

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (“**Agreement**”) is made between 10282260 Canada Inc. (“**Company**”), having its principal place of business at 1212 Avenue Van Horne, Montreal, Qc, H2V 1K3 and the company identified on the online order form submitted concurrently with this agreement (“**Client**”, and together with Company, the “**Parties**”) and is effective as of the effective date on the Software Services (as defined below) are activated (“**Effective Date**”).

This Agreement between the Parties pertains to certain software and support services that are either identified below or subsequently ordered through a written amendment hereto. The Agreement is comprised of: (a) the online order form submitted by Client, including the applicable prices and commercial terms (“**Order Form**”); (b) these Terms and Conditions; and (c) all other documents expressly incorporated into this Agreement by any of the foregoing or necessary for the operation of the Software (the “**Documentation**”).

1.0 SERVICES

1.1 **Services.** Company shall make available to Client during the Term the “Company” software platform (the “**Software**”) and associated services (“**Software Services**”), under the terms and conditions of this Agreement. Client shall manage the access to and use of the Software by the individuals it allows to access the Software (the “**End Users**”). End Users shall be obliged to access the Software Services through identifiers either made available by Company or through Client's own directories (“**Credentials**”). Where the Software Services require to be made available by Client to either individuals that are not employees or otherwise bound by written agreement as a subcontractor, researcher or student; or (ii) individuals part of organizations with whom Company has not entered into an agreement for the Software Services, then Client shall notify Company, and such individual shall enter into an Agreement with Company by on behalf of herself or himself, or their respective institutions.

1.2 Permitted Use.

- (a) Subject to Client abiding by the terms and conditions of this Agreement, Client shall have the limited, non-exclusive, non-transferable, and non-sublicensable (except to Affiliates) right to use and access the Software remotely via the internet solely for Client's internal use (the “**Permitted Use**”). In no case shall Client be deemed to be an individual consumer under applicable consumer protection rights statutes, and Client's representatives hereby represents and warrants that it is entering into this Agreement for the sole benefit of Client. Client shall also have the limited right to use and refer to the Documentation solely as required for the Permitted Use (with a limited right to copy such Documentation only as minimally necessary).
- (b) The Permitted Use includes Client's right to use the Software to input, upload, transmit or otherwise make available research results and other data (together, the “**Client Data**”) through the Software's portals and to use and access such Client Data in accordance with this Agreement for the Permitted Use.

1.3 **Hosted Environment.** The Software and any Client Data are hosted on servers and facilities owned, controlled, and operated by third parties (“**Hosting Providers**”) with whom Company has contracted for such facilities. Company may appoint a new Hosting Provider, relocate the Software (or parts thereof) and the Client Data to any location within Canada and the United States of America, or otherwise modify the hosting environment, at its discretion at any time in accordance with this Agreement. Should Company wish to relocate the Software (or parts thereof) and the Client Data outside of Canada and the United States of America, it shall send thirty (30) days advance notice thereto to Client.

1.4 **Client Environment.** Client shall be responsible for the provision, maintenance and good working order of the required infrastructure and equipment to access and use the Software, including tablet computers, desktop computers, local connections and infrastructure and local internet network (“**Client Systems**”). Client shall be solely responsible for implementing safeguards to protect the security of the Client Systems and Client Data within the Client Systems.

1.5 **Support Services.** Company shall provide Client with the Software maintenance and problem management support services during the Term as described in this Section 1.5 during the Term. Company shall grant standard problem resolution services from 9 a.m. to 5 p.m. (Eastern Standard Time) Monday to Friday (excluding statutory holidays in the Province of Quebec), and such services shall be accessible by individuals authorized by the Client via email to support@rdata.online, via chat or via telephone. Company will use commercially reasonable efforts to correct or eliminate any defect, error, bug or other failure of all or part of the Software (“**Issues**”). The foregoing shall be Client's sole and exclusive remedy for resolution of Issues and Company does not guarantee or warrant that all Issues are or will be resolved or eliminated or correctable or that a workaround will be made available. If Company is unable to resolve a reported Issue, the Parties shall co-operate and work together to implement a plan for addressing any recurrence of the reported Issue.

