Terms & Conditions
Firmex Inc.

These Terms and Conditions set out the provisions pursuant to which the Subscriber is entitled to (and grant permission to its Guest Users) access and use the Technology and/or access the Services.

1 DEFINITIONS

1.1 For the purposes of this Agreement:

"Agreement" means the Order and the Terms and Conditions contained herein and as they are updated from time to time;

"Committed Term" means, with respect to each applicable Service, Unique Host Users and/or Storage Allowance, the period set out in the Order beginning on the Effective Date and ending upon expiry or termination of the Agreement in accordance with the terms of the Agreement or Section 5;

"Confidential Information" means all information contained in any form whatsoever that is not generally available to or used by the public, that is acquired or developed by or on behalf of either of the parties and that is disclosed or made available by a Disclosing Party to a Receiving Party in connection with this Agreement, and includes business information, Personal Information, all Materials and information in relation to Transactions, and the Technology, and in the case of Firmex includes the intellectual property rights described in Section 6.1;

"Default" means a default as set out in Section 5;

"Disclosing Party" means a party to this Agreement that discloses, either directly or through agents, Confidential Information to a Receiving Party;

"Effective Date" means the date of commencement of the provision of the Services as set out in the Order;

"Excess Storage Fee" means the amounts payable by the Subscriber to Firmex for exceeding the Storage Allowance set out in the Order;

"Fees" consist of the Service Fees, the Excess Storage Fees, and interest for overdue accounts as applicable;

"Guest Users" mean those individuals authorized by Subscriber to access the Website that are not a Representative, and do not count towards the total User Licenses, as specified in the Agreement;

"Materials" means the documents, images, video and any other material relating to Transactions placed on the Website for access by Website Users;

"Order" means the written order for the Services from the Subscriber to Firmex in a format determined by Firmex from time to time;

"Personal Information" means information about an identifiable individual or other information that is subject to any Privacy Laws, including personal health information;

"Privacy Laws" means any current, amended or future applicable statute, law or regulation of any governmental or regulatory authority relating to the collection, use, storage and/or disclosure of information about an identifiable individual that applies to Firmex;

"Receiving Party" means a party to this Agreement that receives Confidential Information from a Disclosing Party;

"Representative" means any party that has full or partial administrative permissions to manage the working group or materials in a Transaction, including; any employee, agent, independent contractor, accountant, auditor, counsel, banker, lender, employee of a limited partner of the Subscriber, employee of an affiliate where the Subscriber has a greater than 50% interest, or any other advisor of a party to this Agreement;

"Services" means the services provided by Firmex pursuant to this Agreement, including access to the Website, encryption, transmission, access and storage of Materials in digital form during the course of a Transaction, and support, training, and professional services;

"Service Fees" means those amounts payable by the Subscriber to Firmex for the Services (and includes any license fees for the use of the Technology) set out in the pricing schedule in the Order;

"Service Level Commitment" means a service level commitment to Subscriber by Firmex contained in Section 10;

"Storage Allowance" means the amount of disk space accessible through the Services which is included in the Service Fees;

"Subscriber" means a subscriber to the Services whose details are set out in an Order;

"Technology" means any information technology application developed by Firmex which facilitates the digital storage and file transfer of information on Firmex's servers, i.e. a digital information store pertaining to Transactions where Guest Users can examine digitally stored documents; which may include such features as due diligence checklists, the ability to build multiple checklists and sub-lists for a variety of jurisdictions, post documents, search documents, manage multiple drafts of Materials and document commentaries, assign drafting tasks, the tracking of changes to documents, the authorization and tracking of access to documents, the generation of reports, the generation and viewing of a Transaction;

"Transaction" means a single transaction (which may include any number of related sub-transactions) involving Subscriber and Guest Users, where Subscriber is either a party to the transaction or an adviser for a party to the transaction;

"Unique Host User" means a user that is a Representative of the Subscriber which has a log-in and password and who logs into the Website on behalf of Subscriber at least once, and counts towards the total User Licenses, as specified in the Order

"Website" refers to a portion of the server segmented by the Technology accessible by authorized Guest Users over the internet and which contains, materials uploaded or requested by the Subscriber or Unique Host User.

