

Chatbot Services Agreement

THIS CHATBOT SERVICES AGREEMENT (the “**Agreement**”) is made and entered into as of the 1st day of April, 2021 (the “**Effective Date**”) by and between Canadian Western Bank (“**Customer**”) and Ficanex Technology Limited Partnership, a limited partnership having its principal place of business at 2902 South Sheridan Way, Suite 202, Oakville, ON, L6J 7L6 (“**FICANEX**”).

RECITALS:

A. **WHEREAS** FICANEX offers the Chatbot Services (as defined herein) and has the right to grant to financial institutions who are members of the FICANEX EXCHANGE Network (as defined herein) the right to access and use the Chatbot Services (as defined herein);

B. **WHEREAS** FICANEX is the provider of additional Services (as described herein) relating to the Chatbot Services;

C. **WHEREAS** Customer is a member of the FICANEX EXCHANGE Network and wishes to receive such right to access and use the Chatbot Services and to engage FICANEX to provide the Services (as described herein).

NOW THEREFORE in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

1. DEFINITIONS

1.1 Definitions

The following terms as used in this Agreement have the following meanings:

“Affiliate” means an entity directly or indirectly, Controlling, Controlled by or under common Control with a Party.

“Applicable Privacy Laws” means applicable data protection legislation, being the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (Alberta); the *Personal Information Protection Act* (British Columbia); and *An Act Respecting the Protection of Personal Information in the Private Sector* (Quebec), as same shall be amended, modified, restated or replaced from time to time.

“Business Information” means all (i) financial, business and Personal Information and data relating to each of the Parties and their respective stakeholders, customers, consultants and employees; (ii) products and services supplied by the Parties; (iii) business plans and strategies of each of the Parties; and (iv) studies, customer lists, charts, plans, tables and compilations of business and/or industry information acquired or prepared by or on behalf of each of the Parties.

“Channel” means the communication or messaging channel(s) described in Schedule A.

“Calendar Year” means the period of time beginning on January 1 and ending December 31, except for the first year of this Agreement which shall begin on the Effective Date and end on December 31.

“Change of Control” means the occurrence of any of the following:

(a) the sale or lease of all or substantially all of the assets of Customer to any other Person or entity other than a direct or indirect wholly-owned subsidiary or parent of Customer; or

(b) a merger, amalgamation, consolidation or other reorganization of Customer with any other entity (other than a direct or indirect wholly-owned subsidiary or parent of Customer) in which Customer respectively is not the surviving entity or becomes owned entirely by another entity, unless at least fifty (50%) percent of the outstanding voting securities of the surviving or parent corporation, as the case may be, immediately following such transaction are beneficially held by the same Persons and/or entities that beneficially held the outstanding voting securities of Customer immediately prior to such transaction, and such outstanding voting securities are beneficially held by such Persons and/or entities in the same proportion as such Persons and/or entities beneficially held the outstanding voting securities of Customer immediately prior to such transaction.

“Chatbot API” means the API that enables the Chatbot Application’s access to User Data.

“Chatbot Application” means the proprietary conversational, artificial intelligence powered customer support assistant that makes the Chatbot Services available to Customer by FICANEX which can access User Data and is deployed through the Channel.

“Chatbot Services” means the: (i) Customer-branded responses to User queries using the Chatbot Application through the Channels; and the (ii) Chatbot API, as further described in Schedule B.

“Computer Technology” means all scientific and technical information or material pertaining to any machine, appliance or process, including specifications, proposals, models, designs, formulae, test results and reports, analyses, simulation results, tables of operating conditions, materials, components, industrial skills, operating and testing procedures, shop practices, know-how and show-how.

“Confidential Information” means the confidential, secret or proprietary information of a Disclosing Party including Intellectual Property Rights, Computer Technology, technical information, Supplemental Confidential Information and Business Information of the Disclosing Party that has been or may hereafter be disclosed, directly or indirectly, to the Receiving Party either orally, in writing or in any other material form pursuant to and in connection with this Agreement. For clarity, the term Confidential Information includes any confidential information provided by any User.

“Control” and its derivatives mean, with regard to any entity, the legal or beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the shares (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.

“Conversation” means an unlimited number of messages between a User and a Chatbot Application through a single Channel within a 24-hour period or upon a hand-off to a live agent. For clarity, if a User initiates (i) a Conversation using a different Channel within a 24-hour period; or (ii) another Conversation following a Conversation that has been handed-off to a live agent, then such Conversation shall be deemed to be a new Conversation.

“Customer Branded Responses” means any customized responses to Users explicitly created by FICANEX for Customer based on information provided by Customer pursuant to the Agreement.

“Customer Indemnified Parties” means Customer and its affiliates, and their respective officers, directors, employees and agents and their respective heirs, executors, administrators, successors and assigns.

“Customer Intellectual Property” has the meaning set out in Section 4.1.

“Disclosing Party” has the meaning set out in Section 8.1.

“Documentation” means all documents, such as but not limited to user guides, user manuals, error logs and reports, and other manuals and reports, whether in printed or electronic format, training guides, flow charts, specifications, file specifications, test plans and test data, screen layouts, data dictionaries, reports, FAQs, registration packages, help screens and manuals relating, as appropriate, to the Services and the Chatbot Services supplied by either FICANEX or its Third Party Providers that are required by or that enable Customer to use the Services and the Chatbot Services, whether in printed or electronic format.

“Effective Date” means the date this Agreement becomes legally effective, as set out on the first page of this Agreement.

“Fee” or “Fees” has the meaning set out in Section 5.1.

“Force Majeure Event” has the meaning set out in Section 13.3.

“FICANEX EXCHANGE Network” means FICANEX’s electronic transaction processing infrastructure and authorization and settlement network.

“FICANEX Indemnified Parties” means FICANEX and its officers, directors, employees and agents and their respective heirs, executors, administrators, successors and assigns and the Third Party Licensors.

“Intellectual Property Rights” means any right that is or may be granted or recognized under any legislation of Canada, any foreign country, or any political subdivision of any country, regarding patents, copyrights, neighbouring rights, moral rights, trademarks, trade names, service marks, domain names, industrial designs, mask work, integrated circuit topography, and any other statutory provision or common or civil law principle regarding intellectual property including trade secrets, or which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or unregistered, and including rights in any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

“Law” means the applicable law, treaty or regulation applicable to the Services or subject matter at issue, including Applicable Privacy Laws.

“Losses” has the meaning set out in Section 12.2.

“Maintenance and Support Services” means the preventative maintenance and support services to be provided by FICANEX to Customer in respect of the Chatbot Services as described in Schedule B and as such Maintenance and Support Services may be amended by FICANEX from time to time.

“Onboarding Services” means the onboarding services to be provided by FICANEX to Customer in respect of the Chatbot Services as further described in Schedule B.

“Party” may refer to FICANEX or Customer, as applicable, and collectively they may be referred to as the **“Parties”**.

“Pattern Data” means non-personally identifiable information, data and reports derived from or compiled through the Chatbot Application, Chatbot Services and Services, including but not limited to demographics data, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Chatbot Application or the Chatbot Services. For greater certainty, Pattern Data is data that does not identify a specific Customer or its Users and is data which does not relate to a specific Customer’s business or locations.

“Permitted Use” means the use by one Party of the Confidential Information of another Party in connection with the using Party’s rights, duties and obligations under this Agreement and where applicable, such rights, duties and obligations that continue after termination of this Agreement. **“Permitted Use”** includes disclosure of Confidential Information to a Party’s employees, contractors, subcontractors, Affiliates and Third Party Providers and Third Party Licensors on a need-to-know basis.

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate or authority.

“Personal Information” means information about an identifiable individual or that may identify an individual as further described under Applicable Privacy Laws.

“Portal” means FICANEX’s customer-only portal that allows Customer to make modifications to Customer branded responses to User requests through the Chatbot Services.

“Receiving Party” has the meaning set out in Section 8.1.

“Renewal Term” has the meaning set out in Section 11.1.

“Rules” means those applicable bylaws, rules, regulations and standards of: (i) the Canadian Payments Association and the Financial Transactions Reporting and Analysis Center of Canada, as same shall be amended, modified, restated or replaced from time to time; and (ii) other such other laws, rules and regulations applicable to Customer, the Services and the Chatbot Services.

