

## General Terms and Conditions

Software products and IT services  
(B2B)

Effective January 2024

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## PREAMBLE

- A. Contractor provides data analytics solutions as a service, by, amongst other things, analysing public and private data and providing insights on it (the "**Services**").
- B. Client desires to retain Contractor to, amongst other things, perform the Services.
- C. The Parties now agree on the terms and conditions set out herein (the "**Terms**").

The Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. Definitions. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, the following words have the following meanings:
  - 1.1.1. "**Agreement**" means, collectively, these Terms and the relevant Order;
  - 1.1.2. "**Business Day**" means all days running concurrently from Monday to Friday excluding Saturday, Sunday and or any recognized public holiday in Alberta, Canada;
  - 1.1.3. "**CAD**" or "\$" means the lawful currency of Canada;
  - 1.1.4. "**Client**" means the Person who is purchasing the Sale Assets hereunder;
  - 1.1.5. "**Contractor**" mean DIVU Canada Inc., a corporation incorporated in the Province of Alberta;
  - 1.1.6. "**Force Majeure Event**" means an unforeseeable event beyond a Party's reasonable control, including but not limited to: internet or wifi service interruption; connectivity loss; a cyber attack; failure of data, products or services controlled by any third party including providers of communications or network services; acts of war; acts of nature; pandemics; earthquake; flood; embargo; riot; sabotage; labour shortage or dispute; changes in government codes, ordinances, laws, rules, regulations or restrictions; terrorist acts; or failure of products or services controlled by any third party, provided that such Force Majeure Event is not caused by or results directly from an action or omission of such Party;
  - 1.1.7. "**Order**" means an order for Sale Assets issued by the Client to the Contractor which incorporates these Terms by reference;
  - 1.1.8. "**Parties**" means the Client and the Contractor and "**Party**" means either of them;
  - 1.1.9. "**Person**" includes any individual, trust, trustee, executor, administrator, estate, firm, partnership, joint venture, venture capital fund, joint stock company, association, body corporate, corporation, unincorporated association or organization, governmental authority, syndicate or other entity, whether or not having status as a legal entity;
  - 1.1.10. "**Product**" means all products that are planned, researched, developed, tested, manufactured, sold, licensed, leased or otherwise distributed or put into use by the Contractor for the Client, as more particularly set out in an Order, including without limitation the Software;
  - 1.1.11. "**Sale Assets**" means the Products or the Services that are sold by the Contractor to the Client pursuant to an Order;
  - 1.1.12. "**Services**" has the meaning set out in the Preamble to this Agreement, as more particularly set out in an Order;

- 1.1.13. "**SLA**" means a Service Level Agreement of the Contractor, in a form substantially similar to that set out in Exhibit A hereto;
- 1.1.14. "**Software**" means the computer program(s) set out in an Order;
- 1.1.15. "**Users**" means all officers, directors, and employees of the Client, each of whom is authorized to use the Software.

## 1.2. Interpretations.

- 1.2.1. The headings of the Sections in this Agreement are for the purpose of reference and convenience only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any Section hereof and unless the context otherwise requires.
- 1.2.2. Words indicating the singular includes the plural and vice versa;
- 1.2.3. Words indicating a gender include any gender;
- 1.2.4. An expression indicating a natural person includes any company, partnership, trust, joint venture, association, corporation and any other body corporate and the state;
- 1.2.5. A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under the statute;
- 1.2.6. A reference to a document includes all amendments or supplements to, or replacements or novation's of, that document that have been executed by all parties thereto;
- 1.2.7. Any reference in this Agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature to this Agreement;
- 1.2.8. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-acted from time to time;
- 1.2.9. If any provision in Sections 1.1 is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in such Section, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.2.10. When a number of days is prescribed in this Agreement, such number of days shall be calculated from and not including the first day and including the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.2.11. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.12. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.2.13. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply;
- 1.2.14. The *eiusdem generis* rule shall not apply and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed so as to limit the meaning of that term;

- 1.2.15. Any reference in this Agreement to a Party shall, if such Party makes a general assignment for the benefit of its creditors or a Proposal under the *Bankruptcy and Insolvency Act* (Canada) or is adjudged bankrupt or insolvent or proposes a compromise or arrangement under the *Companies Creditors Arrangement Act* (Canada) or files any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally, be applicable also to and binding upon that Party's liquidator, trustee or legal successor, as the case may be; and
- 1.2.16. The contractual language in this Agreement is English. All other information and settlements shall be offered in English as a matter of principle.

