

SOTI PROFESSIONAL SERVICES TERMS AND CONDITIONS

THIS DOCUMENT IS A LEGAL AGREEMENT (THE “AGREEMENT”) BETWEEN SOTI INC. (“SOTI”, “WE,” “US”) AND YOU OR THE ORGANIZATION ON WHOSE BEHALF YOU ARE UNDERTAKING THE PROFESSIONAL SERVICES DESCRIBED BELOW (“YOU,” “CUSTOMER”) IN RELATION TO SOTI SOFTWARE (THE “SOFTWARE”), AND ALL RELATED MATERIALS AND SERVICES. BY SUBMITTING A SIGNED QUOTE, PURCHASE ORDER FOR PROFESSIONAL SERVICE OFFERINGS OR SCOPE OF WORK (“ORDER”) (THE DATE OF WHICH WILL BE DEEMED THE “EFFECTIVE DATE”), YOU AGREE TO ACCEPT THE FOLLOWING TERMS AND CONDITIONS.

Whereas, SOTI and Customer desire to enter into an agreement for the performance by SOTI of certain professional services for Customer;

Now, therefore, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services

Statement(s) of Work. During the Term (as defined below) and if mutually agreed to in writing, SOTI may from time to time provide certain services to Customer (“Services”). Most Services will be defined in an Order. Any Services not defined in the Order shall be evidenced by one or more written statements of work (each, a “Statement of Work”) which will be subject to this Agreement and may include the following information: (i) a detailed description of the Services; (ii) a projected timetable for completion of the Services; (iv) the location where the Services are to be performed; (v) the projected commencement and termination dates; (vi) SOTI’s compensation rates; (vii) maximum authorized fee for the Services and maximum reimbursable expenses, if any; (viii) names of the parties’ appointed project representatives; (ix) a timetable for invoicing; and (xi) such other requirements for the Services as may be agreed to in writing by the parties. The main body of this Agreement shall control over any conflicting provisions of the Statement of Work unless such Statement of Work specifically states that the conflicting provision should prevail over such main body. SOTI will perform the Services using personnel of required skill, experience and qualifications and in a workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

2. Term

2.1. Term of Agreement. This Agreement shall commence as of the Effective Date and shall continue, unless otherwise terminated earlier pursuant to the terms of this Agreement, until the completion of all Services.

2.2. Term of Statement of Work. Any Statement of Work entered into prior to expiration or termination of this Agreement shall continue in effect through the earlier of: (i) the date all of the Services thereunder have been fully completed and accepted (if applicable) by Customer, or (ii) until such time as such Statement of Work expires or is terminated in accordance with its terms or is terminated pursuant to Section 8 hereof.

3. Payment Terms and Invoicing

3.1. Fees. In consideration for and subject to SOTI’s full performance of the obligations as described herein and in an Order, Customer shall pay to SOTI the fees set forth in the quote provided by SOTI (“Price Quote”) or any relevant Statement of Work. Any and all prepaid professional services related to this Agreement must be redeemed by Customer within twelve (12) months from the date of invoice.

Notwithstanding sections 8 and 12, at the end of the twelve (12) month term, any remaining pre-paid Services will expire; no refunds will be provided for any remaining pre-paid Services.

3.2. **Expenses.** Customer will pay reasonable expenses to SOTI, including without limitation, transportation services, lodging, meal and out-of-pocket expenses that are expressly set forth in an Order. Unless otherwise specified in writing by Customer or by way of an Order all approved expenses and pass through charges shall be reimbursed at cost as actually incurred, without mark up by SOTI.

3.3. **Invoicing.** Except as otherwise provided in a Price Quote or any relevant Statement of Work, invoices shall be issued upon receipt of an Order and shall be due and payable within thirty (30) days after receipt of the invoice and all required documentation. The invoice shall indicate the nature of the work performed, the rate for such work, and any reasonable preapproved expenses incurred by SOTI that are to be paid by Customer as set forth in Section 3.2 above, as well as the total amount then due.

3.4. **Invoicing Disputes.** Customer shall notify SOTI of any invoice dispute in writing within the time frame specified for payment of the invoice. The Parties shall work in good faith to resolve any invoicing disputes as quickly as reasonably possible. The non-payment of any disputed items shall not constitute a breach under this Agreement. Customer shall pay all amounts due that are not in dispute within the time frame specified above.

