

ESILaw Terms & Conditions and End User License Agreement

Capitalized terms used herein are defined in Section 24 below.

These terms and conditions and end-user licence agreement apply to Customer's subscription to and use of the Services. The Subscription and these terms and conditions and end-user licence agreement form the legal agreement ("**Agreement**") between Dye & Durham and Customer regarding the Services.

The Agreement sets out Customer's limited rights regarding the Services and is a binding contract between Customer and Dye & Durham. Use of the Service shall be deemed to be the Customer's acceptance and agreement to be bound by the Agreement.

1. CUSTOMER AUTHORITY

Customer represents and warrants that the individual accessing to and using the Services is an authorized representative of Customer and has the authority to legally bind Customer to the Agreement.

2. LICENCE TO SERVICES

Subject to Customer's payment of applicable fees and subject to the Agreement's terms and conditions, Dye & Durham grants Customer a non-exclusive, non-transferable, non-sublicensable, limited right and licence during the Term for the number of Users set out in Section 3 to install, access and use the Services solely for Customer's internal business operations, provided that Customer unconditionally agrees to install, access and use the Services in accordance with the Agreement.

Customer may make a copy of the Services Software and Documentation for back-up purposes. Customer will make no other copies of the Services Software or Documentation except as authorized in this Agreement. Title to the Services remains vested in Dye & Durham, and nothing in this Agreement gives or conveys any right, title or interest in the Services to Customer except as granted under this Agreement.

3. USERS

Customer will create and activate a number of User Licenses. Each User Licence may be used to create one account (username and password) and one lawyer/timekeeper record for a single User (the lawyer/timekeeper record allows the User to record time and fee and to produce reports by lawyer or timekeeper). Subject to Section 4 below, the Customer may request that additional User Licenses be created and activated by requesting same from Dye & Durham.

Customer is responsible and wholly liable for all acts or omissions committed under any User's username and password. For the purposes of this Agreement, the access to and use of the Services by a User will be deemed to be access and use by Customer, and a breach by any User of this agreement will be deemed to be Customer's breach.

4. FEES

Customer hereby agrees to pay the fee payable for the number of User Licenses subscribed for, which fee has been communicated to you and is available upon request from Dye & Durham, plus all applicable taxes and other charges imposed by governmental authorities in respect of those fees (the “Fees”). In the event that the Customer increases the number of User Licenses subscribed for, a new Fee shall be payable and the foregoing sentence shall apply *mutatis mutandis*. The Fees shall not include fees associated with new features and modules which may be introduced during the Term, and which fees will be in addition to the Fees.

All Fees are non-refundable except as expressly provided in this Agreement.

Dye & Durham may adjust the Fees at the end of a Subscription Period, which adjusted Fees shall apply to the subsequent Subscription Period and Customer will be charged and will pay the adjusted Fees following such adjustment.

5. PAYMENT

Fees shall be invoiced in the manner that has been communicated to you, which manner may be confirmed upon request from Dye & Durham. All invoices are due and payable when issued. Interest shall be charged at a rate of 18% per annum on any outstanding balance not received within thirty (30) calendar days of an invoice date. Any such interest shall accrue on the outstanding balance of the account from the date such invoice was issued until the date the payment (including all accrued interest) is paid in full.

All fees are payable by the payment options made available by Dye & Durham, including any automatic payment mechanism that Dye & Durham may designate. Customer hereby authorizes Dye & Durham to use such automatic payment mechanism and to charge or withdraw from Customer’s applicable payment source for amounts payable. Customer must comply with the terms of all agreements between Customer and any third-party payment processors, and if Customer has any disputes regarding the processing of any payment then Customer must deal directly with those third parties to resolve the disputes.

If for any reason Dye & Durham is unable to obtain automatic payment using the designated payment source, Customer will immediately pay Dye & Durham the amount due and provide Dye & Durham with an alternative payment method for future payments. Customer represents and warrants to Dye & Durham that each payment method Customer uses either belongs to Customer or Customer otherwise has the right to charge all such payments on or through those payment methods.