## 2. **PURCHASE AND SALE OF SALE ASSETS**

- 2.1. The Client may, from time to time, issue one or more Orders to the Contractor which shall set out, among other things, the Sale Assets the Client wishes to purchase and the timeline for delivery of such Sale Assets. Each Order shall incorporate these Terms by reference and shall not, without the Contractor's express written agreement and notwithstanding the terms thereof, add to, modify, amend, supersede, or replace these Terms. An estimate of costs for each Order shall be approved by both Parties in accordance with Section 6.1. Orders may be submitted digitally or agreed upon in an in-person meeting, at the election of the Contractor, who will advise the Client from time to time which method of submission shall be used.
- 2.2. Until the Contractor has digitally accepted an Order, it reserves the right, in its sole discretion, to elect to accept or reject any Order and no Order shall be binding unless executed (or digitally accepted, in the case of the Contractor), by both Parties.
- 2.3. If the Contractor accepts an Order pursuant to Section 2.2, the Contractor shall sell to the Client and the Client shall purchase from the Contractor, the Sale Assets set out in such Order on the terms and conditions provided for herein. The Client shall be solely liable for any errors or miscalculations contained in an Order.

## 3. **SALE ASSETS**

- 3.1. The Sale Assets set out in an Order may include, without limitation:
- 3.1.1. Preparation of organisational concepts;
  - 3.1.2. Global and detail analyses;
  - 3.1.3. Purchase of usage rights for software products, including entering into an SLA;
  - 3.1.4. Purchase of usage rights for online/cloud services including entering into an SLA;
  - 3.1.5. Delivery of library (standard) products (programs and services);
  - 3.1.6. Special Sale Assets (as hereinafter defined);
  - 3.1.7. Acquisition of licences to use works;
  - 3.1.8. Participation in commissioning;
  - 3.1.9. Development of organizational concepts;
  - 3.1.10. Software consulting services;
  - 3.1.11. Software maintenance; and
  - 3.1.12. Miscellaneous services.

- 3.2. For greater certainty, any training and explanations of the Sale Assets requested by the Client and not specifically set out in an Order shall be invoiced separately.
- 3.3. If requested by the Client, the Contractor may, in its sole discretion, agree to create individual organizational concepts and programmes for the Client ("**Special Sale Assets**"). In order for the Contractor to assess whether it can create such Special Sale Assets, the Client must submit to the Contractor (at the Client's sole expense) all relevant information, documents and resources, including sufficient practical test data and test facilities (e.g. an internal server or staging area) ("**Client Information**").
- 3.4. Based on the Client Information provided, the Contractor shall prepare a written performance description (the "**Performance Description**") in relation to the Special Sale Assets. The Client shall review the Performance Description and either: (i) return an executed copy to the Contractor, indicating acceptance of the Performance Description; or (ii) notify the Contractor that changes to the Performance Description are required. If the Client provides notice to the Contractor in accordance with (ii), the Parties shall work together to revise the Performance Description and, once it has been agreed upon, the Client will return an executed copy to the Contractor, indicating acceptance of the Performance Description. The development of the Special Sale Assets shall be based on the settled Performance Description.
- 3.5. The Client shall have four (4) weeks from the date of delivery by the Contractor of the Special Sale Assets to notify the Contractor if it believes that the Special Sale Assets do not comply with the Performance Description (a "**Special Sale Asset Defect**"). If the Client does not notify the Contractor of a Special Sale Asset Defect within this four (4) week period, then the Client shall be deemed to have accepted that the Special Sale Assets comply with the Performance Description. For greater certainty, the Special Sale Assets shall continue to be subject to the warranties set out in Section 9.2 on the terms and conditions set out therein.
- 3.6. If the Client notifies the Contractor of a Special Sale Asset Defect within the four (4) week period (such notification to include sufficient documentation by the Client of the Special Sale Asset Defect), the Contractor shall, at its own cost, make commercially reasonable efforts to correct the Special Sale Asset Defect within a reasonable period of time and the Client shall provide the Contractor with the necessary access to examine and remedy such Special Sale Asset Defect, if required. Provided, however, that if a Special Sale Asset Defect has resulted from the actions or omissions of a Client Party (as hereinafter defined), all such efforts to correct the Special Sale Asset Defect shall be at the sole cost of the Client. Following remedy of such Special Sale Asset Defect, the Client shall have 5 Business Days to notify the Contractor if it believes the Special Sale Asset Defect has not been properly remedied, otherwise the Client shall be deemed to have accepted that the Special Sale Assets comply with the Performance Description.
- 3.7. When the Client purchases library (standard) programmes or services, the applicable Order shall confirm that the Client understands the scope of such library (standard) programmes or services. The Contractor shall not be liable if the Client orders the incorrect library (standard) programmes or services.

