

COMMERX MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

SECTION 1 – INTERPETATION

- 1.1 **Definitions.** “**Agreement**” means, collectively, the Cover Page, these Terms and Conditions, any Managed Services Schedules, CRs, and all schedules and instruments supplemental hereto or in amendment or confirmation hereof; “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario; “**CR**” means a Change Request delivered in accordance with Section 6.1 hereof; “**Commerx System**” means, collectively, all of the components of the infrastructure and computing environment used by Commerx to perform the Services, whether owned by Commerx or its suppliers, including the Services Software, Commerx or third party facilities, hardware, operating systems, software applications and associated databases, tables, data and documentation and training materials; provided that no Services Software is part of the Commerx System to the extent such Services Software is a third party product not provided by Commerx (e.g. is provided by Customer); “**Fees**” shall have the meaning ascribed thereto in Section 4.1 hereof; “**Managed Services Schedule**” means a requisition document describing any services to be purchased by Customer, generated by Commerx and executed by Customer and Commerx; “**Services**” shall have the meaning ascribed thereto in Section 2.1 hereof; “**Services Software**” means any software set-out in a Managed Services Schedule that will be hosted used in providing Services to Customer.
- 1.2 **Currency.** Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.
- 1.3 **Computation of Time.** Any reference in this Agreement to a specific time shall refer to Eastern Standard Time. Should the last day of a time period fall on a weekend or legal holiday, the next Business Day thereafter shall be considered the end of the time period.

SECTION 2 – SERVICES

- 2.1 **Engagement and Managed Services Schedules.** Subject to the terms and conditions hereof, Commerx shall provide the services (the “**Services**”) that are set forth in any Managed Services Schedule or CR.
- 2.2 **Services.** Commerx shall perform the Services for Customer that are described in any applicable Managed Services Schedule or CR in accordance with these Terms and Conditions, and on the price, delivery dates, and specifications described on any applicable Managed Services Schedule or CRs. Commerx is not obligated to perform any Services and Customer has not contracted for any Services unless and until a Managed Services Schedule (as changed pursuant to any applicable CRs) is executed by both parties.
- 2.3 **Third Party Providers.** Customer acknowledges and agrees that Commerx may obtain products and services used in providing the Services from, and otherwise delegate obligations under this Agreement to, its affiliates, subcontractors or other third party suppliers, without the prior written permission of Customer.
- 2.4 **Changes to Commerx System and Services.** Commerx may make any changes in the Commerx System used in performing the Services that Commerx determines (in its sole and absolute discretion) to be necessary or appropriate. In addition, if at any time any third party suppliers cease to make their products or services available to Commerx on reasonable terms, then Commerx may cease to provide such features and/or services to Customer. Commerx will provide prior notice (or, in the event of an emergency, prompt notice as soon as reasonably possible after the occurrence of such emergency) if Commerx believes such changes have a reasonable likelihood of adversely affecting Customer’s use of the Commerx System.

SECTION 3 – TERM, TERMINATION, TRANSITION, AND SUSPENSION

- 3.1 **Term.** This Agreement is effective as of the Effective Date, and, unless terminated earlier in accordance with the termination rights set forth in this Agreement, this Agreement will expire thirty-six (36) full calendar months after the Effective Date (“**Initial Term**”). Following expiration of the Initial Term, this Agreement will automatically renew for additional one-year period (each a “**Renewal Term**”, and the Initial Term and any Renewal Terms, collectively, the “**Term**”), unless either party notifies the other party, in writing, of its intent not to renew at least ninety (90) calendar days prior to the end of the Term or the then-current Renewal Term.

