



PURCHASE ORDER

IMPORTANT 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 7.0). 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; Professional Services and Deliverables; or Sponsorship.
- (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;
 - (c) Professional Services and Deliverables, Section 4.0; or
 - (d) Sponsorship, Section 5.0.

Sections 2.0 through 5.0 include the General Rights and Obligations in Section 6.0, except as noted in Section 5.7.

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 date on the Purchase Order (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. TD shall be responsible and fully liable for all acts and omissions of its Personnel. Supplier shall be responsible and fully liable for all acts and omissions of its Personnel.

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 rights, title and interests 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 2.6 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 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**"). 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.

4.3 Term

- (1) Supplier shall commence the Professional Services on the Effective Date and continue until completion, or 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) The parties agree as follows 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, 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) Supplier represents and warrants 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; and
 - (c) for Professional Services and Deliverables that includes a user interface, Supplier shall adhere to applicable law and industry standards for accessibility.
- (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. TD hereby grants Supplier a royalty-free, non-exclusive, revocable license for the term of each Purchase Order to: (a) use such TD's Intellectual Property solely for the purpose of fulfilling Supplier's obligations under this Agreement; and (b) sublicense the rights referred to in this Section 4.6(5) to a subcontractor solely to the extent necessary to enable subcontractor to fulfill its obligations to provide the Professional Services and Deliverables under the Purchase Order. Supplier is prohibited from using such TD's Intellectual Property for any purpose other than as permitted in this Section 4.6(5).

- (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 SPONSORSHIP

5.1 Description

- (1) "**Program**" means the charitable, non-profit or community functions of Supplier, including specific activities or events, as described in the Purchase Order.
- (2) "**Sponsor**" means a party that pays the Fees (as hereinafter defined) or makes in-kind contributions to Supplier in support of the Program. Such payment or contribution is a "**Sponsorship**".
- (3) For purposes of this Section 5.0, and as applicable in Section 6.0, "Supplier" is the charitable, non-profit or community entity that provides the Program.

5.2 Program / Sponsorship

- (1) Supplier shall carry out the Program and hereby designates TD as a Sponsor.
- (2) As a Sponsor, TD shall pay Supplier the Fees or provide in-kind contributions as set forth in the Purchase Order.
- (3) Program may include public recognition, advertising and participation activities, as described in solicitation, marketing and other published materials for the Program, such as: on-site presence / signage; advertising in paid and social media; acknowledgment in press conferences and press releases; acknowledgement in other collateral material (e.g. board / annual reports of Supplier); and hosting and hospitality opportunities (e.g. complementary tickets to events; VIP access). In no event will Supplier send commercial electronic messages (within the meaning of applicable law) on behalf of TD or that include TD's Marks without TD's prior written approval.
- (4) Supplier acknowledges that TD will be eligible for such public recognition, advertising and participation activities made available by Supplier to Sponsors based upon the level and nature of their Sponsorship.

5.3 Term

- (1) Supplier shall provide the Program on the Effective Date and continue for the period specified in the Purchase Order, but in no event later than 24 months after the Effective Date, unless terminated sooner in accordance with provisions set forth in this Agreement ("**Program Term**").
- (2) Upon the end of the Program Term, Supplier shall immediately (a) cease use of TD's Marks (as hereinafter defined), (b) terminate the Link (as hereinafter defined) to the Destination Page (as hereinafter defined), and (c) cease all social media activities as described in Section 5.3(8).

5.4 Intellectual Property Ownership and Usage Rights

- (1) Supplier's Intellectual Property (as hereinafter defined) includes its logos, trademarks, trade names and copyrighted information (collectively, "**Supplier's Marks**"). TD's Intellectual Property (as hereinafter defined) includes its logos, trademarks, trade names, and copyrighted information, and any license rights to the logos, trademarks, trade names and copyrighted information of its Affiliates (collectively, "**TD's Marks**"). Supplier's Marks and TD's Marks are collectively, the "**Marks**".