3.8. In connection with each Order, as applicable, the Client shall enter into an agreement concerning data processing by a processor in accordance with Articles 28 of the General Data Protection Regulation (Regulation (EU) 2016/679).

#### 4. **DELAYS AND CANCELLATIONS OF ORDERS**

4.1. The Client may cancel an Order, by providing the Contractor with 10 Business Days' notice by registered mail at the address set out in Section 13.1.1, if the Contractor has failed to meet a Deadline set out in such Order solely due to its own actions or omissions. Notwithstanding the foregoing, if the Contractor is able to meet such Deadline within such 10 Business Day period, such Order shall not be cancelled and shall remain in full force and effect in accordance with these Terms.

4.2. Subject to Section 4.1, the Client may not cancel an Order after it has been executed by the Contractor, except: (i) with the written consent of the Contractor, which consent may be withheld in the Contractor's sole discretion; or (ii) in accordance with Section 6.5 or 9.3.1. Should the Contractor agree to the cancellation of such an Order in accordance with (i) or should the Client elect to terminate an Order in accordance with (ii), the Contractor shall charge a cancellation fee in the amount of: (i) the fees for all Sale Assets already provided and not yet paid for in connection with such Sale Order; (ii) 30% of the fees payable for any portion of the Order not yet delivered; and (iii) all other costs and losses attributable to the cancellation of such Order.

4.3. The Contractor may terminate this Agreement and any outstanding Orders under the following circumstances:

4.3.1. if the Client becomes insolvent, declares bankruptcy, assigns all of its property or files a proposal in bankruptcy, upon giving written notice to the Client;

4.3.2. if a Force Majeure Event continues for a continuous period of 90 days, upon giving the Client 10 Business Days prior written notice;

4.3.3. if the Client has committed a material breach of this Agreement or an Order and fails to cure such breach within 15 days (or such longer period as the Contractor may grant in its sole discretion) after having received written notice (detailing the nature of the breach) from the Contractor; or

4.3.4. in accordance with Section 7.4.

4.4. If the Contractor determines that the fulfilment of an accepted Order for Special Sale Assets in accordance with the applicable Performance Description is actually or legally impossible, the Contractor shall promptly notify the Client thereof and the Parties shall work together to revise the Performance Description such that it is possible for the Contractor to provide such Special Sale Assets. If the Parties cannot agree upon a revised Performance Description, the Order shall be deemed cancelled. If the Contractor's inability to fulfil the Order for the Special Sale Assets in accordance with the Performance Description was caused by the actions or omissions of the Client, then the Client shall reimburse the

Contractor for: (i) all documented costs and expenses the Contractor has incurred in connection with such Order up to the date of the cancellation of such Order; and (ii) all other costs and losses attributable to the cancellation.