6. SUSPENSION AND ACCELERATION

If any amount owing by Customer under this Agreement is overdue, or if Customer’s or any User’s access to or use of the Services or Customer Data breaches this Agreement or violates the rights of any third party or is considered unlawful (as determined by Dye & Durham in its sole discretion) then Dye & Durham may, without limiting its other rights and remedies:

- (a) accelerate any unpaid fee obligations so that all such obligations become immediately due and payable; and
- (b) suspend access to and use of the Services.

Dye & Durham will attempt to notify Customer in advance of the suspension so that Customer can take corrective actions, but Dye & Durham reserves the right to act immediately if it reasonably believes it may be subjected to civil or criminal liability or regulatory action, or that its provision of the Services will be enjoined.

7. CUSTOMER'S RESPONSIBILITIES

In addition to Customer's other obligations under this Agreement, Customer will:

- (a) install, access and use the Services, as applicable, in accordance with: (i) the Documentation; (ii) this Agreement; (iii) any operating instructions or procedure that Dye & Durham may issue or amend from time to time; (iv) any acceptable use policies and other policies Dye & Durham implements with respect to the Services and communicates to Customer from time to time; and (v) all applicable laws;
- (b) cooperate with Dye & Durham, respond to all reasonable requests from Dye & Durham in a timely way, and provide Dye & Durham with all reasonably requested information in a timely way;
- (c) take commercially reasonable measures to maintain the confidentiality and security of all usernames and passwords issued to or created by Customer and its Users, and Customer and its Users will be responsible for all activities conducted under their usernames and passwords;
- (d) impose and maintain on all of its computer systems and equipment that Customer or any User uses to access and use the System up-to-date industry-standard security measures.

8. RESTRICTIONS

Dye & Durham expressly reserves all rights not expressly granted to Customer under this Agreement. The Services may only be installed, accessed and used by Customer and its Users, and only for Customer's internal business operations.

Customer will not, and will not permit its personnel or Users to:

- (a) access and use, or rent, resell, lease, lend, license, sub-license, publish, transfer rights to, distribute, or provide service bureau facilities or commercial time-sharing services relating to the Services, or provide unlicensed third parties access to or use of the Services;
- (b) modify, translate or create derivative works of the Services;
- (c) reverse-engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services;
- (d) remove any proprietary notices or disclaimers contained in the Services;
- (e) use the Services in any manner contrary to applicable law;

- (f) use the Services to infringe or misappropriate the intellectual property rights or other proprietary rights of any third party;
- (g) use the Services for spamming, other advertising, other bulk message transmission, or other similar activity objectionable to Dye & Durham in its sole discretion;
- (h) use the Services in any manner that could damage, disable, overburden or impair the Services or Dye & Durham's provision of the Services, or interfere with any third party's use of the Services;
- (i) attempt to access any of Dye & Durham's systems, programs or data that are not licensed under this Agreement;
- (j) interfere with or attempt to interfere with the proper operation of the Services.

9. SUPPORTED ENVIRONMENT

The Services which are to be installed must be installed and used only on a Supported Environment. Customer and its Users will, at their sole expense, be solely responsible for supplying, configuring and maintaining the hardware, devices, software and licences, telecommunication and internet equipment, connections and services necessary for providing a Supported Environment.

Dye & Durham has no responsibility for the working of Customer's or any User's computer or telecommunications equipment, devices, software and networks, or internet access. Customer acknowledges and agrees that the operation and availability of equipment and systems used for accessing and interacting with the Services, including public telecommunication networks, computer networks and the internet (whether supplied by Dye & Durham, Customer or a third party) can be unpredictable and may from time to time interfere with or prevent access to or use of the Services. Dye & Durham is not in any way responsible for any such interference with or prevention of access to or use of the Services.

10. INTERNET ACCESS

Customer acknowledges and agrees that although the Services Software is installed on Customer's computer system, internet access is required to license and activate all forms of the Services and to receive Updates.

