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## OPTRICS INC. STANDARD TERMS AND CONDITIONS

### 1. AGREEMENT AND SCHEDULES

**1.1** This Schedule A applies to all dealings between the Parties, and may not be varied, excluded, amended or repealed except by a written agreement executed by an authorized signing officer of Optrics. Schedule A will be deemed to be incorporated into and to form part of all subsequently executed Schedules, Work Orders (including purchase orders or other Customer documentation accepted by Optrics) and Change Requests. In the event of any conflict between this Schedule A, Standard Terms and Conditions, and any other Schedule, Work Order, Change Request, purchase order, statement of work, or other written document between the Parties, this Schedule A shall take priority except to the extent that a Schedule or other written document between the Parties is signed by both Parties and such conflict is expressly stated to take priority over this Schedule A, Standard Terms and Conditions, notwithstanding this clause.

**1.2** Schedules may be completed by a Party by attaching documentation as appendices or exhibits. Schedules may also be incorporated from online URL's or websites by reference thereto or by click-through or similar methods of electronic acceptance.

**1.3** The definitions and defined terms in this Schedule A apply in all cases to all concurrently, previously or subsequently executed Schedules between the Parties.

**1.4** This Agreement and applicable Schedules constitutes the entire agreement between the Parties and supersede all previous agreements, correspondence, memoranda and representations, oral or written, relating to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing and signed by a duly authorized Representative of each Party.

**1.5** In this Agreement, the following terms have the following meanings:

**"Business Day"** means a day other than a Saturday, Sunday or a statutory holiday in the City of Edmonton, Alberta.

**"Change Request"** means a document in the form of Schedule C, or such other form of document as Optrics may accept or agree to, pursuant to which a Party requests changes to a Work Order, or to Deliverables or Services.

**"Claims"** means any and all costs, debts, demands, liabilities, suits, actions, litigation and claims of any kind.

**"Deliverable"** means any Product and/or Services, or combination thereof, as defined as a Deliverable in a Work Order, or other documentation entered into between the Parties, and provided, delivered, sold, leased, loaned, rented or licensed by or on behalf of Optrics, or to be provided, delivered, sold, leased, loaned, rented or licensed by or on behalf of Optrics.

**"Disclosing Party"** means the Party which provides Confidential Information to the Receiving

Party.

**"Documentation"** means user and technical documents, if any, relating to the Deliverables and Services provided to the Customer by Optrics. Documentation does not include any quotes, estimates, proposals, responses to tenders, bids, responses to requests for proposals, or similar documentation, and does not include any of Optrics' marketing or other promotional materials and, unless otherwise agreed by Optrics, does not include Documentation used, or intended to be used, by Optrics for its internal purposes.

**"Fees"** means and includes all charges, costs, billings, expenses, disbursements (including, without limitation, reimbursements of expenses and disbursements incurred by Optrics), fees, purchase prices, and other amounts paid or payable by Customer to Optrics for Services, Deliverables or otherwise under this Agreement, or any other agreement between Customer and Optrics.

**"Force Majeure"** means any cause which is beyond the reasonable control of the affected Party, provided such event is not due to the affected Party's sole negligence, and may include, but not be limited to:

- (a) causes such as flood, earthquake, storm, lightning, fire, epidemic, war, explosion, riot, act of public enemy, act of civil or military authority, civil disturbance or disobedience;
- (b) sabotage, vandalism, ruptures or breakage of, or accidents to or at any facilities, plant, machinery or equipment;
- (c) inability to obtain, or curtailment of supplies of water, fuel or utilities or other governmental services;
- (d) inability to obtain, or curtailment of supplies of, any materials, third party licenses, software, hardware, or equipment;
- (e) a failure or default of a third-party service provider or the failure of any third-party hardware or software; and
- (f) restraint by court order, or the action or inaction of, or inability to obtain, maintain or renew regulatory approvals from any governmental authority unless such inability was caused by the violation of the law by the Party holding or needing the regulatory approval;

provided that lack of finances or inability to pay will not be considered an event or occurrence outside of a Party's reasonable control and will not constitute Force Majeure

**"Party"** means either Optrics or Customer, and **"Parties"** means both Optrics and Customer.

**"Product"** means any tangible Deliverable, or component of a tangible Deliverable as defined in a Work Order, including any tangible personal property, chattel, item, hardware, software (including third party software and software or content licenses), device, good or ware, agreed in writing by Optrics to be a Deliverable under this Agreement.

**"Receiving Party"** means the Party receiving Confidential Information, directly or indirectly, from the Disclosing Party.

**"Representative"** means an employee, agent, contractor or individual representative of a Party and, in the case of Customer, shall include any of the foregoing of Customer reasonably appearing to have ostensible authority to bind Customer.

**"Schedule"** includes this Schedule A, Schedules B and C, Work Orders (including purchase orders or other Customer documentation accepted by Optrics, Change Requests, and other referenced schedules, addenda, exhibits or similar documentation).

