

Schedule "A"

digginIT Inc.

Terms and Conditions of Service

PLEASE READ THESE SERVICE TERMS AND CONDITIONS IN THEIR ENTIRETY BEFORE RECEIVING ANY SERVICES FROM digginIT Inc.

These Terms of Service ("TOS") are incorporated into and form part of any and all goods or service agreements (the "Customer Agreement") as may be entered into by you (the "Customer") and digginIT Inc. (the "Company") at any time. By accepting the Company's services, you agree to be bound by and accept these TOS. If you do not agree with anything in these TOS, do not use our services.

You are entitled access to these TOS and should review them regularly. Our TOS may change over time. You acknowledge that these TOS are readily accessible on a 24-hour basis on the Company website, and acknowledge that you have every opportunity to obtain independent legal advice with respect to them. You may also request a hard copy of the TOS from the Company at any time.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Customer agrees to the following terms and conditions:

1. Services.

- a. The Company provides several kinds of services (the "Services"), including but not limited to Live Care, Safeguard, Up2Date, Absolute Care, and other managed services. The particulars with respect to the nature of and costs of these services are set out in the Customer Agreement. The Company will provide the Services to the Customer in accordance with the terms of these TOS and the Customer Agreement. Each Customer Agreement will identify the tasks to be performed by the Company, the deliverables to be provided by the Company, as well as a schedule, fees, and expenses. The Company will not initiate any Services unless and until a Customer Agreement is executed by the Customer. Upon execution of the Customer Agreement by the parties, the Customer Agreement will be governed by and subject to the terms of these TOS. The TOS of this Agreement shall apply to each such Customer Agreement unless the parties expressly agree otherwise in a particular Customer Agreement.
 - b. All Customer applications for Services are subject to acceptance by the Company at its head office in Winnipeg, Manitoba, Canada. Acceptance by the Company of your application is expressly made conditional on your assent to all the terms described herein, and all sales and charges for the Services listed on any application shall be interpreted and governed exclusively by these TOS. The Company shall not be bound by any terms and conditions proposed by you, whether on your application or otherwise, that are additional to or different from the terms and conditions set forth herein, unless and only if accepted in writing by a principal officer of the Company at its head office.
- 2. Service Fees.** The Customer shall pay the fees for the Services (the "Service Fees") specified in the Customer Agreement for the performance of the Services. The Service Fees shall be confirmed at the time of the Company's acceptance of your application and its execution of the Customer Agreement. Prices will be charged to you in Canadian dollars, and may be subject to

change without notice. The Customer shall be responsible for timely payment for all invoices received, and shall not unreasonably withhold payment or cause excessive delay of payment. Unless otherwise agreed in writing, the Customer shall pay all invoices within thirty (30) days following the date of invoice. Past due amounts shall be subject to a 10% late fee, in addition to bearing interest at a rate of 1.5% until payment. All fees are exclusive of withholdings, duties, or levies however designated or computed and the Customer shall be responsible therefor.

3. Customer Responsibilities.

- a. The Customer shall: (i) respond to requests from the Company on a timely basis; (ii) have at least one (1) contact present during regular business hours to provide information and assistance to the Company; (iii) provide the Company with timely and accurate information and documentation; (iv) make available to the Company personnel familiar with Customer's requirements to permit the Company to undertake and complete its obligations under the Customer Agreement; (v) maintain a proper operating environment for any installed software, including all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required; (vi) provide a safe area for the Company to perform any services required to be performed on Customer's site; (vii) regularly back up all files and data.
- b. The Customer shall pay all applicable sales, value added, use, stamp, withholding and excise taxes and any other assessment in the nature of a tax, duty or charge relating to or arising from the provision of the Services. In the event that travel is required of the Company to provide the Services, or to address a deficiency (as referenced in paragraph 6(c)), the Customer shall reimburse the Company for all travel-related expenses actually incurred by the Company, and its servants, in rendering the Services so long as such expenses are (i) necessary, reasonable, and directly related to work specified in the applicable Customer Agreement, and (ii) supported by documentation.

