

TERMS AND CONDITIONS FOR SERVICES

1. DEFINITIONS

- 1.1 **"Terms and Conditions"** means the terms and conditions described herein.
- 1.2 **"Statement of Work"** means each or any, as the context requires, Statement of Work entered into between the Customer and Gibraltar that references the Terms and Conditions.
- 1.3 **"Services"** means work performed by Gibraltar for Customer pursuant to a Statement of Work.
- 1.4 **"Gibraltar"** means Gibraltar Solutions Inc. with its principal place of business at 6925 Century Ave, Suite 702, Mississauga ON, L5N 7K2.
- 1.5 **"Customer"** means the customer defined in the Statement of Work that references the Terms and Conditions.

2. CHARGES, PAYMENT AND TAXES

2.1 Fees for Services

Fees and method of billing (e.g., whether based on a fixed price, periodic payment, time and materials or other method) shall be specified in the Statement of Work.

2.2 Incidental Expenses

Customer shall reimburse Gibraltar for reasonable travel, administrative, and out-of-pocket expenses incurred in relation to the Services. Gibraltar shall provide supporting documentation and obtain prior approval from Customer for such expenses.

2.3 Invoicing and Payment

Gibraltar shall invoice Customer monthly, unless otherwise expressly stated in the applicable Statement of Work.

Unless otherwise expressly specified in the applicable Statement of Work: (a) any one-time set-up fees set forth in a Statement of Work are invoiced upon the execution of the Statement of Work by both parties; and (b) monthly fees for Services will commence on the mutually agreed Service Commencement Date set forth in the Statement of Work and are due monthly in advance, pro-rated for any month when the Services are provided for only part of the month.

Invoices shall be payable thirty (30) days from the date of invoice (the "Due Date"). Any invoiced amount which remains unpaid after the Due Date shall be subject to interest charges at a rate of Royal Bank of Canada prime plus 4% per year, compounded monthly and calculated from the Due Date until the amount is paid.

2.4 Non-Payment

If an invoice is unpaid 30 days after the Due Date, Gibraltar may, without notice, and without prejudice to all other rights and remedies under these Terms and Conditions, any Statement of Work, at law or in equity, suspend the supply of any or all Services to Customer, without prejudice to Customer's obligation to make payments to Gibraltar required by any Statement of Work during the period that the provision of the Services to the Customer is suspended, and such suspension shall not be considered a failure by Gibraltar to meet any applicable Service Levels, or trigger any service level credits. The supply of Services pursuant to the applicable Statement of Work shall resume upon payment by Customer to Gibraltar of all outstanding invoices, and all reasonable costs of Gibraltar to suspend and restore the Services.

If an invoice is unpaid 60 days after the Due Date, Gibraltar may, without prejudice to all other rights and remedies under the Terms and Conditions, and Statement of Work, at law and in equity, terminate the applicable Statement of Work immediately on written notice to the Customer. All fees for Services or part thereof performed until the effective date of termination, and all payments not yet paid by Customer to the end of the Term provided for in the applicable Statement of Work up to a maximum of 3 months of the payments due for the Services shall become immediately due and payable as liquidated damages, and not as a penalty. If Gibraltar is required to bring legal action to recover any amount due to Gibraltar by Customer under the Terms and Conditions or a Statement of Work, the Customer agrees to pay to Gibraltar the amount of the reasonable legal fees and costs incurred by Gibraltar in such regards.

2.5 Taxes

Fees do not include, and Customer shall be responsible for, payment of all applicable taxes imposed on the fees payable by Customer under the Terms and Conditions. If Gibraltar is required to pay or collect any federal, provincial, local, withholding, or excise taxes applicable to the Services provided under the Terms and Conditions, such taxes shall be billed to and paid by Customer. In no event will Customer be liable for taxes on Gibraltar's income.

3. CHANGE PROCESS AND ACCEPTANCE**3.1 Change Order**

In order to make a change to the Services described in a Statement of Work, Customer will submit a written request to Gibraltar specifying the proposed changes in detail in accordance with Gibraltar's change management and control procedures. Gibraltar will submit to Customer an estimate of the fees and the anticipated changes in the delivery schedule that will result from the proposed change in Services ("**Change Order**"). Gibraltar will continue performing the Services in accordance with the Statement of Work until the parties agree in writing on the change in scope of work, scheduling and fees therefor. Any Change Order shall be agreed to by the parties in writing prior to implementation.

4. RESERVATION OF RIGHTS**4.1 Retention of Rights**

Gibraltar shall retain all rights (including intellectual property rights), title and ownership interests to any intellectual property used pursuant to or developed pursuant to providing the Services. Customer shall not reverse engineer, disassemble, decompile or make any unauthorized copies of such intellectual property or any portion thereof.