1.6 **Availability.** Company will use commercially reasonable efforts to make the Software Services usable on an uninterrupted basis to Client 24 hours per day, seven days per week, 365 days per year during the Term other than during any period of

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scheduled maintenance determined by Company or the Hosting Provider. The availability target set forth above may be varied due to: (i) maintenance by Company of its systems and the Software; (ii) any circumstance or events beyond the reasonable control of Company, including due to a Force Majeure Event (as defined in paragraph 9.7); (iii) Client's (including its End Users') acts, errors, omissions, or breaches of the terms of this Agreement; (iv) any problems or errors with any computer equipment or network that is the responsibility of Client or third parties, including any issues originating with Client Systems, computer equipment or networks that are not the responsibility of Company or within its direct control, including public telecommunications services; and (v) unavailability of "trial" or "beta" features of the Software Services, or sandbox or test environment use of the Software Services. Client acknowledges that there may be instances where Company needs to interrupt the Software Services without notice in order to protect the integrity of the Software and/or Company's systems (or those of a Hosting Provider) due to security issues, attacks or other unforeseen circumstances. Client's sole and exclusive remedy for any failure to meet the availability target set forth above shall be the provision of the services described above at Section 1.5. Company will use commercially reasonable efforts to backup Client Data on a daily basis and to restore Client Data from backups.

- 1.7 **Maintenance and New Versions.** The Software Services include the provision of updates or patches to the Software intended to correct Issues or that constitute and may include enhancements to the Software as may be provided by Company from time to time during the Term ("**Updates**"). The Updates are deemed to be part of the Software and are implemented automatically into the Software and made available to Client as soon as such are made available by Company to its other customers. The Parties may otherwise agree that prior deployment of the Updates be made in a sandbox or test environment, on fees to be agreed upon by the Parties.

2.0 RESTRICTIONS ON USE AND CLIENT OBLIGATIONS

- 2.1 **End Users.** Client shall be solely responsible for the use and access to the Software by End Users, as well as ensuring that there are no unauthorized use or access to the Software by any person making use of Client Systems. Client specifically acknowledges and agrees that it shall (i) ensure that End Users abide by the terms and conditions of this Agreement; (ii) promptly notify Company of any non-compliant or suspected non-compliant access to or use of the Software by any person (including loss or misuse of the Credentials).

- 2.2 **Restrictions on Use.** Except as otherwise expressly provided herein, Client shall not: (i) provide, disclose, sublicense or otherwise permit any person to access, use, read, disseminate, transmit, download or reproduce the Software or Documentation; (ii) adapt, translate, change, customize, enhance, partially delete, alter or otherwise modify the Software in any manner or to any extent whatsoever; (iii) to the maximum extent permitted by applicable law, disassemble, decompile, reverse engineer, or otherwise investigate all or any part of the Software; (iv) introduce viruses, worms, trojan horses and other items of a disabling or destructive nature within the Software or Company's systems (as well as those of Hosting Providers); (v) probe, scan, or test the vulnerability of any of Company's (and/or a Hosting Provider's) system or network, unless expressly authorized in writing by Company; (vi) disclose the results of any software benchmark tests without Company's prior written consent; (vii) have any right to access or obtain a copy of the object code or source code to the Software; (viii) forge any IP address information or login information or otherwise circumvent the Software's access mechanisms; (ix) make use of the Software Services with materials of any kind that will violate or infringe upon the intellectual property rights of any third party or contain libelous, defamatory or otherwise unlawful material; and/or (x) sell, assign, pledge, sublicense, or otherwise transfer its rights under this Agreement (except as otherwise provided in this Agreement).

2.3 Client Obligations.

- (a) Client shall (i) assist, cooperate and facilitate the provision of the Software Services, including the prompt notification to Company of any modification or change made to any of Client Systems (or other information technology infrastructure) that could impact the installation, operation, use, support and/or maintenance of the Software; (ii) provide Company with access to the Client Systems, and where reasonably necessary and upon 48 hours prior notice from Company, to Client's facilities or premises during Client's regular business hours; and (iii) ensure that Client's calls or requests made to Software's application programming interface(s) shall be made in accordance with the Documentation and never in a form or frequency likely to harm or reduce Company's infrastructure. Client is solely responsible for the selection and implementation of procedures, processes and controls regarding the access, security, encryption, use and transmission of Client Data to Company.
- (b) Client acknowledges and agrees that the Software shall not be used to manage, store and access information relating to identified or identifiable individuals that is protected by law ("**Personal Information**"). Company has no responsibility to obtain the required consents for the use, transmission and display of any Personal Information and

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Client Data under this Agreement or otherwise. Client expressly acknowledges and agrees that the Software Services provided hereunder are solely for the benefit of Client and not for the benefit of any other person, including End Users, and any such person's sole contractual recourse for unauthorized use of their Personal Information shall be against Client.