4. Availability of Service.

- a. Availability. The Company may revise and discontinue any products or the Services at any time without notice to the Customer. The Customer acknowledges that the Services may not be available at all times, and may not be available in the format generally marketed, and some personal computers may not be able to receive the Services even if initial testing shows that the Customer's connection was qualified or the computer environment was suitable. In order for the Customer to receive the Services, if to be provided remotely, the Company will qualify the Internet connection for the minimum line rate (speed) available for support based on the Company's standard line qualification procedures. The Customer acknowledges that the Services require high speed Internet access and that it is the Customer's responsibility to ensure that there is adequate connectivity to the Internet.
- b. Restriction. The Customer acknowledges and agrees that the Company and/or its licensors or other third parties may, at any time, without notice or liability, take actions which restrict the use of the Services or limit the time of availability of the Services in order to perform maintenance activities and to maintain session control.

- c. **Scheduling.** For all Services that require scheduling a session with the Company, the Company will use commercially reasonable efforts to schedule a mutually convenient service session within a reasonable period of time. However, the Customer acknowledges that circumstances outside of the Company's control (for example, a large scale outbreak of a new computer virus) may cause significant delays in the Company's ability to schedule a service session.
 - d. **Personnel.** Subject to its prior approval, the Customer agrees that the personnel assigned by the Company to the Services may be changed from time to time in order to ensure that the types of skills needed to perform assigned tasks are available.
 - e. **Access to Computers.** The Customer hereby gives the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the necessary and reasonable access to its computer systems and other peripherals on its premises, including the right to remotely access its computer systems and other peripherals covered by the Services; give the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the right to open, view, modify, edit, delete, or otherwise manipulate the Customer's computer software, applications, data, and data storage media including, without limitation, the computer operating system, word processing, spreadsheets, databases, workflow, graphics, audio, video, system drivers and libraries, and any other type of software or data that may be contained on its computer system, network or peripherals; and give the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the right to download and/or install software or other products on its computer system, network and other peripherals, including without limitation, memory chips, processor chips, cooling fans, batteries, hard drives, tape drives, storage devices, modem and communication devices, audio and video cards, network interface cards, hubs, routers, switches, printers, scanners, cables, and any other hardware which the Company may elect to install.
5. **Payment Method.** The Customer may pay Service Fees by credit card, and in doing so, authorizes the Company to charge all amounts owed to the Company to its credit card. The Customer will at all times provide to the Company valid and current credit card information. If the Customer terminates its credit card or elects to pay for the Services with a different credit card, or if it receives a new account number for its credit card, the Customer shall immediately notify the Company of such termination or change. If the Company for any reason is unable to bill the Customer's credit card for any amount owed under any Customer Agreement, the Customer authorizes the Company to bill it directly for such amount, which amount, together with all late, chargeback and other fees set forth in these TOS or any Customer Agreement, shall be immediately due and payable. The Company reserves the right to charge any amounts owed by the Customer under these TOS or any Customer Agreement to the Customer's credit card or bill the Customer directly for such amounts at any time after the conclusion of the Services.
6. **Term & Termination.**
- a. **Effective Date and Term.** Unless agreed between the parties otherwise in writing, the Customer Agreement shall commence on the date of the Company's retention by the Customer (the "Effective Date") and shall continue in force for a period of one (1) year

from the Effective Date (the "Term"), unless terminated earlier in accordance with the provisions hereof.

- b. Renewal. Unless agreed between the parties otherwise in writing, or terminated in accordance with the provisions of paragraph 6(b) or 6(c), or either party provides written notice of termination at least sixty (60) days prior to the end of a Term, the Term shall automatically renew for additional 1-year terms, indefinitely.
- c. Termination by the Customer. The Company shall not be liable for delays or default in delivery of the Services due to causes reasonably beyond its control and which occur without its fault or negligence, provided written notification of excusable delay is given by the Customer within ten days of the occurrence causing same. In the event that the Company breaches any provision of these TOS or the Customer Agreement, the Customer agrees to provide the Company with a right to cure the breach. The Company shall have the right to cure any breach within 30 days of its receipt of written notice from the Customer of such breach. If such breach is not reasonably curable within such thirty (30) day period, the Customer shall not unreasonably withhold approval of a longer cure period provided Company promptly commences to cure such breach and continues to diligently pursue a cure of such breach. If, after the foregoing efforts, the Company is unable to reasonably remedy any breach and such breach substantially impairs the provision of the Company's Services, the Customer may terminate the Customer Agreement upon written notice to the Company. In any such case, any Service Fees paid by the Customer are non-refundable, and the Company is entitled to be paid Service Fees up to the date of the breach and substantial impairment of the Services, however, a refund of any Service Fees paid may be provided at the Company's sole discretion. In such case, the Company's liability to the Customer shall be limited as specified in Section 13.
- d. Termination and/or Suspension by the Company. If, as determined by the Company in its sole discretion: (a) the Customer breaches any provision of these TOS or the Customer Agreement or any license for Third Party Software (as defined below); (b) the Customer's use of any of the Services is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to any of the Services, the Company's network, or the use and enjoyment of the Services by third parties; (c) the Company receives an order from a court to terminate the Services provided to the Customer; (d) the Company for any reason ceases to offer any of the Services previously made available to the Customer under this Agreement; or (e) the Customer is abusing any of the Services, then, in any such case, the Company at its sole election may terminate or suspend one or more of the Services immediately without notice.
- e. Termination of Account. Upon failure of the Customer to make timely payment within thirty (30) days of an invoice date, Customer agrees and authorizes Company, at its discretion, to immediately cease without further notice to Customer any and all further action towards performance of the Services until any past due balances are paid in full, and further agrees that the Company shall not be responsible for any damages sustained by the Customer consequent to such cessation of Services after non-payment. The Company, in its sole discretion, may refuse to accept the Customer's request for service, renewal, or re-subscription following a termination or suspension of its use of any of the Services.