- 3.2 Term of Each Schedule.** Services will be provided for the term set out in the relevant Managed Services Schedule (the “**Initial Schedule Term**”). In the event there is no renewal term set out in the Managed Services Schedule, then at the end of the Initial Schedule Term the Managed Services Schedule will transfer to a Month-to-Month term in perpetuity. Each Schedule renewal term described above is defined as a “**Schedule Renewal Term**”. The Initial Schedule Term and any Schedule Renewal Term(s) are collectively referred to as the “**Schedule Term**”. Commerx may change the Fees for a Schedule Renewal Term by providing the Customer with at least ninety (90) calendar days’ advance written notice of the change before the end of the then-current Schedule Term. Commerx will present any renewal changes, such as but not limited to; pricing, scope, equipment, SLA or any deliverables detailed in the Managed Services Schedule, in the form of a CR. Should the Customer decline such renewal conditions, the Customer may exercise their termination rights outlined in Section 3.3(c) of this Agreement.
- 3.3 Termination.** Either party may terminate this Agreement and/or any Managed Services Schedule immediately upon written notice if any of the following events occur: (a) the other party materially breaches or materially fails to perform any of its obligations under this Agreement, and such breach or failure to perform remains unresolved (if capable of being remedied) for a period of 30 days (10 days, in respect of payment obligations) after the other party has been given written notice thereof; (b) the other party becomes bankrupt, insolvent, makes a composition or arrangement with its creditors, has a receiver, administrator, administrative receiver or other encumbrancer take possession of or control over any substantial part of its assets, or otherwise undergoes any event analogous to any event referred to above in any jurisdiction; (c) the Customer, upon any fee increase (as per Section 3.2) by Commerx provided the Customer notifies Commerx in writing within thirty (30) calendar days of receipt of notice, that such fee increase is not accepted.
- 3.4 Termination for Convenience.** Customer shall have the right to terminate this Agreement and/or a Managed Services Schedule, at any time and for any reason, upon ninety (90) calendar days’ prior written notice to Commerx. If Customer terminates this Agreement under this Section 3.4, the Customer will pay the termination fee(s) as defined in the Managed Services Schedule(s). To the extent not set out in a Managed Services Schedule: (a) **Termination during Schedule Onboarding.** Customer will pay 100% of all the expenses incurred by Commerx for the provision of Services along with the Professional Services for onboarding the Customer, not to exceed the fees stated in the Managed Services Schedule, prior to the date of termination. Expenses could include, but not limited to, hardware and software and the associated maintenance fees. Commerx will provide the Customer an invoice with a detailed breakdown of the charges. Payment will be as defined in Section 4; or (b) **Termination after Schedule Onboarding.** Customer will pay 50% of the reoccurring fees, as stated in the relevant Managed Services Schedule(s), for the remaining term of the Managed Services Schedule(s).
- 3.5 Transition.** In the event that Customer terminates this Agreement pursuant to Section 3.3(a) then Customer may also request that Commerx continues to provide any or all Services for a reasonable time after the termination date, but in any event for no more than 3 months. Customer will be liable for pro-rata fees to Commerx, at Commerx’s then-current rates, for the Services provided during this period. In connection with termination or expiration of any Managed Services Schedule, Customer may request Commerx assistance in migrating Customer’s Content (as hereinafter defined) under the Managed Services Schedule to the control of Customer or an alternate vendor designated by Customer. Provided Customer is current in its payment to Commerx under this Agreement, Commerx can be requested to perform transition services under a separate Managed Services Schedule for a period of up to 3 months on a time and materials basis at Commerx’s then-current rates for Services. During the transition period, Commerx will provide Customer a copy of Customer’s data in an agreed format, as required for the transition. At the end of the transition period, each party will return to the other party any of the other party’s property in its possession or control and cease all access to the other party’s system. The parties agree that it will not be necessary to delete copies of any property or data that was made for backup or archival purposes in the ordinary course of business provided that the terms of this Agreement shall apply to such property or data until it is deleted.
- 3.6 Suspension.** Commerx reserves the right at all times to immediately suspend or limit the Services: (a) in the event the Customer prevents or delays Commerx in carrying out any of its obligations under this Agreement; (b) upon ten (10) Business Days’ notice where Customer has breached any of the terms contained in this Agreement and has failed to rectify the breach after being notified by Commerx; (c) in the event Commerx has reasonable grounds for suspecting Customer of using any part of the Services fraudulently, or attempting to do so, or of committing any other illegal or unlawful act in connection with the use of the Services; (d) Customer is directly or indirectly using the Services in a manner that could damage or cause injury to the Services or that otherwise reflects unfavourably on the reputation of Commerx; or (e) without liability, in the event that a court or other authority or regulator with jurisdiction over Commerx and/or Customer requires it to do so.
- 3.7 Effect of Termination or Expiration; Survival.** Upon termination or expiration of this Agreement for any reason whatsoever, all rights and obligations of both parties shall immediately cease and terminate, and all licenses granted hereunder will terminate unless such licenses are expressly stated as surviving. Each party shall return all of the other party’s content or property in its possession and discontinue the use of such content or property in any form. Except as otherwise provided herein, any termination or expiration of this Agreement shall be without prejudice to any other rights or remedies a party may

be entitled to under this Agreement or at law or in equity and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiration. Sections 1, 4, 9, 12 - 14, and 16 will survive termination or expiration of this Agreement for any reason. Upon any termination or expiration, Customer shall immediately pay Commerx any unpaid fees incurred prior to the effective date of termination or expiration.

SECTION 4 – FEES

- 4.1 Fees.** In consideration of the Services, Customer shall pay to Commerx the fees (the “**Fees**”) plus applicable taxes, as specified, and in accordance with the terms of the applicable Managed Services Schedule or CR.
- 4.2 Invoicing.** Invoicing under this Agreement will be in accordance with the payment schedule set-out in the applicable Managed Services Schedule or CR. To the extent not set-out in a Managed Services Schedule or CR: (a) **Recurring Charges.** Customer will be billed monthly, to commence one month prior to the proposed Managed Services Schedule or CR service date as defined by the Managed Services Schedule or CR project plan; (b) **Non-Recurring Charges.** Commerx will submit invoices to Customer immediately upon completion of the work; (c) For any Services performed on a time and materials basis, the invoice will show the number of hours worked by Commerx, if applicable, and other reasonable details as may be necessary to support Commerx’ invoices. Time and materials billing will be invoiced immediately upon completion of the work; (d) Invoices will set-out any authorized travel expenses incurred and reasonable details to support the portion of the invoice regarding such expenses.
- 4.3 Expenses.** Commerx shall obtain Customer’s prior written approval of all travel expenses, except for travel and meal expenses below \$500 when required solely for servicing the Customer.
- 4.4 Disputed Invoices.** If Customer questions or disputes any item on a disputed invoice, it will notify Commerx in writing within thirty (30) calendar days following the date of the applicable invoice while the remaining items not in dispute, will be paid within thirty (30) calendar days of receipt of invoice. Invoices paid or unpaid, will be considered uncontested and therefore due and payable in accordance to Section 4.5 below. If requested, Commerx will provide documentation to support the non-recurring invoiced charges. The parties will attempt to resolve the dispute within sixty (60) calendar days following the date of the applicable invoice. If they are unable to do so, either party may refer the dispute to binding arbitration in accordance with Section 16.13 hereof. Each party shall continue to perform its obligations under this Agreement pending resolution of any disputed invoices.
- 4.5 Payment.** Subject to Section 4.4 hereof, each invoice shall be payable within thirty (30) calendar days of the date of the applicable invoice at the place and in the manner agreed to by the parties. Any uncontested late payments may, at Commerx’s option, accrue interest at the rate of 1.5% per month (or the highest rate permitted by law, if less).

