



PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions of purchase (these “**Terms**”) are the only terms that govern the purchase of goods and services by ivari from the Vendor named on the attached purchase order (“**Purchase Order**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties (“**Prior Contract**”) is in existence covering the sale of the goods and services covered hereby, the terms and conditions of the Prior Contract shall prevail to the extent they are inconsistent with these Terms.

In the absence of a Prior Contract, the attached Purchase Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the Purchaser and Vendor. These Terms prevail over any of Vendor’s general terms and conditions of sale regardless of whether or when Vendor has submitted its sales confirmation or such terms. Shipment of goods or provision of services in compliance with offer constitutes Vendor’s acceptance of all Terms on the ivari website at <https://ivari.ca/files/purchase-order-terms-and-conditions.pdf>.

Any schedule(s) form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedule(s).

The term “**Vendor**” as used herein shall mean the individual firm, partnership or corporation to whom a Purchase Order is issued.

The term “**Purchaser**” as used herein shall mean ivari.

TERMS

1. **OFFER AND ACCEPTANCE.** The Purchase Order constitutes an offer to purchase goods or services according to the description, instructions and conditions set forth herein. The Vendor shall be bound by the Purchase Order and by these Terms, unless exception is taken by separate letter, written ten (10) days from receipt, accompanied by a copy of the Purchase Order. No additional or different terms and conditions of sale offered by the Vendor shall become part of the Purchase Order unless expressly consented to by the Purchaser in writing, the offer being expressly limited to the Terms hereof.

2. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

(a) The Vendor acknowledges that time is of the essence with respect to the Vendor’s obligations hereunder and the timely delivery of the goods and services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

GOODS

(b) The Vendor shall deliver the goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). The Purchaser has the right to return any goods delivered prior to the Delivery Date at the Vendor’s expense and the Vendor shall re-deliver such goods on the Delivery Date.

(c) The Vendor shall deliver all goods to the address specified in the Purchase Order (the “**Delivery Point**”) during the Purchaser’s normal business hours or as otherwise instructed by the Purchaser.

(d) The Vendor shall pack all goods for shipment according to the Purchaser’s instructions or, if there are no instructions, in a manner sufficient to ensure that the goods are delivered in undamaged condition. The Purchaser reserves the right to have items repacked at the Vendor’s expense if the packaging and labelling instructions specified on the bid and Purchase Order are not followed.

(e) The Purchase Order number must be shown on all packaging slips. Packaging slip must accompany each shipment indicating contents of all packages delivered to the Purchaser. Purchase Order number and the relevant business unit of the Purchaser must be clearly marked on exterior of each package delivered to the Purchaser. Packaging slip must be marked “partial” if shipment delivered to the Purchaser is less than complete order as described in the Purchase Order. Each package delivered to the Purchaser must include complete packing memorandum, and appropriate labels with clear label information.

(f) The Vendor must provide the Purchaser prior written notice if it requires the Purchaser to return any packaging material. Any return of such packaging material shall be made at the Vendor’s risk of loss and expense.