2 SERVICES

2.1 Firmex will provide Services to the Subscriber, as follows:
(a) Firmex will, in accordance with the Agreement, make available to Subscriber and Guest Users the Website enabled with the Technology. Promptly after the Effective Date, Firmex will make available the Services set out in the Agreement;
(b) Promptly upon request by Subscriber, Firmex will discontinue access to the Website by any or all Guest Users or delete the Website from its servers as applicable;
(c) Firmex will maintain and update the security of the Website in accordance with generally accepted information technology practices, and, without limiting the forgoing, will adhere to the security standards outlined herein. Firmex will notify Subscriber of any breach of Website security within 24 hours of learning of the breach. Firmex will not allow access to the Website by any person other than its own database administrator(s),

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and Guest Users. Firmex will automatically monitor the Website for possible and actual infections by computer viruses, worms and other malicious software and will take all reasonable precautions to prevent such infections;

(d) Firmex will use reasonable commercial efforts to achieve the Service Level Commitments throughout the Committed Term of this Agreement;

(e) To the extent that Firmex has the capability to maintain logs of the activities of Guest Users on the Website, Firmex will (i) promptly make any such log or logs available to Subscriber at Subscriber's request; (ii) otherwise protect such logs as Confidential Information. These logs may include a report of the total minutes a Unique Host User or Guest User is logged into the Website;

(f) Firmex will maintain Materials for a period of 5 business days following the end of the Committed Term, after which time all data may be deleted without further notice at Firmex's discretion;

(g) The Storage Allowance is set out in the Order. If the amount of disk storage required exceeds this allowance, Firmex will have the right to charge Subscriber Firmex's current Excess Storage Fees or those agreed to in the Order;

(h) The number of Unique Host Users is set out in the Order. If the amount of these exceeds this allowance, Firmex will have the right to charge Subscriber its current Unique Host Users Fees or those agreed to in the Order;

(i) The Committed Term is set out in the Order. If the website continues to be used past the end of the Committed Term Firmex will have the right to charge Subscriber its current monthly fee, and additional storage and users fees as applicable or those fees agreed to in the Agreement.

2.2 Subscriber shall provide Firmex with complete information regarding its use of the Service, including the names of each Unique Host User to access the Service, and shall update this information as necessary. Firmex may suspend or terminate access to the Service if the Unique Host User information is inaccurate, not current or incomplete.

2.3 Subscriber may only use the Services to store data for itself and its Guest Users. Subscriber may not use the Services or its access to the Technology or any of Firmex's intellectual property rights described in Section 6.1, whether for itself or for any other person, to research, develop or create, or to facilitate any of the foregoing by itself or any other person, any service or technology or product that competes with the Website or the Services or any other service provided through the Technology, or that is similar thereto.

3   FEES

3.1   In consideration of the provision of the Services and license granted by Firmex under Section 6, Subscriber shall pay to Firmex the Fees described in the Order. The Fees shall be payable in the currency specified in the Order.

3.2   Subscriber shall pay all applicable taxes on the Fees.

3.3   Fees are calculated based on the Agreement, and except in the case of a Committed Term of less than twelve (12) months, will increase by the greater of three (3%) annually or as otherwise stated per the Agreement.

4   BILLING

4.1   Firmex shall invoice Subscriber for the Services as per the Agreement. Fees shall be payable on receipt of a valid invoice from Firmex. Invoices shall be sent in accordance with the Service Fees set out in the Agreement.

4.2   Subscriber has thirty (30) days from the date that any discrepancy appears in Subscriber's statement or invoice to notify Firmex in order to make a claim for an adjustment or credit, after which time, all Service Fees will be deemed correct.

4.3   In the event that any of Subscriber's service charges remain unpaid for more than 30 days (from the stated invoice date), in addition to any other remedies, Firmex reserves the right to immediately discontinue the provision of the Services and/or access to the Website without notice to the Subscriber.

5   DEFAULT AND TERMINATION

5.1   The following events are a Default by a party where the default is not cured in the relevant cure period:

(a) a party fails to perform or observe any of its material obligations under this Agreement (other than achievement of Service Level Commitments, governed by Section 5.3) and the failure continues unremedied for 5 days following receipt of a notice of the failure from the other party;

(b) a party becomes insolvent, commits any act of bankruptcy or makes a proposal or arrangement with its creditors as a result of its inability to pay its debts as they come due; or

(c) a party fails to make payment when due to the other party, and such failure continues unremedied for 30 days following notice of Default from the other party.

5.2   Upon Default, the non-defaulting party may do any or all of the following:

(a) it may immediately terminate this Agreement by giving notice; and

(b) it may exercise any of its other rights and remedies provided for hereunder or otherwise available to it at law or in equity.