“Service Level” means the specific quality and quantity of performance that will be required for the Chatbot Services as described the Service Level Agreement.

“Service Level Credits” means those amounts that may be recovered by Customer if FICANEX fails to meet or exceed the specified Service Levels in connection with the Chatbot Services, as described in the Service Level Agreement.

“Service Level Agreement” means the service level agreement for the Chatbot Services attached hereto as Schedule C, as may be amended by FICANEX from time to time.

“Services” means all of the services to be provided by FICANEX, its Affiliates and Third Party Providers hereunder (which for greater clarity, includes but is not limited to Onboarding Services and Maintenance and Support Services).

“Supplemental Confidential Information” means any information in writing or electronic form received from or belonging to the Disclosing Party that is marked or identified as confidential or proprietary, or any other oral or visual information identified as confidential at the time of disclosure that is summarised in writing by the Disclosing Party and provided to the Receiving Party within a period of ten (10) calendar days thereafter in written form promptly after the oral or visual disclosure or any information which is, by its very nature, confidential.

“Territory” means Canada.

“Third Party Providers” means any party retained by FICANEX to provide Services, the Chatbot Services, on behalf of or otherwise to fulfill an obligation of FICANEX under this Agreement.

“Third Party Lessor” means a Person not a party to this Agreement that owns certain Intellectual Property Rights contained in the Chatbot Services that has granted FICANEX the right to sublicense and use such portions of the Chatbot Services in accordance with this Agreement.

“Transaction” means a transaction initiated by a User through the Chatbot Services. Such Transactions shall be limited to: (i) inter-account transfers between a User’s accounts held with Customer; (ii) a mini statement of a User’s recent transactions; and (iii) User account balance inquiries.

“User” means those natural persons who are the ultimate end users of the Chatbot Services.

“User Data” means any data relating to Users which FICANEX or its Third Party Providers receives, procures, gathers, stores, processes or has access to, which may include Personal Information.

“User Terms and Conditions” has the meaning set out in Section 7.3.

2. GRANT OF RIGHTS

- 2.1** Subject to the terms of this Agreement, FICANEX hereby grants to Customer a limited, revocable, non-exclusive, non-transferrable right and license to access, use, offer, distribute, sublicense (solely to customer's agents, suppliers, affiliates, contractors and subcontractors (collectively, the “**Approved Sublicensees**”)) and market and make available the Chatbot Services to its Users in the Territory for the purposes of providing automated customer support to such Users. In order to receive the licenses granted above, Customer shall pay to FICANEX all applicable undisputed Fees.
- 2.2** FICANEX and its Third Party Licensors retain all right title and interest in and to the Chatbot Application and the Chatbot Services, as applicable, not specifically granted herein. Nothing in this Agreement shall have the effect of transferring any right or title in the Chatbot Application or the Chatbot Services to Customer or any third party. Customer acknowledges and agrees that it has no right, license or authorization with respect to any of the Chatbot Application or the Chatbot Services, except as expressly set forth in this Agreement. Subject to Section 9.3, all other rights in and to the Chatbot Application and the Chatbot Services are expressly reserved by FICANEX and its Third Party Licensors.

3. RESTRICTIONS ON USE

- 3.1** Customer will ensure that its use of the Chatbot Services is in compliance with this Agreement. Other than for the purposes outlined in this Agreement, Customer shall not directly or indirectly license, sublicense, sell, resell, lease, transfer, assign, distribute, time share or, otherwise make available the Chatbot Services available to any third party including making the Chatbot Services available through any file-sharing method or any application hosting service.
- 3.2** Customer will also not, except to the extent expressly agreed upon in writing by FICANEX or enforcement is prohibited by applicable law, directly or indirectly: (a) modify, rent, loan, sublicense, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Chatbot Application or the Chatbot Services; (b) circumvent any user limits or other use restrictions that are built into the Chatbot Application or the Chatbot Services; (c) remove any proprietary notices, labels, or marks from the Chatbot Services; (d) access the Chatbot Application or the Chatbot Services in order to: (i) build a competitive product or service; or (ii) copy any ideas, features, functions or graphics of the Chatbot Application or the Chatbot Services; or (e) use the Chatbot Application or the Chatbot Services in a manner that: (i) infringes or violates the Intellectual Property Rights or any other rights of anyone else (including FICANEX); (ii) violates any law or regulation, including any applicable export control laws; (iii) is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable; (iv) violates the security of any computer network, or cracks any passwords or security encryption codes; or (v) runs any form of auto-responder or “spam” on the Chatbot Application or the Chatbot Services, or any processes that run or are activated while Customer is not logged into the Chatbot Application or the Chatbot Services, or that otherwise interferes with the proper working of the Chatbot Application or Chatbot Services including by placing an unreasonable load on the Chatbot Application’s or the Chatbot Service’s infrastructure).

- 3.3** During the Term, Customer will notify FICANEX if Customer becomes aware of an infringement or misuse of the Intellectual Property Rights of FICANEX and its Third Party Licensors. Customer will comply with all reasonable requests made by FICANEX in relation to the protection of its Intellectual Property Rights hereunder.

- 3.4** If Customer becomes aware of any unauthorized decompilation or infringement of the Chatbot Application or the Chatbot Services or any component thereof by any third party, including by a User, it will promptly alert FICANEX of such activity and provide the identity of such third party to FICANEX. Customer will provide FICANEX with all reasonable assistance required by FICANEX to assert its rights against such third party and to the proceeds of such unauthorized activity.

4. ONBOARDING, MAINTENANCE AND SUPPORT SERVICES; SERVICE LEVELS

- 4.1** FICANEX shall provide Onboarding Services to Customer. If agreed to by the Parties, FICANEX shall brand the Chatbot Services supplied to Customer under such Customer's logo, trademark, name and other materials supplied by Customer (collectively, “**Customer Intellectual Property**”). Customer hereby grants to FICANEX a non-exclusive, royalty-free, revocable license to use Customer Intellectual Property solely for the purposes of providing

the Onboarding Services, during the Term. Any use of Customer Intellectual Property must be pre-approved and must comply with Customer's branding guidelines, provided to FICANEX from time to time.

- 4.2** FICANEX shall provide the Maintenance and Support Services for the Chatbot Services.
- 4.3** FICANEX shall use commercially reasonable efforts to ensure that at all times during the Term that the Chatbot Services perform in accordance with the Service Levels outlined in the Service Level Agreement. If FICANEX fails to meet a Service Level for reasons other than those specified in Section 4.4 below or in the applicable Service Level, Customer shall have the option to recover the applicable amount of Service Level Credit as specified in the Service Level Agreement which, subject to this Section 4.3, shall be Customer's sole remedy with respect to the failure to meet such Service Level. FICANEX shall apply Service Level Credits to Customer, as an offset from Fees otherwise payable or as otherwise agreed by the Parties, within fifteen (15) days after the end of the month in which such failure occurred or as otherwise mutually agreed by the Parties in writing. In the event of a failure to meet the applicable Service Level to resolve Severity 1 Problems or Severity 2 Problems in any three (3) months in a consecutive six (6) month period, Customer may terminate the Chatbot Services without liability or termination fees upon providing thirty (30) days prior written notice. If Customer elects to terminate, Customer shall pay to FICANEX all Fees due for the Chatbot Services up to the date of termination.

- 4.4** Customer shall not be entitled to receive Service Level Credits if FICANEX's failure to meet a Service Level is directly attributable to either (i) an event of Force Majeure as set out in Section 13.3, (ii) a failure of Customer or its Users to meet its obligation under this Agreement; (iii) a failure of Customer's or its Users' hardware or supporting infrastructure to support the Services or the Chatbot Services; (iv) the actions or omissions of Customer or its Users; or (v) use of the Chatbot Services for any purpose other than that for which they were intended.

- 4.5** FICANEX and Customer shall make available the Chatbot Services to Customer's Users in accordance with the timelines described in Schedule B.

5. FEES

- 5.1** Customer shall pay to FICANEX the fees, including the Subscription Fees as of the Effective Date, specified in the Schedule A (collectively, the "**Fees**") within thirty (30) days of Customer's receipt of an invoice.