SECTION 5 - OPERATIONAL MANAGEMENT

- 5.1 Relationship Managers.** Commerx shall, as of the Effective Date, designate one staff member to be the “**Services Manager**”. Customer shall, as of the Effective Date, designate one staff member to be the “**Customer Manager**”. Each such manager (a) shall have overall responsibility for managing and coordinating its respective party’s performance under this Agreement; and (b) is the single point of contact for and on behalf of its respective party with respect to all matters relating to this Agreement, including issue resolution.
- 5.2 Disaster Recovery.** Commerx shall prepare and maintain a commercially reasonable disaster recovery capability plan during the term of this Agreement. Such plan shall be reasonably designed to minimize the impact of service disruptions caused by natural disasters or other unanticipated events (e.g. destruction of Commerx’s facilities or operations, utility or communication failures, or similar interruptions of operations, or of any necessary third party (including any Commerx’s third party supplier) and to enable its business operations to be promptly restored following such disruptions.
- 5.3 Maintenance.** Commerx may temporarily cease performing the Services in order to conduct any necessary maintenance or upgrades on the Commerx System for such duration and at such times as are set forth in a Managed Services Schedule.
- 5.4 Access to Environment.** Commerx will restrict physical and logical access to any hosting environment at which the Services are performed, strictly to individuals approved by Customer Manager.

SECTION 6 – CHANGE MANAGEMENT

- 6.1 Changes to Managed Services Schedule.** Either party may request changes to a Managed Services Schedule from time to time either during the implementation phase or the Schedule Term. The CR will be used to address the change. Each CR must be written and signed by an authorized representative of each party, and shall identify any changes to the scope, fees and, if applicable, timeline that would result from implementing the change(s). In addition, to the extent applicable, the CR shall identify the parties' ownership rights with respect to deliverables and/or work product arising from any Services provided pursuant to the CR. If and when the parties have signed the CR, then such enhanced, additional or new service shall be implemented and shall be subject to all of the terms and conditions hereof.

SECTION 7 – CUSTOMER OBLIGATIONS

- 7.1 Customer Supplied Components.** Whenever Commerx's performance of the Services is dependent upon Customer's furnishing of any Customer Supplied Component(s) (as hereinafter defined), Customer shall furnish such Customer Supplied Components in a timely fashion and in a reasonable format as mutually agreed upon by the parties in writing. Customer is responsible for (a) all Customer Supplied Components; (b) the risk of failure of Customer Supplied Components; (c) the cost of all maintenance, license and support costs and replacement of all Customer Supplied Components during the term of this Agreement; and (d) notwithstanding any Managed Services Schedule pursuant to which Commerx agrees to provide data storage or backup services, creating and maintaining a current copy of all Customer Supplied Components. Customer grants Commerx permission to perform a physical inspection of any Customer Supplied Component before such component is installed in a Commerx facility. Customer represents and warrants that any Customer-provided specifications or requirements around which Services are configured will be in compliance with applicable federal, state and local laws and regulations. Customer represents and warrants to Commerx that it has acquired all necessary licenses and consents from third party vendors for those Customer-provided items required for Commerx to perform Services hereunder. "**Customer Supplied Components**" means any hardware, software, interfaces, services, data, documents, information, software configuration parameters, macro scripts, engineering records, designs, other materials, or approvals, including, without limitation, Content (as hereinafter defined), as well as managed applications necessary for use or used in conjunction with the Services that are not provided by Commerx with the Services.
- 7.2 Customer Content.** Customer is responsible for the supply, quality, condition, and content of all information, data, and any other materials placed by or on behalf of Customer onto the Commerx System or that Customer stores, transmits or receives through or using any Service (e.g. any hosting service) ("**Content**"). Commerx does not own the Content and Commerx is not responsible for, does not monitor or censor, and exercises no control over (other than control of the physical equipment on which the Content resides). Unless Commerx is providing backup, archive and/or disaster recovery services under a Managed Services Schedule, Commerx is not responsible for re-creating or re-transmitting, the Customer's Content stored, transmitted or received through the use of Services, unless any loss or damage to the Content results directly from the negligence of Commerx. Customer represents and warrants to Commerx that: (a) the Content transmitted during the term of this Agreement and the use of the Commerx System pursuant to this Agreement will not encourage conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any Applicable Laws (as hereinafter defined), and (b) Customer shall not attempt to gain unauthorized access to other computer systems, any application/service for which Customer has not paid fees to use, or data and information belonging to others that is also hosted on the Commerx System. With respect to any Content, Customer is responsible for: (a) ensuring that all physical media that Customer furnishes to Commerx for processing meets the specifications of the manufacturer of the equipment with which such media are to operate and any other specifications that Commerx may reasonably establish; (b) the adequacy and accuracy of all data and information that Customer furnishes to Commerx and the results obtained therefrom; and (c) ensuring that the Content does not and will not contain unlawful, discriminatory, libelous, harmful, or obscene material of any kind and does not and will not violate any right of intellectual property, privacy or publicity.
- 7.3 Access Methods; Compliance With Policies and Procedures; Access to and Use of Commerx System; Open Source.** Customer will be responsible for ensuring that its representatives and employees duly comply with reasonable and written operating policies and procedures from Commerx previously communicated by Commerx to Customer, as well as with any other reasonable recommendations communicated by Commerx to Customer from time to time that are required for Commerx to ensure proper performance of the Services. Customer will be responsible for protecting the security and integrity of any user identifiers, passwords and codes issued to Customer hereunder and for any acts or omission that occur under any such issued user identifiers, passwords or codes to the extent attributable to Customer's custody of such user identifiers, passwords

