



Master Services Agreement

Terms & Conditions

January 2017

IntelliSyn Communications Inc.
2141 Thurston Drive, Suite 204
Ottawa, ON K1G 6C9
Tel. (613) 688-1351
Fax (613) 688-1354

Statement of Confidentiality

This document contains trade secrets and information that is company sensitive, proprietary, and confidential, the disclosure of which would provide a competitive advantage to others. Therefore, this document shall not be disclosed, used, or duplicated, in whole or in part, for any purpose other than to evaluate the requirements herein.

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1. SCOPE AND INTERPRETATION

- 1.1. This **Agreement** sets out the terms and conditions for any supply of products, services, hardware or software, by **IntelliSyn**, provided to the **Customer**, as specified in one or more **Service Schedule** that have been signed by the **Customer**. It will be applied to the exclusion of any conflicting terms and conditions on a purchase order or other document issued by the **Customer**.
- 1.2. The terms and conditions herein, together with the **Service Schedule** terms and deliverables, signed addendum or additions, form part of the entire agreement between **Customer** and **IntelliSyn** and is effective upon the start of the **Work** related to the first active **Service Schedule** and shall remain in effect until the expiration or termination of the last active **Service Schedule**.
- 1.3. At any time during this **Agreement**, the **Customer** may submit an **Order** to **IntelliSyn**. The request will be set forth in a proposed **Service Schedule** that will include the date of request, description of **Services**, financial conditions, **Customer** responsibilities, estimated start and end date, provisions for travel or per diem expenses, any additional terms and conditions, **Primary Contacts** and a section for written acceptance of this **Agreement** by an authorized representative of the **Customer**.
- 1.4. The **Customer's** signature on the **Service Schedule** shall mean that the Customer accepts and agrees to all of the terms and conditions of this Master Services Agreement.
- 1.5. If **IntelliSyn** agrees to perform the **Work**, the new **Service Schedule** specifying the **Work** to be performed will be incorporated in and governed by this Master Services **Agreement**. In case of any conflict between the Master Services **Agreement** and any **Service Schedule**, the former will take precedence, unless agreed otherwise by proper signing officers of each of the parties.

At any time during the performance of the **Services** by **IntelliSyn**, **Customer** can request additional **Work** relevant to any **Service Schedule** through an **Order**. Such **Order** shall be considered by both parties as an addendum to the **Service Schedule**.

- 1.6. The parties will comply with all laws applicable to their respective activities under this Agreement.
- 1.7. No term of this **Agreement** may be waived except in a writing signed by the party waiving enforcement. No term of this **Agreement** will be deemed to be waived by reason of any previous failure to enforce it.
- 1.8. Where the context requires, the singular will denote the plural and vice-versa. Headings used in this **Agreement** are for convenience only and will not affect its interpretation.
- 1.9. This **Agreement** will bind and benefit the parties and their respective successors and assigns.
- 1.10. Any unenforceable provision of this **Agreement** will not invalidate its remaining provisions.
- 1.11. This **Agreement** as written is the complete understanding of the parties in relation to the **Work**. Any earlier **Agreements** or discussions about the subject of the **Agreement** are replaced by this **Agreement**. Any negotiations, prior discussions, representations, promises, understandings, proposals, **Agreements**, warranties, course of dealing or trade usage not expressly contained or referenced in this **Agreement** will not be binding on either party. No addition to or modification of this **Agreement** will be effective or binding unless agreed in writing and executed by the respective duly authorised representatives of each of the parties.
- 1.12. Each **Party** will execute and deliver such further documents and perform such further acts as may be reasonably requested by the other **Party** in order to give full effect to the terms, conditions and intent of this **Agreement**.
- 1.13. The rights and obligations of the parties will be governed by the laws in effect in the Province of Ontario.
- 1.14. No provision of this **Agreement** will be interpreted against any party merely because that party or its legal representative has drafted the provision.

2. DEFINITIONS

- 2.1. In this **Agreement**, capitalised terms in boldface will have the meaning set out in this Article, unless the context clearly indicates otherwise.
 - 2.1.1. "**IntelliSyn**" or "**ICT**" means IntelliSyn Communications Inc. or any of its subsidiaries or affiliates.

- 2.1.2. “**Service Agreement**” or “**Agreement**” means this Master Services Agreement, the Terms and Conditions Agreement, Service Level Agreements, Service Schedules, Proposals, Professional Services Statements of Work, Acceptable Use Policies and all documents supplementing, amending or confirming the Agreement entered into now or hereafter (viewable at www.intellisyn.com/agreements) and ICI’s Privacy Policy (viewable at www.intellisyn.com/privacy).
- 2.1.3. “**Customer**” means applicant, customer, individual, corporation or other type of legal entity which has subscribed for **Services** and entered into a **Service Agreement** and extends to Customer’s employees, contractors, agents or any other party authorized by the Customer to use an **ICI Service**.
- 2.1.4. “**Effective Date**” means the date indicated in the **Services Schedule**.
- 2.1.5. “**Data Centre**” means any **ICI** building, facility, property or location.
- 2.1.6. “**Space**” means any **ICI** specified location in an **ICI Data Centre** facility.
- 2.1.7. “**Network**” means any **ICI** network, network facilities or network services.
- 2.1.8. “**Hardware**” means any equipment, facilities, products, parts or materials to be provided by **IntelliSyn**, as part of the **Services**, pursuant to the **Service Schedule**.
- 2.1.9. “**Information**”: any **Intellectual Property** and any financial information, trade secrets or commercial, proprietary and confidential information, either in tangible or intangible form, that may be expressed orally or in writing by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) or that may be obtained by the **Receiving Party** by other means, including, without limitation, all prices, samples, customer lists, drawings, designs, sketches, models, tools, technical information, data, techniques, studies, business records, business plans, knowledge, processes, systems, ideas, know-how, industry affiliations, trade secrets, photographs, electronically stored information, source codes, object codes, manuals and tape recordings which have been created, compiled or acquired by the **Disclosing Party** through the expenditure of time, effort, trade experience or money, which are (i) designated in writing as confidential at the time of their disclosure, or (ii) if disclosed orally or visually, are designated in writing as confidential either before or within ten days of their disclosure, or (iii) if a reasonable person, having regard to the circumstances, would regard such information as confidential.
- 2.1.10. “**Intellectual Property**”: all intellectual or industrial property rights, including patents, industrial designs, trade-marks, semiconductor topographies and copyrights, developed during or derived from the performance of the **Work**, including any ideas, concepts, know-how, techniques, inventions, original works of authorship, software (including all language codes), discoveries, improvements or any similar notion.
- 2.1.11. “**Order**”: A request by the **Customer** for new **Work** providing authorization to IntelliSyn to invoice for the **Work** if necessary. Acceptable authorizations shall include any email, fax, support ticket, project document or any other electronic means acceptable to IntelliSyn, including verbal requests.
- 2.1.12. “**Payment Default**”: failure by the **Customer** to pay an undisputed **IntelliSyn** invoice within 90 days following receipt.
- 2.1.13. “**Price**”: the amount specified in the **Service Schedule** for the performance of the **Work**, including any agreed expenses of **IntelliSyn**.
- 2.1.14. “**Service(s)**” means the Service(s) purchased by **Customer** as set out in a **Service Schedule**, each of which form part of the Service Agreement, and any additional Services that may be added to the **Service Agreement** from time to time by the Parties.
- 2.1.15. “**Service Schedule**”: any description of **Work** to be performed pursuant to an **Order**.
- 2.1.16. “**Software**” means any computer software to be provided by **IntelliSyn**, as part of the **Services**, pursuant to the **Service Schedule**.
- 2.1.17. “**Service Term**” or “**Term**” means the initial Service term for a **Service** as set out in the **Service Schedule**, each of which form part of the Service agreement, and is deemed to begin upon Service implementation by **ICI** and any subsequent renewal term.
- 2.1.18. “**Work**” means the performance by **IntelliSyn** of the **Services**, including the provision of any **Hardware**, **Software**, professional services and Managed Services.