7. **Notice of Service Deficiency.** With respect to any claim that any of the Services were deficient, the Customer must notify the Company within 5 days of the Company's performance of such Services. If the Customer fails to give the Company written notice of such deficiency within such 5-day period, the Company will not be required to remedy such deficiency. The Customer agrees to give the Company reasonable access to its computer systems, networks and any peripherals, as well as access to its home or office premises if necessary to enable the Company to remedy any breaches of this Agreement. If the Company is unable to make a commercially reasonable effort to remedy any deficiency in services provided, at its sole discretion, then the Company may issue a refund for the deficiencies on services provided. In any such case, the Company's liability to the Customer shall be limited as specified in Section 13.
8. **Refund Policy.** Service Fees for prior months of Services are non-refundable. If the Company is unable to remedy a deficiency, any refund will be considered at the Company's sole discretion.
9. **Dispute Resolution.** Each party agrees to comply with the provisions of this paragraph prior to commencing litigation as to any claim or dispute (a "Dispute") arising under these TOS or the Customer Agreement. The party alleging a Dispute shall promptly advise the other party of such Dispute in writing which describes in reasonable detail the nature thereof (the "Dispute Notice"). The parties shall then exercise good faith efforts to resolve such Dispute. If the parties themselves are unable to resolve the Dispute within 5 days following the delivery of the Dispute Notice by the party alleging the dispute to the other party (the "Dispute Date"), the parties shall then jointly select a mediator to conduct the mediation. All mediation sessions shall be held in Winnipeg, Manitoba or within the surrounding area or such other place as the parties may agree in writing. Not later than 20 days after the Dispute Date, each party shall select for itself a representative who shall have authority to bind such party and shall advise the other party of the name of such representative. In such mediation, the mediator shall review the matter with each party to assist each party to understand the strengths and weaknesses of each position and to attempt to reach a compromise for settlement of the matter. If (a) the parties are unable to agree upon the mediator to use within 25 days after the Dispute Date, (b) mediation is not undertaken in a meaningful way within 30 days after the Dispute Date, or (c) any unresolved dispute remains after mediation, then either party may commence a civil action regarding such Dispute. The parties agree that any civil action thereby commenced shall be brought in a court of competent jurisdiction in the Province of Manitoba, and that the decision of such court(s) shall be final. The parties hereby submit to the jurisdiction of such court(s) and waive any objection that they may now or hereafter have to the venue of any such action or proceeding in any such court(s) or that such action or proceeding was brought in an inconvenient forum and agree not to plead or claim the same. In any mediation, the fees and costs of the mediator shall be borne equally by the parties to the mediation and shall be payable in advance or upon invoice from the mediator, as applicable, and each party shall bear the fees and costs of the party's own legal counsel and witnesses.
10. **Privacy Policy.**
 - a. **Private Information.** The Company will treat the Customer's personal information in accordance with the Company's current privacy policy, which may be amended by the Company from time to time at its sole discretion (the "Privacy Policy"), which is incorporated into these TOS and any Customer Agreement by this reference. The Privacy Policy is located at <http://www.digginIT.ca/privacy>. The Customer agrees to be

bound by the terms and conditions of the Privacy Policy. Please note that the Privacy Policy may change from time to time. The Company will post any Privacy Policy changes on the aforementioned page and, if the changes are significant, the Company will provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes). The Company will also keep prior versions of this Privacy Policy in an archive for the Customer's review.

