

Terms of Services
Shopping Feed, Inc.
(Updated as of 2/28/2014)

By clicking on “I accept the Terms of Use”, you (together with its successors and permitted assigns, the “**Client**”) understand and agree to be bound by the following terms of use and services of SHOPPING FEED INC., a Delaware corporation, with its principal place of business at 60 Broad Street, Suite 3502 New York, NY 10004 (together with its successors and permitted assigns, the “**Company**”) (collectively also referred to as the “**Parties**” and individually as a “**Party**”).

WHEREAS, The Company provides software-as-a-service, or SaaS, solutions that enable clients to integrate, manage and optimize their merchandise sales across hundreds of online channels accessed through a standard web browser, which provides clients with a single, integrated user interface to manage product listings, inventory availability, pricing optimization, search terms, data analytics and other critical functions across these channels (the “**Services**”) via the Company’s software (the “**Software**”) available on shopping-fee.com (the “**Site**”);

WHEREAS, the Client is interested in utilizing the Services to promote and improve its retail sales; and

WHEREAS, the Company wishes to provide the Services to Client according to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, the Parties hereto agree as follows:

1. Definitions.

Unless the context requires otherwise, capitalized terms in this Agreement shall have the following meanings:

1.1. “**Aggregate Data**” shall have the meaning ascribed to it in Section 12.4 below.

1.2. “**Agreement**” shall mean this technology services agreement and shall include all exhibits, schedules and addenda thereto, as well as all future written contractual amendments signed by both Parties supplementing or amending said agreement, or a portion thereof.

1.3. “**Affiliate**” shall mean in relation to a Party, a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Party. For the purposes of this definition, a person shall control another person if the first person: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other person; or (ii) has the ability to elect a majority of the directors of the other person. In relation to Company, “affiliate” shall also include each financial services cooperative that is a member of Desjardins or of an affiliate thereof.

1.4. “**Business Day**” shall mean any day excluding Saturday, Sunday or any other day which in [company’s place of business] is a legal holiday or a day on which banks are authorized by law or by local proclamation to close;

1.5. “**Confidential Information**” shall have the meaning ascribed to it in Section 12.1 below.

1.6. “**Company Indemnified Party**” shall have the meaning ascribed to it in Section 4.1 below.

1.7. “**Client Data**” shall have the meaning ascribed to it in Section 12.3 below.

1.8. “**Client Indemnified Party**” shall have the meaning ascribed to it in Section 4.3 below.

1.9. “**Disclosing Party**” shall have the meaning ascribed to it in Section 12.1 below.

- 1.10. **“Effective Date”** shall have the meaning ascribed to it in Section 9.1 below.
- 1.11. **“Feed”** means any information received from Online Distributors and other merchants and any information from Client in connection with one or more transactions with such Online Distributors and other merchants.
- 1.12. **“IP Rights”** shall have the meaning ascribed to it in Section 3.3 below.
- 1.13. **“Online Distributor”** means an e-commerce platform that allows Client to offer products or services for sale to customers and allow customers to purchase products or services from Client.
- 1.14. **“Company Indemnified Party”** shall have the meaning ascribed to it in Section 4.1 below.
- 1.15. **“Receiving Party”** shall have the meaning ascribed to it in Section 12.1 below.
- 1.16. **“Services”, “Site” and “Software”** shall have the meanings set forth in the Recitals and include all updates, modifications, and amendments thereto.

2. Obligations of the Parties.

2.1. Company’s Obligations

2.1.1. The Company shall provide the Services to Client pursuant to the terms of this Agreement. The Company cannot guarantee that the Services will be continuously available as the Services may be unavailable from time to time due to either (a) scheduled downtime for upgrades and/or maintenance of the Company’s Software or Site; and/or (b) any circumstances which are beyond the Company’s control such as technical failures.

