

## BARNET TECHNOLOGIES CORPORATION - TERMS AND CONDITIONS

### 1. SERVICES

**1.1 Services.** Commencing on the Effective Date and continuing during the subscription term as set out in this Agreement, Barnet will provide Client and its affiliates with access to and use of the Platform as a managed online service as set out in the Order Form (collectively, the “**Services**”).

**1.2 Maintenance and Support.** As part of the Services, Barnet will provide routine maintenance of the Platform and such further management and support services (if any) set forth in the Order Form, including by taking reasonable measures to correct Errors in the Platform or Services as soon as reasonably practicable, as determined by Barnet in its sole discretion taking into account the Error’s severity and effects. In this Agreement, “**Error**” means a reproducible defect in the Platform or Services, when accessed and used from equipment meeting the System Requirements, that causes the Platform or Services not to perform substantially in accordance with Barnet’s current Documentation.

**1.3 Access to the Services and Documentation.** Subject to Client’s compliance with this Agreement, Barnet grants Client a limited, non-exclusive, non-licensable or sub-licensable, term-limited (as set out in Article 8), non-transferable (except in compliance with Section 9.2) right during the Term to:

- (a) access and use the Services, solely for use by Authorized Users in accordance with this Agreement and for Client’s internal business use; and
- (b) use and reproduce all user documentation and any other operating, training and reference manuals provided by or through Barnet relating to the use of the Platform and Services (collectively, the “**Documentation**”) solely as is reasonably necessary for Client’s internal business use related to the rights granted under this Section 1.3.

“**Authorized User**” means a Client employee, consultant or contractor (a) who Client authorizes to access and use the Services under the rights granted to Client under this Agreement; and (b) for whom access to the Services has been purchased under this Agreement.

**1.4 Payment Information and Processing.** Barnet does not process payment information and does not provide payment processing services. Client is solely responsible for obtaining, supplying, configuring, integrating, and maintaining the hardware, software and licences, telecommunication and internet equipment, connections and services necessary for processing payments and the costs and expenses of any third-party payment processing

services. Client acknowledges that Barnet will not be responsible for, nor obligated to provide support for, interruptions, errors, deficiencies or other problems with any payment processing arising from any such hardware, software and licences, telecommunication and internet equipment, or connections or third-party payment processing services.

**1.5 Access and Authorized Users.** Barnet will provide to Client the necessary passwords and network links or connections to allow Client and its Authorized Users to access and use the Services during the Term. Client acknowledges and agrees that:

- (a) only Authorized Users are permitted to access and use the Services. Client will use commercially reasonable efforts to prevent unauthorized access to or use of the Services and will notify Barnet promptly upon learning of any such unauthorized access or use; and
- (b) Client is responsible and liable for all uses of the Services and Documentation resulting from access provided directly or indirectly by Client, whether such access or use is permitted by or this Agreement. Without limiting the previous sentence, Client is responsible for all its Authorized Users’ acts and omissions, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Client will be deemed Client’s breach of this Agreement. Client will make all Authorized Users aware of this Agreement’s provisions as applicable to the Authorized User’s use of the Services and will cause Authorized Users to comply with those provisions. Notwithstanding any other wording in this Agreement, Client will not allow any Authorized User that is, or that is employed or retained by, a Barnet competitor to access or use the Services or the Platform or any of Barnet’s Confidential Information.

**1.6 Use and Restrictions.** Without limiting any other wording in this Agreement, Client will ensure that it and its Authorized Users:

- (a) access and use the Platform, Services and Documentation only (i) to exercise Client’s rights under this Agreement; (ii) for lawful purposes; (iii) in accordance with applicable laws and this Agreement; and (iv) in full compliance with any applicable Documentation and training (if any) that Barnet provides to Client;
- (b) will not use the Platform or Services to store, display, or transmit infringing, defamatory,