Customer acknowledges and agrees that, as with all systems that permit file upload or transmission over the internet, the Services carries the risk that Customer or a User may send, receive, upload, download or transmit a file that contains Harmful Components, and that Harmful Components may damage Customer's or its Users' computers, systems and electronic files, and may spread and damage other persons' computers, systems and electronic files. Provided Dye & Durham satisfies its obligations under this Agreement, Dye & Durham is not responsible if Customer's communications or Customer Data contain Harmful Components, and is not responsible if Customer's communications or Customer Data are lost, delayed, altered, intercepted, accessed, copied or stored without authorization during the transmission of any data whatsoever across networks outside of Dye & Durham's control, provided that Dye & Durham promptly notifies Customer of any such instances of which it becomes aware.

11. FORCE MAJEURE

Dye & Durham will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under the Agreement that is caused by events outside Dye & Durham's reasonable control. Dye & Durham's performance will be deemed to be suspended for the period that any such event continues, and Dye & Durham will have an extension of time for performance for the duration of that period.

12. SUPPORT SERVICES

Dye & Durham does not provide support services and the Subscription does not include support services or training. Customer may request training or support services, and Dye & Durham may decline to perform such training or support services in its sole and absolute discretion. Training and support services that are accepted by Dye & Durham will be at a fee determined by Dye & Durham.

13. LIMITED WARRANTIES

- (a) *Software Warranty.* Subject to this Section 13, Dye & Durham warrants that the Services will perform substantially without Errors during the Subscription Term, provided that:
- (i) the Services has not been modified by anyone other than Dye & Durham;
 - (ii) Customer is using equipment, software and connections that comply with the System Requirements to access and use the Services;
 - (iii) the Error is not caused by Customer or its Users, employees, contractors or agents, or by their hardware, software, networks, or systems;
 - (iv) the Error is not caused by abuse, misuse, alteration, neglect, accidental damage, unauthorized repair or installation of the Services, or accident; unusual physical or electrical stress, failure or fluctuation of electric power or telecommunication services;
 - (v) the Error is not caused failure of media or equipment not provided by Dye & Durham or operation of the Services with other media, hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use;
 - (vi) Customer promptly notifies Dye & Durham of the Error after it is discovered;
 - (vii) all fees then due to Dye & Durham have been paid; and
 - (viii) Customer is not otherwise in breach of this Agreement.

- (b) *Software Warranty Remedy.* Customer acknowledges and agrees that Customer's sole and exclusive remedy, and Dye & Durham's only obligation, for breach of the limited software warranty set out in Section 13(a) is to cause the Services to be performed substantially in accordance with Dye & Durham's then-current Documentation by correcting Errors in accordance with section 12(a) or, if this is not practical in Dye & Durham's reasonable discretion, Dye & Durham may terminate the Subscription and refund to Customer prepaid but unused fees calculated on a pro rata basis from the date that Customer reported the software warranty breach to the end of the Subscription Term.
- (c) *Services Warranty.* Subject to this section 13, Dye & Durham warrants that the Services will be performed in a competent and professional manner consistent with generally accepted industry standards. Customer acknowledges and agrees that Customer's sole and exclusive remedies, and Dye & Durham's only obligations, for breach of this limited services warranty is for Dye & Durham to promptly re-perform the defective Services at no additional charge or, if this is not practical in Dye & Durham's reasonable discretion, Dye & Durham may terminate the Subscription and refund to Customer prepaid but unused fees calculated on a pro rata basis from the date that Customer reported the services warranty breach to the end of the Subscription Term.
- (d) *Reporting.* Customer will report any software warranty breach or services warranty breach to Dye & Durham promptly after discovering it.

14. COMPLIANCE AUDITS

Dye & Durham may at any time and from time to time audit and review any aspect of Customer's or its Users' access to and use of the Services to ensure compliance with this Agreement, and Customer will cooperate with providing assistance reasonably required to facilitate that audit. If Dye & Durham discovers any discrepancies that are not corrected within such period that Dye & Durham deems appropriate and notifies the Customer of in writing, Dye & Durham may immediately on written notice to Customer terminate this Agreement. If Dye & Durham discovers any material breach of this agreement through an audit, Customer will bear the costs of the audit; otherwise, Dye & Durham will bear the cost of the audit.

