

PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions ("**Terms and Conditions**") govern the order form ("**Purchase Order**") between the seller ("**Supplier**"), and The Toronto-Dominion Bank or its Affiliate as the purchaser ("**TD**"), as each is identified in the Purchase Order.

References herein to "**Section**" are deemed to be a section of these Terms and Conditions unless expressly stated otherwise.

Capitalized terms have the meanings attributed to them in these Terms and Conditions. (For reference, see Index to Defined Terms in Section 6.0). Words importing the singular number include the plural and vice versa.

1.0 GOVERNANCE

1.1 Contract Structure

- (1) The Purchase Order is TD's offer to Supplier.
- (2) Supplier's commencement of performance or written acceptance of the Purchase Order in any manner (such as issuance of an invoice), will conclusively evidence Supplier's acceptance of the Purchase Order and these Terms and Conditions. TD will not be bound by, and explicitly rejects, any provision that is different from, or in addition to, the Purchase Order and these Terms and Conditions as offered by TD.
- (3) TD may, by notice to Supplier, cancel the Purchase Order or any portion thereof without penalty at any time prior to the earlier of: (a) Supplier's commencement of performance; or (b) receipt of Supplier's written acceptance.
- (4) Upon Supplier's acceptance of the Purchase Order, Supplier agrees to provide, and TD agrees to purchase, any of the following specified in the Purchase Order, as each is defined in these Terms and Conditions: Products; Product Maintenance; Software; Software Maintenance; or Professional Services and Deliverables.
- (5) Only the following Sections applicable to the subject matter identified in the Purchase Order are incorporated into and made a part of the Purchase Order:
 - (a) Products and Product Maintenance, Section 2.0;
 - (b) Software and Software Maintenance, Section 3.0; or
 - (c) Professional Services and Deliverables, Section 4.0.

Sections 2.0 through 4.0 include the General Rights and Obligations in Section 5.0.

The Purchase Order and the Sections applicable to the subject matter of the Purchase Order form a single and distinct contract (this "**Agreement**").

1.2 Agreement and Effective Date

Supplier and TD agree to this Agreement as of the effective date on the Purchase Order, or if an effective date is not stated, its date of issuance (the "**Effective Date**").

1.3 Affiliates, Personnel and Other Suppliers

- (1) With respect to either party to this Agreement, an "**Affiliate**" is any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with the party.
- (2) The obligations of the parties to this Agreement will be effectuated through their personnel ("**Personnel**") consisting of: (a) in the case of TD, directors, officers and employees (including potential employees and candidates for employment) of TD or any of its Affiliates, employees of other suppliers acting for or on behalf of TD ("**Other Suppliers**"), or independent contractors providing staff augmentation support to TD; and (b) in the case of Supplier, officers and employees of Supplier.

1.4 Precedence

- (1) In the event of any inconsistency between these Terms and Conditions, as applicable, and those set forth in the Purchase Order, these Terms and Conditions will prevail.
- (2) Unless there is another contract as described in Section 1.4(3), this Agreement is the entire agreement between the parties and cancels and supersedes any other understandings or agreements between the parties with respect to the subject matter identified in the Purchase Order, whether written or oral, now existing or hereinafter entered into, including any click-wrap or shrink-wrap agreements or invoice terms and conditions, and notwithstanding any similar precedence or "entire agreement" conditions therein.
- (3) **IF THERE IS A CONTRACT IN EFFECT BETWEEN SUPPLIER AND TD THAT IS IDENTIFIED IN THE PURCHASE ORDER, INCLUDING AS MAY BE INDICATED BY A "CONTRACT WORKSPACE ID" OR "CW" REFERENCE NUMBER, THEN SUCH CONTRACT GOVERNS THE SUBJECT MATTER OF THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS DO NOT APPLY.**

2.0 **PRODUCTS**

2.1 Description

- (1) "**Products**" means all things, including manufactured goods, which are tangible and moveable, as described in the Purchase Order, excluding Software and Deliverables.

Products may include equipment, devices, mainframes, personal computers, servers, client/server stations, network equipment, routers, semi-conductor chips, embedded software, communication lines and other equipment as more particularly described in the Purchase Order, including modifications, updates, or repairs or replacements of the same (collectively "**Hardware**").

- (2) "**Product Documentation**" means all user and administrator manuals, operating instructions, installation guides, help files, and other printed, electronic, and online material generally made available to Supplier's customers with respect to the Products, and all other printed, electronic, or online materials, that describe the features, functions, or operation of the Products. Product Documentation includes the description, specifications, and performance standards of Supplier's program for Product Maintenance (as hereinafter defined).

2.2 Sale

Supplier hereby sells, transfers, and delivers to TD all right, title and interest to the Products, in the quantities specified in the Purchase Order.

2.3 Delivery

- (1) Supplier shall pack and ship all Products in accordance with industry standards to ensure that Products are not damaged during transport. All Products will be shipped and delivered to the location specified in the Purchase Order (the "**Product Delivery Location**") by the delivery date specified in the Purchase Order ("**Product Delivery Date**").
- (2) Supplier shall provide or make available to TD, as of the Product Delivery Date, the Product Documentation, whether or not Supplier is the manufacturer of the Products.
- (3) Time is of the essence with respect to Supplier's obligations in this Section 2.3. If Supplier fails to deliver the Products and Production Documentation on the Product Delivery Date, TD may agree in writing to an extension of the Product Delivery Date or cancel this Agreement, in whole or in part, without any liability or limiting any other right under this Agreement.

2.4 Title and Risk of Loss

- (1) Title and risk of loss to the Products will remain with Supplier until acceptance of the Products by TD pursuant to Section 2.8.
- (2) Title to the Products will vest in TD upon its acceptance thereof pursuant to Section 2.8 below. Upon acceptance, Supplier shall furnish to TD a bill of sale or such other documentation evidencing the same as reasonably requested by TD. For avoidance of doubt, title in any replacement parts will vest in TD upon the later of: (a) the date of delivery of same to TD; or (b) the date such part has been completely and properly installed in the Product if Supplier is installing such part.

2.5 Embedded Software

- (1) With respect to any software delivered with, and installed in, the Hardware, Supplier hereby grants TD a non-exclusive, irrevocable, royalty-free, world-wide license ("**Embedded Software License**") to use the software in conjunction with TD's use of the Hardware, and use, copy, distribute and modify related Product Documentation, in each case as reasonably necessary to support TD's use of the Hardware.
- (2) Subject to the Embedded Software License granted above, Supplier will retain all intellectual property rights in and to any software code included with the Hardware and any Product Documentation. However, TD will retain all right, title, and interest in and to all data input and output arising out of TD's use of the Hardware.
- (3) If the Hardware is sold or transferred to a third party, the Embedded Software License will, without notice to or consent of Supplier, also be transferred to the third party with the Hardware. Notwithstanding the foregoing, TD may, in its discretion, procure any operating system or other software application licensed by Supplier separate from the Hardware pursuant to a separate agreement with Supplier, or from an Other Supplier.

2.6 Installation

- (1) If Supplier is installing the Products, as specified in the Purchase Order, this Section 2.6 will apply.
 - (a) Products will be installed and configured at the Product Delivery Location or other location as specified in the Purchase Order (the "**Product Installation Location**"). Supplier shall commence installation and configuration of the Products on the Product Delivery Date or other date as specified in the Purchase Order ("**Product Installation Date**").
 - (b) Unless otherwise set forth in the Purchase Order or otherwise directed by TD, Supplier shall, within 30 days of the Product Installation Date:

- (i) unpack the Products at the Product Installation Location and dispose of all packaging materials;
- (ii) install and configure the Products; and
- (iii) start up and test the Products to ensure that they comply with the warranties set forth in this Agreement.