2.1.2. The Company hereby grants Client a limited, non-transferrable, non-exclusive licence to use and access the Services solely for Client’s internal business purposes provided that Client shall not licence, sub-licence, sell, resell, rent, lease, transfer, assign, distribute or otherwise exploit the terms of this licence or make the Services available for access or use by any person other than the Client, save as for is expressly permitted by this Agreement or authorised by the Company.

2.1.3. The Company will provide technical support to Client. There is no charge for technical support provided via telephone or e-mail. Technical support can be reached at support@shopping-feed.com and is available from 10:00 am to 5:00 pm EST. The Company will endeavor to respond to all e-mail requests for support within two (2) Business Days but does not guarantee a particular response time.

2.1.4. The Company will advertise its business relationship with the Client through the following actions:

(i) Within twenty (20) Business Days of the Effective Date of this Agreement, the announcement of its business relationship with the Client on the Company’s website www.shopping-feed.com or through such other print or social media as the Company shall determine appropriate.

The form and content of any advertisement, announcement, publication or other public communication by the Company concerning its business relationship with the Client shall be approved by the Client in writing prior to disclosure.

2.1.5. Client will pay a monthly fee of Two Hundred (\$200.00) Dollars via automatic payment from Client’s credit card or PayPal account. In the event that payment is declined, unpaid monthly balances will accrue interest at the rate of 1.5% per month. Any other payment form may have a 20% additional charge.

2.1.6. The Company reserves the right to increase prices at any time. Notice will be given of at least 30 days in advance of any price changes.

2.1.7. The Company will automatically and without additional charge to Client update the Software from time to time to ensure its continued compatibility and functionality with Online Distributors.

2.1.8 The Company reserves the right to terminate, in its sole discretion, the Services of a Freemium plan at any time without any right from the Client to seek any damages as a result thereof.

2.2. Client's obligations.

2.2.1. The Client must ensure that its own web service is compatible with the Software and installed correctly, and that no modifications have been made to Client's source code to render it incompatible with the Software or any software or system used by an Online Distributer. Client further agrees that the Company can modify the Client's API or modules on an as-needed basis in order to ensure inter-operability with Online Distributors. The Company will provide the first such modification without charge; additional modifications will result in a charge of \$500.

2.2.2. During the Term, Client shall use its best efforts to cooperate with the Company in the Company's provision of the Services and shall observe a duty of good faith and fair dealing.

2.2.3. Client will use the Software only for the purpose of utilizing the Services for its internal business purposes. Any other use is strictly prohibited. Client shall ensure that all of its personnel comply with the terms of this Agreement and that Client personnel do not access or use the Services in breach of this Agreement.

2.2.4. Client is prohibited from violating or attempting to violate any security features of the Site, including, without limitation, (i) accessing content or data not intended for Client, or logging onto a server or account that Client is not authorized to access; (ii) attempting to probe, scan, or test the vulnerability of the Site, or any associated system or network, or to breach security or authentication measures without proper authorization; (iii) interfering or attempting to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Site, overloading, "flooding", "spamming", "mail bombing", or "crashing"; (iv) using the Site to send unsolicited e-mail, including, without limitation, promotions, or advertisements for products or services; (v) using any automatic or manual process to monitor or copy any portion of the Site without the Company's prior written permission; (vi) forging any TCP/IP packet header or any part of the header information in any e-mail; (vii) introducing any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or Confidential Information; (viii) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by the Company in providing the Site. Any violation of system or network security may subject Client to civil and/or criminal liability.

2.2.5. Client will provide the Company with its password and login information, or token, to its accounts with Online Distributors. Client understands and agrees it is responsible for opening and maintaining its accounts with Online Distributors; the Company will not open any accounts for Client.

2.2.6. Because the Software is web-based, Client must save and retain its own data; the Company will not save any Client data. Client will be able to download reports pertaining to the Services in .xls and .csv formats.

2.2.7. All sums under this Agreement are to be paid in currency of the United States of America (USD).

3. Intellectual Property.

3.1. The Company shall at all times either have valid licenses or own all right, title and interest in and to any and all intellectual property (including for greater certainty IP Rights (as defined below)) required in order to provide the Services and the Software, operate the Site, and otherwise to perform its obligations hereunder.