15. VIRUSES

Dye & Durham takes reasonable steps in accordance with generally accepted industry standards to ensure that the Services is free of Harmful Components. Nevertheless, Customer and its Users are responsible for installing and maintaining appropriate anti-virus and other protective software on the devices and systems on which the Services is installed or from which Customer or its Users access and use the Services. Customer acknowledges and agrees that, as with all systems that permit file upload or transmission over the internet, the Services carries the risk that Customer or a User may send, receive, upload, download or transmit a file that contains Harmful Components, and that Harmful Components may damage Customer's or its Users' computers, systems and electronic files, and may spread and damage other persons' computers, systems and electronic files.

16. PROPRIETARY RIGHTS

As between the parties, Dye & Durham owns all right, title and interest (including all intellectual property rights) in and to all aspects of the Services, including the software code and architecture, the graphical design and “look and feel” of the user interface, and code libraries (including classes and functions), and the Services is protected by copyright and other proprietary rights, all of which Dye & Durham owns or has the right to use. Subject to the limited rights expressly granted to Customer under this Agreement, Dye & Durham reserves all rights, title and interest in and to the Services. Customer does not acquire ownership rights to the Services by installing, accessing or using the Services.

Dye & Durham owns its name, logo, the ESILaw trademark and all of its other trademarks and trade names appearing on or in association with the Services. Unless otherwise indicated, all other names, logos, trademarks appearing on the Services are owned by third parties and are used under licence.

17. INFRINGEMENT CLAIMS

- (a) *Infringement Claims.* Subject to the remainder of this Section 17 and to the limitations in Section 19(d), Dye & Durham will defend Customer against, and pay the amount of any adverse final judgement (or settlement to which Dye & Durham consents) resulting from, any third-party claim during the Term that Customer’s installation or use of or access to the Services in accordance with this Agreement infringes any intellectual property right enforceable in Canada (each a “**Claim**”), provided that:
- (i) Customer promptly notifies Dye & Durham in writing if any Claim is threatened or commenced;
 - (ii) Dye & Durham has sole control of the defence of the Claim and all negotiations for its settlement, and its settlement; and
 - (iii) Customer provides reasonable assistance (at Dye & Durham’s expense) in the defence and settlement of the Claim.
- (b) *Limitation.* Dye & Durham has no obligations regarding any Claims based on or arising out of:
- (i) any use of the Services not in accordance with this Agreement or the Documentation;
 - (ii) use or combination of the Services with other products, equipment, software or data not supplied by Dye & Durham which but for such combination would not have given rise to the Claim;
 - (iii) any modification of the Services by any person or entity other than Dye & Durham or its agents or subcontractors authorized to make such modifications;

- (iv) any activities of Customer after Dye & Durham has notified Customer that such activities may result in a Claim; or
 - (v) Customer's negligence or intentional misconduct.
- (c) *Dye & Durham's Options*. If any Claim arises, Dye & Durham may in its sole discretion and at its sole expense:
- (i) procure the right to access and use the Services;
 - (ii) modify the Services so that it is not infringing, provided that the modifications do not materially impair the Services' ability to conform to and perform in accordance with the Documentation;
 - (iii) replace the infringing portion of Services with a non-infringing alternative with substantially similar functionality; or, if after reasonable commercial efforts Dye & Durham is unable to perform any of the foregoing alternatives,
 - (iv) Dye & Durham may terminate this Agreement and refund to Customer prepaid but unused fees calculated on a pro rata basis from the termination date to the original scheduled end of the current Subscription Term.
- (d) *Sole Remedy*. Customer acknowledges and agrees that any defence and payment under Section 17(a) and any refund under section 17(c) will be Customer's sole and exclusive remedy against Dye & Durham with respect to any Claim.

18. CUSTOMER INDEMNITY

Customer agrees to indemnify and hold Dye & Durham and its affiliates and their respective directors, officers, employees, agents, suppliers or subcontractors harmless from all losses, damages and expenses incurred in connection with any claims, demands and other liabilities asserted against any of them arising from or related to: (a) Customer's use of the Services; (b) Dye & Durham's possession or use of Client Materials; or (c) any fraud, negligence or wilful misconduct of Customer or any breach by Customer of this Agreement.