- b. **Use of Private Information.** The Company agrees not to misuse or disclose any of the Customer's confidential information except under the following circumstances: (i) with the Customer's consent following an "opt in" by the Customer; (ii) with the Company's subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information on the Company's behalf (any such parties are required to process information based on the Company's instructions and in compliance with the Privacy Policy and Terms of Use and other appropriate confidentiality and security measures); (iii) where the Company has a good faith belief that access, use, preservation or disclosure of such information is reasonably necessary to: satisfy any applicable law, regulation, legal process, court order or enforceable government request, enforce the Company's rights under these TOS and any Customer Agreement, including investigation of potential violation thereof, detect, prevent, or otherwise address fraud, security or technical issues, or protect against harm to the rights, property or safety of the Company, its users or the public as required or permitted by law.
- c. **Password Security.** The Customer is responsible to keep its password(s) secure. The Customer is solely responsible for any activity that occurs under its user names and accounts, including any sub-accounts. The Company may request temporary use of the Customer's password(s) to facilitate routine support and maintenance services. If the Customer loses its password(s) or the encryption keys for any of its products or services, the Company may not be able to assist the Customer in recovering any associated data or information. The Customer must notify the Company immediately of any suspected unauthorized use of its accounts or any other security breach related to the Services. If the Company determines that a security breach or suspected fraudulent activity has occurred or is likely to occur on the account, the Company may suspend the account until the appropriateness of the activity has been verified.

11. Intellectual Property.

- a. **Company Intellectual Property.** The Company has created and exclusively owns the trade-marks Live Care TM, Safeguard TM, and Up2Date TM, as well as all intellectual property associated with these trade-marks and Services (the "Property"), including all rights to their use, promotion, and publication, without limitation in all formats, and in all jurisdictions, on a worldwide basis. The Property was created by the Company in order to advance and promote the business and objectives of the Company, and is of high value to the Company. Company invested time and money into the Property's creation, conceived of and created the Property, is the original and exclusive owner of all intellectual and other rights accruing to the Property, and has controlled and policed the use of the Property. The Customer acknowledges the validity of the Company's ownership of the Property and of the goodwill pertaining thereto, and agrees that the benefit of and goodwill associated with the use of the Property by the Company will inure entirely for the benefit of the Company. Customer acknowledges and agrees (i) that the

Property and all rights therein and goodwill pertaining thereto belong exclusively to the Company; (ii) to use the Property only while the Services are in effect, and only in accordance with the policies, practices, specifications, directions and standards stipulated by the Company from time-to-time; (iii) not to use the Property in any manner that is not expressly permitted by these TOS or the Customer Agreement unless the Company agrees to same in writing; (iv) not to reverse engineer, sell, transfer, or sublicense any aspect of the Property to any other person, company, or entity; (v) not do anything or omit to do anything that might impair, jeopardize, violate or infringe the foregoing trade-marks or the Company's rights thereto; (vi) not attack or challenge the validity of any trade-marks or intellectual property rights belonging to or asserted by the Company in the Property, or assist any other party to do so; and (vii) not do any act which would have a detrimental effect upon the Property, the Company's ownership of the Property, or the goodwill associated with the Company by its association with the Property.

