

## TERMS AND CONDITIONS

These are the terms and conditions (the "Terms and Conditions") that govern the supply of services by LSquared Networks Inc. ("LSquared", "us", "we", "ours" and words of like import) to our customers ("Customer", "you", "yours" and words of like import). These Terms and Conditions become a binding legal agreement when you sign an LSquared-provided order form, work order or statement of work ("Order Form") with us. The services we provide (the "Services") under an Order Form are described on the Order Form and in these Terms and Conditions.

### 1 DEFINITIONS

#### 1.1 For the purposes of the Agreement:

"Confidential Information" means all information that is not generally available to or used by others and that is disclosed or made available by one party to the other party in connection with the Agreement. Confidential Information includes, but is not limited to, research, product plans, products, services, customer lists, development plans, designs, drawings, marketing, finances, and other business information. Confidential Information does not include any information that: (i) was publicly known and made generally available in the public domain prior to the time it was disclosed to the Receiving Party, (ii) became publicly known and made generally available, after disclosure to the Receiving Party, through no wrongful action or inaction of the Receiving Party, or (iii) was in the Receiving Party's possession, without confidentiality restrictions, at the time of disclosure to it, as shown by Receiving Party's files and records.

"Deliverable" means any software deliverable expressly required under an Order Form to be delivered to you in the course of the Services, or in which Work Product is included. Deliverables include applicable Third-Party Materials, if any.

"Disclosing Party" means a party to the Agreement that discloses, either directly or through agents, Confidential Information to a Receiving Party.

"Fees" means the fees for the Services that are described in the Agreement. The Fees are set out more particularly in the applicable Order Form.

"Pre-Existing Works" means any materials (i) created or owned by us at the time of the commencement of the Services, or created or acquired by us after the commencement of the Services other than pursuant to the Services, and (ii) incorporated in or provided with a Deliverable. Pre-Existing Works do not include Third-Party Materials.

"Receiving Party" means a party to the Agreement that receives Confidential Information from a Disclosing Party.

"Third-Party Materials" means any materials, other than Client Materials, that are owned by a third party or third parties and which we include in a Deliverable.

"Work Product" means software, code, scripts, designs, materials, documentation or other works of authorship or other information, created by us in the performance of Services under an Order Form that expressly provides that such materials, or the Deliverable in which they are included, are to be the property of Customer. Work Product does not include Pre-Existing Materials or Third-Party Materials, and also does not include ideas, concepts, processes, procedures, techniques, methods or know-how unless the Order Form expressly states otherwise.

### 2 THIS AGREEMENT

2.1 These Terms and Conditions apply to all of our Services, including under our Service Level Agreement, if applicable. They apply notwithstanding the terms of any purchase order or other terms of or provided by Customer of any kind, unless we have expressly agreed otherwise in the applicable Order Form.

2.2 These Terms and Conditions, together with the applicable Order Form and the Service Level Agreement (if applicable), constitute a legally binding agreement (when used in reference to a particular Order Form or particular Services, that agreement is referred to here as the "Agreement"), and govern our delivery and your receipt and use of the Services. In the event of any conflict of inconsistency between these Terms and Conditions and the Order Form, the Order Form shall prevail.

2.3 The Agreement is effective from and after the effective date stated in the Order Form, or if no effective date is stated in the Order Form, from and after the date on which the last of you and LSquared execute the Order Form, or if both do not execute the Order Form, from and after the date we commence performing the Services at your request.

### 3 THE SERVICES

3.1 We shall perform, or cause to be performed (including through appropriate supervision and inspection), the Services, and otherwise fulfill our obligations under the Agreement, exercising reasonable skill, care and diligence, in accordance with recognized professional and industry standards, in a timely manner and in accordance with the terms and conditions of the Agreement. We possess the knowledge, skill and experience necessary for the provision and completion of the Services in accordance with the terms of the Agreement, and each worker furnished or deployed by us under the Agreement shall be competent and qualified to perform the Services required of the worker. We shall comply with all applicable laws in the performance of the Services. We have all necessary rights to perform the Services and provide any Deliverables and Pre-Existing Works in the manner and on the terms contemplated in the Agreement.

3.2 Any Deliverable that we provide to you will comply in all material respects with the Agreement. If you notify us of any non-compliance of a Deliverable with this warranty during the 90 days after your acceptance of it we shall use reasonable and repeated efforts to correct the non-compliance at our expense. Other than termination of the Agreement for breach, this warranty is your sole remedy for non-compliance of a Deliverable with this warranty.

3.3 We may outsource or subcontract the performance of Services, but we shall be liable for the performance thereof as though the Services were performed by us directly, and any subcontractor shall be subject to confidentiality and intellectual property ownership obligations to us that are consistent with the Agreement.

