



GENERAL TERMS OF BUSINESS

1. AGREEMENT

- 1.1. **Parties:** The Agreement is made between the customer identified in the Service Order ("**Customer**") and the Aptum legal entity providing the Services as indicated in the Service Order ("**Aptum**"), each a "**Party**," together the "**Parties**."
- 1.2. **Terms of Agreement:** The Agreement sets forth the roles and responsibilities of the Parties regarding the Service identified in a Service Order(s). By using and/or accessing the Services, the Customer, including its other Users, agree to be bound by all the terms and conditions of the Agreement (as this term is defined hereinafter), as updated from time to time. The "**Agreement**" consists of the documents listed below, together with any additional written terms executed by the Parties as an amendment to the Agreement (which shall take precedence). To the extent that the Customer issues its purchase order(s) or other like documents in connection with ordering Services, such documents shall serve the Customer for its internal recording keeping purposes only, and any terms thereon shall not have any force or effect over the provisions of the Services. Unless otherwise agreed, in the event of a conflict or inconsistency between the component parts of the Agreement, such documents will follow the order of precedence outlined below:
 - (a) Service Order (a/k/a Order);
 - (b) these General Terms of Business;
 - (c) Data Processor Addendum;
 - (d) Product Terms that further describes the Services set forth in the applicable Order, including the component parts thereof that are incorporated by reference, such as the applicable Service Documentation (a/k/a Service Guide), Statement of Work (a/k/a Scope of Work) and/or End-User License Agreement (a/k/a EULA); and
 - (e) Acceptable Use Policy.
- 1.3. **Interpretation:** In the Agreement:
 - (a) headings are for reference only and do not affect the scope or meaning of the Agreement;
 - (b) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies and corporations;
 - (c) "including" means including without limitation;
 - (d) the singular includes the plural and vice-versa; and
 - (e) reference to a day or month means a calendar day or month, unless expressly stated otherwise.

2. TERM AND TERMINATION

- 2.1. **Term:** The Agreement shall continue for the duration of all of the Services or until terminated in accordance with clause 2.2 below.
- 2.2. **Termination:** The Agreement, Service Order(s) and/or a particular Service(s) may be terminated in one of the following ways:
 - (a) by either party, if the other Party commits a material breach or fails to perform any obligations under the Agreement, and has not remedied the breach within thirty (30) days after receipt of a notice from the non-breaching Party identifying the breach or failure;
 - (b) by Aptum if the Customer ceases to carry on business as a going concern, becomes insolvent, commits an act of bankruptcy, becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or if a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets, or an event similar to any of the foregoing occurs under applicable law;
 - (c) by Aptum for any reason by providing the Customer with not less than sixty (60) days prior notice, and to the extent that the Customer pre-paid the Fees to Aptum, Aptum shall refund the Customer any remaining amount of such Fees that have not been applied to the affected Services after the effective termination date thereof; or
 - (d) as otherwise provided in the Agreement.
- 2.3. **Service Orders:** Service Order shall state the Customer's minimum committed term of the Services arising thereunder from the Commencement Date ("**Initial Term**"); if the Initial Term is not expressly stated in the Service Order, the Initial Term of the Services shall be deemed to be for a period of twelve (12) months from the Commencement Date. Unless a Party notifies the other Party of its intention not to renew the Services at least sixty (60) days prior the end of the Initial Term or then current term ("**Term**"), the Services shall automatically renew for subsequent twelve (12) month terms under the same terms and conditions except that the Fees may be adjusted to reflect Aptum's then current



pricing for such Services. Cancellation of any Service Order or a particular Service thereunder must be made by way of a cancellation request in writing or through a service ticket in accordance with the applicable Product Terms.

3. CUSTOMER OBLIGATIONS

3.1. Customer will:

- (a) use the Services in accordance with the Agreement and all applicable laws. Customer remains responsible for the use of and access to the Services by Users and reasonably causing their compliance with the obligations under the Agreement where applicable to Users;
- (b) comply with the reasonable Aptum policies and guidelines notified to Customer;
- (c) reasonably cooperate with Aptum's investigations of outages, security problems and any suspected breach of the Agreement;
- (d) without delay notify Aptum of any unauthorized use of the Services, any other breach or suspected breach of the security of the Services that Customer becomes aware of;
- (e) pay all undisputed Fees and applicable taxes in accordance with the terms of the Agreement; and
- (f) reasonably cooperate with Aptum to determine any tax-exempt status applicable to the Customer.

3.2. **Customer Requirements:** Customer acknowledges and agrees that it is Customer's responsibility to assess whether the Services are appropriate and suitable for Customer's requirements. Where Aptum provides advice about Customer's Service requirements or the configuration of any equipment used in connection with Customer's Service, such advice is given on the basis of a good faith recommendation using reasonable skill and care, but without any guarantee or warranty of performance.

