

Terms and Conditions for Newforma Konekt

Last Updated June 26, 2023

Software as a Service Subscription Agreement and Terms of Use

Please read these Software as a Service Subscription Agreement and Terms of Use carefully. These Terms of Use create an agreement (the "Agreement" between you (as "Customer") and Newforma, Inc., a Delaware corporation with a principal office address of 1750 Elm Street, 9th Floor, Manchester, New Hampshire 03104, USA., or one of its direct or indirect subsidiaries ("Newforma"), ("Provider") regarding your access to and use of the Newforma web-based collaborative platform and associated software that you are registering to use via the Internet. All users must agree to this Agreement before using the Services (as defined below), unless you have a separate written agreement in place expressly covering the Services. If you accept this Agreement for an entity, you represent that you have the authority to bind the entity to this Agreement. If you do not agree to this Agreement, please click "Cancel" or "Back" and do not use the Services.

1. DEFINITIONS

- "Access Credentials" means any username, identification number, password, license or security key, security token, personal identification number (PIN) or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.
- "Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, investigative, regulatory or other, whether at Law, in equity or otherwise.
- "Affiliate" of a Person means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the first Person.
- "Authorized User" means each of the individuals authorized to use the Hosted Services under Section [2.1](#) and the other terms and conditions of this Agreement.
- "Available" means the Hosted Services are available for access and use by Customer over the internet.
- "Beta Service" means services or functionality which is designated as beta, preview, evaluation, or similar description.
- "Business Day" means any day other than a Saturday, Sunday or any other day on which banks located in the City of Manchester, NH are authorized or required by law to be closed for business.
- "Control" (and the terms "Controlled by" and "under common Control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- "Customer" has the meaning set forth in the preamble.
- "Customer Data" means, information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from the Customer by or through the Hosted Services.
- "Customer Systems" means Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), networks, and internet connectivity, whether operated directly by Customer or through the use of third-party services.
- "Disclosing Party" means a party that discloses Confidential Information under this Agreement.
- "Documentation" means any manuals, instructions or other documents or materials that Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.
- "Governmental Authority" means any federal, provincial, territorial, municipal or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.
- "Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.
- "Harmful Code" means any software, hardware or other technology, device or means, including any virus, trojan horse, worm, backdoor, malware or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt,

disable, distort, or otherwise harm or impede in any manner any: (i) computer, software, firmware, hardware, system or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby; or (b) prevent Customer from accessing or using the Hosted Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

- "HST" means harmonized sales tax, or goods and services tax, imposed under the HST Act (or any provincial or territorial legislation imposing sales tax or harmonized sales tax).
- "HST Act" means Part IX of the *Excise Tax Act* (Canada).
- "IP Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trade-mark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection in any part of the world.
- "Law" means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.
- "Losses" mean all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including legal fees, disbursements and charges, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- "Newforma Konekt" is a web-based collaborative platform that empowers teams with better coordination workflows. Newforma Konekt provides a central hub for all coordination information from design to construction. With information at your fingertips, you can access your data anytime, anywhere, either from a mobile device or desktop. Charts and graphics help understand data and your management performance through precise metrics.
- "Party" (and the term "Parties") shall refer to either Customer or Provider, or both.
- "Permitted Use" means any use of the Services by Customer for the benefit of Customer solely in or for Customer's internal business operations or for any and all lawful purposes.
- "Person" means an individual, corporation, partnership, unlimited liability company, Governmental Authority, unincorporated organization, trust, association or any other entity.
- "Personal Information" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located.
- "Process" means to take any action or perform any operation or set of operations that the Hosted Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy, and "Processing" and "Processed" have correlative meanings.
- "Provider" has the meaning set forth in the preamble.
- "Provider Disabling Device" means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer's access to or use of the Hosted Services automatically with the passage of time or under the positive control of Provider or its designee.
- "Provider Materials" means the Service Software, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems.
- "Provider Personnel" means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.
- "Provider Systems" means the information technology infrastructure used by or on behalf of Provider in performing the Hosted Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.
- "Receiving Party" means a Party that receives or acquires Confidential Information directly or indirectly under this Agreement.
- "Representatives" means, with respect to a party, that party, its Affiliates, and their respective employees, officers, directors, consultants, agents, independent contractors, subcontractors and legal advisors.
- "Service Software" means the Provider software application or applications and any third-party or other software that Provider provides remote access to, and use of, as part of the Hosted Services, and all new versions, updates, revisions, improvements and modifications of the foregoing.
- "Taxes" means any commodity tax, including sales, use, excise, value-added, goods and services tax, HST, consumption or other similar tax, including penalties and interest, imposed, levied or assessed by any Governmental Authority.
- "Territory" means the World.
- "Third-Party Materials" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