2.1.19. “**Work Product**”: the utility obtained by the **Customer** as a result of the performance of the **Work**.

3. SERVICES, NETWORK and LICENSING

3.1. **Customer** agrees to subscribe for the **Services** and **ICI** agrees to provide the **Services** to the **Customer** subject to the terms and conditions in the **Service Agreement**. **Customer** may subscribe to **Services** in addition to the **Customer’s Service Agreement**. Any additional **Service**, or **Work** will become part of the **Customer’s Service Agreement**.

3.2. **Customer** may use the **Services, Equipment** and **Network** provided by **ICI** for **Customer’s** lawful business purposes only. **Customer** will at all times use the **Services** and **Equipment** in compliance with their **Service Agreement** and all applicable laws and ICI Acceptable Use Policy (viewable at: www.intellisyn.com/agreements.html)

3.3. **Customer’s Service Agreement** becomes binding on **Customer** when signed and will survive until all **Services** are terminated. The Service Term for a **Service** is deemed to commence on the date the **Service** is implemented by **ICI**.

3.4. Domain Name Service

3.4.1. The **Customer** will arrange the required domain name service (DNS) for any **ICI Service** that they desire to be accessible by hostname over the Internet. **ICI** will, upon **Customer** request, provide DNS with a Service only if it is required to provide **Customer** access to an ICI Service. **Customer** is responsible for all charges for DNS provided by **ICI**.

3.4.2. The **Customer** may use a domain name or subdomain name that is already registered under the **Customer’s** business name. **Customer** shall be solely responsible for any domain registration fees, maintenance fees, and taxes incurred in connection with **Customer** domain names. The **Customer** may also use **ICI** provided DNS services, subject to applicable charges.

3.5. Internet Protocol

3.5.1. **ICI** will provide to the **Customer**, if required and subject to reasonable availability and as may be acquired from a third party, and route Classless Inter-Domain Routing (CDR) host Internet Protocol (IP) addresses to support network access.

3.5.2. **Customer** shall have no ownership or interest in any IP address provided by **ICI** and such IP addresses remain the sole and exclusive property of **ICI** or any third party from whom **ICI** may obtain IP addresses. Upon termination of the **Service Agreement**, **Customer** access to and utilization of any IP address supplied by **ICI** shall terminate.

3.6. Network Access

3.6.1. **Equipment, Services** and **Customer** equipment will be connected to the **Network** via 10/100/1000Mbps Ethernet connection. **Customer** connectivity will be provisioned according to the connectivity levels requested on the Service quotation.

3.7. Data Centre Carrier Neutrality

3.7.1. **ICI** will, in its sole discretion, allow third party network and access providers to provide service to **Customer’s** in **ICI** data centres. **ICI** will provision the cross-connection between the **Customer’s** colocation space and the third party network access provider. The **Customer** is responsible for all charges for cross-connection applied by **ICI**.

3.7.2. **ICI** will not provide support, guarantee performance, be responsible, or make any representations or warranties for third party services.

3.8. Licensing

3.8.1. **ICI** may grant to **Customer** a license(s) for Server Operating Systems and other software required for use of **ICI** Services. These licenses are subject and subordinate to the applicable underlying Service Provider Licensing Agreements. Any license(s) provided by **ICI** is solely permitted for use upon **ICI Service** platforms. Upon termination of the **Service Agreement** for any reason, the license(s) shall be terminated, and the **Customer** shall have no further rights to the license, except as necessary to comply with the **Service Agreement**. For purposes of Server Operating System and software license grant, the term ‘Customer’ shall refer to and include all end users.

3.8.2. **Customer** shall be responsible for ensuring that any and all Customer-owned and provided Software can be used by **IntelliSyn**. **IntelliSyn** is responsible for complying with the terms of the software licenses and further, indemnifies and holds **Customer** harmless for any breach of the third party license terms. **Customer** acknowledges and agrees that it is responsible for strictly maintaining the confidentiality and integrity of any passwords of **Customer**, its customers or its customers' users, and **IntelliSyn** agrees that it will maintain the confidentiality of any such passwords in its possession or control.

3.9. Data Retention

3.9.1. **ICI** makes no guarantee related to retaining any data stored on **ICI** systems or servers following the expiration without renewal or termination of the **Service Agreement**. The **Customer** is solely responsible for data retention, including all measures to ensure data retention, following **Service Agreement** termination.

3.10. Backup & Disaster Recovery

3.10.1. **Customer** is responsible for backup and disaster recovery of all **Customer** data. **ICI** is not responsible or liable for providing data backup, data storage, or archival history with respect to Customer equipment and **Customer** data. The sole exception to this clause is where **Customer** has purchased **ICI Backup Services**.

3.11. Remote Hands

3.11.1. **ICI** will make available personnel ("Remote Hands") who will, upon **Customer** request and availability, provide non-technical support and assistance. **ICI** will respond to a reasonable number of requests based on the size of the installation, and the response times will be based on a best-efforts basis. Remote Hands will act only upon request and direction from the Customer. **ICI** is not responsible or liable for any consequences of the actions performed upon **Customer** request by Remote Hands.