5.3   If Firmex fails to achieve the Service Level Commitments in two (2) or more months in any six (6) month period, the Subscriber shall have either:

(a) the right to terminate the Agreement immediately by giving Firmex written notice; or

(b) receive a twenty percent (20%) discount on the Fees payable for the months in which the Service Level Commitments were not achieved during such six (6) month period.

5.4   The Subscriber's remedies under Clause 5.3 are limited to the right of termination or the Fee reduction set out therein. Under no circumstances whatsoever shall the Subscriber be entitled to a greater than twenty percent (20%) discount of the Fees payable for any month. The Subscriber is not under any circumstances whatsoever entitled to claim or receive damages from, or pursue any other remedy against, Firmex save in respect of the foregoing provisions of Clause 5.3 for failure to achieve the Service Level Commitments.

5.5   Firmex reserves the right to terminate the Agreement in the event of unauthorized running of security or vulnerability port scans, service penetration tests, load tests or other network tests without the consent and authorization from Firmex.

5.6   Firmex reserves the right to suspend access to the Website for non-payment of Fees.

5.7   Upon termination of the Agreement for Default by the Subscriber, the right of the Subscriber, Guest Users and Unique Host Users and to access or use Materials shall cease immediately.

5.8   Any termination for Default shall be only by written notice of the terminating party to the other party setting out the details of the Default.

5.9   Firmex may terminate this Agreement for convenience upon 90 days written notice to Subscriber by Firmex.

5.10 Notwithstanding the foregoing or any other term or condition hereof or of the Agreement, and except in the case of a Committed Term of less than twelve (12) months, unless either party provides written notice of termination to the other in accordance with the terms of this Section 5, or, the Committed Term is not otherwise modified by mutual agreement of the Parties, in writing, at least thirty (30) business days in advance of the expiry of the Committed Term, the Committed Term shall be deemed to have automatically been renewed for an additional one (1) year period from the scheduled end of such Committed Term (the "**Renewal Term**"), and shall continue to do so on a recurring basis, in perpetuity, unless and until either party terminates this Agreement in accordance with the terms of this Section 5, or, provides the other with written notice of its intention of non-renewal at least thirty (30) business days prior to the end of such then-current Renewal Term.

5.11 Upon termination, each party shall return to the other the other party's Confidential Information or, upon request, destroy the Confidential Information and all copies and certify in writing that they have been destroyed. All obligations arising prior to termination shall be complied with and any provisions of this Agreement that by their nature operate beyond the termination or expiry of this Agreement shall survive such termination.

6   INTELLECTUAL PROPERTY AND LICENSES

6.1   Firmex does not own any intellectual property rights in the Materials. Firmex owns and shall own all intellectual property rights in the Technology, the Website, including the look and feel of the Website, the database designs, the architecture of all information technology, and any elements of such technology that are intrinsic to the Technology, subject to Subscriber's ownership of its trade-marks used on the Website as described in Section 6.2 below.

6.2   The Website may, at Subscriber's option, be privately branded using a Subscriber trade-mark, or on any other use of a Subscriber trade-mark, but all such trade-marks shall remain the property of Subscriber. Firmex grants to Subscriber the right, during the Committed Term of this Agreement, to display the Firmex trade-marks on Subscriber brochures and other materials to promote the use of the Technology, with Firmex's written prior approval of the trademark.

6.3   Firmex is entitled to insert a legend on any page of a Website indicating that the Website has been developed by Firmex. Firmex may insert a hyperlink in the legend to Firmex's own web site. Unless notified in writing by Subscriber, Firmex may use Subscriber's name and trade-mark in a list of representative clients.

6.4   Firmex grants to Subscriber a license to access and use, and to grant the Guest Users access to, and use of, the Technology, solely through a Website, for the Committed Term and solely in accordance with this Agreement, including the right to copy solely as required to give effect to the Agreement. Firmex retains all rights in the Technology not specifically licensed to Subscriber.

6.5   Subscriber acknowledges that each Guest User is required to agree to Firmex's Terms of Use prior to being permitted to access and use the Website.

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6.6   Subject to Section 6.4, Subscriber does not have the right, and agrees not to reverse engineer, recreate, copy, create derivative software from, distribute, transfer or otherwise deal with the Technology or any part of it.