4.2 Software

The Services provided under the Terms and Conditions may be in support of Customer's license to use computer software programs, owned or distributed by Gibraltar, under a separate software license agreement. Except for restrictions on use set forth in an applicable Statement of Work, such software license agreement shall govern all use by Customer of such programs. Neither the Terms and Conditions nor any Statement of Work grants any license or any other rights for such programs.

4.3 Customer Provided Materials

To the extent that Customer provides Gibraltar with materials, including software during Gibraltar's provision of the Services, Customer grants a temporary, non-exclusive license to Gibraltar to use, reproduce and modify such materials solely for the purposes of providing the Services, and warrants to Gibraltar that it has the rights to grant such license.

5. CONFIDENTIALITY**5.1 Nondisclosure**

The parties may provide to one another information that is marked confidential or ought reasonably in the circumstances surrounding its disclosure to be viewed as confidential, including but not limited to personal information, trade secrets, marketing plans, financial data, and specifications, and includes all Customer information and data ("**Confidential Information**"). Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. The parties agree to use Confidential Information only for purposes related to the Services and to hold each other's Confidential Information in confidence while the Services are being performed and indefinitely thereafter. Confidential Information may be disclosed by a court order, pursuant to a Statement of Work, or in connection with a judicial or arbitration process, provided that, except with respect to disclosure pursuant to a Statement of Work, the party required to disclose such Confidential Information first gives the other party reasonable notice of such order or process, if permitted by law, and co-operates in efforts to obtain a protective order.

5.2 Customer Information

Upon request by Customer within 30 days of termination, Gibraltar will return or destroy, at Gibraltar's option, all Customer information or data remaining with Gibraltar at the termination of a Statement of Work. Gibraltar will have no obligation to retain or preserve any such Customer information or data beyond such 30 day period. Notwithstanding the foregoing, Gibraltar may retain any such Customer information or data to the extent required by law, or contained in any backups.

6. WARRANTY, LIMITATION OF LIABILITY, INDEMNITY AND INSURANCE

6.1 Warranty and Disclaimers

Gibraltar warrants that the Services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards. The warranty in this Section 6.1 is the only warranty with respect to the Services and in lieu of all other warranties or conditions, whether express, statutory or implied, including any implied warranties of merchantable quality, completeness, timeliness or fitness for a particular purpose, and all of such representations and warranties are, to the extent permitted by applicable law, excluded, disclaimed by Gibraltar and waived by the Customer.

6.2 Limitation of Liability

In no event shall either party be liable for any indirect, incidental, special, punitive, exemplary or consequential damages, or damages for loss of profits, revenue, business interruption, contract, goodwill or other business or economic loss, or for lost or damaged data or the availability of data, incurred by either party or any third party, even if the other party or any other person has been advised of the possibility of such damages. Gibraltar's liability for damages hereunder shall in no event exceed the amount of fees paid by Customer, under the Statement of Work in respect of which such liability arises in the three month period prior to the first event giving rise to the claim. Gibraltar's liability for loss of Customer's data shall be limited to making commercially reasonable efforts to re-install data from the Customer's last available back-up. The foregoing disclaimer and limitation of liability shall apply regardless of whether such liability is based on breach of contract, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise.

6.3 Indemnity

Each party shall indemnify and save harmless the other party, its agents, employees, officers, directors and representatives from and against any loss, cost, damage, liability, action, penalty, fine, interest or claim howsoever arising or resulting from any breach of these Terms and Conditions, a Statement of Work, or applicable laws, regulations, ordinances, orders, or similar in effect from time to time, pertaining to the Services, or for any negligent or willful act or omission, by the other party, its employees, agents, representatives, officers, directors and designees, or that may arise or result from any action or services of the other party or by any person claiming an ownership or possessory interest, lien, trust, pledge, or security interest in any of property not owned or provided by Gibraltar and related to the provision of the Services, including without limitation any attempt by such third party to take possession of such property, or by any third party based on an alleged violation of applicable copyright or other intellectual property law.

7. TERM AND TERMINATION

7.1 Term

The Effective Date and Term of a Statement of Work, where applicable, will be detailed in the Statement of Work and remain in effect until terminated in accordance with this section 7.

7.2 Renewal

The parties shall negotiate the renewal of each Statement of Work, where applicable, sixty (60) days prior to the end of the term of such Statement of Work. In the event a new Statement of Work has not been finalized by the expiry date, and if Customer wishes to continue the Services, the Services shall be provided to the Customer on a monthly basis with fees charged at Gibraltar's standard rates current at that time.

7.3 Termination of Statement of Work

Except as otherwise specified in a statement of Work, either party may terminate a Statement of Work at any time by providing the other party with ninety (90) days written notice. Any Statement of Work outstanding at the time of termination shall continue to be governed by these Terms and Conditions as if it had not been terminated.

Upon termination of any Statement of Work by Customer pursuant to this Section 7.3, all fees for Services or part thereof performed until the effective date of termination shall become immediately due and payable as liquidated damages.

