

TERMS OF USE

GHOSTPRACTICE

1. Definitions

- 1.1 "Acceptance" has the meaning detailed in Section 6 below;
- 1.2 "Acceptance Testing" means the testing by the Firm of the Software delivered and installed by D&D for the purposes of determining whether the Software complies with the specifications or acceptance criteria agreed to between the Parties in writing;
- 1.3 "Agreement" means the Subscription Agreement together with these Terms of Use, together with all annexures and schedules hereto, as may be amended from time to time;
- 1.4 "Business Day" means any day other than a Saturday, Sunday or statutory holiday;
- 1.5 "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party and/or any third party, or which is provided or disclosed in confidence; and which the Disclosing Party, or any person acting on its behalf, may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means, but specifically excluding information or data which (i) is lawfully in the public domain at the time of disclosure thereof; (ii) subsequently becomes lawfully part of the public domain by publication or otherwise; (iii) becomes available from a source other than one of the Parties which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; and (iv) is disclosed pursuant to a requirement or request by operation of law, regulation or court order, provided that in these circumstances, (a) the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard; (b) the Receiving Party will disclose only that portion of the information which it is legally required to disclose; and (c) the Receiving Party will use commercially reasonable efforts to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 1.6 "D&D" means GhostPractice Inc. with offices located at 1100-25 York St., Toronto, ON M5J 2V5, which address it hereby selects as its address for receiving legal notices and other communications under this Agreement;
- 1.7 "Data" means any data supplied, stored, collected, collated, accessed or processed by or for the benefit of the Firm including personal information;
- 1.8 "Disclosing Party" means a Party that discloses Confidential Information;
- 1.9 "Equipment" means, collectively, the hardware and software required for the Firm to utilise the Software;
- 1.10 "Firm" means the legal entity that signed the Subscription Agreement and agreed thereunder to purchase a subscription to use the Software;
- 1.11 "First Year Fixed Term Period" means one calendar year from the date of Acceptance.
- 1.12 "Implementation" means such assistance to be provided by D&D so as to transition, integrate and deliver the Software solution to the Firm, including the installation and implementation of the Software, as contracted for in terms of this Agreement (as such plan may be amended by agreement between D&D and the Firm);
- 1.13 "Implementation Period" means the period commencing on the Signature Date and ending on the date of Acceptance;
- 1.14 "Intellectual Property" means any know-how (not in the public domain), invention (whether or not patented), design, trade mark (whether or not registered), or copyright material (whether or not registered), goodwill, processes, process methodology and all other identifiably or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property;
- 1.15 "Losses" means all losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims and all related costs and expenses (including legal fees on the scale as between solicitor-and client basis, tracing and collection charges, costs of investigation, interest and penalties)
- 1.16 "Modules" means the various modules which form part of the Software;
- 1.17 "Parties" means the parties to this Agreement, being D&D and the Firm;
- 1.18 "Receiving Party" means the Party that receives disclosure of any Confidential Information;
- 1.19 "Remote Assistance" means assistance by D&D's customer support centre Staff or support Staff in connection with reasonable requests by Users relating to their use of the Software, either telephonically or by some other electronic means;
- 1.20 "Signature Date" means the date on which the last party signs the Subscription Agreement and the date on which this Agreement becomes operative;
- 1.21 "Software" means D&D's proprietary legal and financial practice management software known as "GhostPractice" comprising, inter alia, the Modules, and any updates, upgrades and enhancements thereto;
- 1.22 "Software Administrator" means the natural person at the Firm who has been designated as the person who, on behalf of the Firm, is empowered to manage User Accounts as well as the installation of the Software;

- 1.23 "Staff" means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;
- 1.24 "Subscription Agreement" means the written Subscription Agreement executed by the Firm and Dye & Durham Corporation, an affiliate of GhostPractice Inc.;
- 1.25 "Subscription Fees" has the meaning detailed in Section 11.1 below;
- 1.26 "Third Party" means a person, contractor or entity other than a Party;
- 1.27 "Third Party Software" means the software supplied by parties other than D&D which the Firm utilises in its practice;
- 1.28 "User" means each single natural person employed by or contracted to the Firm specifically authorized by the Firm to utilise a User Account;
- 1.29 "User Account" means each distinct account registered with D&D which is protected by a username and password;
- 1.30 "Web Site" means <http://www.ghostpractice.ca>.