2. SERVICES

2.1 User Categories.

Provider offers different subscription levels to the Platform and its Services depending on the number of Authorized Users who will be given access to the Newforma Konekt web-based collaborative platform (the "Platform" or "Newforma Konekt"). Only the Newforma Konekt Hub Owner and Hub Administrator (either of which shall be a "Domain Manager") can invite Authorized Users to work in collaboration with him or her on one or several projects. The Domain Managers can administer the account of every Authorized User and the Hub ("Domain"). The maximum number of Authorized Users is set by a Domain Manager's subscription level. There are three (3) categories of Authorized Users: Project Administrator, Project Editor and Project Viewer. The Project

Administrator can make changes to projects and assign Authorized Users to projects. The Project Editor can make any change to a project while the Project Viewer is only permitted to view it.

One of the roles above shall be assigned to Customer by Provider. All Customers shall be bound at least by the rules herein applicable to Authorized Users and Customers generally, with limited more specific rights and obligations only applicable to Domain Managers, as specified in this Agreement.

2.2 Individual Accounts.

Each Authorized User shall have its own account for accessing the Platform and use of the Hosted Services.

2.3 Services.

Subject to and conditional on compliance with the terms and conditions of this Agreement by Customer, during the Term, Provider shall use commercially reasonable efforts to provide to Customer the services offered on the Platform (collectively, the "Services"), including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer (collectively, the "Hosted Services") 24 hours per day, seven days per week, every day of the year, except for:

(a) Service downtime or degradation due to a Force Majeure Event;

(b) any other circumstances beyond Provider's reasonable control, including use by Customer of Third-Party Materials, misuse of the Hosted Services or use of the Services other than in compliance with the express terms of this Agreement; and

(c) any suspension or termination of access to, or use, of the Hosted Services by Customer, as permitted by this Agreement.

2.4 Updates to Service Software

(a) Provider reserves the right to make, at no additional fee to the Customer, updates and changes to the Services (including maintenance releases, bug fixes, corrections, and minor modifications) that Provider makes generally available to its other customers ("Updates"); provided that Provider will not make any updates, change, or Updates that materially decrease the core functionality of the Services that impact the Customer during the Term of this Agreement.

(b) Provider may periodically launch new or significantly different add-on Hosted Services, enhancements, or services that are outside the scope of this Agreement and which have additional fees. Such add-on Hosted Services, enhancements or services will not be considered an Update. The Customer is under no obligation to use or pay for such new add-on Hosted Services, enhancements, or services, and the use or deployment of those services will be subject to a subsequent order form between the Parties, if applicable.

2.5 Beta Services.

From time to time, Provider may make available to the Customer, at no additional cost, Beta Services. If the Customer chooses to use Beta Services (at its sole discretion), it acknowledges and agrees that those Beta Services are intended and made available for evaluation purposes only, are not for production use, are not supported, are provided on an "as is" basis excluding any express or implied representations or warranties of any kind, and such Beta Services may be subject to additional terms. The Customer acknowledges and agrees that: (a) Beta Services are not considered "Hosted Services" under this Agreement; and (b) all restrictions, Provider's reservation of rights, and the Customer's obligations concerning the Hosted Services, shall apply to the Customer's use of Beta Services. The Customer's right to use Beta Services will expire on the date that a version of the Beta Services becomes generally available to customers, provided that in the event that the Beta Services are rolled out and become available as a Hosted Service under this Agreement, additional terms, conditions, and fees shall apply all as provided for in a statement of work. Provider may discontinue Beta Services (at its sole discretion) and may never make them generally available. Unless otherwise provided in this Agreement, which, for the avoidance of doubt, includes the indemnities set out in this Agreement, Provider disclaims any liability for any harm or damage arising out of or in connection with a Beta Service. Provider shall not implement or provide any Beta Services to Customer without prior written approval of the Customer.