and codes. If it is necessary for Customer to access and use the Commerx System in receiving the Services, Customer agrees that its use of the portion of the Commerx System to which access is given shall be (a) solely for Customer's own internal use in receiving the Services, unless otherwise agreed by the parties under a Managed Services Schedule, and (b) for proper business purposes. Customer will not disclose, download, decompile or reverse-engineer any Services Software or any other material or content provided by Commerx or its licensors and/or used in the performance of Services. Customer represents and warrants to Commerx that it will not use, and will not authorize any person or entity to use, any software in connection with the Services that may require that any Services, components thereof, or other intellectual property (including Commerx Property) of Commerx and/or its third party suppliers be (a) disclosed or distributed in source code form; (b) made available free of charge to recipients; or (c) modifiable without restriction by recipients.

- 7.4 No Adverse Acts.** In the event that Customer, its agents, employees or representatives cause (or are otherwise responsible for) any act or omission which adversely affects in any material way the provision of Services by Commerx hereunder, Customer shall be liable for any and all reasonable additional costs and expenses incurred by Commerx, its third party suppliers, its agents and/or its representatives, as a result of such act or omission. In addition, Commerx (at its discretion) may be relieved of its obligations under this Agreement to the extent that the performance of such obligations has been impeded by such act or omission. In the event that Commerx incurs any additional reasonable costs or expenses, or is otherwise unable to perform its obligations hereunder as a result of such act or omission, Commerx shall promptly notify Customer of same once Commerx becomes aware of such impact and mitigates the impact of such act or omission on the Services.
- 7.5 Security.** As the Services may be accessible through the Customer's networked environment, Customer shall maintain, in connection with such access, commercially reasonable technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication, and non-repudiation and virus detection and eradication. To the extent that Customer's affiliates, representatives or customers have access to the Services through the Customer's networked environment, Customer shall be responsible for ensuring that such affiliates, representatives and/or Customers abide with the terms of this Agreement relating to the confidentiality and intellectual property rights of Commerx in the Commerx Property, Commerx System and the Services, and shall be liable for any breach of such provisions by such users. Commerx shall have no liability or responsibility with respect to such users. In addition, Customer represents and warrants that the Customer Supplied Components will not, and Customer shall not introduce, any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines capable of damaging the Services or any Commerx Property.

SECTION 8 – COMPLIANCE WITH LAWS

- 8.1 Compliance with Laws.** The parties agree to comply with all applicable laws, regulations, rules, ordinances and codes, including, without limitation, Privacy Laws (as hereinafter defined) and anti-corruption laws ("**Applicable Laws**") applicable to that party in the performance of its obligations under this Agreement, which are or which may in the future be applicable to this Agreement. For greater clarity, if an Applicable Law is not an Applicable Law that is applicable to Commerx, Customer will be responsible for informing Commerx of such change and to proceed by the change management process in Section 6.1 to render the Service compliant with the Applicable Laws governing Customer's business. "**Privacy Laws**" means all applicable laws, regulations, rules, ordinances and codes governing the collection, use, disclosure and protection of information about an identifiable individual (i.e. "**Personal Information**") applicable to either party or to the Services, including, but not limited to, the *Personal Information and Protection of Electronic Documents Act* (Canada).
- 8.2 Access to Personal Information.** It is understood and agreed to by the parties that Commerx will not, pursuant to the terms of this Agreement, knowingly collect Personal Information directly from individuals but Commerx may (due to the nature of the Services) collect from Customer, use, access and/or disclose Personal Information solely for providing the Services.

SECTION 9 – CONFIDENTIALITY

- 9.1 Confidential Information.** "**Confidential Information**" means all non-public information and any information which ought reasonably to be considered confidential having regard to the circumstances surrounding disclosure, regardless of the format in which it is provided, of the disclosing party ("**Disclosing Party**") or its affiliates or suppliers, which is provided or disclosed to the receiving party ("**Receiving Party**"), or learned or accessed by the Receiving Party, in connection with the Receiving Party's performance of its obligations pursuant to this Agreement or any Managed Services Schedule. For the avoidance of doubt, Confidential Information includes any information concerning the business and affairs of the Disclosing Party or its affiliates or suppliers.