4. Ownership

4.1. **SOTI Ownership.** SOTI shall retain all ownership and proprietary rights to its trademarks, service marks, copyrights, patents, trade secrets, and other intellectual property rights and to any commercially available products of SOTI developed independently of this Agreement that are provided to Customer (“SOTI Property”).

4.2. **Vendor Know-How.** SOTI shall be free to use in other engagements its general skills, know-how, and expertise, whether pre-existing or gained under this Agreement, so long as it acquires and applies such information without disclosure of any proprietary information of Customer. This Agreement does not grant Customer any licenses under any of SOTI’s patents, trademarks, service marks, trade secrets or copyrights.

4.3. **SOTI’s Materials.** If SOTI provides to Customer any tools, equipment, software, lists, files, contacts or other materials of any kind that are owned by SOTI (collectively referred to as “SOTI Provided Materials”), SOTI grants to Customer a non-exclusive, limited, non-transferable license to use such SOTI Provided Materials solely in connection with the performance of its obligations under this Agreement to which they relate and solely for the term of such Services. Customer agrees to abide by any and all license requirements and instructions of SOTI related to such SOTI Provided Materials. Customer shall not acquire any right, title or interest to the SOTI Provided Materials by virtue of this Agreement, other than the limited license expressly granted to SOTI. Customer shall not allow access to such SOTI Provided Materials to any third party. Upon the expiration or termination of this Agreement or relevant Statement of Work, as the case may be, Customer shall return the SOTI Provided Materials to SOTI in substantially the same condition as provided to Customer, normal wear and tear accepted, and shall not retain any copy thereof. With respect to software owned or licensed by SOTI and provided to Customer for purposes of performing the Services, Customer shall not copy, reproduce, modify, adapt, translate or create any derivative works from such software (unless specifically authorized by SOTI as part of the Services), or disassemble, decompile, reverse engineer or make any other attempt by any means to discover or obtain the source code of such software (if such software is provided and only intended to be used in object code format).

4.4. **Injunctive Relief.** Each party acknowledges that any remedy for money damages for any violation of this Section shall be inadequate and the other party may suffer immediate and irreparable damage through

any breach or threatened breach. Accordingly, the other party may, in addition to all other legal remedies, specifically enforce this Section and seek injunctive relief to prevent any threatened or continuing breach without requirement of notice or posting of bond.

5. Indemnification

Each party (an “Indemnifying Party”) shall defend at its own expense the other party including the other’s directors, officers, employees, and agents (collectively, the “Indemnified Party”), from and against any and all third party claims, demands, suits or actions resulting from, arising out of or relating to the Indemnifying Party’s (including its employees and anyone acting on its behalf) (i) alleged or actual negligent acts or omissions, willful misconduct or fraud in connection with this Agreement, (ii) alleged or actual breach of this Agreement or any representations or warranties herein; (iii) alleged or actual violation of any statute, law, ordinance or regulation, or (iv) any alleged or actual infringement of any patent, copyright, trademark, service mark, trade secret or other intellectual property or other rights of a third party arising out of the Services (an “Indemnifiable Claim”). With respect to each Indemnifiable Claim, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against any and all damages, judgments, awards, expenses, and costs that are incurred by the Indemnified Party, that are awarded and payable to the third Party by a court of competent jurisdiction or that are payable pursuant to a settlement made by the Indemnifying Party.

6. Notice of Indemnifiable Claim

The Indemnified Party shall give the Indemnifying Party prompt written notice of any Indemnifiable Claim. Such notice shall not diminish the Indemnifying Party’s indemnity obligations hereunder unless and only to the extent that the Indemnifying Party is materially and adversely affected by the Indemnified Party’s failure or delay to give notice. The Indemnifying Party shall control the defense or settlement of any Indemnifiable Claim. The Indemnified Party shall reasonably cooperate (at the Indemnifying Party’s expense) with the Indemnifying Party in the defense of such claim. Any settlement by the Indemnifying Party must be approved by the Indemnified Party, with such approval not to be unreasonably withheld (except that any settlement requiring the Indemnified Party to make any admission of liability shall be subject to the Indemnified Party’s approval in its sole discretion). The Indemnified Party also has the right to retain its own counsel at its own expense in connection with such claim. If the Indemnifying Party has been advised by the written opinion of counsel to either party that the use of the same counsel to represent both parties would present a conflict of interest, then the Indemnified Party may select its own counsel and all costs of the defense shall be borne by the Indemnifying Party.