- b. **Company Trade Secrets.** The Customer shall not directly or indirectly use, disclose, or publish any Company Trade Secrets. "Company Trade Secrets" means any and all documents or information relating to the Company that have been developed by the Company to give it a competitive edge, including but not limited to, software, formulas, programs, methods, techniques or processes, product costs and mark-up information, and service costs and mark-up information. The Customer acknowledges that any unpermitted use or disclosure of the Company Trade Secrets will cause the Company irreparable damage for which remedies other than injunctive relief will be inadequate and that the Company shall be entitled to injunctive relief or other equitable relief enjoining such use or disclosure, without the posting of a bond or other security, in addition to any other remedies available by law or under the Customer Agreement.
- c. **Third Party Software.** The Company, in the provision of the Services, may make use of software products or services made, provided, and operated by third parties (the "Third Party Software"). The Customer authorizes such use, and acknowledges that the Company and the Customer are requested to abide by all licensure and other legal obligations for such Third Party Software. The Customer further acknowledges and agrees that is shall be required to install the Third Party Software, to accept certain terms of service and enter into agreements prior to their installation and operation. The Customer may decline to install the Third Party Software or to accept Third Party Software terms of service, but doing so may constitute a breach of the terms of these TOS and the Customer Agreement, as the Company may be prevented from providing the Services where such Third Party Software is necessary, required, or preferred. Under no circumstance shall the Company be liable for any design, deficiency, faulty or inadequate Service caused by of consequent on the operation of the Third Party Software, and the Customer's sole remedy for such deficiency or default is the Third Party Software company. The Company reserves the right to change Third Party Software providers at its discretion in order to optimally provide the Services.
- d. **Work Product.** As between the parties, all work product and intellectual property rights resulting from the Services shall belong solely to the Company. For the purposes of these TOS, "intellectual property" shall include, without limitation, all inventions, know-how, information, documentation, project plans, work plans, methodology/approach documentation, templates, specifications, programs, custom software, prototypes and

systems first made, authored, conceived or reduced to practice by the Company or the Company's agents, servants, employees or representatives in connection with this Agreement. Title to, ownership of, and all intellectual property rights in, any facilities, equipment, software, systems, data, processes and documentation owned by the Customer used in connection with the Services shall remain with the Customer. To the extent that the Services result in the development of code or any modification or enhancement to Customer's software, the Customer expressly acknowledges that all proprietary interests in said code, modification or enhancement thereto shall be the sole property of the Company. The Company hereby grants to the Customer, a royalty free, non-exclusive, irrevocable, worldwide, licence to use such code, modification or enhancement at their facilities for their own internal use.

12. Confidential Information & Non-Competition Covenants.

- a. Confidential Information. Each party agrees to hold all Confidential Information of the other party in confidence and to take all necessary precautions to protect such Confidential Information. "Confidential Information" shall mean the Customer Agreement, and all information, data, documents and materials acquired or to which access has been given in the course of or incidental to the provision of the Services, except for information which the receiving party can demonstrate: (a) is previously rightfully known to the receiving party without restriction on disclosure; (b) is or becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or public domain; (c) is disclosed to the receiving party by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by the receiving party without access to the Confidential Information. Each receiving party shall at all times keep in confidence all such Confidential Information using a standard of care such party uses with its own information of a similar nature, but in no event less than reasonable care. The receiving party shall not use any Confidential Information other than in the course of its duties hereunder. Without the prior written consent of the disclosing party, the receiving party shall not disclose any Confidential Information except on a "need to know" basis to an employee or contractor under binding obligations of confidentiality substantially similar to those set forth herein. The terms of confidentiality under these TOS shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Immediately upon the termination or expiration of the Customer Agreement, the receiving party will return to the disclosing party all Confidential Information of the disclosing party and all documents or media containing any such Confidential Information and any and all copies or extracts thereof. If a receiving party is legally compelled to disclose any of the disclosing party's Confidential Information, then, prior to such disclosure, the receiving party will assert the privileged and confidential nature of the Confidential Information and cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, the receiving party shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. Each party expressly agrees that monetary damages would be inadequate to compensate the other for any breach of confidentiality obligations hereunder, that any such breach or threatened breach will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, at law or in equity, the other party shall be entitled to obtain injunctive relief against the threatened

breach of any confidentiality provision or the continuation of any such breach without the necessity of proving actual damages.

- b. **Non-Competition.** During the Term and for two (2) years after termination of the Customer Agreement, the Customer agrees not to, directly or indirectly, discuss the terms of prospective employment with, solicit for hire, or hire (directly as employees or indirectly as contractors, sub-contractors, consultants, or in any other capacity) any person who is, who becomes during the term of the Customer Agreement, or who has been in the past twelve (12) months an employee of the Company and had more than incidental contact with the Customer on the Company's behalf to perform services that are the same or substantially similar to services the person performed for the Company. Notwithstanding the foregoing, nothing shall prevent the Customer from employing an employee of the Company who demonstrably (1) responds to a general employment advertisement when such solicitation is not specifically directed at that individual, or (2) is directed to the Customer by employment search firms where such employment search firms are not directed by the hiring party or its affiliates to initiate discussions with respect to the prospective employment of that individual.