SERVICES

- (g) The Vendor shall provide the services to the Purchaser as described and in accordance with the Purchase Order and in accordance with these Terms.
3. **TITLE AND RISK OF LOSS.** Title and risk of loss passes to the Purchaser upon delivery of the goods at the Delivery Point. The Vendor bears all risk of loss or damage to the goods until delivery of the goods to the Delivery Point. However, this is subject to rejections by the Purchaser under Section 6 (Rejections) set out on the following page.
4. **TERMINATION OR CANCELLATION.** Purchaser may terminate or cancel the Purchase Order in whole or in part at any time with or without cause. Termination shall be without prejudice to any claims, which one party may have against the other for work performed and goods supplied up to date of cancellation.
5. **EFFECTS OF TERMINATION OR EXPIRATION.** Upon expiration/termination/cancellation of this Agreement for any reason,
- (a) the Vendor shall:
- (i) deliver to the Purchaser all goods, documents, work product, and other materials, whether or not complete, prepared by or on behalf of the Vendor;
 - (ii) return to the Purchaser all Purchaser owned property, equipment, or materials in the Vendor's possession or control;
 - (iii) remove any Vendor owned property, equipment, or materials located at the Purchaser's locations; and
 - (iv) provide reasonable cooperation and assistance to the Purchaser upon the Purchaser's written request in transitioning the services to an alternate goods and/or service provider.
- (b) each party shall return to the other party or destroy, at the other party's discretion, all documents and tangible materials (and any copies, physical or electronic) containing, reflecting, incorporating or based on the other party's Confidential Information and certify in writing that it has done so; provided, however, that Purchaser may retain copies of any Confidential Information of the Vendor incorporated or needed to use the goods/services to the extent necessary to allow it to make full use of any goods and/or Services.
6. **REJECTIONS.** If any of the goods are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Purchase Order, the Purchaser, in addition to any other right which it may have under warranties or otherwise, shall have the right to reject and return such goods which are not to be replaced without suitable written authorization from the Purchaser. If the Purchaser requires replacement of the goods, the Vendor shall, at its expense, promptly within seven (7) days replace the non-conforming or defective goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement goods.
7. **PURCHASER'S PROPERTY.** Unless otherwise agreed to in writing, all materials such as for example, negatives, artwork, models, samples, specifications, drawing, etc. used by the Vendor in connection with the printing of materials for Purchaser, whether initially provided by Vendor or by Purchaser, made by Vendor, or made on Vendor's behalf, shall be considered the property of the Purchaser and shall be returned to the Purchaser when requested, reasonable wear and tear excepted. While in the Vendor's custody or control, such materials shall be held at the Vendor's risk and shall be kept insured by the Vendor at the Vendor's expense in an amount equal to the replacement cost with loss payable to the Purchaser.
8. **ASSIGNMENT.** Assignment or subcontracting of this Purchase Order or any interest therein or any payment due or to become due thereunder, without the prior written consent of the Purchaser, shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder. The Purchaser may at any time assign or transfer any or all of its rights or obligations under this Agreement without the Vendor's prior written consent.
9. **GOVERNING LAW AND CHOICE OF FORUM.** This Agreement shall be construed and the legal relations between Purchaser and Vendor shall be determined in accordance with the laws of Ontario and Canada, as applicable. Each party attorns to the jurisdiction of the courts of Toronto, Ontario and agrees not to contest their connection or convenience.
10. **CONFIDENTIALITY.**
- (a) Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by the terms of the Confidentiality and Non-Disclosure Agreement set out in Schedule A of this Agreement.
 - (b) If a written confidentiality and non-disclose agreement signed by both parties ("Prior NDA") is in existence, the terms and conditions of such Prior NDA shall prevail to the extent they are inconsistent with the confidentiality and non-disclosure agreement set out in Schedule A of this Agreement.