- 9.2 Obligations.** The Receiving Party acknowledges and agrees that (a) the Disclosing Party owns all right, title and interest in and to all of such Disclosing Party's Confidential Information; and (b) the Receiving Party has no right to use or retain the Confidential Information for any purpose other than in furtherance of carrying out its obligations pursuant to this Agreement. In addition, the Receiving Party shall (a) safeguard and protect the Confidential Information from theft, piracy or unauthorized access in a manner at least consistent with the procedures that Receiving Party uses to protect its own confidential information but in no event less than a reasonable degree of care; (b) ensure that any Confidential Information obtained from the Disclosing Party shall be disclosed only to the Receiving Party's employees, contractors, agents and suppliers on a "need-to-know" basis, and that such individuals and/or entities shall be bound by an obligation of confidentiality similar to the obligations of the parties under this Section 9; and (c) shall be liable for any breaches of this Agreement by any person to whom it provides, or provides access to, the Receiving Party's Confidential Information.
- 9.3 Exclusions.** These confidentiality obligations do not apply to any information that is (a) already known to the Receiving Party at the time of disclosure other than through disclosure by the Disclosing Party; (b) in the public domain at the time of, or following, disclosure through no action or inaction of Receiving Party; (c) disclosed to the Receiving Party by a third party that is known not to be prohibited by law or agreement from disclosing same; or (d) subsequently and independently developed by the Receiving Party without reference to the Confidential Information disclosed under this Agreement.
- 9.4 Compelled Disclosure.** If Confidential Information is required to be disclosed pursuant to a requirement of a governmental authority, such Confidential Information may be disclosed pursuant to such requirement so long as the party required to disclose the Confidential Information, to the extent possible, provides the other party with timely prior notice of such requirement and coordinates with the other party in an effort to limit the nature and scope of such required disclosure.
- 9.5 Return or Destruction.** Subject to Section 9.6 below, upon termination or expiration of this Agreement, the Receiving Party, at the Disclosing Party's option, will return or destroy (to the extent permitted under applicable records retention laws, rules, regulations and policies), all Confidential Information of the Disclosing Party under the Receiving Party's possession or control (provided, however, that either Party is permitted to store copies of the other Party's Confidential Information solely for backup and/or archival purposes, or as may otherwise be required by Applicable Laws, provided that any use of the other Party's Confidential Information is subject to this Agreement for as long as a Party retains such Confidential Information. Promptly following the reasonable advance written request of the Disclosing Party, the Receiving Party will provide to the Disclosing Party a certificate (signed by an officer or the Receiving Party) stating the Receiving Party's compliance with this Section 9.5.
- 9.6 Backups and Restoration.** In the event that (pursuant to a Managed Services Schedule) Commerx offers data storage or backup services, then Commerx will provide such services in accordance with the applicable Managed Services Schedule. However, due to technical issues regarding backups on servers and the possibility of data corruption on backup and restore, the parties acknowledge and agree that Commerx cannot guarantee any data can be fully restored. Customer will not hold Commerx responsible for any claim resulting from a failed backup and/or restore procedure, provided that Commerx performed its services in accordance with the applicable Managed Services Schedule and with due diligence and care consistent with similarly situated service providers within Commerx's industry.
- 9.7 Injunction.** The Receiving Party acknowledges and agrees that any breach of this Section 9 may cause the Disclosing Party serious damage which cannot fully or adequately be compensated by monetary damages, and that in addition to claiming damages, the Receiving Party has the right to seek interim or a permanent injunctive relief, in the event of any breach of this Section 9.
- 9.8 Notice.** Each party shall promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 9, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

SECTION 10 – OWNERSHIP

- 10.1 Intellectual Property.** As between the parties, Commerx shall exclusively own and retain all title, ownership rights and intellectual property rights in and to all the components of the Commerx System (excluding any Customer Supplied Components prior to Commerx commencing Services, and any software configuration parameters, macro scripts, engineering records and designs that apply to the Customer's use of the Commerx System), and to all other proprietary rights, materials, work products or assets that are developed by Commerx in providing the Services, including any successors, updates, extensions, modifications, derivatives, translations or enhancements of any of the foregoing (collectively, the "**Commerx Property**"). Notwithstanding the foregoing, Customer will own all Customer Supplied Components, software configuration parameters, macro scripts engineering records and designs, together with all intellectual property developed or created by

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Commerx for Customer to the extent expressly set out in a Managed Services Schedule. For certainty, nothing in this Agreement transfers any intellectual property rights from the Customer to Commerx. The Commerx Property constitutes Confidential Information and shall be treated by the parties in accordance with Section 9.