- offensive, harassing, obscene, or otherwise unlawful or tortious material;
- (c) do not license, sublicense, sell, resell, lease, transfer, assign, distribute, time share or otherwise make the Platform or any Services or Documentation available to any third party (other than Authorized Users in accordance with this Agreement);
  - (d) do not access or use the Platform, Services or Documentation in order to (i) build a competitive product or service; or (ii) copy any ideas, features, functions or content of the Services;
  - (e) do not modify, hack, reverse engineer, disable, disrupt, de-compile, disassemble, reassemble, supplement, commingle, combine, translate, adapt, create derivative works of, enhance, copy, decrypt or interfere with the functioning of the Platform or any Services;
  - (f) do not use any type of robot, spider, virus, worm, trojan-horse, malware, time bomb or any other codes, instructions, automatic device or manual process to distort, delete, damage, disassemble, monitor or copy the Platform or Services;
  - (g) do not avoid, circumvent, or disable any access control technology, security device, procedure, protocol, or technological protection mechanism that may be included or established in or as part of the Services or any hardware/software used to provide the Services, or third-party hardware, software or services;
  - (h) do not remove, modify or deface any proprietary notices, labels, or marks contained in or on materials Client receives or accesses under this agreement, including the Services and the Documentation;
  - (i) do not use any device, software or routine to interfere or attempt to interfere with the proper working of the Platform or Services;
  - (j) do not use the Platform, Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; and
  - (k) do not permit, authorize or encourage any third party to do any of the above.

In addition to any other available remedies, Barnet may suspend or terminate Client's and any Authorized User's access to any portion or all of the Services or Documentation if Client or any Authorized User breaches any of these restrictions. Further, regardless of Client's efforts, Client acknowledges

that Barnet will not be responsible for any harm caused in whole or part by any Authorized User's failure to comply with this section or any liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client or any Authorized User may incur as a result of a Service Suspension.

**1.7 System Requirements.** Client will, at its sole expense, be solely responsible for supplying, configuring and maintaining the hardware, software and licences, telecommunication and internet equipment, connections and services necessary for accessing and using the Platform and Services in accordance with the minimum requirements for ancillary software, computers, internet connections and other hardware and equipment needed to access and use the Platform and Services, as set out in the Documentation from time to time ("**System Requirements**"). Client acknowledges that Barnet will not be responsible for, nor obligated to provide support for, interruptions, Errors, deficiencies or other problems with the Platform or Services arising from, Client's failure to comply with the System Requirements.

**1.8 Information Provided by Client.** Client acknowledges that Client or its Authorized Users are responsible for providing accurate and complete information and data into the Platform for use of the Services, including any data obtained from the Client's preceding POS provider (a "**Preceding Provider**"), if applicable. Barnet will not be responsible for any results or outcomes generated through the Services as a result of incorrect, incomplete or missing information provided by Client, including data from a Preceding Provider. Client shall ensure that any data obtained from a Preceding Provider is transferred to Barnet in compliance with all applicable data protection laws and regulations and, and Client represents and warrants that it has the right to transfer that data to Barnet. Barnet may, at its sole discretion, refuse acceptance of any data or provide assistance to the Client in refining, converting or modifying their initial dataset and any such assistance shall be subject to extra charges, which shall be borne by the Client. Client acknowledges and agrees that any information, solutions, or recommendations provided by or through the Services as a result of incorrect, incomplete or missing information provided by Client, including data from a Preceding Provider, shall not give rise to any claims for damages or liability under this Agreement.

**1.9 Beta Offerings.** From time to time, Barnet may make services that are identified as alpha, beta, not generally available, limited release, developer preview, or any such similarly designated services,

products, features, and documentation offered by Barnet ("**Beta Offerings**") available to Client at no charge. Client may choose to try Beta Offerings or not in its sole discretion. Barnet may discontinue Beta Offerings at any time in its sole discretion and may decide not to make a Beta Offering generally available. For avoidance of doubt, Beta Offerings are not Services under this Agreement. Barnet provides any Beta Offerings "AS-IS" and "AS AVAILABLE," without indemnification or support, and disclaims all express and implied warranties (including warranties of merchantability, fitness for a particular purpose, and non-infringement) with respect to the Beta Offerings. Any Beta Offerings do not constitute an implied commitment to offer to Client or anyone any of the applicable features and functionality as part of the Services on a generally available basis.