11. **NON-DISCLOSURE.** Any and all information regarding the goods or services outlined in this Agreement is proprietary information of the Purchaser. The Vendor upon receiving this Purchase Order shall maintain the confidentiality of the information contained therein or subsequently provided.
12. **PATENTS AND COPYRIGHTS.** In the event any goods sold and delivered hereunder shall be covered by any patent, copyright, or similar intellectual property right, or any application thereof, the Vendor shall warrant compliance with all laws and licences and agrees to indemnify and save harmless the Purchaser from any and all loss, cost or expense on account of any and all claims, suits, or judgements arising in any way from the possession, use, purchase or sale of such goods in violation of rights under such patent, copyright or application.
13. **USE OF NAME.** Vendor agrees not to use the name or logo of the Purchaser or its affiliates or to quote the opinion of any of the Purchaser's employees or independent contractors in any advertising without obtaining the prior written consent of the Purchaser.
14. **COMPLIANCE WITH LAW.** Vendor warrants that no law or regulation or court ruling of Canada or a Province or a Territory thereof, has been violated in the manufacture, procurement or sale of any of the goods furnished, work performed, or service rendered pursuant to any Purchase Order. The Vendor shall maintain in effect all the licences, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. The Vendor assumes all responsibility for shipments of goods requiring any government import clearance.
15. **DELIVERY DELAY.** In the event, the Vendor, for any reason, cannot comply with the Purchaser's delivery schedule provided in the Purchase Order, the Vendor must immediately inform the Purchaser and the Purchaser may, at its option, either approve a revised delivery schedule or terminate this Agreement by providing written notice to the Vendor without any liability to the Purchaser. In the event of such termination by the Purchaser, the Vendor shall indemnify the Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendor's failure to comply with the deliver schedule provided in the Purchase Order.
16. **COMPLIANCE WITH TERMS.** Purchaser may at any time insist upon strict compliance with these Terms notwithstanding any previous custom, practice or course of dealing to the contrary.
17. **PRICE.** The price of the goods and services is the price stated in the Purchase Order (the "Price"). No increase in the Price is effective, whether due to increased material, labour, or transportation costs or otherwise, without the prior written consent of the Purchaser. Vendor must verify prices before acceptance of the Purchase Order. All prices stated in the Purchase Order will be in Canadian dollars unless otherwise indicated.
18. **RECORDS.** The Vendor shall keep sufficient records to allow the Purchaser to confirm that the submitted invoices are correct.
19. **AUDIT.** The Purchaser reserves the right to audit the records upon reasonable notice to the Vendor.
20. **TAXES.** The Purchaser shall be responsible for all goods and services tax, harmonized sales tax, provincial sales taxes, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, provincial, territorial, or municipal governmental entity or regulatory authority on any amounts payable by Purchaser hereunder; provided that, in no event shall the Purchaser pay or be responsible for any taxes, statutory withholdings, deduction, or remittances, imposed on, or with respect to, the Vendor's income, revenues, gross receipts, personnel, or real or personal property or other assets.
21. **REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the other party that:
 - (i) it is incorporated and validly existing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation or formation;
 - (ii) it has the power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; and
 - (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
22. **PAYMENT TERMS.** Vendor must forward a separate invoice for each Purchase Order showing Sales Tax, GST/HST and shipping charge, if any, separately, together with the net amount of such invoice. The Purchase Order number must be shown on all invoices. Invoices showing shipping charge, other than parcel post, must be accompanied by copy of freight bill. Payment for the goods or services covered by this Agreement shall be made NET THIRTY (30) days following delivery of goods and/or services together with receipt of an invoice by the Purchaser, including an itemized record of the goods and/or services delivered, except for any amounts disputed by the Purchaser in good faith. All payments hereunder must be in Canadian Dollars unless otherwise indicated. In the event of a payment dispute, the process set out in Section 29 (Dispute Resolution) set out below shall be followed.

23. **CHANGE ORDERS.** The Purchaser may at any time, by written instructions and/or drawings issued to the Vendor (each a “**Change Order**”), order changes to the goods and/or services stated in the Purchase Order. The Vendor shall within five [5] days of receipt of a Change Order submit to the Purchaser a firm cost proposal for the Change Order. If the Purchaser accepts such cost proposal, the Vendor shall proceed with the changed goods and/or services subject to the cost proposal and the terms and conditions of this Agreement. The Vendor acknowledges that a Change Order may or may not entitle the Vendor to an adjustment in the Vendor’s compensation or the performance deadlines under this Agreement.
24. **CONDITIONS AND WARRANTIES.**
- (a) The Vendor covenants and warrants to the Purchaser that for a period of twelve (12) months from the Delivery Date, all goods will:
 - (i) be free from any defects in workmanship, material, and design.
 - (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by the Purchaser.
 - (iii) be fit for their intended purpose and operate as intended.
 - (iv) be merchantable.
 - (v) be free and clear of all liens, security interests, or other encumbrances.
 - (vi) not infringe or misappropriate any third party’s patent or other intellectual property rights; and
 - (vii) These warranties survive any delivery, inspection, acceptance, or payment of or for the goods by Purchaser.
 - (b) The Vendor warrants to the Purchaser that it shall perform the services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and
 - (c) The warranties set forth in this Section 24 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser’s discovery of the noncompliance of the goods or services with the foregoing conditions and warranties. If the Purchaser gives the Vendor notice of noncompliance pursuant to this Section, the Vendor shall, at its own cost and expense, within seven (7) days (i) replace or repair the defective or non-conforming goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming goods to the Vendor and the delivery of repaired or replacement goods to the Purchaser, and, if applicable, (ii) repair or re-perform the applicable services.
25. **GENERAL INDEMNIFICATION.** The Vendor shall defend, indemnify and hold harmless the Purchaser and the Purchaser’s parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and the Purchaser’s clients (collectively, “**Indemnitees**”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable legal and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) relating to, arising out of or occurring in connection with the products purchased and/or services availed from the Vendor or Vendor’s negligence, misconduct or breach of the Terms. The Vendor shall not enter into any settlement without the Purchaser or Indemnitee’s prior written consent.
26. **INSURANCE.** Vendor shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than the total value of the Purchase Order and other insurance as is customary for purchase orders of this nature, with financially sound and reputable insurers. Upon the Purchaser’s request, the Vendor shall provide the Purchaser with a certificate of insurance from the Vendor’s insurer evidencing such insurance coverage.
27. **AMENDMENT AND MODIFICATION.** No change to this Purchase Order is binding upon the Purchaser unless it is in writing, specifically states that it amends this Purchase Order and is signed by an authorized representative of the Purchaser.
28. **RELATIONSHIP OF THE PARTIES.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.
29. **DISPUTE RESOLUTION.** In the event of a payment dispute, the Purchaser shall deliver a written statement to the Vendor no later than seven (7) days prior to the date such payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in Section 22 (Payment Terms). The parties shall seek to resolve all such disputes expeditiously and in good faith. Each party shall designate an officer with the responsibility and authority to resolve the dispute. Resolution of a dispute shall be in writing and signed by the designated officer and shall be binding and final. If a resolution is not reached in thirty (30) days of such submission, any party may seek relief from any court of competent jurisdiction within Toronto, Ontario to resolve the dispute. The Vendor shall continue performing its obligations under the Agreement notwithstanding any such dispute.

30. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such party's ("Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"):
- (a) acts of God;
 - (b) flood, tsunami, fire, earthquake, explosion;
 - (c) epidemics, pandemics, including the 2019 novel coronavirus pandemic (COVID-19), and other potential disaster(s) or catastrophe(s);
 - (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions;
 - (f) embargoes or blockades in effect on or after the date of this Agreement; and
 - (g) national or regional emergency;
 - (h) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; and
 - (i) shortage of adequate power or telecommunications or transportation facilities; and
 - (j) failure of any governmental or public authority to grant a necessary licence or consent; and
 - (k) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section 30, the other party may thereafter terminate this Agreement upon seven (7) days' written notice.
31. **SEVERABILITY.** If any term or condition of this Purchase Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or condition of this Purchase Order or invalidate or render unenforceable such term or provision in any other jurisdiction.
32. **WAIVER.** No waiver by the Purchaser of any of the provisions of the Agreement shall be effective unless explicitly set forth in writing and signed by the Purchaser. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
33. **SURVIVAL.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Section 9 (Governing Law and Choice of Forum), Section 10 (Confidentiality), Section 14 (Compliance with Laws), Section 26 (Insurance) and this Section 33 (Survival).
34. **NOTICES.** Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement in writing and addressed to the other party at the addresses set forth on the Purchase Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Each party shall deliver all notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), or email of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.
35. **PUBLIC ANNOUNCEMENTS, USE OF LOGOS.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.
35. **PUBLIC ANNOUNCEMENTS, USE OF LOGOS.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.
36. **ORDER OF PRECEDENCE.** In the event of any conflict between the terms and provisions of this Agreement and those of any schedule or exhibit or such other document, then the terms of this Agreement shall control unless expressly set forth otherwise in the applicable schedule or exhibit or other document.
37. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
38. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

39. **SUBCONTRACTING.** The Vendor shall not subcontract its mandate.

40. **CONFLICT OF INTEREST.** It is a term of this Agreement the Vendor shall conduct herself/himself in a manner such that there is not and will not be any conflict arising from a competing or opposing interest of other clients of the Purchaser. Such relationship(s) must be disclosed at all times. Should an interest be acquired during the term of this Agreement that would cause a conflict of interest, the Vendor shall declare it immediately to the Purchaser. This Section shall be subject to Section on confidentiality.

41. **INCIDENT NOTIFICATION.** The Vendor shall, promptly notify the Purchaser of:

- (a) Any incident and events that materially impact the delivery of the goods/services provided, Client Information and Client's personal information.
- (b) Any violation or attempted violation of confidential information as a result of any technology or cybersecurity incident (including those of its permitted subcontractors) within 24 hours of the occurrence.
- (c) Any significant organizational/ operational changes that may impact the delivery of the goods/services.
- (d) Any material non-compliance with regulatory requirements or litigation that may impact the delivery of the goods/services.

42. **BUSINESS CONTINUITY.** The Vendor hereby represents and warrants that it has a disaster recovery and business continuity plan in place taking into account the following:

- (a) Continuity of service.
- (b) Prevention of loss of data.
- (c) Prevention or minimization of impact on the achievement of its obligations under the Agreement.
- (d) Return to normal of the operational services promptly.