19. DISCLAIMER AND LIMITATION OF LIABILITY

- (a) Except as set out in Section 13 (Limited Warranties):
- (i) the Services and Subscription are provided to Customer on an "as-is" and "as-available" basis, without any other warranties or conditions, express or implied, including those of merchantability, fitness for a particular purpose and non-infringement. Dye & Durham does not warrant that the service or that the operation or data will be:
 - (A) uninterrupted, or

- (B) free from libelous content or content which is an invasion of privacy, or
 - (C) identical to the original source from which the data were obtained, or
 - (D) accurate, or
 - (E) complete, or
 - (F) current, or
 - (G) free from any software virus or other harmful component.
- (ii) Dye & Durham does not warrant that that access to or use of the Services will be secure, timely, uninterrupted or error-free, that errors in the Services will be identified and corrected, that the Services will meet Customer's requirements or that the Services will operate in conjunction with equipment, third-party software or services that Customer may obtain outside of this Agreement;
 - (iii) access to and use of the Services may affect the usability of third-party software, applications or services;
 - (iv) Dye & Durham shall not be liable for any loss or injury arising out of or caused, in whole or in part, by any negligent acts or omissions in providing the service, and/or procuring, compiling, collecting, interpreting, reporting, communicating, or delivering the data, by Dye & Durham, its officers, directors, employees, consultants, agents and suppliers.
 - (v) Dye & Durham shall not be liable for any indirect, consequential, punitive or special damages of the Customer or of any third party claimed against the Customer, including, without limitation, damages for loss of profits or revenue or failure to realize expected savings, however derived, even if Dye & Durham has been advised of the possibility of such damages.
 - (vi) the expression "Dye & Durham" in this Section shall be deemed to include any licensors or third-party suppliers to Dye & Durham and its affiliates of data, and all gateway providers of data through Dye & Durham to the Customer.
- (b) Without limiting the previous paragraph, Customer acknowledges that security risks cannot be eliminated and that the internet is not a secure medium. Dye & Durham does not represent or warrant that the data or files stored on the System, or messages sent or received through the Services by Customer or its Users, are free of Harmful Components and does not represent or warrant that any data or electronic messages transmitted to, from or through the Services will be received in a timely way or at all.

- (c) Customer acknowledges that Dye & Durham will not be bound by any representations, warranties, conditions or guarantees, whether express or implied by law or custom, other than those explicitly set out in Section 13 (Limited Warranties).
- (d) LIMITATION OF LIABILITY.

IN NO EVENT WILL DYE & DURHAM, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY USER FOR (a) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES OF ANY NATURE, FOR ANY REASON WHATSOEVER INCLUDING A BREACH OF THIS AGREEMENT OR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES, WHETHER THAT LIABILITY IS ASSERTED ON THE BASIS OF INDEMNITY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF DYE & DURHAM HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES; OR (b) LOST PROFITS, BUSINESS, REVENUE, OPPORTUNITIES OR CUSTOMERS; BUSINESS INTERRUPTIONS; LOSS OF OR DAMAGE TO DATA; COST OF REPLACEMENT PRODUCTS OR SERVICES; LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL.

IN NO EVENT WILL DYE & DURHAM'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL FEES RECEIVED BY DYE & DURHAM UNDER THIS AGREEMENT DURING THE CALENDAR YEAR IN WHICH CUSTOMER MAKES ITS FIRST CLAIM FOR DAMAGES.

20. TERM, TERMINATION AND SUSPENSION

- (a) *Term.* This Agreement will commence when the Customer first receives notice of this Agreement and will continue for the initial Subscription Period unless terminated earlier under Section 20(b). This Agreement will automatically renew for subsequent Subscription Periods unless either party gives the other party written notice of non-renewal at least 30 days prior to the end of the then-current Subscription Period. (All Subscription Periods are collectively the “**Term**”.)
- (b) *Early Termination.* Either party may terminate this Agreement immediately upon written notice to the other party if: (i) the other party breaches any of its obligations under this Agreement and fails to remedy the breach within 30 days after receiving notice of the breach; or (ii) any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against the other party or its property. Dye & Durham may terminate this Agreement at any time and for any reason upon 30 days' notice to Customer.
- (c) *Actions on Termination.* Upon the termination or expiration of this Agreement for any reason: (i) Customer's right to access and use the Services will automatically terminate; (ii) Customer will immediately cease all access to and use of the Services, and will delete all copies of the Services Software and Documentation in Customer's possession or control; (iii) Customer will immediately pay all sums