3.3. **Monitoring User Activity:** Customer, and its Users, voluntarily engage in the use of the Internet and is responsible for the risks associated with that activity. Customer acknowledges and agrees that Aptum exercises no access or control over any information passing through the Services, including Aptum's host computers, network hubs, points of presence, the Internet, or any content any User may display or post on any website and is under no obligation to monitor Customer, its Users or other customers of Aptum with respect to their use of the Services. Customer remains responsible for content or information made available for distribution using the Services.

3.4. **Indemnity for Third Party Claims:** Customer agrees to defend, indemnify and hold harmless Aptum, its parent company, and their affiliates, subsidiaries, personnel and representatives, jointly and severally, from and against any and all third party claims for damages, losses, liability, causes of action, judgments, costs or expenses (including reasonable legal fees) directly or indirectly arising from its or any Users use or access to the Services, including any unauthorized access to Customer's data, computers or network systems by a third party.

3.5. **Add-on Components:** Services may include non-core add-on components, such as back-up/disaster recovery and firewall service ("**Add-on Component/s**"). Add-on Components are provisioned for the Customer only if expressly agreed to in writing by the Parties (e.g.: in an Order or a ticket raised by the Customer and confirmed by Aptum). When an Add-on Component is provisioned for the Customer, the specific parameters of the scope and applicability of each Add-on Component ("**Add-on Component Parameter**") may be set forth in an applicable Order, ticket or another document agreed to, or established by the Parties. For example, in the case of back-up/disaster recovery, such document will set out the details as to what needs to be backed-up and the backup frequency. It shall be the Customer's responsibility to instruct Aptum in writing as to the specific details of the Add-on Component Parameters, including any updates thereto from time to time. In the absence of such detail, Aptum shall set-up each Add-on Component in accordance with its standard practices.

4. FEES AND PAYMENT TERMS

4.1. **When Customer's Fees are Due:** Unless otherwise agreed to in writing by the Parties, invoices for Fees shall be issued in accordance with the applicable Product Terms, or monthly in advance if not stated in the applicable Product Terms, and such Fees shall be payable by the Customer on the due date set forth on each invoice issued by Aptum.

4.2. **Late Payment:** Without prejudice to the right of Aptum to receive payment when due, Aptum may assess a late payment charge of 1.5% per month or fraction of a month (equivalent to 19.56 % per annum) on the unpaid and undisputed balance of any amount due hereunder.

4.3. **No set-off or abatement:** The right of Aptum to any payment provided for under the Agreement shall not be subject to any abatement, reduction, set off, defense, counterclaim or recoupment of any amount due or alleged to be due by reason of any past, present or future claims of the Customer.

4.4. **Invoicing Entity:** All or a portion of the Fees may be invoiced to the Customer under the name of the Aptum Affiliate that actually performs a particular Service arising from a Service Order. Consolidated invoices shall be provided at Aptum's discretion where possible.