- 5.2** FICANEX may modify the Fees once per Calendar Year. FICANEX shall provide Customer with at least thirty (30) days' notice prior to modifying such Fees. Upon receipt of such notice, Customer may elect to accept or reject FICANEX's modification to the Fees. If Customer wishes to reject the modification to the Fees, Customer shall provide notice in writing to FICANEX prior to the date the Fee modification is to take effect (the "Modification Date") rejecting the modification to the Fees and terminating this Agreement as of the Modification Date. If Customer elects to terminate, Customer shall pay to FICANEX all Fees due for the Chatbot Services up to the date of termination. If Customer does not provide notice of termination to FICANEX prior to the Modification Date, Customer shall be deemed to have accepted the modification to the Fees as outlined in FICANEX's initial notice.

6. MODIFICATIONS AND THIRD PARTY PROVIDERS

- 6.1** FICANEX will not charge Customer for any updates to the Chatbot Services that are standard releases. If any governmental entity or regulator, industry standards setting body, or other third party mandates (or any changes made by such third party require) industry wide modifications that impact the Chatbot Services or the Services, then FICANEX may pass on to Customer the costs and charges associated with such modifications on a pro-rata basis.

- 6.2** If Customer requires specific modifications to the Chatbot Services or the Services or if such changes are required of Customer by a governmental entity or regulator, industry standards setting body, or other third party, FICANEX shall provide, at Customer's request and pursuant to a mutually agreed upon timeline and project plan, modifications to the Chatbot Services or the Services pursuant to Customer's requirements. Customer shall pay FICANEX for such services on a time and materials basis at FICANEX's or its Third Party Providers' then current rates.

- 6.3** FICANEX may modify the Chatbot Services and the Services, at any time, in its sole discretion, provided that those changes do not materially degrade performance of the Chatbot Services and the Services. Customer will be required to implement such modifications within the specified time period provided by FICANEX at the time of such release.

- 6.4** FICANEX shall have the right to subcontract all or any portion of the Services or the provision of the Chatbot Services to Third Party Providers upon ten (10) Business Days' prior notice to the Customer. In the event FICANEX engages any Third Party Providers to assist its performance hereunder, it shall be responsible for the compliance of such Third Party Provider with the terms hereof applicable to FICANEX.

7. CUSTOMER OBLIGATIONS

- 7.1** In performing its obligations and responsibilities under this Agreement, FICANEX shall be entitled to rely on all information, data and instructions provided by Customer, Users or third parties on Customer's behalf to FICANEX.
- 7.2** Customer shall comply with all Rules, Law and industry standards applicable to Customer's business or use of the Chatbot Services. Customer shall promptly notify FICANEX of any changes in Law or Rules of which it becomes aware that would impact the Chatbot Services.
- 7.3** Customer shall make available the Chatbot Services to its Users pursuant to an electronic or written agreement with each User (the "**User Terms and Conditions**"). FICANEX shall not be a party to the User Terms and Conditions. The User Terms and Conditions shall:
- (a) afford FICANEX and its Third Party Licensors no less protection in terms of limitation of liability, confidentiality and protection of Intellectual Property Rights than this Agreement offers FICANEX and its Third Party Licensors;
 - (b) obtain any and all such consents as may be required for Customer, FICANEX and its Third Party Providers to collect, store and disclose User Data, including Personal Information, in accordance with Applicable Privacy Laws for collection, use and processing hereunder;
 - (c) not grant the User or any other third party any right of action against FICANEX or its Third Party Licensors;
 - (d) restrict use of the Chatbot Services for only lawful purposes by the Users;
 - (e) require that the Users comply with all Rules, Law and industry standards applicable to use of the Chatbot Services; and
 - (f) require that the Users adhere and conform to the prohibitions below:
- (i) User obtains no right to modify, duplicate or reverse-engineer any aspect of the Chatbot Services;
 - (ii) User will also not, directly or indirectly: (a) modify, rent, loan, sublicense, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Chatbot Services; (b) circumvent any user limits or other use restrictions that are built into the Chatbot Services; (c) remove any proprietary notices, labels, or marks from the Chatbot Services; (d) access the Chatbot Services in order to: (i) build a competitive product or service; or (ii) copy any ideas, features, functions or graphics of the Chatbot Services; or (e) use the Chatbot Services in a manner that: (i). infringes or violates the Intellectual Property Rights or any other rights of anyone else (including FICANEX); (ii). violates any law or regulation, including any applicable export control laws; (iii). is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable; (iv) violates the security of any computer network, or cracks any passwords or security encryption codes; or (v). runs any form of auto-responder or "spam" on the Chatbot Services, or any processes that run or are activated while the User is not logged into the Chatbot Services, or that otherwise interferes with the proper working of Chatbot Services including by placing an unreasonable load on the Chatbot Service's infrastructure);;
 - (iii) During the Term, Users will notify Customer who shall in turn notify FICANEX if the User becomes aware of an infringement or misuse of the Intellectual Property Rights of FICANEX. User will comply with all reasonable requests made by FICANEX in relation to the protection of its Intellectual Property Rights hereunder; and
 - (iv) If User becomes aware of any unauthorized decompilation or infringement of the Chatbot Services or any component thereof by any third party, it will promptly alert FICANEX of such activity and provide the identity of such third party to FICANEX. User will provide FICANEX with all reasonable assistance required by FICANEX to assert its rights against such third party and to the proceeds of such unauthorized activity.
- 7.4** During the Term, Customer shall promptly notify FICANEX of any material breach of the User Terms and Conditions or breach of security safeguards involving Customer or a User if such breach or breach of security safeguards could have a negative impact upon the Chatbot Services.
- 7.5** Customer may use the Portal to make modifications to Customer branded responses to Users through Chatbot Services.

8. CONFIDENTIALITY AND DATA SECURITY

8.1 Disclosure and Limits on Use. A Party receiving (the “**Receiving Party**”) any Confidential Information of the other Party (the “**Disclosing Party**”) shall not use such Confidential Information for any purpose other than the Permitted Use and will not copy or disclose the same to third parties except as authorized by the Disclosing Party or as required by Law. Except as otherwise provided in this Agreement, neither Party shall use the Confidential Information of the other Party for any purpose except for a Permitted Use during the Term of this Agreement and, where applicable, following termination of this Agreement. In particular, and not by way of limitation of the foregoing, neither Party shall use the Confidential Information of the other Party for any commercial purpose, or for any operational purpose (other than in connection with the Permitted Use).

8.2 Obligations of the Parties. Each Party shall:

- (a) maintain the secrecy of the Confidential Information using the same means that it uses, or would reasonably be expected to use, to protect its own confidential and proprietary information of a similar nature as the Confidential Information received from another Party;
- (b) subject to Section 8.3, not disclose any Confidential Information to a third party without the prior written consent of the Disclosing Party;
- (c) only disclose the Confidential Information to the Receiving Party’s representatives who have a need to know the information to carry out their duties and obligations and to exercise any rights pursuant to this Agreement; and
- (d) not use any Confidential Information for any purposes other than the Permitted Use;
- (e) make copies or partial copies of the Confidential Information only as required for its Permitted Use;
- (f) notify the Disclosing Party promptly in writing in the event of any loss or inability to account for Confidential Information; and
- (g) ensure that any copies permitted under this Article 8 will bear the same Disclosing Party or third party proprietary and confidential notices and legends that appear on the original information.

8.3 Permitted Disclosures. A Party will not have violated the terms of this Article 8 for disclosing Confidential Information of the other Party:

- (a) to such Party’s directors, officers, employees, agents, subcontractors, professional advisers, and other representatives who need to know the information for the purposes of this Agreement, who are informed of the confidential nature of the Confidential Information and who agree to comply, in writing, with the requirements of this Article 8;
- (b) to third parties, including Third Party Providers, Affiliates and Third Party Licensors as applicable, performing Services and providing the Chatbot Services required under this Agreement where use of such Confidential Information by such third party is authorized under this Agreement, and such disclosure is necessary in the natural course of the third party’s duties; provided in each case that such third party has executed a written confidentiality agreement enforceable by a Party hereto under which the third party is obligated to maintain the confidentiality of the Confidential Information and is liable for any violations thereof; or
- (c) as required to comply with any applicable Law, provided that as soon as feasible, the Party will notify the other Party of the disclosure or possible disclosure under this Section 8.3 and will use all commercially reasonable efforts to provide the Confidential Information under conditions of confidentiality, subject to the Applicable Privacy Laws.

