

## Standard Terms and Conditions

Last Modified: June 29, 2020

### PLEASE READ THESE STANDARD TERMS AND CONDITIONS CAREFULLY.

These Standard Terms and Conditions, along with the Quote which you have accepted, and the Statement of Services attached thereto, altogether form a contract (the “**SaaS License Agreement**” or “**Agreement**”) between you (the “**Subscriber**”) and us (“**Texada**”). These contract documents describe the terms of your license to access the hosted application provided as “software as a service” known as Texada Platform (the “**Application**”) that we will provide to you, along with further services described in Statement of Services attached to the Quote, and other aspects of our business relationship. These terms are so important that we cannot provide our products and services to you unless you agree to them. By accepting the Quote, and/or by purchasing or using our hosted business applications, you are agreeing to all of the terms of the SaaS License Agreement.

We may periodically update these terms. If you have an active subscription, we will let you know when we do via an email or in-app notification.

This Agreement applies exclusively to Subscribers in North America.

1. The Services. During the Term hereof (as defined in Section 3.1), Texada grants a non-exclusive, revocable license to Subscriber for the Application and agrees to provide other services necessary for productive use of the Application, including monitoring, support, maintenance, backup and recovery, and change management (the “**Services**”), as further set forth in the Quote or in the Statement of Services or in other statements of services agreed in writing by the parties from time to time.
  - 1.1. Authorized Users. Unless otherwise limited in the Quote, Texada grants Subscriber during the Term of this Agreement a revocable, non-exclusive, royalty-free (apart from payment for the Services as provided herein), non-transferrable and worldwide right for the Subscriber, and subject to Section 1.4, its employees, or any other individual or entity authorized by Subscriber and Texada as provided in Section 1.4 (each an “**Authorized User**”) to access and use the Application under and subject to the terms and conditions of this Agreement.
  - 1.2. Changes in Number of Authorized Users. The initial number of Authorized Users is set forth in the Quote. Subscriber is required to maintain the initial number of Authorized Users at a minimum during the contractual period. Subscriber may increase the number of Authorized Users by written notice to Texada at any time during the quote. Texada shall thereupon increase Authorized Users and adjust the prospective Services Fees accordingly no later than five (5) business days from the Subscriber’s written notice. Subscriber must not permit more than the number of Authorized Users permitted under this Section at any time to access and use the Application and related Services. Change to the number of Authorized Users may incur an additional fee if the Subscriber does not have an adequate number of licenses for the Application.
  - 1.3. Subscriber Representative(s). Subscriber must indicate in the space provided in the Quote the individual(s) (the “**Authorized Representative(s)**”) who have the authority to commit to purchase services from Texada, make changes to services, and act as a representative of Subscriber. Subscriber warrants that the Authorized Representative(s) are duly authorized to

commit to purchase services from Texada, make changes to services, and act as a representative of Subscriber. Texada may rely on the exercise, decision, action, notice or consent of the Authorized Representative in relation to any such matters as having been given on behalf of Subscriber. Subscriber agrees to be bound by all acts and omissions of the Authorized Representative in exercising its rights and performing its obligations under this Agreement.

- 1.4. Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Texada.
  - 1.5. Data Storage. The Services shall include the applicable allocation of base data storage of 5GB. Within five (5) business days of Subscriber's request, Texada shall make additional data storage available to Subscriber at \$5 per month for each 1GB increments.
  - 1.6. Documentation. Texada shall provide Subscriber access to the documentation for the Services, which describes the functions and features of the Services, including all subsequent revisions thereto ("**Documentation**").
2. Support, Maintenance and Additional Services.
- 2.1. Technical Support. Texada shall provide the technical support described in the Quote in accordance with the applicable service time windows and service level standards, force majeure events excepted. The Services Fees include the fees for the Technical Support.
  - 2.2. Maintenance. Texada shall use reasonable endeavors to provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure that the functionality of the Services, as described in the Documentation, is available to Authorized Users. The Services Fees include the fees for maintenance.
  - 2.3. Scheduled Maintenance Outages. Scheduled outages may take place for maintenance of systems, verifying backups, upgrades, etc. Texada shall use reasonable endeavors to conduct these operations on according to a regular pre-announced recurring schedule, or otherwise to provide notification at least five (5) business days in advance to Subscriber's key contact, whose shall distribute the notice as Subscriber sees fit internally to its users. For emergency maintenance, Texada shall provide as much prior notice as commercially practicable to Subscriber and shall provide a description of all maintenance performed no greater than one (1) business day following the implementation of the emergency maintenance.
  - 2.4. Training & Implementation Services. Texada shall provide the Training & Implementation Services, if any, as described in the Quote. Any license fee for the Application contained in the Quote does not include the fees for Training & Implementation Services.
3. Term and Termination; Renewals.
- 3.1. Term. This Agreement is legally binding as of the date the Quote is executed. Texada shall commence providing the Services on the Start Date set forth in the Statement of Services and shall continue, unless this Agreement is terminated earlier in accordance with the terms set forth herein, until the End Date set forth in the Quote (the "**Initial Term**"). Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement and