**"Services"** means any service or services of any kind, including any component or portion of a service or services, provided or to be provided, by Optrics to Customer under this Agreement, whether or not described in a Work Order, including without limitation services provided by Optrics personnel (whether employees or contractors or agents on behalf of Optrics, or otherwise), any services provided in connection with Products and software as a service, whether or not specifically requested by Customer, and whether or not Customer pays for the same, such as Services provided by Optrics without charge as part of providing Deliverables for Fees.

**"Specifications"** means, for Deliverables, the specifications and other descriptions for the Deliverables as set out in the Work Order. For software which is not a Deliverable, "Specifications" means the description of the software set out in the technical Documentation provided by the licensor or owner of the software for the same as the same may be changed by such owner or licensor from time to time.

**"Work Order"** means a document in the form of Schedule B, or such other form of document as Optrics may accept or agree to, and executed by the Parties, pursuant to which Customer orders or purchases Deliverables. Without limitation, Optrics may request from Customer, or accept, Customer's own purchase order or similar documentation and, upon acceptance by Optrics, such purchase order or other documentation shall be deemed to be a Work Order, provided that Optrics may require a Work Order in addition to such purchase order or other Customer documentation.

## **2. WORK ORDERS**

**2.1** Customer may order one or more Deliverables or Services pursuant to a Work Order in the form of Schedule B, or such other form as may be accepted in writing by Optrics.

**2.2** The Parties will set out in a Work Order any Deliverables to be provided by Optrics and such other information, including any applicable Specifications or Documentation, as is applicable to the same. Once signed by both Parties, the Work Order shall form part of this Agreement and be effective between the Parties as to the Deliverables, Fees and other particulars set out therein.

**2.3** Until a Work Order has been entered into between the Parties, or the Parties have otherwise agreed in writing, execution of this Agreement by the Parties does not obligate Customer to order Deliverables, and does not obligate Optrics to provide or deliver any Deliverables. The Parties may agree to enter into one or more Work Orders at any time, and from time to time, in accordance with the applicable Work Order. In the event Optrics fails to meet one or more of any dates set out in the Work Order, at the request of Customer, Optrics will investigate the cause of the same and will take commercially reasonable remedial action to reduce the possibility of the occurrence of the same in the future. The foregoing will be Optrics' sole obligation and liability in the event of a failure to meet any of the dates in a Work Order.

**2.4** Once executed, a Work Order may be cancelled by Customer without liability until such time as Optrics has also executed such Work Order and/or provided the Deliverables. Where

Customer cancels a Work Order after acceptance by Optrics, Customer will pay Fees to Optrics for all Services provided to the date of Optrics receiving notice of cancellation, including Fees for work on any Deliverable at the same rate for time and materials as Optrics charges for Services, and for all goods and materials ordered, received or used by Optrics to the date of cancellation. Cancellation of a Work Order by itself will not operate so as to terminate this Agreement.

### **3. CHANGE REQUESTS**

**3.1** The Parties may agree to amend, vary or repeal any Work Order at any time, and from time to time, by way of a Change Request executed by both Parties. For greater certainty, changes based on business processes and all additional functions, specifications, designs, features and reports requested by Customer will be done pursuant to a Change Request or new or further Work Order.

**3.2** Optrics will use commercially-reasonable efforts to accommodate any request made by Customer to make changes to the Services and/or Deliverables. Such changes may result in increases to the Fees.

**3.3** To request a change, Customer will submit a written proposed Change Request to Optrics, which will set out the requested changes to the Deliverables. If Optrics accepts the requested changes, Optrics will respond to Customer with any changes to the Fees and Work Order and any required changes to the Deliverables by setting the same out in the Change Request or in a new Work Order. If the changes to the Fees, Work Order and Deliverables are acceptable to the Parties, then they shall each sign the Change Request or new Work Order. Once signed by the Parties, the Change Request or new Work Order will be effective between the Parties and shall change the Fees, Work Order and Deliverables in accordance with the terms of the Change Request or new Work Order.

**3.4** If Optrics states that it is unable to make the changes requested by Customer in the Change Request, Optrics will provide its reasons, and at the request of Customer the Parties will meet at the earliest opportunity to discuss a means of addressing Optrics' inability to make the changes.

**3.5** Optrics may also make a Change Request of Customer using the procedure described above. If Customer states that it is unable to accept the changes requested in the Change Request, Customer will provide its reasons, and at the request of Optrics the Parties will meet at the earliest opportunity to discuss a means of addressing Customer's inability to accept the changes.

**3.6** In the event of a conflict between a Change Request and a Work Order, the Change Request will govern, provided both Parties have executed such Change Request in writing. In the event of a conflict between two Change Requests the most recent of the Change Requests signed by both Parties shall govern.

### **4. FEES AND PAYMENT**

**4.1** Optrics will invoice Customer for Fees as provided in the applicable Work Order. If the Services or Deliverables are being provided on a fixed- price basis, as indicated in a Work Order,

then Customer will make the specific payments on the dates set out in the applicable Work Order.

**4.2** Unless Deliverables are being provided on a fixed-price basis, any estimated pricing set out in a Work Order are estimates only and Customer will pay for the Deliverables on a time-and-expenses basis as set out in the Work Order. Where prices are on a time-and-materials basis, Optrics will keep accurate records of all time spent providing the Services or Deliverables, as applicable, for or on behalf of Customer.