7   CONFIDENTIALITY

7.1   Each party acknowledges that it would be damaging to the other party if its Confidential Information were used other than as permitted under this Agreement or disclosed to or obtained by third parties. Each party shall make all commercially reasonable efforts during the Committed Term of this Agreement and thereafter to prevent the other party's Confidential Information from being disclosed to or obtained by any person or entity for any purpose except as described in this Agreement. Each party's efforts will not be less than those that it takes to prevent disclosure of its own Confidential Information.

7.2   The Receiving Party will be responsible for breaches by its Representatives of this Agreement and, in particular, this Section 7. Without limiting the generality of the foregoing, Firmex will keep confidential all Confidential Information of Subscriber furnished to it or its Representatives, and each party will only use the Confidential Information of the other for the purpose of providing or receiving, as the case may be, the Services in accordance with this Agreement.

7.3   The parties hereby agree and acknowledge that It shall not be a breach of Section 7.1 to disclose Confidential Information required to be disclosed by law, judicial or arbitration process or by governmental authorities, provided that the Receiving Party first gives the Disclosing Party reasonable notice of any required disclosure pursuant to such law, order or process and takes all reasonable steps to restrict such disclosure and protect the confidentiality to the extent possible and fully cooperates with the Disclosing Party, in any efforts Disclosing Party may reasonably take to challenge or delay such disclosure.

7.4   Firmex shall have no obligation to obtain any consent for the collection, use and disclosure of Personal Information placed on the Website, and its storage, processing and backup by Firmex. Each party will collect, use, store, disclose, dispose of and otherwise handle Personal Information collected or accessible by either party under this Agreement in accordance with all applicable Privacy Laws. Firmex will post all applicable privacy policies regarding the Personal Information on the Website so that such policies are accessible to all Guest Users and Unique Host Users.

7.5   Each party acknowledges and agrees that:
(a) the restrictions set forth in this Section 7 are reasonable in the circumstances and the Receiving Party waives all defenses to the strict enforcement of the restrictions;
(b) a violation of any of the provisions of this Section 7 will result in immediate and irreparable harm and damage to the Disclosing Party; and
(c) in the event of any violation of any provision of this Section 7, the Disclosing Party shall be entitled to apply for equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

8   WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

8.1   Each party covenants, represents and warrants to the other that it has the right to enter into this Agreement.

8.2   Except as specifically set forth in the Agreement, Firmex and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service. Further, Firmex and its licensors do not represent or warrant that:
(a) the use of the Service will be uninterrupted or error-free, or operate in combination with any other hardware, software, system or data;
(b) the Services will meet the requirements or expectations of the Subscriber or Guest Users;
(c) any stored data in the Website will be accurate or reliable;
(d) all errors or defects in the Technology and/or the Services will be corrected; or
(e) the Services or the server(s) that make the Services available are free of viruses or other harmful components and. except as specifically set forth in the Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantable quality, merchantability, fitness for a particular use or purpose, or non-infringement of third party intellectual property rights, are hereby disclaimed and excluded to the maximum extent permitted by applicable law by Firmex and its licensors.

8.3   Firmex shall not have any responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of the materials, or for obtaining rights to use or title to any materials. Firmex shall not be responsible or liable for the deletion, correction, destruction, damage, loss of any materials caused by subscriber or guest users, for their failure to store any materials, or for their misuse of the technology.

8.4   Except for direct damages neither party shall be liable to the other for any damages whatsoever (including without limitation loss of profits or other economic loss, or any indirect, exemplary, incidental, special or consequential damages, even if it has been advised of the possibility of such damages), and in no event shall liability for any damages exceed, in the aggregate, the total monthly fees payable by subscriber to Firmex in the 12 months immediately preceding the event which caused the damage or injury, less any amounts owing to Firmex by the subscriber. The exclusions and limitations in this Section shall apply regardless of whether any action is brought in contract or in tort, (including breach of warranty, negligence and strict liability), or fundamental breach and/or failure of essential purpose of this agreement or of any remedy contained herein and shall survive the expiration, termination or repudiation of the Agreement.

8.5   Firmex shall defend or settle, at its own cost and expense, any and all suits, actions, proceedings or claims against the Subscriber alleging that:
(a) any part of the Technology and/or of the Services;
(b) the use of the Technology and/or the Services by Subscriber in the manner contemplated by the Agreement; or
(c) the copying or use of any part of the Materials produced by Firmex in the course of rendering the Services
infringes any trade-mark, industrial design, patent, trade secret or copyright in Canada or the United States of America, provided that Firmex is notified promptly in writing of such claim, has the exclusive right to control such defense or settlement and, at its request and expense, is given authority and assistance by the Subscriber reasonably required for such defense.