3.12. Set-up and On-going Maintenance for Customer Managed Servers

3.12.1. If the **Customer** has not purchased **ICI Managed Services**, limited to the **Services** identified as Managed Services and that are subject to **ICI** ongoing management and control, **ICI** is not responsible to the **Customer** for providing, or for any cost or expenses associated with providing, any administrative, technical, emergency or support personnel or services necessary for dealing with **ICI** or for providing and maintaining the Cloud platform, operating system or **Customer** equipment.

3.13. System Administration

3.13.1. If the **Customer** has not purchased **ICI Managed Services**, **ICI** may, in its sole discretion, provide **Customer** with system administration assistance, including unattended access, but only on a strictly limited bases as determined by **ICI**, provided that the **Customer** agrees to pay an additional for **ICI's** assistance.

4. SPACE & EQUIPMENT

4.1. Colocation Service

4.1.1. **ICI** will provide **Space** to locate **Equipment** for Colocation Service as stated in the **Service Schedule**. Additional **Equipment** and/or **Space** are subject to availability.

4.2. Equipment

4.2.1. Where required, **ICI** will provide **Equipment** to provide **Customer** with **Services**.

4.2.2. **Equipment** will be considered to be in good working condition, unless **Customer** gives written notice to **ICI** to the contrary within five (5) days of receiving the **Equipment**.

4.2.3. **Customer** agrees upon deactivation or termination of **Services**, to return the **Equipment** immediately to **ICI** in good working condition excluding normal wear and tear. Charges for **Equipment** will continue and be payable until the **Equipment** is returned and failure to do so within the time specified by **ICI** will result in **ICI**, at its option repossessing the **Equipment** at **Customer's** expense or **Customer** paying **ICI** the replacement costs of such **Equipment**.

4.2.4. **Customer** agrees that if the **Equipment** is damaged, lost or stolen while in care of **Customer**, or returned to **ICI** in an unusable condition, to pay the replacement value of the **Equipment** as determined by **ICI**.

4.2.5. **Customer** will not acquire any right, title or interest in, except for use pursuant to the Service Agreement, nor file any liens upon any **Space**, **Equipment** or **Data Centre** pursuant to the Service Agreement or its termination

for any reason; and

4.2.6. **Customer** will hold all right, title or interest in **Customer** content, including, but not limited to, portions of content that are **Customer** trade names and trademarks.

5. TERM AND TERMINATION

- 5.1. Unless otherwise stated on the **Service Schedule**, each **Service Schedule** shall have a minimum term period of 3 years and shall automatically renew each year thereafter for a subsequent one (1) year term beginning on the day immediately following the end of the previous term (“**Renewal Term**”) unless either party gives the other sixty (60) days’ prior written notice of its intent not to renew the services.
- 5.2. This **Service Schedule** will come into effect upon the **Effective Date** and will stay in effect, unless earlier terminated in accordance with this **Agreement**. In case of such earlier termination, obligations which by their nature should extend beyond termination will survive.
- 5.3. **Termination for Non-payment.** If **Customer** defaults in the payment of any charges or other amounts due under this **Agreement** and fails to cure such default within sixty (60) days after the due date, then **IntelliSyn** may terminate this **Agreement** without further notice or obligation. **Customer's** obligations to pay past invoices, as well as payments to the remaining Term of the **Agreement** shall not cease upon Termination for Non-payment.
- 5.4. **Termination for Insolvency.** If either party becomes or is declared insolvent or bankrupt; is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver, conservator, or similar officer or makes an assignment for the benefit of all or substantially all of its creditors or enters into any **Agreement** for the composition, extension, or readjustment of all or substantially all of its obligations, then in a proceeding under bankruptcy law, all payment obligations under this **Agreement** shall be deemed to be administrative expenses of the bankrupt. The **Agreement** shall automatically terminate upon the commencement of such proceedings, but all amounts due to **IntelliSyn**, shall continue to be due and owing.
- 5.5. **Termination for Cause.** If either party materially defaults in its performance and obligations under this **Agreement**, then the party not in default may terminate this **Agreement** without further obligation on ninety (90) days written notice to the defaulting party. **Customer** is obligated to pay for services up to and including the end of the notice period.
- 5.6. **Termination without Cause.** **Customer** may terminate this **Agreement** without cause giving **IntelliSyn** at least ninety (90) days prior written notice of such termination (herein referred to as “Early Termination”). Early termination charges may apply based on the remaining number of months between the date of termination and the end of the **Service Schedule** term and based on whether or not the cost of **Hardware**, **Software** or 3rd party services are bundled into the monthly service price. **Customer** is obligated to pay for services up to and including the end of the notice period plus any applicable early termination charges.
 - 5.6.1. **Early Termination Charges.** Unless otherwise stated on the **Service Schedule**, the early termination charge payable by the **Customer** for Early Termination of any individual service defined within a **Service Schedule** shall be the value of the monthly service fees times the number of months defined in the following table or the remaining monthly service fees up to and including the end of the term, whichever is less.

Termination occurs: (based on 36 month term)	Service is bundled with IntelliSyn owned Hardware or Software or bundled with a third party service:	Service is <u>not</u> bundled with IntelliSyn owned Hardware or Software or bundled with a 3rd party service:
During the first 12 months from start of service term	90 day notice period + 80% or remaining months	90 day notice period
Between 13 th and 24 th months from start of service term	90 day notice period + 66% or remaining months	90 day notice period
Between 25 th and 36 th months from start of service term	90 day notice period + 33% or remaining months	90 day notice period

Subsequent 12 month renewal terms	90 day notice period	90 day notice period
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5.6.2. In lieu of the early termination charges, the **Customer** will have the option to purchase the **Hardware** and/or **Software**. The price will be set at the sole discretion of IntelliSyn and shall be based on the fair market value for same or similar used equipment.

5.7. If either party terminates any **Service Schedule**, IntelliSyn will assist **Customer** in the orderly termination of services, including timely transfer of the services to another designated provider. **Customer** agrees to pay **IntelliSyn** the actual costs of rendering such assistance. For Customer-owned equipment located in an **IntelliSyn** data centre, **Customer** will retrieve its equipment within 7 business days of termination. For **IntelliSyn**-owned equipment located in **Customer's** facilities within the Ottawa area, **Customer** will assist and allow access, for the removal of equipment by **IntelliSyn** designated staff within 7 business days. **Customer** will return the **Hardware** or **Software** at their own expense.