- (2) Supplier grants to TD, for the duration of the Program Term, a non-transferable, non-exclusive, royalty-free license to use, reproduce and publicly display Supplier's Marks, in any form of media, solely for the purpose of promoting or advertising the existence of the Program or TD's relationship with Supplier.
- (3) TD grants to Supplier, for the duration of the Program Term, a non-transferable, non-exclusive, royalty-free license to use, reproduce and publicly display the TD's Marks, in any form of media, solely for the purpose of promoting, carrying out, or advertising the existence of the Program or TD's relationship with Supplier.
- (4) Each party shall comply with any brand usage standards or guidelines that govern the display, colour, typography, size, background, etc. of the use of the other party's Marks that are provided to such party by the other party.
- (5) Each party may use the other party's Marks solely as necessary to promote the Program, however, each agrees to submit all instances of any use of the Marks to the other party for approval in advance of any disclosure to third parties and after an instance has been approved by a party, to not depart therefrom in any material respect without further approval. Requests for approvals will be responded to promptly and such approvals will not be unreasonably withheld.
- (6) Each party recognizes the great value of the goodwill associated with the other's Marks and acknowledges that the goodwill attached thereto belongs to the other party (and, regarding TD's Marks, to its Affiliates). All ownership rights in the Marks will remain vested in the originating party and any intellectual property rights in and to the Marks that may accrue to the other party will inure to the benefit of the originating party and will be assigned to it upon request. Neither party shall at any time, do or knowingly permit to be done any act or thing that would in any way impair the rights of the originating party, that would affect the validity of the Marks or any part thereof, or that would depreciate the value of the Marks or any part thereof. The limited rights granted in this paragraph will be terminated upon expiration of the Program Term or termination of this Agreement.
- (7) In the event Supplier provides for an outbound web-link (a "**Link**") from its website (the "**Linking Page**") to TD's website (the "**Destination Page**"), the Link will be presented on the Linking Page solely using TD's Marks, encoded with hypertext markup language establishing a function link to the Destination Page. In addition,
 - (a) TD shall be notified by Supplier immediately of any changes or alterations to the Linking Page;
 - (b) Supplier shall not, without TD's prior written consent, post or display, on the Linking Page operator any price, commission, fee, rate or other detailed information with respect to any of TD's products or services;
 - (c) no charge or other monetary compensation will be due from either party to the other in connection with the Link;
 - (d) the Linking Page will not contain any illegal or illicit content, content that could reasonably be deemed offensive or objectionable, or hypertext link or make any other reference or connection directly to any web page or other internet site containing any such illegal, illicit, offensive or objectionable content (without limitation of the foregoing, the parties agree that the following will be deemed offensive or objectionable for purposes of the Agreement: (i) content that is pornographic, lewd, salacious or obscene; and, (ii) content constituting or promoting any form of gambling or game of chance);
 - (e) Supplier shall permit and provide TD with free access to the Linking Page, and any other internet web pages to which the Linking Page directly links or connects;

- (f) Upon reasonable prior notice from TD, Supplier shall permit TD and its designees to conduct security and external vulnerability testing of the Linking page provided that such testing is conducted with due care in a workmanlike and non-destructive manner. Supplier shall cooperate with such testing by, among other things, providing TD and its designees with any and all information and documents requested and reasonably needed for purposes of preparing for, conducting or facilitating such testing; and
 - (g) Supplier shall promptly communicate to TD all complaints, and all claims by persons relating in any way to the Linking page and/or the Link.
- (8) TD's Marks may be placed on social media by Supplier only after Supplier receives written approval of each instance of such placement from TD. Supplier must ensure, for each social media site on which TD's Marks are posted, that all terms-of-use are satisfied. As used in this Agreement, social media refers to an interactive computer mediated forum which allows the creation and/or sharing of ideas, information, or other forms of expression via virtual means. Social media sites include, but are not limited to Facebook, Instagram, Twitter, YouTube, Tumblr, Snap Chat, and Pinterest.

5.5 Warranties

- (1) Supplier represents and warrants that:
 - (a) Supplier is a recognized charitable, non-profit or community organization in good standing with regulatory and tax authorities, and shall provide to TD, upon its request, evidence of its organizational status and tax standing; and
 - (b) Supplier shall provide the Program in accordance with the requirements set forth in this Section 5.0.
- (2) The representations and warranties in this Section 5.5 are in addition to, and not in substitution for, other representations and warranties set forth in this Agreement.