3.4 You acknowledge that unless an Order Form provides for particular dates, all deadlines and date milestones in an Order Form are approximate. You also acknowledge that to the extent our performance of the Services is delayed by your acts or omissions, any deadline or date milestone that applies to us and is affected by such delay shall be extended on a day for day basis by the amount of the delay. Such delays may also be subject to additional costs, to be discussed and agreed by you and us at the applicable time.

3.5 You may from time to time request a change in the scope of Services by providing us with a written notice setting out the requested change. We will respond to the change request in writing within a reasonable period of time and shall indicate therein whether we are able to comply with such change request, and shall describe any additional costs or other changes to the Services and Deliverables, specifications, method of delivery, effect on price, implementation schedule and other resources that we believe (acting reasonably) would be required ("Change Order"). You may accept or reject a Change Order in your sole discretion. If you accept a Change Order, you will indicate your acceptance by executing the Change Order and returning it to us, after which the Change Order will be deemed incorporated into, and form a part of, the Agreement.

3.6 You shall have a reasonable period of time, not to exceed 10 days after delivery to you of any Deliverable, to test the Deliverable for compliance with the Agreement. We will make reasonable efforts to correct, within a reasonable period of time not to exceed 10 days, any deficiency from

the warranties in the Agreement that you notify to us in writing during that testing period. You will then have a further reasonable period of time not to exceed 10 days to test the corrected Deliverable, and we will have a further reasonable period of time not to exceed 10 days during which we shall use reasonable efforts to correct any remaining deficiency that you notify to us in writing during such further testing period. If after such testing and correction the Deliverable does not comply with the warranties in the Agreement you may by written notice given within 10 days of the end of such correction period terminate the Agreement and we shall within a reasonable period of time refund to you an equitable portion of the applicable Fees, or reduce our Fees by such amount, as the case may be, having regard to the portion thereof you have at that time paid, and the nature and extent of the deficiencies, and the usability of the Deliverable. If you do not give us written notice within any such testing period of any deficiency you will be deemed to have accepted the Deliverable.

#### **4 FEES AND TAXES, AND BILLING**

- 4.1 In consideration of the provision of the Services, you shall pay to us the Fees in accordance with the Agreement. You shall also reimburse us for any expenses that are set forth in an Order Form, or otherwise approved by you in advance in writing. We shall invoice you for Services in accordance with the Order Form. Except as set forth in the Order Form, payment shall be due within 30 days of the date of the invoice.
- 4.2 You shall pay all applicable sales and excise taxes, including HST, on amounts due under the Agreement.
- 4.3 You shall pay us interest on any amounts due hereunder that are not paid when due. Interest shall be calculated at the rate of 1.5% per month, and shall also be payable on overdue interest.
- 4.4 In the event that any amounts properly due remain unpaid more than 10 days after the due date, in addition to any other remedies we might have under the Agreement or in law, we have the right on notice to you to (i) immediately discontinue providing the Services, and/or (ii) alter the Fees and billing under the Agreement should you wish to continue receiving the Services after paying all overdue amounts.

#### **5 DEFAULT AND TERMINATION**

- 5.1 The term of an Agreement (the "Term"), if any, will be set forth in the Order Form and this Agreement will continue in force until its expiration or early termination in accordance with this Article 5.
- 5.2 The following events are a Default by a party where the default is not cured in the relevant cure period:
  - (a) a party fails to perform or observe any of its material obligations under the Agreement and the failure continues unremedied for 5 days following receipt of a notice of the failure from the other party;
  - (a) a party becomes insolvent, commits any act of bankruptcy (as set out in the Bankruptcy and Insolvency Act (Canada)) or makes a proposal under the Companies Creditors Arrangement Act (Canada); or
  - (b) a party fails to make payment when due to the other party, and such failure continues unremedied for 30 days following receipt of notice of Default from the other party.
- 5.3 Upon Default, the non-defaulting party may do any or all of the following:
  - (a) it may immediately terminate the Agreement by giving notice; and
  - (b) it may exercise any of its other rights and remedies provided for hereunder or otherwise available to it at law or in equity.
- 5.4 Either you or we may terminate the Agreement for convenience upon 10 days written notice to the other party.
- 5.5 If the Order Form specifies any termination fees, upon your termination of this Agreement for any reason other than our Default, you shall be responsible for and on receipt of our invoice therefor shall pay the termination fees set forth in the Order Form. Such termination fees are an agreed pre-estimate of the damages we would suffer as a result of such termination, and are not a penalty. We may set-off such termination fees against any amounts we owe you under the Agreement.
- 5.6 Upon termination, each party shall return to the other the other party's property and Confidential Information or, upon request, destroy the Confidential Information and all copies and certify in writing that they have been destroyed. All obligations arising prior to termination shall be complied with and any provisions of the Agreement that by their nature operate beyond the termination or expiry of the Agreement shall survive such termination. For clarity, upon an expiry or termination for any reason of this Agreement we shall each within 30 days of the effective date of the expiry or termination pay to the other all amounts required to be paid hereunder in relation to Services provided on or before such effective date, including the payment of Service Fees.