2. Term and Duration

These Terms of Use commence on the Signature Date and will remain in force ifor the term (and any renewal thereof) set forth in the Subscription Agreement, subject to the terms and conditions (including rights of termination) of the Agreement.

3. Terms of use

- 3.1 By using the Software, the Firm agrees to the terms and conditions contained in this Agreement.
- 3.2 Subject to the terms of this Agreement, D&D hereby grants the Firm and the Firm hereby accepts a revocable, non-exclusive, non-sublicensable, non-transferable licence to use the Software for the term of this Agreement. The licence is granted on a per User Account basis and the Firm shall only be entitled to use the Software in relation to the relevant number of User Accounts registered at any point in time. For purposes of clarity, each User Account requires a separate licence.
- 3.3 Concurrent use of a User Account is not permitted and all Users must have a User Account.
- 3.4 The Firm is responsible for ensuring that only Users have access to the Software and that each User complies with all restrictions and terms and conditions of this Agreement. Any breach or non compliance of the terms and conditions of this Agreement by any User or Staff member of the Firm shall be deemed to be a breach or non-compliance by the Firm.
- 3.5 The Software consists of proprietary products, in which all Intellectual Property rights are and shall remain the exclusive property of D&D. The Firm shall have no right, title or interest in the Software and shall not do, allow or permit anything which would infringe or otherwise prejudice the proprietary rights of D&D in the Software, or infringe or otherwise prejudice the Intellectual Property rights of any Third Party.
- 3.6 Unless otherwise provided in this Agreement, the Firm agrees that it will not (i) exploit the Software for commercial gain; (ii) distribute, copy,

reproduce, translate, adapt, vary, modify, sell, lease, licence, sub-licence, encumber or in any other way deal with any portion of the Software; (iii) de-compile, disassemble or reverse engineer the whole or any part of the Software in any manner or attempt to derive the source code of the Software; and (iv) write and/or develop any derivative works, including any other software program based on the Software.

- 3.7 The Firm may retain and use 1 (one) copy of the Software as part of the Firm's disaster recovery plan.
- 3.8 The Firm shall: (i) to maintain accurate and up-to-date records of the number and location of all copies of the Software; and (ii) to supervise and control the use of the Software in accordance with the terms of this Agreement.
- 3.9 The Firm shall, within 30 (thirty) days of the date of termination of this Agreement for whatever reason, at D&D's discretion, return or irretrievably destroy the Software and copies thereof, in whole and in part, in any form including partial copies or modifications of the Software received from D&D or made in connection with this Agreement and all documentation relating thereto; and will furnish D&D with a certificate certifying that such return or destruction, as the case may be, has been duly effected.

4. Implementation

- 4.1 D&D shall, for the duration of the Implementation Period, be obliged to carry out the Implementation provided the Firm complies with the reasonable requests of D&D and the Implementation remains practically feasible.
- 4.2 The Firm will grant D&D reasonable access to the Firm's premises and all of the Equipment to enable D&D or its agents, to perform the Implementation.
- 4.3 As part of the Implementation, D&D will, with the assistance and co-operation of the Firm:
 - 4.3.1 Undertake a site assessment to examine the Firm's existing environment and to prepare a comparison report between the existing environment and the minimum requirements (including in respect of Equipment) for the Software to be successfully implemented and used;
 - 4.3.2 provide initial User training;
 - 4.3.3 extract, sort and convert relevant Firm Data into a format which can be used with the Software;
 - 4.3.4 implement and install the Software (in accordance with the provisions of Section 5 below), including a test version of the Software for use in Acceptance Testing, which testing shall involve the Users performing test exercises to ensure that the Software meets the agreed acceptance criteria; and
 - 4.3.5 provide reasonable assistance with Acceptance Testing.
- 4.4 The Implementation shall be performed free of charge.
- 4.5 If the parties mutually agree, acting reasonably, that the Implementation is not practically feasible,