43. **FURTHER ASSURANCES.** The Vendor understands that the Purchaser is a regulated entity and from time to time may have to comply additional requirements as a result of changes to the law/regulation or changes in its own policies ("New Requirement"). In the event the Purchaser so requests, then the Vendor shall use commercially reasonable efforts from time to time at the request of the other party, furnish to the other party such reasonable information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other reasonable actions and do such other things, as may be necessary or appropriate/desirable to give effect to such New Requirement.

SCHEDULE A

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“**Agreement**”) is by and between:

ivari, an insurance company incorporated under the *Insurance Companies Act* (Canada) with its head office located at 200-5000 Yonge Street, Toronto, ON, M2N 7E9 (“ivari”)

and

full legal name of company, a [corporation incorporated under / limited liability partnership organized] under the laws of the Province of Ontario, located at full address (“Counterparty”).

WHEREAS:

- A. To facilitate discussions regarding possible purchase of goods and/or services by ivari from the Counterparty (the “**Purpose**”); and
- B. In connection with the Purpose, the Parties desire to share and exchange certain information that is non-public, confidential or proprietary in nature.

IN CONSIDERATION of the above and the promises contained herein, ivari and Counterparty (hereinafter jointly referred to as the “**Parties**” and individually as “**Party**”) hereto, intending to be legally bound, do agree as follows:

1. **Definition of Confidential Information.** For the purposes of this Agreement, Confidential Information shall mean all non-public, confidential or proprietary information about the business of either Party and its affiliates that is disclosed on or after the Effective Date by either Party (the “Discloser”) to the other Party (the “Recipient”), irrespective of whether such information is disclosed in written, oral, graphic or machine readable format and whether received directly or indirectly in conversation with Discloser’s employees and/or representatives, and whether or not such information is marked, designated or otherwise identified as “confidential,” including, but not limited to, new business, products, methods of doing business, business plans, and other information relating to the business and affairs or ideas or concepts owned by Discloser and/or its affiliates that would reasonably be considered non-public, confidential or proprietary given the nature of the information and the Discloser’s business, as well as information about the clients and employees, consultants and contractors of Discloser and its affiliates, that falls within the definition of personal information pursuant to any applicable privacy law or legislation.
2. **Standard of Care.** Recipient agrees not to use any Confidential Information disclosed to it by Discloser for its own use or for any purpose other than to carry out the Purpose. Recipient agrees and acknowledges that unauthorized disclosure of any Confidential Information could adversely affect the business or financial condition of Discloser. Recipient shall not disclose or permit disclosure of any Confidential Information or any summary or reproduction thereof to third parties or to employees of Recipient, other than directors, officers, employees, consultants and agents of Recipient (its “Representatives”) who are required to have the information in order to carry out the Purpose. Recipient has had or will have its Representatives who have access to Confidential Information sign a nondisclosure agreement or covenant sufficient to enable it to comply with the terms of this Agreement. Such Representatives shall have no right to further disclose or to otherwise use the Confidential Information without the express prior written authorization of Discloser. Recipient agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Recipient further agrees to notify Discloser in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to Recipient’s attention.
3. **Excluded Information.** Notwithstanding the above, Recipient shall not have liability to Discloser with regard to any Confidential Information, which Recipient can prove:
 - (a) at the time of disclosure, is or becomes generally available to and known by the public, other than as a result of its disclosure directly or indirectly by the Recipient or its Representatives in violation of this Agreement;
 - (b) is or becomes available to the Recipient or its Representatives from a source other than the Discloser or its Representatives, provided that such source, to the Recipient’s knowledge after reasonable inquiry, was not and is not bound by a confidentiality agreement regarding the Discloser or its affiliates, or otherwise prohibited from disclosing such information to the Recipient or its Representatives by a legal, contractual or fiduciary obligation;
 - (c) was already known by or in the possession of the Recipient or its Representatives as established by documentary evidence, before being disclosed by or on behalf of the Discloser pursuant to this Agreement; or

(d) has been or is independently developed by the Recipient or its Representatives as established by documentary evidence, without violating any of its obligations under this Agreement or use of or reference to, in whole or in part, any of the Discloser's Confidential Information.