7. Limitation of Liability

TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, MULTIPLE, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO AMOUNTS PAYABLE BY A PARTY PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, BUT SHALL APPLY IN ALL OTHER INSTANCES REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT.

8. Termination

8.1. Termination for Breach. If a party breaches this Agreement, including any document that this Agreement references as being attached hereto or incorporated herein by reference, the other party shall have the right to terminate this Agreement by providing written notice of termination, if the breach has not been cured within thirty (30) days following receipt of written notice of the breach. The non-breaching party shall not be obligated to pay for the breaching party’s time or resources to cure any breach.

8.2. Termination by SOTI. In addition to any other termination rights, SOTI shall have the right in its discretion to terminate this Agreement or any Statement of Work under this Agreement, for any reason or for no reason, upon thirty (30) days prior written notice to Customer.

8.3. Survival. The rights and obligations of any party which by their nature extend beyond the expiration or termination of this Agreement shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, including, without limitation, rights and obligations with respect to payment terms and invoicing, confidential information, ownership of work product, indemnification, limitations of liability, and termination.

9. Independent Contractor

Each of the parties is an independent contractor and shall not be considered to be an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other. All personnel supplied or used by SOTI shall be deemed employees, agents or subcontractors of SOTI and shall not be considered employees, agents or subcontractors of Customer for any purpose whatsoever. SOTI shall assign only SOTI personnel or permitted subcontractors who are legally eligible to work in the location in which Services are to be performed by those personnel or permitted subcontractors. SOTI assumes full responsibility for the actions of all such personnel and permitted subcontractors while performing Services under this Agreement and for the payment of their compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other applicable taxes), workers' compensation, disability benefits and the like to the extent applicable. SOTI shall defend, indemnify and hold harmless Customer against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, provincial and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws and all other laws applicable to SOTI or its employees or permitted subcontractors engaged in performance of this Agreement.

10. SOTI Personnel

10.1. On-Site Services. If any SOTI personnel (including employees or permitted subcontractors) are on Customer's premises, SOTI shall cause such persons to comply with all of Customer's rules, regulations and policies regarding the workplace as well as applicable security procedures and fitness for duty requirements, including, without limitation, its policy on drugs and alcohol (collectively "Workplace Rules"). Customer may immediately remove any SOTI personnel from Customer's premises for security reasons or for noncompliance with Customer's Workplace Rules. Any equipment or personal property brought onto Customer's premises during any such visit shall at all times remain the property of SOTI. In the event of lost or misplaced equipment/personal property Customer will immediately notify SOTI upon discovery and parties will discuss arrangements to have said property returned at SOTI's expense. Customer may request the replacement of any SOTI personnel that Customer reasonably determines is not satisfactorily performing the Services (including, without limitation, for reasons of interpersonal skills) and SOTI shall use commercially reasonable efforts to comply with such request. The parties acknowledge and agree that SOTI receives Customer property, upon which the Services are to be provided to Customer (the "Property") with respect to its covenants and obligations set forth in any work order, in "as-is, where-is" condition, with any and all patent and latent defects.

10.2. Subcontractors. Without limiting Section 10.1 hereof, any use by SOTI of any subcontractors shall be subject to the following: (i) SOTI shall provide notice specifying the subcontractor's name and company (where applicable) prior to such subcontractor performing any services and Customer reserves the right to exclude any such subcontractor from performing services (Customer's approval to be in writing or by email); (ii) each approved subcontractor shall be bound by written obligations that are at least as protective of Customer's business, Customer's proprietary information and any other materials provided by Customer

as the terms of this Agreement or a separate confidentiality and nondisclosure agreement (“Confidentiality and Nondisclosure Agreement”) between the parties; (iii) if Customer will be charged by SOTI for the use of any subcontractor, such amounts shall be no more than SOTI’s actual payment to the subcontractor; and (iv) SOTI shall remain fully responsible to Customer for the complete performance of all Services and shall be liable for any subcontractor’s noncompliance with any terms of this Agreement or the Confidentiality and Nondisclosure Agreement between the parties.