7.4 Termination for Breach

A party may terminate a Statement of Work if the other party is in material breach of these Terms and Conditions or such Statement of Work, as applicable, and has not remedied the breach within thirty (30) days of written notice specifying the breach. Consent to extend the remedy period shall not be unreasonably withheld, so long as the breaching party has commenced to remedy the breach during the thirty (30) day notice period and diligently pursues remedying the breach in good faith.

7.5 Termination for Bankruptcy

Either party may, by written notice, immediately terminate any or all Statement of Work for cause if either party becomes: (a) the subject of any proceedings under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect; or (b) subject to the appointment of or taking possession by a receiver, receiver-manager, interim receiver, monitor, liquidator, assignee, custodian, trustee or other similar agent on any substantial part of such party's assets or property.

7.6 Effect of Termination

Termination of any Statement of Work shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges that accrued prior to the effective date of such termination. The parties' rights and obligations under Sections 2, 4, 5, 6, 7 and 8 shall survive termination of any Statement of Work in respect of such Statement of Work.

8. GENERAL**8.1 Governing Law**

The Terms and Conditions, and all matters arising out of or relating to the Terms and Conditions, shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8.2 Relationship Between the Parties

The relationship between Customer and Gibraltar is that of an independent contractor. Nothing in the Terms and Conditions or any Statement of Work shall be construed to create a partnership, joint venture, employment or agency relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each party will maintain appropriate worker's compensation for its employees as well as general liability insurance.

8.3 Jurisdiction

Each Party hereby fully and irrevocably submits to the jurisdiction of the provincial and federal courts located in the City of Toronto in connection with any disputes of any kind or nature arising out of the Terms and Conditions or any Statement of Work. No Party shall object to any such location for any reason. Any such disputes shall be resolved exclusively in such provincial and federal courts.

8.4 Notice

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the applicable address indicated on the Statement of Work, or such other address as either party may indicate by at least 10 days prior notice to the other party.

8.5 Cooperation

All parties shall take all action reasonably necessary to give effect to the Terms and Conditions and any Statement of Work.

8.6 Non-Solicitation

During the term of a Statement of Work and for a period of one year after the Statement of Work terminates for any reason, each party agrees not to directly or indirectly, in any capacity whatsoever, solicit, recruit for employment or offer employment or sub-contracting opportunities to or knowingly employ any employee, agent, subcontractor or consultant of the other party who has been assigned to the performance of the Statement of Work, without the prior written consent of the other party. Without limiting other remedies, in the event of a breach of this provision by a party with respect to an employee, such party shall pay the other party, as liquidated damages and not as a penalty, an amount equal to twelve (12) months' salary for the employee hired by such party.

8.7 Severability

In the event any provision of the Terms and Conditions or any Statement of Work is held to be invalid or unenforceable, the remaining provisions of the Terms and Conditions and Statement of Work will remain in full force.

8.8 Waiver

The waiver by either party of any default or breach of the Terms and Conditions shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either party's intellectual property rights, no action, regardless of form, arising out of the Terms and Conditions or any Statement of Work may be brought by either party more than one year after the cause of action has accrued.

8.9 Force Majeure

Neither party shall be responsible for any inability or delay in the performance of all or any part of its obligations under the Terms and Conditions or any Statement of Work (excluding payment obligations) caused by an event or circumstance ("**Force Majeure Event**") occurring after the date of the Statement of Work which was beyond the reasonable control of the party invoking such event or circumstance (including fire, flood, earthquake, elements of nature or acts of God, acts of war, acts of terrorism, riots, civil disorders, rebellions, power outages, strikes or lockouts) that cannot be reasonably prevented or controlled by the party whose performance is prevented or delayed, but provided that a lack of funds shall not qualify or be regarded as a Force Majeure Event. The party affected by a Force Majeure Event shall promptly give notice to the other party whenever such contingency or event occurs or becomes reasonably foreseeable and shall use commercially reasonable efforts to overcome the effects of the Force Majeure Event. The party affected by the Force Majeure Event shall give prompt notice to the other party of the cessation or resolution of the event. Non-performance by a party due to a Force Majeure Event for a period of thirty (30) or more consecutive days shall entitle the other party to terminate the Statement of Work upon written notice to the non-performing party.

8.10 Entire Agreement

These Terms and Conditions and all applicable Statements of Work constitute the complete agreement between the parties and supersede all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter the Statement of Work. A Statement of Work may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify the Statement of Work. It is expressly agreed that any terms and conditions of Customer's purchase order shall be superseded by these Terms and Conditions and all applicable Statements of Work. In the event of a conflict between these Terms and Conditions and a Statement of Work, the Statement of Work shall prevail, except as specifically set out herein.

8.11 Assignment

Neither the Terms and Conditions nor any Statement of Work may be assigned in whole, or in part, by either party, without the prior written consent of the other party. The Terms and Conditions and any Statement of Work shall bind and inure to the benefit of the successors and permitted assigns of the parties.