#### **6 INTELLECTUAL PROPERTY**

- 6.1 Subject to this Article 6, as between the parties all Services and any software, technology or other intellectual property that we use to provide the Services or create in the provision of the Services is our property or Third-Party Materials, and except for express rights in the Agreement no rights therein are granted to you.
- 6.2 Any Third-Party Materials shall be described in the Order Form. Your rights to the Third-Party Materials shall be subject to the license agreements, end user terms, or other legal agreements that govern their use, copies of which we shall provide to you. Unless the Order Form states otherwise, the cost of the license or access rights to the Third-Party Materials that are contemplated by the Order Form shall while this Agreement is in effect be included in the Fees (and afterward are your responsibility). We are not responsible for the Third-Party Materials, including for any loss, damage, injury, claim or liability they may cause or that you may suffer as a result of using them.
- 6.3 If the Order Form expressly states that Work Product or a Deliverable specifically described in the Order Form is to be your property, subject to payment therefor hereunder:
  - (a) We shall and do hereby assign to you all right, title and interest to the applicable Work Product. Such assignment shall occur automatically upon the later of (i) the creation of such Work Product, and (ii) your payment for such Work Product or the applicable Deliverable in accordance with the Agreement. We confirm that we require any individuals who perform any of the Services to waive any moral rights they may have in such Work Product. Upon our assignment of such Work Product to you under the Agreement, it becomes, as between us and you, your Confidential Information; and
  - (c) We shall and do hereby grant to you a non-exclusive, royalty-free (except for amounts due hereunder) perpetual license to use the applicable Pre-Existing Materials. This license allows you to use such Pre-Existing Materials in connection with the applicable Deliverable, allows you to modify such Pre-Existing Materials to the extent necessary to modify such Deliverable, can be sublicensed to any user of such Deliverable and can be assigned to any transferee of such Deliverable. This license survives any termination or expiry of the Agreement, except for a termination by us for your breach of the Agreement.

## **7 SUPPORT AND MAINTENANCE**

- 7.1 Except as expressly set forth in these Terms and Conditions or in an Order Form, our sole obligation to provide support or maintenance services is as set forth in our Service Level Agreement. The Service Level Agreement does not apply to the Services unless the Order Form specifically states that the Service Level Agreement does apply.

## **8 CONFIDENTIALITY**

- 8.1 Each party acknowledges that it would be damaging to the other party if its Confidential Information were disclosed to or obtained by third parties. Each party shall make all commercially reasonable efforts during the term of the Agreement and thereafter to prevent the other party's Confidential Information from being used by, disclosed to or obtained by any person or entity for any purpose other than the performance and use of the Services or as expressly permitted in the Agreement. Each party's efforts will not be less than those that it takes to prevent disclosure of its own Confidential Information. The Receiving Party will be responsible for breaches by its Representatives of the Agreement.
- 8.2 It is not a breach of the Agreement to disclose Confidential Information required to be disclosed by law, judicial or arbitration process or by governmental authorities, provided that the Receiving Party first gives the Disclosing Party reasonable notice of any required disclosure pursuant to such law, order or process and takes all reasonable steps to restrict such disclosure and protect the confidentiality to the extent possible and fully cooperates with the Disclosing Party, in any efforts Disclosing Party may reasonably take to challenge or delay such disclosure.
- 8.3 Each party acknowledges and agrees that:
- (a) the restrictions set forth in this Article 8 are reasonable in the circumstances and the Receiving Party waives all defenses to the strict enforcement of the restrictions;
  - (b) a violation of any of the provisions of this Article 8 will result in immediate and irreparable harm and damage to the Disclosing Party; and
  - (c) in the event of any violation of any provision of this Article 8, the Disclosing Party shall be entitled to apply for equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.
- 8.4 This Article 8 shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products, provided it is done without use of the other party's Confidential Information. Further, the Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Receiving Party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of the Agreement. The term "residuals" means information in intangible form, which is retained in unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.