11. Notices

Except as otherwise expressly provided for in this Agreement or Statement of Work, any and all notices or demands required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) at the time of receipt by first class mailing or overnight delivery postage and/or other charges prepaid and properly addressed to the Party to be notified at its address; or (iii) at the time of transmission by email, addressed to the other party at its email address specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of read receipt. All notices not delivered personally or email will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address or email address as follows, or at such other address or email address as such other party may designate by one of the indicated means of notice herein to the other parties hereto as follows:

If to SOTI:

SOTI Inc
5770 Hurontario Street
Suite 1100
Mississauga, Ontario
Canada, L5R 3G5
Attn: Legal / Contracts
Phone: 905 624 9828
Email: legal@soti.net

Notices shall be deemed received upon actual receipt or refusal of delivery.

12. Force Majeure

Except for payment obligations, neither party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control that are not due to the negligence or misconduct of the party claiming relief under this Section 12, including, without limitation, fire or other casualty, act of God, war, terrorism, or other violence, any law, order or requirement of any governmental agency or authority or other causes beyond the reasonable control of such party, provided that such party has informed the other party of such force majeure event promptly upon the occurrence thereof (including a reasonable estimate of the additional time required for performance to the extent determinable) and such party uses reasonable commercial efforts to effect the required performance as soon as reasonably practicable.

13. Confidentiality

13.1. The parties are to be bound by any separate and pre-existing non-disclosure agreement, however if no such non-disclosure agreement is in place as of the Effective Date of this Agreement, the terms of this Section 13 shall apply.

13.2. Neither party shall disclose any information received from the disclosing party (“Disclosing Party”) that is identified orally or in writing as being confidential or proprietary in nature or used in a context where the receiving party (“Recipient”) should have reasonably understood that the information should be treated as confidential or proprietary, whether or not the words “confidential” or “proprietary” are used. Before providing the Recipient with confidential or proprietary information the Disclosing Party may require the Recipient to sign a non-disclosure agreement.

13.3. The Recipient shall protect this information using the same degree of care as it uses to protect its own sensitive business information, but not less than a reasonable degree of care and shall not disclose such information to any third party without the prior written consent of the Disclosing Party.

13.4. Upon the termination or expiration of this Agreement, the Recipient shall promptly return any confidential information provided by the Disclosing Party.

13.5. The Recipient may disclose confidential information to its employees only on a “need to know basis”.

13.6. The obligations in this Article shall not apply to confidential information:

- a) which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Agreement;
- b) for which the Recipient can provide evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party;
- c) information independently developed by a party outside the scope of this Agreement without use of any of the other party’s Confidential Information; and/or
- d) which is required to be circulated by governmental or judicial order or applicable law. Prior to disclosure, the Recipient shall provide notice to the Disclosing Party of the information so as to permit the Disclosing Party to take such actions to protect its information as it deems appropriate.

13.7. The obligations set out in this Article shall survive termination, cancellation or expiry of this Agreement.

14. General Terms

14.1. Time of the Essence. Time is of the essence with respect to any Services to be performed or work product to be delivered hereunder.

14.2. Assignment. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their respective heirs, permitted successors and permitted assigns. Neither party shall assign this Agreement or any rights hereunder or, except as expressly permitted in this Agreement, delegate any obligations hereunder to any third party without the other party’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Either party shall have the right in its discretion to terminate this Agreement immediately in addition to all other available remedies if there is any assignment or delegation in violation of the foregoing.

14.3. Publicity. Without limiting the confidentiality obligations in this Agreement or in the Confidentiality and Nondisclosure Agreement between the parties, and notwithstanding anything in such agreements to the contrary, neither party shall advertise, market, disclose or otherwise make known to others (other than its employees) any information relating to any terms of this Agreement, or the existence of a relationship with the other party, including mentioning or implying the name of the other party, or any of its personnel, without the prior written consent of the other party, which shall not be unreasonably withheld. However, a

party may disclose such information as may be expressly required under applicable law without such consent from the other party; provided that such party promptly (prior to such disclosure to the extent possible) notifies the other party in writing of any such disclosure required by law, including any notices received by such party requiring such disclosure.

14.4. Governing Law. This Agreement shall be construed in accordance with the laws of the Province of Ontario, Canada excluding its conflict of law provisions. The parties agree to sole venue in the provincial or federal courts located in the Province of Ontario, Canada and each party hereby consents to the jurisdiction of such courts over itself in any action relating to this Agreement.

