sale of Goods and any local implementing legislation related to the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date and year first above written.

WALL STREET ON DEMAND, INC.

Per:


(Signature)

James Tanner
(Name)

President & CEO
(Title)

12/18/08
(Date)

BANK OF MONTREAL

Per:


(Signature)

CONNIE STEFANKIEWICZ
(Name)

PRESIDENT & CEO BMO INVESTORLINE
(Title)

DEC 23, 2008
(Date)

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New_York