8.4 Exceptions. For purposes of this Article 8, Confidential Information (other than Personal Information) will be deemed not to include any of the following:

- (a) information that has been published or that has otherwise entered the public domain without a breach of this Agreement or a breach of any applicable Law;
- (b) information that has been received in good faith by the Receiving Party from a third party having legitimate possession of the information disclosed and the right to make such disclosure;
- (c) information that was already in the Receiving Party’s possession or was known to the Receiving Party before its disclosure by the Disclosing Party, or before it was otherwise obtained by the Receiving Party in connection with this Agreement;

(d) information that is required to be disclosed by Law or judicial process, by an order of an authority or tribunal such as the Information and Privacy Commissioner, governmental authorities so long as the Receiving Party provides the Disclosing Party with reasonable prior notice of such requirement in order to permit the Disclosing Party to interpose an objection or seek an appropriate order to prevent or limit such disclosure (but such information shall be deemed not to be Confidential Information only for the purposes of disclosure in accordance with this paragraph and shall retain its status as Confidential Information for all other purposes);

(e) information that has been disclosed by the Receiving Party to a third party with the prior written consent of the Disclosing Party; and

(f) information that is independently developed by the Receiving Party without a breach of confidentiality under this Agreement or any other agreements.

8.5 Return/Destruction of Confidential Information. Each Party shall have the right to demand at any time the immediate return of its respective Confidential Information and any and all copies thereof, if any, in the possession of the other Party and that the other Party has provided to any third parties. The Party receiving such request shall, within thirty (30) days of receiving such request, return such Confidential Information, together with any and all copies thereof and will immediately destroy any and all memoranda, notes, reports, documents, and software containing copies, extracts or reproductions thereof in its possession, power or control. Upon request, each Party will certify the return and/or destruction of the Confidential Information by a certificate of one of its senior officers. The return of such documents shall in no event relieve either Party of its obligations of confidentiality set out in this Agreement with respect to such returned Confidential Information.

8.6 In performing its obligations under this Agreement, each Party shall comply with all applicable data protection legislation, including the Applicable Privacy Laws. Each Party shall take all necessary measures to safeguard and prevent the misuse of all Personal Information disclosed to it under this Agreement.

8.7 Upon the expiration or termination of this Agreement, each Party shall complete the procedures outlined in Section 8.5 regarding the return and destruction of Confidential Information.

8.8 Each Party shall be liable for the compliance of its directors, officers, employees, agents, subcontractors and third parties (including ,without limitation, Third Party Providers, Affiliates and Third Party Licensors, as applicable) to whom such Party discloses the Confidential Information of the other Party.

8.9 Compliance and Data Security

(a) During the Term, each Party shall perform its obligations under this Agreement in compliance with appropriate industry standards, as applicable.

(b) FICANEX and Customer shall be responsible for the security of data on their respective systems. In addition to the foregoing, FICANEX shall comply with all Rules, Laws and industry standards applicable to the performance of FICANEX's obligations under this Agreement. During the Term, FICANEX shall regularly, at least once per calendar year, conduct security audits of its systems and the Chatbot Services, data security testing, penetration testing, disaster recovery and business continuity plans, and will require PCI compliance and secure PCI DSS certification with respect to the central switch provider. FICANEX shall make available to the Customer through the Portal a summary of the findings from such audits.

(c) FICANEX shall, so long as it is in possession, custody or control of Customer Data:

(i) use reasonable physical, organizational and technological security measures to protect Customer Data against loss, theft and unauthorized access, disclosure, copying, use, or modification, and otherwise as may be specified by Customer pursuant to this Section;

(ii) within twenty-four (24) hours, notify Customer of (A) any loss, theft or accidental or unauthorized access, disclosure, copying, use, or modification of Customer Data and (B) any disclosures made or proposed to be made that are required by Law unless such notification to Customer is expressly prohibited by applicable Law;

(iii) upon termination of this Agreement or upon request of Customer, whichever comes first, promptly return to Customer or, at the direction of Customer, dispose of all Customer Data, in each case using reasonable physical, organizational and technological security measures to protect such Customer Data against loss, theft and unauthorized access, disclosure, copying, use, or

modification, except if record keeping of such Customer Data is required by applicable Law and then only for the period required under applicable Law;

- (iv) designate an individual to handle all aspects of performance of its obligations hereunder that relate to the handling of Customer Data, whose name and contact details and any changes thereof shall be communicated to Customer upon request;
 - (v) on not less than three (3) prior Business Days' notice in writing and during normal business hours, permit Customer or its designees and its regulators to inspect any Customer Data in its custody or possession in connection with this Agreement and to audit its compliance with its obligations described in this Section, including, without limitation, the security measures and internal controls used to protect Customer Data, and FICANEX shall permit Customer, its designees and its regulators to enter onto its premises for such purposes, and shall otherwise promptly and properly respond to all reasonable inquiries from Customer with respect to its handling of Customer Data in connection with this Agreement; and
- (d) FICANEX shall promptly suspend the Customer's access to the Chatbot Services, upon the direction of the Customer, if the Customer, acting reasonably, suspects that the Chatbot Services is being accessed or used by a third party or a User for fraudulent purposes.
- (e) During the Term, FICANEX shall within twenty-four (24) hours notify the Customer of any breach of security safeguards involving FICANEX of which it becomes aware if such breach or breach of security safeguards could materially impact the security of the Customer's systems or the Chatbot Services.

(f) FICANEX shall maintain servers and backup servers that store or process Customer Data in Canada.

(g) If an audit conducted pursuant to this Agreement reveals any material error, deficiency or other failure to perform the Services on the part of FICANEX, FICANEX will, as soon as reasonably possible following the date on which FICANEX becomes aware of such material error, deficiency or other failure to perform, prepare and execute a corrective action plan to correct such material error, deficiency or other failure to perform. Upon receipt of a written request from Customer, FICANEX will provide a copy of the corrective action plan to Customer.

9. PATTERN DATA AND MACHINE LEARNING

9.1 FICANEX or its Third Party Licensors may freely use any suggestions, feedback or ideas Customer or its Users may provide (collectively, "**Feedback**"). By providing Feedback, Customer and its Users grant FICANEX and its Third Party Licensors a perpetual, worldwide, fully transferable, sublicensable, non-revocable, royalty free, license to use the Feedback for any purpose, including, but not limited to, modifying and improving the Chatbot Application, the Chatbot Services or FICANEX's or its Third Party Licensors' other current and future services/products, services advertising or marketing materials without any payment or other further obligation to Customer or its Users.

9.2 In the course of FICANEX providing Customer with access to the Chatbot Services and the Services, FICANEX, its Third Party Licensors and the Chatbot Application will develop, create and accrue additional machine learning which will be incorporated into the Chatbot Application and the Chatbot Services ("**Machine Learning**"). All right, title and interest in and to the Machine Learning and Pattern Data, including all Intellectual Property Rights therein are and will remain with FICANEX or its Third Party Licensors. Customer acknowledges and agrees that it or its Users have no right, license or authorization with respect to any of the Machine Learning or Pattern Data.

9.3 As between Customer and FICANEX and its Third Party Licensors, Customer owns and retains ownership of content and data that Customer provides, stores or processes through the Chatbot Services including User Data and any other Personal Information Customer provides about its Users ("**Customer Data**") and Customer Branded Responses. Customer hereby grants FICANEX and its licensors a worldwide, royalty-free, and non-exclusive license to access Customer Data in order to: (a) provide the Chatbot Services and the Services; (b) create Pattern Data and Machine Learning, provided that all Customer Data and Customer Branded Responses is filtered from the Pattern Data or Machine Learning and anonymized in such a way that it cannot be linked to Customer or a User; and (c); otherwise use anonymized Pattern Data (including without limitation the content of User interactions with Customer through the Chatbot Services and the Services) for the purpose of improving the Chatbot Application, the Chatbot Services and the Services.