either Party shall be entitled to terminate the Firm's subscription to the Software (but for certainty, such termination shall not apply to any other services or products procured under the Subscription Agreement) at any time during the Implementation Period on written notice to the other Party. If the subscription is so terminated, GhostPractice will be entitled to recover from the Firm the equivalent of 2 months Subscription Fees for a full complement of firm user licenses plus any travel expenses incurred in respect of the Implementation up to the date of cancellation of the subscription.

5. Installation

- 5.1 D&D will notify the Firm of the anticipated date of installation of the Software not less than 5 (five) Business Days prior to such installation date.
- 5.2 The Firm will grant D&D reasonable access to the Firm's premises and all of the Equipment required to enable D&D or its agents, as the case may be, to install the Software.
- 5.3 The Firm will, to the extent relevant, ensure that a suitably qualified representative from each of its Third Party service providers is functionally available on the date on which the installation is to commence in order to oversee and co-operate with the installation process.

6. Acceptance

- 6.1 The Firm shall conduct Acceptance Testing of the Software upon delivery and installation of the Software as part of Implementation and such acceptance testing cannot be unreasonably delayed. No productive use of the Software shall be permitted until after completion of Acceptance Testing.
- 6.2 The Firm shall be deemed to have accepted the Software ("**Acceptance**"):
 - 6.2.1 where completion of Acceptance Testing is signed off by the Firm, as evidenced by a duly completed "Sign Off Letter"; and
 - 6.2.2 should the Software be placed into productive use in a live environment.

7. Technical Specifications

- 7.1 D&D may advise the Firm of various technical specifications relating to Equipment which the Firm will need to comply with in order for the Software to function optimally.
- 7.2 The Firm acknowledges that the manner in which the Firm operates its Third Party Software and hardware will have an impact on the performance and functionality of the Software. The Firm undertakes to confirm with its Third Party service providers that the recommendations made by D&D as to technical specifications relating to Equipment are in fact compatible with and appropriate for the Firm (and, without limiting the generality of the foregoing, confirm that the existing Third Party Software and hardware of the Firm will not negatively or otherwise affect the functionality of or be affected by, the Software). The Firm also warrants that all Third Party Software is and shall for the duration of this

Agreement be lawfully used by the Firm under an appropriate licence concluded with the licensor thereof.

- 7.3 While reasonable efforts will be made by D&D (after consultation with the Firm's Third Party service providers) to ensure that the recommendations as to technical specifications for Equipment will be compatible with the Firm's existing hardware and Third Party Software, the Firm acknowledges that failure to comply with such recommendations (or subsequent modifications or additions of software thereto) could lead to a malfunction of the Software, and could cause damage to hardware and Third Party Software used by the Firm (including without limitation resulting in a loss of Data) and that D&D will under no circumstances be held liable for such loss of Data, malfunction and/or damage and the Firm agrees to indemnify D&D against any and all such loss of Data, malfunction and/or damage, save where such loss is caused by the wilfull misconduct or fraud of D&D.
- 7.4 The Firm agrees to provide D&D with all reasonable assistance which is necessary to allow D&D to import the Firm's existing Data into the Software.

8. Upgrading of Software

8.1 D&D will notify the Firm when Software upgrades are available for download. The Firm may elect to update the Software via a secure internet connection or through installation by a D&D Staff member. The Firm or a D&D Staff member, as the case may be, will update the Software, free of charge, as and when an upgrade becomes available and will allow the Software to perform automatic updates.

