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Acorn PLMS

# North American Terms & Conditions

Last Updated: November 28, 2024

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ACORN PLMS PTY LTD. ("ACORN PLMS") HAS DEVELOPED A SOFTWARE APPLICATION CONSISTING OF A LEARNING MANAGEMENT SYSTEM, CALLED ACORN PERFORMANCE AND LEARNING MANAGEMENT SYSTEM. THIS IS A LEGAL AGREEMENT BETWEEN ACORN PLMS AND THE CLIENT. BY (I) CLICKING THROUGH THIS AGREEMENT ELECTRONICALLY, OR (II) EXECUTION OF AN ORDER FORM, OR (III) USING THE SERVICES, THE CLIENT AGREES TO BE BOUND BY THESE TERMS. IF YOU ARE ENTERING INTO THIS AGREEMENT AS AN AGENT, EMPLOYEE OR REPRESENTATIVE OF THE CLIENT, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ACT ON THE CLIENT'S BEHALF.
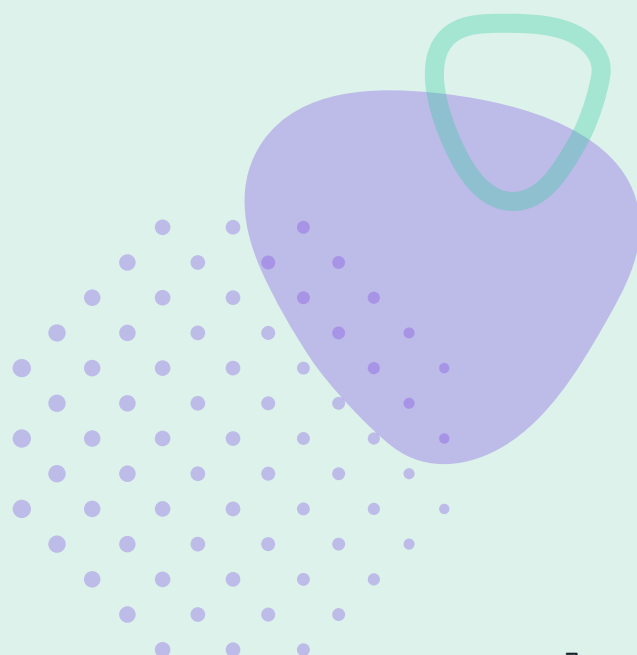
1. DEFINITIONS & INTERPRETATION

1.1.   **Definitions.** In this Agreement the following definitions apply, unless the context otherwise requires:

(a).   **"Administrator"** means each person who is nominated by the Client as an administrator of the Services, who supervises the use of the Services by Authorized Users;

(b).   **"Affiliate"** means, with respect to a party, any person, partnership, joint venture, corporation, or other entity, that directly or indirectly controls, is controlled by, or is under common control with such party'

(c).   **"Agreement"** means the entire agreement between Acorn PLMS and the Client for the provision of the Services and the Implementation Services, and includes these terms and conditions and any Order Form in effect.

(d).   **"Applicable Law"** means any local, state, provincial, federal and foreign laws or orders of any governmental or regulatory authority applicable to the provision of the Services and the Client's use thereof, including without limitation data protection and privacy laws;

(e).   **"Authorized Users"** means the person or persons for whom the Client has provided access and use of the Services under the rights granted to the Client pursuant to this Agreement;

(f).   **"Business Day"** means a day other than a Saturday, Sunday, or a Statutory Holiday in the Province of British Columbia, Canada;

(g).   **"Business Hours"** means between 8:30am and 5:30pm Pacific Standard Time on a Business Day;

(h).   **"Client"** means the client listed in the Order Form referencing these terms.

(i).   **"Client Data"** means all information and materials that is entered into the Services by or on behalf of the Client, including such information that is entered into the Services by Authorized Users and includes Personal Data and includes content created by the Client that is hosted on the Services;

(j).   **"Commencement Date"** means the commencement date specified in the applicable Order Form;

(k).   **"Confidential Information"** has the meaning as set out in section 10.1;

(l).   **"Fees"** means the aggregate of the Implementation Fee, the License Fee and applicable duties, levies, and taxes in association with such fees;

(m).   **"Implementation Fee"** means the amount or schedule of rates payable for the performance of the Implementation Services, as set out in the Order Form;

(n).   **"Implementation Services"** means the implementation services as set out in the Order Form;