- 10.2 Limited License to Customer; Restrictions.** Commerx hereby grants to Customer during the term of the applicable Managed Services Schedule, a royalty-free, non-exclusive, non-transferable, non-sublicensable, revocable, limited right or sub-right, as the case may be, to access, use and display, in connection with the Services, the Commerx Property. With the sole exception of such right, nothing in this Agreement shall, directly or indirectly, confer any interest in the Commerx Property on Customer. Customer shall not copy, modify, translate, reverse-engineer, decompile, disassemble, or create derivative works based on the Commerx Property without written permission from Commerx.
- 10.3 Limited License to Commerx.** Customer hereby grants to Commerx during the term of this Agreement a royalty-free, non-exclusive, non-transferable (subject to the rights of assignment of this Agreement) limited right and license or sub-license, as the case may be, to access, display, reproduce, process and otherwise use, solely for the purpose of performing the Services for Customer, the Customer Supplied Components, including any Content.
- 10.4 Third Party Suppliers.** Notwithstanding any other provisions of this Agreement, the parties acknowledge and agree that any Commerx Property provided by Commerx to Customer, or Customer Property provided by Customer to Commerx, under this Agreement that has been licensed to Commerx, Customer or affiliates of either party by a third party is subject to the terms and conditions applicable to such license and the parties agree to comply with (a) any terms and conditions of such license communicated by the licensing party to the other party; and (b) any requirement of the licensing party in order for the licensing party to ensure the other party's compliance with the terms and conditions of such license, as such requirements are communicated by the licensing party to the other party. In the event of any inconsistency between the terms and conditions of this Agreement and such terms and conditions and requirements communicated by the licensing party to the other party such terms and conditions and requirements shall prevail.

SECTION 11 – REPRESENTATIONS, WARRANTIES AND COVENANTS

- 11.1 General.** Each party represents, warrants and covenants to the other party that it has: (a) it is a legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with full power and authority to conduct its business as it is now being conducted, to own or use the properties or assets that it purports to own or use, and to perform all of its obligations under this Agreement; (b) it has taken all action necessary in order to execute, deliver and perform its obligations under this Agreement; (c) this Agreement has been duly executed and delivered by it and constitutes a valid and binding Agreement, enforceable against it in accordance with its terms; (d) the authorization, creation, execution and delivery of this Agreement and the performance of its obligations hereunder will not (i) conflict with, result in the breach of, or constitute an event which would, or with the lapse of time or action by a third party or both could, result in a default under, or accelerate the performance required by, the terms of any agreement, document, contract, instrument or commitment to which it is a party or by which it is bound; (ii) breach or violate its articles, by-laws or any other constating or organizational documents; or (iii) conflict with or violate any Applicable Law; and (e) it has the right and authority to grant any and all licenses granted or purported to be granted hereunder and in the manner contemplated by this Agreement.
- 11.2 Customer Representations, Warranties, and Covenants.** Customer hereby represents, warrants and covenants to Commerx that: (a) it will not, and it will ensure that its representatives do not, use any device, software or routine to interfere with the proper working of the Services; and (b) neither Customer nor any of its representatives will infringe upon the intellectual property rights of any third party.
- 11.3 DISCLAIMERS.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND COMMERX PROPERTY ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. COMMERX CANNOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE ACCURACY, VALIDITY, SEQUENCE, TIMELINESS, OR COMPLETENESS OF THE SERVICES, OR THAT THE RESULTS OF THE SERVICES ARE OR WILL BE ERROR-FREE. COMMERX FURTHER EXPLICITLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION.

SECTION 12 – INDEMNIFICATION OBLIGATIONS

- 12.1 By Commerx.** Commerx shall indemnify, defend and hold harmless Customer and its directors, officers, employees, successors and assigns (each an “**Customer Indemnified Party**”) against any and all claims, actions, liabilities, losses, damages, costs and expenses, including reasonable outside lawyers’ fees (collectively, “**Losses**”) arising from or in connection with any claims of infringement made against a Customer Indemnified Party that the Services or the Commerx Property and/or their use by Customer infringe the intellectual property rights of any third party. Notwithstanding the foregoing, Commerx does not have any liability hereunder and will be indemnified and defended by Customer for any claim of infringement based on: (a) the combination, operation or use of the Services and/or Commerx Property with any Customer supplied software, Customer supplied hardware, Customer materials or other materials or networks not furnished or certified in writing by Commerx, if such infringement would have been avoided without the presence of such software, hardware, materials or networks; or (b) any Content or any services, materials or other work product fulfilled according to the specifications, instructions or requirements supplied by Customer. If the Services (or any part thereof) or Commerx Property become or in Commerx’s opinion, acting reasonably, are likely to become the subject of a claim based on an alleged infringement or breach, Commerx may at its expense and option: (i) modify or replace the Service (or portion thereof) or Commerx Property so that there is no longer any infringement or breach (provided that such modification does not adversely affect the functional capabilities of the Services as set out in a Schedule); or (ii) procure the right for Commerx or for Customer, as the case may be, to continue to use the affected Services or Commerx Property. In the event that either of the foregoing options are unavailable to Commerx for any reason, Commerx may terminate the Managed Services Schedule upon notice to Customer, with a pro rata refund of any prepaid but unearned/unamortized Fees allocable to such part of the Services or the Commerx Property. This Section 12.1 constitutes Customer’s sole remedy from Commerx in respect of infringement claims.
- 12.2 By Customer.** Customer shall defend, indemnify and hold harmless Commerx, its suppliers, their affiliates, and the directors, officers, employees, successors and assigns of the foregoing (each a “**Commerx Indemnified Party**”) from and against any and all Losses arising from or in connection with any claim brought by a third party regarding: (a) any claims of infringement made against a Commerx Indemnified Party of any intellectual property right that occurred because of systems, products, services or other resources or items provided by Customer in connection with this Agreement, including, without limitation any Customer Supplied Components and/or the Content; (b) any unauthorized access to or use by Customer of the Services or the Commerx Property; (c) any allegation, which, if true, would constitute a breach by Customer of any representation, warranty, covenant, term or condition of this Agreement; (d) breach by Customer of any Applicable Laws; (e) defamation, fraud, misrepresentation, disparagement or violation of any publicity or privacy rights by Customer; and (f) any gross negligence, willful misconduct or fraud on the part of Customer or any of its representatives.
- 12.3 Procedures.** The indemnification obligations on the part of either party are conditional upon: (i) the indemnifying party being notified in writing promptly of the indemnified party’s receipt of notice of the claim (provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations under this Section 12, except to the extent of any material prejudice to the indemnifying party as a direct result of such failure); (ii) the indemnifying party having sole control over the defense or settlement of such claim; and (iii) the indemnifying party being given the necessary authorization, information and full co-operation and assistance by the indemnified party for the defense of same (at the indemnifying party’s cost); provided in all cases, however, that the indemnifying party shall not enter into any settlement or compromise of any such claim in the event such settlement or compromise imposes any liability or obligation on the indemnified party without such indemnified party’s prior written consent.