2.7 Warranties

(1) Supplier represents and warrants as follows:

- (a) Supplier owns or has the right to license all right, title and interest in and to the Products for the purposes set forth herein, and the Products are free and clear of all liens and encumbrances, including any security interest perfecting the interests of Supplier or any third party;
- (b) for Hardware that includes a user interface, Supplier shall adhere to applicable law and industry standards for accessibility that are hereby deemed to be part of the specifications and acceptance terms for the Products and Product Documentation; and
- (c) the Products will perform in accordance with the features, functionalities and specifications set forth in the Product Documentation:
 - (i) during the warranty period set forth in the Product Documentation, but no less than 30 days from TD's acceptance of the Products, or for Hardware, 180 days from TD's acceptance of the Hardware (collectively, "**Product Warranty Period**"); and
 - (ii) during the period that Supplier is providing Product Maintenance to TD.

(2) The representations and warranties in this Section 2.7 are in addition to, and not in substitution for, other representations and warranties set forth in this Agreement.

2.8 Acceptance or Rejection

- (1) TD shall have the right to inspect and test the Products to determine if they are free of defects and comply with the warranties in this Agreement.
- (2) The Products are deemed to be accepted: (a) if TD does not reject the Products by written notice to Supplier within 30 days after the Product Delivery Date; or (b) if the Products are in productive use.
- (3) If the Products are rejected, TD shall advise Supplier of the reason for rejection and at TD's option may do any of the following:
 - (a) terminate, effective immediately, all or part of the Purchase Order and receive a refund of all Fees (as hereinafter defined) and, to the extent permitted by law, Sales Taxes (as hereinafter defined), paid to date thereunder relating to the non-conforming Products;
 - (b) permit Supplier to provide corrected Products for re-inspection and re-testing by TD; or
 - (c) accept non-conforming Products subject to an appropriate reduction in the Fees.
- (4) Except as otherwise set out in the Purchase Order, TD will not pay Supplier for the Products until they have been accepted by TD in accordance with this Agreement.

2.9 Maintenance

- (1) "**Product Maintenance**" means the services and support necessary for the Products to conform to the warranties in this Agreement.
- (2) Supplier shall provide Product Maintenance during the Product Warranty Period at no charge to TD. If TD elects to receive Product Maintenance after the expiry of the Product Warranty Period, Supplier will provide Product Maintenance to TD for the Fees and term specified in the Purchase Order, not to exceed 24 months after the Effective Date, unless terminated sooner in accordance with the provisions set forth in this Agreement.
- (3) When providing Product Maintenance, Supplier shall respond to any unplanned interruption in the performance of the Products or any error, malfunction or degradation that results in the Products not conforming to the warranties in this Agreement (collectively, "**Product Error**"), by repairing or replacing the Products or components thereof, at its own cost and expense, in accordance with the process, timeframes and performance requirements set out in the Product Documentation.
- (4) Notwithstanding anything contrary in the Product Documentation, all replacement parts will be new, and no refurbished parts used, unless specified otherwise in the Purchase Order.
- (5) If Supplier is unable to repair or replace a Product or component thereof within the required timeframes in the Product Documentation, or if such timeframes are not stated in the Production Documentation, then within a commercially reasonable time, TD will have the option to:
 - (a) terminate, effective immediately, all or part of the Purchase Order and any interdependent purchase orders, and receive a refund of the Fees and, to the extent permitted by applicable law, Sales Taxes, paid for Product Maintenance;
 - (b) by written notice to Supplier, extend the time period to permit Supplier to repair or replace the Product or component thereof; or
 - (c) accept the non-conforming Products with an appropriate pro-rata reduction in Fees.
- (6) Except for drives, storage, or other data-bearing media (which will at all times be retained by TD), the parties agree that replaced Products or Product parts will, upon removal, become the property of Supplier and Supplier shall be responsible for their proper disposal or recycling.
- (7) Supplier or its subcontractors that service or remove drives, storage or other data-bearing media will only do so:
 - (a) after having notified TD in writing of Supplier's intent to do so;
 - (b) in the presence of TD's security representatives and in coordination with them.

3.0 SOFTWARE

3.1 Description

- (1) "**Software**" means any source code or object code versions of Supplier's proprietary software identified in the Purchase Order, including any Updates.
- (2) "**Software Documentation**" means all user and administrator manuals, operating instructions, installation guides, help files, and other printed, electronic, and online material generally made available to Supplier's customers with respect to the Software, and all other printed, electronic, or online materials, that describe the features, functions, or operation of the Software. Software Documentation includes the description, specifications, and performance standards of Supplier's program for Software Maintenance (as hereinafter defined).

- (3) **"Updates"** means any new version or release of the Software, and any patch, bug fix, correction, enhancement, or other modification by Supplier to the Software.

3.2 Delivery

- (1) For Software to be provided to TD in a physical media form as specified in the Purchase Order, Supplier shall pack and ship such Software in accordance with industry standards to ensure that such Software is not damaged during transport. Software in a physical media form will be shipped and delivered to the location specified in the Purchase Order (the **"Software Delivery Location"**). The risk of loss for such Software will remain with Supplier until acceptance of the Software pursuant to Section 3.6.
- (2) For Software to be provided to TD in electronic form, Supplier shall, as specified in the Purchase Order, make the Software available to TD in a downloadable format from Supplier's designated website, or securely transmit the Software to TD's designated system.
- (3) Supplier shall provide or make available the Software to TD by the delivery date specified in the Purchase Order (**"Software Delivery Date"**). With the delivery of the Software and with each Update (as hereinafter defined), Supplier shall provide related Software Documentation to TD.
- (4) Time is of the essence with respect to Supplier's obligations in this Section 3.2. If Supplier fails to deliver the Software, Software Documentation and Updates, as applicable, in accordance with Section 3.2(3), TD may agree in writing to an extension of the Software Delivery Date or cancel this Agreement, in whole or in part, without any liability or limiting any other right under this Agreement.
- (5) If TD's copy of any Software is destroyed, lost, or damaged, Supplier shall promptly, upon request, furnish TD with a replacement copy at no additional charge.

3.3 License

- (1) Supplier hereby grants TD a non-exclusive, irrevocable, non-transferable (except as set out herein), royalty-free, world-wide license for TD and its Personnel to install, use and access the Software (and to use and copy all applicable Software Documentation) in perpetuity or for a fixed period of time if specified in the Purchase Order. Supplier acknowledges and agrees that the license to the Software and the Software Documentation includes use by TD, its Affiliates, and their Personnel, in accordance with the terms of this Agreement.
- (2) If the period of the license for the Software extends beyond the term of the Purchase Order, such license will continue for the applicable period, and the parties shall comply with the requirements set forth in this Agreement as applicable to the Software for such period.
- (3) As between the parties, Supplier owns all right, title and interest in the Software and Software Documentation. Except for the license granted to TD set forth in this Section 3.3, TD does not have and will not acquire any right, title, or interest in or to the Software or Software Documentation.
- (4) All licenses to the Software that Supplier grants to TD under this Agreement in the United States are, for purposes of section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property", as that term is defined in section 101 of the Bankruptcy Code. Nothing in this Agreement limits TD's rights under section 365(n). TD is not in this Agreement making an election under said section 365(n).
- (5) No third-party software or databases, or any system or equipment is needed for TD to access, install, or use the Software except as expressly set out in the Product Documentation. If any third-party software or databases are embedded in or a part of the Software, Supplier shall have obtained or shall obtain prior to delivery of the

Software, at no additional charge to TD, a paid-up, non-exclusive, transferable and sub-licensable right and license for TD to install and use such third-party software and databases for a license term no shorter than the term of the license to the Software granted hereunder and on terms no less restrictive than the terms of the license set out herein in respect of the Software. Supplier shall secure all licensing rights and warranties in such third-party software and databases and provide all related documentation evidencing such rights and warranties at the time of delivery.