the subscription for Services will automatically renew for successive one (1) year terms (each, a “**Renewal Term**” and, collectively with the Initial Term, the “**Term**”) until such time as either party provides the other party with written notice of non-renewal. Notice of non-renewal shall be given no less than thirty (30) calendar days prior to the last day of the then-current (Initial or Renewal) Term, and termination for non-renewal shall be effective as of the date that would have been the first date of the next Renewal Term.

- 3.2. Fees During Renewal Terms. Fees for Services during a Renewal Term are subject to an increase by Texada over the prior (Initial or Renewal) term. Texada will notify Subscriber no less than sixty (60) calendar days prior to any pricing changes.
- 3.3. Termination for Cause. Either party may terminate this Agreement if the other party breaches any of its duties or obligations hereunder and such breach is not remedied within thirty (30) calendar days after written notice of the breach or such longer period as the non-breaching party may provide in its notice of breach. Termination for cause shall be effective as of the date specified in the notice of breach.
- 3.4. Termination for Insolvency. Either party may immediately terminate this Agreement if any of the following occurs in relation to the other party (collectively an “**Insolvency Event**”):
  - a. a resolution is passed for the winding up of the other party;
  - b. a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of the other party;
  - c. a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of the other party;
  - d. the other party makes any composition or arrangement or assignment with or for the benefit of its creditors;
  - e. the other party or any creditor appoints a voluntary administrator, or a resolution is passed for that party to execute a deed of company arrangement;
  - f. the other party ceases to carry on its business; or
  - g. the other party becomes insolvent within the meaning of the laws of the place of incorporation of the other party;
  - h. an event analogous to any of the above occurs in relation to the other party under the laws of the place of incorporation of that party.
- 3.5. Payments Upon Termination. Upon the termination of this Agreement, Subscriber shall pay to Texada all amounts due and payable hereunder for the remainder of the Term.
- 3.6. Return of Subscriber Data. Upon the termination of this Agreement, Texada shall, within ten (10) business days following such termination, provide Subscriber, upon payment of all

outstanding fees due to Texada, with a final extract of the Subscriber Data as a CSV file. A fee may be charged for this service, data extraction in a different file format, or other additional services. Any other method of access to this data beyond the CSV file extract requires written permission from Texada. Further, Texada shall certify to Subscriber the destruction of any Subscriber Data within possession or control of Texada upon the return of Subscriber Data to the Subscriber.

#### 4. Payments.

- 4.1. Fees. Subscriber shall pay Texada the fees described in the Quote. The actual invoiced amount may vary based upon various contractual factors including the number of Authorized Users, additional data storage, etc. Unless a different payment term is specified in the Quote, all sums due to Texada shall be due and payable thirty (30) calendar days from the date of invoice. The Subscriber shall pay, in addition to the fees described in the Quote, any sales taxes, goods and services taxes or value-added taxes which may be charged by governmental authorities thereon.
- 4.2. Billing Procedures. Unless otherwise specified in the Quote, Texada shall provide Subscriber with an invoice containing: (a) a description of Services for which fees are charged; (b) the fees or portion thereof that are due; (c) taxes due, if any; and (d) total amount due.
- 4.3. Suspension of Service for Late Payment. Texada may suspend any part of the Services where any unpaid amount due to Texada is in arrears more than sixty (60) calendar days after the date of invoice.
- 4.4. Texada shall charge a late fee at 18% annual interest rate or, if less, the maximum late fee allowed by law, on an unpaid balance.