2.6 Service and System Control.

Except as otherwise expressly provided in this Agreement, as between the parties:

(a) Provider has and will retain sole control over the hosting, operation, provision, management and maintenance of the Services and Provider Materials, including the: (i) Provider Systems; (ii) location(s) where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Service maintenance, upgrades, corrections and repairs;

(b) Customer has and will retain sole control over the operation, management and maintenance of, and all access to and use of, the Customer Systems, and sole responsibility for all access to, and use of, the Hosted Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions or materials provided by any of them to the Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use; and

(c) Data Location.

As further detailed in the [Data Location Page](#), the Domain Manager for your organization shall have the exclusive possibility upon the creation of the hub to select a jurisdiction in which Provider may store the Customer Data on its trusted servers, which are currently available in Canada (East), the United States (East) and Europe. By using the Services, Customer consents to this processing and storage of Customer Data at such location and transfer of any such Customer Data held in your jurisdiction to such other jurisdiction as per the selection of a Domain Manager. Once selected upon the creation of a hub, Domain Manager or Customer may not request for any subsequent transfers. Notwithstanding the foregoing, existing permanent hubs shall remain hosted in their current region and Demo hubs shall only be hosted in Canada.

2.7 Service Management.

Each Party shall, throughout the Term, maintain within its organization a service manager to serve as such Party's primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services (each, a "Service Manager"). Each Service Manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Agreement. Each Party shall ensure that its Service Manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each Party shall use commercially reasonable efforts to maintain the same Service Manager in place throughout the Term. If either Party's Service Manager ceases to be employed by such Party or such Party otherwise wishes to replace its Service Manager, such Party shall promptly name a new Service Manager by written notice to the other Party.

2.8 Changes.

Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable Law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties, except that a Domain Manager may increase or decrease the number of Authorized Users for any Services under Section 2.3. For greater certainty and without limiting the generality of the foregoing, this provision only pertains to changes that are requested by Customer and voluntarily agreed-upon by Provider. Provider may implement changes to the Hosted Services from time to time without prior notice or approval from Customer.

2.9 Subcontractors.

Provider may, from time to time, in its sole discretion, engage third parties to perform Services (each, a "Subcontractor") and exercise at all times a reasonable degree of control in accordance with industry standards to ensure that each Subcontractor abides by the terms of this Agreement in their performance of the Services.

2.10 Suspension or Termination of Services.

Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny access to, or use of, all or any part of the Services or Provider Materials by Customer or any other Person, without incurring any resulting obligation or liability, if: (a) Provider receives a Governmental Order that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its discretion, that: (i) Customer has failed to comply with, any term of this Agreement, accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement for the use of the Services; (ii) Customer is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.8 does not limit any of Provider's other rights or remedies, whether at Law, in equity or under this Agreement.

2.11 Application Developer and API Terms of Use

If Customer has entered into an Application Developer and API Terms of Use (the "API Agreement") with Provider governing Customer's rights (as "Developer" as defined in the API Agreement) to use and access the application programming interface and any accompanying or related documentation, source code, executable applications and other materials made available by Provider, including, without limitation, through its website ("API") for the purpose of developing, and implementing web or other software services or applications, Customer's access to and use of the API for internal use is governed by this Agreement (and the General API Policies) as indicated in Section 2.1 of the API Agreement.