3.4 Usage Rights and Restrictions

- (1) TD may use the Software and Software Documentation for any business purpose, other than as expressly prohibited in this Agreement.
- (2) Except as expressly set out in a Purchase Order, there is no restriction on the identity, number of concurrent users, or total number of users authorized by TD to use the Software and Software Documentation in accordance with this Agreement.
- (3) TD may install and use the Software at any TD facility, and the Software may be used via remote access from any device or location, including access over local or wide area networks and the Internet. If a TD facility where the Software is installed becomes impaired or inoperable, TD may install and operate the Software at one or more backup or redundant computer facilities (including, without limitation, Other Supplier disaster recovery facilities) until operable status is restored.
- (4) TD may make copies of the Software for archival and backup purposes and may make such copies of the Software Documentation as may be reasonably necessary for its and its Affiliates' operations. TD shall not alter or delete any copyright or other proprietary rights notices on the Software or Software Documentation and shall make commercially reasonable efforts to ensure that any such copies include notices included with the original versions.
- (5) Except as permitted by applicable law, TD shall not reverse engineer, decompile or disassemble any Software to develop or derive the source code thereof. This restriction will not apply if TD has been granted, pursuant to the Purchase Order or a separate agreement, access to the non-executable, human readable version of any Software, with accompanying materials and Software Documentation sufficient to enable a competent programmer with no knowledge of such Software to use, operate, modify, support, maintain and enhance such Software, including details of all algorithms and all software or developer's tools required to compile and generate object code with the use of the source code.
- (6) Supplier shall have no responsibility with respect to Software Errors (as hereinafter defined) to the extent that they result from modifications to the Software made by TD without Supplier's participation or approval.

3.5 Warranties

- (1) Supplier represents and warrants as follows:
 - (a) the Software and Software Documentation are free and clear of all liens and encumbrances, including any security interest perfecting the interests of Supplier or any third party;
 - (b) the Software will perform in accordance with the features, functionalities and specifications set forth in the Software Documentation:
 - (i) during the warranty period set forth in the Software Documentation, but no less than 90 days from TD's acceptance of the Software ("**Software Warranty Period**"); and
 - (ii) during the period that Supplier is providing Software Maintenance to TD;

- (c) the Software provided to TD will be the most current release or version that Supplier has made commercially available to its customers, unless TD, after being advised by Supplier of the availability of a newer release or version, expressly elects to acquire, and deploy an older one;
 - (d) at the time of delivery (and, if applicable, implementation by Supplier), the Software will be free of any virus, Trojan horse, worm, logic bomb, drop-dead device, backdoor, or shutdown mechanism, that is intended or designed to, is likely to or has the effect of disabling, denying authorized access to, permitting unauthorized access to, repossessing, damaging, destroying, corrupting or otherwise affecting or interfering with the Software or the normal use of any of TD's software or systems (including any documentation) or any data or files on or used in conjunction with any of the aforementioned (collectively, "**Disabling Code**"), provided that Software may include code to ensure Software license compliance (including passwords) or an activation key;
 - (e) if the Software (other than beta or evaluation Software expressly supplied on a temporary basis) requires the use of an activation key, Supplier shall provide a key that will unlock and activate the Software permanently, not temporarily;
 - (f) except as expressly disclosed in the Software Documentation, the Software will be designed to operate in an open architecture environment such that all external Supplier interface specifications will be published and generally available, and applications that have been implemented to those interface specifications will be able to interoperate with the Software;
 - (g) except as expressly disclosed in the Software Documentation, the Software will not include any free or open-source software, or code subject to licensing terms (such as the GNU General Public License) that would affect TD's rights or obligations hereunder with respect to the use, modification, disclosure, or distribution of any Software or of TD's Intellectual Property (as hereinafter defined);
 - (h) the Software and any Update thereto will be designed, architected, developed, enhanced, and tested (including vulnerability testing and penetrating testing) in accordance with application security practices that are consistent with industry standards for application security; and
 - (i) for Software and Software Documentation that includes a user interface, Supplier shall adhere to applicable law and industry standards for accessibility that are deemed to be part of the specifications and acceptance terms for the Software and Software Documentation.
- (2) The representations and warranties in this Section 3.5 are in addition to, and not in substitution for, other representations and warranties set forth in this Agreement.

3.6 Acceptance or Rejection

- (1) TD shall have the right to inspect and test the Software to determine if it is free of defects and complies with the warranties in this Agreement.
- (2) The Software will be accepted: (a) if TD does not reject the Software by written notice to Supplier within 30 days after the Software Delivery Date; or (b) if the Software is in productive use.
- (3) If the Software is rejected, TD shall advise Supplier of the reason for its rejection, and at TD's option may do any of the following:
 - (a) terminate, effective immediately, all or part of the Purchase Order and receive a refund of all Fees (as hereinafter defined) and, to the extent permitted by applicable law, Sales Taxes (as hereinafter defined), paid to date thereunder relating to the non-conforming Software;

- (b) permit Supplier to provide corrected Software for re-inspection and re-testing by TD; or
 - (c) accept non-conforming Software subject to an appropriate reduction in the Fees.
- (4) Except as otherwise set out in the Purchase Order, TD will not pay Supplier for Software until it has been accepted by TD in accordance with this Agreement.

3.7 Maintenance

- (1) "**Software Maintenance**" means the services and support necessary for the Software to conform to the warranties in this Agreement, including all Updates: (a) made generally available by Supplier to its other customers; (b) necessary to keep the Software operating in accordance with the warranties in this Agreement, and resolve Software Errors (as hereinafter defined); and (c) to enable the Software to operate under new versions or releases of the operating systems and database platforms on which the Software currently runs.
- (2) Supplier shall provide Software Maintenance during the Software Warranty Period at no charge to TD. If TD elects to receive Software Maintenance after the expiry of the Software Warranty Period, Supplier shall provide Software Maintenance to TD for a term as specified in the Purchase Order, not to exceed 24 months after the Effective Date, unless terminated sooner in accordance with the provisions set forth in this Agreement.
- (3) When providing Software Maintenance, Supplier shall respond to any unplanned interruption in the performance of the Software or any error, malfunction or degradation that results in the Software not conforming to the warranties in this Agreement (collectively, "**Software Error**"), in accordance with the process and performance requirements set out in the Software Documentation.
- (4) Notwithstanding anything contrary in the Software Documentation, in the event of a Software Error, Supplier shall, at its own cost and expense, investigate, diagnose, and analyze the Software Error to achieve a solution to the Software Error (if a temporary solution, a "**Workaround**", and if a permanent solution that eliminates the root cause of the Software Error, a "**Resolution**"). If a Workaround is achieved, Supplier shall continue to work on the Software Error until a Resolution is achieved.
- (5) If Supplier is unable to provide a Workaround or Resolution within the required timeframes in the Software Documentation, or if such timeframes are not stated in the Software Documentation, then within a commercially reasonable time TD will have the option to:
- (a) terminate, effective immediately, all or part of the Purchase Order and any interdependent purchase orders, and receive a refund of the Fees and, to the extent permitted by applicable law, Sales Taxes, paid for Software Maintenance;
 - (b) by written notice to Supplier, extend the time period to permit Supplier to provide a Workaround or Resolution; or
 - (c) accept the non-conforming Software with an appropriate pro-rata reduction in Fees.
- (6) TD may elect to defer or decline installation of Updates or to install Updates in a test environment before applying them in its production systems, and Supplier shall not install, or attempt to install, any Update on any of TD's systems without TD's prior written consent. TD acknowledges that Software Maintenance may not be available or may be subject to additional Fees if TD is more than 2 Updates behind Supplier's then currently released Update.
- (7) For Software licensed to TD for a perpetual term, expiration or termination of Software Maintenance will not constitute expiration or termination of such license, unless otherwise set forth in the Purchase Order.

4.0 PROFESSIONAL SERVICES

4.1 Description

- (1) "**Professional Services**" means general or professional services as described in the Purchase Order, excluding, as addressed in other Sections, support for installation of the Products or Software, and any Product Maintenance or Software Maintenance.
- (2) "**Deliverables**" means all tangible and intangible goods, including any software, content, documentation, or materials that are designed, developed, or produced as a part of, or as a result of, the Professional Services.

4.2 Performance

Supplier shall provide the Professional Services and any Deliverables to TD for its own benefit and for the benefit of TD's Affiliates and its subsidiaries when received through TD in accordance with the terms and conditions set forth in this Agreement.