**1.10 Reservation of Rights.** Barnet reserves all rights not expressly granted to Client in this Agreement. Client acknowledges and agrees that the Services are a "right to access" only and that nothing in this Agreement constitutes, by implication, waiver, estoppel, or otherwise, a licence or sale of any of the Platform or Services, and further that this Agreement does not convey to Client, an Authorized User or to any of their affiliates or to any third party, any ownership right or title in or to the Barnet IP. "**Barnet IP**" means the Platform, Services, the Documentation, all intellectual property and proprietary rights in, to, and associated with any of the Platform, the Services, and the Documentation, and any other intellectual property provided to Client or any Authorized User in connection with the foregoing.

**1.11 Quality of Services.** Barnet will perform the Services in a timely and professional manner using properly qualified personnel and will use commercially reasonable efforts to comply with any time periods and other specifications set out in the Order Form.

## **2. FEES AND PAYMENTS.**

**2.1 Fees.** Subject to Section 2.2, Client will pay to Barnet the fees, without deduction or setoff, for the Services as specified in the Order Form or if no timeline is provided in the Order Form, within 30 days after receipt of an invoice (the "**Fees**"). Client acknowledges and agrees that the Fees are exclusive of any applicable taxes, duties, and tariffs and may be increased, updated, or amended from time to time upon 30 days' notice to the Client. Client's continued use of the Services after any such day notice constitutes Client's acceptance of any new or increased charge or Fees.

**2.2 Payment Terms.** Client will pay any Fees in accordance with the Payment Schedule set out in the Order Form. Client will undertake any additional

actions reasonably requested by Barnet to implement any Fee payment process. Unless required by applicable law, all payments made by Client to Barnet under this Agreement are non-refundable. If Client chooses to pay via credit card, a processing fee of 2.4% of the total payment amount will be added to the Fees. All late payments will bear interest at a rate of 2% per month (24% per annum) from the date payment is due until the date the outstanding amount, including all accrued interest, is paid in full. Client will reimburse Barnet for all costs incurred in collecting any late payments, including actual reasonable legal fees on a solicitor-client basis, disbursements and charges, whether or not any judicial proceedings have been commenced, and collection agency fees, and any such fees and disbursements will be added to the principal amounts owing to Barnet under this Agreement. Additionally, the Client agrees to pay to Barnet a returned or non-sufficient funds (NSF) charge of \$45.00 to reimburse Barnet for its time and expense incurred with respect to a cheque or payment that is returned for any reason.

**2.3 Taxes.** Client will be responsible for and will pay directly, any taxes, duties and assessments (other than taxes based on Barnet's income).

**2.4 Suspension.** Notwithstanding anything to the contrary in this Agreement, Barnet may temporarily suspend Client's and any Authorized User's access to any portion or all of the Services if: (a) Barnet reasonably determines that (i) there is a threat or attack on any of the Barnet IP, (ii) Client's or any Authorized User's use of the Barnet IP disrupts or poses a security risk to the Barnet IP or to any other Client or vendor of Barnet, (iii) Client, or any Authorized User, is using the Barnet IP for fraudulent or illegal activities, (iv) subject to applicable Law, Client has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, or (v) Barnet's provision of the Services to Client or any Authorized User is prohibited by applicable law; (b) any vendor of Barnet has suspended or terminated Barnet's access to or use of any third-party services or products required to enable Client to access the Services; or (c) if Client fails to pay any Fees in accordance with this Section 2 (any such suspension described above is a "**Service Suspension**"). Barnet will use commercially reasonable efforts to provide written notice of any Service Suspension to Client and to provide updates regarding resumption of the Services following any Service Suspension. Barnet will use commercially reasonable efforts to resume providing the Services as soon as reasonably possible after the event giving

rise to the Service Suspension is cured. Barnet will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client or any Authorized User may incur as a result of a Service Suspension.

### **3. REPRESENTATIONS AND WARRANTIES**

**3.1 Mutual.** Each party represents and warrants to the other that: (a) it has full corporate power and/or authority to execute this Agreement and to consummate the transactions contemplated hereby; and (b) this Agreement, when duly and validly executed and delivered by the Parties, will constitute the valid and binding agreement of the Parties, enforceable against each party in accordance with its terms.

**3.2 By Barnet.** Barnet further represents and warrants to Client that:

- (a) Barnet has the right to grant the licence under Section 1.3; and
- (b) Barnet has used and will continue to use commercially reasonable efforts to provide the Services in a diligent, competent and professional manner.