#### 5. Subscriber Data.

- 5.1. Ownership. As used herein, “**Subscriber Data**” shall include: (a) Subscriber’s data collected, used, processed, stored, or generated as a result of the use of the Services; and (b) personally identifiable information (“**PII**”) collected, used, processed, stored, or generated as a result of the use of the Services, such as an individual’s government-issued identification number, address, telephone number, email address, credit card information, or an individual’s name in combination with any other of the above items. Subscriber Data is and shall remain the sole exclusive property of Subscriber and all right, title, and interest in the same is reserved by Subscriber, subject to the limited license and use authorization provided to Texada in this Agreement.
- 5.2. Security. Texada shall deploy commercially reasonable and available security measures to protect the integrity and confidentiality of all Subscriber Data. Subscriber shall ensure that it will: (a) be responsible for the security and/or use of access credentials (i.e. logins and passwords) for all Authorized Users; (b) not permit any other person or entity to use its access credentials; and (c) access and use the Application and Services in accordance with these Standard Terms and Conditions and all applicable local, provincial/state, and federal laws and regulations. Subscriber shall also be responsible for: (d) its obligations under these Standard Terms and Conditions and the restrictions set forth in these Standard Terms and Conditions; and (e) its use of the Application. Texada reserves the right to deny or revoke access to the

Application and Services, in whole or in part, if Texada reasonably believes that Subscriber is in breach of these Standard Terms and Conditions or is otherwise using or accessing the Application and Services in a manner that is inconsistent with the Standard Terms and Conditions. Texada is not responsible for unauthorized access, alteration, theft or destruction of Subscriber Data arising from Subscriber's own or its Authorized Users' actions or omissions contrary to the Documentation.

- 5.3. Texada Use of Subscriber Data. Subscriber grants Texada a limited license and authorization to use Subscriber Data for the purpose of providing the Services, including a license to collect, process, store, generate, and display Subscriber Data. Subscriber also consents to Texada aggregating Subscriber Data with data of other subscribers, for the purposes of assisting Texada in improving and optimizing various aspects of its Services or in support of generic marketing activities related to its Services, and providing additional data to all participating Subscribers; provided that in doing so, Texada shall:
  - a. Keep and maintain Subscriber Data in strict confidence, and in accordance with provincial/state and federal privacy legislation governing access to personal information data, using such degree of care as is appropriate and consistent with its other obligations in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss;
  - b. Not identify Subscriber using any aggregate data services; and
  - c. Not distribute, disclose or otherwise make available Subscriber Data, except in aggregated data form, for the benefit of anyone other than Subscriber without Subscriber's prior written consent except to Texada's related bodies corporate, advisers and to the extent Texada is required to disclose or make available the Subscriber Data by statutory requirement, order of a court or legal direction or requirement of a person acting with statutory authority.
  
- 5.4. Extraction of Subscriber Data. Texada shall, within ten (10) business days of Subscriber's request, provide Subscriber an extract of the Subscriber Data. Texada may charge a reasonable processing fee for providing the extracted data.
  
- 5.5. Backup and Recovery of Subscriber Data. As a part of the Services, Texada shall maintain a backup of Subscriber Data, for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in the Quote, Texada shall maintain a contemporaneous backup of Subscriber Data that can be recovered within approximately one (1) day at any point in time. Any backups of Subscriber Data shall not be considered in calculating storage limits used by Subscriber. Backups do not include data in the test environment.
  
- 5.6. Data Breach. In the event of any act, error, omission, or other cause that compromises or is suspected to compromise the security, confidentiality, or integrity of Subscriber Data, Texada shall, as applicable: (a) notify Subscriber as soon as practicable, but no later than twenty-four (24) hours after becoming aware of such occurrence; (b) cooperate with Subscriber in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise reasonably required by Subscriber; (c) in the case of PII, at Subscriber's request, cooperate

with Subscriber to notify the affected individuals as required by applicable law, as soon as practicable but no later than is required to comply with applicable law; (d) be responsible for restoring Subscriber Data to the latest usable backup and providing Subscriber reasonable support and assistance for Subscriber to restore or re-enter any Subscriber Data added after the latest usable backup; and (e) provide to Subscriber a detailed plan within ten (10) business days of the occurrence describing the measures Texada will undertake to prevent future occurrence.