- 4.5. Subject to the warranties set forth in Section 9.2, Sale Assets are not returnable or refundable.
- 4.6. Except for the Client's payment obligations, neither Party shall be liable to the other Party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, flood, natural disaster, earthquake, an act of terrorism, a war, a total or partial strike, an epidemic, pandemics, labour actions, transportation disruptions, a total or partial interruption or blockade of telecommunications or electrical networks, or an act of computer piracy, provided that upon cessation of such events such Party shall thereupon promptly perform or complete the performance of its obligations hereunder.
- 4.7. Upon termination of this Agreement, the Contractor shall charge the Client a cancellation fee in the amount of: (i) the fees for all Sale Assets already provided and not yet paid for; (ii) 30% of the fees payable for any portion of each Order not yet delivered; and (iii) all other costs and losses attributable to the cancellation.

## 5. **DELIVERY**

- 5.1. The Contractor shall make commercially reasonable efforts to deliver the Products and complete the Services by the applicable dates set out in the Order (the "**Deadlines**"). Provided, however, that the Client shall be required to cooperate with the Contractor and provide the Contractor with all required information, files, etc., including without limitation the Performance Description, required by the Contractor with sufficient time for the Contractor to meet the applicable Deadlines. Subject to Section 4.1, Deadline are estimates only and the time of delivery of Sale Assets is not of the essence. In no event shall the Contractor be liable to the Client for any costs, fees, penalties or price reductions as a result of any failure to deliver Sale Assets by the applicable Deadlines.
- 5.2. The Contractor shall not be liable for failure to meet Deadlines or for cost increases caused by incorrect, incomplete, or retrospectively changed statements or information, documents, Order and Performance Descriptions provided by the Client and any additional costs incurred therefrom shall be for the account of the Client.
- 5.3. Where an Order consists of different Sale Assets, the Contractor shall be entitled to deliver such Sale Assets on different dates, as set out in the applicable Order.
- 5.4. All deliveries of digital content and products shall be made electronically unless the Contractor notifies the Client otherwise.
- 5.5. Physical Sale Assets shall be delivered to the Client as agreed between the Parties in the applicable Order and all costs of transportation (including without limitation loading,



freight, shipping, insurance (if requested by the Client), forwarding and handling charges) shall be for the account of the Client.

## 6. **PRICES, TAXES AND FEES**

- 6.1. Following issuance of an Order by the Client, the Contractor shall send to the Client a draft invoice setting out a cost estimate for the applicable Order (the "**Cost Estimate**"), which estimate shall be exclusive of any applicable taxes, shipping costs, shipping insurance costs and any other costs and expenses. For greater certainty, the Cost Estimate is only an estimate of costs and costs may be subject to change pursuant to Section 6.4, 6.5 and 6.6. The Contractor shall indicate to the Client when delivering the Cost Estimate by what date the Client must confirm if it approves of the Cost Estimate or notify the Contractor that it wishes to discuss changes to the Cost Estimate. The Contractor shall not accept an Order pursuant to Section 2.2 until the Parties have agreed on the Cost Estimate for such Order.
- 6.2. The Contractor shall issue invoices on the last day of each month, which invoices shall be paid by the Client in accordance with Section 7. All prices shall be calculated in CAD. Prices agreed to by the Contractor in respect of a particular Order will apply to only that Order.
- 6.3. Expenses for (i) programme media (e.g. CDs, HDDs, SSDs, USB sticks, etc.); and (ii) additional charges that arise in the course of fulfilling the Agreement (e.g. administrative fees, legal fees, or any other costs that are not covered by the agreed prices for the Order, including without limitation those fees set out in Section 8.4), shall be invoiced separately. For greater certainty, the term "Products" is deemed not to include programme media.
- 6.4. For library (standard) programmes, the Client shall pay the price charged by the distributor of such programme on the day of delivery of such programme.
- 6.5. For all other Services (organisational consultation, programming, initial training, adjustment support, telephone consultation, etc.), the work shall be invoiced according to the Contractor's rates effective on the day of performance of such Services. Where such rates are different to those rates for Services set out in the Cost Estimate, the Contractor shall inform the Client of the current rates prior to performing the Services. The Client may accept or reject the current rates prior to performance of the Services. If the Client and the Contractor cannot agree upon the rate to be charged for the Services, the Client may elect to terminate the applicable Order.
- 6.6. Where the provision of Sales Assets takes longer than estimated in an Order, and such extra time is not attributable to errors of the Contractor, such additional time shall be billed to the Client at the rates agreed upon in the Cost Estimate.
- 6.7. Costs for travel expenses, daily and accommodation allowances shall be separately invoiced to the Client at the respective valid rates, which rates shall be set out in the applicable Cost Estimate. Travel time shall be considered working hours.