9.4 Customer is responsible for any and all content provided by Customer or its Users hereunder and for Customer's compliance with this Agreement including obtaining all necessary licenses, permissions and consents to allow FICANEX and its Third Party Providers to collect, use, host, process and disclose Customer Data in accordance with its rights and obligations under this Agreement. For greater certainty, Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Chatbot Services and notify FICANEX promptly of any such unauthorized access or use. If Customer will be using the Chatbot Services to process Personal Information of residents of the European Economic Area, Customer is responsible for notifying FICANEX and entering into any further data processing agreements required by applicable laws.

9.5 Upon request by Customer during the Term or within 90 days of termination, FICANEX shall provide Customer with a copy of Customer Data, including Chatbot questions and answers developed during the Term.

10. REPRESENTATIONS AND WARRANTIES

10.1 FICANEX hereby represents and warrants to Customer as follows:

(a) FICANEX shall use commercially reasonable efforts to ensure that the Chatbot Services provided by FICANEX do not contain or will not contain any disabling mechanism, protection feature or software code designed to prevent its use or that would prevent the Chatbot Services from substantially conforming to the Agreement, such codes to include any clock, timer, counter, computer virus, worm, software lock, drop dead device, malware, rootkit, Trojan horse routine, trap door, time bomb or any other codes or instructions that may be used to access, modify, replicate, distort, delete, damage or disable the Chatbot Services or Customer's software or computer systems or that would materially interfere with Customer's ability to use and make available access to the Chatbot Services as contemplated by this Agreement;

(b) FICANEX has all necessary rights and licenses to the Chatbot Services to grant Customer the rights as described herein; and

(c) FICANEX will perform the Services in good faith and in a professional manner consistent with industry practices and in accordance with the Schedules attached hereto.

10.2 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 ABOVE, THE CHATBOT SERVICES IS PROVIDED ON AN "AS IS" "AS AVAILABLE BASIS. THE REPRESENTATIONS AND WARRANTIES IN SECTION 10.1 OF THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY QUALITY, FITNESS OR ADEQUACY FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS, CAPACITY, OR THAT THE OPERATION OF THE CHATBOT SERVICES OR THE SERVICES PROVIDED BY FICANEX ARE ERROR FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FICANEX, ITS DIRECTORS, OFFICERS, CONTRACTORS, EMPLOYEES, AGENTS, THIRD PARTY LICENSORS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, SUPPLY, OR DELIVERY OF THE CHATBOT SERVICES OR THE SERVICES PROVIDED BY FICANEX WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THESE WARRANTIES AND CUSTOMER AND ITS USERS MAY NOT RELY ON SUCH INFORMATION OR ADVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES AND CONDITIONS SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER AND ITS USERS. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER SHALL FAIL OF ITS ESSENTIAL PURPOSE. CUSTOMER HAS ACCEPTED THE DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE SERVICES AND UNDERSTANDS THAT THE PRICE OF THE PRODUCTS AND SERVICES WOULD BE HIGHER IF FICANEX WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.

10.3 Customer hereby represents and warrants to FICANEX as follows:

(a) it is a duly licensed Canadian financial institution; and

(b) Customer has obtained (or will obtain prior to making Chatbot Services available to Users) all necessary consents from Users or otherwise as may be required to collect, use, store and disclose User Data in accordance with Law, including Applicable Privacy Laws as contemplated by this Agreement.

10.4 FICANEX does not represent, warrant or undertake that the User Data available through the Chatbot Services will at all times be accurate, error-free, up-to-date or complete.

11. TERM & TERMINATION

11.1 This Agreement shall commence upon the Effective Date and shall terminate three (3) years thereafter (the “**Initial Term**”) unless otherwise terminated by a Party as described in this Article 11. The Parties may, upon mutual written agreement, at least six (6) months prior to the expiry of the Initial Term (or any Renewal Term, as described below) renew this Agreement for additional three (3) year terms (each a “**Renewal Term**”) commencing at the end of the Initial Term or a Renewal Term, as applicable. The Initial Term, together with all Renewal Terms (if applicable), are collectively defined as the “**Term**”.

11.2 Termination Rights of Customer. Customer may terminate this Agreement as follows:

- (a) FICANEX commits a material breach of a material obligation under this Agreement and does not cure such breach within forty-five (45) days of receiving notice from Customer (if such failure is capable of being cured);
- (b) immediately, if FICANEX ceases to have the right to utilize the FICANEX EXCHANGE Network;
- (c) immediately, in the event that any Rules or Law prohibit FICANEX from continuing to provide the Services, Chatbot Services or if FICANEX fails to comply with Rules or Law;
- (d) immediately, if FICANEX breaches its confidentiality obligations as described in Article 8 and such violation is determined by Customer, in its sole discretion, to subject Customer or its Users to a real risk of significant harm; or
- (e) immediately, if FICANEX makes a material misrepresentation or omission or provides materially inaccurate information to Customer which in the sole opinion of Customer, acting reasonably, subjects Customer to a real risk of significant harm.

11.3 Termination Rights of FICANEX. FICANEX may terminate this Agreement as follows:

- (a) Customer commits a material breach of a material obligation under this Agreement and does not cure such breach within forty-five (45) days of receiving notice from FICANEX (or such longer period if FICANEX agrees, if such failure is capable of being cured);
- (b) in the event that Customer’s or a User’s use or misuse of the Chatbot Services compromises, in the reasonable opinion of FICANEX, the security or integrity of the Chatbot Services and Customer is unable to cure such breach within thirty (30) days of receiving notice from FICANEX;
- (c) immediately, if FICANEX ceases to have the right to utilize the FICANEX EXCHANGE Network or that Customer is no longer a member of the FICANEX EXCHANGE Network;
- (d) immediately, in the event that any Rules or Law prohibit FICANEX from continuing to provide the Services, Chatbot Services or if Customer fails to comply with Rules or Law;
- (e) immediately, if Customer breaches its confidentiality obligations as described in Article 8 and such violation is determined by FICANEX, in its sole discretion, to subject FICANEX to a real risk of significant harm.
- (f) immediately, if Customer makes a material misrepresentation or omission or provides materially inaccurate information to FICANEX which in the sole opinion of FICANEX, acting reasonably, subjects FICANEX to a real risk of significant harm; or
- (g) immediately, if Customer undergoes a Change of Control which as determined by FICANEX, acting reasonably, adversely affects Customer’s ability to satisfy some or all of its material obligations under the Agreement.

11.4 Right to Suspend. Notwithstanding Section 11.3(b), FICANEX may immediately suspend Customer’s or a User’s access to the Chatbot Services without notice to Customer if: (i) Customer’s or a User’s use or misuse of the Chatbot Services compromises, in the reasonable opinion of FICANEX, the security or integrity of the Chatbot Services; or (ii) FICANEX reasonably suspects or determines that there is a malfunction, abuse, degradation or instability in the Chatbot Services or the Services.

11.5 Duties Upon Termination. Upon expiration or termination of this Agreement for any reason whatsoever, all of Customer’s rights hereunder will terminate immediately, except as otherwise provided herein and Customer shall, and require its Users to, immediately cease using the Chatbot Services and Services.

12. INDEMNITIES

12.1 Infringement Indemnity.

(a) FICANEX will defend, indemnify and hold harmless the Customer Indemnified Parties at FICANEX's expense, from any and all actions and suits brought by third parties against the Customer Indemnified Parties resulting from a claim that the Chatbot Services (or any of them) (i) breaches any applicable Law or Rules; (ii) any acts or omissions of FICANEX; or (iii) infringes on any copyright, trademark or patent of a third party and will pay all damages, awards and expenses that are finally awarded by a court or arbitral body to such third party (or any settlement amount agreed to in writing by FICANEX and such third party), subject to the limitations and disclaimers set forth in this Section 12.1, provided that (a) Customer promptly notifies FICANEX of any such action or suit following a responsible officer or director of Customer becoming aware of such action or suit; (b) Customer gives FICANEX sole control over the defense, settlement or compromise of any such action or suit; and (c) Customer, at FICANEX's expense, co-operates fully in FICANEX's defense or settlement of such claim.