2.4 **Compliance.** Company shall have the right to conduct periodic inspections and audits for the purpose of verifying Client's compliance with the terms of this Agreement.

2.5 **Client Data Processing.** The Hosting Provider has policies and processes in place to ensure that the confidentiality of information in their care is properly safeguarded in accordance with industry standards. Client acknowledges that Client Data may be processed and stored in Canada and the United States of America and the governments, courts or law enforcement or regulatory agencies of these jurisdictions may be able to obtain disclosure of Client Data in accordance with local laws and regulations.

3.0 FEES AND PAYMENT

3.1 **Software Fees.** In consideration for the provision of Software Services during the Term, Client shall pay to Company the Software Fees based on the terms of the Order Form. The Order Form sets out whether the Software Fees are payable monthly or annually and the following shall apply:

- (a) If paid on a monthly basis: Company shall invoice the pro-rated Software Fees at the end of the first month following the activation of the Software Services and on a monthly basis thereafter, based on the monthly active users.
- (b) If paid on an annual basis: Company shall invoice the Software Fees at the Effective Date. No reimbursement will be made for any cancellation of the Services or decrease in number of Authorized Users during the Term.

3.2 **Overage Fees.** If Client exceeds the limits set out in Order Form for the subscription package it has paid for, Client shall be responsible for the overage fees set out in the Order Form and shall pay them in accordance with this Agreement. Company shall make commercially reasonable efforts to notify Client directly or through a notice on the platform through which the Software Services are accessible.

3.3 **Payment Terms.** All amounts owed to Company shall be paid within 30 days of an invoice thereto. Any unpaid amount shall bear interest from the due date to the date of payment at the rate of 1% per month (being 12% per annum), or, if lower, the highest rate permitted under applicable law, such interest to accrue from day to day and to be compounded on a monthly basis, and default of payment may lead to suspension or termination of the Software Services. Payment shall be made without any right of set-off, recoupment, counterclaim, deduction, debit or withholding for any reason. Except as provided for herein, all payments made pursuant to this Agreement are non-refundable.

3.4 **Taxes.** The Software Fees are exclusive of all taxes imposed by applicable law in connection with the Software Fees, including, sales tax, goods and services tax, use, withholding or excise tax and all other like or similar taxes applicable to the provision of Services, and Client shall be responsible for the payment of all such applicable taxes.

4.0 INTELLECTUAL PROPERTY

4.1 **Ownership of Software.** All rights, titles, and interests in and to the Software and the Documentation (inclusive of all enhancements, changes, and modifications to the Software and Documentation), including all intellectual property and other proprietary rights therein are owned solely and exclusively by Company and/or its third party licensors. Nothing in this Agreement shall, or shall be deemed or construed to, assign, transfer or convey to or vest in Client any title, rights or interest in or to any intellectual property, including in or to the Software or Documentation, other than the rights specifically and expressly granted herein. Company reserves all rights not expressly granted to Client hereunder.

4.2 **Client Data.** Subject to the limited licenses granted herein, all rights, titles and interests in and to the Client Data including all intellectual property and other proprietary rights therein are owned solely and exclusively by Client and/or the End Users. Client is solely responsible for the accuracy, quality, integrity, legality and reliability of all Client Data. Client shall abide by all policies, procedures, guidelines or other rules applicable to Client Data, including, without limitation, applicable ethics policies and anonymization requirements.

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- 4.3 **Client Data and Client Systems License.** Client acknowledges that by using the Software Services, it will make available Client Data to Company. Client hereby grants to Company a perpetual, irrevocable, world-wide and fully paid up license to access and use the Client Data and Client Systems (including via remote access) in order to perform its obligations under this Agreement. Client agrees that Company may transfer or disclose Client Data to third parties, including the Hosting Provider. Company is hereby granted a perpetual, irrevocable, world-wide and fully paid up license to use and aggregate Client Data for use in an anonymized and aggregated manner, including, without limitation to disclose same to third parties for the purpose of benchmarking or evaluating use of research equipment.