6. RATES, CHARGES, BILLING & PAYMENTS

- 6.1. **Customer** is responsible and agrees to pay for all **Services** subject to their **Service Agreement**, including the monthly **Service** charges, professional service charges pursuant to a statement of work and all other charges incurred in the use of **Services**, regardless of who used the **Services**. **Customer** is solely responsible in the event of charges arising from fraudulent and/or unauthorized use of **Customer's** equipment, **Equipment** or **Services** by a third party.
- 6.2. The monthly **Service** charges set out in the **Service Agreement** represent minimum charges. **Customer** is responsible for all charges for excess usage beyond the minimum monthly **Service** charges. Unless otherwise specified, there are no limits or restrictions on usage.
- 6.3. Professional Services offered by **ICI** to complete specific **Customer** requested work are subject to additional charges and require **Customer** approval of a Professional Services Statement of Work. Applicable charges include, but are not limited to, travel, living and miscellaneous expenses. **Customer** will also be responsible for all costs associated with the purchase, lease and, or subscription of any software, hardware or related equipment to fulfil the Professional Services Statement of Work.
- 6.4. All **IntelliSyn** invoices must be paid within thirty (30) days of date of invoice. Any amounts past due over thirty days will accrue interest from their due date at the rate of 3% month (42.58% per annum on a compounded basis), or such lesser rate as may be the maximum permissible rate under applicable law.
- 6.5. If **Customer** does not pay the **Price** when due, **IntelliSyn** reserves the right to suspend performance of the **Work** until proper payment, including any applicable interest, is received in full.
- 6.6. In addition to the **Price**, **Customer** will pay any present or future sales, goods and services, excise, value-added, or other similar taxes resulting from **IntelliSyn's** performance of the **Work**, unless **Customer** furnishes **IntelliSyn** with a tax-exemption certificate acceptable to the taxation authorities.
- 6.7. **Customer** will be responsible for all costs incurred by **ICI** to collect any unpaid invoices, including legal fees.
- 6.8. **ICI** may apply fees up to 12 months after the date the fees were incurred by **Customer**. **Customer** must bring all invoice disputes and inquiries to **ICI's** attention in writing within sixty (60) days of the invoice date. Any invoice not objected to within 60 days of invoice date will be deemed to be an undisputed invoice and until the total of all outstanding undisputed invoices are paid in full, **ICI** reserves the right to suspend any or all performance of the **Work**, and/or **Service Level Agreement** Terms and Conditions associated with the **Service Schedule(s)** or **Work** without notification.
- 6.9. The **Price** payable by **Customer** under a **Service Schedule** shall be variable for the contract term. **IntelliSyn** reserves the right change the **Price** for any and all **Services** subject to the **Service Agreement** upon the provision of ninety (90) days' notice in the event of a substantial increase in supplier costs or costs to provision service. If there is a change in the **Work** as a result of the imposition of any requirements by any federal, provincial, or local government, an equitable adjustment in the **Price** will be made to reflect any added cost and expense of the change, and the **Agreement** will be modified in writing accordingly.

7. PROFESSIONAL SERVICES STATEMENT OF WORK

- 7.1. In respect of any Professional Services to be performed by **ICI**, each Professional Services Statement of Work shall include, to the extent applicable:
- 7.1.1. Project identification and the agreed scope of **Services**;
 - 7.1.2. The commencement date for the **Services** and the period of performance for the **Services** under the Professional Services Statement of Work;
 - 7.1.3. The rates for the **Services** contemplated in the Professional Services statement of Work, including, but not limited to, any down payment, progress payments, or delivery milestone payments;
 - 7.1.4. Any project assumptions, and any **Customer** resource commitments and responsibilities in addition to those set forth in the **Service Agreement**;
 - 7.1.5. Intellectual property rights of the parties to the extent they differ from the rights set out in the **Service Agreement**; and
 - 7.1.6. Any other information or agreements deemed relevant by the parties.
- 7.2. Each Professional Services Statement of Work shall be executed by the Parties, and is incorporated by reference into and shall form part of the **Customer's Service Agreement**. The parties may agree at any time in writing to amend any Professional Services Statement of Work.
- 7.3. As part of its fulfilment of its obligations under any Professional Services Statement of Work, **ICI** may outsource some or all of the work to be performed to a third party. In such case, **ICI** shall be responsible for the delivery of the **Services** by the third party, and shall manage the relationship with the third party. The fees associated with the delivery of the **Services** by the third party shall be included in **ICI's** fee, and shall be payable by the **Customer** as if the **Services** were performed by **ICI**.

8. SECURITY, ACCESS & FRAUD

- 8.1. **Customer** agrees to implement, and is wholly responsible for implementing, security precautions and practices in relation to the use of **ICI Services**. **Customer** is solely responsible for any security breach or unauthorized usage of **Service**, **Customer** equipment, including unmanaged **Equipment** provided by **ICI**, and, or **Customer** accounts.
- 8.2. **ICI** will take precautions and utilize best practices, as determined by **ICI**, to secure **ICI Equipment**, excluding unmanaged **Equipment** provided by **ICI**, and **ICI Service** platforms. Notwithstanding any action of **ICI**, **Customer** is solely responsible for security of **Services** and the security of **Customer** data.
- 8.3. **ICI** will utilize best practices, as determined by **ICI**, to identify security breaches. **ICI** provides absolutely no guarantees in relation to its efforts to identify security breaches and is not liable for any security breach that occurs despite its efforts.
- 8.4. **Customer** will provide authorized access list that identify individuals that have access to **Customer Space**, account administration, billing and escalation contacts. **Customer** is responsible to notify **ICI** of any changes, additions or deletions of authorized personnel.
- 8.5. **Customer** agrees to co-operate and assist **ICI** with any investigation or action taken in relation to **ICI's** operations and provisioning of services, confirmation of **Customer** compliance with the Service Agreement and, or breach of the **Service Agreement**.
- 8.6. In the event of any emergency or an immediate threat that presents a substantial risk of a **Service** outage, damage to equipment or data belonging to **ICI**, a third party, the **Data Centre**, or any persons or property present therein, **ICI** will take all measures it deems reasonable to respond to the emergency or threat. **ICI**, acting reasonably, may disable all **Services** and **Equipment**, (and **Customer** equipment, if necessary) to address the emergency or immediate threat.

9. SITE ACCESS

- 9.1. **Customer** agrees to provide **ICI** (and its agents) access to the **Customer's** premises, including heat, light, ventilation, electric current and outlets, adequate storage space if required, at **ICI's** reasonable request to make such installations, service, inspections, tests and adjustments as are necessary for the provision of the **Services**.