SECTION 13 LIMITATION OF LIABILITY; FORCE MAJEURE

13.1 EXCLUSIONS FROM AND LIMITATION OF LIABILITY.

- 13.1.1** THE PARTIES ACKNOWLEDGE AND AGREE THAT DUE TO THE COMPLICATED, ORIGINAL AND UNCERTAIN NATURE OF THE SERVICES, THE SERVICES AND THE IMPLEMENTATION OF THE SERVICES MAY RESULT IN LOSS, DAMAGE OR DESTRUCTION OF DATA AND LOSS OF REVENUES, AND THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, COMMERX IS IN NOT IN ANY WAY LIABLE TO CUSTOMER FOR ANY SUCH LOSSES OR DAMAGES. IN ADDITION AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY MANAGED SERVICES SCHEDULE, COMMERX SHALL NOT BE LIABLE, AND ASSUMES NO RESPONSIBILITY FOR, ANY LOSS OR DAMAGE TO CUSTOMER RESULTING FROM: (A) FAILURES OF CUSTOMER’S SYSTEMS (INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO SECURE AND SAFEGUARD CUSTOMER’S SYSTEMS); (B) ANY ACCESS, INABILITY TO ACCESS, FAULT OR FAILURE OF THE SERVICES OR COMMERX PROPERTY CAUSED

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BY CUSTOMER'S SYSTEMS OR ANY THIRD PARTY SERVICE, SERVICE PROVIDER, NETWORK, INFORMATION CUSTOMER OR OTHER USER OR COMPUTING RESOURCE OF CUSTOMER; (C) UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS, CORRUPTION OR DESTRUCTION OF ANY CONTENT, OTHER THAN DUE TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF COMMERX, ITS EMPLOYEES AGENTS OR SUPPLIERS; OR (D) ANY MALFEASANT OR WILFUL ACT OR OMISSION BY CUSTOMER OR OF ANY THIRD PARTY OTHER THAN COMMERX AGENTS OR SUPPLIERS.

- 13.1.2** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST PROFITS, LOST REVENUES, LOST BUSINESS, OR GOODWILL, REGARDLESS OF THE FORM OF THE ACTION OR THE BASIS OF THE CLAIM, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THEIR ESSENTIAL PURPOSE, ANY BUSINESS OR ECONOMIC LOSS EXCEPT AS SPECIFICALLY PROVIDED HEREIN. IN THE EVENT A PARTY IS FOUND TO HAVE ANY LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, THE TOTAL LIABILITY OF SUCH PARTY FOR SUCH DAMAGES IS LIMITED TO DIRECT DAMAGES, IN AN AMOUNT EQUAL TO THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO COMMERX DURING THE 3 MONTH PERIOD PRECEDING THE EVENT OR EVENTS GIVING RISE TO THE APPLICABLE CLAIM.
- 13.1.3** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE LIMITATION OF LIABILITY UNDER THIS SECTION 13 DOES NOT APPLY TO LIABILITY RESULTING FROM EITHER PARTY'S (I) FRAUD, NEGLIGENCE OR WILLFUL MISCONDUCT; OR (II) INDEMNIFICATION OBLIGATIONS HEREUNDER; OR (III) BREACH OF ITS CONFIDENTIALITY OR PRIVACY OBLIGATIONS HEREUNDER.
- 13.2 FORCE MAJEURE.** EXCEPT FOR PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE FOR ANY DELAY IN PERFORMANCE OR FAILURE TO PERFORM DUE ANY REASON BEYOND THE REASONABLE CONTROL OF SUCH PARTY OR ITS SOURCES, SUCH AS, FIRE, EXPLOSION, ACCIDENT, FLOOD, LABOR TROUBLE, WEATHER CONDITION, ANY REGULATION, RULE OR ACT OF ANY GOVERNMENT OR GOVERNMENTAL AGENCY, OR THE INABILITY TO OBTAIN OR SHORTAGE OF SUITABLE MATERIAL, COMPONENTS, PARTS, EQUIPMENT, MACHINERY, FUEL, POWER, COMMUNICATION FACILITIES OR TRANSPORTATION, ACT OF GOD, ARMED CONFLICTS, CIVIL COMMOTION OR ANY OTHER CAUSE OF LIKE CHARACTER; PROVIDED, PROVIDED THAT THE PARTY THAT IS UNABLE TO PERFORM HAS TAKEN ALL REASONABLE AND CUSTOMARY MEASURES TO AVOID THE OCCURRENCE OF, OR TO PREVENT OR MITIGATE THE EFFECTS OF, ANY SUCH DELAYS OR NONPERFORMANCE. IN ANY SUCH EVENT, THE PARTY THAT IS UNABLE TO PERFORM SHALL PROMPTLY NOTIFY THE OTHER PARTY AND SHALL USE ITS BEST EFFORTS ON A CONTINUOUS BASIS TO REMEDY THE FAILURE OR DELAY.