**4.3** Unless otherwise specified in a Work Order, Optrics may invoice Customer on a bi-weekly basis for Fees for Deliverables provided in the period since the previous invoice for Deliverables, unless a Work Order specifies different billing or invoice periods. Where a Work Order is silent as to billing or invoice periods, billing or invoice periods will otherwise be in the discretion of Optrics.

**4.4** Optrics will generally require advance payment or payment of deposits with respect to Deliverables. Advance payments and deposits will be as described in the applicable Work Order.

**4.5** Customer will reimburse Optrics for all travel, living and incidental expenses, including travel time, incurred by Optrics' representatives under this Agreement for any Deliverables that are required to be provided at a location outside of the City of Edmonton, Alberta. Prior to such travel, unless already stated in a Work Order, Optrics will first obtain Customer's consent. On request, Optrics will provide to Customer a copy of receipts for reimbursable expenses claimed.

**4.6** Customer shall pay all amounts due on each invoice under this Agreement within thirty (30) days of the date on which the invoice is issued by Optrics.

**4.7** Customer shall be responsible for all sales, use, excise and similar taxes imposed by any governmental entity on the Deliverables, other than those taxes based solely on Optrics' income.

**4.8** If Customer is in arrears in the payment of any Fees that are due, Optrics may withhold or pause any further Deliverables until such arrears have been paid in full and any Work Order shall adjust accordingly. Customer will remain liable for the Fees during any period in which such Deliverables were withheld or paused due to a non-payment. Title to Deliverables, including any Products and the results of any Services in all cases remains with Optrics, or its suppliers or licensors, until Customer has fully paid for such Deliverables or the results of such Services.

**4.9** Recurring Fees, Optrics' rates for Services, and Optrics' prices for Products are subject to change by Optrics annually, or otherwise from time to time upon thirty (30) days' notice to Customer, provided that Optrics may increase its offered or advertised rates or prices not as yet subject to a fully executed Work Order with Customer at any time without notice. Fees may be adjusted by Optrics at any time with respect to any Work Order or Change Request

**4.10** Unless otherwise stated, all amounts set out in this Agreement are in the currency of Canada. A Work Order may provide for U.S. currency or other currency.

**4.11** All Fees and other due amounts not paid by their due date will be subject to interest at twenty four per cent (24%) per annum, both before and after judgment, compounded monthly. In addition to Fees and all accrued interest, Customer will pay Optrics all Optrics' costs of collection of outstanding Fees, including legal fees and disbursements on a solicitor client basis.

## **5. DELIVERABLES**

**5.1** Subject to the terms and conditions of this Agreement, Optrics will provide Deliverables to Customer as stated in the applicable Work Order. Unless otherwise stated in the applicable Work Order, the following terms and conditions shall apply to Deliverables:

- (a) Unless stated otherwise in a Work Order, Deliverables are provided on an ex works basis at Optrics' place of business stated on the first page of this Agreement.
- (b) Upon delivery, Customer assumes all risk of loss or damage to Deliverables, and, unless Optrics agrees otherwise in writing, Customer will pay all costs of shipping delivery and return of Deliverables. If Optrics agrees in a Work Order to vary the foregoing and pay for loading or shipping, then all loading and shipping costs will be in addition to all other prices and Fees applicable to the Deliverable being loaded or shipped.
- (c) Notwithstanding such ex works delivery, until all applicable Fees have been paid to Optrics: (i) Customer does not take title to any Deliverable; (ii) transfer of possession to Customer will not defeat Optrics' title or transfer title to Customer; (iii) any affixation of chattels owned by Customer or third Parties to a Deliverable will not affect Optrics' title to the Deliverable; and (iv) Deliverables shall remain the property of Optrics until all related Fees are paid notwithstanding any affixation of the Deliverable to the realty or any real estate, fixture or chattel, notwithstanding the Deliverable itself becoming a fixture or annexed or attached to any chattel.
- (d) Delivery dates are estimates only. The time of delivery may depend on availability of materials, availability of equipment, availability of travel and delivery services, and availability of third-party services, may be subject to delays by suppliers, licensors and others outside the control of Optrics, and are subject to change by Optrics on a commercially-reasonable basis. Late delivery will not be a breach of this Agreement.
- (e) Documentation is provided only as stated in the applicable Work Order.
- (f) Where Customer requests Documentation, additional Fees may apply. Optrics reserves the right, in its sole discretion, to refuse disclosure or delivery of all or some of the Documentation related to a Deliverable and, without limitation, Optrics retains the right to not provide its own internal Documentation and other information related to the design, fabrication or construction of a Deliverable.

## **6. SERVICES**

**6.1** Subject to the terms and conditions of this Agreement, Optrics will provide Services to Customer as stated in the applicable Work Order. Optrics shall have the right to suspend provision of Services, or to discontinue or refuse Services, where Customer has failed to pay Fees as agreed, or where Customer is otherwise in default under this Agreement.