- 4.5. **Collection costs:** Customer will be responsible for any costs Aptum incurs in enforcing collection of any Fees payable under the Agreement, including reasonable legal fees, court costs or collection agency fees, as well as any costs Aptum incurs due to insufficient funds or other charges incurred in connection therewith.
- 4.6. **Payment of Fees:**
- (a) If Customer pay by credit card or ACH or EFT, then Aptum will charge Customer's credit card or bank account (as applicable) to pay for any charges that may apply to Customer's account, including any verification or hold amounts charged to Customer's credit card.
 - (b) Customer agrees that Customer will immediately notify Aptum of any changes to Customer's credit card, ACH or EFT account, Customer's billing address or any other information Aptum may reasonably require in order to process Customer's payments according to the terms herein.
 - (c) Customer must ensure Customer's billing, contact and other account information (including credit card details) is accurate and up to date, and that any credit card payments have been properly authorized by the cardholder.
 - (d) If the Customer elects to pay invoiced amount of Fees by credit card, where permit by Law, a percentage of such amount (between 2% to 2.4%) will be applied to the Customer's following invoice for Fees as a credit card processing surcharge in connection with the Customer's credit card payment made for the previous invoice. Credit card surcharges form part of the Fees. If the Customer wants to avoid such credit card surcharge, it can elect to pay Fees by ACH, EFT or cheque.
- 4.7. **Overage Fees:** To the extent applicable to the Services and in the event that the Customer's usage of or access to the Services in any billing period exceed the usage allotment set forth in the applicable Service Order ("**Overage**"), including the usage allotment of electrical power, network bandwidth, the number of subscriptions and/or the allotment of any third-party products/services (each an "**Overage Product**"), the Fees invoiced by Aptum to the Customer for the monthly period in which the Overage occurred or the invoice for the period after such month shall be adjusted accordingly in to reflect the Overage (i) in accordance with the unit price of Overage Product as expressly set forth in the Service Order; or (ii) if the unit price of the Overage Product is not expressly set forth in the Service Order, then in accordance with Aptum's then current unit price of such Overage Product.
- 4.8. **Suspension:** In addition to any other rights hereunder and at law, upon notice to the Customer of and reasonable effort to collect overdue undisputed Fees from the Customer, Aptum may suspend Customer's account and any active Service until such overdue undisputed Fees are paid in full by the Customer. To the extent that the Customer disputes any portion of the Fees, the Customer shall work in good faith with Aptum to resolve the matter expeditiously; the payment of any undisputed portion of the Fees shall not be impacted in any way by such dispute.
- 4.9. **Early Termination:** (a) Where the Customer terminates any Services prior to the expiration of the applicable Term therefor for reason(s) unrelated to a breach of the Agreement by Aptum, the Customer shall be invoiced for, and shall be liable to pay Aptum the aggregate amount of the Fees that would have been payable during the remainder of the Term; however, to the extent that the Fees are not expressly stated in the applicable Service Order for any reason, for purposes of the foregoing in this Section, the monthly Fees applicable to the affected Services shall be deemed to be either (i) the average of the monthly Fees paid by the Customer over a twelve (12) month period immediately preceding the effective date of such termination, or (ii) if the affected Services were provisioned for a period that is less than twelve (12) months, then the average of the monthly Fees paid by the Customer for the affected Services prior to the effective termination date therefor. (b) Where Customer terminates the Services arising from an executed statement of work (a/k/a scope of work) that forms part of the Product Terms for professional services at any time prior to the completion of such Services, the Customer shall be invoiced for, and shall remain liable to pay Aptum the aggregate amount of Fees set forth in such statement of work.
- 4.10. **Credit check:** Credit facilities, if any, are offered at Aptum's discretion and subject to being revoked on notice in the event of late payment. For purposes of considering a credit facility request by the Customer or to maintain a credit facility for the Customer, the Customer authorizes Aptum, its Affiliates, and/or their respective agents to disclose, share and/or exchange information that they have concerning the Customer for the purpose of assessing the Customer's on-going credit worthiness.
- 4.11. **Fee Increases:** Aptum shall be entitled to increase the Fees:
- (a) in order to pass through an increase in the cost of electrical power Aptum pays to its electrical power supplier in relations to the provisioning of Services;
 - (b) on an annual basis, but not before the first anniversary of the first day of the Initial term, to reflect an increase in the Consumer Price Index, as published by Statistics Canada or equivalent government agency, whereby the Fees may be increased by the same percentage as the increase in the Consumer Price Index; and
 - (c) to the extent applicable, pass through an increase in the cost of any third-party software, license or service that was pre-approved by the Customer and is used solely for the provision of the Services,

provided that in any case Aptum has notified the Customer no less than sixty (60) days in advance of such increase excepting where Aptum itself has received less than sixty (60) days advance notice, in which case it shall give as much notice as it is reasonably able.

- 4.12. The Fees specified on the applicable Service Order are exclusive of, and may be increased as a result of, the imposition by any relevant authority of any tax, impost, duty, levy, charge or any measure of equivalent effect to any of the foregoing including but not limited to any 'green levy' such as the carbon reduction commitment and the climate change levy, import/export duties or shipping and delivery charges applicable to the Services.
- 4.13. If Aptum, during an investigation or trouble shooting of any issue related to the Services, determines in its reasonable opinion that the issue is caused by the Customer or related to a solution and/or service not included under the Services or attributable otherwise than to Aptum, then Aptum reserves the right to pause work on the issue until the Customer has agreed to pay Fees in respect of the appropriate additional costs relating to any associated engineering time or other costs, unless otherwise agreed in writing by both parties.