3.2. The Company retains ownership of the Software and Site and of any original developments related thereto.

3.3. The Company shall retain all right, title and interest in and to all intellectual property rights in the Software and Site, documentation, and all other open source software modules or materials (including trademarks, logos, domain names, copyrights) developed or owned by the Company (collectively, "IP Rights") and provided or made available to Client in connection with the services provided by the Company hereunder, and in any and all modifications, updates, and enhancements to the foregoing items which are created, introduced or provided by the Company.

3.4. Client shall not make any claim of ownership on any open source software modules or information technology developments created by the Company or any member of the open source community in relation to the Site or the Software.

3.5. Client further agrees that at no time during or after the termination of this Agreement shall it attempt to register any intellectual property rights that are identical or confusingly similar in any way to any component or attribute of the Company's IP Rights (including but not limited to a trademark or a domain name).

3.6. Except as otherwise stated in this Agreement or as may be required in furtherance of the performance of this Agreement, this Agreement shall not be construed as conferring upon Client by implication, operation of law, estoppels, or otherwise, any license right in respect of the Company's IP Rights. Client shall not (1) use, reproduce, distribute, or permit others to use, reproduce or distribute any IP Rights for any purpose other than as provided under this Agreement, (2) make any IP Rights available to any unauthorized third parties, (3) rent, electronically distribute, timeshare, or market the IP Rights by any means other than as provided under this Agreement, or (4) directly or indirectly modify, reverse engineer, decompile, disable, or derive source code from any IP Rights.

3.7. For the sole purpose of promoting and informing third parties of the existence of the business relationship between them, the Parties allow each other to use their respective trademarks and logos to the extent permitted by this Agreement, including for greater certainty Section 2.1.4; any other use will be subject to the prior written consent of the other Party.

3.8. The Client will notify the Company in writing if the Client has knowledge of any actual or potential infringement of the Company's IP Rights.

4. Indemnification.

4.1. Client shall indemnify, defend and hold the Company, its affiliates and their respective officers, directors, employees and agents (each a "**Company Indemnified Party**") harmless from and against any and all damages, liabilities, losses, suits, claims, demands, costs, expenses fines and actions of any kind (including reasonable attorneys' fees) brought by any third party or governmental authority based on: (a) allegations that Client or any webpages or accounts maintained by Client with any third parties (including Facebook and Twitter), Client's products or services, or Client content, violate any applicable law or infringe or violate the intellectual property rights or the terms of service of any third party; (b) any breach, violation or non-performance on the part of Client of any term, representation, warranty or condition of this Agreement; (c) representations, warranties, or guarantees made by Client about the performance or operation of its products or services; (e) a violation of any applicable privacy law, rule or regulation by Client, except to the extent caused by the Company.

4.2. Under no circumstances shall Client enter into any settlement that involves an admission of liability, negligence or other culpability of the Company or any Company Indemnified Party or requires the Company or any Company Indemnified Party to contribute to the settlement without the Company's prior written consent. Company and any Company Indemnified Party may participate and retain their own counsel at their own expense.

4.3. Company shall indemnify and save harmless Client, its affiliates and their respective officers, directors, employees and agents (each a "**Client Indemnified Party**") harmless from and against any and all damages, liabilities, losses, suits, claims, demands, costs, expenses fines and actions of any kind (including reasonable attorneys' fees) brought by any third party or governmental authority based on (a) allegations that Company's Services (including the Software and Site), or Company content, violate any applicable law or infringe or violate the intellectual property rights or the terms of service of any third party; (b) any breach, violation or non-performance on the part of the Company of any term, representation, warranty or condition of this Agreement; (c) representations, warranties, or guarantees made by the Company to Client or any of its members, Clients or clients regarding the Services, Software, Site, or otherwise; or (d) a violation of any applicable law, including privacy laws, except to the extent caused by Client.