8.2 The Firm acknowledges that failure to either update the Software as and when an upgrade becomes available or to enable the Software to perform automatic updates could result in the Software becoming inoperable or becoming obsolete. In no event shall D&D be liable or responsible for any Losses incurred or suffered by the Firm to the extent arising from, relating to or in connection with the Software becoming inoperable or obsolete due to the failure of the Firm to update or upgrade the Software.

9. Additional Services

- 9.1 D&D may, at its sole discretion, at the request of the Firm, provide the Firm with additional services.
- 9.2 The Firm acknowledges that the provision of additional services will be provided to the Firm, if available, at a commercially reasonable hourly rate, determined by D&D, and subject to the Firm accepting a written quote for the additional services.

10. Responsibilities of the Firm

- 10.1 Without limiting any other obligations of the Firm detailed in this Agreement (including with regard to payment), in order to access and use the Web

Site and Software, the Firm will be responsible, at its own cost, for:

- 10.1.1 establishing a secure connection to the Internet for the duration of this Agreement;
- 10.1.2 installing and using appropriate Microsoft versions;
- 10.1.3 procuring and using current, appropriate Equipment. Although D&D will, as part of the Implementation and as contemplated in Section 7 above, make recommendations as to the preferred Equipment to be used in relation to the Software, D&D accepts no responsibility and hereby disclaims all liability for or arising from any Equipment used by the Firm in relation to the Software, including liability for inaccuracies, errors, omissions or misinterpretations and for any loss or damage, whether direct, indirect or consequential in nature, suffered by the Firm, a User or any Third Party arising from or relating to any such recommendations, save where such liability is attributable to the wilful misconduct or fraud of D&D, its Staff or authorized representatives. In particular and due to the fact that the Firm is granted the opportunity to conduct Acceptance Testing and that D&D is not a supplier of the Equipment, D&D provides no warranty that the recommended Equipment will meet any specific requirements or function error free or be compatible with the Software;
- 10.1.4 subject to D&D's initial training obligations hereunder, ensuring that the Users are properly trained to use the Software;
- 10.1.5 not permitting any person other than the Users to access the Software;
- 10.1.6 ensuring that each User complies with all licence restrictions and other applicable terms and conditions of this Agreement. Any breach or non-compliance of the terms and conditions of this Agreement by any User shall be deemed to be a breach or non compliance by the Firm;
- 10.1.7 ensuring that the username and password allocated to each User is used exclusively by that User. The Firm and/or Users may not re-use usernames or passwords;
- 10.1.8 ensuring that Users and Firm Staff do not share or re-use usernames or passwords with other Users or Staff members;
- 10.1.9 permanently de-commissioning a username and password in the event that a User to whom the username and password was issued leaves the employ of the Firm or is no longer required to access or use the Web Site or the Software;
- 10.1.10 keeping and maintaining logs in respect of all Users to whom usernames or passwords are issued;
- 10.1.11 ensuring that all Users and Staff members are made aware of the fact that they are responsible for all activity that takes place under any username or

password allocated under this Agreement; and

- 10.1.12 ensuring that all Users log out of the Web Site or Software or activate a password protected screen saver before leaving their personal computer, workstation, or terminal unattended.