3. SUBSCRIPTION PACKAGES

3.1 Subscription.

A Domain Manager can opt for a subscription of either one (1) month or (1) year (the "Subscription Package") directly through the Platform (the "Subscription Order"). The subscription period for a Subscription Package begins on the date the Subscription Order is processed by Provider and ends at the expiration of the specified period, unless terminated earlier under any of this Agreement's express provisions ("Initial Term"). After the Initial Term, that same selected Subscription Package shall automatically be renewed for the same duration, unless earlier terminated under this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term (each, a "Renewal Term" and, together with the Initial Term, the "Term").

4. PAYMENT TERMS

4.1 Fees.

A Domain Manager shall pay Provider the fees agreed-upon pursuant to an individual agreement ("Fees").

4.2 Payment.

The payment of the Fees applicable to the one (1) year Subscription Package shall be made at the moment the Subscription Order is made by the Domain Manager. The payment of the Fees applicable to the one (1) month Subscription Package shall be made at the moment the Subscription Order is made, and pursuant to the renewal provision in the above Section 4.1, shall be processed automatically each subsequent month on the same day.

4.3 Fee Increases.

Provider may increase Fees for any Subscription Package, at any time and without prior notice to the Domain Manager. The Fees billed to the Domain Manager for a chosen Subscription Package will however remain the ones in effect when the Subscription Order was made and until the end of the then-current Term when the increase occurred. The Fees shall then be increased in accordance with the terms of the applicable Subscription Order for any Renewal Terms.

4.4 Reimbursable Expenses.

The Domain Manager shall reimburse Provider for reasonable out-of-pocket expenses incurred by Provider in connection with performing the Services which are out of scope of the level of support specified in this Agreement and the applicable Subscription Order and which shall include, without limiting the generality of the foregoing, specific required onsite meetings, travel costs and expenses for specific tasks and extraordinary troubleshooting (the "Reimbursable Expenses").

4.5 Currency.

The Fees for the Services are indicated and charged in U.S. dollars.

4.6 Taxes.

All Fees and other amounts payable by the Domain Manager under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, the Domain Manager is responsible for all HST/GST, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, provincial or territorial governmental or regulatory authority on any amounts payable by the Domain Manager hereunder, other than any taxes imposed on Provider's income.

4.7 Payment method.

The Domain Manager shall make all payments hereunder in U.S. dollars by Check, Wire or ACH payment method. Provider is not responsible for payment issues arising from any failure of the payment gateway. Provider reserves the right to modify its online transaction procedures or use other providers to process the payment of the Fees at any time.

4.8 No Deductions or Set-Offs.

All amounts payable to Provider under this Agreement shall be paid by the Domain Manager to Provider in full without any set-off, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

5. AUTHORIZATION AND CUSTOMER RESTRICTIONS.

5.1 Authorization.

Subject to and conditional on the Domain Manager's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby authorizes Domain Manager (and all Authorized Users) to access and use, in the Territory and during the Term, the Hosted Services and such Provider Materials as Provider may supply or make available to the Domain Manager solely for the Permitted Use by and through Authorized Users in accordance with the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and other than as may be expressly set forth in Section 16.8, non-transferable.

5.2 Authorization – Limitations and Restrictions.

The Domain Manager shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

(a) copy, modify or create derivative works or improvements of the Services or Provider Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;

- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, or any part thereof;
- (d) bypass or breach any Provider Disabling Device, security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then-valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the Services or Provider Systems any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trade-marks, Documentation, warranties or disclaimers, or any copyright, trade-mark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- (h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any IP Right or other right of any third party, or that violates any applicable Law;
- (i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or
- (j) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under Section 5.1.

6. CUSTOMER OBLIGATIONS.

6.1 Customer Systems and Cooperation

Customer shall at all times during the Term:

- (a) set up, maintain and operate in good repair all Customer Systems on or through which the Services are accessed or used; and
- (b) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

6.2 Effect of Customer Failure or Delay.

Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").

6.3 Corrective Action and Notice.

If a Domain Manager becomes aware of any actual or threatened activity prohibited by Section 5.2 by an Authorized User, that Domain Manager shall, and shall cause any Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity by email at security_konekt@newforma.com.