4.4. Under no circumstances shall the Company enter into any settlement that involves an admission of liability, negligence or other culpability of Client or any Client Indemnified Party or requires Client or any Client Indemnified Party to contribute to the settlement without Client's prior written consent. Client and any Client Indemnified Party may participate and retain their own counsel at their own expense.

5. Promotion.

No Party will issue any release or publicity concerning this Agreement or its subject matter including without limitation the business relationship between the Parties or the Services, except with the prior written approval of the other Party, which consent will not be unreasonably withheld. Consent given by a Party for any particular publicity or press release will not be deemed to be consent to any other particular publicity or press release.

Except as otherwise stated in this Agreement, each Party shall bear its own cost of promotion and advertising related to this Agreement.

6. Disclaimers.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY WHATSOEVER, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH REGARD TO THE SERVICES, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY DOES NOT WARRANT ITS SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE RESULTS OF THEIR USE WILL ALWAYS BE CORRECT, ACCURATE, OR RELIABLE. THE COMPANY DOES NOT WARRANT THAT ITS SERVERS WILL AVOID INTERRUPTIONS, BREAKDOWNS, OR FAILURES OF ANY KIND. THE COMPANY SHALL NOT GIVE OR MAKE ANY WARRANTIES OR REPRESENTATIONS ON BEHALF OF THE COMPANY WITH RESPECT TO THE COMPANY'S SERVICES, INCLUDING AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR ANY FEATURES OF THE COMPANY'S SERVICES.

7. Limitation of Liability.

7.1. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE IN ANY FORM OF ACTION, UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY, FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING LOSS OF OR DAMAGE TO DATA, COST OF COVER, LOSS OF ANTICIPATED REVENUE OR PROFITS, PROPERTY DAMAGE (INCLUDING DAMAGE TO A COMPUTER OR COMPUTER SYSTEM OR PHONE CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS), UNAUTHORIZED ACCESS TO OR INTERFERENCE WITH PERSONAL INFORMATION, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, ARISING FROM OR IN CONNECTION WITH THE AGREEMENT OR SUCH PARTY'S PERFORMANCE HEREUNDER, ANY DELAYS OR THE USE, MISUSE, OR INABILITY TO USE, IN WHOLE OR IN PART, THE SERVICES PROVIDED BY SUCH PARTY, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE COMPANY BE RESPONSIBLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF ANY ONLINE DISTRIBUTOR, INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY PROBLEM WITH THE FEED OF SUCH ONLINE DISTRIBUTOR .

7.2. EXCEPT FOR LIABILITY ARISING FROM OR IN CONNECTION WITH SECTIONS 4 OR 10, EACH PARTY'S TOTAL LIABILITY ARISING FROM OR IN CONNECTION WITH THE AGREEMENT AND THE SERVICES PROVIDED BY SUCH PARTY UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY SHALL NOT EXCEED THE AMOUNT OF FIVE HUNDRED (\$500.00) DOLLARS.

7.3. Each Party shall be solely responsible for the information posted on its website.

7.4. Except as otherwise provided by law, the Company shall have no liability whatsoever in connection with the Services.

8. Non-exclusivity.

8.1. Client does not grant any kind of exclusivity to Company.

8.2. Company does not grant any kind of exclusivity to Client.

9. Term and Termination.

9.1. This Agreement has an initial term of one month and thereafter shall be renewed automatically on a monthly basis until terminated by a Party. Termination can be with or without cause. Client can terminate this Agreement via e-mail to support@shopping-feed.com. The Company can terminate this Agreement via e-mail at the address provided by Client or via certified letter to Client's business address.

9.2. In no event shall a Party hold the other Party responsible for any consequential or incidental damages resulting from the termination of this Agreement.

9.3. The termination of this Agreement shall not affect any accrued rights or liabilities of either Party. Moreover, all obligations undertaken respecting Confidential Information disclosed in connection herewith shall survive the termination of this Agreement for an unlimited period of time.