- 9.2. ICI shall grant reasonable physical access to the contracted space for colocation services only to authorized individuals identified by **Customer**. **Customer** shall give a minimum of four (4) hour advance notice during daytime business hours to the ICI technical support team to request physical access to the colocation or data centre. An ICI escort may be required to accompany the authorized individuals to **Customer's** designated **Space**. **Customer** is provided 30 minutes of escorted access to the **Customer** designated **Space** per business day at no charge. Any time beyond the 30 minutes requiring escorted access will be billed at ICI's standard rates. **Customer** is fully responsible for the acts or omissions of its personnel, and that of its agents, while at the **Data Centre**.
- 9.3. All visitors must present a valid, government issued photo ID and be authorized in advance by the **Customer**, subject to ICI approval, to access the ICI **Customer Space**. If ICI records indicate that a visitor is not a designated as a **Customer** authorized visitor, the visitor will not be granted access to the facility.
- 9.4. All emergencies noted on site, including, but not limited to, smoke, fire or other dangerous conditions, must be immediately reported to ICI or the data centre security desk.
- 9.5. Smoking is not permitted in the **Data Centre** and all posted instructions must be obeyed at all times. Food and beverages are not permitted on the raised floor and **Customer Space** must remain clear of clutter and any potential hazardous materials.

10. CONTRACT ADMINISTRATION

- 10.1. Each party will designate a person to administer all of the party's activities in connection with this **Agreement**, and be the primary point of contact for the other party (the "**Primary Contact**"). The names, addresses and telephone numbers of the initial **Primary Contacts** are indicated in the **Service Schedule**. The parties will immediately notify each other of any change thereto.
- 10.2. In the event of a dispute, which will be deemed to have arisen on the day that one party receives from the other a notice setting forth the substance of the dispute, the **Primary Contacts** will meet and attempt to resolve the dispute as expeditiously as possible. If the **Primary Contacts** are unable to resolve the dispute within ten days following the date on which the dispute arose, either party may submit the dispute to final and binding arbitration in accordance with the Arbitration Act (Ontario) before one or three arbitrators chosen in accordance with those rules. The arbitration will take place in Ottawa. The decision of the arbitrator(s) will be in writing and will be final and binding on the parties. The arbitrator(s) will have the authority to set the terms and procedures for the conduct of the arbitration but will issue their decision within sixty (60) days of the commencement of the arbitration.

11. INTELLISYN'S OBLIGATIONS

- 11.1. **IntelliSyn** will use commercially reasonable efforts to timely perform the **Work**, in such a manner as to occasion minimal disruption to the normal daily business activities of the **Customer**.
- 11.2. At any time during the term of this **Agreement**, the **Customer** may submit a request to modify the scope of the **Work**. If **IntelliSyn** agrees to such modification, the parties will execute an amended **Service Schedule** incorporating the modification, which will be incorporated in and governed by this Master Services **Agreement**.
- 11.3. **IntelliSyn** will endeavour to deliver **Hardware** in accordance with the **Service Schedule**. However, actual time of delivery is contingent upon availability of **Hardware**. Unless otherwise specified by **IntelliSyn**, delivery will be made F.O.B. point of shipment to **Customer**. Upon delivery to **Customer's** carrier, title to each portion of the **Hardware** and all risk of loss or damage will pass to **Customer**.
- 11.4. If the **Work** is to be performed on a time and materials basis, **IntelliSyn** will ensure that (i) each of its employees and contractors keeps an accurate record of the time worked; and (ii) at the end of each month, the **Customer** is invoiced for the **Work** performed in that month. If the **Work** is to be performed on a fixed price basis, the timing of the payments for **Work** performed will be specified in the **Service Schedule**, and **IntelliSyn** will issue invoices accordingly.
- 11.5. The fee for each item of the **Work**, or a calculation formula therefor, will be specified in the **Service Schedule**.
- 11.6. **IntelliSyn** may subcontract any portion of the **Work** and will be responsible for the performance and work of the subcontractors.
- 11.7. During the term of this **Agreement** and for a period of six months following the expiration or termination thereof, neither party will solicit the employees or contractors of the other with a view to engaging their services.

12. OBLIGATIONS OF THE CUSTOMER

- 12.1. The **Customer** will perform such acts and provide **IntelliSyn** with such materials and data belonging or pertaining to the **Customer** as may be necessary for the performance of the **Work**. Any such acts, materials and data will be specified in the **Service Schedule**.
- 12.2. **Customer** grants **IntelliSyn** a security interest (or its equivalent under applicable legislation) in the **Work** until complete payment of the **Price**. **Customer** will perform all acts necessary to permit the perfection and maintenance of such security interest.
- 12.3. **Customer** shall co-operate with **IntelliSyn** with regard to the performance of **IntelliSyn's** obligations hereunder, including (without limitation), and in each instance subject to normal security requirements and in a manner that is not unnecessarily disruptive to **Customer's** business operations, by (a) providing to **IntelliSyn** such information, data, access premises, management decisions, approvals, and acceptances as may be reasonable to permit **IntelliSyn** to provide the **Services**, and (b) providing **IntelliSyn** with the use of any specific facilities, resources, or other services may be reasonable to permit **IntelliSyn** to provide the **Services**. **Customer** will not abuse or misuse **IntelliSyn's** facilities, equipment, services, or any of the components thereof, or any of the capabilities provided thereby.