owing to Dye & Durham; (iv) Dye & Durham will have the right to disable the Services Software, and (v) Sections 8 (Restrictions), 11 (Force Majeure), 13 (Limited Warranties), 15 (Viruses), 16 (Proprietary Rights), 18 (Customer Indemnity), 19 (Disclaimer and Limitation of Liability), 20(c) (Actions on Termination) and 21 (General), and all other provisions necessary to give effect thereto, will survive this Agreement's expiration or termination.

- (d) *Suspension.* Without limiting any of Dye & Durham's other available rights or remedies, if any act or omission of Customer or its Users gives rise to a breach or potential breach of this Agreement then Dye & Durham may, acting reasonably, immediately suspend Customer's rights to access and use the System and Services pending Dye & Durham's investigation of the breach or suspected breach and implementation of a resolution satisfactory to Dye & Durham.

21. Arbitration

Any dispute, controversy or claim between the parties arising out of, or in respect of, or in connection with, this agreement shall be submitted to arbitration under the *Arbitration Act, 1991* (Ontario), subject to the following:

- (a) either party may initiate arbitration by delivering a written notice of arbitration to the other party, which notice shall set out a brief description of the matter submitted to arbitration;
- (b) arbitral tribunal shall consist of one arbitrator appointed by mutual agreement of the parties or, in the event of failure to agree within 10 business days following delivery of the notice of arbitration, any party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator;
- (c) the parties will take reasonable steps to ensure that the arbitration award is made within 6 months of the delivery of the notice of arbitration;
- (d) the arbitration shall take place in Toronto, Ontario, shall be conducted in English, and shall be governed by the substantive law of Ontario;
- (e) the application of section 7(2) of the *Arbitration Act, 1991* (Ontario) is expressly excluded;
- (f) the arbitration award shall be given in writing with reasons and shall be final and binding on the parties, with no right of appeal;
- (g) the parties will equally share the costs of the arbitral tribunal and each party shall bear its own costs involved in preparing and presenting its case during the course of the arbitration, subject to the arbitral tribunal in the arbitration award allocating all or part of such costs to the prevailing party; and
- (h) the parties agree that the arbitration shall be conducted in private and that the existence of the dispute and the arbitration proceeding, including any documents submitted or exchanged, any testimony or other oral submissions and any awards,

shall not be disclosed beyond the arbitral tribunal, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be required by applicable law or as may be required in judicial proceedings relating to the arbitration.

Customer agrees to waive any right Customer may have to commence or participate in any class action against Dye & Durham and any affiliate related to any claim and, where applicable, Customer also agrees to opt out of any class proceedings against Dye & Durham and any affiliate.

22. ESILAW 360

The Customer has the option during the initial Subscription Period to migrate to ESILaw 360 for a one-time payment equal that portion of the Fee payable for the remaining portion of the then Subscription Period or \$10,000, whichever is higher, plus all applicable taxes and other charges imposed by governmental authorities in respect of those fees, provided that the Customer enters into an end-user licence agreement with respect to its subscription to ESILaw 360.