5.6 Government Ethics and Elections

- (1) Supplier acknowledges and agrees that the Program is solely for a charitable, community or civic purpose, and the Program and all contributions received from its Sponsors (which include TD), will not be used, in any way, to influence a government official, an election, candidate for government office, or a government function in any way whatsoever.
- (2) No proceeds from the Sponsorship or any payments or in-kind contributions from TD, will be used, 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.
- (3) Supplier shall be fully liable for the Program and the use of proceeds from its Sponsors, including any breach of this Agreement or violation of law or regulations governing Supplier, the Program and its Sponsorship. Supplier fully indemnifies TD from any claim that the Program or any Sponsorship violates any laws or regulations, including lobbying registration or reporting requirements, government ethics regulations or election laws.

5.7 Additional Rights and Obligations

The terms and conditions of this Section 5.0 include, by reference, the Rights and Obligations in Section 6.0, except the definition of Confidential Information, as set out in Section 6.15(1), is limited to the terms of this Agreement.

6.0 GENERAL RIGHTS AND OBLIGATIONS

6.1 Applicability

All references in this Section 6.0 to "**Goods**" means the Products, Software or Deliverables, and all references to "**Services**" means Product Maintenance, Software Maintenance, Professional Services, the Program or Sponsorship-related services.

6.2 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.
- (2) Supplier is responsible for performing its obligations set out in this Agreement at its own expense without charge or additional cost to TD. Only Expenses for out-of-pocket costs, if any, may be charged to TD at cost, without mark-up or administrative charge unless expressly stated in the Purchase Order.
- (3) TD is not obligated to pay Supplier for any Fees, Expenses or other charges that are not expressly stated in the Purchase Order or exceed any budgeted amount expressly stated therein.
- (4) The 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.

6.3 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, duties, or charges (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 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 6.3(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.

6.4 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 6.3(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.

6.5 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.

6.6 Third Parties and Personnel

- (1) 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 to 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.

6.7 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 6.7(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.

6.8 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**").
- (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 6.15(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.

6.9 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, and 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.

6.10 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) **For Goods and Services performed in the United States, TD and Supplier shall abide by the requirements of 41 CFR §§ 60-1.4(a), 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 prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that TD and Supplier take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Further, TD and Supplier agree to comply with the requirements set forth at 29 CFR Part 471, Appendix A to Sub-part A.**

6.11 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 U.S. International Traffic in Arms Regulations (collectively, "**Export Control Laws**"). Supplier represents and warrants 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.

6.12 Anti-Corruption and Bribery

- (1) 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 offering 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 and warrants 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 and warrants to TD that neither Supplier nor its Affiliates 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 and warrants that neither Supplier nor its Affiliates have any undisclosed

relationship with any of TD's Personnel who is in any manner involved the performance of the Services or provision of the Goods.

6.13 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 terrorism sanctions; or (b) any sanction, directive or other action by any Canadian, United States or European regulatory authority regarding terrorism or money laundering.

6.14 Force Majeure

- (1) "**Force Majeure Event**" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not 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 any strike or other labor unrest that affects only one party, a change in applicable law, or an epidemic, pandemic, public health alert or other public health-related emergency.
- (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. Notwithstanding the foregoing, each party agrees to make good faith efforts to perform its obligations hereunder in event of a Force Majeure.
- (3) While 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.

6.15 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. Confidential Information includes non-public or proprietary information of: (a) TD, its Affiliates, and their Personnel, Other Suppliers and customers; and (b) Supplier and its subcontractors.
- (2) Confidential Information does not include:

- (a) information that is, or becomes, generally available to the public other than as a result of breach of this Agreement;
 - (b) information 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) information independently developed by the Receiving Party without any use of, or reference to, the Confidential Information, as confirmed by documentary evidence; or
 - (d) information 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 use, reproduce, disclose or allow access to, transfer or make available any of the Confidential Information for any purpose other than as expressly permitted under Section 6.14(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 pseudonymized or aggregated or both.
- (4) The Receiving Party may disclose Confidential Information to:
- (a) Personnel to the extent that they "need to know" such Confidential Information to provide or receive the Goods or Services, where the Receiving Party has informed such Personnel in advance of the confidential nature of such Confidential Information and the Receiving Party's obligations hereunder;
 - (b) accountants, attorneys, 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 6.7;
 - (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) any party or person, 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; 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.

Confidential Information may also be disclosed by TD, as the Receiving Party, to any regulatory authority having jurisdiction over TD or TD's Affiliates.