8.6   Firmex will pay any settlement amount, or any damages and costs finally awarded by any court of competent jurisdiction, in any such suit, action, or claim set out in Section 8.5 above. If any part of the Technology and/or the Services is, or in Firmex's opinion is likely to become, the subject of such a suit, action or claim, Firmex, at its sole option and at no expense to the Subscriber may:
(a) obtain for the Subscriber from any and all persons who claim an interest in the Technology, the Services and/or the work products arising from the Services, the right allowing the Subscriber to use them as contemplated by the Agreement; or
(b) substitute non-infringing equivalent Technology and/or Services; and this indemnity shall extend thereto; provided that nothing in this Section 8 shall require Firmex to indemnify the Subscriber for any matter whatsoever arising from modifications made by the Subscriber, from any Default by the Subscriber, from the combination of the Technology by the Subscriber with other software, equipment, systems or process, or from a claim that is based on the Subscriber's use of the Technology other than in accordance with the terms of the Agreement. Nothing in this Section 8 shall require Firmex to indemnify the Subscriber in any way whatsoever for any matter arising from any default by the Subscriber.

8.7   Subscriber shall defend or settle at its own expense any and all suits, actions or claims against Firmex alleging that any part of the Materials, or the posting of the Materials on the Website, infringes any trade-mark, patent, trade secret or copyright in Canada or the United States of America or constitutes an illegal disclosure of the confidential information of a third party, provided that Subscriber is notified promptly in writing, has the exclusive right to control such defense and at its request and expense, is given authority and assistance by Firmex reasonably required for such defense or settlement. Subscriber will pay any settlement amount or any damages and costs finally awarded in any such suit, action or claim, and save harmless Firmex. Nothing in this Section shall require Subscriber to indemnify Firmex for any matter arising from any Default by Firmex.

9   FORCE MAJEURE

9.1   Neither party shall be liable to the other for any delay or failure to perform their obligations under the Agreement due to fire, flood, earthquake, acts of God, acts of war, riots, civil disorder, acts of terrorism, strikes, lock-outs or labor disruptions, the failure of telecommunications systems or any other cause whether similar or dissimilar beyond its reasonable control (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event only for so long as such Force Majeure Event continues, and such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

10   GENERAL

10.1 Notices and other communications required or permitted under this Agreement shall be in writing and addressed to the parties at the addresses above. Notices shall be sent by delivery (written receipt required) or by email (machine confirmation to be retained by sender) and the party sending such notice shall email the other party to confirm receipt. Either party may change its address for notification purposes by giving the other party notice of the new address and the date upon which it will become effective. A communication shall be deemed to have been received as of the next business day following its transmission by email if transmitted after 4 p.m. Eastern Time.

10.2 The Agreement may be executed in any number of counterparts, all of which when executed and delivered, shall constitute one (1) single agreement between the parties. This Agreement may be executed by way of such third-party electronic document signature platform as Firmex may, in its absolute discretion, choose from time to time, or by way of an exchange of signed pdf copies of this Agreement by email.

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10.3 Except as expressly set out herein, nothing contained in this Agreement shall create or imply any agency relationship between the parties, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties.

10.4 If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected, and each such provision shall be valid and enforceable to the extent granted by law. This Agreement constitutes the entire agreement between the parties relating to the Services.

10.5 This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, excluding their rules governing conflicts of laws. The courts situate in the City of Toronto shall have exclusive jurisdiction over all disputes. The parties agree that jurisdiction and venue in such courts is appropriate and irrevocably attorns to the jurisdiction of such courts.

11 SERVICE LEVEL COMMITMENTS

11.1 Firmex will ensure that its servers and other information technology systems under its control that allow access to the Website are operating at a rate of 99 percent of potential uptime each calendar month.

11.2 Potential uptime is the number of hours in a particular calendar month less planned downtime of 12 hours per calendar month. Firmex will use this planned downtime to implement any changes to the Technology and will use reasonable precautions to ensure that the changes, once implemented, will not disrupt the Services. Firmex will provide 24 hours prior notice of planned downtime.

11.3 Firmex will provide help desk response to Unique Host Users in accordance with the terms of the Agreement. Firmex may also provide help desk technical support through an online service, such as an interactive software interface providing instant messaging and remote access assistance, subject to the capabilities of the Unique Host User's system.

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