7. DATA BACKUP

The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Provider shall use best reasonable efforts to comply with usual industry standards with regard to data backup practices. IN ANY EVENT, PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

8. SECURITY

8.1 Provider Systems and Security Obligations.

Provider will employ security measures in accordance with Provider's data privacy policy as amended from time to time, a current copy of which is available on Provider's website at <https://www.newforma.com/privacy-policy/> (the "Privacy Policy").

8.2 Data Breach Procedures.

Provider maintains a data breach plan in accordance with all Laws and the criteria set forth in Provider's Privacy Policy and shall

implement the procedures required under such data breach plan on the occurrence of a “Data Breach” (as defined in such plan).

8.3 Domain Manager Control and Responsibility.

A Domain Manager has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of any Authorized User in connection with the Services; (c) Customer Systems; (d) the security and use of Access Credentials by any Authorized User; and (e) all access to and use of the Hosted Services and Provider Materials directly or indirectly by or through the Customer Systems or its Authorized Users’ Access Credentials, with or without the Authorized User’s knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

8.4 Access and Security.

A Domain Manager shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to, or use of, the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

9. IP RIGHTS

9.1 Reservation of Rights.

All right, title and interest in and to the Services, Provider Materials and Third-Party Materials, including all IP Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer acknowledges and agrees that it has no right, license or authorization with respect to any of the Services, Provider Materials or Third-Party Materials (including any IP Rights therein) except as expressly set forth in Section 5.1 or the applicable third-party license, in each case subject to Section 5.2. All other rights in and to the Services, Provider Materials and Third-Party Materials are expressly reserved by Provider and the respective third-party licensors.

9.2 Customer Data.

As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all IP Rights relating thereto, subject to the rights and permissions granted in Section 9.3.

9.3 Consent to Use Customer Data.

Customer consents to, and grants Provider, its Subcontractors and the Provider Personnel a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable, and transferable license to, collect, use, edit, modify, truncate, aggregate, reproduce, prepare derivative works of, display, store, analyze, process, adapt, publish, distribute, incorporate, perform, and otherwise fully use Customer Data in any form, medium, or technology now known or later developed (a) as necessary or useful to perform the Services, (b) as are necessary or useful for Provider to enforce this Agreement and exercise its rights and perform its obligations hereunder, (c) in an aggregated and de-identified manner to conduct benchmarking analysis and provide benchmarking services, (d) for data analytics purposes, and (e) to train and deploy machine learning and large language models and other artificial intelligence technologies and offerings (whether now known or hereafter developed); provided that in all cases the Company maintains the confidentiality of any Confidential Information of Customer.

9.4 Data Access.

Provider’s automated systems may analyze Customer Data using techniques such as machine learning. This analysis may occur when the Customer Data is sent, received, or stored.

9.5 Mobile Features

(a) The Platform may allow you to access our Services, download our mobile applications (“Apps”), upload content to the Platform, and receive messages on your mobile device (collectively “Mobile Features”). Your mobile device carrier may prohibit or restrict certain Mobile Features and certain Mobile Features may be incompatible with your mobile device carrier or mobile device. In addition, your mobile device carrier may charge you for standard messaging, data, and other fees to participate in Mobile Features. We have no responsibility or liability for any fees or charges you incur when using the Mobile Features. You should check with your mobile device carrier to find out whether any fees or charges will apply, what plans are available and how much they cost. You should also contact your mobile device carrier with any other questions regarding these issues.

(b) You acknowledge that your use of the Apps is subject to any terms set forth in the terms of service of the third party providing the mobile device on which the App operates (e.g., Apple iOS or Android).

(c) Provider shall not be liable if you do not have a compatible mobile device or if you download the wrong version of an App for your mobile device. Provider reserves the right to terminate the use of the Apps or any other aspect of the Platform should you be using the Apps or the Platform with an incompatible or unauthorized device. Provider is not responsible for your internet connection or for any consequences of intermittent or unavailable connectivity.