13. Liability, Indemnification, & Third Party Claims.

- a. **Liability.** Each party shall use reasonable care in the performance of its respective obligations under these TOS and the Customer Agreement so as to minimize the likelihood of injury to persons, damage to property, or infringement of rights.
- b. Although the Company will make diligent efforts to avoid the effects of malicious software, viruses, and other online threats, the Company cannot and does not make any warranties with respect to the safety or security of any computer system, including that of the Customer. The Company represents and warrants that its Services shall not contain any libelous material, do not infringe upon any third party intellectual property rights, and do not invade or violate any right of privacy, personal or proprietary right. While the Company only partners with legitimate and reputable businesses, the Company cannot and does not control the actions of Third Party Software vendors. The Company makes no representations or warranties regarding the contents and actions of any Third Party Software. The Company cannot and does not control the actions of the Customer. Under no circumstances shall the Company be liable for any act or omissions of the Customer that cause any harm, loss, damage, or downgrading of the Customer's systems or services.
- c. **Indemnification.** Each party will indemnify and save the other harmless from any loss or damage to real property or tangible personal property or from any loss or damage arising from bodily injury, including death, to the extent such loss or damage is caused by the negligent acts or omissions or intentional wrongdoing of the indemnifying party's employees, subcontractors, or agents, or any other party for whom they are responsible at law and arises out of the performance of this Agreement, provided that: the indemnified party gives the indemnifying party prompt written notice of such claim of loss or damage, and full cooperates in the defence and all related settlement negotiations.

- d. THE COMPANY AND RELATED PARTIES PROVIDE THE SERVICES “AS IS, WITH ALL FAULTS,” AND MAKE NO REPRESENTATIONS OR WARRANTIES OF KIND, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE COMPANY OR AN AUTHORIZED REPRESENTATIVE OF THE COMPANY SHALL CREATE A WARRANTY.
- e. THE MANUFACTURER OF ANY PRODUCT OR THIRD PARTY SOFTWARE INSTALLED BY THE COMPANY DURING THE PROVISION OF SERVICES IS SOLELY RESPONSIBLE FOR ANY WARRANTY ASSOCIATED WITH THE PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, IN RESPECT OF THE PRODUCTS AND SERVICES CONTEMPLATED BY THESE TOS, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RESPONSIBILITY FOR CLAIMS IN RESPECT OF THE PRODUCTS IS LIMITED TO REPLACEMENT OF THE PRODUCT.
- f. Notwithstanding Clause. Notwithstanding anything to the contrary in these TOS and the Customer Agreement it is acknowledged and agreed that the Company’s aggregate liability for damages for any cause related to or arising out of any and all provision of goods or Services, whether in contract, negligence, or tort, will not exceed the amount of Service Fees paid during the preceding twelve (12) month period.
- g. Damages. Except for the foregoing obligations of indemnity, no Party (nor its suppliers or customers) shall be liable to the other Party for any damages for loss of profits or business, loss or damage to data, or failure to realize expected savings, or for any punitive consequential, incidental, or indirect damages, related to the provision of the Services, even if the Party could reasonably foresee or has been advised of the possibility of such damages.

14. Intellectual Property Right Infringement Claims.

- a. Claims against the Company. If a third party claims that the Services or the Company’s hardware or software infringe any existing or pending patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any third party, the Company will defend the Customer against that claim at the Company’s expense and pay all costs, damages and attorneys’ fees that a court finally awards provided that the Customer (i) promptly notifies the Company in writing of such claim, (ii) allows the Company to control, and cooperates with the Company in, the defence and any related settlement negotiations, and (iii) the Company may, at its option and expense, either: (i) procure for the Customer the right to continue to utilize the Services pursuant to this Agreement, or; (ii) replace or modify the Services in such a way that they shall not continue to constitute such infringement or misappropriation so long as it doesn’t materially affect the Services, or, (iii) if neither option is commercially practicable, remove the infringing component from the Services and reduce the Service Fees accordingly.