4.3 Term

- (1) Supplier shall commence the Professional Services on the Effective Date and continue for the period specified in the Purchase Order that is no more than 24 months after the Effective Date, unless terminated sooner in accordance with provisions set forth in this Agreement ("**Professional Services Term**").
- (2) Upon the end of the Professional Services Term:
 - (a) Supplier shall immediately cease performance of the Professional Services,
 - (b) Supplier shall deliver the Deliverables completed as of the end of the Professional Services Term to TD or as designated by TD, any Affiliate;
 - (c) Supplier shall transfer, assign, and deliver to TD or its designated Affiliate any software, hardware or other equipment acquired by Supplier for TD as part of the Professional Services and any related warranties then in effect;
 - (d) unless a party has a continuing right to use the other party's Confidential Information (as hereinafter defined), after the end of the Professional Services Term as permitted under this Agreement, each party shall return all copies of the Confidential Information of the other party to the other party or, at the other party's option and direction, shall destroy all copies of the Confidential Information, certifying in writing to the return or destruction; and
 - (e) TD shall pay Supplier for the Fees (as hereinafter defined) and the Expenses (as hereinafter defined) for the Professional Services rendered through the end of the Professional Services Term.

4.4 Warranties

- (1) Supplier represents and warrants as follows:
 - (a) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards;
 - (b) for Deliverables that are software, the warranties for Software in Section 3.5(1) will apply to such Deliverables;

- (c) for Professional Services and Deliverables that includes a user interface, Supplier shall adhere to applicable law and industry standards for accessibility; and
 - (d) the performance by Supplier of its obligations stated in this Agreement, and the receipt, use and the possession of the Deliverables (whether separately or together in combination) by TD, its Affiliates and their Personnel, customers, or Other Suppliers, in accordance with this Agreement, do not and will not infringe, violate, or misappropriate the intellectual property rights of any third party.
- (2) The representations and warranties in this Section 4.4 are in addition to, and not in substitution for, other representations and warranties set forth in this Agreement.

4.5 Acceptance or Rejection

- (1) TD shall have the right to inspect and test the Deliverables to determine if they are free of defects and comply with the warranties in this Agreement.
- (2) The Deliverables will be accepted: (a) if TD does not reject the Deliverables within 30 days after the date of delivery of the Deliverables to TD; or (b) if the Deliverables are in productive use.
- (3) If the Deliverables are rejected, TD shall advise Supplier of the reasons for its rejection and at TD's option may do any of the following:
- (a) terminate, effective immediately, all or part of the Purchase Order and receive a refund of all Fees (as hereinafter defined) and, to the extent permitted by law, Sales Taxes (as hereinafter defined), paid to date thereunder relating to the non-conforming Deliverables;
 - (b) by written notice, permit additional iterations of the provision by Supplier of corrected Deliverables for re-evaluation by TD; or
 - (c) accept non-conforming Deliverables subject to an appropriate reduction in the Fees relating to those Deliverables.
- (4) Except as otherwise set out in the Purchase Order, TD will not pay Supplier for the Deliverables until they have been accepted by TD in accordance with this Agreement.

4.6 Ownership

- (1) Supplier agrees that the Deliverables are TD's Intellectual Property (as hereinafter defined), excluding any of Supplier's Intellectual Property contained therein.
- (2) Supplier hereby irrevocably assigns and transfers and agrees to irrevocably assign and transfer to TD without further consideration, all world-wide right, title and interest, in perpetuity, including all intellectual property rights, in and to each Deliverable (exclusive of Supplier's Intellectual Property contained therein), immediately upon creation of such Deliverable, and Supplier has caused, or will cause, all Supplier's Personnel and subcontractors to assign and transfer all such rights to TD.
- (3) Supplier has caused, or will cause, Supplier's Personnel and subcontractors to waive, irrevocably and in perpetuity and for the benefit of TD, and its successors, assigns, licensees and contractors, their respective moral rights in and to any works subject to copyright protection within any and all Deliverables. Supplier shall cooperate fully at all times and will cause all Supplier's Personnel and subcontractors to cooperate fully at all times, with respect to signing such documents and doing such acts and other things reasonably requested by TD to: (a) protect TD's Intellectual Property; and (b) perfect TD's rights in the Deliverables, including all intellectual property rights therein.

- (4) Supplier grants to TD, a transferable, royalty-free, perpetual, world-wide, irrevocable, nonexclusive license to use, disclose, reproduce, modify, distribute, sub-license, and copy Supplier's Intellectual Property contained in any Deliverables in connection with TD's use of the Deliverables, but not independently from such Deliverables.
- (5) TD's Intellectual Property also includes all data shared with Supplier by or on behalf of TD, as well as any output (data, reports, records) generated as a result of the use of the Professional Services or Deliverables.
- (6) The parties shall not engage in any joint development of intellectual property under this Agreement except as the parties may separately agree, in writing.

5.0 GENERAL RIGHTS AND OBLIGATIONS

5.1 Applicability

All references in this Section 5.0 to "**Goods**" means the Products, Software or Deliverables, and all references to "**Services**" means Product Maintenance, Software Maintenance, Professional Services, or the Program.

5.2 Fees and Expenses

- (1) In full consideration of the Goods and Services, TD shall pay Supplier the fees ("**Fees**") and expenses ("**Expenses**"), if any, in specified amounts, or within budgeted amounts, as expressly stated in the Purchase Order. Expenses are limited to Supplier's out-of-pocket cost, without mark-up or administrative charge, unless the additional cost, mark-up or charge is expressly stated in the Purchase Order.
- (2) Except for Fees and Expenses expressly stated in the Purchase Order, Supplier is responsible for performing its obligations set out in this Agreement at its own expense.
- (3) All references to a financial obligation, including Fees and Expenses, will be invoiced, and paid in the currency specified on the Purchase Order, and if not so specified, then the currency of the governing law country applicable to this Agreement.

5.3 Taxes

- (1) Each party shall be responsible for complying with their respective obligations, under applicable law, for the collection and payment of all federal, state, provincial, territorial, county, municipal, local, or foreign taxes, charges, fees, levies, imposts, and other assessments (collectively, "**Taxes**"), imposed by a government agency responsible for the assessment and collection thereof ("**Taxation Authority**").
- (2) TD is responsible for paying value-added, sales, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, gross receipts, transfer, or similar Taxes (collectively "**Sales Taxes**") for the Goods and Services received by TD, based upon the amount of Fees and Expenses charged by Supplier.
- (3) If the Supplier is required by applicable law or by administration thereof to charge or collect Sales Taxes, then the Supplier shall include Sales Taxes as a separate item on its invoice to TD for the Fees and Expenses, and TD shall pay such invoice in accordance with this Agreement. If Sales Taxes are not separately itemized by Supplier on its invoice, then the Fees and Expenses on the invoice will be deemed to have included the Sales Taxes, and Supplier shall be fully liable for such Sales Taxes upon TD's payment of the invoice. Supplier shall remit all Sales Taxes that are collected from TD, whether separately invoiced or as part of the Fees and Expenses, to the Taxation Authority.
- (4) Supplier shall adjust the amount of Sales Taxes payable by TD, or refund, pay, or credit TD, the full amount of any excess Sales Taxes charged to TD, or collected from TD, due to an error or a reduction in the Fees and Expenses. If the Fees and Expenses are reduced by a discount offered by Supplier, the Sales Tax will be assessed against the discounted price if allowed under applicable law.

- (5) If the Sales Tax applicable to the Goods or Services received by TD is Canada's Goods and Services Tax and Harmonized Sales Tax ("**GST/HST**") imposed under Part IX of the Excise Tax Act (Canada), Supplier shall charge, collect, and remit the GST/HST on the Fees and Expenses, in accordance with, and subject to, its obligations set forth in Section 5.3(3).
- (6) TD may, but is not obligated, to deduct and withhold from the Fees and Expenses any amount that TD may be required or permitted to deduct or withhold for Taxes in accordance with applicable law ("**Withholding Tax**"). If the Withholding Tax is deducted or withheld, TD shall timely remit the Withholding Tax to the Taxation Authority without regard to any mitigation in the amount required to be withheld. The amount of the Withholding Tax paid to the Taxation Authority will be treated as having been paid to the Supplier as part of the Fees and Expenses. If the Withholding Tax is not deducted or withheld, but TD pays the Withholding Tax in addition to the Fees and Expenses, Supplier shall reimburse TD for the full amount of the Withholding Tax paid by TD.