## 7. **PAYMENT**

- 7.1. The Client shall pay each invoice issued by the Contractor (or part thereof if the Contractor has consented to partial payment), including all applicable taxes set out therein, within fourteen (14) days of receipt of such invoice without deductions or set-offs for any reason.
- 7.2. If the Client does not pay an invoice or any part thereof when due, interest shall be charged on the arrears from the due date of such invoice at the rate of 13.52% per annum, or the maximum interest allowable by applicable laws, whichever is less. If the Client fails to make a payment when due more than once, all issued invoices shall become immediately due and owing, notwithstanding the fourteen (14) day period set out in Section 7.1. An invoice shall be deemed paid on the day such payment is received in the Contractor's account, if received during the normal business hours of the Contractor or on the Business Day during which such normal business hours next occur if not received during such hours on any day.
- 7.3. If the Client does not pay an invoice or any part thereof when due in the case of business-to-business transactions, a flat rate of \$40.00 shall be charged to the Client for collection costs. All other remedies shall remain available to the Contractor. The Contractor shall not be entitled to exercise any set-off, lien or any other similar right or claim against any amounts due to the Contractor for any reason.
- 7.4. Compliance with the provisions of this Article 7 is a crucial condition for the performance by the Contractor of its obligations hereunder. Breach by the Client of its obligations under this Article 7, which breach has not been remedied within 30 days of the day on which the breach began, shall entitle the Contractor to terminate this Agreement and any outstanding Orders.

## 8. **COPYRIGHT AND USE**

- 8.1. Upon receipt of payment in connection with an Order the Contractor shall grant to the Client, subject to the provisions hereof, a non-exclusive, non-transferrable, non-sublicensable license for its Users to use the Software set out in such Order, including any Software required in connection with the hardware comprising part of the Products specified in such Order, if applicable, solely for their own internal business use and operations (the "**License**").
- 8.2. The Contractor shall remain the exclusive owner of all intellectual property rights of whatever nature including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the Software and Products that it owns and any improvements thereto. The applicable third party shall remain the exclusive owner of all intellectual property rights of whatever nature including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the Software and Products that it owns and any improvements thereto.

- 8.3. The Client shall be permitted to make copies of the Software for archiving and data security purposes only; provided that, where the Software is sub-licensed from a third party and such third party prohibits such copies, the Client may not be permitted to make any copies of such Software; and provided that all copyright and ownership notices shall be transferred to such copies without alteration. Buyer shall not reverse engineer the products or any part thereof. Buyer shall not remove any proprietary notices and/or branding contained in or otherwise affixed to the products.
- 8.4. If the Client requires information about Software interfaces to ensure interoperability of the Software, it shall request this information from the Contractor, who shall provide such information for a fee to be determined by the Contractor (the "**Information Fee**"). If the Contractor fails to provide such information within 30 days of payment by the Client of the Information Fee, the Client may decompile the Software solely for the purpose of achieving interoperability of the Software and not for any other purpose.
- 8.5. The Client acknowledges and agrees that the Software must be used in accordance with all instruction provided by the Contractor and, where stated, the Software must be operated only by Users who have received the appropriate training. If the Contractor provides the Client with a sub-license to third party Software (e.g. standard software by Microsoft), such sub-license shall be subject to any and all conditions and agreement imposed by such third party. The Contractor is not liable for the functionality of third party services.