9.6 Apple – App Store Sourced Application

(a) With respect to the Apps provided by that may be accessed through or downloaded from the Apple App Store (“App Store Sourced Application”) that is designed for use on Apple-branded products (including but not limited to iPad, iPhone, and iPod touch) as permitted by the usage rules set forth in the Apple App Store Terms of Service: (i) you agree to use the App Store Sourced Application only on an Apple-branded product that runs iOS (Apple’s proprietary operating system software); and (ii) you acknowledge and agree that the terms and conditions of such applicable Apple, Inc. (“Apple”) “Usage Rules” set forth in the Apple App Store Terms of Service shall apply and, if any of the terms and conditions of these Terms of Use are less restrictive than, or otherwise in conflict with such applicable Apple usage rules, the Apple usage rules shall control. Provider reserves all rights in and to the Apps not expressly granted to you under this Agreement.

(b) You acknowledge and agree that (i) this Agreement is valid between you and Provider only, and, that Apple is not a party to this Agreement other than as third-party beneficiary as contemplated below, and (ii) Provider, not Apple, is solely responsible for the App Store Sourced Application and the Platform Content.

(c) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or support services to you with respect to the App Store Sourced Application and any questions with respect to the App Store Sourced Application shall be directed to Provider.

(d) Notwithstanding anything to the contrary herein, and subject to the terms in this Agreement, you acknowledge that, solely as between Apple and Provider, and not Apple is responsible for addressing any claims you may have relating to the App Store Sourced Application, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims, (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(e) In the event of any failure of the licensed App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the licensed App to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the licensed application.

(f) Further, you agree that if the App Store Sourced Application, or your possession and use of the App Store Sourced Application, infringes on a third party’s intellectual property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.

(g) You acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of this Agreement for App Store Sourced Applications, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use for App Store Sourced Applications against you as a third-party beneficiary thereof.

(h) Without limiting any provisions of this Agreement, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

10. CONFIDENTIALITY

10.1 Confidential Information.

In connection with this Agreement each party (as the “Disclosing Party”) may disclose or make available Confidential Information to the other party (as the “Receiving Party”). Subject to Section 10.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including, information consisting of, or relating to, the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing: all Provider Materials are the Confidential Information of Provider.

10.2 Exclusions.

Confidential Information does not include information that:

(a) was rightfully known to the Receiving Party without restriction on use or disclosure before such information’s being disclosed or made available to the Receiving Party in connection with this Agreement;

(b) was or becomes generally known by the public other than by non-compliance with this Agreement by the Receiving Party or any of its Representatives;

(c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or

(d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

10.3 Protection of Confidential Information.

As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 10.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 10.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 10.3;
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 10.

10.4 Compelled Disclosures.

- (a) If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information, then, to the extent permitted by applicable Law, the Receiving Party shall:
 - (i) promptly, and before such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 10.3; and
 - (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking an injunction, a protective order or other limitations on disclosure.
- (b) If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 10.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

11. TERMINATION

11.1 Reasons for Termination.

In addition to any other express termination right set forth elsewhere in this Agreement:

- (a) Provider may terminate this Agreement, effective on written notice to Customer, if:
 - (i) Customer, as Domain Manager, fails to pay any amount when due hereunder, and such failure continues for more than 30 days after Provider's delivery of written notice thereof;
 - (ii) Customer breaches any of its obligations under Section 10(Confidentiality); and
 - (iii) Customer has no activity on Customer's account for more than twelve (12) months.
- (b) Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach:
 - (i) is incapable of cure; or
 - (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; and
- (c) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party:
 - (i) fails to pay its debts generally as they become due or otherwise acknowledges its insolvency;
 - (ii) ceases to carry on business in the ordinary course;

(iii) makes a general assignment for the benefit of its creditors;

(iv) has issued against it a bankruptcy order or otherwise becomes subject to any involuntary proceeding under any domestic or foreign bankruptcy law;

(v) commences or institutes any application, proceeding or other action under any Law relating to bankruptcy, insolvency, winding-up, reorganization, administration, plan of arrangement, relief or protection of debtors, compromise of debts or similar Laws, seeking:

(A) to have an order for relief entered with respect to it;

(B) to adjudicate it as bankrupt or insolvent;

(C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, compromise, arrangement, stay of proceedings of creditors generally, or other relief with respect to it or its assets or debts; or

(D) appointment of a receiver, interim receiver, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets.