SECTION 14 - NON-SOLICITATION

- 14.1 Non-Solicitation.** During the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement or Managed Services Schedule, each party shall not, without the consent of the other party, solicit, seek out or employ, either directly or indirectly (as a consultant, independent contractor or otherwise) any employee or consultant engaged by the other party who is or was associated with the performance of the other party's obligations pursuant to this Agreement.

SECTION 15 – GENERAL

- 15.1 No Third Party Beneficiaries.** Except as agreed to by the parties in a Managed Services Schedule, the provisions of this Agreement are for the sole benefit of the Commerx and Customer. This Agreement confers no rights, benefits, or claims upon any person or entity not a party to this Agreement.
- 15.2 Integration of Managed Services Schedules; CRs; Entire Agreement.** These Terms and Conditions, the Cover Page, any Managed Services Schedules, CRs, and any and all other schedules hereto are incorporated herein by this reference and shall constitute part of this Agreement as if fully set forth herein. These Terms and Conditions, the Cover Page, any Managed Services Schedules, CRs, and any and all other schedules hereto constitute the entire agreement between parties and supersedes all previous agreements, promises, and representations, whether written or oral, between the parties with respect to the subject matter hereof.

- 15.3 Time for Performance.** Each party will be responsible for the timely performance of its responsibilities as set forth in any Managed Services Schedule issued under this Agreement.
- 15.4 Jurisdiction; Venue.** This Agreement will be governed by and construed and interpreted in accordance with the laws of Ontario and the applicable laws of Ontario. The parties hereby agree that the exclusive forum for all disputes related to or arising out of this Agreement shall be federal court in Toronto, Ontario.
- 15.5 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party. This Agreement shall ensure to the benefit of and be binding upon each party and their respective successors and permitted assigns.
- 15.6 Independent Contractors.** The parties acknowledge and agree that Commerx and Customer are independent contractors and will have no power, nor will either party represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. This Agreement will not be construed as constituting Commerx and Customer as partners, joint venture or agents or to create any other form of legal association that would impose liability upon one party for the act or failure to act of the other party.
- 15.7 Further Assurances.** Each party will, at any time or from time to time, at the request of any other party to this Agreement do, execute and deliver all further acts, documents and instruments as may be reasonably necessary or desirable to evidence or give full effect to this Agreement.
- 15.8 No Amendment.** This Agreement may not be modified except in a written document signed by the parties.
- 15.9 No Waiver.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by all parties to this Agreement entitled to grant the waiver.
- 15.10 Invalidity.** If any provision of this Agreement or its application to any party or circumstance is determined to be illegal, invalid or unenforceable, the provision will be ineffective only to the extent of the illegality, invalidity or unenforceability without affecting the validity or the enforceability of the remaining provisions of this Agreement and without affecting its application to other parties or circumstances.
- 15.11 Headings.** The section and subsection headings used in this Agreement are for reference and convenience only, and shall not affect in any way the meaning or interpretation of the Agreement.
- 15.12 Notices.** Each party shall promptly notify the other party in the event it: (a) becomes subject to any bankruptcy or insolvency proceedings; (b) has a dispute with the other party; or (c) otherwise is required to provide notice hereunder. Any and all notices required to be delivered hereunder shall be sent by email to the email address set forth on the Cover Page ("**Email Notification**"), or by registered or certified mail, postage prepaid, return receipt requested or by nationally-recognized overnight courier service to the address set forth on the Cover Page ("**Mail Notification**"). Any such notification shall be deemed effective: (i) upon transmission when delivered by Email Notification; or (ii) when delivered by Mail Notification.
- 15.13 Dispute Resolution.** If there is a disagreement or dispute arising out of or in connection with this Agreement or in respect of any legal relationship associated with or derived from this Agreement (a "**Dispute**"), the parties shall attempt in good faith to resolve the Dispute by mutual agreement. Any Dispute that is not resolved within one hundred and twenty (120) calendar days, or such other period as the parties may agree, will be finally resolved by arbitration under the Simplified Arbitration Rules of the ADR Institute of Canada, Inc. The seat of Arbitration will be Toronto. The language of the arbitration will be English. Nothing in this section shall restrict or prevent either party from seeking and obtaining temporary or interim relief from a court of law, to the extent required to preserve the property.