9.4. The termination of this Agreement shall not affect the Company's rights in the Aggregate Data.

10. Taxes.

All fees are exclusive of all applicable taxes. Each Party will be liable for and will pay all taxes associated with its deliverables provided under this Agreement, including sales, use, excise, and value added taxes, and government withholdings, but excluding any taxes on income. In the event either Party is required to withhold taxes, said Party agrees to furnish to the other Party all required receipts and documentation substantiating such payment. If either Party is required by law to remit any tax or duty on the other Party's behalf or for account of the other Party, said other Party agrees to reimburse said remitting Party within thirty (30) days after said remitting Party notifies said other Party in writing of such remittance.

11. Amendments.

Any waiver, amendment or modification of any provision of the Agreement must be in writing and executed by both Parties. The failure of either Party to exercise any right provided for by the Agreement shall not be deemed a waiver of that right.

12. Confidentiality and Security.

12.1. *Duty to Keep Confidential.* During the course of the business relationship between Company and Client, each Party may disclose to the other Party, or may receive through the course of the relationship, Confidential Information, either directly by verbal, written or electronic communications, or indirectly by permitting employees or associates or agents to observe various operations, processes, strategies or methods conducted or used by the other Party.

For the purpose of this Agreement, "**Confidential Information**" shall mean in respect of a Party (the "**Disclosing Party**") any and all information stated or marked as, or that by its nature is or ought reasonably to be perceived as, confidential or proprietary to such Party or its affiliates and disclosed to the other Party (the "**Receiving Party**"), or to its subsidiaries, affiliates, or their respective directors, partners, officers, agents, employees or advisors including accountants, lawyers, technical consultants or investment bankers, whether before, on or after the date of this Agreement, including, without limitation, the specific terms of this Agreement and any of the Disclosing Party's or its affiliates' trade secrets, know-how, techniques, improvements, processes, programs, schematics, designs, drawings, compositions, sketches, models, machines, apparatus, manuals, notes, reports, documents, memoranda, information, data, contracts, Client lists, supplier lists, financial information, Client information, account holder information, employee information, research methodologies, sales and marketing plans, business plans, market opportunities, business affairs, accounting methods, infrastructure designs, software and related documentation and information systems.

Confidential Information shall not include any information, ideas, or data which:

(a) was known to the Receiving Party prior to disclosure to it by or acquisition from the Disclosing Party, as evidenced by records of the Receiving Party predating the date of such disclosure;

- (b) is part of the public domain at the date of disclosure by or acquisition from the Disclosing Party;
- (c) becomes part of the public domain after the date of disclosure by or acquisition from the Disclosing Party without breach of any obligation owed by the Receiving Party to the Disclosing Party;
- (d) is furnished to the Receiving Party by a third party without breach of any obligation of confidentiality owed by that third party to the Disclosing Party; or
- (e) has been independently developed by the Receiving Party without use of any of the Confidential Information of the Disclosing Party.

Disclosures made by the Disclosing Party will be made upon the basis of the confidential relationship between the Parties and upon each Party's agreement that, unless specifically authorized in writing by the Disclosing Party, the Receiving Party will:

- (a) use such Confidential Information only for the purpose of fulfilling its obligations under this Agreement;
- (b) not disclose any portion of any Confidential Information to any Person except those personnel of the Receiving Party or its affiliates with a need to know such Confidential Information for purposes of the business relationship with the Disclosing Party;
- (c) advise each such personnel before being granted direct or indirect access to such Confidential Information of the obligations of the Receiving Party under this Agreement, and ensure that each such personnel to whom Confidential Information is thus disclosed is similarly bound to keep the Confidential Information confidential;
- (d) take strict precautions, at a minimum those as the Receiving Party affords its own confidential information of a similar nature, to safeguard and protect from direct or indirect disclosure to any other person or entity all Confidential Information disclosed by the Disclosing Party to, or otherwise received by, the Receiving Party; and
- (e) immediately return to the Disclosing Party or, upon the Disclosing Party's request destroy, all tangible materials concerning Confidential Information, including but not limited to memoranda, notes, reports, agreements, documents, drawings, products, disks and tapes, as well as all copies or extracts thereof, whether such material was made or compiled by the Receiving Party or furnished by the Disclosing Party.