- (5) Supplier shall keep all of TD's Confidential Information that is stored by Supplier in tangible form physically segregated from other tangible forms of information and shall keep all TD's Confidential Information that is in electronic form logically segregated from any other information of Supplier, its subcontractors or their respective customers.
- (6) Supplier shall not access, use, store or transmit any of TD's Confidential Information outside Canada or the United States without the prior written approval of TD, which may be withheld by TD. The location of any TD's Confidential Information permitted outside of Canada or the United States must be established and may not be relocated unless agreed to by TD.
- (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(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 a duty of confidence or a confidentiality obligation by any individual or entity receiving 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.

6.16 Privacy

- (1) The parties do not intend for Supplier to obtain any of TD's Confidential Information of a personal or sensitive nature that can be used on its own or with other information to identify, contact or locate a natural person, including financial information, accounts and activities relating to a natural person ("**Personal Information**").
- (2) If any Personal Information is disclosed to or obtained by Supplier, Supplier agrees as follows: (a) Personal Information is Confidential Information that is not subject to the exceptions set forth in Section 6.15(2); (b) Supplier shall comply with all data protection and privacy laws and regulatory requirements applicable to Personal Information; (c) Supplier is prohibited from using Personal Information except as permitted in Section 6.14(4); and (d) Supplier shall immediately notify TD of its receipt of Personal Information in which case TD shall instruct Supplier on the prompt return or destruction of the Personal Information in accordance with Section 6.14(7).
- (3) If disclosure of Personal Information to Supplier becomes necessary for performance of the Services, 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 data protection and privacy laws, regulatory requirements, and TD's use and security requirements.
- (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) access, use or process such information in accordance with applicable data protection and privacy laws; (c) implement and maintain appropriate technical and organizational security measures to protect such information against unauthorized or unlawful access, loss, corruption or disclosure; and (d) not, by act or omission, put TD in breach of any applicable data protection and privacy laws.

6.17 Security

- (1) For as long as any Confidential Information of TD or its Affiliates is in Supplier's possession or control, Supplier shall maintain security measures 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: guard against any accidental, unauthorized, unauthenticated or unlawful access, copying, use, disclosure, loss or other handling or processing of such Confidential Information; and to protect the privacy, confidentiality, integrity and availability of such Confidential Information.
- (2) If there is any unauthorized access to, disclosure or loss of, or inability to account for any Confidential Information of TD (an "**Incident**"), Supplier shall immediately, but in no event later than 48 hours after becoming aware of the Incident: (a) notify TD of the Incident; (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.

6.18 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, including the Professional Services Term or Program Term, as applicable; or (b) termination of this Agreement in accordance with the provisions of this Section 6.18.
- (2) A party may terminate this Agreement, for cause, immediately upon written notice to the other party, in each of the circumstances set forth below:
 - (a) if the other party materially breaches its obligations under this Agreement and fails to cure such breach within 30 days after receipt of written notice of such default from a party;
 - (b) if the other party materially breaches any provision of this Agreement that is not capable of being cured, including any breach for which a party has an immediate right of termination expressly stated in this Agreement; or
 - (c) if the other party becomes insolvent (generally unable to pay its debts as they become due) or is the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or makes a general assignment for the benefit of its creditors.
- (3) In addition to Section 6.18(2), TD may terminate this Agreement for Product Maintenance, Software Maintenance, Professional Services or Sponsorship, without cause, upon 10 days' prior written notice to Supplier. TD shall reimburse Supplier for reasonable expenses incurred by reason of such termination.
- (4) Upon receipt of notice of termination, Supplier shall stop all performance under this Agreement, except as otherwise directed by TD, and shall furnish TD with Goods and Services (in full or its then current state of completion if not finished).

- (5) Sections 2.2, 2.4, 2.5, 2.7(1)(a), 3.3, 3.4, 3.7(7), and Sections 1.0 and 6.0 in their entirety, will survive the expiration or termination of this Agreement.

6.19 Disclaimer of Warranties and Obligations

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.

6.20 Remedies Cumulative

Unless otherwise expressly stated herein, 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.