5. SERVICE RESPONSIBILITIES

- 5.1. **Service Documentation:** Aptum will provide the Services, including the applicable support as specified in the applicable Service Documentation. Parties agree that such Service Documentation sets forth the exclusive Service performance warranty terms of Aptum.
- 5.2. **Security:** Aptum will maintain the physical security of its data centers, equipment and systems in accordance with its advertised security standards. User access control (including the safety of all passwords and ensuring that the technical contacts specified for Customer's account are up-to-date and the appropriate use of encryption technology to prevent unauthorized viewing of data) is the Customer's responsibility. The Customer acknowledges and agrees that in the event a device or Service attributable to Customer's account is responsible for or involved in a computerized network system attack or unauthorized access thereto, Aptum will have the right to respond as it determines appropriate, including the right to identify, isolate and block the source of the attack.
- 5.3. **Customer Data:** Aptum does not have access to, does not have any control over and does not monitor the type, nature or value of Customer's data either passing through or being stored on any part of the Services (collectively "**Customer Data**"). The Customer shall be solely responsible for implementing security measures which are commensurate to the importance and sensitivity of the Customer Data, including (a) backing up Customer Data on a regular basis; (b) configuring and maintaining system redundancies; (c) encrypting Customer Data stored or transmitted through the Services; (d) installing and maintaining software on its system, and if applicable on the Services to prevent unauthorized access, viruses and malware; and (e) controlling who has access to its systems that connect to the Services. Despite anything to the contrary in the Agreement, Aptum shall not be liable to Users for damages any of them may suffer as a result of the Customer failing to comply with the foregoing in this Section. The following provisions explain how Aptum operates and the Customer's responsibilities:
 - (a) **Regulatory requirements:** Customer are responsible for understanding the regulatory requirements applicable to Customer's business and selecting appropriate services that meet Customer's requirements.
 - (b) **Data Retention/Server Reclaim:** Aptum will remove and permanently delete any data stored on its systems or servers following the termination of any Services in accordance with its internal procedures. Customer will not have access to the systems or hardware following termination of a Service; it is therefore Customer's responsibility to retain a copy of the data prior to termination, including, where applicable, repossessing any of the Customer's devices that may be located at any Aptum data center.
 - (c) **Data recovery losses:** Certain Services contain features that may help to minimize and/or mitigate the risk of data loss; however, this is not a guarantee and the Customer is still required to implement operational measures appropriate to its needs to safeguard against data loss including defining and checking the regularity and success of its data back-ups.
 - (d) **Data Protection Addendum:** Aptum handles personal information of individuals in accordance with the Privacy Policy updated from time to time on its Website. To the extent applicable to the Customers use of the Services, Aptum adheres to the data protection obligations that are outlined in its current Data Protection Addendum, a copy of which can be found on the Website.
- 5.4. **Interruption of Service:** Aptum does not guarantee that (i) access to any Service will be uninterrupted or completely error-free; (ii) that defects can or will be corrected; or (iii) that any Service will be completely secure. Customer agrees that except as provided in the Product Terms, including Service Documentation, Aptum will not be liable to Customer, a User or any other third party for any temporary delay, outage or interruption of a Service.
- 5.5. **End of Life Support:** When a necessary component of the Services, including hardware, software, licensing, etc. (each a "**Service Component**") is for any reason no longer supported (including software updates and patching) by Aptum or the applicable third-party supplier (the "**Supplier**"), or the Supplier discontinues or adversely alters the program or policy under which it makes a Service Component available, Aptum will identify that Service Component to the

Customer as being “End-of-Life” (each, an “**EOL Product**”). Once the Customer has been notified by Aptum in writing of the EOL Product (“**EOL Product Notice**”), Aptum may, at its discretion do the following:

- (a) If the EOL Product is owned and/or operated by Aptum in connection with the Service, Aptum may (i) discontinue the Service or affected part thereof upon thirty (30) days written notice to the Customer; or (ii) replace the EOL Product with an alternative Service Component and pass-through to the Customer any associated cost increase therefor as a one-time Fee or as an increase to the monthly Fees of the Services for the remainder of the Term; or
 - (b) If the EOL Product is owned and/or operated by Customer in connection with the Service, Aptum may require the Customer to replace EOL Product within thirty (30) days after written notice to the Customer or as otherwise agreed to the Parties in writing. After the date the EOL Product Notice is provided to the Customer and for any duration thereafter that such EOL Product continues to be used by the Customer in connection with the Services for any reason, (i) Aptum’s Service Level Agreements and performance guarantees will cease to apply to the Service; (ii) Aptum may only be able to provide limited support with respect to the EOL Product and to the extent that such support is provided, it will be done so on an “as-is” basis and without warranty of any kind; (iii) Aptum will not be liable to Customer or any other User for any loss or damage that may be suffered from any impact to the Services arising in connection with the EOL Product even if Aptum consented to the Customer’s continued use of such EOL product; and (iv) Aptum may, once per calendar year, conduct a pricing review and adjust the monthly Fees of the Services in respect of the EOL Product to account for the additional cost to Aptum associated with provisioning of the Services during the Customer’s continued use of the EOL Product.
- 5.6. **Insurance:** Aptum will maintain insurance commensurate with its potential liabilities under the Agreement. The Customer agree that insurance covering actual losses to Customer’s business, including losses related to interruption of business or cybercrime, are Customer’s responsibility.
- 5.7. **Maintenance:** In order to maintain a high level of service to all customers, all Aptum Services are subject to periods of maintenance. Aptum will use commercially reasonable efforts to notify the Customer seven (7) days in advance of any scheduled maintenance. Notice of scheduled maintenance will be provided to the Customer via an e-mail addressed to the Customer provided technical contact and/or the Customer’s Aptum portal. The Customer shall ensure that Aptum Networks Operations Centre has, at all times, up to date Customer contact information. Failure to provide notice to the Customer by Aptum acting reasonably shall not be deemed a breach of any applicable Service Level Agreement. Scheduled Maintenance does not constitute Service Unavailability.
- 5.8. **Emergency Maintenance:** Aptum may have the need to request or notify Customer of emergency maintenance (including where a change is required to address a safety issue, security vulnerability, ensure stability, avoid service interruption or restore service). Aptum will notify the Customer as soon as reasonably possible of any occurrence that would result in a requirement for emergency maintenance. Such emergency maintenance does not constitute Service Unavailability.
- 5.9. **IP Addresses:** Customer shall have no right, title or interest in or to any network address or identifier (such IP address and host name) (“**Identifier**”) assigned to the Customer by Aptum as part of the Services and that the Identifier may be determined by a third-party Identifier allocation authority, not Aptum. Aptum may, on reasonable notice to the Customer, change or remove the Identifier; and Aptum is not obligated to notify any other party of such change or removal.
- 5.10. **Relocation:** Services that are managed and/or hosted by Aptum may be relocated and provisioned from any data center where Aptum conducts its operations. To the extent that any such relocation is anticipated to impact the Customer use of the Services, Aptum will provide the Customer reasonable prior notice. Except as otherwise set forth in the Agreement, the foregoing in this Section shall not apply to collocated Services.
6. **CLAIMING SERVICE CREDITS**
- 6.1. Where a Service Level Agreement is provided for a particular Service, Customers entitlement to a Service Credit pursuant to the Service Level Agreement is subject to the following conditions:
- (a) the Customer must request Service Credits in writing within thirty (30) days of the last day of the calendar month in which the failure(s) occurred;
 - (b) if a service installation charge has been waived by Aptum under a prior agreement or promotion, a Service Credit for provisioning of Service will not be provided;
 - (c) Customers may not receive more than one Service Credit per affected Service per incident. The maximum value of Service Credits the Customer may receive in a given month is equal to the total Fees for that Service in the same month;