(b) FICANEX will have no indemnity obligation to Customer if the actions or suits described in Section 12.1 above resulted from: (i) a modification of the Chatbot Services by Customer (including other services provided by Customer) or any User not provided by FICANEX; (ii) the failure by Customer or a User to promptly install an upgrade or any enhancement that would have eliminated the actual or alleged infringement after FICANEX has given notice to Customer or a User that such upgrade or enhancement is available; (iii) the combination by a Customer or a User of the Chatbot Services with other items and hardware not provided by FICANEX; or (iv) use of the Chatbot Services by Customer or a User for a purpose contrary to this Agreement, Law or Rules.

(c) If any part of the Chatbot Services is, in FICANEX's opinion, likely to become the subject of a suit, action or claim, FICANEX, at its option and at no expense to Customer or a User, shall: (i) obtain for Customer or a User the right to continue use of the Chatbot Services as contemplated by this Agreement; or (ii) substitute non-infringing functionally equivalent Chatbot Services subject to the limitations contained in Section 12.1(a) above.

(d) THE PROVISIONS OF THIS SECTION 12.1 STATE THE EXCLUSIVE LIABILITY OF FICANEX AND THE EXCLUSIVE REMEDY OF CUSTOMER AND A USER WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, OR TRADE-MARK INFRINGEMENT.

12.2 Customer Indemnity.

(a) Customer shall defend, indemnify and hold harmless the FICANEX Indemnified Parties, at Customer's expense, from any and all third-party claims, actions, proceedings, and suits brought against the FICANEX Indemnified Parties, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable legal fees and other litigation expenses) (hereinafter referred to as the "**Losses**"), incurred by the FICANEX Indemnified Parties arising out of or relating to: (i) Customer's breach of any term or condition of this Agreement; (ii) Customer's or its User's breach of any Law or Rules (iii) any acts or omissions of Customer or a User of Customer; (iv) any third party claim asserted against the FICANEX Indemnified Parties to the extent such claim is based upon Customer's or its User's use of the Chatbot Services not in accordance with this Agreement; (v) a User's breach of the User Terms and Conditions; or (vi) Customer's failure to obtain all necessary consents from Users or otherwise as may be required to collect, use, store and disclose User Data in accordance with Law, including Applicable Privacy Laws as contemplated by this Agreement provided, however, that Customer will not be liable for any Losses to the extent such Losses are the result of willful misconduct or gross negligence on the part of FICANEX or any of the FICANEX Indemnified Parties.

13. LIMITATIONS OF LIABILITY

13.1 **Direct Damages Only.** Except for each Party's indemnity obligations outlined in Article 12 or a breach of Article 8, any harm or loss suffered by a Party as result of any breach by the other Party, will be compensated by way of a claim for direct damages actually proven only and in no event will a Party be liable to any other for incidental, indirect or consequential loss or damage (even if the Party has been advised or had knowledge of the possibility of same or could have reasonably foreseen same), including lost business revenue, loss of profits or failure to realize expected profits or savings.

13.2 **Limitation of Liability.** Each Party's respective liability to the other Party, the Users or to any third party in connection with this Agreement, for any and all claims in connection with the Chatbot Services or otherwise, shall not exceed the aggregate Fees paid under this Agreement by the Customer to FICANEX during the twelve (12) month period before the claim arose, with the exception of:

- (a) any claims resulting from a Party's indemnification obligations under Article 12;
- (b) any claims arising from breaches of Article 8;

which shall not exceed five (5) times the aggregate Fees paid under this Agreement by the Customer to FICANEX during the twelve (12) month period before the claim arose.

13.3 Force Majeure Events. Except for the timely payment of Fees by Customer, neither Party will be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control (a “**Force Majeure Event**”). If a Party seeks to excuse itself from its obligations under this Agreement due to a Force Majeure Event, that Party shall promptly notify the other Party of the delay or non-performance, the reason for such delay or non-performance, the anticipated period of delay or non-performance.

14. GENERAL PROVISIONS

14.1 Notices. All notices, requests, demands, claims and other communications hereunder must be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given (i) if personally delivered, when so delivered, (ii) if given by electronic transmission, once the notice or other communication is transmitted to the email address specified below, provided that the notice or other communication is promptly thereafter sent in accordance with the provisions of clause (i) or (iii), or (iii) if sent through an overnight delivery service in circumstances in which such service guarantees next day delivery, the day following being so sent:

(a) If to FICANEX:

FICANEX TECHNOLOGY LIMITED PARTNERSHIP

2902 South Sheridan Way, Suite 202

Oakville, ON

L6J 7L6

Attn: Andrew Obee, President & CEO

email: Andrew.Obee@Ficanex.ca

(b) If to Customer:

Canadian Western Bank

3000-10303 Jasper Avenue NW

Edmonton, AB T5J 3X6

Attn: Jason Bond, Senior AVP, Application Services,

email: jason.bond@cwbanks.com

Either Party may give any notice, request, demand, claim or other communication hereunder using any other means (including ordinary mail), but no notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it actually is received by the individual for whom it is intended. Either Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner described above.

14.2 Amendments; No Waivers; Cumulative Remedies. No provision of this Agreement may be amended or waived unless the amendment or waiver is in writing and signed by an authorized officer of all Parties.

(a) No waiver by a Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence. No failure or delay by a Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Except as and to the extent otherwise expressly provided in such approval or consent, an approval or consent given by a Party under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement.

(c) The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

14.3 General Litigation Support. In the event and for so long as any Party to this Agreement is actively contesting, defending against or participating in any suit, proceeding, action, hearing, investigation, charge, complaint, claim or

demand by a third party in connection with (a) any transaction contemplated under this Agreement or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction, with respect to FICANEX during the Term or with respect to Customer during the Term, the Party not contesting or defending agrees to (i) if reasonably requested, cooperate with the contesting or defending Party and its counsel, (ii) use commercially reasonable efforts to make available its employees, as reasonably necessary, to assist counsel and (iii) as permitted by Law, provide reasonable access to its books and records as is reasonably necessary to the contestation, defence or participation, all at the sole cost and expense of the Party participating; provided that if the Party contesting, defending or participating is for that reason entitled to indemnification otherwise under Article 11, the foregoing provisions do not apply and Article 11 governs and provided further that nothing herein will be deemed to require FICANEX to permit access to FICANEX premises or to the premises of any agent of FICANEX for any purpose.

- 14.4 Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of each other Party. However, (a) FICANEX may assign its rights, interest and obligations under this Agreement without the approval of Customer to any successor to the obligations of FICANEX; and (b) Customer may assign its rights, interest and obligations under this Agreement to any Canadian credit union or federally regulated financial institution so long as such party agrees to be bound in writing to the terms and conditions of this Agreement. Any attempted assignment, delegation or subcontracting in contravention of the above provisions will be void and ineffective.
- 14.5 Governing Law; Jurisdiction.** This Agreement will be interpreted in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflicts of law provisions. The Parties attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any disputes arising under this Agreement.
- 14.6 Counterparts.** This Agreement may be signed in any number of counterparts and the signatures delivered by telecopy or email, each of which will be an original, with the same effect as if all the signatures were upon the same instrument.
- 14.7 Entire Agreement.** This Agreement and the Schedules attached to this Agreement constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. Estimates or forecasts furnished by either Party will not constitute commitments, warranties or guarantees. The provisions of this Agreement supersede all contemporaneous oral agreements and all prior oral and written quotations, communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement.
- 14.8 Severability.** If any provision of this Agreement, or the application thereof to any Person, place or circumstance, will be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other Persons, places and circumstances will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.
- 14.9 Relationship of the Parties.** FICANEX will perform the Services and provide the Chatbot Services as an independent contractor. Nothing in this Agreement or in the performance of the Services or the provision of Chatbot Services by FICANEX will be construed to create: (i) a partnership, joint venture or other joint business arrangement or agency between FICANEX and Customer; (ii) any fiduciary duty owed by one Party to the other Party or any of its affiliates; (iii) a relationship of employer and employee between the Parties; or (iv) any basis for any employee of a Party to claim that he or she is an employee of the other Party.
- 14.10 Survival of Obligations.** The Parties agree that the following Articles and Sections of this Agreement shall survive any expiration or termination of this Agreement: Articles: 1, 3, 9, 10, 12, 13 and 14 and Sections 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8 and 11.5.
- 14.11 Third Party Beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, FICANEX and Customer. This Agreement will not be deemed to create any obligations of a Party to any third party or create any rights in third Parties, including employees, suppliers, or customers of a Party. For greater certainty, no employee, supplier or customers of a Party will have any rights to enforce any part of this Agreement, either for his or her own benefit or otherwise.
- 14.12 Further Assurances.** Subsequent to the execution and delivery of this Agreement and without any additional consideration, each of the Parties will execute and deliver or cause to be executed and delivered any further legal

instruments and perform any acts which are or may become necessary to carry out the true intent and meaning of this Agreement.