11. Payment in respect of Software Licence and Additional Services

- 11.1 The Software is licensed to the Firm and is charged according to the number of User Accounts that are held in any given month (or part thereof), irrespective of actual usage ("the Subscription Fees").
 - 11.2 The Subscription Fees (excluding Tax) as at the Signature Date are set out in the Subscription Agreement, which amounts include D&D's charges for Data conversion and Remote Assistance, but specifically exclude any charges for customizations required post the Implementation Period or additional services, which may be offered at D&D's sole discretion, and charged for at a commercially reasonable hourly rate.
 - 11.3 Subscription Fees and D&D's charges for any on-site or additional services will be invoiced by D&D monthly in arrears and are payable by the Firm by no later than 30 (thirty) days from the date of such invoice, free of deduction or set-off, unless otherwise provided for in the Subscription Agreement.
 - 11.4 If the Firm fails to pay the Subscription Fees or any other amount under the Subscription Agreement or these Terms of Use on the due date for payment thereof, then without prejudice to any other rights that D&D may have under this Agreement or at law or equity, if the relevant amount remains unpaid twenty-eight (28) days after the due date for payment thereof and if D&D has given at least 7 days' written notice of its intention to do so, D&D shall be entitled to:
 - 11.4.1 suspend the Firm's access to and use of the Software; and
 - 11.4.2 if the suspension contemplated in clause 11.4.1 occurs within the First Year Fixed Term Period, impose a fee with respect to the Implementation services provided to the Firm for no charge in contemplation of D&D receiving Subscription Fees throughout the First Year Fixed Term Period. The said fee will be calculated at D&D's standard hourly rates for the time spent and the actual costs of any disbursements (plus GST thereon), and shall be payable within a period of 15 (fifteen) days after issue by D&D of an invoice therefor.
 - 11.5 If at any time the Firm pays to D&D all unpaid amounts contemplated in clause 11.4, D&D may, in its sole discretion, reactivate the Firm's access to and use of the Software.
- ## **12. Data Privacy and Protection**
- 12.1 The Firm acknowledges that in provision of the Software, Implementation, Remote Assistance

and additional services to the Firm, D&D may be exposed to the Data of the Firm, its Staff and/or its clients.

- 12.2 The Parties specifically record that all Data provided by the Firm to D&D shall constitute Confidential Information.
- 12.3 The Parties agree that they will comply with all applicable laws with regard to the collection and handling of such Data.
- 12.4 The Firm will for the duration of this Agreement ensure that it has provided all reasonably necessary disclosures (including any required notices to Staff or clients about how Data may be used or stored by D&D) and obtained all relevant consents, including all consents required by law, to allow D&D to use the Data pursuant to this Agreement, including in relation to the provision of the Software, Implementation, Remote Assistance and additional services.
- 12.5 The Firm acknowledges that in the performance of its obligations under this Agreement, D&D will have access to the server and/or Data of the Firm, and the Firm warrants that it will implement appropriate measures (including technological and security measures) to safeguard the Data against damage and/or loss, including by ensuring that up-to-date back-up copies of Data are available.
- 12.6 D&D shall (except for wilful misconduct, or fraud) under no circumstances be liable for any damage or loss to Firm Data howsoever arising, nor for any Losses arising from such damage or loss and the Firm hereby indemnifies D&D fully against any and all such Losses.

13. Training

The Firm acknowledges that the attendance by its Users (including without limitation the Software Administrator) at the training sessions offered by D&D from time to time is critical to the optimal use and management of the Software by the Firm, and undertakes to use its best efforts to ensure that all of the Users attend the training sessions at mutually convenient times.

14. Remote Assistance

- 14.1 D&D will provide the Firm with Remote Assistance for the duration of this Agreement.
- 14.2 Remote Assistance may include the use of a computer program to allow D&D's Staff to view and interact with the computer(s) being utilised by the User in question ("Real Time Remote Assistance"). D&D's Staff will only provide Real Time Remote Assistance on a User's specific instruction and the User will be required to view the changes made/assistance provided by D&D's Staff on the computer of the User in question in real time while the changes are being made/assistance is being provided. The User will be responsible for ensuring that the changes made or assistance provided is accurate. Each instance - or session - of Real Time Remote Assistance using a computer program must be initiated by the User in question by downloading a Real Time Remote Assistance program to that User's computer from a designated web site.

- 14.3 Once the Real Time Remote Assistance session has been concluded the Real Time Remote Assistance computer program will automatically uninstall and will be completely deleted from the User's computer and a new session of Real Time Remote Assistance can only be initiated by a User by downloading a new Real Time Remote Assistance computer program in the same manner as described above.