**3.3 By Client.** Client represents, warrants, and covenants to Barnet that

- (a) Client, including its affiliates, employees, contractors, assigns, and Authorized Users, will at all times ensure that the Services are used in full compliance with any applicable Documentation and training (if any) provided to Client by Barnet; and
- (b) Client, including its affiliates, employees, contractors, assigns, and Authorized Users, will access and use of the Platform or Services in compliance with all laws and regulations applicable to the access to or use of the Platform or Services.

**3.4 Disclaimers.** CLIENT ACKNOWLEDGES THAT (a) BARNET CANNOT GUARANTEE THE RESULTS GENERATED THROUGH THE PLATFORM, SERVICES OR THE BETA OFFERINGS (IF ANY) OR THAT THE PLATFORM, SERVICES OR BETA OFFERINGS WILL BE CONTINUOUSLY AVAILABLE FOR USE WITHOUT INTERRUPTION, (b) THE PLATFORM AND SERVICES AND BETA OFFERINGS (IF ANY) ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, AND BARNET HEREBY DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY (i) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE (INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY WARRANTY THAT THE PRODUCTS ARE FISCALLY COMPLIANT WITHIN CLIENT'S JURISDICTION), (ii) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, (iii) WARRANTY OF TITLE OR NON-INFRINGEMENT; OR (iv) STATUTORY REMEDY, AND (c) BARNET IS NOT RESPONSIBLE FOR ANY PRODUCT CONFIGURATION SETTINGS OR PRODUCT CHANGES OR BETA TECHNOLOGY CHANGES APPLIED BY OR ON BEHALF OF CLIENT. BARNET EXPRESSLY DISCLAIMS ANY SPECIFIC SERVICE LEVEL WARRANTIES OR COMMITMENTS. REGARDLESS OF ANY OTHER TERM OF THIS AGREEMENT, NOTHING IN THIS AGREEMENT EXCLUDES OR PURPORTS TO EXCLUDE ANY STATUTORY RIGHT OR WARRANTY THAT MAY NOT BE EXCLUDED BY LAW. To the extent that any of the Services (including the Platform or any hosted elements thereof) depend on the public internet, and without limiting any obligations relating to security in this Agreement, the parties acknowledge that data, messages, information or materials sent over the public Internet may be intercepted by third parties.

### **4. CONFIDENTIALITY.**

**4.1 Confidential Information.** In this Agreement "Confidential Information" means all confidential and proprietary information of Barnet or its affiliates, including all information in any form that (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, or (ii) is provided to or obtained by Client from Barnet in circumstances where, by its nature or the nature of its disclosure, Client ought reasonably to know has value in being not generally known by the public (including, without limitation, any information that is marked or indicated as confidential at the time of disclosure). Notwithstanding the foregoing, Confidential Information does not include information if, and only to the extent that, Barnet establishes that the information:

- (a) is or becomes a part of the public domain through no act or omission of Client.
- (b) was in Client's lawful possession before the disclosure and (i) had not been obtained by Client either directly or indirectly from Barnet, and (ii) was not subject to any obligation of confidentiality.
- (c) is lawfully disclosed to Client by a third party without restriction on disclosure.

**4.2 Nondisclosure.** Client will keep all Confidential Information in strict confidence, will not

make use of Confidential Information other than in accordance with this Agreement, and will not release, disclose, communicate it or make it available to any person other than employees and permitted subcontractors (including affiliates) who reasonably need to know the Confidential Information in connection with this Agreement and who are legally bound to protect the Confidential Information from unauthorized use or disclosure on terms and conditions at least as strict as this Agreement.

**4.3 Compelled Disclosure.** If Client becomes or may become legally compelled to disclose any Confidential Information, Client may disclose that Confidential Information to the extent required by law provided that: (a) Client promptly notifies Barnet of the efforts to compel disclosure (unless prohibited by law from doing so); (b) Client cooperates with and assists with Barnet's lawful attempts to prevent or limit disclosure or to obtain a protective order; and (c) to the extent disclosure is still required by law, Client takes all reasonable steps to make the disclosure on a confidential basis.

**4.4 Return of Information.** Upon termination of this Agreement, Client will return to Barnet all Confidential Information in Client's possession or control, and will remove all digital representations of that Confidential Information in any form from all electronic storage media in its possession or under its control using commercially reasonable means, provided that Client does not directly or indirectly perform or permit any recovery or restoration thereof, whether through forensics, archives, undeletion or otherwise.