14.13 Language of the Agreement. The Parties to this Agreement have requested that it be drawn up in English. Les Parties à ce contrat ont demandé qu'il soit rédigé en anglais.

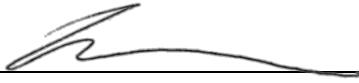
14.14 Currency. Any reference in this Agreement to "dollars" or "\$" refers to lawful money of Canada.

(the remainder of the page has been left blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of Effective Date first written above.

FICANEX TECHNOLOGY LIMITED PARTNERSHIP, by its
General Partner **FICANEX TECHNOLOGY CORP.**

By:



Name: **Andrew Obee**

Title: **President & CEO**

I have the authority to bind this Agreement

By:



Name: **Tarak Saha**

Title: **Chief Operating Officer**

I have the authority to bind this Agreement

CANADIAN WESTERN BANK

By:



Name: **Jason Bond**

Title: **Sr AVP Application Services**

I have the authority to bind this Agreement

By:



Name: **Stacy Schmidt**

Title: **Head of Digital Delivery & Management**

I have the authority to bind this Agreement

**Schedule A:
FEES**

Customer shall pay to FICANEX the following Fees:

(i) One-time Fees:

Onboarding Fee	Rate	Conditions
Base Bot Onboarding Fee	\$40,000	Unless Bot Onboarding Services Fees have been previously paid by Customer, the Base Bot Onboarding Services Fees are charged one-time and applies to each implementation of a Chatbot Application. An implementation is further defined in Schedule B and may include deployments on the Facebook Messenger platform and/or a web-based platform.

(ii) Monthly Conversation Fees:

Conversation Fee	Rate	Conditions
Aggregate Conversions (0 - 19,999)	\$1.00	The Conversation Fee is charged on each conversation completed by a User on a licensed Chatbot Application. A conversation is defined as unlimited messages between a User and a Chatbot Application on a given device within a 24-hour period or upon a hand-off to a live agent. Conversation aggregation is completed across all FICANEX customers.
Aggregate Conversions (20,000 - 29,999)	\$0.90	
Aggregate Conversions (30,000 - 39,999)	\$0.80	
Aggregate Conversions (40,000 - 49,999)	\$0.70	
Aggregate Conversions (50,000 +)	\$0.60	

(iii) Annual Subscription Fees:

Subscription Fee	Rate	Conditions
Advanced Package	\$40,200	The Subscription Fee is charged on each licensed Chatbot Application in production. This includes Maintenance and Support Services from FICANEX as detailed in Schedule B. <u>Included Blocks/Functionality:</u> •Text, Shuffle, Link, Picture, Video, Redirect •Email, Web, CSAT •Chat Intros •Analytics •Bot Branding •Multilingual •Request Block •Conditionals and Capture (Advanced) •List Option and Set Variable •Predictive Suggestions •Scheduled

The Subscription Fee is charged on an annual basis for the Chatbot Services and includes the Maintenance and Support Services. All Subscription Fees are subject to pro-rated adjustments for any periods less than twelve (12) months.

(iv) Additional Support:

If requested FICANEX shall make available to Customer additional support on a time and materials basis subject to a mutually-agreed upon statement of work or as otherwise agreed by the Parties.

**SCHEDULE B:
DESCRIPTION OF THE SERVICES**

The Services shall consist of the following:

Onboarding Services:

Automation Bot

1. FICANEX will provide assistance to Customer with respect to customizing twenty-five (25) questions and answers from FICANEX's Standard Library. FICANEX will also develop five (5) custom questions and answers as per requirements outlined by the Customer.
2. FICANEX will provide a comprehensive training program and guide describing both functionality and support for Chatbot Services.
3. FICANEX will provide support for Chatbot Services branding and content authoring.
4. FICANEX will assist Customer with the following test cycles related to the Chatbot Services;
 - a) User acceptance testing (UAT)
5. FICANEX will coordinate the provision of Onboarding Services with all FICANEX partners and vendors participating in the delivery of the Chatbot Services.
6. FICANEX will provide the Customer with JavaScript in order for the Customer to deploy the Customer-Branded Chatbot Services on the Customer's website and/or on Facebook messenger. Any requested alterations to the JavaScript by the Customer or its Third Party Provider is subject to time and materials through a mutually-agreed upon statement of work.
7. FICANEX will provide reasonable project management services and project governance documentation.
8. Each of Customer and FICANEX will make available all technical and business resources within their organization and third parties in order to deploy the Chatbot Application in production within three (3) months. However, FICANEX shall not responsible for any delays caused by Customer's failure to meet its timelines or deploy adequate resources.

Everyday Banking Bot

9. FICANEX will provide assistance to Customer with respect to integrating Customer's core systems with the Chatbot Services using the agreed upon approach approved through the project charter (approved December 2nd 2020) and subsequent change requests. To that end, FICANEX will provide Customer with the most current version of the relevant specifications and documentation for Customer to follow.
10. FICANEX will assist Customer with the following test cycles:
 - a) User acceptance testing (UAT)
 - b) Production acceptance testing (PAT)
 - c) Any other test cycles mutually agreed upon by FICANEX and Customer.
11. FICANEX will ensure secure telecommunications are established between the Party's environments.
12. Customer will be responsible for any of their vendor setup and certification costs for enabling the FSEF and processing of Transactions.

Maintenance and Support Services:

Automation Bot

1. FICANEX will ensure that the Customer is provided with the necessary technical and operational support that is reasonably required to manage all aspects of the Chatbot Application that are within the control of FICANEX.
2. FICANEX will provide a monthly Conversations Report in CSV file format. Other reports may be reasonably requested by the Customer from time to time but are subjected to time and materials.
3. FICANEX will ensure that the standard JavaScript is functional and up to date. Any support or maintenance required to embed the Chatbot Application into the Customer's website outside of the standard JavaScript will be the responsibility of the Customer.

Everyday Banking Bot

4. FICANEX will provide support for processing services for Transactions through tunl.
5. FICANEX will provide Customer access to Customer specific reporting as mutually agreed by the Parties including, but not limited to, the following:
 - a. Debit card and cardholder changes audit report; and
 - b. Service activity report.
6. FICANEX will maintain secure telecommunications between the Party's environments.

Description of Chatbot Services

The following is the offering for the Chatbot Services:

Automation Bot

- 1) Chatbot Application Portal:
 - a) Ability for Customer to author its own questions, create branded responses and links (answers)
 - b) Ability for Customer to apply logo, trademark, name and other materials
 - c) Review of basic usage analytics
 - d) Alter language of questions, branded responses and links (answers) manually
 - e) Contribute content used for the development of Machine Learning and Patterned Data
 - f) Ability to manage and assign permissions to the individual accounts who have access to the Chatbot Application Portal
 - g) Ability to test branded responses in a controlled accessed environment.
- 2) ATM Locator through the use of the EXCHANGE ATM API
- 3) Google Translate
 - a) If the branded responses are not manually translated in the Chatbot Application Portal, Customer can choose to use the Google Translate will step in and translate the answer to the question asked
- 4) Reporting
 - a) Customer will have the ability to extract raw data from the Chatbot Application using the export functionality. Exports will be done in CSV format.