## **9. WARRANTY, MAINTENANCE AND MODIFICATIONS**

- 9.1. Each Party represents, warrants, and covenants that:
  - 9.1.1. it has the full power and authority to agree to the Agreement and to perform its obligations hereunder; and
  - 9.1.2. its acceptance of and performance the Agreement shall not breach any oral or written agreement with or obligation in favor of a third party.
- 9.2. The Contractor represents, warrants, and covenants that:
  - 9.2.1. it shall perform the Services in accordance with applicable law;
  - 9.2.2. it has a valid license for the Software and shall provide a valid license for the Software to the Client in accordance with Section 8 upon full payment therefore in accordance with the terms of this Agreement; and
  - 9.2.3. the Software is suitable for its usual purpose and use for a period of six (6) months (the "**Warranty Period**") from the date of delivery, provided that the Software is used on the operating system stipulated in the applicable Order (the "**Operating System**").
- 9.3. Prior to the expiry of the Warranty Period, the Client shall notify the Contractor in writing of any failure of the Software to conform to the provisions of Section 9.2.3 (a "**Defect**"), within five (5) days of identifying such Defect, including the following details:

- (a) a sufficient description of the error in an error message;
- (b) all documents necessary for the correction of the error;
- (c) confirmation that the Client or an affiliated third party has not interfered with the software; and
- (d) confirmation that the Software is used according to the designated conditions of use as stipulated in the user guide provided to the Client by the Contractor,

(the "**Defect Notice**").

- 9.3.1. Following receipt of a Defect Notice, the Contractor shall, at its own cost, make commercially reasonable efforts to replace the Software or correct the Defect within a reasonable period of time and the Client shall provide the Contractor with the necessary access to examine and remedy such Defect. Provided, however, that if a Defect has resulted from the actions or omissions of a Client Party, all such efforts to correct the Defect shall be at the sole cost of the Client. If a Defect has not been substantially cured within 30 days' of the Contractor's receipt of a Defect Notice, the Client may elect to terminate the applicable Order.
- 9.3.2. Notwithstanding anything to the contrary herein, all warranties hereunder shall be voided if:
  - (a) the Software is in any way altered or modified by any of the Client Parties or by a third party at the behest of the Client;
  - (b) if the Client engages a third party to examine or remedy a Defect;
  - (c) the Client improperly uses the Software or changes components of the Operating System, interfaces or parameters;
  - (d) the Client uses inadequate organisational means or data storage media (as far as these are required), abnormal operating conditions (particularly deviations of installation and storage conditions); or
  - (e) transport damage occurs.
- 9.3.3. The Contractor does not provide any warranty for third party parts, components or products that are not created or manufactured by the Contractor. Such parts, components or products may be warranted by third parties on a "pass through" basis. The Contractor does not make, and hereby disclaims, any other express, statutory and implied representations and warranties in respect of the Sale Assets, including, but not limited to, warranties of merchantability, fitness for a particular purpose (except as set out in Section 9.2.3), compatibility, quality, suitability, operability, condition, system integration, non-interference, workmanship, accuracy (of data or any other information or content), absence of defects (latent or patent), and any warranties arising from a course of dealing, usage or trade practice.
- 9.3.4. Where an Order is issued in respect of changing or adding to existing Software, the Contractor shall provide a warranty in respect of such change or addition as set out in this Section 9; however, under no circumstances shall the foregoing act to extend the warranty provided in connection with the initial Order under which the existing Software was provided.