5.4 Invoicing and Payment

- (1) Supplier shall submit an invoice to TD for the Fees and Expenses, in arrears, at the times set forth in the Purchase Order. An invoice will include reasonable documentation supporting the calculation of the amount, and TD shall pay any undisputed portion of the invoice within the payment date specified on the Purchase Order, and if not so specified, within 45 days of receipt.
- (2) Sales Taxes will be reflected on an invoice in accordance with Section 5.4(3). To the extent the Supplier is required to collect GST/HST, Supplier shall issue an invoice reporting the amount of GST/HST that is collectible and such invoice will be in a form and contain sufficient information to satisfy the input tax credit documentation requirements provided in subsection 169(4) of the Excise Tax Act (Canada).
- (3) The total Fees on each invoice may be discounted for early payment as specified in the Purchase Order.
- (4) Payment will be made by TD by cheque (check) or by electronic funds transfer in immediately available funds to an account designated by Supplier, as agreed in writing by the parties.

5.5 No Exclusivity

This Agreement will not be interpreted to grant to Supplier exclusive rights or to bind TD in any way to an exclusive relationship with Supplier.

5.6 Third Parties and Personnel

- (1) Supplier acknowledges that TD or its Affiliates have entered into agreements, and may enter into agreements, with Other Suppliers. At TD's request, Supplier shall cooperate with, assist, and share information with the Other Suppliers in order to coordinate the performance by each Other Suppliers of their obligations with the performance of the obligations of Supplier.
- (2) Any of Supplier's Personnel or its subcontractors seeking access to TD or its Affiliates' network, system or facilities must first complete a background check satisfactory to TD, and Supplier shall share the results of such background check with TD. TD may, in its sole discretion, prohibit such persons acting on behalf of Supplier from access to TD or its Affiliates' network, systems or facilities.

5.7 Subcontracting

- (1) Supplier shall not delegate or subcontract the provision of Goods or performance of any Services under this Agreement without the prior written authorization of TD.

- (2) To the extent permitted under Section 5.7(1), Supplier shall enter into a written agreement subjecting the subcontractor to obligations that are as stringent as those applicable to Supplier under this Agreement:
- (a) concerning confidentiality, privacy, data security and background checks if the subcontractor has access to any Confidential Information of TD, its Affiliates, and their Personnel, Other Suppliers, and customers;
 - (b) concerning background checks and insurance if Supplier has access to TD's facilities or systems;
 - (c) concerning intellectual property rights if the subcontractor is performing services related to TD's Intellectual Property; and
 - (d) in all cases, compliance with all laws and regulations related to the provision of the Goods and performance of the Services.
- (3) Supplier shall remain responsible for the performance of all, or any part of its obligations set out in this Agreement performed by subcontractors and for any act or omission by any subcontractor to the same extent as if the performance, act, or omission was Supplier's performance, act, or omission. Supplier shall ensure that each subcontractor performs any of Supplier's obligations set out in this Agreement.

5.8 Property Ownership and Rights

- (1) Supplier owns all right, title and interest in any works fixed in any medium (including software and databases), embodied inventions, trade-secrets, know-how, marks and logos, designs, including all intellectual property rights therein, developed by Supplier or by third parties at the direction of Supplier, prior to the Effective Date, that are used by Supplier to perform the Services ("**Supplier's Intellectual Property**").
- (2) TD owns all right, title and interest in any works fixed in any medium (including software and databases), embodied inventions, trade-secrets, know-how, marks and logos, designs, including all intellectual property rights therein, developed by TD, its Affiliates, or by Other Suppliers at the direction of TD, that may be shared with Supplier ("**TD's Intellectual Property**"). TD's Intellectual Property also includes all data shared with Supplier by or on behalf of TD, as well as any output (data, reports, records) generated as a result of the use of the Goods or Services.
- (3) All Confidential Information (as hereinafter defined), whether furnished before, during or after the termination or expiration of this Agreement, regardless of the manner in which it is furnished, is part of Supplier's Intellectual Property or TD's Intellectual Property as the Disclosing Party (as hereinafter defined) and is owned by the Disclosing Party or its licensors. Except for the right of the Receiving Party (as hereinafter defined) to use the Confidential Information for the limited purposes specified in Section 5.18(4), nothing in this Agreement grants or confers any license or other rights to the Receiving Party (as hereinafter defined) in any Confidential Information of the Disclosing Party.

5.9 Applicable Law and Non-Infringement

- (1) Supplier shall comply with all laws applicable to Supplier in its dealings with TD and in performing its obligations under this Agreement. If Supplier becomes aware of any charge or claim that Supplier is not in compliance with applicable law, Supplier shall promptly notify TD in a writing describing such charge or claim and Supplier's remediation plans.
- (2) Supplier represents and warrants that the performance by Supplier of its obligations under this Agreement, and the receipt, use and the possession of the Goods and Services (whether separately or together in combination) by TD, its Affiliates and their Personnel, customers, or Other Suppliers, in accordance with this Agreement, do not and will not infringe, violate or misappropriate the intellectual property rights of any third party.

5.10 Non-discrimination

- (1) Supplier represents and warrants that it is an equal opportunity employer, and Supplier shall not discriminate in the employment or advancement of Personnel, or in the selection of a subcontractor, because of a person's race, color, sex, sexual orientation, gender identity, national origin, religion, veteran status, or disability.
- (2) **To the extent applicable, Supplier will abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and require affirmative action to employ and advance in employment protected veterans and individuals with disabilities. Further, Supplier agrees to comply with the requirements stated in 29 CFR Part 471, Appendix A to Sub-part A.**

5.11 Export Control

Supplier acknowledges that the export and re-export of certain commodities and technical data are subject to applicable laws that prohibit or limit exports, transfers, or services for certain uses or to certain countries or end users, including Canada's *Export and Imports Permits Act*, and the Export Administration Regulations and the United States *Export Administration Regulations* (collectively, "**Export Control Laws**"). Supplier represents, warrants, and covenants that its performance of the Services, provision of the Goods and satisfaction of its obligations under this Agreement will not result in violation of any Export Control Laws.

5.12 Anti-Corruption and Bribery

- (1) Supplier represents that neither Supplier, its Affiliates, their Personnel, Representatives or subcontractors have engaged, or will engage, in any corrupt, fraudulent, unfair or deceptive practices in connection with this Agreement or any other business transactions involving TD, including directly or indirectly accepting bribes, offering, promising or providing to a person (including any political party, public official, regulatory authority or other government-related entity) a contribution, gift, bribe, loan, kick-back, payment of money or other benefit, regardless of form, for the purpose of influencing any act, decision or failure to act by such person or to secure an improper advantage to obtain, retain or direct business.
- (2) Supplier shall comply with, and shall cause its Affiliates, their Personnel, Representatives, and subcontractors to comply with, all applicable laws concerning anti-bribery and anti-corruption, including the Canadian *Corruption of Foreign Public Officials Act*, the UK *Bribery Act*, 2010 and the United States *Foreign Corrupt Practices Act* (collectively, "**ABAC Laws**"). Supplier represents, warrants, and covenants that none of Supplier, its Affiliates, Personnel, Representatives, or subcontractors have taken any action in connection with this Agreement or any other business transaction involving TD that would constitute a violation of any ABAC Laws.
- (3) Supplier represents, warrants, and covenants that neither Supplier nor its Affiliates nor its Personnel have or will have any undisclosed direct or indirect business or personal, financial, or other interest, in any person that would conflict with, or influence in any manner or degree, the selection of Supplier, the performance of the Services or provision of the Goods. Supplier further represents, warrants, and covenants that neither Supplier nor its Affiliates have any undisclosed relationship with any of TD's Personnel who is in any manner involved in the selection of Supplier, the performance of the Services or provision of the Goods.

5.13 Government Ethics and Elections

The Services shall not include any election-related activities or efforts to influence a government official, candidate for government office, or government function in any way whatsoever. No payment received by Supplier will be used on behalf of TD, in whole or in part, directly or indirectly, in connection with: (a) a federal, state, provincial, or local election, including for the benefit of a political party, political action committee or organization, referendum committee or candidate; or (b) lobbying, entertaining, or seeking to influence a government official, candidate for government office, or a government function.