23. GENERAL

- (a) *Changes in Terms and Conditions of this Agreement.* Dye & Durham may from time to time, in its sole discretion or if required by governmental activity, change any component thereof, or the content, format or functionality of the Services. This Agreement may also be changed from time to time in Dye & Durham's sole discretion upon notice to Subscriber posted on the website at www.esilaw.com/esilawlegacy-eula.html. The current version of this Agreement will be available on that website. Continued use of the Service after any changes by Dye & Durham shall be considered acceptance of the amended Agreement.
- (b) *Service Providers.* Dye & Durham may use service Providers as it considers appropriate from time to time to carry out its obligations under this Agreement, and Dye & Durham will bear the cost of these service Providers unless specifically agreed otherwise.
- (c) *Independent Contractors.* The parties are independent contractors and neither party is an agent, employee, partner or joint venture of the other party for any purpose.
- (d) *Notices.* All notices and other documents delivered under this Agreement must be in writing and must be sent to the parties at the addresses in the Subscription, or to such other addresses as a party may designate in writing, and must sufficiently be given by registered mail or commercial courier, and such notice will be deemed to have been given when the written or electronic evidence of delivery is obtained.
- (e) *Invalidity.* If a court of competent jurisdiction finds any provision of this agreement to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this agreement will not be affected or impaired.
- (f) *Failure to Enforce.* Dye & Durham's failure to enforce, on any one or more occasions, any of the terms or conditions of this agreement, will not be construed as a waiver of the future performance of any such terms or conditions.

- (g) *Governing Law; Jurisdiction.* This Agreement will be performed and interpreted in accordance with the laws of the Province of Ontario (and the federal laws of Canada applicable therein), without regard to conflict of laws principles, and the parties hereby irrevocably submit to the exclusive jurisdiction of the Province of Ontario courts, provided that Dye & Durham may apply to a court of competent jurisdiction for interim protection or equitable relief such as an interlocutory or interim injunction.
- (h) *Assignment.* Dye & Durham may assign this agreement and any of its rights under this agreement to a third party. Customer may not assign or license this agreement or any of its rights or obligations under this agreement to any third party without Dye & Durham's prior written consent.
- (i) *Entire Agreement; Modification.* This Agreement constitutes the entire agreement between the parties, and replaces any and all prior agreements and understandings, whether written or oral, in any way relating to the subject matter of this agreement. This Agreement cannot be modified except in writing signed by each of the parties.
- (j) *Parties Bound.* This Agreement binds and benefits the parties and their respective lawful successors and permitted assigns.
- (k) *Language.* At the request of the parties, the official language of this Agreement and all communications and documents relating hereto is the English language, and the English-language version shall govern all interpretation of the Agreement. À la demande des parties, la langue officielle de la présente convention ainsi que toutes communications et tous documents s'y rapportant est la langue anglaise, et la version anglaise est celle qui régit toute interprétation de la présente convention.

24. DEFINITIONS.

“**Customer Data**” means any data, content, documents, information or material that Customer or any of its Users processes, stores or transmits using the Services, including any Personal Information contained in Customer Data.

“**Customer**” means the person or entity using the Services in accordance with this Agreement with Dye & Durham.

“**Documentation**” means the user manuals regarding the Services Software provided or made available by Dye & Durham, whether in electronic or physical formats.

“**Dye & Durham**” means Dye & Durham Corporation, and its subsidiaries, as applicable and as the context requires.

“**Error**” means a reproducible defect in the Services, when accessed and used from equipment meeting the System Requirements, that causes the Services not to perform substantially in accordance with the Documentation.

“Harmful Components” means any virus, Trojan horse, worm, time bombs, back doors or any similar device, mechanism, code or routine that manifests harmful, contaminating, destructive or disabling properties.

“Personal Information” means any data regarding an identifiable individual.

“Services Software” means the object code version of Dye & Durham’s applications offered in accordance with this Agreement, including Updates provided by Dye & Durham from time to time.

“Services” means the services accessible to Customer in the ESILaw application subscribed for hereby.

“Subscription” means the Subscription that Customer accepts when subscribing to the Services.

“Subscription Period” means (a) initially, the five year period commencing on the commencement of this Agreement, and (b) thereafter, for each subsequent Subscription Period, the one year period commencing on the day immediately following the last day of the then Subscription Period.

“Supported Environment” means the hardware, devices, operating system platform, software and licences, telecommunication and internet equipment, connections and services that meet or exceed the minimum system requirements for the Services as set out by Dye & Durham from time to time.

“Updates” means any patches, fixes, upgrades, enhancements, modifications or new versions of or to the Services provided by Dye & Durham from time to time.

“User Licence” means the authorization for a single User to establish and use a Services account.

“User” means an individual who is a partner, member, employee or contractor of Customer and who is authorized by Customer to access and use the Services through a User Licence under Customer’s Subscription.