(o). **"Initial Term"** means the initial term as set out in the Order Form;

(p). **"Intellectual Property Rights"** means all present and future registered and unregistered copyrights, moral rights, rights associated with works of authorship, trademark rights, trade name rights, trade secret rights, patent and industrial property rights, and other proprietary rights, conferred by statute, common law, equity or otherwise, in or in relation to software code (in any form, including source code, executable or object code), algorithms, technology, formulae, programs, processes, scripts, concepts, databases, designs, diagrams, documentations, models, trade secrets, semiconductor, know-how, and Confidential Information;

(q). **"License Fee"** means the fee for the number of licenses to use the Services, for the term, as specified in the Order Form;

(r). **"Order Form"** means an ordering document containing the Client's agreement to purchase the Services and, if applicable, the Implementation Services, which references these terms and conditions;

(s). **"Party"** means a party to this Agreement;

(t). **"Personal Data "** means any information about an identified or identifiable individual including, without limitation, data or information entered into the Services by the Client or Authorized Users that has not been made publicly available;

(u). **"Services"** means the services provided by Acorn PLMS to the Client pursuant to an Order Form, which includes the licenses to use Acorn PLMS's proprietary software-as-a-service application or platform, currently described as the Acorn Learning Management System and includes all written information, documentation, and materials provided to the Client in respect of same, and any software, materials, or content made available in connection with the Services; and

(v). **"Term"** means the term of this Agreement, as set out in clause 2.

2. TERM

2.1.   The Term of this Agreement will commence on the Commencement Date and will continue for the Initial Term.

2.2.   At the end of the Initial Term (and at the end of each Renewal Term, if any), this Agreement will renew for a further term (each, a **"Renewal Term"** and together with the Initial Term, the **"Term"**), subject to the Terms, unless either party gives written notice to the other party at least thirty (30) days prior to the expiration of the then current Initial Term or Renewal Term, as the case may be.

2.3.   For each Renewal Term, unless otherwise set out in an Order Form: (a) these terms and conditions will govern; (b) the term for such Renewal Term will be the same as the Initial Term; and (c) the License Fee will be determined in accordance with clause 2.4.

2.4.   The Parties will negotiate in good faith the License Fee that will apply for each Renewal Term and the Parties will execute an Order Form for such Renewal Term; such Order Form for a Renewal Term may consist of an e-mail or other electronic communication. Notwithstanding the foregoing, if the Parties do not enter into an Order Form for a Renewal Term, the License Fee for such Renewal Term will be Acorn PLMS's then current published rates.

3.   PROVISION, USE, AND LICENSE

3.1.   Subject to payment of the License Fee and the Client's and Authorized Users' compliance with all of the terms and conditions of this Agreement, Acorn PLMS grants to the Client a revocable, non-exclusive, non-transferable license during the Term to use the Services in accordance with the terms and conditions of this Agreement.

3.2.   Subject to payment of the Implementation Fee, if applicable, Acorn PLMS will perform the Implementation Services.

3.3.   The Client will:

(a).   restrict the number of users of the Services to the number of Authorized Users as set out in the applicable Order Form;

(b).   not, directly or indirectly, copy, reproduce, modify, distribute, revise, vary, translate, reverse-engineer, use, alter, decompile, disassemble or otherwise attempt to derive the source code of the Services from object code in any way, unless the Client obtains Acorn PLMS's prior written consent and on such conditions which Acorn PLMS may impose, in Acorn PLMS's absolute discretion, or allow a third party to do any of the foregoing;

(c).   Subject to Section 8.4, not sell, rent, lease, license, sublicense, display, time share or otherwise transfer the Services to, or permit the use of the Services by, any third party;

(d).   not remove any copyright or proprietary notice from the Services;

(e).   use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Services;

(f).   bind all Authorized Users to the terms and conditions of this Agreement.;

(g).   not sub-contract, novate or assign its rights under this Agreement without Acorn PLMS's prior written consent;

(h).   supervise and control the use of the Services so that it is in accordance with the terms of this Agreement;

(i).   ensure that the Client, the Administrators and the Authorized Users do not post or transmit through the Services any material or content that gives rise to civil or criminal liability or otherwise violates any Applicable Law;

(j).   not, and ensure Administrators and the Authorized Users do not, post or transmit through the Services any material or content that solicits, encourages or promotes the use of illegal substances or activities that are unlawful, threatening, abusing, harassing, defamatory, libellous, invasive of privacy, bigoted, profane, pornographic, indecent or otherwise objectionable;

(k).   provide Acorn PLMS with up to date and accurate information regarding the number and details of all Administrators and Authorized Users, as and when requested by Acorn PLMS; and

(l).   ensure that its employees, sub-contractors and agents who have access to the Services are made aware of the terms of this Agreement.