5.14 Sanctions

Supplier shall comply with, and shall cause its Affiliates, their Personnel, Representatives (as defined in below) and subcontractors to comply with, all Sanctions Laws in connection with their respective business engagements. "**Sanctions Laws**" means: (a) the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), the *Canadian Criminal Code*, the *United States Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List*, the *United States Department of State's Designated Foreign Terrorist Organizations List*, and any similar restrictions published by the United Nations or any United States, Canadian or European regulatory authority regarding sanctions; or (b) any sanction, directive or other action by any Canadian, United States or European regulatory authority regarding terrorism or money laundering.

5.15 Accessibility

Supplier shall not provide a user interface (including any web pages or mobile screens accessible through any TD website or mobile app) as part of the Services or Goods, unless explicitly agreed to by the parties in writing that includes Supplier's agreement to comply with TD's accessibility requirements.

5.16 Models

- (1) A "**Model**" is a method or system that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process data into outputs that are quantitative estimates or predictions (not outputs that are qualitative or based on deterministic rules). A Model may use machine learning to generate outputs.
- (2) Supplier represents, warrants, and covenants that it will not use Models to provide the Services or Goods or incorporate Models into the Goods. Notwithstanding the foregoing, this restriction does not apply to Models that constitute productivity tools used by Supplier in the ordinary course of business that are incidental to the Services and Goods, and provided that such tools: (a) do not use TD's data (including any of TD's Confidential Information) for testing, training, development, or as inputs; and (b) are not designed to influence or determine TD's decision making (e.g., providing TD with features such as auto-correct, text editor, or suggested reply).

5.17 Force Majeure

- (1) "**Force Majeure Event**" means, with respect to a party, any act of God, flood, fire, earthquake, war, invasion, terrorism, riot or other civil unrest, national or regional emergency, pandemic, epidemic or other similar event not in the control of or caused by that party (or persons acting on its behalf), that prevents a party from complying with its obligations under this Agreement, except that a Force Majeure Event will not include a strike or other labor unrest that affects only one party, a change in applicable law, or an Incident (even if resulting from an attack by a foreign government or terrorist organization).
- (2) In the event either party is unable to perform its obligations under this Agreement due to a Force Majeure Event, such party will not be liable for damages to the other party resulting from such failure to perform or otherwise from such causes, provided that it has promptly notified the other party of the Force Majeure Event. Notwithstanding the foregoing, each party agrees to make good faith efforts to perform its obligations hereunder in event of a Force Majeure.
- (3) If Supplier is unable to perform any of its obligations under this Agreement (including any delay in performance) due to a Force Majeure Event, Fees and Expenses will be adjusted on an equitable basis taking into account, among other things, the duration of the Force Majeure Event and any degradation of Goods or Services as a result of such event.

- (4) If a Force Majeure Event substantially prevents or delays delivery of the Goods or performance of any Services for more than 90 consecutive days, TD may terminate this Agreement and TD will receive a pro-rata refund for any Goods or Services not provided to TD.

5.18 Confidentiality

- (1) **"Confidential Information"** means any non-public or proprietary information of a party (the **"Disclosing Party"**), regardless of form (oral, written, database or electronic), or whether it is marked "confidential", that is disclosed or made available to, or comes into the possession of, the other party (the **"Receiving Party"**), either directly or indirectly, through any means of communication or by observation, whether prior to or after the Effective Date. TD's Confidential Information, as a Disclosing Party, includes non-public or proprietary information of TD, its Affiliates, and their Personnel (including candidates for employment), Other Suppliers and customers.
- (2) Confidential Information does not include information:
- (a) that is, or becomes, generally available to the public other than as a result of breach of this Agreement;
 - (b) in the possession of the Receiving Party on a non-confidential basis prior to access or disclosure under this Agreement, as confirmed by documentary evidence;
 - (c) independently developed by the Receiving Party without any use of, or reference to, the Confidential Information, as confirmed by documentary evidence; or
 - (d) acquired in good faith from a third party, if such third party is not known by the Receiving Party to be prohibited from disclosing such information due to any obligation of confidence of any kind.
- (3) The Receiving Party shall keep the Confidential Information strictly confidential and not Handle (as defined below) any Confidential Information for any purpose other than as expressly permitted under 5.18(4) or as otherwise agreed to by the Disclosing Party in writing in advance. For greater certainty, this provision applies to all Confidential Information of the Disclosing Party, including such information that is anonymized, pseudonymized, aggregated or otherwise de-identified.
- (4) The Receiving Party may disclose Confidential Information to:
- (a) Personnel to the extent that "need to know" such Confidential Information to provide or receive the Goods or Services, or to exercise rights or perform obligations under this Agreement, where the Receiving Party has informed such Personnel in advance of the confidential nature of such Confidential Information and the Receiving Party's obligations under this Agreement;
 - (b) accountants, attorneys, consultants, advisors, and agents providing advice, counsel, or representation of the Receiving Party and its business (collectively **"Representatives"**) to the extent that they "need to know" such Confidential Information to provide professional advisory services relating to the business of the Receiving Party (including in the case of TD, the business of its Affiliates), and who are subject to an express duty of confidence in accordance with professional standards between them and the Receiving Party;
 - (c) subcontractors of Supplier to the extent that they "need to know" such Confidential Information to provide the Goods or Services, who have been engaged by Supplier in accordance with Section 5.7;
 - (d) Other Suppliers to the extent that they "need to know" such Confidential Information to: (i) solicit, procure, provide or facilitate additional, related or alternative Goods or Services; (ii) provide consulting services to TD in support of its operations; (iii) investigate or resolve an Incident (as defined below); or (iv) plan or implement a transition from all or part of the Goods or Services to an alternative provider or

solution; and, in all cases, who are subject to obligations of confidentiality no less stringent than those in this Agreement; and

- (e) a third party, to the extent required by applicable law or compelled to do so by court order or other judicial process. Such disclosure will be subject to the restrictions of any applicable protective order and the Receiving Party shall, to the extent permitted by applicable law, do the following:
 - (i) promptly give the Disclosing Party prior written notice of such disclosure, if legally permitted; and
 - (ii) use commercially reasonable efforts to provide the Disclosing Party with an opportunity to take action, if it desires, to challenge or contest such disclosure or seek a protective order; and
 - (f) any regulatory authority having jurisdiction over TD or TD's Affiliates if disclosed by TD as the Receiving Party.
- (5) Supplier will Handle all of TD's Confidential Information in a way that: (a) separates or partitions TD's Confidential Information from the information or data of other parties; and (b) Supplier can readily locate and return or destroy it in accordance with Section 5.18(7).
 - (6) Supplier will access, receive, collect, use, store, host process, retain, record, disclose, transmit, transfer, dispose of, manage or otherwise handle ("**Handle**") TD's Confidential Information at, and provide the Services and Goods from, the location inside Canada or the United States, and if stated in the Purchase Order, a specific address. For greater certainty, Supplier shall not Handle TD's Confidential Information or provide the Services and Goods outside Canada or the United States without the prior written approval of TD. Supplier will not change the location of its Handling of any TD's Confidential Information, or any location from which the Services or Goods are provided to TD, without TD's prior written consent.
 - (7) Upon the Disclosing Party's written request, the Receiving Party shall promptly return or destroy Confidential Information of the Disclosing Party in accordance with the Disclosing Party's instructions. Notwithstanding the foregoing, TD may retain Confidential Information required for regulatory and compliance purposes.
 - (8) Unless consented to in writing in advance by TD, or as otherwise permitted in accordance with Section 5.18(4), Supplier shall not: (a) publish or distribute any release, announcement, or other internal or external disclosure of any nature (including internal announcements to employees) relating to this Agreement or its subject matter; (b) use or display the name, logo, trademark or other similar intellectual property of TD; or (c) otherwise refer to or disclose the fact that TD is a customer of Supplier.
 - (9) Any breach of confidentiality by any individual or entity Handling Confidential Information on behalf of the Receiving Party will be deemed to be a breach of this Agreement as if otherwise committed by the Receiving Party. Disclosures made by a regulatory authority receiving Confidential Information will not be deemed to be a breach of this Agreement.
 - (10) For greater certainty, except for the right of the Receiving Party to use the Confidential Information as specified in 5.19(4), the Disclosing Party owns all right, title and interest to its Confidential Information. Except as expressly stated in Section 4.6(4) and Section 5.19(4), nothing in this Agreement grants or confers a license or other rights of the Disclosing Party in the Confidential Information to the Receiving Party.