## **9 DISCLAIMERS, WARRANTIES, LIMITATION OF LIABILITY AND INDEMNITIES**

- 9.1 You acknowledge that unless an Order Form provides for certain dates, all deadlines and date milestones for any integration, setup or configuration services to be provided by us under an Order Form are approximate. You also acknowledge that to the extent our performance of the Services is delayed by your acts or omissions, any deadline or date milestone that applies to us and is affected by such delay shall be extended on a day for day basis by the amount of the delay.
- 9.2 Except as specifically set forth in the Agreement, LSquared makes no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Services or any Deliverable. LSquared does not represent or warrant (a) that the use of the Services or any Deliverable or the use or operation thereof will be uninterrupted or error-free or operate in combination with any other hardware, software, system or data, or (b) that all errors or defects will be corrected. Except as specifically set forth in the Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantable quality, merchantability, fitness for a particular use or purpose, or non-infringement of third party intellectual property rights, are disclaimed to the maximum extent permitted by applicable law.
- 9.3 LSquared shall not have any responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of any materials that you provide, or for obtaining rights to use or title to any such materials, or for any loss or damage they or their use causes.
- 9.4 Except for direct damages, neither party shall be liable to the other for any damages whatsoever (including without limitation loss of profits or other economic loss, or any indirect, exemplary, incidental, special or consequential damages, even if it has been advised of the possibility of such damages) caused by its performance of this Agreement or arising in relation to this Agreement. Other than liability for unpaid amounts for Services, in no event shall either party's liability for damages for any Services exceed, in the aggregate, the total fees paid by Client to LSquared for the Services in the 12 months immediately preceding the event which caused the damage or injury. The exclusions and limitations in this Section 9.4 shall apply regardless of whether any action is brought in contract or in tort, including breach of warranty, negligence and strict liability, or fundamental breach and/or failure of essential purpose of the Agreement or of any remedy contained herein, and shall survive the expiration, termination or repudiation of the Agreement, but shall not apply to indemnification under the Agreement, to breaches of Article 7, or to fraud, deliberately wrongful conduct, or gross negligence.

## **10 GENERAL**

- 10.1 Neither you nor we shall, during the term of the Agreement and for twelve (12) months thereafter, without the other's prior written consent, solicit for hire any of the other's employees. This provision shall not restrict the right of either party (1) to solicit or recruit generally in the media, and (2) to hire, without the prior written consent of the other party, any personnel of the other party who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.
- 10.2 You may not assign your rights or obligations under the Agreement without our prior written consent.
- 10.3 We shall be entitled to use your name on our website and general sales collateral for the sole purpose of identifying you as a customer of ours.
- 10.4 Neither party shall be liable to the other for any delay or failure to perform due to fire, flood, earthquake, acts of God, acts of war, riots, civil disorder, strikes, lock-outs or labor disruptions, the failure of telecommunications systems or any other cause whether similar or dissimilar beyond its reasonable control (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance of those of its obligations pursuant to the Agreement affected by the Force Majeure Event only for so long as such Force Majeure Event continues and such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 10.5 Notices and other communications required or permitted under the Agreement shall be in writing and addressed to the parties at the addresses shown on the Order Form. Notices shall be sent by delivery (written receipt required) or by facsimile transmission (machine confirmation to be retained by sender) and the party sending such notice shall telephone or email to confirm receipt. Routine operational notices may be sent by

email to the email address routinely used by the parties in their communications with each other. Either party may change its address or facsimile number for notification purposes by giving the other party notice of the new address or facsimile number and the date upon which it will become effective. A communication shall be deemed to have been received as of the next business day following its transmission by facsimile if transmitted after 4 p.m. Eastern Time.

- 10.6 Except as expressly set out herein, nothing contained in the Agreement shall create or imply any agency relationship between the parties, nor shall the Agreement be deemed to constitute a joint venture or partnership between the parties.
- 10.7 If any provision of the Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of the Agreement, or the application of such provisions to persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected, and each such provision shall be valid and enforceable to the extent granted by law. The Agreement constitutes the entire agreement between the parties relating to the Services. You may not amend this Agreement without our prior written consent. We may amend this Agreement on not less than 30 days prior written notice to you, and if you do not terminate this Agreement on or before the effective date of such amendment you shall be deemed to have agreed to the amendment. Sections 4.2, 4.3, 5.5, 5.6, 6.1, 6.2, 6.3, 7, 8, 9 and 10 shall survive any termination or expiry of the Agreement.
- 10.8 The Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. The courts situate in the City of Toronto shall have exclusive jurisdiction over all disputes. The parties agree that jurisdiction and venue in such courts is appropriate and each irrevocably attorns to the jurisdiction of such courts.
- 10.9 The parties have requested that the Agreement and all documents contemplated thereby or relating thereto be drawn up in the English language. Les parties ont requis que cette Convention ainsi que tous les documents qui y sont envisagés ou qui s'y rapportent soient rédigés en langue anglaise.