4.   UPDATES AND VERSIONS

4.1.   The Client acknowledges that it will receive the Services, pursuant to the terms of this Agreement, in its current state and with the existing capabilities and functionalities, provided that Acorn PLMS reserves the right, at its sole discretion, to modify, enhance, remove, or otherwise update any features or functionalities of the Services (referred to as **"Modifications"**) at any time, without prior notice to the Client. Such Modifications may include, but are not limited to, the addition of new features, the removal of existing features, the modification or enhancement of current features, or the improvement of the overall performance, functionality, or usability of the Services. Acorn PLMS will endeavor to provide reasonable notice of any material Modifications to the Services, either by direct communication with the Client, through Acorn PLMS's website, or by any other appropriate means, as determined by Acorn PLMS in its sole discretion.

4.2.   In the event that Acorn PLMS updates the Services during the Term and makes it available to the Client, the Client will cooperate with Acorn PLMS to install any upgrades of the Services. Any Modifications made to the Software may require the Client to update its own systems, hardware, or software in order to maintain compatibility with the Services. The Client shall be solely responsible for any costs, expenses, or other obligations incurred as a result of any such updates.

4.3.   Acorn PLMS will not be liable for any loss, damage, or inconvenience suffered by the Client as a result of any Modifications.

5.   CLIENT PRIMARY CONTACT

5.1.   The Client will appoint the Client Primary Contact (as set out in the Order Form) as the primary liaison and contact between the Client and Acorn PLMS and such Client Primary Contact will be authorized to give notices and consents under this Agreement on the Client's behalf.

5.2.   Acorn PLMS will liaise with and report to the Client Primary Contact about the performance of the Services and attend meetings with, or provide briefings to, the Client Primary Contact as and when required, from time to time.

6.   PROVISION OF THE SERVICES

6.1.   Acorn PLMS will provide the Services in good faith, in a competent and professional manner, in accordance with industry standards.

6.2.   Acorn PLMS authorizes the Client to make a limited number of copies of any documents or other materials containing Intellectual Property Rights as are reasonably required for operational use, backup and security and evaluation and testing purposes, provided that all reproduction rights in respect of the Intellectual Property Rights within the Services are retained by Acorn PLMS and the Client agrees that the Intellectual Property Rights subsisting in the Services may not be reproduced in any form without consent from Acorn PLMS.

6.3.   The Client will:

(a).   ensure that the Client has internet access with adequate speed as determined at Acorn PLMS's discretion from time to time; and

(b).   allow Acorn PLMS to access the Client's equipment via internet or remote access to investigate and resolve any difficulties which arise in the Client's use of the Services.

7.   FEES AND EXPENSES

7.1.   **Fees.** The Client will pay the Fees (other than those disputed on reasonable grounds), in the manner and at the times as set out in the applicable Order Form. Unless otherwise set out in the Order Form, the Fees will be due within 30 days of the date the Client receives an invoice. Fees are calculated based on the license Fee per Authorized User, if the Client increased the number of Authorized Users Acorn PLMS will invoice the Client for the number of additional Authorized Users on an annual basis.

7.2.   **Expenses.** Where Acorn PLMS is required to travel to the Client's business in order to provide the Services, the Implementation Services, or any requested assistance, the Client will pay the reasonable travel, food and accommodation costs, of no less than 4-star accommodation incurred by Acorn PLMS's staff.

7.3.   **Delays.** In addition to any other remedy available to Acorn PLMS, if the Client fails to pay any Fees when due, interest will accrue and be payable from the time payment was due until the time the Fees have been paid at a rate of 18% per annum, compounded monthly. If payment of Fees is not made when due, Acorn PLMS reserves the right, in its sole discretion, to suspend the Services, or terminate this Agreement and cease providing the Services.