- 5.7. Subscriber Responsibilities. Subscriber shall be responsible to ensure that it has obtained all rights, permissions, and consents or has provided notices necessary to use and transfer data and information of its own customers when using the Application and Services (which may involve the transmission of such data to servers located in Canada or the US). Subscriber shall also be responsible to ensure that it is permitted to disclose or transfer data and information under any laws that may be applicable to its business, including the data and information collected and used by or in the course of conducting its business.

6. Subscriber's Representations and Responsibilities.

- 6.1. Subscriber's Representations and Warranties. Subscriber represents and warrants that: (a) it is duly incorporated, validly existing and in good standing under the laws of its place of incorporation; (b) it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (c) it has taken all necessary action to authorize its entry into and performance of this Agreement and carry out the transactions contemplated by this Agreement; (d) its obligations under this Agreement are valid and binding and enforceable against it in accordance with its terms; (e) it has not suffered an Insolvency Event; (f) it shall comply with all applicable federal, state/provincial, local or other laws and regulations applicable to the performance of this Agreement and the use of the Application and Services (including all federally and/or provincial/state privacy legislation) and shall obtain all applicable permits, authorizations, certifications and licenses, if any, required by a government authority (including any governmental, semi-governmental, municipal or statutory authority, instrumentality, organization, body or delegate) having jurisdiction, authority or power over or in respect of Subscriber and their business; and (g) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

- 6.2. Subscriber's Responsibilities. Subscriber shall not: (i) send or store code that can harm or result in damage to the Application (including but not limited to malicious code and malware); (ii) willfully interfere with or disrupt the integrity of the Application or the data contained therein; (iv) attempt to gain unauthorized access to the Application or its related systems or networks; (v) use the Application in order to cause harm, such as overload or create multiple agents for the purpose of disrupting operations of a third party; (vi) remove or modify any program markings or any notice of Texada's or its licensors' proprietary rights; (vii) perform or disclose any of the following security testing of the Application environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation. A breach by Subscriber of its obligations under this section shall be considered a material breach of the Agreement.

7. Limited Warranty, Remedy, and Disclaimers by Texada.

- 7.1. Software and Services Warranty. Texada warrants that the Application and the services provided by Texada necessary for productive use of the Application shall operate substantially in accordance with the Documentation. To the extent they do not do so, Texada shall provide the Support and Maintenance Services set forth in this Agreement and the Quote, which shall be performed in a workmanlike manner. As Subscriber’s sole remedy and Texada’s sole liability (being all liabilities whether actual, contingent, or prospective), losses, damages, costs and expenses of whatever description (“**Liabilities**”) for breach of the warranty in this section, Texada may at its sole discretion, terminate this Agreement.
- 7.2. Warranty of Non-infringement. Texada warrants that Subscriber’s use of the Services will not violate any third-party copyright or trade secret enforceable in the United States or Canada. Subscriber’s sole remedy and Texada’s sole liability for breach of the warranty in this section is set forth in Sections 8.1 and 8.2 below.
- 7.3. Service Availability. Texada warrants that it will use reasonable endeavors to maintain and monitor all systems and controls to maximize the uptime for Subscriber and minimize service interruptions and unscheduled outages. Texada is not responsible for Subscriber’s connectivity to Texada’s systems. In the event that the Services are unavailable during any given month due to significant unscheduled downtime (as defined in Schedule A of this document) in the data center, excluding scheduled outages, Subscriber shall be entitled to a credit toward future fees for such downtime.
- 7.4. Exclusion of Other Warranties and Remedies. The obligations of Texada expressly stated in this Agreement are in lieu of all other warranties or conditions expressed or implied. **Except for the express warranties and remedies set forth in Sections 7.1, 7.2, and 7.3 above and otherwise to the extent a warranty, guarantee or representation cannot be excluded under an applicable law, Texada makes no warranties, guarantees, or representations, whether written, oral, express, or implied, with respect to the Services, or their use or inability to be used, including but not limited to warranties or conditions of merchantable quality, satisfactory quality or fitness for a particular purpose, that the Services will meet the Subscriber’s needs, or that the Services will be error free or uninterrupted, or those arising by statute or otherwise in law, or from a course of dealing or usage of trade. The limited warranties and remedies in 7.1, 7.2, and 7.3 above state Subscriber’s sole remedies with respect to Texada’s breach of such warranties.**