13. WARRANTIES

- 13.1. If any **Work** fails to meet the following warranties, **IntelliSyn's** sole obligation and **Customer's** exclusive remedy will be the correction of the failure by **IntelliSyn**. Where such failure cannot be corrected by **IntelliSyn's** reasonable efforts, the parties will negotiate an equitable adjustment in **Price**.
- 13.2. **IntelliSyn** warrants that all **Services** will be performed (i) with reasonable care and diligence in accordance with normal industry standards and (ii) substantially in accordance with the specifications in the applicable **Service Schedule**. If any **Service** fails to conform to the foregoing warranty, **IntelliSyn** will re-perform it. In no event will **IntelliSyn** be accountable for any non-conformance reported more than 90 days after completion of performance of the **Service**.
- 13.3. **IntelliSyn** warrants that **Hardware** manufactured by **IntelliSyn** ("**IntelliSyn Hardware**") will be free from defects in material and workmanship for a period of one year following installation. If any **IntelliSyn Hardware** fails to meet this warranty, **IntelliSyn** will remedy the failure by repairing or replacing any defective component or by providing substitute **Hardware**. Where such failure cannot be corrected by **IntelliSyn's** reasonable efforts, the parties will negotiate an equitable adjustment in **Price**. Similarly, **Customer** will not refuse any reasonable proposal to substitute equivalent or superior **Hardware**. **Customer** will be responsible for all charges incurred in returning defective **IntelliSyn Hardware** to **IntelliSyn**. **IntelliSyn** will be responsible for all charges incurred in shipping repaired or replacement **Hardware** to **Customer**.
- 13.4. **IntelliSyn** warrants that **Software** owned exclusively by **IntelliSyn** ("**IntelliSyn Software**") will perform substantially in accordance with its published specifications or written **IntelliSyn** materials which accompany it, for a period of one year following its installation by **IntelliSyn**. If any **IntelliSyn Software** fails to conform to the foregoing warranty, **IntelliSyn** will repair or replace it. Where such failure cannot be corrected by **IntelliSyn's** reasonable efforts, the parties will negotiate an equitable adjustment in price. Similarly, **Customer** will not refuse any reasonable proposal to substitute equivalent or superior software.
- 13.5. **IntelliSyn** makes no representations or warranties with respect to (i) the network transmission capacity or reliability of common carriers, (ii) the compatibility of the equipment of common carriers with that of **IntelliSyn** or the **Customer**; (iii) the transmission of data over the Internet in an uncorrupted form or (iv) the security of any transmission over the Internet.
- 13.6. The foregoing warranties are conditional upon **Customer's** giving written notice to **IntelliSyn** no more than thirty days after the failure.
- 13.7. With respect to any **Software** not owned exclusively by **IntelliSyn** or any **Hardware** not manufactured by **IntelliSyn** (except for integral parts of **IntelliSyn's** products to which the above warranties will apply) **IntelliSyn** gives no warranty of any kind. Only the warranty, if any, given by the licensor of the **Software** or the manufacturer of the **Hardware** will apply.
- 13.8. **IntelliSyn's** warranty obligations under this Article will not apply to (i) defects which are the result of improper

storage or use, or installation, maintenance, repairs or alterations performed by any party other than **IntelliSyn** without **IntelliSyn's** prior written consent; (ii) **Work** which has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident; (iii) components, such as light bulbs and fuses, which are normally consumed in operation; (iv) defects caused by or attributable to modifications made to the **Work** without **IntelliSyn's** approval; (v) any combination of the **Work** with other vendors' products or combinations of components of the **Work** other than as specified by **IntelliSyn**, without **IntelliSyn's** approval; (vi) misuse of the **Work**; or (vii) **Customer's** failure to implement software patches or maintenance releases no later than one month after their receipt by **Customer**.

- 13.9. **IntelliSyn** warrants that the **IntelliSyn Software** and the **IntelliSyn Hardware** will be delivered free of any rightful claim of any third party for infringement of any Canadian patent, trade secret or copyright. If **Customer** notifies **IntelliSyn** promptly of the receipt of any claim that any **IntelliSyn Software** or **IntelliSyn Hardware** infringes a Canadian patent, trade secret or copyright and gives **IntelliSyn** information, assistance and exclusive authority to settle and defend such claim, **IntelliSyn** at its own expense will defend, or may settle, any suit or proceeding against **Customer** insofar as it is based on a claimed infringement which breaches this warranty. **IntelliSyn** will pay all damages and costs awarded in such suit or proceeding, provided **Customer** or its agent does not by any act (including any admission or acknowledgment) materially impair or compromise the defence of such suit or proceeding. If, in such suit arising from such claim, the continued use of the **IntelliSyn Software** or **IntelliSyn Hardware** for the purpose intended is enjoined by any court of competent jurisdiction, **IntelliSyn** will, at its expense and option, either: procure for **Customer** the right to continue using the **IntelliSyn Software** or **IntelliSyn Hardware**, or modify or replace the **IntelliSyn Software** or **IntelliSyn Hardware** or portions thereof so that they become non-infringing, or remove the **IntelliSyn Software** or **IntelliSyn Hardware** and refund the **Price** received by **IntelliSyn** therefor (less reasonable depreciation for use).
- 13.10. The foregoing states the entire liability of **IntelliSyn** for patent, trade secret or copyright infringement by the **Work** and is subject to any limitation of total liability set out in this **Agreement**.
- 13.11. The warranty of the **Work** and the warranty against infringement of patents, trade secrets or copyright set forth in this Article are exclusive and in lieu of all other warranties and conditions, whether written, oral, implied or statutory. They set forth the sole remedies available to the **Customer** for defects in the **Work**, infringement of intellectual property rights, or other matters falling under their purview. No implied or statutory warranty or condition of merchantability or fitness for a particular purpose will apply. This disclaimer will apply whether a claim purports to be in contract, warranty, tort (including negligence) infringement, strict liability or any other doctrine of law.

14. EXCUSABLE DELAYS

- 14.1. **IntelliSyn** will not be liable for delayed performance or failure to perform due directly or indirectly to: (i) causes beyond **IntelliSyn's** reasonable control, (ii) acts of God, acts of civil or military authority, governmental priorities, strikes or other labour disturbances, floods, epidemics, war, riot, delays in transportation or component shortages, (iii) **IntelliSyn's** inability to timely obtain necessary materials, items, components or services from suppliers who are affected by the foregoing circumstances, or (iv) the failure of **Customer** to perform its obligations set forth in the **Service Schedule** in a timely manner. The foregoing will apply even though the cause exists at the time of signature of the **Agreement** by **IntelliSyn** or occurs after delays in **IntelliSyn's** performance of its obligations due to other reasons. If a delay or failure excused by this Section occurs, **IntelliSyn** will notify **Customer**, specifying the revised performance timetable. The time for performance will be extended for a period equal to the time lost by **IntelliSyn** by reason of the delay.

15. INDEMNIFICATION AND INSURANCE

- 15.1. **IntelliSyn** will indemnify **Customer** for, and hold it harmless from, third party claims for personal injuries or damage to tangible property resulting directly from the wilful misconduct or negligent acts or omissions of **IntelliSyn**, **IntelliSyn's** officers, agents, employees, or subcontractors. **Customer** will notify **IntelliSyn** as soon as practical of any third party claim, demand or cause of action for which **Customer** will request indemnification from **IntelliSyn**. **Customer** will provide **IntelliSyn** with the necessary information and assistance to defend such claim, demand or cause of action.
- 15.2. **Customer** will indemnify **IntelliSyn** for, and hold it harmless from and against, third party claims, demands and causes of action for direct damages (including reasonable legal fees) for personal injuries or damage to tangible property directly resulting from the wilful misconduct or negligent acts or omissions of **Customer**, **Customer's**

officers, agents, employees, or subcontractors. **IntelliSyn** will notify **Customer** as soon as practical of any third party claim, demand or cause of action for which **IntelliSyn** will request indemnification from **Customer**. **IntelliSyn** will provide **Customer** with the necessary information and assistance to defend such claim, demand, or cause of action.