7.4. **Taxes.** All Fees and other amounts payable by the Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, the Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local government, financial institution or regulatory authority on any amounts payable by the Client hereunder, other than any taxes imposed on Acorn PLMS's income.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. **Ownership.** The Client acknowledges that Acorn PLMS owns all rights, title and interest in the Services and in all customizations of the Services and its related documentation and any Intellectual Property Rights created in the course of providing the Services. All Intellectual Property Rights made available or disclosed to the Client in the provision of the Services are and shall remain the sole and exclusive property of Acorn PLMS and except for the limited license to use the Intellectual Property as part of the Client's use of the Services in accordance with this Agreement, no right, title, or interest is granted in the Intellectual Property.

8.2. **Improvements.** Acorn PLMS and its Affiliates owns all rights, title and interest, including all Intellectual Property Rights, in and to any improvements to the Services or any new programs, upgrades, modifications or enhancements thereto, even when such refinements and improvements result from the Client's feedback. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in Acorn PLMS or its Affiliates by virtue of this Agreement or otherwise, the Client hereby transfer and assign to Acorn PLMS all rights, title, and interest which the Client may have to such refinements and improvements.

8.3. **Modifications.** The Client will not modify the Services without Acorn PLMS's prior consent in writing.

8.4. **Client Data.** As between the parties, the Client owns all Intellectual Property Rights in the Client Data, including content created by the Client that is hosted on the Services.

8.5. **Suspected Infringement.** The Client will immediately notify Acorn PLMS in writing if it becomes aware of any actual or suspected infringement of Acorn PLMS's Intellectual Property Rights.

9. CONFIDENTIALITY

9.1. **Confidential Information.** Each Party (as the **"Disclosing Party"**) may disclose or make available Confidential Information to the other party (as the **"Receiving Party"**). Subject to section 9.2, **"Confidential Information"** means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing

Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, Intellectual Property, Client Data, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as "confidential".

9.2. **Exclusions.** Confidential Information does not include any information that (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information; (e) was at the time of disclosure in the possession of the Receiving Party and was obtained without an obligation of confidence; or (f) is intentionally released for disclosure by the Disclosing Party or with the Disclosing Party's prior written consent.

9.3. **Protection of Confidential Information.** The Receiving Party will:

(a). not make any unauthorized use or disclosure, in whole or in part, of the Disclosing Party's Confidential Information or use such Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b). Except as may be permitted under this Agreement and Section 9.4 and 9.5, not to disclose or permit access to Confidential Information other than to its employees, directors, officers, shareholders, owners, service providers, sublicensees, independent contractors, subcontractors, agents, advisors, and consultants who:

  (i). need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights and performance of its obligations under and in accordance with this Agreement;

  (ii). have been informed of the confidential nature of the Confidential Information; and

  (iii). are subject to subject to confidentiality duties or obligations to the Receiving Party which are no less restrictive than the terms applicable to the Confidential Information under this Agreement;

(c). Protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; and

(d). Promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure.

9.4. **Permitted Disclosure.** Notwithstanding the foregoing, Acorn PLMS may access or disclose the Client's Confidential Information if: (a) to perform under or enforce the terms of this Agreement, including instructing a third party for collection of outstanding amounts owed under this Agreement; (b) to protect the security or integrity of the Services, or (c) in connection with a change of control or a potential change of control of Acorn PLMS or a Acorn PLMS Affiliate, provided that reasonable measures are used to preserve the confidentiality of the Confidential Information being disclosed. In each of the foregoing cases, Acorn PLMS will disclose only such Confidential Information as Acorn PLMS believes, in good faith, is necessary.

9.5. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by Applicable Law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

9.6. **Termination or Expiration.** The Receiving Party will, within 30 days of the termination or expiration of this Agreement or the completion, abandonment or other termination of the Services under an Order Form, upon receipt of a written request from the Disclosing Party within such 30 day time period, promptly return or destroy all of the Disclosing Party's Confidential Information, in the Receiving Party's control.

10. CLIENT DATA

10.1. **Client Data.** The Client acknowledges that Acorn PLMS may: (a) use, process or store information entered into the Services, including Client Data, for purposes relating to the function of the Services and use of the Services by the Client and Authorized Users, including to (a) manager and administer the Services; (b) enable third parties engaged by Acorn PLMS to provide the Services on Acorn PLMS's behalf; (c) assist the Client with enquiries; (d) charge the Fees; and (e) ensure that Acorn PLMS's internal business operations are running smoothly including any reporting or legal requirements it may be required to fill, and the Client consents to such use, processing and storage. The Client will obtain all necessary consents, as required by Applicable Law, for Acorn PLMS's use, disclosure, processing and storage of Authorized User's Personal Data entered into the Services in accordance with this Agreement.