8. Indemnification

- 8.1. Intellectual Property Indemnity. Texada shall defend at its own expense any claim, notice, demand, action, proceeding, litigation, suit, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute (“**Claim**”) brought against Subscriber only to the extent such Claim alleges that any of the Services furnished hereunder infringes any copyright or trade secret enforceable in the United States or Canada, and will indemnify and pay all damages which by final judgment or settlement may be assessed against Subscriber on account of such infringement, provided that Texada is given:



- a. Written notice of the Claim or of any allegations or circumstances known to Subscriber which could result in a Claim within 5 business days of Subscriber receiving notice of the Claim or circumstances which could result in a Claim being made against Subscriber;
  - b. All reasonable information and assistance from Subscriber which Texada may require to defend the Claim;
  - c. Sole control of the defense of the Claim, and all negotiations for the settlement or compromise thereof; and
  - d. That the alleged infringement does not result from any non-permitted uses, alterations, modifications, or enhancements carried out by Subscriber, its employees, independent contractors, agents, an Authorized User or otherwise on its behalf by a third party.
- 8.2. Mitigation of Claim. If a Claim has been brought, or in Texada's opinion is likely to occur, Texada may, at its option and expense, either procure for Subscriber the right to continue using the Services or replace or modify the Services without material loss of functionality. If none of the foregoing alternatives is reasonably available, Texada may at its sole discretion, terminate this Agreement, refunding to Subscriber all fees paid in respect of final three (3) months of Services. The foregoing provisions in Sections 8.1 and 8.2 state the entire obligations of Texada with respect to any infringement of Intellectual Property Rights of any third party.
- 8.3. Indemnification by Subscriber. Subject to its rights under the foregoing warranties and indemnities, Subscriber will be solely responsible for its use of the Application, Services and the results it obtains. If Subscriber, by its actions or those of its employees, independent contractors, agents, or other Authorized Users of the Services, causes Texada to incur a Liability to any third party (other than one arising from express written warranties passed through from Texada), then, upon prompt notice to Subscriber by Texada, Subscriber shall defend at its own expense any resulting Claim, brought by a third party against Texada, and will indemnify and pay all costs (including legal costs which may be incurred by Texada) and damages which by final judgment or settlement may be assessed against Texada as a result. In addition, Subscriber agrees to fully indemnify and hold harmless Texada from any Claim arising from Subscriber's breach of applicable law (including federal and or provincial/state privacy legislation) in its use of the Application and Services.
9. Limitation of Liability.
- 9.1. Limitation to Direct Damages. To the full extent permitted by law, Texada, its affiliates, subcontractors and third-party licensors shall **NOT** be liable for:
- a. loss of profits, loss of revenue, loss of anticipated savings, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
  - b. any loss, not arising naturally (that is according to the usual course of things), from the relevant breach,



whether or not such loss is reasonably supposed to have been in the contemplation of both parties, at the time they made this Agreement.

- 9.2. Limitation to Payments Made. To the full extent permitted by law, Texada's maximum Liability to Subscriber for any cause, whether based in contract, including breach of this Agreement, negligence or other tort, or otherwise, will not exceed the fees paid by Subscriber for the Services giving rise to the Liability under this Agreement.
- 9.3. Other Enforcement. The limitations in Sections 9.1 and 9.2 shall not preclude a party from seeking specific performance or injunctive relief for the enforcement of this Agreement, when justified under the circumstances. The parties shall comply with the procedures in Article 10, which shall be mandatory in any proceeding seeking enforcement of this Agreement.
- 9.4. Risk Management. Each party agrees that the limitations of Liability set out in this Agreement are fair and reasonable in the commercial circumstances of this Agreement and that it would not have entered into this Agreement but for the other party's agreement to limit its Liability in the manner, and to the extent, provided for herein.