- 15.3. **Insurance.** (1) Without limiting the foregoing, each party shall maintain insurance coverage to protect itself in connection with any liability in any connection with this indemnification both during the term of this **Agreement** and for a period of one year after any termination hereof. Such insurance coverage shall contain reasonable terms and conditions and shall provide coverage of an amount not less than C\$1,000,000. Such insurance policy shall not be cancellable or subject to reduction of coverage, or other modification, except upon thirty days prior written notice to the other party. Each party shall, within 30 days of a written request, provide the other with a certificate verifying such insurance coverage that shall be signed by an officer of such party. (2) Each party agrees that the insurance required under this section hereof shall be with an insurance company, satisfactory to the other party and licensed to do business in Canada. All such insurance coverage shall be evidenced by insurance policies that have terms and conditions satisfactory to the other party and such insurance policies shall not be cancellable or subject to reduction of coverage, or other modification, except after 30 days prior written notice to the other party.

16. LIMITATION OF LIABILITY

- 16.1. **General.** **IntelliSyn** agrees to perform the Services in a professional, workmanlike, and commercially reasonable manner, which is similar to the services provided to its other **Customers**. **IntelliSyn** agrees to maintain adequate staff of persons or sub-contractors who are knowledgeable with the **Services** as necessary to timely and adequately perform its obligations herein.
- 16.2. **Limitations of Liability.** Any and all warranties and liabilities with respect to this **Agreement** and provided hereunder shall be limited as follows: EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, **INTELLISYN** MAKES NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY LIABILITY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF **INTELLISYN**, THE BREACH BY **INTELLISYN** OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, THE AGGREGATE AMOUNT OF ANY LIABILITY OF **INTELLISYN**, ITS OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES, AFFILIATES, PARTNERS, AND CONTRACTORS, FOR ONE OR MORE CLAIMS ARISING FROM OR RELATING TO ANY DEFICIENCIES WITH RESPECT TO THIS **AGREEMENT**, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO **INTELLISYN** HEREUNDER FOR THE PERFORMANCE OF SERVICES HEREUNDER DURING THE IMMEDIATELY PRECEDING SIX-MONTH PERIOD. NEITHER PARTY HERETO SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND ARISING OUT OF THE BREACH OF THIS **AGREEMENT** BY SUCH PARTY.
- 16.3. The total liability of **IntelliSyn**, including its subcontractors and suppliers, for all claims of any kind for any loss or damage will not exceed an amount greater than the monthly amount paid by **Customer** allocable to the particular item of **Hardware**, **Software** or **Service** which gave rise to the claim. In no event will **IntelliSyn** or its subcontractors or suppliers be liable for any special, consequential, incidental, indirect or exemplary damages including, but not limited to, loss of profit or revenue, loss of use of any network, system or equipment, cost of capital, cost of substitute goods, facilities, services or replacement communications, downtime costs, loss of business information, claims of **Customer**'s customers for such damages, or any other claims for damages that are not the direct, immediate, and inevitable consequence of **IntelliSyn**'s negligence or breach of its obligations under this **Agreement**.
- 16.4. Any action for any claim of any kind for any loss or damages arising out of the **Agreement** or in any way connected to the **Work** will be commenced within six (6) months after the cause of action accrued or it will be deemed waived.
- 16.5. The provisions of this Article will apply notwithstanding any other provisions of this **Agreement** or any other **Agreement** and will survive the expiration or termination of this **Agreement**. They will apply to all claims, whether purported to be in contract, warranty, tort (including negligence), infringement, strict liability or some other doctrine of law.

17. INTELLECTUAL PROPERTY

- 17.1. The **Intellectual Property** will at all times be vested in **IntelliSyn**. **IntelliSyn** grants to the **Customer** a non-exclusive and non-transferable licence to use the **Intellectual Property** as reasonably necessary in order for **Customer** to use the **Work Product**.

18. CONFIDENTIALITY

- 18.1. **Confidential Information.** The Parties acknowledge that they each own Confidential and Proprietary Information and that they each desire that disclosures of such Confidential and Proprietary information be made to each other upon the terms and conditions contained herein.
- 18.1.1. **Customer** recognizes and acknowledges that the **IntelliSyn** proprietary process and products which **IntelliSyn** owns, plans or develops, whether for **IntelliSyn**'s own use, or for the use by **Customer**, or for use by others, are confidential and are the property of **IntelliSyn**. **Customer** further recognizes and acknowledges that in order to enable **IntelliSyn** to perform services for **Customer** and other **Customers** of **IntelliSyn** and to develop new products and services, **Customer** may be furnished confidential information concerning business affairs, plans, property, methods of operation, data, trade secrets, actual or anticipated business, **IntelliSyn**'s, consultants, **Customers**, licensees, affiliates, know-how, designs, formulae, research, strategies and information all of which are not generally known by the public.
- 18.1.2. **IntelliSyn** recognizes and acknowledges that in performing the services hereunder, that it will come into contact and otherwise learn Confidential Information of **Customer**, and its customers, including but not limited to, information concerning business affairs, plans, property, data supplied by system users, methods of operation, data, trade secrets and information all of which are not generally known by the public.
- 18.1.3. The Parties recognize that the information described in the foregoing sub-paragraphs must be kept confidential (hereinafter collectively "Confidential Information"). By definition, the term Confidential Information as used herein shall also include any and all information discussed between the Parties including, without limitation, in any meetings, telephone conferences, communications or correspondence and which is not generally known by the public. As used herein, the term "Recipient" shall mean the party receiving Confidential Information, and the term Discloser, shall mean the party disclosing confidential information.
- 18.1.4. The term Confidential Information shall not include: (a) information that, as of the time of receipt by Recipient, is in the public domain or subsequently enters the public domain without fault of the Recipient; (b) information that, as of the time of receipt by the Recipient, is already known to or in the possession of Recipient provided that: i) Recipient did not previously receive such information from Discloser; or, ii) Recipient, within ten (10) days of disclosure, provides written verifiable documentation that such information was already known to or in the possession of Recipient prior to its disclosure; (c) information that, at any time is received in good faith by Recipient from a third party that was lawfully in possession of the information and had the right to disclose the same; (d) information that is disclosed to third parties by Discloser on a non-confidential basis; or (e) information that the Parties mutually agree in writing to release from the terms of this **Agreement**, or (f) required to be disclosed by government or court order or other legal process, provided that the receiving party will take all reasonable steps to permit the disclosing party to prevent or limit such disclosure.
- 18.2. **Duty of Confidentiality.** Recipient hereby agrees not to use or disclose to others, either directly or through any third party, Confidential Information, regardless of the manner in which the Confidential Information was communicated to or received by the Recipient, whether oral, written, digital or otherwise, and regardless of whether the Confidential Information was marked as confidential or proprietary. Recipient shall use its best efforts to protect the Confidential Information of the other party. Recipient shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential and proprietary information, to protect the Confidential Information. **Customer** shall be entitled to disclose such information to its customers with respect to the services being provided for them by **IntelliSyn**. All employees, agents, subcontractors or representatives who have access to Confidential Information will be required to execute a confidentiality **Agreement** containing restrictions on the use and copying of the Confidential Information and confidentiality and trade secret provisions equivalent to those contained in this Section.
- 18.3. **Proprietary Rights.**
- 18.3.1. Any and all Confidential Information disclosed by Discloser to Recipient is proprietary to, the exclusive property of and owned in full by Discloser.
- 18.3.2. Recipient hereby agrees not to use, either directly or through any third party, said information in