## **7. OWNERSHIP**

**7.1** Unless otherwise stated in the applicable Work Order as accepted by Optrics:

- (a) Subject to, and conditional upon Optrics first receiving full payment of applicable Fees, and to the extent provided in the Work Order, Customer will receive title to Products sold to Customer as provided herein. All sales or transfers of property rights are conditional upon Optrics having been first fully- paid all applicable Fees.
- (b) Customer will be provided with Specifications and/or Documentation, if any, as specified in the applicable Work Order.
- (c) Unless otherwise expressly provided in the Work Order:
  - (i) Optrics will own and retain all right, title and interest in and to all Deliverables, including Services , Specifications and Documentation, including all Intellectual Property embodied in the foregoing;
  - (ii) Optrics will at all times own all work product and related methods, processes, know-how, procedures, materials and documentation, developed, provided or arising in the course of any of the Services, including all Intellectual Property that is created or that arises in the course of the Services;
  - (iii) The Services, the Specifications and the Documentation are provided pursuant to a non-exclusive license and are not sold.
  - (iv) Customer does not own the Specifications, the Documentation, the Services or any Intellectual Property of Optrics; and
  - (v) The ownership provisions set out in this Section shall apply irrespective of whether the Deliverables, Services, work product or Intellectual Property, or any part thereof, arose as a result of a request or suggestion by Customer or any of its staff, and whether or not Customer paid for the same.

## **8. INSPECTION AND ACCEPTANCE**

**8.1** Unless the applicable Work Order states otherwise, Customer will immediately inspect or test the Deliverables, including without limitation any work product or other results of the Services, to determine that the Deliverables are in compliance with any Specifications or other applicable terms and conditions in the applicable Work Order. applicable to the Deliverables or Services. If the Deliverables or Services are not in compliance with the Specifications or other applicable terms and conditions in the applicable Work Order, Customer shall confirm same by delivering written notice to Optrics using the form attached hereto as Schedule B(1) setting out in detail all of the non-compliances within fourteen (14) days of delivery of the Deliverables or the Services, as applicable.

**8.2** Optrics shall use commercially reasonable efforts to correct all non-compliances identified by Customer as provided in the foregoing, and present Customer with a corrected version of the Deliverables for acceptance by Customer.

**8.3** In the event of non-compliances with respect to Services, Optrics' only obligation, and Customer's only remedy, will be re-performance of the non-compliant components of the Services by Optrics or, where Optrics is of the opinion that re-performance will not correct non-compliances, delivery of replacement or new Services of reasonably similar functionality and Specifications.

**8.4** A Work Order may state that Customer is to inspect and accept Deliverables at Optrics' place of business, in which case taking delivery of Deliverables following such inspection and

acceptance is conclusive proof of acceptance by Customer.

**8.5** If Customer does not deliver written notice of non-compliance to Optrics within fourteen (14) days of any delivery of Deliverables to Customer, or inspection in advance of delivery, such Deliverables will be deemed to be accepted by Customer.

**8.6** A notice of non-compliance may only identify actual deviations from the Specifications or applicable terms and conditions in the applicable Work Order, and may not contain any other matters.

## **9. COOPERATION**

**9.1** In performing its obligations under this Agreement, Optrics shall be entitled to rely upon any instructions, authorizations, approvals or information provided to Optrics by Customer's Representatives (including Representatives in relation to the Services and Deliverables). Unless Optrics is shown to have known in advance of any manifest error, incorrectness or inaccuracy in such instructions, authorizations, approvals or information, Optrics will not incur any liability or responsibility of any kind in relying on or complying with any such instructions, authorizations, approvals or information.

**9.2** Customer may offer to supply materials, parts, equipment, devices or other tangible goods ("Customer Materials") for incorporation by Optrics into Deliverables and/or for use by Optrics in providing Services. Optrics shall have the right, in its discretion, to refuse any or all Customer Materials. Without limitation, unless Customer provides an itemized list and any specifications or other information requested by Optrics with respect to such Customer Materials, Optrics may exercise its right to refuse such Customer Materials. Provision of Customer Materials may result in additional or increased Fees.

**9.3** Customer shall indemnify Optrics and defend, or at its option, settle (without any cost or contribution by Optrics) any Claims brought against Optrics claiming Optrics' possession or use of Customer Materials infringes any copyright, trademark or trade secret of any third party enforceable against Optrics in the United States of America or Canada, and shall reimburse Optrics for any judgments, damages, costs or expenses payable by Optrics to the party bringing such action together with reasonable attorneys' fees relating thereto. Optrics agrees that Customer shall be relieved of its obligations under this Section unless Optrics notifies Customer promptly in writing of and gives Customer the exclusive authority to defend or settle such Claim and gives Customer proper and full information and non-financial assistance to settle or defend any such Claim.

**9.4** Optrics and Customer shall each maintain at least one Representative who will be its primary points of contact in dealing with the other under this Agreement and each such representative will have the authority and power to make decisions with respect to actions to be taken by it under this Agreement.

**9.5** Optrics may provide conceptual documentation, schematics, diagrams, specifications, drawings and similar materials to Customer for review. Unless otherwise stated in a Work Order, all such materials, including all Intellectual Property, remain the exclusive property of Optrics, and constitute Confidential Information of Optrics.