12.2. *No Licence.* Except as specifically provided, this Agreement will not be construed as granting or conferring to any Party any rights by licence or otherwise in any Confidential Information of another Party, nor will it be regarded as any representation or warranty by the Disclosing Party with respect to the infringement of the rights of any third party. All right, title and interest in and to all Confidential Information or other property furnished to a Receiving Party, and all modifications or additions thereto by the Receiving Party, will remain with or otherwise belong to the Disclosing Party.

12.3. *Client Data.* Commercial information uploaded by Client ("**Client Data**") is Confidential Information of Client and is its property. Client has the sole responsibility to ensure that no personal information of any person is uploaded or stored as Client Data. For the convenience of Client, the Company shall retain Client's log-in and password information for the purpose of aiding Client in the event Client loses such information.

12.4. *Aggregate Data.* The Company shall have the right to aggregate Client's anonymous data with respect to sales with those of the Company's other clients ("**Aggregate Data**"). Aggregate Data shall be Confidential Information of the Company and Client shall have no right, title, or interest in the Aggregate Data.

12.5. *Privacy Legislation.* Each Party shall ensure that the collection and use by said Party of any Client Data complies in all respects with all applicable laws and regulations, including all applicable laws, regulations and policies regarding privacy and the protection of personal information. During the term of the Agreement, each Party agrees that its websites and applications will feature a clear and conspicuous privacy policy that complies with all applicable laws and regulations.

12.6. *Segregation of Client Data.* Company hereby covenants and undertakes towards Client that it shall:

- (a) differentiate, keep separate from Company's other data and information and segregate all Client Data, as well as all of Client's Confidential Information; and
- (b) differentiate, keep separate and segregate all financial information regarding this Agreement.

12.7. *Security, Backup and Contingency Plans.* Company shall ensure the security and integrity of its information technology and server platforms, as well as those of its subcontractors, in order to be able to respond to breakdowns, software problems, security breaches and acts of force majeure. Without limitation to the scope of this Section 12.6, Company shall, upon being so requested by Company, transmit to Company its written security, backup and contingency plans. Company undertakes and covenants to keep such plans up-to-date in respect of industry standards and applicable laws.

12.8. *Notice of Breach and Mandatory Disclosures.* Each Party undertakes to notify the other Party immediately of any breach of the obligations created under this Section 12 of which it is aware of. Should either of the Parties be required by applicable laws or compelled by a court to disclose any term of this Agreement or any Confidential Information of the other Party, such disclosure shall be authorized but only after reasonable notice is given to the other Party granting sufficient time to apply for a preventive order or remedial action, if possible.

12.9. *Injunctive Relief.* Each Party acknowledges that any unauthorized use or disclosure of Confidential Information of the other Party is likely to cause immediate and irreparable damage to the other Party and, in such cases, the other Party shall be entitled to apply for injunctive relief or any other remedy to ensure the protection of its Confidential Information, and this in addition to any other recourse whatsoever it may have.

12.10. *Security Breach.* Company shall control and maintain the security of all information and data, including Client Confidential Information and Client Data, and shall ensure that the Site, Software, and Services hereunder are provided in accordance with security standards consistent with applicable industry regulations and standards and applicable law. In particular, and without limiting or qualifying its obligations in respect of security set out above, Company shall:

- (a) inform Client of any material changes to its security standards that may impact the security of Client Confidential Information or Client Data; and
- (b) promptly notify Client if an event, such as a breach by Company of its security obligations hereunder resulting in the unauthorized access to or use of Site, Software, or any information in relation thereto, occurs and has or is likely to have an impact on the security of Client Confidential Information, Client Data, the Site, the Software, or the Services, and take all steps required in order that such security breach ceases and to prevent it from happening again.