any manner except in performance of this **Agreement**.

18.3.3. Recipient shall not attempt to reverse engineer, decompile, disassemble or in any way attempt to duplicate, either directly or through a third party, the Confidential Information of the other party.

18.3.4. Neither the execution and delivery of this **Agreement**, nor the furnishing of Confidential Information by either party, shall be construed as granting to Recipient, either expressly, by implication, estoppels, or otherwise, a license under any invention, trademark or copyright, currently or hereafter owned or controlled by Disclosure, except as may be necessary for the purposes of this **Agreement**.

18.4. Unless the parties otherwise agree in writing, the provisions and restrictions described in this Sections shall survive any termination or expiration of this **Agreement**.

19. MISCELLANEOUS

19.1. **Binding Nature and Assignment.** This **Agreement** shall be binding on the parties and their respective successors and assigns. Neither party may assign this **Agreement** unless it first obtains the prior written consent of the other party, which consent may not be unreasonably withheld. .

19.2. **Consents.** Each party agrees that when approvals or consents are required pursuant to this **Agreement**, the party entitled to provide such approval or consent shall not unreasonably withhold it and shall co-operate in helping the other party obtain it when reasonable.

19.3. **Entire Agreement.** This **Agreement** and all **Service Schedules** constitute the entire **Agreement** between **IntelliSyn** and **Customer** with respect to the subject matter of this **Agreement** and may be amended only by a written amendment signed by the parties.

19.4. **Equitable Remedies.** Each party hereto acknowledges that certain violations of the provisions of this **Agreement** may cause irreparable injury to the other party and that, in addition to any other remedies available to it, the other party may be entitled to injunctive relief, specific performance, and other equitable remedies.

19.5. **Force Majeure.** Each party shall be excused from any delay or failure in performance under this **Agreement** for any period if and to the extent that such delay or failure is caused by factors beyond the reasonable control of that party, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communications line failures, power failures, earthquakes, severe weather, or floods or other natural disasters. Delays or failures that are excused as provided in this Section shall result in automatic extensions of dates for performance for a period of time equal to the duration of the events excusing such delay or failure. However, **Customer's** financial condition or inability to pay shall not be a basis for excusing performance of **Customer's** obligations herein. The Party relying on such event shall use its best efforts to mitigate the effect of any such events, provided that such efforts shall not result in additional cost to the other party.

19.6. **Governing Law.** This **Agreement** shall be governed by and construed in accordance with the laws of the Ontario and the applicable laws of Canada and the Parties agree to be subject to the exclusive jurisdiction of the courts of Ontario.

19.7. **No Third-Party Beneficiaries.** This **Agreement** shall be for the benefit of the parties hereto and none of the provisions of this **Agreement** shall be for the benefit of or enforceable by any third party.

19.8. **Notices.** Any notice under this **Agreement** shall be deemed to be given when delivered electronically by facsimile or electronic mail or by hand or when mailed, first-class postage prepaid, and addressed to the recipient party at its address set forth on the **Service Schedule**. Either party may from time to time change its address to notification purposes by giving the other prior written notice of the new address and the date on which it will become effective.

19.9. **Relationship of Parties.** **IntelliSyn**, in providing the **Services**, is acting as an independent contractor and does not undertake by this **Agreement** or otherwise to perform any regulatory or contractual obligation of the **Customer**. **IntelliSyn** has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by **IntelliSyn** under this **Agreement**.

19.10. **Subcontracting Rights.** In addition to any other rights that **IntelliSyn** may have and subject to obtaining any necessary consents from third parties, **IntelliSyn** shall be entitled to grant to any responsible third party the right to have access to all or any portion of the **Hardware** or **Software** for the purpose of allowing such third party to provide services to or on behalf of **IntelliSyn**. Notwithstanding such subcontracting, **IntelliSyn** shall remain

liable for the acts of all third parties engaged by **IntelliSyn**.

- 19.11. **Travel.** All travel, lodging, and any related incidental (parking, tolls, etc) and out-of-pocket expenses incurred by **IntelliSyn** to visit **Customer** locations shall be paid by **Customer**. All such expenses must have the prior written approval of **Customer**.
- 19.12. **Waiver.** A waiver by either of the parties of any of the covenants, conditions, or **Agreements** to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant, condition, or **Agreement** contained in this **Agreement**.
- 19.13. **Severability.** If any provision of this **Agreement** is determined to be invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision shall be deemed to be severed herefrom only to the extent of the facts in dispute, and where permitted by such determination, and the remaining provisions of this **Agreement** shall not be affected and shall remain valid and enforceable.
- 19.14. **No Publicity.** Neither party shall refer, expressly or by implication, to the other, to any project or system of the other, or to this **Agreement** in any advertising or other publicity release except with the prior written consent of the other party.

20. ACCEPTANCE

- 20.1. The parties hereby agree that any individual **Service Schedule** that references this **Agreement** and that is signed by an authorized representative of the **Customer** will cause this Master Services **Agreement** to be in effect as of the date set forth on the **Service Schedule**.