5.0 CONFIDENTIALITY

- 5.1 **"Confidential Information"** means any and all data or information including specifications, documents, correspondence, research, software, web logs, trade secrets, discoveries, ideas, know-how, designs, drawings, product information, technical information, the Credentials and all information concerning the operations, affairs and businesses of a party, the financial affairs of a party and the relations of a party with its customers, employees and service providers (including customer lists, customer information, account information, consumer markets, sales figures and marketing plans) which is disclosed or made available (in any format) by such party (the **"Disclosing Party"**) in connection with the Agreement to the other party (the **"Receiving Party"**). The terms of the Agreement are deemed Confidential Information (including all Software Fees).
- 5.2 **Confidentiality Obligations.** The Receiving Party hold in strict confidence any Confidential Information under the same degree of care as it normally protects its own confidential information, but in no case less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information in cases where (i) the information is made public through no fault of or contribution by the Receiving Party; (ii) the information was made available to the Receiving Party by a third party that was legally in possession thereof and was free to disclose same; (iii) the information was independently acquired by third parties without access to or knowledge of the Confidential Information; or (iv) this disclosure was required by law or a court order, provided that the Receiving Party gives the Disclosing Party enough advance warning of this requirement so as to give the latter enough time to adopt whatever measures may be needed to avoid or limit the disclosure.
- 5.3 **Public Announcements.** Company shall be permitted to disclose the fact that Client is a customer of Company in its marketing, promotional or other similar materials and on its website or orally. Upon Client's prior approval, Company may be authorized to use Client as the basis for published case studies.
- 5.4 **Surveys.** Company may send to Client customer satisfaction surveys from time to time, under which Client and End Users provide feedback and information regarding the Software Services. Client acknowledges and agrees that Company may make use of the information provided through such surveys for any purpose and that it shall obtain all required consents from End Users participating in such surveys. Company will make available to Client the non-anonymized results of such surveys which may contain Personal Information of End Users (**"Survey Results"**). Client is and shall remain the data controller of the Survey Results, and it is Client's sole and exclusive responsibility to obtain the relevant consents and authorizations from the End Users' for their participation in such surveys. Client shall only use the Survey Results in accordance with the law.

6.0 REPRESENTATIONS AND WARRANTIES

- 6.1 **Mutual Representations and Warranties.** Each party represents and warrants that: (i) it has the full right, power and authority to enter into this Agreement, grant the licenses set forth herein and to discharge its obligations hereunder; and (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder does not and will not violate any agreement to which it is a party or by which it is or will be otherwise bound.
- 6.2 **Company's Representations and Warranties.** Company warrants that, during the Term, (i) the Software Services will be performed in accordance with this Agreement and in a professional, workmanlike manner; and (ii) it has not received, and has no knowledge, of any claim or allegation that the Software, or Client's use of the Software Services infringes or misappropriates any intellectual property right of any third party.
- 6.3 **Exclusions.** THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES FROM A COURSE OF DEALING OR USE OF TRADE. CLIENT ACKNOWLEDGES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, NO REPRESENTATIONS HAVE BEEN MADE RESPECTING THE SOFTWARE OR THE SERVICES

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PROVIDED, AND THAT CLIENT HAS NOT RELIED ON ANY REPRESENTATION NOT INCLUDED IN THIS AGREEMENT.

- 6.4 **Client's Representations and Warranties.** Client hereby represents and warrants that: (i) it shall at all times comply with applicable law and this Agreement (including any applicable privacy or data protection laws); (ii) the Client Data does not infringe or misappropriates any rights of any third party (including End Users'); and (iii) it has obtained all necessary rights and consents necessary to grant Company the rights to Client Data granted hereunder, prior to such Client Data being made available by Client through the Software.

7.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

- 7.1 **Indemnification.** Company agrees to indemnify, hold harmless, and defend the Client from and against all claims, actions, and demands made or threatened against Client from any third party that results from or arise out of any breach of Company's representations and warranties under this Agreement. Client agrees to indemnify, hold harmless, and, upon Company's request, defend Company from and against all claims, actions, and demands made or threatened against Company that result from or arise out of any breach by Client of this Agreement (including, but not limited to its representations and warranties).