**9.6** When a Representative of a Party is on the other Party's premises, that Representative shall comply with the reasonable rules and regulations of the other Party which are brought to



their attention.

**9.7** Either Party may include its rules and regulations in a Work Order in which case such rules and regulations, if accepted by the other Party, are deemed to have been brought to the attention of the Representatives of the other Party.

## **10. CUSTOMER'S OBLIGATIONS**

**10.1** Customer shall, at its own cost and expense, perform all of Customer's obligations as set out in a Work Order forming part of this Agreement. Customer acknowledges and agrees that Optrics' ability to perform the Services and provide the Deliverables is contingent upon Customer's timely performance of those obligations assigned to Customer hereunder or in a Work Order, or otherwise reasonably under the control or comprising the responsibility of Customer. Customer will be liable to reimburse Optrics for additional costs incurred by Optrics as a result of any delay by Customer and such costs will become part of the Fees under this Agreement. Notwithstanding the foregoing, Optrics will have the right, but not the obligation, to perform Customer's obligations, in which case Customer will pay to Optrics all Fees associated with Optrics performing all or part of Customer's obligations.

**10.2** Customer will provide Optrics with reasonable access to Customer's premises and facilities, including remote access, as reasonably needed by Optrics to enable Optrics to provide the Deliverables, including any assessment services, set-up services, repair services, maintenance services or other services of any kind.

**10.3** Customer will provide and make available to Optrics as Representatives of Customer, appropriate management and technical personnel who will work with Optrics and will facilitate Optrics' performance of the Services and delivery of the Deliverables. In addition, Customer will co-operate with Optrics through making available such personnel, management decisions, information, authorizations, approvals and acceptances in order that Optrics' performance of the Services and delivery of the Deliverables may be accomplished properly, timely and efficiently.

**10.4** Customer will ensure that it has obtained all necessary permits, authorizations, licenses, permissions and consents to permit Optrics to have access to any location where Optrics is to attend with respect to Deliverables or Services, and to perform the Services. Customer will ensure that Optrics has the right to access any chattels, equipment or tangible property owned or licensed by Customer as needed to enable Optrics to provide the Services or Deliverables. If Customer is unable or refuses to provide to Optrics the foregoing permits, authorizations, licenses, permissions, rights and/or consents (collectively, the "Consents") for any reason, Optrics will be relieved of all those obligations under this Agreement that are affected by such lack of Consents and Customer's failure or refusal to provide the Consents will not act to reduce the Fees owing by Customer or the obligation of Customer to pay such Fees.

## **11. CONFIDENTIAL INFORMATION**

**11.1** "Confidential Information" means any information of the Disclosing Party and includes, without limitation, any business, marketing, technical and scientific information, trade secrets, processes, designs, data, formulae, plans, prototypes, specifications, know-how, improvements,

inventions (whether patentable or not), techniques, software, source code, customer lists, research, business opportunities, agreements and other information whether or not related to or arising from the activities contemplated in this Agreement and which may be in any form or medium and whether or not designated as confidential (or like designation). Notwithstanding the forgoing, Confidential Information shall not include any information that (a) is in the public domain or publicly available or disclosed without such disclosure being as a result, directly or indirectly, of a breach of the obligations of confidence, secrecy or non-use by the Receiving Party or; (b) was previously known to the Receiving Party, reasonable proof of which lies upon the Receiving Party; or (c) was received by the Receiving Party without any obligation of confidentiality from a source (other than the Disclosing Party) lawfully having possession of such information; or (d) is released or disclosed to the public by the Disclosing Party.

**11.2** Customer agrees to treat (and take sufficient precautions to ensure that its Representative(s) treat) all Deliverables and Services as the Confidential Information of Optrics in accordance with the confidentiality provisions set out in this Agreement.

**11.3** A Receiving Party shall be bound by an obligation of confidence to the Disclosing Party in respect of any Confidential Information disclosed by the Disclosing Party or on its behalf. In respect of such Confidential Information, the Receiving Party shall not: (a) disclose, either directly or indirectly, any such Confidential Information, or any part thereof, other than to its Representatives who have a need to know the Confidential Information (b) use any such Confidential Information, or any part thereof for any purpose except as specifically contemplated in this Agreement or (c) make any copies of any Confidential Information except as required to fulfill the obligations and to exercise the rights granted in this Agreement.

**11.4** The Receiving Party shall take all reasonable precautions and actions and shall take at least the same precautions and actions as the Receiving Party takes to prevent the unauthorized use or disclosure of its own confidential information or that a prudent person in similar circumstances would take, whichever is the higher standard, to prevent the unauthorized use or disclosure of any Confidential Information.

**11.5** In the event that the Receiving Party wishes to disclose any Confidential Information of the Disclosing Party to any of its Representatives, the Receiving Party shall ensure that such Representatives are told of the confidential nature of the Confidential Information and such Representatives must have agreed to protect the same to at least the same level of protection as the provisions hereof provide.

**11.6** If the Receiving Party is requested or becomes legally compelled (by discovery obligations, oral questions, interrogatories, requests for confidential information, documents, subpoena, civil investigative demand or otherwise) to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of same so that the Disclosing Party may, at Disclosing Party's option, either seek a protective order, other appropriate remedy or to obtain reliable assurances that the Confidential Information will be accorded confidential treatment. The Receiving Party shall provide all reasonable assistance with same.