## 10. Dispute Resolution.

- 10.1. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws in force in the Province of Ontario, Canada (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction) and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts with jurisdiction in the Province of Ontario, Canada. Neither the provisions of the International Sale of Goods Act or the United Nations Convention on Contracts for the International Sale of Goods shall apply to this Agreement, regardless of such Act or Convention's legal or statutory adoption by any jurisdiction.
- 10.2. Agreement for Arbitration. All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, will be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. The Seat of Arbitration will be in the Province of Ontario, Canada. The language of the arbitration will be English. Judgment upon the award rendered by such arbitration may be entered and enforced by any court having jurisdiction thereof.
- 10.3. Legal Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the substantially prevailing party will be entitled to recover its costs and expenses, including reasonable attorney's fees, from the other party.

## 11. General.

- 11.1. Intellectual Property and Confidentiality. Texada owns all right, title and interest to the Application and Services, Documentation, and feedback provided by the Subscriber, Texada intellectual property generally, and any modifications or derivatives thereof ("**Texada Intellectual Property**"). Subscriber and Texada agree that any Confidential Information that is exchanged will only be used for purposes relating to this Agreement, and that it will be protected in the same manner that Subscriber or Texada would protect its own information of

a similar nature, but in no less than reasonable means. Subscriber and Texada agree that Confidential Information means Subscriber Data, either party's intellectual property, and any other information that a reasonable person would deem to be confidential. Except where prohibited by law, the following is not considered Confidential Information: (i) information which has been authorized in writing to use without restriction; (ii) information which is rightfully in a party's possession or becomes known to a party through proper means (including information publicly available when received, other than through unauthorized disclosure by, or on behalf of, the receiving party); and (iii) information which is independently developed without use or reference to the Confidential Information of the other party.

- 11.2. Amendment. Texada may update and change any part or all of this Agreement. If so, the updated Agreement terms will be posted on Texada's website and Texada will let the Subscriber know via email or in-app notification. The updated Agreement will become effective and binding on the next business day after notification is given. If Subscriber does not agree with a modification to the Agreement, it must notify Texada in writing within thirty (30) days after receiving notice of modification. If Subscriber gives this notice, its subscription will continue to be governed by the terms and conditions of the Agreement prior to modification for the remainder of its current term. Upon renewal, the modified Agreement published on Texada's website will apply.
- 11.3. No Waiver. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.
- 11.4. Currency. All monetary amounts referred to in the Quote or Statement of Services shall be in United States currency unless otherwise expressly stated therein.
- 11.5. Relationship between Subscriber and Texada. Texada represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall Texada, or any of its staff, if any, hold itself out as or be considered an agent, employee, joint venture, or partner of Subscriber.
- 11.6. Compliance with Laws. Both parties agree to comply with all applicable federal, state/provincial, and local laws, executive orders and regulations issued, where applicable. The parties agree to comply with all aspects of relevant privacy legislation including the *Personal Information Protection and Electronic Documents Act* (SC 2000, c. 5) and all similar acts in the jurisdiction where each party conducts its business in the course of providing and using the Services.
- 11.7. Notices. Notices under this Agreement will be sent to the address set forth in the Quote, or to such subsequent address as the party may designate in writing.
- 11.8. Force Majeure. Notwithstanding any other provision contained herein, in the event that either party should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, natural disasters, or any other cause beyond its reasonable control, but not including insolvency or lack of funds, then performance of such act shall be

postponed for a period of time equivalent to the time lost by reason of such delays. The provision of this Article 11.8 shall not under any circumstances operate to excuse Subscriber from prompt payment of fees and/or other charges otherwise payable under this Agreement.