15. Excused Performance

- 15.1 D&D will be excused from performing any of its duties under this Agreement (including any Remote Assistance and/or additional services) under circumstances (i) of force majeure;(ii) where the failure by D&D to perform is as a result of the actions of or failure to act by the Firm, or any Third Party appointed by the Firm; and/or (iii) where such failure is as a result of circumstances beyond the reasonable control of D&D ("Excusable Event"). In the event of the occurrence of an Excusable Event which results from the actions of or failure to act by the Firm, or any Third Party appointed by the Firm, D&D will provide notice to the Firm of the occurrence of an Excusable Event and the Firm will be afforded a period of 5 (five) business days ("Remedial Period") within which to remedy such actions or failure to act.
- 15.2 Upon the occurrence of an Excusable Event or, where the Firm has failed to remedy its actions or failure to act as contemplated in Section 15.1 above, on the expiry of the Remedial Period, D&D's failure to perform shall not be a breach of this Agreement and D&D's obligation to perform shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Event. D&D shall be entitled to charge an hourly rate for any additional hours it requires to perform its duties affected by an Excusable Event which arises as a result of the actions of or failure to act by the Firm, or any third party appointed by the Firm.
- 15.3 D&D will not be liable for any failure to fulfil any obligation or to provide the Remote Assistance or additional services in terms of this Agreement or for any Losses arising out of such failure, where such failure is a result of any Excusable Event.

16. Non-Disclosure

- 16.1 The Parties shall hold in confidence all Confidential Information received from each other in terms of, or arising from this Agreement, and shall not divulge or permit the Confidential Information to be divulged to any person, save for officers, employees, consultants and professional advisors who have a need-to-know, provided that such officers, employees, consultants and professional advisors are required by agreement, instruction or otherwise to treat such Confidential Information in accordance with the terms and conditions of this Agreement prior to such disclosure.
- 16.2 The Receiving Party agrees:
 - 16.2.1 not to disclose Confidential Information to any Third Party for any reason or purpose

whatsoever without the prior written consent of the Disclosing Party;

- 16.2.2 not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose whatsoever other than strictly in relation to this Agreement; and
 - 16.2.3 that the unauthorized or unlawful use or disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party.
- 16.3 The Receiving Party agrees to protect Confidential Information by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorized disclosure of Confidential Information.
- 16.4 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return or destroy any material containing, pertaining to or relating to Confidential Information and to irretrievably expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material. The Receiving Party will comply with all requirements in terms of this Section 16.4 within 7 (seven) days of receipt of written notice thereof.
- 16.5 Without limiting any other provision of this Agreement, the Firm hereby undertakes and agrees that it will at all times, including during and after the term of this Agreement, keep the Software, all information relating to the Firm's use of the Software including any benchmarks, performance results and other information related to or arising from this Agreement and/or the Software, confidential except to the extent disclosure is required by law, regulation, or judicial procedure.
- 16.6 This Section 16 shall survive termination of this Agreement.

17. Intellectual Property

- 17.1 The Software consists of proprietary products, in which all Intellectual Property rights are and shall remain the exclusive property of D&D. The Firm hereby expressly acknowledges and agrees that the Firm shall under no circumstances have any right, title or interest to the Software, save as provided for in this Agreement.

For the avoidance of doubt, D&D retains all Intellectual Property and any other proprietary rights in and to any customisation, modifications, enhancements and upgrades effected to the Software, irrespective of whether such customisations, enhancements, modifications or upgrades were developed by D&D, the Firm or any Third Party.

- 17.2 The Firm shall not during the term of this Agreement or thereafter, without the prior written consent of D&D -
- 17.2.1 directly or indirectly, register the Software or any Intellectual Property forming part of the Software, anywhere in the world;
 - 17.2.2 directly or indirectly register or use any Intellectual Property confusingly similar to the Software;
 - 17.2.3 claim or seek to obtain any proprietary right in respect of the Software;
 - 17.2.4 incorporate and/or combine the Software with any other intellectual property; and/or
 - 17.2.5 alter or amend the Software in any way.
- 17.3 Upon termination or expiration of this Agreement, the Firm shall cease use of the Software.
- 17.4 The provisions of this Section 17 will survive termination of the Agreement.