**11.7** In the event of a dispute between the Parties requires the disclosure of Confidential Information in the course of proceedings in court or before an administrative or regulatory tribunal, the Parties will endeavor to minimize such disclosure or seek an appropriate order of the court or tribunal protecting the confidentiality of such Confidential Information .

## **12. INTELLECTUAL PROPERTY INDEMNITY**

**12.1** Optrics shall defend, or at its option, settle any Claims brought against Customer claiming Customer's possession or use of the Deliverables, excluding third-party Products and third-party Deliverables, or receipt of the Services, (but only to the extent provided by Optrics or its servants, employees, agents or contractors), infringes any copyright, trademark or trade secret of any third party enforceable against Customer in the United States of America or Canada, and shall reimburse Customer for any judgments, damages, costs or expenses payable by Customer to the party bringing such action together with reasonable attorneys' fees relating thereto. Customer agrees that Optrics shall be relieved of its obligations under this clause unless Customer notifies Optrics promptly and immediately in writing of and gives Optrics the exclusive authority to defend or settle such Claim and gives Optrics proper and full information and non-financial assistance to settle or defend any such Claim.

**12.2** If the Deliverables, or any part thereof, is, or in the opinion of Optrics may become, the subject of any claim for infringement of any third party proprietary right, or if it is determined, or appears likely to be determined, by a court of competent jurisdiction that the Deliverables, or any part thereof, infringes any third-party proprietary right, and such claim or court determination may, in the opinion of Optrics, trigger Optrics' indemnity obligations under the foregoing, then Optrics may, at its option and expense, either (i) procure for Customer the right to use the Deliverables alleged to be infringing or (ii) replace or modify the Deliverables, or parts or components thereof, with other suitable and reasonably equivalent Deliverables so that the Deliverables become non-infringing or (iii) if it is not commercially reasonable to take the actions specified in items (i) or (ii) immediately preceding, terminate this Agreement and Customer shall immediately cease using such Deliverables, and Customer shall have no remedy or recourse against Optrics as a result of such termination other than to claim a refund of any deposit or payment paid to Optrics and not as yet applied, or due to be applied to Fees accruing due.

**12.3** Optrics shall have no liability or obligations hereunder for any infringement Claim relating to any of the following:

- (a) modifications made to the Deliverables by Optrics pursuant to directions from Customer or specifications or requirements provided by Customer;
- (b) modifications made to the Deliverables by Customer or on behalf of Customer by any third party;
- (c) the combination of any of the Deliverables with any other product, software, hardware, equipment, system or process;
- (d) use of the Deliverables other than as described in any applicable Specifications or Documentation or licensing; or
- (e) any Claim that arises as a result of any of Customer Materials, or Customer's specifications or directions.

**12.4** The foregoing infringement provisions set out the entire liability and obligations of Optrics and the sole recourse and remedy of Customer in respect of any claim that the Deliverables infringe, violate or misappropriate any third- party rights.

**12.5** Notwithstanding any other term or condition of this Agreement, Optrics shall have no liability or obligation to Customer arising out of any third party claim of patent infringement.

### **13. WARRANTIES**

**13.1** Except as otherwise stated in a Work Order, Optrics gives the following express and limited warranty:

- (a) Third-party Products are subject to any available or applicable manufacturers' or third- party suppliers' warranties applicable to such Product, and Optrics gives no warranties with respect to Deliverables or Products provided or supplied by third parties in addition to such third- party warranties; and
- (b) Each Deliverable provided by Optrics, other than a third- party Product and its components, will be free from defects in materials and workmanship for a period of thirty (30) days from delivery to Customer.

### **14. LIMITATION OF LIABILITY**

**14.1** EXCEPT FOR CUSTOMER'S RIGHTS OF INSPECTION UNDER SECTION 8, THE INDEMNITY GIVEN BY OPTRICS UNDER SECTION 12, AND THE EXPRESS WARRANTY GIVEN BY OPTRICS IN SECTION 13, THERE ARE NO OTHER PROMISES, REPRESENTATIONS, WARRANTIES, GUARANTEES, OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR MERCHANTABILITY QUALITY, COMPLIANCE WITH ANY DESCRIPTION, OR FITNESS FOR A PARTICULAR PURPOSE AND OPTRICS SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND CONDITIONS, INCLUDING THOSE THAT MAY BE IMPLIED BY STATUTE, COURSE OF DEALING OR CUSTOM OF TRADE.

**14.2** UNDER NO CIRCUMSTANCES WILL OPTRICS BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, ANY ECONOMIC LOSS, INTERRUPTION OF BUSINESS OR RELATED LOSSES, LOSS OF DATA OR INFORMATION, OR LOSS OF ANTICIPATED SAVINGS, OPPORTUNITY, GOODWILL, REVENUE OR PROFIT INCURRED OR SUFFERED BY CUSTOMER WHICH MAY ARISE OUT OF THE USE OR INABILITY TO USE ANY OF THE SERVICES AND DELIVERABLES OR ANY DEFECTS, FAILURE OF, OR ERRORS IN ANY OF THE SERVICES AND DELIVERABLES, INCLUDING THE SPECIFICATIONS AND DOCUMENTATION, WHETHER OR NOT OPTRICS WAS TOLD OR OUGHT TO HAVE KNOWN OF THE POSSIBILITY OF SAME.