6.21 Third Party 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.

6.22 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 third party 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) (collectively, "**Losses**") suffered or incurred by any of them directly or indirectly arising from claims for any of the following:
- (a) personal injury (including death) or 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 collect Sales

Taxes or 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 6.15, 6.16 or 6.17; or
 - (f) a claim that 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 6.22(1)(f) will not apply to the extent any alleged Infringement results from:
- (a) alterations to Supplier's Intellectual Property or Goods where such alleged Infringement would not have occurred but for such alteration (except for those alterations made by Supplier or its Representatives or on Supplier's instructions or otherwise made prior to TD's receipt thereof);
 - (b) failure of TD to use within a reasonable time updates or modifications that were provided by Supplier to avoid Infringement, provided such updates or modifications are identified in writing as being provided for such purpose; or
 - (c) use of Supplier's Intellectual Property or Goods in connection with, or in combination with, any equipment, devices, software or other service which has not been supplied, recommended or approved by Supplier, where such alleged Infringement would not have occurred but for the use of such Supplier's Intellectual Property or Goods in connection with or in combination with such equipment, devices, software or other service.

6.23 Limitation of Liability

- (1) Subject to Section 6.22(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 6.22(1) will not apply to limit: (a) Supplier's obligation to indemnify, defend and hold TD Indemnitees harmless under Section 6.21; and (b) Supplier's liability for gross negligence, willful misconduct, or fraud of it or its Personnel.

6.24 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.

6.25 Assignment (including Corporate Changes)

- (1) This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties permitted herein.
- (2) Subject to Section 6.25(3) and except for subcontracting expressly permitted in accordance with Section 6.7, 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.

6.26 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 6.26(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.

6.27 Notice

- (1) Any notice, request, consent or other communication required or made hereunder (other than routine operational communications) must be delivered or given to the parties as follows: (a) for TD at the email address TD.PO-Notices@td.com; and (b) for Supplier at the address specified in the Purchase Order; or (c) to such other address as the relevant party may from time to time advise by notice in writing in accordance with this Section.

- 6.28 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.

6.29 No Publicity

Except as set forth in Section 5.4, 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.

6.30 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.

6.31 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 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.

6.32 Severability

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.

6.33 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.

7.0 INDEX TO DEFINED TERMS

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

ABAC Laws.....	6.12(2)	Product Warranty Period.....	2.6(1)(i)
Affiliate.....	1.3(1)	Products.....	2.1(1)
Agreement.....	1.1	Professional Services Term.....	4.3(1)
Confidential Information.....	6.15(1)	Professional Services.....	4.1(1)

Contract Workspace (CW)	1.4(3)	Program.....	5.1(1)
Deliverables.....	4.1(2)	Program Term.....	5.3(1)
Destination Page.....	5.4(7)	Receiving Party.....	6.15(1)
Disabling Code.....	3.5(1)(d)	Representatives.....	6.15(4)(b)
Disclosing Party.....	6.15(1)	Resolution.....	3.7(4)
Effective Date.....	1.2	Sales Tax	6.3(2)
Embedded Software.....	2.15(1)	Sanctions Laws.....	6.13
Expenses.....	6.2(1)	Section.....	Preamble
Export Control Laws.....	6.11	Services.....	6.1
Fees.....	6.2(1)	Software Delivery Date.....	3.2(3)
Force Majeure Event.....	6.14(1)	Software Delivery Location.....	3.2(1)
Goods	6.1	Software Documentation.....	3.1(2)
GST	6.3(5)	Software Error.....	3.7(3)
Hardware.....	2.1(1)	Software Maintenance	3.7(1)
HST.....	6.3(5)(l)	Software Warranty Period.....	3.5(1)(b)(i)
Incident.....	6.17(2)	Software.....	3.1(1)
Infringement.....	6.22(1)(f)	Sponsor.....	5.1(2)
Link	5.4(7)	Sponsorship.....	5.1(2)
Linking Page.....	5.4(7)	Supplier.....	Preamble
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Marks.....	5.4(1)	Supplier's Marks.....	5.4(1)
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Personnel.....	1.3(3)	TD Indemnitees.....	6.22(1)
Product Delivery Date.....	2.3(1)	TD.....	Preamble
Product Delivery Location.....	2.3(1)	TD's Intellectual Property.....	6.8(2)
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Product Installation Date.....	2.6(1)(a)	Terms and Conditions.....	Preamble
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Product Maintenance	2.9(1)	Withholding Tax.....	6.3(6)
Purchase Order.....	Preamble	Workaround.....	3.7(4)
Product Documentation.....	2.1(2)		