14.5. Severability. If any provision of this Agreement is found to be invalid or unenforceable to any extent, then the invalid portion shall be deemed conformed to the minimum requirements of law to the extent possible. In addition, all other provisions of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

14.6. Amendment. Any modification or amendment of this Agreement (including, without limitation, any Statement of Work) must be in writing and bear the signature of the duly authorized representatives of both parties.

14.7. Entire Agreement; Interpretation. This Agreement together with any Statement of Work executed by both parties and any other document that the Agreement references as being attached hereto or incorporated herein by reference sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any other agreements, discussions, proposals, representations or warranties, whether written or oral between the parties with respect to the subject matter hereof. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any party based on such party's or its advisors' participation in the preparation of this Agreement.

14.8. Remedies. Except as expressly provided in this Agreement, a party's exercise of any right or remedy under this Agreement or under applicable law is not exclusive and shall not preclude such party from exercising any other right or remedy that may be available to it. If either party seeks monetary damages from the other party, and a final judgment is entered entirely in favor of the party defending the monetary damages claim, then the party who brought such monetary claim shall reimburse the defending party for its reasonable attorney's fees and costs paid defending that claim. Otherwise, each party shall bear its own fees and expenses unless otherwise provided by statute.

14.9. Third Party Beneficiaries. Except as set forth herein, this Agreement is for the sole benefit of the parties and is not intended to, and shall not be construed to, create any right or confer any benefit on or against any third party, except as expressly provided in this Agreement.

14.10. Effectiveness of Agreement. The preparation, revision or delivery of this document for examination and discussion is not an offer to enter into any agreement and is merely a part of the negotiations between the parties. Neither party shall have any obligation or liability to the other whatsoever at law or in equity (including, without limitation, any claims for detrimental reliance or promissory estoppel) relating to the subject matter hereof unless and until such time as both parties shall have executed and delivered this Agreement.

15. Delivery, Testing, and Acceptance

15.1 Delivery. The term "Deliverable" as used herein shall include all such items provided to Customer pursuant to any Order or Statement of Work. SOTI shall perform its standard tests (if applicable) to verify

that the Deliverable to be delivered pursuant to any Professional Services Offering or any relevant Statement of Work satisfies the requirements set forth herein prior to delivery to Customer. Upon satisfactory completion thereof, SOTI shall deliver such Deliverable to Customer for testing (if applicable) and acceptance. SOTI represents that the Deliverables (i) will meet the functional and technical specifications, standards or other performance criteria set forth in an Order or Statement of Work and (ii) will not infringe upon the intellectual property rights of any third party.

15.2 Testing. If Testing is required, Customer shall have a period of five (5) business days following receipt of a Deliverable from SOTI (the "Acceptance Period") to test such Deliverable in accordance with the Acceptance Criteria set forth in Section 15.5 herein. If Customer reasonably determines during the Acceptance Period that Deliverable does not meet the Acceptance Criteria, then Customer shall notify SOTI of the nature and specifics of the nonconformity. SOTI shall within a reasonable time correct nonconformities discovered during the Acceptance Period and shall resubmit the corrected Deliverable to Customer for re-testing and the procedure set forth in this paragraph with respect to testing and acceptance of the Deliverable shall be repeated.

15.3 Acceptance. If Customer fails to give a statement of the failure of such Deliverable to meet the Acceptance Criteria within the expiration of the Acceptance Period, Customer shall notify SOTI of such failure and, if after the expiration of an additional three (3) business day period Customer continues to fail to deliver a statement of acceptance or failure of the Deliverable, Customer shall be deemed to have accepted the Deliverable as of the expiration of such three (3) business day period.

15.4 Rejection. Should Customer determine, prior to acceptance, that any Deliverable fails to meet the Acceptance Criteria in any material respect after the second re-delivery of the Deliverable, then Customer may elect to terminate this Agreement or any relevant Statement of Work, but shall be obligated to pay for all work completed and accepted (as defined above) by SOTI prior to the effective date of termination.

15.5 Acceptance Criteria. Acceptance Criteria shall be defined as SOTI's completion of all defined Deliverables in a Professional Services Offering or any relevant Statement of Work with Customers' acknowledgement that the Deliverables are completed and accepted by Customer.