- (d) no Service Credit will be applied to accounts that are past-due or for accounts that are suspended or cancelled before the conditions for application of the Service Credit are met. Service Credits will not be applied against past due balances; and
 - (e) Upon cancellation or termination of a Customer's account, any outstanding or previously accrued Service Credits will be forfeited.
- 6.2. Changes to business, technology improvements and changes to Aptum Services may result in a revision to the service level components and services levels component metrics. Any adjustment resulting in an enhancement to a Service shall be notified to the Customer in advance.

7. CONFIDENTIALITY

- 7.1. Any Confidential Information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Recipient**") in connection with the Agreement will be protected and held in confidence by the Recipient. Customer and Aptum agree that Confidential Information will be used only for the purposes of the Agreement and related internal administrative purposes.
- 7.2. Disclosure of Confidential Information will be restricted to the Recipient's employees, contractors, affiliates or agents (including auditors, lawyers and consultants) on a "need to know" basis in connection with the Services, each of whom are bound by confidentiality obligations no less stringent than these prior to such disclosure. Each Party may disclose Confidential Information relating to the Services to providers of goods and services to the extent such disclosure is necessary and reasonably anticipated.
- 7.3. A Recipient may disclose Confidential Information to the extent required by law, but the disclosure does not relieve the Recipient of its confidentiality obligations with respect to any other Party.
- 7.4. Customer agrees that any audit, compliance, certification or security reports provided to Customer by Aptum are for Customer's internal use only and are not to be disclosed or distributed by Customer to any third party. Customer agree that the terms of any Service Order Customer may place with Aptum constitutes Confidential Information of Aptum and Customer will maintain its strict confidentiality.

8. RESELLING CUSTOMER'S SERVICES

Customer may resell the Services to third parties, provided always that Customer's reselling of the Services will not create a relationship between Aptum and any other person, nor will any other person be entitled to exercise any rights or remedies under the Agreement. Customer will be responsible for the use of the Services by any User as if Customer were using the Services itself, and any use of the Services by any User is subject to (and Customer will be solely responsible for any breach of) the AUP.

9. BRANDED PRODUCTS

- 9.1. **Hardware and Software:** The Customer acknowledges that Aptum does not manufacture the hardware, and in most cases, does not develop the software components, that are used to provide the Services (the "**Branded Products**"). Aptum does not make any representations or warranties regarding either fitness for any particular purpose, nor any standard or quality, unless this forms part of the manufacturers' or developers' specifications for such Branded Products. Except as expressly set forth in the Agreement, the Branded Products and associated Services, including all information and content made available by Aptum are provided on an "as is" or "as available" basis. This Section does not affect Customer's rights under any Service Level Agreement.
- 9.2. **Service Documentation:** Service Documentation may be amended by Aptum to reflect updates to the Branded Products by notice to the Customer.
- 9.3. **Liability for Defects:** Aptum is dependent on manufacturers and developers of the Branded Products for updates and patches, including security patches, and will have no liability to Customer, Customer's Users or any third party with respect to security vulnerabilities inherent in the applicable Branded Products.
- 9.4. **End User License Terms:** Customer agrees:
 - (a) that Customer will not (i) copy any license keys or otherwise decrypt or circumvent any license keys with respect to the Branded Products; (ii) run Branded Products on a second system or through any other hosting provider; (iii) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on or during the use of any Branded Product; or (iv) reverse engineer, decompile, or disassemble any Branded Product, except to the extent such activity is expressly permitted by the manufacturer or developer of the Branded Products or applicable law;
 - (b) to observe the terms of any license or applicable end user subscriber agreement for Branded Products made available to Customer;