10.2. **Aggregate Information.** The Client agrees that Acorn PLMS may collect, use,

store and disclose Aggregate Information derived from the Client's use of the Services for analysis, analytics, marketing, or other business purposes. All Aggregate Information will be used in an aggregate and anonymous form only and will not identify any individual. **"Aggregate Information"** means data and information related to the Client's use of the Services that is used by Acorn PLMS in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

10.3. **System Controls.** Each Party will ensure that it has in place appropriate technical and organizational measures, to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it.

11. INDEMNITY

11.1. **Indemnification by the Client.** The Client will defend, indemnify, and hold Acorn PLMS and its directors, officers, employees, and Affiliates harmless against any loss, damage, or cost (including reasonable attorneys' fees) incurred in connection with a claim, demand, suit, or proceeding by a third party alleging that the Client's use of the Services (i) infringes upon the privacy rights of a third party, (ii) is in violation or alleged violation of any Applicable Laws, or (iii) is a result of the Client's or Authorized User's negligence, willful misconduct, or use of the Services in a manner not authorized by this Agreement, provided the Client is notified in writing by Acorn PLMS as soon as reasonably practicable as to any such claim. Acorn PLMS will provide reasonable information, cooperation and assistance in defending any such claim.

11.2. **Indemnification by Acorn PLMS.** Acorn PLMS will defend, indemnify, and hold the Client and its directors, officers, employees, and Affiliates harmless against any loss, damage, or cost, and any lawsuit to the extent based thereon, that is brought by a third party against the Client alleging that the Services infringe any patent, trade secret, copyright or other Intellectual Property Rights ("Infringement Claim"), so long as Acorn PLMS is notified in writing by the Client as soon as reasonably practicable as to any such Infringement Claim. If Acorn PLMS believes that the Services may be subject to an Infringement Claim, or the Client's use of the Services is held to infringe and its use is enjoined, or threatened to be enjoined,

then Acorn PLMS will, at Acorn PLMS's own expense and option: (i) procure for the Client the right to continue using the Services; or (ii) replace same with non-infringing Services; or (iii) modify the Services so that it becomes non-infringing. If none of the foregoing is available on terms that are commercially reasonable for Acorn PLMS, then Acorn PLMS may terminate the Client's rights to access and use those portions of the Services that are subject to such Infringement Claim, in which case Acorn PLMS will refund the Client a pro rata amount of any prepaid fees applicable to the unutilized portion of the Term of the terminated Services. THIS SECTION REPRESENTS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CLIENT AGAINST Acorn PLMS FOR ANY INFRINGEMENT CLAIMS. Notwithstanding the foregoing, Acorn PLMS has no obligation with respect to any actual or claimed infringement if the Infringement Claim is solely caused by Client Data, use of the Services other than as specified in any documentation made available by Acorn PLMS to the Client, or the Client's combination of the Services with any products, software, services, data or other materials not provided by, required by, or approved by Acorn PLMS, unless such use is necessary in order to use the Services as instructed by Acorn PLMS.

12. WARRANTIES

12.1. Each Party represents and warrants to the other Party that: (i) it has the full right, power and authority to enter into the Agreement; and (ii) the Agreement are a valid binding obligation of such party.

12.2. Acorn PLMS warrants, represents and agrees that the Services, as utilized pursuant to the terms of the Agreement: (i) will not transmit a virus, Trojan horse, worm, time bomb, or other harmful computer code, file, or program to the Client's systems; and (ii) will be performed in a workmanlike manner in accordance with generally accepted industry standards.

12.3. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, ACORN PLMS MAKES NO (AND HEREBY DISCLAIMS) WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. ACORN PLMS DOES NOT WARRANT THE RESULTS OF USE OF THE SERVICES OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

13. THIRD PARTY DEVELOPERS

13.1. The Services may include features that permit Client to connect the Services to third-party applications requested by the Client (**"Third Party Applications"**), developed by third parties (**"Third Party Developers"**). The Client acknowledges and agrees that:

(a).   Acorn PLMS is not such Third Party Developers and is not an Affiliate of such Third Party Developers;

(b).   No representation or warranty by such Third Party Developers is binding on Acorn PLMS nor shall breach of such representation or warranty by a Third Party Developer relieve Client of its obligations to Acorn PLMS and the Client shall be responsible for the costs of such Third Party Applications;