18. Tools for communication

- 18.1 The Software provides access to various communication tools, such as SMS, which allows the Firm to communicate with various parties (the "Communications Services").
- 18.2 Although the Software provides access thereto, the Communications Services will be rendered for and on behalf of the Firm by a Third Party service provider and D&D will not in any way be responsible or liable for the Communications Services.
- 18.3 All costs associated with the Communications Services are for the Firm's account. D&D shall render an invoice to the Firm on a monthly basis for settlement within 30 (thirty) days of invoice date.
- 18.4 The Firm is responsible for all communications created by means of the Software and hereby indemnifies D&D and holds it harmless against any claims of whatsoever nature which may arise from or be related to the use or content of the Communications Services, save where such claims are attributable to the wilful misconduct or fraud of D&D.
- 18.5 D&D does not represent nor does it warrant that the use of the Communications Service will be successful, error or interruption free, nor will it be liable for the non-delivery of any message and/or for the integrity of any Data sent through the Communications Services, save where such liability arose from the wilful misconduct or fraud of D&D.

19. Termination of Agreement

- 19.1 This Agreement may only be terminated as expressly set forth in the Subscription Agreement and these Terms of Use.
- 19.2 In the event of the Firm committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 30 (thirty) days after delivery of a written notice from D&D calling upon the Firm so to remedy, then D&D shall be entitled, at its sole discretion and without prejudice to any of its other rights in law:

- 19.2.1 suspend the Firm's access to and use of the Software; and
 - 19.2.2 if the suspension contemplated in clause 19.2.1 occurs within the First Year Fixed Term Period, impose a fee with respect to the Implementation services provided to the Firm for no charge in contemplation of D&D receiving Subscription Fees throughout the First Year Fixed Term Period. The said fee will be calculated at D&D's standard hourly rates for the time spent and the actual costs of any disbursements (plus GST thereon), and shall be payable within a period of 15 (fifteen) days after issue by D&D of an invoice therefor.
- 19.3 Notwithstanding anything to the contrary contained herein, either Party will be entitled to terminate this Agreement immediately if the other Party:
- 19.3.1 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory or under judicial management in either case whether provisionally or finally where circumstances exist which would allow for the winding up of such Party;
 - 19.3.2 takes steps to deregister itself or is deregistered;
 - 19.3.3 commits an act which would be an act of insolvency;
 - 19.3.4 commits an act of fraud.
- 19.4 Termination of this Agreement will not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.
- 19.5 If this Agreement is terminated for any reason whatsoever, the Firm hereby agrees to allow D&D access to its premises and permission to remove or uninstall the Software from all its computers as soon as is reasonably possible after termination of the Agreement.

20. Warranty Disclaimer

- 20.1 D&D gives no warranty and makes no representation of any kind, express or implied, regarding the Software, the Implementation, Remote Assistance or additional services, including without limitation, as to the condition, quality, performance, merchantability or fitness for purpose save to the extent that it warrants that the Software, the Implementation, Remote Assistance or additional services meet the requirements of the law. In the light of the nature of the Software, the Implementation, Remote Assistance or additional services and to the extent permitted in law D&D does not warrant that the functions contained in the Software will meet the requirements of the Firm or that the Software will be error-free.
- 20.2 Any assistance, information or advice provided by D&D pursuant to this Agreement, whether as part of the Remote Assistance or additional services or not, is for general information purposes and does not constitute professional or financial

advice. Any such assistance, information or advice will be based on information submitted by the User and the Firm.