- (c) that Aptum will not have any liability to Customer or any other party resulting from Customer's violation of any license agreements or end user subscriber agreements that govern such Branded Products; and
- (d) that Customer will be solely responsible for any additional software or products that Customer installs or uses in connection with the Services.

Additional restrictions may apply to any Microsoft software provided to Customer in connection with the Services. Customer agree to comply with all applicable Microsoft Corporation licensing terms. Customer's own Microsoft licenses must be maintained under Microsoft's Software Assurance Program. In the event Customer's Software Assurance expires, Customer must either (i) renew its compliance with the Software Assurance Program, (ii) purchase a valid Microsoft license from Aptum; or (iii) remove the expired license from the Services. Customer shall reimburse Aptum any costs incurred as a result of Customer's non-compliance with this clause.

- 9.5. **Third Party Vendors:** Aptum may from time to time introduce Customer to third-party vendors with whom Customer contracts for services. Aptum provides no warranty with respect to such services and Customer is responsible for assessing the appropriateness of the such third-party vendors and their services for Customer's requirements.

10. INTELLECTUAL PROPERTY INDEMNITY BY APTUM

- 10.1. **Indemnity:** Aptum agrees to defend, indemnify and hold Customer harmless from and against any and all third-party claims, damages, losses, liability, causes of action, judgments, costs or expenses (including reasonable legal fees) directly or indirectly arising from any claim alleging that the provision of Services infringes any third party's intellectual property rights.

- 10.2. **Remedies:** If a third-party infringement claim described above in Section 10.1 prohibits Customer's use of the Services in accordance with the Agreement, or if at any time any of Customer's Services are, or in Aptum's opinion are likely to become the subject of a claim or allegation of infringement of a third party's intellectual property rights, Aptum in its discretion will either:

- (a) replace or modify the affected Services to make them non-infringing;
- (b) obtain a license for Customer to continue to use the affected Services; or
- (c) terminate Customer's Service Order for the affected Services and refund Customer the remainder of Fees actually paid by Customer in respect of the Services.

- 10.3. This Section 10 represents Customer's sole and exclusive remedies with respect to any claim or allegation that the Services infringe a third party's intellectual property rights.

11. LIMITATION OF LIABILITY

- 11.1. The provision of the Services by Aptum is subject to the limitations on liability outlined in this Section and sets out the Parties' entire liability arising out of or in connection with the Agreement. Customer acknowledge and agree that the Fees for the Services under the Agreement are based upon this allocation of risk.

- 11.2. Nothing in the Agreement is intended to exclude or limit either Party's liability for any loss or damage resulting from:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other type of liability that cannot be limited or excluded as a matter of law.

- 11.3. Neither Party will be liable to the other in respect of:

- (a) any indirect, incidental, special, punitive, exemplary or consequential losses or damages of any kind;
- (b) any lost profits or opportunity;
- (c) any loss of revenue;
- (d) damages or costs associated with loss or compromise of data; or
- (e) any increased or duplicated costs, or any costs related to replacement services by third parties,

howsoever arising in connection with the performance or non-performance of the Agreement even if a Party has been informed of the possibility thereof.

- 11.4. Except as set forth in Article 10 of the Agreement, Aptum's liability to the Customer hereunder however arising, whether in tort (including negligence), contract or otherwise, is limited to and will not exceed the lesser of:

- (a) an amount equal to 3 times the monthly recurring Fee paid by the Customer in the immediately preceding month to which the claim arose; or

(b) one hundred thousand dollars (\$100,000 USD) (or an equivalent amount in any designated currency).

11.5. The Service Credits referenced in any Service Level Agreement are the Customer's sole and exclusive remedy in respect of any failure by Aptum to meet its Service performance warranties and is not limited by Section 11.4 above.

12. DISCLAIMERS

12.1 Aptum, its parent company, its affiliates and subsidiaries hereby disclaim, to the fullest extent permitted by law, any express or implied warranties and conditions of any kind or nature whatsoever, including warranties related to any course of dealing, usage or trade practice, or implied warranties and conditions of merchantability or fitness for a particular purpose.

12.2 Without limiting the generality, Aptum shall not be liable for (a) any act or omission of a telecommunications carrier whose facilities and services are used by the Customer in establishing connections to the Services; and (b) defamation or copyright infringement or any other claim arising from material transmitted or received over Aptum' networks or equipment.