(c).   Acorn PLMS does not monitor or have any control over, and makes no claim or representation regarding Third Party Applications or Third Party Developers and Acorn PLMS is not responsible or liable, directly or indirectly, for any damage, loss or liability caused or alleged to be caused by or in connection with any use of or reliance on any of the foregoing; and

(d).   To the extent that the Client authorize the use of the Services in connection with such Third Party Applications, the Client consent to Acorn PLMS releasing to Third Party Developers any Confidential Information reasonably required by such Third Party Developers for the proper use of such Third Party Applications, and such Third Party Developer's use of such Confidential Information shall be governed by the Client's agreement with such Third Party Developers.

14. LIMITATION OF LIABILITY

14.1.   NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR GOOD WILL, WORK STOPPAGE, LOSS OF INFORMATION OR DATA, OR LOSS OF REVENUE OR PROFIT, RESULTING FROM THE PROVISION OF THE SERVICES, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, REGARDLESS OF THE LEGAL THEORY ASSERTED, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE.

14.2.   EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, NEITHER PARTY'S AGGREGATE AND TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT SHALL EXCEED AMOUNTS PAID OR DUE BY THE CLIENT TO ACORN PLMS UNDER THE APPLICABLE ORDER FORM IN THE 12 MONTHS PRIOR TO THE DATE THE CLAIM AROSE. Some jurisdictions do not allow limitation of liability in certain instances, and in such a case, the foregoing exclusions and limitations shall apply to the maximum extent permitted by applicable mandatory law (and Acorn PLMS's liability shall be limited or excluded as permitted under mandatory applicable law).

15. TERMINATION

15.1.   The Client may immediately terminate this Agreement by notice in writing to Acorn PLMS if Acorn PLMS:

(a).   fails to remedy a breach of this Agreement within 30 days after a notice, specifying the breach and requesting that it be remedied, has been given by the Client to Acorn PLMS; or

(b).   becomes insolvent or enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors or is wound up, voluntarily or involuntarily.

15.2.   Acorn PLMS may immediately terminate this Agreement by notice in writing to the Client, if the Client:

(a).   fails to remedy a breach of this Agreement within 30 days after a notice, specifying the breach and requesting that it be remedied, has been given to the Client by Acorn PLMS; or

(b).   If, by reason of any fact, circumstance, matter or thing beyond the reasonable control of Acorn PLMS, Acorn PLMS is unable to perform in whole or in part any obligation under this Agreement, and that continues in excess of 30 days, without any penalty or claim by the Client.

15.3.   Termination of this Agreement will not affect any claim or action either Party may have against the other by reason of any prior breach of this Agreement and will not relieve either Party of any obligation under this Agreement which is expressed to continue after termination.

15.4.   Upon the expiration or termination of this Agreement:

(a).   all rights, licenses, and authorizations granted to the Client under this Agreement will cease immediately and the Client will discontinue using, and return all Services provided under this Agreement, if requested by Acorn PLMS;

(b).   Upon the Client's written request, provided such request is made within 30 days of the date of termination of this Agreement, Acorn PLMS will make available a CSV extract (or such other format as determined by Acorn PLMS) of the Client's Confidential Information entered into the Services and that is in Acorn PLMS's possession or control. Acorn PLMS will have no obligation to retain, maintain or provide the Client with such data after 30 days from termination unless agreed to in writing between the Parties and thereafter Acorn PLMS may, at its option, delete or destroy all copies of the Client's Confidential Information in its possession or control; provided that notwithstanding anything to the contrary in this Agreement, Acorn PLMS may retain the Confidential Information (a) solely to the extent and for so long as required by Applicable Law; and (b) in its backups, archives, and disaster recovery systems until such Confidential Information is deleted in the ordinary course; and (c) all such information described in this section will remain subject to all confidentiality

requirements of this Agreement.

(c).   Sections 8, 9, 10, 11, 14, 15, 17 will survive the expiration or termination of this Agreement; and

(d).   Acorn PLMS will be entitled to be paid for all work done and Services rendered to and including the date of termination.