- 20.3 The Firm bears all responsibility for ensuring that any information submitted to D&D is true and correct in all respects. The Firm shall, at its sole cost, be responsible for conducting the necessary due diligence to ensure that any assistance, information or advice provided by D&D under this Agreement is true and correct in all respects and meets its requirements.
- 20.4 Notwithstanding any assistance, information or advice provided by D&D to the Firm under this Agreement, the Firm acknowledges that it will retain all responsibility and liability for ensuring that the Firm complies with all applicable laws and for the accuracy of and compliance with, without limitation, its financial processes, accounts, financial statements, any Tax or other fiscal requirements and any other statutory or other obligations applicable to it, and the Firm agrees to bear all costs associated with complying with applicable laws and regulations, including. The Firm hereby fully indemnifies D&D against any and all Losses which are or may be suffered by the Firm or any Third Party as a result of a breach of this Section 20.4.
- 20.5 The Firm acknowledges that the Software has not been custom developed for the Firm's individual requirements and that it is the Firm's responsibility to ensure that the facilities and functions thereof meet the Firm's requirements.
- 20.6 Use of the Software, Remote Assistance and additional services is entirely at the risk of the User and the Firm and shall at all times and for all purposes be strictly subject to the terms and conditions of this Agreement.
- 20.7 The Firm agrees and undertakes to perform regular back-ups of all Data, messages and other information generated, sent, received and/or stored arising from or in relation to the Software and/or Communications Services, and acknowledges that D&D shall not be liable for any loss or damage the Firm, its clients or any Third Party may suffer as a result of an error occurring in relation to the operation or use of the Software, save where such loss or damage is due to the willful misconduct or negligence of D&D, its Staff or authorized representatives and save where D&D will be liable by virtue of the laws of Ontario, Canada.

21. Limitation of Liability & Indemnity

- 21.1 Notwithstanding anything to the contrary in this Agreement, in the event that D&D is found to be liable for any loss or damages suffered by the Firm and/or any other person arising from this Agreement and/or any use of the Software, and provided such liability did not arise as a result of the willful misconduct of D&D, such liability will to the maximum extent permissible in law, be limited to an amount equal to the aggregate Subscription Fees in respect of the Software paid by the Firm to D&D during the 6 (six) month period immediately preceding the date upon which the claim for such damages arose.

21.2 Firm agrees to fully indemnify and save harmless D&D, its parents, subsidiaries and affiliates and their respective directors, officers, employees, contractors and agents (collectively, the “**D&D Indemnified Parties**”), from and against any and all Losses which are suffered by the D&D Indemnified Parties or any Third Party as a result of a breach or default of any of the Firm’s obligations, covenants, conditions, representations or warranties hereunder.

22. Force Majeure

D&D shall not be liable for a failure to perform any of its obligations in terms of this Terms of Use insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control. For the purposes of this Section “impediment” does not include lack of authorizations, licenses, permits, or approvals necessary for the performance of this Agreement.

23. Cession of Agreement

23.1 The Firm may not cede, assign or otherwise transfer its rights and/or obligations under this Agreement without the prior written consent of D&D, which may be arbitrarily withheld in D&D’s sole discretion.

23.2 D&D shall be entitled to assign, cede, transfer, subcontract and dispose of in any other way any of its rights and/or obligations under this Agreement to any third party on 90 (ninety) Business Days’ written notice to the Firm to such effect.

24. Entire Agreement

This Agreement comprises of the entire Agreement between the Parties in relation to its subject matter, supercedes all prior document exchanges relating to the Software. D&D may amend these Terms of Use from time to time provided that Dye & Durham Corporation shall not be entitled to amend the terms of the Subscription Agreement without the mutual written agreement of the Firm.

25. Failure to enforce rights

No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement.

26. General

26.1 This Agreement shall be construed and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and the parties submit to the non-exclusive jurisdiction of the Courts of Ontario, Canada.

26.2 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable.

26.3 The following provisions of this Agreement shall survive any termination or expiration thereof: Sections 11, 12, 16, 17, 19.4, 19.5, 20, 21, 25 and 26.