## **5. PROPRIETARY RIGHTS AND DATA PROTECTION.**

**5.1 Ownership.** As between the Parties, Barnet owns all right, title and interest in and to the Barnet IP (including any updates, modifications, or improvements to, or derivatives of, the Platform and Services), including the software code and architecture, the graphical design and "look and feel" of the user interface, and code libraries (including classes and functions).

**5.2 Client Data.** In this Agreement, "**Client Data**" means all reports, materials, data, or information, including any Personal Information (as defined below), provided by Client or its affiliates to Barnet or its affiliates and their respective subcontractors in connection with the Services or the use of the Platform. "**Personal Information**" means any identifiable information about an individual, including but not limited to an individual's name, home address, telephone number, email address, except any other information otherwise exempted by the applicable laws of Canada and other jurisdictions. For certainty, Client Data excludes Aggregated Statistics (as

defined below). As between the Parties, Client owns and has control over the Client Data. By transmitting, storing, displaying, processing or otherwise using Client Data in any way with respect to the Platform or Services, Client represents and warrants to Barnet that: Client has made all required disclosures and has all rights, consents, permissions, titles and interests in and to Client Data to use the Client Data with the Platform and to grant Barnet the rights in and to Client Data set out below, all without violating or infringing laws, third-party rights (including intellectual property, publicity or privacy rights) or any terms or privacy policies that apply to its Client Data. Subject to Barnet's obligations regarding Client Data in Barnet's custody or control, Client is solely responsible for its Client Data, including its content and accuracy and compliance with Laws. Client hereby grants to Barnet a royalty-free, fully-paid, worldwide, transferable, sub-licensable, licence during the Term to use, process, copy, distribute, transmit, display, edit, delete, modify, publish and translate Client Data for (a) the proper transmission, processing, display or other usage or performance of the Client Data in connection with the Services and the provision of the Platform, and (b) the performance of Barnet's obligations and exercise of Barnet's rights under this Agreement.

**5.3 Aggregated Statistics.** Notwithstanding anything to the contrary, Barnet may monitor Client's use of the Platform or Services and collect and compile Aggregated Statistics. "**Aggregated Statistics**" means data and information related to Client's and its users' access to and use of the Platform and Services that Barnet uses in an aggregate and anonymized manner that does not identify Client or any Authorized User, including to compile statistical and performance information related to the provision and operation of the Services. As between the parties, Barnet owns all right, title and interest (including all intellectual property rights) in and to all aspects of the Aggregated Statistics. Client acknowledges that Barnet may generate and compile Aggregated Statistics based on Client Data input into the Services. Client agrees that Barnet may (i) use Aggregated Statistics for the purpose of providing, operating, promoting, or improving the Platform and Services or for developing, improving, operating, and providing other services or technology, (ii) make Aggregated Statistics publicly available in compliance with applicable law, (iii) create, modify, disclose, distribute, sell, rent, advertise, market, or otherwise commercially exploit the Aggregated Statistics to the extent and manner permitted by applicable law; and (iv) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

**5.4 Feedback.** If Client or any of its employees or contractors sends or transmits any

communications or materials to Barnet suggesting or recommending changes to the Platform or Services (including new features or functionality), or any comments, questions, suggestions, or the like ("**Feedback**"), Barnet is free to use the Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Client hereby assigns to Barnet on Client's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Client is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Barnet is not required to use any Feedback.

**5.5 Marketing.** Barnet may identify Client from time to time on Barnet's website, in presentations, speeches, press releases and other media as a client of Barnet. Any use of Client's branding or logos will be subject to Client's prior written consent on a case-by-case basis.

**5.6 Security Breach.** Upon becoming aware of any unlawful access to or disclosure of any Client Data in Barnet's possession or control (a "**Security Incident**"), Barnet will promptly notify Client of the Security Incident, and will, on a commercially reasonable basis, investigate or assist in the investigation of the Security Incident and provide Client with information about the Security Incident. Barnet will take commercially reasonable steps to mitigate the Security Incident's effects or assist Client in doing so.