5.19 Privacy

- (1) The parties do not intend for Supplier to receive any of TD's Confidential Information that can be used on its own or with other information to identify, describe, contact, or locate, or is otherwise reasonably capable of being associated with, a natural person/unique individual, including financial information, accounts and activities relating to a natural person/unique individual, and information that is otherwise governed by applicable data

protection and privacy laws and regulatory requirements ("**Privacy Laws**"), including any of the foregoing information that has been anonymized, pseudonymized, aggregated, or otherwise de-identified, all collectively referred to as "**Personal Information**".

- (2) If any Personal Information is inadvertently received by Supplier, Supplier agrees as follows: (a) Supplier shall immediately notify TD of its receipt of the Personal Information, in which case TD shall instruct Supplier on the prompt return or destruction of the Personal Information in accordance with 5.18(7); (b) Personal Information is Confidential Information that is not subject to the exceptions set forth in Section 5.18(2); (c) Supplier shall comply with all Privacy laws; and (d) Supplier is prohibited from Handling Personal Information except in accordance with Section 5.19(4).
- (3) If disclosure of Personal Information (other than business contact information described in Section 5.19(4) to Supplier becomes necessary for performance of the Services or provision of the Goods, before receiving or having access to such information, Supplier shall enter into an amendment to this Agreement or a separate agreement with TD that addresses the use and protection of Personal Information in accordance with applicable Privacy Laws and use and security requirements appropriate for the protection of such information.
- (4) In some jurisdictions, business contact information (a natural person's name, job title, business address, business telephone number or email address) is considered Personal Information. For any business contact information that is Personal Information, Supplier shall: (a) use such information only as necessary to provide the Goods or perform the Services; (b) Handle such information in accordance with applicable Privacy Laws; (c) implement and maintain appropriate technical and organizational security measures (including as stated in Section 5.20) to protect such information against unauthorized or unlawful Handling, loss, corruption or disclosure; and (d) not, by act or omission, put TD in breach of any applicable Privacy Laws.

5.20 Security

- (1) For as long as Supplier Handles any Confidential Information of TD or its Affiliates, Supplier shall protect and maintain the confidentiality and security of the Confidential Information in compliance with applicable law, current industry standards and best practices used or observed by leading Canadian and United States providers of services to major financial institutions engaging in activities similar to Supplier, to: (a) guard against any loss of, or any accidental, unauthorized, unauthenticated or unlawful Handling of such Confidential Information; and (b) to protect the privacy, confidentiality, integrity and availability of such Confidential Information.
- (2) If there is any unauthorized Handling or loss of, or inability to account for any Confidential Information of TD (an "**Incident**"), Supplier shall: (a) notify TD of a known or suspected occurrence of an Incident within twenty-four (24) hours or the time required by applicable law if less, in accordance with Section 5.20(3); (b) take those actions as may be necessary or reasonably requested by TD to contain, mitigate, eradicate, remediate and minimize the Incident; and (c) cooperate with TD to minimize the effect of the Incident and share information with TD and its regulators with respect to the Incident.
- (3) In addition to the other notices stated in this Agreement, Supplier will report any Incident to TD by both email and telephone at the following address and number: td.csoc@td.com; and 1-888-550-8102.

5.21 Termination, Transition and Survival

- (1) This Agreement is effective as of the Effective Date and will continue until the earlier of: (a) the expiration of any term or period of service set forth in the Purchase Order; or (b) termination of this Agreement in accordance with the provisions of this Section 5.21.
- (2) TD may terminate this Agreement prior to the end of its Term, without cause upon 30 days' prior written notice to Supplier.

- (3) Supplier may terminate this Agreement, prior to the end of the Term, if TD materially breaches any of its obligations under the Agreement (including its obligation to pay undisputed amounts in accordance with Section 5.4(1)) and does not cure such breach within 45 days of receipt of written notice of such breach from Supplier.
- (4) Upon the end of the Term or upon receipt of a notice of termination:
 - (a) Supplier shall immediately cease all performance under this Agreement, except as otherwise directed by TD;
 - (b) Supplier shall furnish TD (or to an Affiliate designated by TD) with the Goods and Services (in full or its then current state of completion if not finished);
 - (c) Supplier shall transfer, assign, and deliver to TD or its designated Affiliate any software, hardware, or other equipment acquired by TD.
- (5) Sections 2.2, 2.4, 2.5, 2.7(1)(a), 3.3, 3.4, 3.7(7), and Sections 1.0 and 5.0 in their entirety, will survive the expiration or termination of this Agreement.

5.22 Disclaimer of Warranties and Obligations

- (1) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OR THE PRODUCT DOCUMENTATION OR SOFTWARE DOCUMENTATION, AS APPLICABLE, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF EITHER PARTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, FOR THIS PURCHASE ORDER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The application of the United Nations Convention on Contracts for the International Sale of Products and any local implementing legislation related to the United Nations Convention on Contracts for the International Sale of Products is expressly excluded from this Agreement.
- (2) Supplier represents and warrants as follows:
 - (a) the execution, delivery and performance of this Agreement will not conflict with, violate, or result in any breach of any agreement or other obligation to which the Supplier is a party; and
 - (b) Supplier has, in all material respects, full power and authority to own its properties and conduct its business as presently owned or conducted, and to execute, deliver and perform its obligations in connection with this Agreement and grant the rights, licenses and benefits set out in this Agreement.

5.23 Remedies Cumulative

Unless otherwise expressly stated in the Agreement, the rights and remedies of the parties hereunder are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.24 Supplier Insurance

- (1) Supplier shall, at its own expense, secure and maintain in full force and effect, insurance with reputable insurance companies qualified to do business in the jurisdiction where the Goods will be delivered or the Services will be performed, with coverage and coverage amounts that meet generally accepted industry standards or applicable laws for the risks arising from the types of Goods and Services provided by Supplier. If Supplier Personnel or its subcontractors are performing Services at a TD location in the United States, such coverage will include workers' compensation with coverage limits as required by applicable law.

- (2) Upon request, Supplier shall deliver to TD certificates of insurance, or other proof of coverage satisfactory to TD, evidencing compliance with the terms hereof.

5.25 Indemnification

- (1) Supplier shall indemnify, defend and hold harmless TD, its Affiliates, their Personnel, third-party providers, and agents (collectively, the "**TD Indemnitees**") from and against any and all claims, losses, costs, damages (including enhanced, punitive, and willful), expenses, liabilities, settlement payments, interest, awards, judgments, fines, fees, penalties and legal defense fees and costs (including the legal fees and costs incurred to enforce the terms of this indemnity against Supplier, if necessary) suffered or incurred by any of them directly or indirectly arising from claims for any of the following:
- (a) personal injury (including death), property damage, gross negligence, willful misconduct, or fraud;
 - (b) Supplier's obligations to its Personnel or claims by Supplier's Personnel to be agents or employees of TD or its Affiliates under a misclassification theory or similar basis;
 - (c) failure to comply with applicable law;
 - (d) penalties, additional Taxes, costs, or interest that may be assessed or levied by a Taxation Authority due to the failure of Supplier to comply with any of its Tax obligations, including the failure to remit any Taxes collected from TD to Taxation Authorities, or to file any return, form, or information statement that may be required by a Taxation Authority;
 - (e) breach of Supplier's obligations under Sections 5.19, 5.20 or 5.21; or
 - (f) a claim that the Services, Supplier's Intellectual Property, the Goods or the provision, license or use thereof, directly, or indirectly infringes upon, or misappropriates, the intellectual property of a third party ("**Infringement**").
- (2) The provisions of the indemnity set forth in Section 5.25(1)(f) will not apply to the extent any alleged Infringement claim results from:
- (a) the use by TD of the Services, Supplier's Intellectual Property or Goods in a manner not permitted by this Agreement, if such infringement claim would not have arisen but for such unauthorized use;
 - (b) the modification of the Services, Supplier's Intellectual Property or Goods, by or on behalf of TD in a manner not permitted by this Agreement, if such infringement claim would not have arisen but for such modification; or
 - (c) the failure of TD to use within a reasonable time updates that were provided by the Supplier to avoid infringement, provided such update is identified in writing as being provided for such purpose.