**14.3** IN ALL CASES AND CIRCUMSTANCES, OPTRICS' TOTAL MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT AND IN CONNECTION WITH THE USE, OR INABILITY TO USE, OF ANY OF THE SERVICES AND DELIVERABLES, OR ANY DEFECTS OR ERRORS IN ANY OF THE DELIVERABLES, OR ANY FAILURE OF OR ANY DEFECTS OR ERRORS IN THE SERVICES OR THE DELIVERABLES, ARISING IN ANY MANNER WHATSOEVER, SHALL BE LIMITED TO THE TOTAL OF THE FEES PAID BY CUSTOMER TO OPTRICS UNDER THIS AGREEMENT WITH RESPECT TO THE APPLICABLE WORK ORDER.

**14.4** IN NO EVENT WILL ANY OF OPTRICS' SUPPLIERS, LICENSORS, SHAREHOLDERS, DIRECTORS,

OFFICERS OR EMPLOYEES HAVE ANY LIABILITY UNDER THIS AGREEMENT, OR IN CONNECTION WITH ANY DELIVERABLES, DOCUMENTATION OR SERVICES, INCLUDING IN RESPECT OF ANY ERROR OR DEFECT IN ANY OF THE FOREGOING, AND CUSTOMER AGREES THAT IT WILL NOT DIRECTLY OR INDIRECTLY BRING ANY ACTION, SUIT OR PROCEEDING OR MAKE ANY CLAIM OR DEMAND IN RESPECT OF ANY SUCH SUPPLIERS, LICENSORS, SHAREHOLDERS, DIRECTORS, OFFICERS OR EMPLOYEES OF OPTRICS.

## **15. TERM AND TERMINATION**

**15.1** The initial term of this Agreement shall start on the Effective Date and shall continue until terminated by a Party as provided herein.

**15.2** Either Party may provide the other Party with written notice of its intent to terminate this Agreement at least thirty (30) days prior to the date of such termination. Where a Party gives notice of termination of this Agreement pursuant to the foregoing, unless the Parties agree otherwise, all Work Orders then in effect will continue in force until they have been completed or expired pursuant to their terms. A Party may terminate a Work Order without terminating this Agreement in its entirety in which case only the Work Order so terminated shall be terminated.

**15.3** This Agreement may be terminated immediately by the non-defaulting Party if any of the following events of default occur:

- (1) a Party materially fails to perform or comply with this Agreement or any provision hereof and the same is not cured within 10 Business Days of written notice of such default;
- (2) a Party becomes insolvent or confirms in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors;
- (3) a petition under any foreign, United States or Canadian bankruptcy act, receivership statute or the like, as they now exist or as they may be amended, is filed by a Party; or
- (4) such a petition is filed by any third party or an application for a receiver is made by anyone and such petition or application is not resolved in favour of the Party within ninety (90) days.

**15.4** On termination for default, all Work Orders and Change Requests then in effect shall also terminate, each Party shall stop using and return to the other Party all property and Confidential Information of that other Party (including all Products and Deliverables in the custody, possession or control of Customer but not as yet fully paid for), and Customer shall delete and destroy all copies of the Specifications and Documentation, and all copies of Deliverables other than Products provided under license (provided such license continues following and notwithstanding such termination) or rented or leased, and all rights, licenses or permissions granted herein shall terminate.

**15.5** Notwithstanding the termination of the Agreement, Sections 1, 4, 5, 6, 7, 10, 11, 12, 13 and 14 shall survive such termination and remain in force. Further, termination does not relieve any Party of any liability accruing at the date of termination .

## **16. FORCE MAJEURE**

**16.1** Except as may be expressly otherwise provided in this Agreement, to the extent by reason of Force Majeure a Party is unable in whole or in part to perform or comply with any covenant or obligation hereunder, then the Party shall be relieved of such covenant, obligation or liability and shall suffer no prejudice for failing to perform or comply during the continuance and to the extent of the inability so caused from and after the happening of the event of Force Majeure, provided that the Party invoking Force Majeure gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing within 48 hours), of such inability and reasonably full particulars of the cause thereof.

**16.2** The Party invoking Force Majeure shall use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply, provided that settlement of strikes and other labour disputes shall be wholly within the discretion of the Party involved and such Party shall not be required to accede to demands of its opponents in any such strike or labour dispute.