- 7.2 **Indemnification Procedure.** A party invoking the indemnification (the "**Indemnified Party**") shall promptly notify the other party (the "**Indemnifying Party**") in writing upon knowledge of any claim for which it may be entitled to indemnification under this Agreement. The Indemnified Party must permit the Indemnifying Party to have the sole right to control the defense and settlement of any such lawsuit (provided that the Indemnified Party may opt to participate in the defense at its own expense). The Indemnified Party must provide assistance to the Indemnifying Party in the defense of such lawsuit, at the Indemnifying Party's cost and expense. The Indemnifying Party must not enter into any settlement agreement or otherwise settle any such claim or lawsuit that does not contain a full and final release of all claims against the Indemnified Party without its express prior consent or request. Where Client invokes its rights under Section 7.1 as a result of a third party claim or allegation that the Software, or Client's use of the Software infringes any intellectual property right of any third party, Company may, at its own expense and at its sole discretion, (a) replace or modify the Software so as to be non-infringing, (b) obtain for Client a license to continue using the Software, or (c) if neither (a) nor (b) is feasible, terminate the License and refund a pro rata portion of the monthly Software Fees paid by Client during the remaining Term. Notwithstanding the foregoing, Company shall have no obligation under this Section for any claim resulting or arising from modifications of the Software that were not performed by or on behalf of Company or resulting from Client's written specifications. This Section states Client's exclusive remedies for any third party intellectual property claim or action.

- 7.3 **Limitation of Liability.** IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY TO CLIENT FOR ANY LOST OF PROFITS, REVENUES OR INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER AND REGARDLESS OF THE FORM OR CAUSE OF ACTION, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO CASE SHALL COMPANY'S LIABILITY WITH RESPECT TO ANY AND ALL INCIDENTS ARISING OUT OF OR RELATED TO THIS AGREEMENT, SHALL EXCEED IN THE AGGREGATE THE SOFTWARE FEES PAID BY CLIENT HEREUNDER DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM (OR THE AVERAGE MONTHLY FEES PAID IF SUCH PERIOD IS INFERIOR TO 12 MONTHS), REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY.

8.0 TERM AND TERMINATION

- 8.1 **Term.** The Services shall commence on the Effective Date and continue for the period of time specified in the Order Form ("**Term**"), unless otherwise terminated in accordance with this Section 8.

8.2 **Termination.**

- (a) Either party may, in addition to other relief, suspend or terminate this Agreement if (A) the other party commits a material breach of this Agreement, and either fails within 30 days after receipt of notice of such breach to correct such material breach or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion; or (B) becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed, or a petition in bankruptcy is filed with respect to the Party and is not dismissed within 30 days. Company may, at its sole discretion, elect to suspend the Software Services during the 30-day cure period.

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- (b) Company may elect to terminate this Agreement upon a one (1) month prior notice to Client. Additionally, in the event that, and through no fault of Company, the Hosting Provider ceases to make available the hosting services provided to Company in support of the Services provided by Company hereunder, or materially changes the terms on which the hosting services are provided, Company may, on notice to Client, terminate this Agreement. Company agrees to use commercially reasonable efforts to find a suitable replacement hosting service provider. In the event of such termination, Client shall only be responsible for the Software Fees due through to the effective date of termination and Client will not be required to make any further payment of Software Fees and such relief from payment of Software Fees shall be Client's sole and exclusive remedy in such circumstances. Client agrees that any termination under this Subsection (b) or failure to find a replacement hosting service shall not be a breach of this Agreement by Company.
- (c) Where Client has subscribed to the Software Services on a monthly basis, Client may terminate this Agreement by providing 30 days advance notice in writing, and by paying for all Software Fees incurred up to the effective date of termination.