11.2 Effect of Expiration or Termination.

In this Agreement, except with respect to the consent to use data in Section 9.3 and except with respect to de-identified data, unless indicated otherwise:

(a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and permanently erase all Customer Data and Customer's Confidential Information from the Provider Systems;

(c) Customer shall immediately cease all use of any Services or Provider Materials; and

(i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Provider's Confidential Information; and

(ii) permanently erase Provider's Confidential Information from all computer systems that Customer directly or indirectly controls.

(d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control:

(i) the Receiving Party may retain the Disclosing Party's Confidential Information in its then current state and solely to the extent and for so long as required by applicable Law;

(ii) Provider may retain Customer Data in its then current state and solely to the extent and for so long as required by applicable Law;

(iii) Provider may also retain limited Customer Data in its backups, archives and disaster recovery systems in accordance with reasonable industry standards until such backup and archival Customer Data is deleted in the ordinary course of Provider's data removal procedures; and

(iv) all information and materials described in this Section 11.2(d) will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

(e) Provider may disable all Customer access to the Hosted Services and Provider Materials. However, each Customer's designated Hub Owner or Hub Administrator will retain access for a period of twelve (12) months to the data contained within that Customer's account (with the understanding that the ongoing projects themselves will become inactive and only the data will be retrievable during this period). At the expiration of this twelve-month (12) period, all the data in the account will be deleted and no liability will be assignable to Provider for any damage incurred by the user as a result of the deletion;

(f) if Provider terminates this Agreement under Section 11.1(a) or Section 11.1(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefor.

11.3 Surviving Terms.

The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its

nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 5.2, Section 10, Section 11.2, this Section 11.3, Section 12, Section 13, Section 14 and Section 16.

12. REPRESENTATIONS AND WARRANTIES.

12.1 Specific Representations and Warranties.

(a) Customer acting as a Domain Manager represents and warrants to Provider that it has all required power and capacity to enter into this Agreement (including binding the corporation for which Customer acts as a Representative), to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement.

(b) A Domain Manager represents and warrants to Provider that it shall at all times ensure that each Authorized User uses its own account for access to the Platform and use of the Hosted Services.

(c) Each Party represents and warrants to the other Party that this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or similar laws related to or affecting creditors' rights generally or the effect of general principles of equity.

12.2 Additional Provider Representations, Warranties and Covenants.

Provider represents, warrants and covenants to Customer that it will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

12.3 Additional Customer Representations, Warranties and Covenants.

Customer represents, warrants and covenants to Provider that Customer owns or otherwise has, and will have, the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any IP Rights, or any privacy or other rights of any third party or violate any applicable Law. It is understood that, at all times, the user remains responsible for validating all construction documentation prior to the construction of any building.

12.4 DISCLAIMER OF CONDITIONS AND WARRANTIES.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, SECTION 12.2 AND SECTION 12.3, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (a) MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES; OR (e) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

13. INDEMNIFICATION.

13.1 Provider Indemnification.

Provider shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any Action by a third party (other than an Affiliate of Customer) alleging/to the extent that such Losses arise from any allegation in such Action that Customer's use of the Services (excluding Customer Data and Third-Party Materials) in compliance with this Agreement infringes an IP Right protected in Canada. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

(a) access to, or use of, the Services or Provider Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by Provider;

(b) modification of the Services or Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification; or

(c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider.

13.2 Customer Indemnification.

Customer shall indemnify, defend and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their

respective officers, directors, employees, agents, successors and permitted assigns (each, a “Provider Indemnitee”) from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party (other than an Affiliate of a Provider Indemnitee) that/to the extent that such Losses arise out of or relate to any:

(a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

(b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer, including Provider’s compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by Provider;

(c) allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants or obligations under this Agreement; or

(d) negligence/gross negligence or more culpable act or omission (including recklessness or wilful misconduct) by Customer, or any third party on behalf of Customer, in connection with this Agreement.