5.26 Limitation of Liability

- (1) Subject to Section 5.26(2), in no event will a party be liable to the other party with respect to this Agreement for special, indirect, consequential, or punitive damages.
- (2) Section 5.26(1) will not apply to limit:
- (a) Supplier's liability for: (i) its failure to comply with applicable law in connection with its obligations under this Agreement; or (ii) an Incident or breach of Section 5.19 or Section 5.20;

- (b) The liability of either party for a breach of Section 5.18;
- (c) Supplier's obligation to indemnify, defend and hold TD Indemnitees harmless under Section 5.25; and
- (d) Either party's liability for gross negligence, willful misconduct, or fraud of the party or its Personnel.

5.27 Books and Records; Audit Rights

Supplier shall keep accurate books, records, and accounts in connection with the performance of its obligations under this Agreement. Supplier shall make its records and systems (as applicable) available to TD, its third-party auditor (who is bound by a confidentiality agreement), or TD's regulators, upon reasonable advance written notice.

5.28 Assignment

- (1) This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties permitted in this Agreement.
- (2) Subject to Section 5.28(3) and except for Section 5.7, neither party may assign, delegate or subcontract all or any portion of this Agreement without the prior written consent of the other party, and any assignment, delegation, or subcontracting in violation of this Section will be null and void.
- (3) TD may, without consent and upon written notice to Supplier, assign this Agreement or any rights or obligations hereunder in whole or in part to: (a) any of TD's Affiliates; (b) a purchaser of all or substantially all of the assets or entities that comprise an identifiable segment, portion, division or unit of a business of TD; (c) a successor in interest of TD; (d) as part of a corporate reorganization, amalgamation, consolidation or merger; or (e) pursuant to a request of a governmental authority. In each case, the assignee or transferee will be bound by, and TD will be released of, the assigned portion of its obligations under this Agreement.

5.29 Governing Law and Attornment; Jury Trial Waiver

- (1) If the TD entity identified on the Purchase Order is The Toronto-Dominion Bank or is a TD entity other than the Affiliates referenced in Section 5.29(2), the following will apply:
 - (a) this Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and laws of Canada applicable therein;
 - (b) for the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement; and
 - (c) TD and Supplier each hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.
- (2) If the TD entity identified on the Purchase Order is TD Bank, N.A. or TD Securities (USA), LLC, the following will apply:
 - (a) this Agreement will be governed by and construed in accordance with the laws of the State of New York (without regard to conflict of law provisions) and the federal laws of the United States; and
 - (b) for the purpose of all legal proceedings arising from this Agreement or transactions contemplated hereunder, TD and Supplier each hereby agrees to the exclusive jurisdiction and venue of the courts of the State of New York.

- (3) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY SUCH SUIT, ACTION, OR PROCEEDING.

5.30 Notice

- (1) All legal or other notices or requests under this Agreement (other than routine operational communications) will be in writing and will be deemed duly given: (a) when delivered by hand; (b) except for a notice of termination permitted under this Agreement or a notice relating to a dispute, by e-mail when received; (c) on the designated day of delivery after being given to an express overnight courier with a reliable system for tracking delivery; or (d) six days after the day of mailing, when mailed by Canada Post or USPS, registered or certified mail, return receipt requested and postage prepaid, to the address stated in the Purchase Order or to such other address as the relevant party may from time to time advise by notice in writing in accordance with this Section 5.29.

5.31 No Publicity

Neither party shall use the name or trademarks of the other party in any form of publicity whatsoever, including but not limited to providing references, without the other party's prior written consent.

5.32 No Consent or Conflict; Authority

Supplier represents and warrants that: (a) the execution, delivery and performance of this Agreement will not conflict with, violate or result in any breach of any agreement or other obligation to which Supplier is a party; and Supplier has, in all material respects, full power and authority to own its properties and conduct its business as presently owned or conducted, and to execute, deliver and perform its obligations in connection with this Agreement and grant the rights, licenses and benefits set out in this Agreement.

5.33 Amendment and Waiver

- (1) No amendment to this Agreement will be effective unless made by written instrument signed by authorized signing officers of each of the parties.
- (2) No waiver of any obligation, remedy, or exercise of right for this Agreement will be effective or binding unless made in writing and signed by an authorized signing officer of the waiving party. Any waiver will be limited to the specific obligation, remedy, or exercise of right waived. The failure of any party at any time to require performance by the other party of any provision of this Agreement will not affect in any way the full right to require such performance at any subsequent time; nor will a waiver by any party of an obligation, remedy or right for this Agreement be taken or held to be a waiver of the provision itself.

5.34 Severability

Wherever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any portion of this Agreement is declared invalid for any reason, such declaration will have no effect upon the remaining portions of this Agreement, which will continue in full force and effect as if this Agreement had been executed with the invalid portions thereof deleted.

5.35 Relationship

Other than the relationship of independent parties contracting for Goods and Services, nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, to create any relationship between the parties including the relationship of partnership or joint venture or a relationship of principal and agent, employer-employee, master-servant, or franchisor-franchisee between TD or its Affiliates and Supplier.

5.36 Choice of Language

The parties confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, be drawn up in the English language only. *Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.*

5.37 Entire Agreement

The Agreement constitutes the entire agreement between the parties with respect to its subject matter and cancels and supersedes any other understandings and agreements between the parties with respect to the subject matter of the Agreement, whether written or oral.

6.0 INDEX TO DEFINED TERMS

Each defined term and the meaning attributable to it is set out in the Section referenced below:

ABAC Laws.....	5.12(2)	Product Warranty Period.....	2.7(1)(c)(i)
Affiliate.....	1.3(1)	Products.....	2.1(1)
Agreement.....	1.1	Professional Services Term.....	4.3(1)
Confidential Information.....	5.18(1)	Professional Services.....	4.1(1)
Contract Workspace (CW)	1.4(3)	Receiving Party.....	5.18(1)
Deliverables.....	4.1(2)	Representatives.....	5.18(4)(b)
Disabling Code.....	3.5(1)(d)	Resolution.....	3.7(4)
Disclosing Party.....	5.18(1)	Sales Tax	5.3(2)
Effective Date.....	1.2	Sanctions Laws.....	5.14
Embedded Software License.....	2.5(1)	Section.....	Preamble
Expenses.....	5.2(1)	Services.....	5.1
Export Control Laws.....	5.11	Software Delivery Date.....	3.2(3)
Fees.....	5.2(1)	Software Delivery Location.....	3.2(1)
Force Majeure Event.....	5.17(1)	Software Documentation.....	3.1(2)
Goods	5.1	Software Error.....	3.7(3)
GST	5.3(5)	Software Maintenance	3.7(1)
Hardware.....	2.1(1)	Software Warranty Period.....	3.5(1)(b)(i)
HST.....	5.3(5)	Software.....	3.1(1)
Incident.....	6.20(2)	Supplier.....	Preamble
Infringement.....	5.25(1)(f)	Supplier's Intellectual Property.....	5.8(1)
Losses.....	5.25(1)	Taxation Authority.....	5.3(1)
Other Suppliers.....	1.3(2)	Taxes.....	5.3(1)
Personal Information.....	5.19(1)	TD Indemnities.....	5.25(1)
Personnel.....	1.3(2)	TD.....	Preamble
Product Delivery Date.....	2.3(1)	TD's Intellectual Property.....	5.8(2)
Product Delivery Location.....	2.3(1)	Terms and Conditions.....	Preamble
Product Error.....	2.9(3)	Updates.....	3.1(3)
Product Installation Date.....	2.6(1)(a)	Withholding Tax.....	5.3(6)
Product Installation Location.....	2.6(1)(a)	Workaround.....	3.7(4)
Product Maintenance	2.9(1)		
Purchase Order.....	Preamble		
Product Documentation.....	2.1(2)		