## **6. INDEMNIFICATION.**

**6.1 Indemnification.** Client will defend, indemnify and hold Barnet, its affiliates and their respective directors, officers, partners, employees, shareholders, agents and representatives (collectively, the "**Barnet Indemnitees**") harmless from and against all claims, liabilities, actions, proceedings, demands, losses, damages and costs, including reasonable legal costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties suffered or incurred by any of the Barnet Indemnitees as a result of (a) any breach by Client or its Authorized Users of this Agreement (including, without limitation, its obligations under Sections 1.6, 3.1 and 3.3); (b) any claim that any use by Client of the Services infringes any applicable laws or third-party rights, including without limitation, any claim that Client failed to obtain all necessary consent to disclose data from a Preceding Provider or any Personal Information to Barnet and have Barnet collect, use, host and process such data from a Preceding Provider or Personal Information in connection with the provision

of the Services; and (c) any claim that any Client Data infringes or misappropriates any third-party intellectual property or other proprietary, personality, or privacy rights.

## **7. LIMITATION OF LIABILITY.**

**7.1** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BARNET'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF (A) THE FEES ACTUALLY PAID TO BARNET HEREUNDER DURING THE IMMEDIATELY TRAILING THREE-MONTH PERIOD, OR (B) \$1,000. IF AND TO THE EXTENT THAT CLIENT PARTICIPATES IN A BETA TESTING PROJECT, IN NO EVENT WILL BARNET'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THE BETA TESTING PROJECT INCLUDING ANY TRANSACTION PROCESSED THEREIN EXCEED \$1,000.

**7.2** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STATUTORY REMEDY OR ANY OBLIGATION ARISING THEREFROM OR OTHERWISE AND IRRESPECTIVE OF WHETHER EITHER PARTY HAS ADVISED OR BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

**7.3** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, CLIENT HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION FAIRLY ALLOCATE THE RISKS UNDER THIS AGREEMENT AS BETWEEN THEM. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE PRODUCTS AVAILABLE TO CLIENT AND THAT, WERE BARNET TO ASSUME FURTHER LIABILITY OTHER THAN AS SET FOR HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SIGNIFICANTLY HIGHER.

**7.4** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BARNET WILL NOT BE LIABLE OR INDEMNIFY CLIENT IN ANY WAY FOR ANY DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM (A) CLIENT'S OMISSION TO INSTALL ANY PATCH, FIX, UPDATE OR

UPGRADE, (B) ANY PRODUCT CHANGES PURSUANT TO SECTION 1.2 AND/OR (iii) CLIENT'S ALLEGED OR ACTUAL BREACH OF THIS AGREEMENT.

## **8. TERM AND TERMINATION.**

**8.1 Term and Renewal.** The term of this Agreement will commence on the Effective Date and will continue for the Initial Term, as set out in the Order Form, and will automatically renew without further notice for additional twelve-month terms (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless specified otherwise in the Order Form or unless either party provides written non-renewal notice at least 90 days before the end of the Initial Term or then-current Renewal Term (in which case this Agreement will terminate when the Initial Term or then-current Renewal Term ends).

**8.2 Termination for Cause.** Either party may terminate this Agreement, in whole or in part, at any time as follows:

- (a) upon written notice if the other party breaches any of its material obligations under this Agreement and fails to correct that breach within 30 days after receiving written notice specifying the nature of the breach; or
- (b) if the other party makes an assignment for the benefit of creditors, or commences, or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization under bankruptcy laws or laws of debtor's moratorium, provided that if there is an involuntary petition the affected party will have 30 days from after the petition's date of filing to discharge the petition.

**8.3 Termination for Fundamental Breach.** Barnet may terminate this Agreement, in whole or in part, immediately and without notice upon any breach by the Client of Sections 1.6, 3.1, 3.3, 4.2, or 9.3.

**8.4 Termination for Unacceptable Behaviour.** Barnet reserves the right to terminate this Agreement immediately upon written notice to the Client if Barnet determines, in its sole discretion, that the Client has engaged in behaviour or practices that constitute unacceptable treatment to any Barnet employees. Unacceptable treatment includes, but is not limited to, harassment, discrimination, abuse, or any other conduct that violates applicable labour laws or ethical standards.