- b) Bot Performance reports are available for download through the Chatbot Application Portal. These reports highlight the overall performance with respect to deflection, recognition and usage.
- 5) Channels offered for deployment:
 - a) Facebook
 - b) Webpage

Everyday Banking Bot

- 6) Transactions (as made available by Customer or its vendor)
 - a) Balance inquiry
 - b) Account to account transfer
 - c) Mini statement (recent transactions)
- 7) Authentication of cardholder for financial transactions
 - a) Authentication of User accounts with Customers will be completed by tunl. tokenization

Schedule C:
Service and Support Level Agreement

1. Availability

FICANEX shall make the Chatbot Services available to Customer and its Users 99% of the time (excluding any planned Maintenance and Support Services as described below) during any given month. If such uptime availability is not achieved, the following Service Level Credits shall apply:

Business Hours		After Hours	
Between 9:00 am and 5:00 pm (EST) Monday to Friday during a calendar month.		Between 5:00 pm and 9:00 am (EST) Monday to Thursday and from 5:00pm Friday to 9:00am Monday during a calendar month.	
Downtime During Business Hours (DBH) (minutes)	Service Level Credit as a % of one twelfth (1/12) of the monthly Subscription Fee	Downtime After Hours (DAH) (minutes)	Service Level Credit as a % of one twelfth (1/12) of the monthly Subscription Fee
Less than 66	0%	Less than 66	0%
66 to 668	2%	66 to 668	0%
669 to 1337	5%	669 to 1337	0%
1338 to 4463	8%	1338 to 4463	2%
4464 or greater	12%	4464 or greater	5%

Downtime shall be calculated on a calendar month basis, in accordance with the following 2 formulae:

$$\text{DBH} = \text{TDBH} - E$$

$$\text{DAH} = \text{TDAH} - E$$

The following additional terms and conditions apply to the calculation of Service Level Credits:

Downtime: FICANEX will test the Chatbot Application and Chatbot Services to assess uptime every 3 minutes. “**Downtime**” means the period beginning at the time the Chatbot Services does not give a valid response to 2 consecutive FICANEX tests and continues until the Chatbot Services returns a valid response. TDBH: “**TDBH**” means total Downtime during Business Hours in a calendar month; TDAH: “**TDAH**” means total Downtime After Hours in a calendar month; E: “**E**” means excusable downtime which includes all of the following: (i) Downtime of an aggregate total of thirty (30) minutes in any two-week period necessary to conduct regular software and hardware updates to the Chatbot Application and Chatbot Services, including bug fixes and patches; (ii) Downtime which is out of FICANEX’s control due to a Force Majeure Event and the first 30 minutes of any emergency, and; (iii) Downtime required as a result of a critical security breach.

2. Contact Information

FICANEX’s standard support hours are between 9:00am to 5:00pm Eastern Standard Time or Eastern Daylight time when this adjustment is in effect in the Eastern Time Zone, or as may be agreed to from time to time (“**Standard Call Window**”). For Severity 1 reported Problems the Call Window is 24x7x365 for cell phone contact and call back service. All Problems must be logged by email to tunl.support@ficanex.ca. For Severity 1 Problems, the following contacts can be notified for investigation:

Amandha Narangoda, Business Operations Analyst, 1-905-691-7602

Catherine Nguyen, Business Operations Manager, 1-647-544-5294

During regular business hours (9am-5pm EST) FICANEX will also provide Customer with such technical advice by telephone or email as will be necessary to resolve Customer's difficulties and queries in using the Service. However, Customer acknowledges that FICANEX cannot guarantee that such advice and information will be error free and accurate in all instances as such advice and information is dependent upon Customer's presentation and interpretation of the support needed as well as complete disclosure of the circumstances leading up to the request.

3. Problem Response Time Table

FICANEX will achieve the response times indicated below for the relevant issues (the "Problems").

Problem Severity Level	Description	Initial Response Time	Resolution Time
Severity 1 Problem	An incident in a production environment that results in a complete loss of usage of the Service; no workaround is available.	Within 1.5 hours	FICANEX will commit the necessary resources around the clock for Problem Resolution to solve, obtain workaround or reduce the severity of the error and issue a resolution or obtain a workaround within 8 hours. FICANEX will provide Customer with status updates on the resolution of the Problem every 3 hours until such Problem is resolved.
Severity 2 Problem	A reported defect in one or more key features or functions for the majority of users, required to perform necessary business functions but does not completely restrict the use of the Service; no workaround is available.	8 Hours	FICANEX will commit the necessary resources and issue a resolution or obtain a workaround within 12 hours. FICANEX will provide Customer with status updates on the resolution of the Problem every 3 hours until such Problem is resolved.
Severity 3 Problem	A reported minor defect in one or more key features or functions of the Service but the failing does not have a critical or severe impact on customer's business operations.	8 Business Hours	Next release of the software or within 8 weeks
Severity 4 Problem	Enhancement request; feature is working, but	2 Business Days	As agreed upon with Customer - case by

	not as expected by Customer; no detriment to Service		case; may not be resolved
--	--	--	---------------------------

Both Parties shall engage in reporting, tracking and handling Problems in accordance with processes and procedures provided by FICANEX which includes the assignment of a unique number to the Problem for tracking purposes.

When reporting a Problem, Customer will provide (a) a complete description of the issue including the affected individuals and their unique identification or account numbers, their roles within the system (i.e. user, administrator, store staff, etc.), order identification numbers and other relevant pieces of information as requested by FICANEX, (b) clear steps to replicate the issue and the circumstances or environmental properties that has led to the occurrence of the issue, and (c) the estimated severity of the issue and the magnitude of the impact on Customer's business.

4. Planned Service Outages

FICANEX will notify Customer no less than 5 business days in advance for a Planned Service Outage or Maintenance Release. All planned service outages shall occur between the hours of 12:00AM PST and 4:00AM PST. Any outages occurring outside of this timeframe requires at least forty-eight (48) hours advanced notice but such unplanned outages shall be limited to once every two calendar months.

5. Software Updates and Upgrades

FICANEX may, at its discretion, develop updates to its software systems to correct defects, add features, improve performance, or implement other optimizations ("Updates"). Upcoming Updates will be communicated in scheduled communications. Should any Updates require downtime, the efforts will be coordinated with Customer's IT staff to ensure minimal disruption to regular operations and will follow the planned service outage procedure in Section 4.

6. Support Escalation Process

After a maintenance or support request has been made or a Problem reported, it will go through the support levels outlined below until resolved

Tier 1: Dedicated Support Team. tunl.support@ficanex.ca is the first stop for any maintenance or support request and they are tasked with determining the Severity Level of a Problem and with starting the resolution of the same unless it is complicated enough or of a sufficiently high priority to be escalated up to the Development Team.

Tier 2: Development Team and Third Party Vendors. Any Problem or request of a higher priority and/or which may require more in depth technical knowledge of the Service will be escalated as required to FICANEX's Development Team or Third Party Vendors.

Tier 3: FICANEX Executive Team. If any Problem or support request cannot be resolved by Tier 1 or Tier 2, the Problem will escalate it to the management level/executive for resolution.

7. Exclusions

FICANEX will not be obligated to provide maintenance or support for errors that are caused by: (a) Customer's failure to provide FICANEX with all information, technical assistance or information reasonably requested by FICANEX but only to the extent that such failure on behalf of FICANEX caused such error; (b) the Service not being used in accordance with the documentation and specifications provided by FICANEX to Customer; (c) any issue that is found by FICANEX to be due to a non-FICANEX supported third party or due to a modification made on non-FICANEX software systems without any prior communication to FICANEX. If any non-Service error, malfunction, or defect may reasonably be corrected by FICANEX, FICANEX shall use its commercially reasonable efforts to correct it at Customer's request, subject to resource availability, and subject to Customer's prior written agreement to pay for such support on a time and materials basis.

8. Disaster Recovery

FICANEX shall maintain a disaster recovery and business continuity plan consistent with industry standards for such services. In the event of disaster, as declared by FICANEX, which renders the entire platform unusable by Customer,

FICANEX and its partners will work full time on restoration of the Chatbot Application as soon as possible. The recovery time objective is 15 business days; however, this time is not guaranteed.

Over time, ongoing efforts to improve both the resilience of the Chatbot Application as well as to shorten the recovery time will be undertaken by FICANEX and its partners.

[37711.0001/13594652_1](#)