13.3 Indemnification Procedure.

Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified under Section 13.1 or Section 13.2, as the case may be. The party seeking indemnification (the “Indemnitee”) shall cooperate with the other party (the “Indemnitor”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defence and investigation of such Action and shall employ counsel to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section 13.3 will not relieve the Indemnitor of its obligations under this Section 13 except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13.4 Mitigation.

If any of the Services or Provider Materials are, or in Provider’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party IP Right, or if Customer’s use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Services and Provider Materials as contemplated by this Agreement;

(b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the Services and Provider Materials.

THIS SECTION 13 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY IP RIGHT.

14 LIMITATIONS OF LIABILITY.

14.1 EXCLUSION OF DAMAGES.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA; (d) BREACH OF DATA OR SYSTEM SECURITY; OR (e) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 CAP ON MONETARY LIABILITY.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED \$100. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.3 Exceptions.

The exclusions and limitations in Section 14.1 and Section 14.2 do not apply to Provider's obligations under Section 13 (Indemnification) or liability for Provider's gross negligence or wilful misconduct.

15. FORCE MAJEURE.

15.1 No Breach or Default.

In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including:

- (a) acts of God;
- (b) flood, fire, earthquake, tsunami or explosion;
- (c) war, terrorism, invasion, riot or other civil unrest;
- (d) actions, embargoes or blockades in effect on or after the date of this Agreement;
- (e) national or regional emergency;
- (f) strikes, labour stoppages or slowdowns or other industrial disturbances;
- (g) passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, or any complete or partial government shutdown;
- (h) national or regional shortage of adequate power or telecommunications or transportation facilities; or
- (i) any other event that is beyond the reasonable control of such party.

(each of the foregoing, a "Force Majeure Event").

15.2 Affected Party Obligations.

A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

16. MISCELLANEOUS.

16.1 Relationship of the Parties.

The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or another form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

16.2 Public Announcements.

During this Agreement, Customer grants Provider the right to identify Customer as a customer of the applicable Services, including using the Customer's logo, solely in marketing materials and on Newforma's website. In any case, Customer can opt-out of this obligation with the prior written notice to Provider. Neither party shall issue any press release regarding this Agreement without the prior written consent of the other party.

16.3 Communications from Provider.

By authorizing Provider to communicate with you by email, you consent to Provider sending you all relevant information regarding the use of its products and services, announcements of new products, special offers, etc. You can unsubscribe from the Provider's mailing list at any time. However, for as long as you remain a user of the Platform, Provider will nonetheless send you information related to the use of its Services. To stop receiving this information, you can close your account by following the required procedure.

16.4 Notices.

All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (in either case, with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if

sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

16.5 Interpretation.

For purposes of this Agreement: (a) the words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Unless otherwise stated, all dollar amounts referred to in this Agreement are stated in U.S. currency.

16.6 Headings.

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

16.7 Entire Agreement.

Unless expressly provided in a prior agreement between Customer and Provider for the use of the Platform and the Hosted Services (in which case this prior agreement shall take precedence), this Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

Provider reserves the right, at its discretion, to change, modify, add, or remove portions of this Agreement at any time. All Customers are expected to check this page from time to time to take notice of any changes, as they are legally binding on Customer. By using or accessing the Platform, Customer is agreeing to this Agreement.

16.8 Assignment.

Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 16.8 is void. This Agreement is binding upon and enures to the benefit of the Parties hereto and their respective permitted successors and assigns.

16.9 No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.10 Amendment and Modification: Waiver.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by an authorized representative of each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.11 Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16.12 Governing Law: Forum Selection.

This Agreement and all exhibits and schedules attached hereto and all matters arising out of or relating to this Agreement are governed by and construed in accordance with the Laws of the Province of Quebec and the federal laws of Canada applicable therein. Any Action arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the Province of Quebec, and each Party irrevocably submits to the jurisdiction of such courts in any such Action. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any Action brought in any such court.

- 1. Equitable Relief.

Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 10 or, in the case of Customer, Section 5.2, Section 6.3 or Section 8.3, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.