## 10. **INDEMNIFICATION AND LIMITATIONS ON LIABILITY**

- 10.1. The Contractor shall indemnify, defend, and hold harmless the Client from and against third-party claims, demands, causes of action, fees (including, without limitation, reasonable lawyers' fees and disbursements) or liability (each, a "**Claim**") arising from the gross negligence, wilful misconduct and strict liability of the Contractor or its subcontractors in connection with this Agreement. Provided, however, that the Contractor shall only be required to provide the indemnities set out in this Section 10.1 if the Client notifies the Contractor of the Claim twelve (12) months of the date on which the Client first becomes aware of such Claim.
- 10.2. The Client shall indemnify, defend, and hold harmless the Contractor, its directors, officers, employees, contractors, agents and representatives (collectively, the "**Contractor Parties**") from and against third-party Claims arising from (i) the gross negligence, wilful misconduct and strict liability of the Client, its directors, officers, employees, contractors, agents and representatives (collectively, the "**Client Parties**" and each a "**Client Party**") in connection with this Agreement; (ii) any Client Party's use of the Sale Assets in violation of applicable law or these Terms; (iii) any breach or inaccuracy of any representation or warranty given by the Client herein; (iv) any failure by the Client to perform or fulfil any of its covenants or obligations hereunder; and (v) any Client Party's misuse of third party Software, including without limitation any breach of Section 8.4.
- 10.3. Under no circumstances shall any of the Contractor Parties be liable for any indirect, incidental, special, consequential, or punitive damages, any damage for business interruption, data losses (subject to Section 10.4), lost profits, lost revenue, or lost business, arising out of or in connection with this Agreement. The total aggregate liability of the Contractor Parties shall be limited to the actual fees paid or payable by the Client under this Agreement for the twelve (12) month period preceding the event giving rise to the damage.
- 10.4. Notwithstanding anything to the contrary herein, if an Order includes data backup as a Service, the Contractor shall be liable, for each such event of data loss, up to a maximum value of the lesser of:
- 10.4.1. \$15,000; or
  - 10.4.2. 10% of the value of the applicable Order that is attributable to data backup as a Service.

## 11. **NON-SOLICITATION**

- 11.1. During the Term and for a period of 12 months thereafter, no Party shall directly or indirectly solicit, entice or attempt to solicit or entice for employment, hire or otherwise contract for the services of, or aid in the solicitation, hiring or contracting for, the services of any employee of the other Party who works on the fulfilment of Orders; provided that, a Party may make general solicitations to the public without specifically targeting any employee of the other Party.

## 12. **CONFIDENTIALITY AND NON-DISCLOSURE**

- 12.1. Each Party (the "**Receiving Party**" hereby acknowledges that the other Party (the "**Disclosing Party**") has disclosed or may disclose certain business, technical and financial information, know-how, ideas, concepts, designs, products, markets, computer programs, prototypes, processes, machines, manufacture, compositions of matter, business plans and operations, technical information, drawings, specifications, and the like that is intended to be confidential ("**Confidential Information**"). "**Confidential Information**" shall not include information for which the Receiving Party can document: (a) had become generally available to the public; (b) was in the Receiving Party's possession or known by it prior to receipt from Disclosing Party; (c) that was lawfully disclosed to Receiving Party without restriction by a third-party; or (d) that was independently developed without use of any Confidential Information of Disclosing Party.
- 12.2. The Receiving Party agrees: (a) to exercise the same degree of care in protecting the Confidential Information as it exercises in safeguarding its own confidential information, but in no event less than a commercially reasonable degree of care; (b) not to use the Confidential Information except as required to fulfil its obligations under this Agreement; and (c) not to disclosure such Confidential Information to any third party except for (i) its employees, contractors, agents, representatives and professional advisors who need to know such information for the performance of their duties and provided that such Persons are subject to an obligation of confidentiality guaranteeing a level of protection at least equivalent to the provisions in this Section 12.2; or (ii) as set out in Section 12.3. The foregoing obligation shall remain in force throughout the Term of the Agreement and for two (2) years from the effective date of termination or expiration of the last Order entered into by the Parties.
- 12.3. The Receiving Party shall not be prevented from disclosing Confidential Information to the extent such Receiving Party is legally compelled to do so by any competent court or administrative authority; provided, however, that prior to disclosure, Receiving Party shall: (a) assert the confidential nature of the Confidential Information to the court or administrative authority; (b) immediately notify Disclosing Party in writing of the disclosure order or request; and (c) cooperate fully with Disclosing Party in protecting against or limiting disclosure to the extent allowable under applicable law.
- 12.4. To the extent permissible under applicable law, the Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury and that, in the event of such breach, the Disclosing Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other related relief, without bond and without the necessity of showing actual monetary damages.