13. GOVERNING LAW

13.1. Services Rendered in Canada

Where Services are rendered by Aptum in Canada, the Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and all disputes arising out of or related to the Agreement will be brought exclusively in the courts located in the Province of Ontario; provided however that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.

13.2. Services Rendered in the United States

Where Services are rendered by Aptum in the United States of America, the Agreement will be governed by, and construed in accordance with, the laws of the state of Washington, and all disputes arising out of or related to the Agreement will be brought exclusively in the courts located in the State of Washington; provided, however that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.

13.3. Services Rendered in the United Kingdom or the European Union

Where Services are rendered by Aptum in the United Kingdom or the European Union, the Agreement will be governed by, and construed in accordance with, the laws of England and Wales, and all disputes arising out of or related to the Agreement will be brought exclusively in the courts located in England; provided, however, that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.

14. DISPUTE RESOLUTION

Customer and Aptum agree to use reasonable efforts to resolve any breach of the Agreement through good faith discussions prior to either Party taking any legal action with respect to such breach, except that either Party may seek immediate injunctive relief for any alleged or perceived violation of the other Party's obligations with respect to Confidential Information, Customer's breach of the AUP, or any use of the Services by Customer or Customer's Users which violates applicable law. Such discussions will involve senior representatives nominated by each Party and, if reasonably required, ultimately include the executive management of each Party if necessary. Only if such aforementioned dispute cannot be resolved through such good faith discussions within thirty (30) days may legal action be taken by either Party to enforce its rights under the Agreement. In the event either Party commences an action to enforce the terms of Agreement, the prevailing Party shall be entitled to seek its reasonable attorney fees and costs from the court of competent jurisdiction.

15. MISCELLANEOUS PROVISIONS

15.1. Except for the Customer's payment obligation to Aptum for the provision of Services, neither Party shall be liable or responsible to the other Party for any delay in performance or for non-performance in whole or in part of the Agreement caused by the occurrence of acts of God, floods, war, fires, natural disasters, famine, earthquake, embargoes, labour disputes, casualties, civil disturbance, acts of insurrection by civil and military authorities, terrorist acts, fiber cuts, other material or component failures, failure or disturbance of the Internet or of the networks of other companies, lack of or delay in transportation, shortages, failure of a public utility, public health emergencies, unavailability or delay in delivery not resulting from the responsible Party's failure to timely place orders therefor, government action or any other cause or contingency beyond its reasonable control ("**Force Majeure Event**"). In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. If a Force Majeure Event causes a material failure or delay in the performance of any Service by Aptum for more than thirty (30) consecutive days, the Customer may immediately terminate the affected Service(s) upon five (5) Business Days written notice to Aptum.

