

SOLACE

PROFESSIONAL SERVICES

Solace provides professional services pursuant to the terms and conditions set forth below and in any Statement of Work (as defined below).

DEFINITIONS

“NDA” means the non-disclosure agreement between Solace and Customer.

“Services” means the services provided by Solace to Customer as specified in a Statement of Work.

“Statement of Work” means a Statement of Work entered into by Solace and Customer.

Any capitalized terms not defined in these terms and conditions shall have the meaning given to such term in a Statement of Work.

SERVICES AND DELIVERABLES

Solace will perform the Services for and provide the Deliverables to Customer as specified in a Statement of Work.

Except as otherwise expressly provided in a Statement of Work, Solace shall be responsible for providing the facilities, personnel and other resources as necessary to perform the Services for and provide the Deliverables to Customer.

Solace acknowledges and agrees that it will co-operate with Customer employees or contractors in performing the Services and providing the Deliverables under a Statement of Work.

Any maintenance or support services to be provided by Solace in respect of the Services or Deliverables shall be purchased separately by Customer.

Solace will complete and deliver to Customer all the Services and the Deliverables, as the case may be, according to the delivery schedule and in conformance with the requirements and specifications described in the applicable Statement of Work. The Deliverables shall be deemed to be accepted when delivered to Customer by Solace.

REPRESENTATIONS, WARRANTIES AND COVENANTS

Solace represents and warrants to Customer that:

- (a) the Services and the creation of the Deliverables will be performed in a professional manner;
- (b) the Services and the Deliverables will substantially conform with the requirements and specifications described in the applicable Statement of Work;

- (c) the Deliverables will be free and clear of any liens, encumbrances or claims; and
- (d) the Deliverables will not infringe any intellectual property rights of a third party.

Any warranty in respect of any materials delivered by Solace shall be as set out in a Statement of Work and if none is so specified there shall be no warranty on any Services or Deliverables.

INVOICING AND PAYMENT

Solace shall invoice Customer for any Services performed by Solace and for any Deliverables delivered by Solace. Customer shall pay Solace all undisputed amounts within thirty (30) days, or such other period of time specified in the applicable Statement of Work, of Customer's receipt of a complete and accurate invoice from Solace.

EXPENSES

Customer shall pay any reasonable travel, lodging and meal expenses incurred by Solace's personnel in performing the Services or providing the Deliverables.

TERMINATION

A Statement of Work(s) may be terminated as follows:

- (a) by Customer, provided that Customer has provided Solace with thirty (30) days prior written notice;
- (b) by either Party, if the other Party fails to comply with any term or condition of these terms or any Statement of Work, provided that the terminating Party has given the other Party written notice of such breach and the breaching Party has not remedied the breach within fifteen (15) days of receipt of such notice; or
- (c) by Solace, if Customer has not paid any amount as set out in an undisputed Solace invoice delivered to Customer.

Unless otherwise stated in a Statement of Work, in the event of a termination under paragraph (a) above, Customer shall pay to Solace all amounts that would have been owing up to the end of the thirty (30) day notice period required for such termination.

No termination of any Statement of Work shall release Customer from its obligation to pay to Solace any unpaid, undisputed amounts that have accrued to Solace up to the time such termination becomes effective or release either Party from any other right or obligation which at such time had already accrued to the other Party.

Upon termination of a Statement of Work, Solace shall deliver to Customer all unfinished Deliverables to be delivered pursuant to such Statement of Work and the Parties shall return to each other all Confidential Information disclosed to the other Party in connection with a Statement of Work.

CONFIDENTIALITY

Solace and Customer acknowledge that they are parties to a non-disclosure agreement (the “NDA”). Any Confidential Information (as such term is defined in the NDA) related to a Statement of Work disclosed by either Party shall be subject to the terms and conditions of the NDA.

LIMITATION OF LIABILITY

Disclaimer

Solace and Customer each disclaim all representations, warranties or conditions, including but not limited to implied representations, warranties or conditions of merchantable quality and fitness for a particular purpose and those arising by statute or otherwise in law or from course of dealing or usage of trade.

Limitation of Liability

Neither Party will be liable for any indirect, special, incidental, consequential or punitive damages or for lost profits or revenues, however caused, arising in connection with any Statement of Work, Services or Deliverables even if such Party has been advised of the possibility of such damages or if such possibility was reasonably foreseeable.

Each Party's total liability to the other Party in respect of a Statement of Work shall be limited to direct damages up to the amount Customer has paid under the applicable Statement of Work, in the aggregate.

The limitations set out above apply regardless of the causes or circumstances giving rise to the claim even if such claim is based on negligence or other torts or breach of contract including, fundamental breach or breach of a fundamental term.

The limitations set out above do not apply to Solace's liability to Customer in respect of Solace's indemnity for intellectual property infringement claims set forth below; nor do they apply to a breach by Solace or Customer of the confidentiality obligations in the NDA.

INDEMNITY

Solace Indemnity

Solace hereby agrees to indemnify and defend Customer and its respective affiliates and its and their respective directors, officers, employees, agents, contractors or shareholders (collectively, the “**Customer Indemnified Parties**”) from any and all claims, demands and actions (including claims, demands, actions of contractors or employees of Customer) brought by or against Customer Indemnified Parties arising out of or relating to:

- (a) any intellectual property infringement claim brought by a third party in respect of the Services performed or the Deliverables delivered by Solace;
- (b) any non-fulfilment or breach of any covenant or agreement on the part of Solace contained in a Statement of Work; and

- (c) any claim with respect to damage to tangible property or personal injury caused by the gross negligence or wilful misconduct of Solace, Solace's employees or contractors.

Such indemnity shall include all costs and expenses, including reasonable legal costs of any judgment or settlement.

Customer Indemnity

Customer hereby agrees to indemnify and defend Solace and its respective directors, officers, employees, agents, contractors or shareholders (collectively, the "**Solace Indemnified Parties**") from any and all claims, demands and actions (including claims, demands, actions of contractors, employees or resellers of Customer) brought by or against Solace Indemnified Parties arising out of or relating to:

- (a) any non-fulfilment or breach of any covenant or agreement on the part of Customer contained in a Statement of Work; and
- (b) any claim with respect to damage to tangible property or personal injury caused by the gross negligence or wilful misconduct of Customer, or Customer's employees or contractors.

Such indemnity shall include all costs and expenses, including reasonable legal costs of any judgment or settlement.

DISPUTE RESOLUTION

Any dispute not resolved by good faith discussions between Solace and Customer may be submitted for resolution by arbitration under the *Arbitration Act, 1991* (Ontario) (the "**Arbitration Act**") as amended or substituted from time to time. Any arbitration shall take place in Ottawa, Ontario. Any arbitration proceeding shall be conducted by an arbitrator mutually agreed upon by Solace and Customer. The language used in the arbitration proceedings shall be English.