- b. Claims against the Customer. If a third party claims that any of the components of the Customer's hardware or software which are utilized to perform the Services, infringe any existing or pending patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any third party, the Customer will defend the Company against that claim at the Customer's expense and pay all costs, damages and attorneys' fees that a court finally awards provided that the Company (i) promptly notifies the Customer in writing of such claim, (ii) allows the Customer to control, and cooperates with the Customer in the defence and any related settlement negotiations. (c) Limitation. The foregoing indemnities shall not apply to the extent that the claim for infringement arises out of any of the following: (i) a modification to the Services made by the Customer or the third party, or a combination of the software or products provided by the Customer or the third party, unless such modification or combination was made at the written authorization or direction of the Company or its subcontractors; (ii) adherence by the Company or its subcontractors to the Customer's written requirements; or (iii) the use of the Services in violation of this Agreement.

15. General.

- a. Amendments. These TOS and the Customer Agreement may be amended only in writing signed by both parties.
- b. Assignment. The Customer may not assign or otherwise transfer any of its rights or obligations under these TOS and the Customer Agreement without the Company's prior written consent. Subject to this limitation, these TOS and the Customer Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto. In the event of a sale of all or substantially all of the Company's business or assets, the Customer consents to the assignment or transfer the Customer Agreement to the buyer so long as the buyer also acquires and assumes the obligations of the Company under these TOS and the Customer Agreement.
- c. Marketing. The Customer grants the Company the right to use its name and logo in promotional material and other communications documents to be distributed from time to time, without notice. The Company may use the Customer as potential reference for future and potential clients. Further, the Customer agrees to receive the Company's newsletters, updates and promotions sent via email regarding its services, until such time as the Customer withdraws its consent to receive such material.
- d. Waiver of Warranties. The representations and warranties set forth in these TOS and the Customer Agreement are the only representations and warranties made by the Company to the Customer and are in lieu of all other representations or warranties of any kind, either express or implied by law, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, all such warranties being hereby fully disclaimed.
- e. Entire Agreement. These TOS and the Customer Agreement (including any Schedules attached thereto) constitutes the entire agreement between the parties concerning the Services and supersedes all prior and contemporaneous agreements and

communications, whether oral or written, between the parties relating to the subject matter hereof, and all part courses of dealing or industry custom.

- f. **Governing Law.** These TOS and the Customer Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba, and the laws of Canada applicable therein. The Customer attorns to Manitoba for the resolution of any dispute relating to these TOS or the Customer Agreement. Any court proceeding with respect to these TOS or the Customer Agreement shall be brought in Manitoba at the Court of Queen's Bench.
- g. **Force Majeure.** Dates or times by which either party is required to perform under these TOS and the Customer Agreement, excepting the payment of any amount due hereunder, will be postponed automatically to the extent that any party is prevented from meeting them by causes beyond its reasonable control, excepting labour issues, provided that the parties will use reasonable efforts to avoid the adverse impact of such causes and to resolve such causes once they have occurred in order to resume performance.
- h. **Waiver of Condition.** The waiver by either party of a breach or a default by the other party shall not be construed as a waiver of any succeeding breach, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege operate as a waiver of any right, power or privilege by such party.
- i. **Severability.** If a court finds any provision of these TOS and the Customer Agreement invalid or unenforceable as applied to any circumstance, that provision shall be enforced to the maximum extent permitted by law, and the other provisions, and that provision as applied to other circumstances, shall remain in full force and effect.
- j. **Notices.** All notices, requests, demands or communications made pursuant to the terms hereof or required or permitted to be given by one party to another shall be given in writing by personal delivery or by registered mail, postage prepaid, addressed to such other party or delivered to such other party as follows:

To the Company:

PO BOX 23068
1295 PEMBINA HWY
Winnipeg, MB R3T 5S3
Alternatively, by email: contact@digginit.ca

To the Customer:

At the address provided by the Customer in the application.
Alternatively, by email as provided by the Customer during registration.

or at such other address or email as may be given by any of them to the other from time to time and such notices, requests, demands or other communications shall be deemed to have been received when delivered, or, if mailed, three (3) business days following the

date of mailing thereof, provided that if any such notice, request, demand or other communication shall have been mailed and regular mail service shall be interrupted by strikes or other irregularities, such notices, requests, demands or other communications shall be deemed to have been received three (3) business days after the day following the resumption of normal mail service, or if emailed, notice shall be deemed given 24 hours after an email is sent, unless the sending party is notified that the email address is invalid.

- k. Survival. Upon termination of this Agreement for any reason, the following sections shall survive according to their terms: Sections 2, 6, 8, 10, 11, 12, 13, 14, and this Section 15(k) and all other clauses which survive by operation of law.