**16.3** The Party invoking Force Majeure shall give prompt notice of the cessation of the event of Force Majeure.

## **17. INSURANCE**

**17.1** Where Representatives of one Party (the "Attending Party") attend at the premises of the other Party (the "Host Party"), the Attending Party warrants and represents as follows:

**17.2** The Attending Party has, at its sole cost and expense, obtained and has in force the following minimum insurance coverages related to its Representatives:

- (a) Workers' Compensation Board ("WCB") account, or its equivalent in the jurisdiction in which Customer carries on business, or has an office, or in which Deliverables are provided, covering all its Representatives on the premises of the Host Party with statutory limits prescribed by law in the jurisdiction of the Host Party except for those employees, agents and servants exempt from WCB coverage by applicable statute;
- (b) Comprehensive General Liability Insurance including but not limited to coverage for premises, completed operations; underground explosion, collapse, hazard; products, completed operations; broad-form contractual liability, independent subcontractors; fire legal liability, broad-form property damage and personal injury with maximum limits per occurrence of (\$2,000,000.00) CDN or as may be required by the project , or equivalent, or by the other Party, acting reasonably, each for bodily injury and property damage;
- (c) Auto liability insurance covering all owned, non-owned, leased, rented or hired vehicles and equipment with bodily injury and property damage limits of a maximum of (\$2,000,000.00) CDN per accident; and
- (d) All Risks Property Insurance covering all of the supplies, materials and equipment, including property of Attending Party in Host Party's care, custody or control, on a replacement cost basis.

**17.3** The Host Party may require written proof of the foregoing before permitting any of Attending Party's Representatives to enter the premises or facilities of Host Party and the Attending Party's Representatives shall provide the requested proof of coverage when requested to so do.

## **18. INJUNCTIVE RELIEF**

**18.1** Nothing in this Agreement will prevent Optrics from seeking equitable relief, including injunctive relief, in any court of competent jurisdiction to restrain Customer from any breach of this Agreement, and from any infringement, violation or misappropriation of the Intellectual Property of Optrics.

## **19. GENERAL PROVISIONS**

**19.1** Customer shall have no right to transfer, assign or otherwise dispose of its rights or obligations hereunder or this Agreement without the prior written consent of Optrics, which may be withheld for any reason.

**19.2** This Agreement shall be governed, construed and enforced in accordance with the laws of the Province of Alberta and those of Canada applicable therein, without reference to any conflict of laws principles.

**19.3** The United Nations Convention on Contracts for the International Sale of Goods shall have no application to this Agreement, the Deliverables, the Services, or any transaction contemplated herein and the Parties hereby agree that any statute which would otherwise give rise to such application shall have no force or effect.

**19.4** Any dispute arising out of this Agreement or in relation to any Deliverable or Services shall be adjudicated in the courts in Edmonton, Alberta. Notwithstanding the foregoing, either Party may apply to any court of competent jurisdiction for injunctive relief.

**19.5** Optrics may subcontract the performance of any of the Services or the provisions, delivery, construction or development of the Deliverables. Optrics shall request that such subcontractors comply with the confidential obligations set out in Section 1111 as well as all other restrictions and obligations imposed on Optrics in the Agreement.

**19.6** If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a Party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

**19.7** The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either Party to enforce the same or a different provision in the future.

**19.8** The non-performance by either Party of an obligation hereunder shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence or neglect of the non-performing Party.

However, lack of finances shall not serve as a basis of non-performance.

**19.9** During the period in which any Services are being provided and for a period of twelve (12) months thereafter, neither Party will solicit, directly or indirectly, for employment or employ any employee of the other who is or was involved in the performance of the Services without the prior written consent of the other. The foregoing restrictions shall not apply if an employee of one Party seeks employment with the other as a result of a response to a general solicitation (newspaper, trade journal or other advertisement or job fair) to which the employee has not been directed to or provided notice of by the soliciting Party.

**19.10** No Party is the employee, partner, joint venturer, agent or legal representative of the other Party for any purpose. No Party shall have any authority to enter into any agreement for or on behalf of the other Party or have any authority to make any commitments of any nature for or on behalf of the other.

**19.11** Optrics may list Customer's name in Optrics' marketing materials, press releases and customer lists and may otherwise inform third parties that Customer is a customer that uses the Software and Services.

**19.12** Each Party shall, from time to time, at the request of the other Party, promptly execute and deliver all such other and additional instruments, notices, releases or documents and shall do all such other acts and things as may be reasonably necessary or desirable in order to give full force and effect to this Agreement.

**19.13** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. An electronic copy shall be as good as the original.

**19.14** Notices shall be deemed to be effective if sent by registered mail, five Business Days after having been sent, if sent by courier, upon delivery, if sent by facsimile, upon confirmation from the recipient's facsimile machine of receipt and if sent by email, upon delivery to the other Party's email address unless such Party can prove non-receipt. Notices shall be sent to addresses or facsimile number given on the first page of this Agreement. A Party may change its address for delivery by written notice of same.

**19.15** The rights and remedies of a Party hereunder are cumulative and no exercise or enforcement by a Party of any right or remedy hereunder shall preclude the exercise or enforcement by the Party of any other right or remedy hereunder or which the Party is otherwise entitled by law or equity to enforce.

**19.16** This Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective and permitted heirs, executors, administrators, successors and permitted assigns.

**19.17** The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof. The words "hereof", "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement or any particular Schedule.

**19.18** Any reference to a Section shall be to the Section in the same Schedule unless otherwise indicated .

Updated: August 23, 2018