## 13. **SERVICE AND NOTICE**

- 13.1. Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing and given by personal delivery or electronic communication, and sent to the following addresses, or such other addresses as indicated by the applicable Party in writing from time to time:

13.1.1. If to the Contractor:

Address: DIVU Canada Ltd., 3400, 350 7<sup>th</sup> Avenue SW, Calgary, Alberta, T2P3N9,  
Canada  
Attention:  
E-Mail: [office@divu.tech](mailto:office@divu.tech)

13.1.2. If to the Client:

Address: [●]  
Attention: [●]  
Email: [●]

13.2. Notices sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the Party at the address indicated above (or such other address as indicated by the applicable Party in writing from time to time) shall be deemed received on the fourth Business Day next following the date of its mailing. Any notice transmitted by facsimile shall be deemed to have been given and received on the next business day after its transmission. Notices given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof. Notices sent by email will be deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

13.3. Notwithstanding anything to the contrary herein, a written notice or communication actually received by a Party shall be adequate written notice or communication to such Party notwithstanding that it was not sent to or delivered at the applicable address set out in Section 13.1.

14. **SEVERABILITY**

14.1. Should any clause of this Agreement be found to be invalid or unenforceable, such clause will be deleted, and will not influence the validity or enforceability of the remaining provisions. In such event, the Parties shall cooperate in order to amend such clause such that it is no longer invalid or unenforceable, while maintaining the initial intent of the clause to the extent possible.

15. **ADVERTISING, REFERENCE**

15.1. The Contractor is entitled to refer to the Client (including without limitation name, address, website, e-mail and company logo) on its own website and in other advertising material without the Client being entitled to any remuneration for this and without requiring the consent of the Client. The Client may notify the Contractor at any time that it no longer wishes to be referred to on the Contractor's website and in other advertising material of the Contractor. Following such notification the Contractor shall remove references to the Client from its website and shall not produce any new advertising material containing the Client's name; however, under no circumstances shall the Contractor be required to destroy or change existing advertising materials following such notification.

## 16. MISCELLANEOUS PROVISIONS

- 16.1. Governing Law. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention). The Parties agree on the exclusive jurisdiction of the competent courts in Alberta in the judicial district of Calgary. All other agreements on the place of jurisdiction are invalid.
- 16.2. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties relating to the matters set out herein and shall supersede all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. In the event of any conflict between provisions of this Agreement and an Order, the Agreement shall take precedence.
- 16.3. Amendment. Amendments to this Agreement must be made in writing and executed by both Parties, as must any waiver of this formal requirement. Verbal agreements or agreements in writing that are not executed by both Parties shall be of no force or effect.
- 16.4. No Waiver. No waiver will be implied from any conduct or failure by either Party to enforce any rights provided for under this Agreement. No waiver will be effective unless in writing and executed by the waiving Party. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.5. Assignment. The Client shall not assign its rights hereunder or delegate the performance of any of its duties or obligations under this Agreement to a third party, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the Contractor's prior written consent. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.
- 16.6. Subcontractors. The Client acknowledges and agrees that the Contractor shall have the discretion to subcontract all or part of its obligations under this Agreement provided that the Contractor shall be ultimately responsible for the fulfilment of any subcontracted activities under this Agreement.
- 16.7. Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Neither Party has any authority whatsoever to bind the other Party in any respect by virtue of this Agreement.