Confidential Information disclosed under this Agreement shall not be deemed to be within the foregoing exclusions merely because such Confidential Information is included in more general information in the public domain or in Recipient's possession. None of the foregoing exceptions shall apply to any Confidential Information that falls within the definition of personal information pursuant to any applicable privacy law or legislation.

4. **Compelled Disclosure.** Recipient may disclose the Confidential Information as required by law, or in response to a judicial or other statutory order, provided that Recipient:
 - (a) discloses only that portion of the Confidential Information that its legal counsel advises is required to be disclosed;
 - (b) notifies Discloser as soon as possible unless prohibited by law; and
 - (c) provides reasonable cooperation to Discloser in efforts to obtain a protective order, at Discloser's cost.
5. **No Duplication; Destruction.** Recipient agrees, except as otherwise expressly authorized by Discloser, not to make any copies or duplicates of any Confidential Information. Recipient will at Discloser's request return or destroy any materials or documents that have been furnished by Discloser to Recipient in connection with the Purpose, accompanied by all copies of such documentation. All notes, compilations, forecasts, analysis, data, studies or other documents prepared by Recipient or its Representatives based on the Confidential Information will be destroyed and/or permanently erased.
6. **Non-Disclosure of Existence of Purpose.** Without the prior written consent of Discloser, Recipient shall not, and shall direct their Representatives not to, disclose to any person, other than as provided in Section 2:
 - (a) the fact that Recipient has received the Confidential Information;
 - (b) that discussions or negotiations are taking place concerning the Purpose; or
 - (c) any of the terms, conditions, or other facts with respect to the Purpose, including the status of discussions, negotiations, or performance.
7. **No Rights Granted.** Confidential Information remains the property of Discloser. Nothing shall be construed as granting Recipient any rights or interests in or license or title to any of Discloser's present or future Confidential Information.
8. **No Representations or Warranties.** Discloser makes no representation or warranty as to the accuracy or completeness of the Confidential Information. Nor shall Discloser have any liability arising from its use or for any errors therein or omissions therefrom.
9. **Remedies; Indemnification.** The Parties each agree that the obligations created by this Agreement are necessary and reasonable in order to protect Discloser, its affiliates and their respective businesses. Recipient expressly agrees that due to the unique nature of the Confidential Information, monetary damages alone would be inadequate to compensate Discloser and/or its affiliates for any breach of this Agreement. Accordingly, Recipient agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to Discloser and/or its affiliates and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Discloser shall be entitled:
 - (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Recipient, without the necessity of proving actual damages, and
 - (b) to be indemnified by Recipient from any loss or harm, including but not limited to lawyer's fees, arising out of or in connection with any breach or enforcement of Recipient's obligations under this Agreement or the unauthorized use or disclosure of the Confidential Information.The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
10. **No Waiver of Privilege.** To the extent that any of a Party's Confidential Information includes materials subject to solicitor-client privilege, litigation privilege or similar protections or privileges, that Party and its affiliates do not waive, and shall not be deemed to have waived or diminished, its solicitor-client privilege, litigation privilege or similar protections and privileges as a result of disclosing any of that Party's Confidential Information (including Confidential Information related to pending or threatened litigation) to the other Party or any of its Representatives.
11. **Successors and Assigns.** The terms and conditions of this Agreement shall ensure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided that the Confidential Information may not be assigned without the prior written consent of Discloser.

12. **Severability.** If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision of this Agreement is invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect, and (b) the Parties shall immediately thereafter replace the invalid or unenforceable provision or term with a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision, and evidence such replacement by written instrument signed by each of them.
13. **Governing Law and Jurisdiction.** This Agreement is governed by the laws of Ontario and the laws of Canada applicable therein, and each Party attorns to the jurisdiction of the courts of Ontario and agrees not to contest their connection or convenience.
14. **Amendment and Waiver.** This Agreement may be amended only by agreement in writing signed by the parties. No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege under this Agreement.
15. **Notice.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement in writing and addressed to the other Party at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Each Party shall deliver all notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), or email of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which counterparts, when taken together, shall constitute but one and the same agreement.
17. **Entire Agreement.** This Agreement is the product of both of the Parties hereto, and constitutes the entire agreement between such Parties pertaining to the subject matter hereof.
18. **Term of Agreement.** The terms of this Agreement do not expire.