- 15.2. **Modifications:** The Agreement may be amended only by mutual written agreement executed by the authorized representatives of the Parties.
- 15.3. **Relationship:** Customer and Aptum are independent contractors and the Agreement does not establish any partnership, joint venture, agency, employment, franchise or other relationship between Customer and Aptum.
- 15.4. **Waiver:** The waiver of any breach or default of the Agreement will not constitute a waiver of any subsequent breach or default and will not amend or negate the rights of the waiving Party.
- 15.5. **Assignment:** Customer may not sell, assign or transfer for rights or delegate Customer's duties under the Agreement in whole or in part without the prior written consent of Aptum, and any attempted or actual assignment or delegation without Aptum's consent will be void.
- 15.6. **Third Party Beneficiaries:** Customer and Aptum agree that, except as expressly provided in the Agreement or the terms and conditions of use of any Branded Products, there will be no third-party beneficiaries to the Agreement.
- 15.7. **Severability:** If any provision of the Agreement is held to be invalid or unenforceable for any reason, that provision will be deemed to be severed from the Agreement and the remaining provisions will continue in full force and effect.
- 15.8. **Survival:** Any provision of the Agreement that, by its nature, is applicable to circumstances arising after the termination or expiration of the Agreement will survive such termination or expiration and remain of full force and effect. No termination or expiration of the Agreement will relieve either Customer or Aptum from any liability arising out of any breach of the Agreement occurring prior to the termination or expiration.
- 15.9. **Export Matters:** Customer's use of the Services must be in compliance with applicable laws. Without limiting the foregoing statement, Customer agrees to comply with all restrictions and regulations of the U.S. Department of Commerce, Foreign Affairs, Trade, Development Canada, the UK Department for Business, Innovation and Skills, or any other domestic or foreign agency or authority in connection with Customer's use of the Services, and to not, in violation of any laws, transfer or authorize the transfer of any Services into any U.S., Canadian, UK or U.N. embargoed countries. Customer represents and warrants that it is not located in, under the control of, or a national or resident of any such country or using the Services for a purpose that is otherwise prohibited in accordance with any such list.
- 15.10. **Anti-Corruption:** The Customer will comply with all applicable anti-corruption laws of Canada, United States and United Kingdom and other countries, including the United States Corrupt Practices Act, the Canadian Criminal Code and Corruption of Foreign Public Officials Act and the U.K. Bribery Act 2010. Neither the Customer nor any of its representatives shall, directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to any official or employee of any government, government agency, political party or public international organization, or any candidate for political office, to (i) improperly influence any act or decision of such official, employee or candidate for the purpose of promoting the business interests of the other party in any respect, or (ii) otherwise improperly promote the business interests of the other party in any respect.
- 15.11. **Notice:** Unless otherwise specified in the Agreement, all notices, demands, requests or other communications required or permitted under the Agreement will be deemed given, in the case of notice to Aptum, when delivered personally or upon delivery of overnight or first-class mail, or, in the case of notice to Customer, by email to a designated contact email address, via Aptum's Customer portal ticket, or upon delivery of overnight or first class mail to Customer's designated contact address.
- 15.12. **Publicity and Feedback:** Customer agrees that Aptum may publicly disclose that it is providing Services to Customer and may use Customer's name, including its trademarked logo to identify Customer in promotional materials, including press releases and on Aptum's websites. The Customer agrees, at its sole discretion, to provide to Aptum with suggestions, comments and feedback regarding the Services or portion thereof, including but not limited to its user experience, usability, performance matters and technical issues (collectively, "**Feedback**"). If the Customer provides such Feedback to Aptum, the Customer hereby grants Aptum a worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid-up rights to make, use, copy, modify, sell, distribute, publicly perform or display, sublicense (including the right to sublicense to further third parties), and create derivative works of the Feedback as part of any Aptum Services, Services specification, Services documentation and/or Services marketing.
- 15.13. **Construction:** The headings in the Agreement are for the purpose of convenience only, and shall not limit, enlarge, or affect any of the covenants, terms, conditions or provisions therein. Each Party has had an opportunity to review, seek clarity and/or revise the terms of the Agreement, including the wordings and phrases used therein to give effect to such terms; therefore, no rule of strict construction shall apply against or in favor of either Party.
- 15.14. **Entire Agreement:** The Agreement constitutes the entire agreement between Customer and Aptum with respect to Customer's Services, and does not include any representation, promise, warranty or guarantee other than as expressly set out in the Agreement.

16. **Definitions:** In the Agreement, the defined terms shall have the meaning ascribed to them in section following terms have the following meanings, and all other capitalized terms have the meaning given to them elsewhere in the Agreement:

"Acceptable Use Policy" or **"AUP"** means Aptum's Acceptable Use Policy found on the Website.

"ACH" means Automated Clearing House.

"Commencement Date" means the later of the date that the Services are either (a) expected to be made available to the Customer as indicated on a Service Order or (b) the actual date that Services are made available to the Customer under such Service Order.

"Confidential Information" means all non-public information disclosed by either Customer or Aptum to the other that the recipient, on receipt of the information, can reasonably identify as being confidential in nature. Aptum's Confidential Information includes unpublished pricing information and terms of service, audit reports, compliance and certification reports, security reports, product development plans, data center designs, server configuration designs and other proprietary information or technology.

"EFT" means Electronic Fund Transfer, also known as Direct Debit or BACS payment.

"Fees" or **"Fee"** as used in the context means the money amounts payable by the Customer to Aptum for the provision of Services hereunder.

"Term" means the applicable Initial Term or any subsequent renews thereof.

"Third Party Product(s)" means the product(s) and/or service(s) identified in the Service Order as forming part of the Services but are provisioned by Aptum's third-party vendor(s).

"Product Terms" means the specific product terms applicable to the Services a copy of which is located on the Website.

"Service Documentation" means any service guide and/or technical description document(s) that relate to the Services as referenced in the Agreement; and only if applicable, additional terms and conditions for Third Party Products, such as end-user software license terms. For clarity, such terms and conditions are additional provisions that only apply to Third Party Products.

"Service Level Agreement" or **"SLA"** means the service levels and any associated service credit regime identified in the Product Terms or Service Documentation.

"Service Order" (also referred to as "Service Order Form" and "Order") means either an electronic order Customer submits to Aptum via one of its service portals, or any other written order (either in electronic or paper form) provided to Customer by Aptum, which describes the specific Services the Customer is purchasing from Aptum during the Term.

"Service(s)" means the service(s) identified in the Service Order to be provided to Customer by Aptum and more specifically outlined in the Service Documentation.

"Service Unavailability" means the Service is unavailable in accordance with the applicable Service Level Agreement.

"Users" means Customer and its employees, contractors, agents, lawyers, auditors or end users (including any customer of the Customer) of the Services, including any persons who Customer provide with access to, or on whose behalf Customer access the Services.

"Website" means the Aptum website, currently located at www.aptum.com