- 11.9. Covenants Surviving Termination. The parties' respective obligations under Sections 1.2, 3.6, 5.1, 5.3, 6, 7.4, 8, 9, 10, and 11 shall survive any expiration or termination of this Agreement.
- 11.10. Entire Agreement. This Agreement, its related Quote and Statement of Services, and any additional documents linked to the Quote and/or Statement of Services constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Subscriber and Texada as to the subject matter hereof. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 11.11. Further Action. Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transactions contemplated by it.
- 11.12. Assignment. Texada may assign this Agreement to another party without the prior written consent of Subscriber. Subscriber may not assign this Agreement without the prior written consent of Texada.
- 11.13. Severability. A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.
- 11.14. Language. It is the parties desire and agreement that this Agreement and associated documentation be drafted in English. Les Parties conviennent que la présente convention et tous les documents s'y rattachent, soient rédigés et signés en anglais.

**Schedule A: Service Level Agreement**

1. **Definition of Severity.** For the purposes of providing Support under the terms of this Agreement, the following terms shall apply, unless otherwise agreed by the Parties in writing:
  - a. “Severity 1” means the Services cease to be functional (i.e. complete system failure) for the majority of users or the majority of machines running the Service due to a malfunction with but not inclusive of the Software, data center hardware, or data center connectivity.
  - b. “Severity 2” means a problem with the Services that result in significant system problems, including data integrity, and/or instability to multiple users or multiple machines running the Software. Examples of Severity 2 would be the inability to create or complete a Quote, Reservation, Work Order, Contract, or perform key Back Office financial functions.
  - c. “Severity 3” means a problem with an aspect of the Services that constitutes a deficiency with respect to the applicable specifications for the Software as set forth in the documentation. For the avoidance of doubt, Severity 3 will not include any deficiency affecting sales or rentals – these will any event be considered Severity 1 or 2.
  - d. “Severity 4” means a request for information regarding the operation of the Software, i.e. “how to questions, general information, etc.
  
2. Texada shall, upon receiving a problem report from Customer containing sufficient information, respect the following timelines and processes, unless otherwise agreed by the Parties in writing:
  - a. **For Severity 1:** Texada will initiate problem investigation and resolution efforts as soon as the phone call is received by Texada. Texada agrees to notify Customer to confirm receipt within 15 minutes of receipt of the complete problem report. Texada will also provide a report (verbal or electronic) about the problem status every one (1) hour until a resolution is supplied. After one (1) hour, if the Support request is not resolved, it will be escalated to the attention of Texada’s Customer Support Manager for review and to champion its resolution. The Customer Support Manager will also communicate with Customer every (1) hour to report progress, action plan(s) and an anticipated resolution time. If Texada has not corrected the problem or provided a workaround within four (4) hours, Texada’s Chief Executive Officer will champion resolution of the problem. Customer will continue to receive updates everyone (1) hour until problem resolution.

Texada Escalation Process:

- 1st call: Support – 800-361-1233 x1
- 2nd call: Manager, Customer Support, Texada
- 3rd call: CEO-Texada

- b. **For Severity 2:** Texada will initiate problem investigation and resolution efforts or provide a temporary workaround or restore service within two (2) hours of the reported service interruption. Texada agrees to notify Customer within thirty (30) minutes of receipt of the complete problem report, to confirm receipt. Texada will also provide a report (verbal or electronic) about the problem status every four (4) hours until a resolution has been supplied. If after four (4) hours the Support request is not resolved, or a workaround is not found, it will be escalated to the attention of Texada’s Customer Support Manager for review and to champion its resolution. The Customer Support Manager will also communicate with Customer every four (4) hours to report progress, action plan(s) and an anticipated resolution date until problem

resolution. If Texada has not corrected the problem or provided a workaround within twenty-four (24) hours, Texada Chief Executive Officer will champion resolution of the problem. Customer will continue to receive updates every four (4) hours until problem resolution.

Texada Escalation Process:

1st call: Support – 800-361-1233 x1

2nd call: Manager, Customer Support, Texada

3<sup>rd</sup> call: CEO-Texada

- c. **For Severity 3:** Texada agrees to notify Customer, to confirm receipt, within one (1) business day of receipt of the complete problem report. Texada will initiate problem investigation as soon as is reasonably practicable after notification by Customer and will outline how the deficiency will be addressed within three (3) business days.
  - d. **For Severity 4:** Texada will make efforts to answer Customer questions and log feature requests in a timely fashion. Training related inquiries are defined by a scenario whereby the end-user is uncertain, does not recall, or does not know how to perform a task or function. Training issues will be resolved by Customer's internal support or additional training will be organized through Texada sales representative.
3. Penalty Fee. In situations where a service incident occurs as per the Definition of Severity in this agreement, a penalty amount shall be assessed against Texada in the form of a credit to Customer. Customer shall be able to recover all or a portion of its monthly subscription fees based on the following:
- a. The Customer shall be entitled to a credit under the terms of this agreement upon the occurrence of either a Severity 1 or Severity 2 incident resulting in Service downtime as described in this Agreement.
  - b. Customer's sole and exclusive remedy for Texada's breach of the SLA is the issuance of a credit in the amount described in this Agreement.
  - c. Customer shall not receive any credits under this agreement in connection with any failure of deficiency caused by or associated with:
    - Failure or malfunction of Customer level network or hardware
    - Failure of Customer's internet network connection
    - Electrical power failure at the Customer's location
    - Scheduled maintenance for hardware/software updates
  - d. System Availability percentage is calculated as follows:  $\text{System Availability Percentage} = ((\text{Total Minutes in the Month} - \text{Downtime}) / \text{Total Minutes in the Month}) * 100$ .
  - e. The downtime tracking starts when the Severity 1 or Severity 2 incident is reported to Texada following the Texada Escalation Process to Texada Client Support, and verified as a Texada issue, through to the time of resolution and service restored.
  - f. Upon occurrence of a Severity 1 or Severity 2 incident the credit will be based on the downtime time calculation starting when the incident is reported to Texada following the Texada Escalation Process to Texada Client Support. For the 1<sup>st</sup> hour of unscheduled downtime per incident, there will be no credit of monthly fees. After the 1<sup>st</sup> hour, every hour corresponds to 1 day of credit on

- your SaaS user billing up to 30+ hours at which point, the maximum credit received will be 100% of the recurring SaaS user fees.
- g. The total accumulated penalty amount within a twelve-month period shall not exceed the total SaaS payment obligations for the period by Customer to Texada.
  - h. In the event the Customer is not current in its payment obligations when the penalty amount is allocated, remedies will not accrue, and credits will not be issued until the Customer becomes current in its payment obligations.
  - i. To receive credits, the Customer must submit a written request to Texada’s designated Account Manager, no later than thirty (30) days following the end of the month in which the incident occurred.
  - j. Credits are exclusive of any applicable taxes charged to the Customer or collected by Texada.
  - k. Excluded downtime includes minutes in the month attributable to: (i) a Scheduled Downtime for which a Regular Maintenance Window is described in this Agreement. (ii) any other Scheduled Downtime described at least five (5) business days prior to such Scheduled Downtime.
  - l. Texada will provide the Customer with a monthly report describing the System Availability percentage for the Service either (i) by email following a customer’s request to its assigned Texada account manager, or (ii) through an online portal made available to customers, if and when such online portal becomes available.
  - m. Incident Report. Texada will provide to the Customer no more than five (5) business days’ after the occurrence and reporting by the Customer to Texada of a Severity 1 or Severity 2 incident, a detailed report describing the Severity 1 or Severity 2 incident. The detailed report will include the following fields:
    - incident number (or Texada ticket number);
    - incident severity;
    - list of the Customer locations, users and devices affected;
    - time of incident investigation;
    - time incident resolved and service restored;
    - incident type;
    - incident description;
    - detailed description of action(s) taken by Texada to resolve the incident
  - n. In the event Texada fails to meet the SLA (i) for three consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Texada with written notice within thirty days after the failure.
4. Exclusions. Texada will not be bound by the terms of this Service Level Agreement in any of the following circumstances:
- a. Failure of the Customer to fulfill their obligations as specified in this Service Level Agreement.
  - b. Failure of Customer’s internet network connection.
  - c. Information from the customer that is inaccurate, incomplete or not supplied in a timely manner.
  - d. Incomplete configuration (e.g., missing components or modules essential for correct system operation).
  - e. Use of hardware and software not approved by Texada.
  - f. Configuration, software or DNS problems beyond the control of the Customer or Texada.
  - g. Problems not reported promptly by the Customer.
  - h. Texada being unable to verify service restoration with the Customer.