**8.5 Effect of Termination.** Upon this Agreement's termination for any reason: (a) the licence granted under Section 1.3 will automatically terminate; (b) Client will immediately cease accessing and using the Platform and Services; and (c) Client will immediately pay all sums owing to Barnet in accordance with Section 2.2.

**8.6 Client Data.** Unless otherwise expressly agreed in a writing that is signed by Barnet's authorized representative, Barnet will have no obligation to retain Client Data following 30 days after this Agreement's termination. Client will have 30 days after the termination date in which to request a copy of the Client Data, which Barnet will make available to Client in the same format maintained by Barnet.

**8.7 Survival of Terms.** Section 2, Section 1.1, Section 4, Section 5, Section 6, Section 7, and Section 9 will survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement. Termination of this Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief.

## **9. GENERAL PROVISIONS.**

**9.1 Conflicts.** If there are any conflicts between these Terms and Conditions and the Order Form, these Terms and Conditions will prevail over the Order Form unless the Order Form specifically states that it is intended to prevail over specific identified terms of these Terms and Conditions.

**9.2 Assignment.** Neither party may assign this Agreement or any rights and obligations under this Agreement, in whole or in part, without the other party's prior written consent of the other, provided that Barnet may assign this Agreement or any rights or obligations under this Agreement to an affiliate or to another entity in connection with a reorganization, merger, consolidation, acquisition, restructuring, or sale of all or substantially all of Barnet's assets or business.

**9.3 Non-Disparagement.** Client will not at any time speak or act in any manner that may have the effect of reflecting adversely upon, or that is intended to harm, Barnet's reputation, business or goodwill, and Client will not engage in any other disparaging conduct or communications with respect to Barnet. Any conduct as described in this section will be deemed a material breach of the Agreement. Notwithstanding the preceding provisions of this section, nothing herein shall restrict Client's right to make any disclosure or statement that is required or otherwise protected by applicable law.

**9.4 Force Majeure.** Except for Client's payment obligations, neither party will be liable for failure to perform any of its obligations under this Agreement that is caused by events outside its reasonable control, including acts of God, war, pandemics, acts of terrorism or natural disasters. The delayed party will use commercially reasonable efforts to recommence performance as soon as reasonably possible. This paragraph will not excuse Client from the prompt payment of any Fees or other payments

due to Barnet for Services previously rendered under this Agreement.

**9.5 Law and Venue.** This Agreement will be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to principles of conflict of laws, and each party unconditionally and irrevocably attorns to the non-exclusive jurisdiction of the Ontario courts.

**9.6 Notice.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement shall be in writing. Any such notice will be deemed duly delivered on the date of hand-delivery, on the date an email is received, one day after deposit with an overnight courier with tracking capabilities, or five days after deposit in registered mail, postage prepaid, return receipt requested. All notices to Client will be sent to the Client's address or email address on the first page of this Agreement. All notices sent to Barnet must be sent to the addresses indicated below (or at such other address Barnet may specify in a notice given in accordance with this Section 9.6):

Address: 179 John St., Suite 402, Toronto,  
ON, M5T 1X4

Email: [legal@barnetbc.com](mailto:legal@barnetbc.com)

Attention: Barnet Legal Department

**9.7 General. Independent Contractors.** The parties are independent contractors, and nothing in this Agreement creates a partnership, joint venture or agency relationship between them. Waiver. A party's failure to insist on the strict performance of any term of this Agreement or to exercise any right or remedy in this Agreement will not be construed as a waiver of that term, right or remedy. Severability. If any portion of this Agreement is invalid or unenforceable, the invalidity or unenforceability will attach only to that portion of the Agreement, and the remainder of the Agreement will remain in full force and effect. Remedies Cumulative. Rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedy available under law or equity or otherwise. Successors. This Agreement will bind and benefit each party and its lawful successors and permitted assigns. Amendment. Barnet reserves the right, at its sole discretion, at any time upon at least 30 days' written notice, to amend these Terms and Conditions. These amendments may be made for reasons including, without limitation: (i) complying with applicable law or regulation, (ii) security reasons, (iii) changes in market conditions, and (iv) changes

imposed by a third-party supplier. Any such amendments will be effective at the end of the notice period specified in the applicable notice.

## ***END OF TERMS AND CONDITIONS***