8.3 Effects of Termination.

- (a) Upon any termination of this Agreement: (i) Company shall cease providing the Software Services, and Client and End Users shall cease all use of, the Software and Documentation and return the Documentation, and all copies thereof, in its possession or under its control to Company (or at Company's direction, destroy it); and (ii) each party shall return to the other party, or at the direction of the other party destroy (and provide an officer's certificate attesting to the destruction as is satisfactory to the other party, acting reasonably), within 30 calendar days of the termination date all Confidential Information of the other party.
- (b) Upon termination, Company shall discontinue the Software Services to prevent further use by End Users, however, limited access will be provided for not more than 60 days to allow Client's administrators to participate in the winding down of the site(s) and assist in the migration of Client Data. Company may invoice Client for wind down services as agreed upon in advance or where such wind down is beyond the ordinary course of Company's business. After such period Company may delete from its servers any and all data and information provided by Client under this Agreement. Notwithstanding the foregoing, the Parties agree that some Confidential Information may be retained for archival purposes, provided it is not otherwise not accessible in the ordinary course of business. Any such Confidential Information held by a party will remain subject to the terms hereof.

8.4 **Survival.** The provisions of Sections 2.2, 2.3(b), 2.3(c), 2.4, 2.5, 3.2, 4-9 (as well as the definitions of terms related thereto) shall survive the termination or expiration of this Agreement.

9.0 GENERAL PROVISIONS

9.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to all the matters herein and supersedes all prior agreements, proposals, understandings, letters of intent, negotiations and discussions between the Parties, whether oral or written. This Agreement may only be amended or modified in writing by the Parties, or as updated from time to time by Company and accepted by Client through the online portal through which the Software Services are made available. If Client does not agree with any such update, its only remedy is to discontinue use of the Software Services and request a refund for any prepaid Software Fees. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable in any respect, then such provisions shall be read down so as to not be invalid or enforceable. The remaining provisions of this Agreement shall remain unaffected.

9.2 **Notice.** All notices or approvals required or permitted under this Agreement will be in writing and delivered by email transmission, overnight delivery service, or certified mail, and in each instance, will be deemed given upon receipt. All notices or approvals will be sent: (i) to Company at either karim@rdata.online or the address specified on the Order Form and (ii) to Client at the physical or electronic email address provided on the Order Form. For notices sent by email, the date of receipt will be deemed the date on which such notice is transmitted.

9.3 **Jurisdiction.** This Agreement shall be exclusively governed by laws of the Province of Quebec, Canada (and all federal laws applicable therein). The Parties irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Quebec district of Quebec in respect of all matters and disputes arising hereunder. *Les parties ont spécifiquement exigé que cette entente et la documentation qui s'y rapporte soit rédigées en anglais.*

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- 9.4 **Assignment and Delegation.** This Agreement shall be binding upon and shall ensure to the benefit of and be enforceable by each of the Parties, their respective successors and permitted assigns. Client may not assign all or any part of this Agreement without the prior written consent of Company, which consent will not be unreasonably withheld, except to an Affiliate. Where Client's business undergoes a change of control through the purchase by a third party of a substantial part of Client's assets for which the Software Services were provided, the third party acquirer of such assets shall be required to separately enter into an agreement with Company for the Software Services, and Company may invoice Client and/or such third party acquirer for the migration and separation of Client Data, as agreed upon. Company may assign this Agreement without the consent of Client at any time. Company may subcontract the performance of its obligations hereunder to any person without the prior written consent of Client.
- 9.5 **Independent Contractor.** It is expressly understood and agreed that each party shall be acting as an independent contractor in performing its obligations hereunder and shall not be considered or deemed to be an agent, employee, joint venturor or partner of the other party. Nothing in this Agreement shall prevent Company from providing any services to any other person.
- 9.6 **Waiver and Remedies.** No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights. Certain breaches of this Agreement result in irreparable harm and that monetary damages would be an inadequate remedy for such breach, namely with respect to Confidential Information and Company's intellectual property rights to the Software.
- 9.7 **Force Majeure.** Neither party shall be liable for delays in or for failures to perform hereunder due to causes beyond reasonable control, including acts of God, service failures, Internet or telecommunications outages, acts of civil or military authorities, fire, strikes, power, surges or outages, epidemics, flood, earthquakes, riot, or war ("**Force Majeure Event**"). Each party shall use commercially reasonable efforts to provide the other party with notice of any such events. If Company is unable to perform for a period of more than 30 days due to any such delay, Client may terminate this Agreement without liability to Company (other than fees and charges payable through the effective date of the Force Majeure Event).
- 9.8 **Counterparts.** This Agreement may be executed in one or more counterparts, including by email, each of which when executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.
- 9.9 **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties, and nothing in this Agreement will be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.