16. NOTICES

16.1.   Any notice, request, notification, consent or approval under this Agreement must be in writing and may be sent by prepaid postage or email or delivered by hand to the addresses as set out in the applicable Order Form, or such other address as a Party may subsequently notify to the other. A notice will be deemed to be given: (a) if posted, three business days after the date of posting; (b) if hand delivered, on the date of delivery; or (c) if emailed, on the date of the email, except that an email received after 5:00 pm on a Business Day, or at any time on a day other than a Business Day, will be deemed to be given on the next Business Day. Notwithstanding the foregoing, all legal notices must be addressed to the attention of the other party's General Counsel, unless notified otherwise. All notices shall be in English.

17. DISPUTE RESOLUTION

17.1.   **Negotiation.** If there is a dispute or difference (**"Dispute"**) between the Parties arising out of or in connection with this Agreement, then within five (5) business days of a Party notifying the other Party in writing of the Dispute, a senior representative from each Party shall meet and use all reasonable endeavours, acting in good faith, to resolve the Dispute by joint discussions.

17.2.   **Court proceedings and other relief.** If such escalation fails to resolve the issue, it shall be settled by arbitration administered by final and binding arbitration initiated and conducted according to the Rules of Arbitration of the International Chamber of Commerce (the **"Arbitration Rules"**), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in Vancouver, Canada. Notwithstanding the foregoing, either party may seek injunctive relief in any court of competent jurisdiction to protect its Intellectual Property Rights. All arbitrators shall be qualified by education, training, and experience in the subject matter of the dispute.

17.3.   **Equitable Remedies.** The Parties agree that monetary damages may be an inadequate remedy for any breach or threatened breach of any provision of this Agreement concerning Confidential Information, Intellectual Property Rights or other matters for which equitable rights may be granted. Accordingly, such

provision may be enforced by injunction or other order of a court of competent jurisdiction.

18. GENERAL PROVISIONS

18.1. **Relationship.** The relationship of the Parties under this Agreement is one of principal and contractor and the Parties are not, by virtue of this Agreement in partnership or joint venture nor does this Agreement constitute or imply any agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will represent itself or allow itself to be represented as a partner or joint venturer, employee or agent of the other.

18.2. **Waiver.** No provision of this Agreement will be deemed to be waived unless that waiver is in writing and signed by the waiving Party. A waiver by a Party of a breach of any provision of this Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

18.3. **Proper Law.** This Agreement is governed by the laws of the province of British Columbia and the Parties agree to attorn to the exclusive jurisdiction of British Columbia.

18.4. **Invalidity.** The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision and any such invalid or unenforceable provision shall be deemed to be severable.

18.5. **Interpretation.** In the Agreement, unless the context otherwise requires, the masculine includes the feminine and the neuter genders and the plural includes the singular and vice versa, "or" is not exclusive" and "including" is not limiting, whether or not such non-limiting language (such as "without limitation" or "but not limited to") is used with reference to it, and modifications to the provisions of the Agreement may be made accordingly as the context requires. The headings used in the Agreement are for convenience and reference only and shall not affect the construction or interpretation of this Agreement.

18.6. **No Strict Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for, nor strictly against, any of the Parties.

18.7. **Force Majeure.** Neither Party will be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control including, but not limited to, earthquake, flood, fire, storm or other natural disaster, act of God, labor controversy or threat thereof, civil disturbance or commotion, act of terrorism, disruption of the public markets, war or armed conflict or the inability to obtain sufficient material, supplies, labor, transportation, power or other essential commodity or service required in the conduct of its

business, including Internet access, or any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree.

18.8. **Assignment.** Neither Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign or transfer this Agreement in connection with a merger or acquisition provided the assigning Party provides notice to the other Party. This Agreement shall be binding upon and shall inure to the benefit of a party's authorized successors and permitted assigns.

18.9. **Currency.** A reference to "dollars" or "$" is to an amount in United States of America currency.

18.10. **Export Compliance.** The Services, technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Acorn PLMS and the Client each represents that it is not named on any U.S. government denied-party list or similar list in any other jurisdictions. The Client will not permit any Authorised User to access or use any Service in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation or in violation of any other country's export laws or regulations directly applicable to Acorn PLMS or its Affiliates.

18.11. **Anti-Corruption.** Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

18.12. **U.N. Convention.** The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement and shall not apply to any Order Form issued in connection herewith.

18.13. **Counterparts.** This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same document.

18.14. **Entire Agreement.** This Agreement, including these terms and any Order Form(s), constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements and agreements between the Parties. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the applicable Order Form, (b) these terms and conditions and (c) other referenced documentation.