13. Non-Solicitation of Employees.

Each Party agrees not to hire, directly or indirectly, any employee of the other Party throughout the duration of the Agreement and for a period of one (1) year thereafter, except that the foregoing shall not prevent said Party from hiring any such employee (a) who contacts said Party in response to a bona fide public advertisement for employment placed by said Party and not specifically targeted at the employees of said other Party, (b) who has been terminated by said other Party and subject to applicable restrictions set out in the termination arrangement of such person or (c) who has not been employed by said other Party during the twelve (12) months preceding any such action by said Party.

14. Severability.

In case any one or more of the provisions contained herein shall for any reason be deemed unenforceable in any respect, such provision(s) will be construed or limited to the extent necessary (and only to such extent) to render them enforceable. If it is not possible to construe and/or limit such provisions to make them enforceable, then such provisions will be severed from this Agreement and the other provisions of this Agreement will not be affected thereby.

15. Law and Jurisdiction.

This Agreement and any dispute or claims arising out of or connected with the interpretation, enforcement or termination of this Agreement shall be governed by the laws of the State of New York, without regard to

conflict of law rules. The Parties consent to the exclusive jurisdiction of, and venue in, the state courts in the County and State of New York (or, in the event of exclusive federal jurisdiction, the courts of the Southern District of New York) and hereby waive their right to a jury trial. Attorney's fees shall be awarded to the prevailing party in any litigation arising out of, or connected to, this Agreement.

16. Entire Agreement.

The Agreement, including any Amendments attached hereto, (i) constitutes the entire agreement between the Parties regarding its subject matter, (ii) supersedes all prior oral or written agreements, understandings, or communications between them with regard to such subject matter, and (iii) may only be amended or cancelled or rescinded as provided in Sections 9 or 11 above.

17. Counterparts.

The Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that the counterparts can be signed in facsimile or portable document format (PDF) and such signatures shall be deemed as valid as their original.

18. Headings.

The headings of Sections of this Agreement are for convenience only and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

19. Independent Contractors.

The Parties agree that this Agreement does not create a *de facto* partnership, corporation, merger, joint venture, or requires the pooling of any goods or services whatsoever. Each Party is a separate entity and acts independently.

20. Force Majeure.

Neither Party shall be responsible for any delay in its performance due to shortage of materials, strike, fire, earthquake, flood, or any other cause beyond its reasonable control; provided, however, that if an event of force majeure exceeds twenty (20) days, the Agreement may be rescinded at the option of the Party suffering from the Force Majeure event.

21. Notices.

Any notice or other communication required or permitted under this Agreement shall be given in writing and shall be conclusively deemed effectively given upon personal delivery or delivery by courier, or on the first Business Day after transmission if sent by confirmed overnight express courier, or five (5) Business Days after deposit by first class mail, by registered or certified mail, postage prepaid, addressed to the Party's address appearing next to such Party's signature below or at such other address as such Party may designate by ten (10) Business Days' advance written notice to the other Party in accordance with this Section 21.

22. Construction.

Each Party acknowledges and agrees that they have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement and any schedules, exhibits or amendments thereto shall be construed as if drafted jointly by both Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, provincial, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The Parties shall interpret, construe and enforce each provision of this Agreement in the most favorable way, preferring the interpretation which validates or produces an enforceable obligation rather than the one which invalidates or render unenforceable a certain proviso or obligation. In the event of an overlap between two provisions of this Agreement, the provisions shall not cancel each other, but shall be deemed to produce the maximum legal effect possible.

23. Assignment.

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assignees; provided, however, that neither Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, except that each Party may without the other Party's prior approval or consent (a) assign as security all or any portion of its rights under this Agreement to any bank or other entity in connection with a financing transaction, (b) change its name, or its corporate form.

24. Language.

The Parties hereto declare that it is their express wish that this Agreement and all related documents and notices be drawn up in the English language.

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