



## Platform and Hardware Agreement

This Platform and Hardware Agreement (this “**Agreement**”) governs the provision of the BIDS and Hardware (as those terms are defined below) by Archimedes Industrial advisory & Investments LLC. (“**AIAI**”) to the customer listed on an Order Form that incorporates by reference this Agreement (the “**Customer**”, and collectively with AIAI, the “**Parties**”). Capitalized terms not defined in this Agreement have the definitions given in the Order Form. AIAI may modify this Agreement at any time in its sole discretion; provided that AIAI notifies Customer of the updated Agreement. Should Customer object to the updated Agreement within ten (10) days of AIAI’s notification, the Agreement shall not apply to Customer’s Order Forms until the beginning of the Renewal Period (as defined below) of an Order Form, at which time the updated Agreement shall apply to such Order Form.

### 1. DEFINITIONS

“**Authorized Users**” means Customer’s employees and authorized independent contractors who Customer has permitted to use Customer’s subscription to the AIAI Platform.

“**AIAI Platform**” means AIAI’s BIDS, licensed in accordance with this Agreement and as ordered by Customer pursuant to the Order Form.

“**Customer Data**” means any content, data or information provided, submitted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the BIDS.

“**Documentation**” means AIAI’s user manuals, handbooks, and installation guides, if any, relating to the BIDS and/or Hardware made available by AIAI to Customer.

“**Hardware**” means, collectively, the Leased Hardware, the Loaned Hardware, and the Purchased Hardware (as those terms are defined in Section 2.3 of this Agreement).

“**Leased Hardware**” means hardware products specified in an Order Form as being leased to Customer by AIAI as a capital lease under this Agreement.

“**Loaned Hardware**” means hardware products specified in an Order Form as being provided to Customer during the Subscription Period as a true lease under this Agreement.

“**Major Improvements**” means material feature changes or improvements to the BIDS that AIAI offers to its customers for additional fees.

“**Purchased Hardware**” means hardware products specified in an Order Form as being purchased by Customer from AIAI under this Agreement.

“**Subscription Period**” means the Initial Subscription Period (as specified in the Order Form) and any and all Renewal Periods (as defined in Section 7.1 of this Agreement).

“**Usage Data**” means any anonymized data and statistics collected by AIAI resulting from the use of the BIDS by Customer.

### 2. BIDS AND HARDWARE

**2.1. License.** Where specifically indicated and subject to the terms and conditions of this Agreement and the applicable Order Form, including the payment by Customer of all fees pursuant to Section 5 hereof and the applicable Order Form, AIAI hereby grants to Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferable license during the Subscription Period to access and use the specified service as part of the BIDS system

**2.2. Customer Data and Usage Data.** Customer shall own all Customer Data and Usage Data. Customer may choose to log its Customer Data in its sole discretion. AIAI will collect and store Customer Data and Usage Data. Customer hereby grants to AIAI a royalty-free, non-exclusive



license, with the right to sublicense to its affiliates, to (a) use the Customer Data solely for providing the BIDS to Customer, improving the performance of the BIDS, and in connection with the further development of the BIDS and (b) use the Customer Data and Usage Data (but specifically excluding any Customer Data that could be used to identify a person or a business), in aggregate and anonymous format only, for any business or commercial purpose, including without limitation system operation and for marketing purposes. AIAI HAS NO LIABILITY UNDER THIS AGREEMENT FOR THE PROTECTION OF CUSTOMER DATA AND USAGE DATA EXCEPT TO THE EXTENT RESULTING FROM AIAI'S BREACH OF THIS SECTION 2.2.

### **2.3. Hardware.**

**A. Leased Hardware.** If the Order Form specifies that Customer is ordering hardware as Leased Hardware, then AIAI leases the Leased Hardware to Customer during the lease period specified in the Order Form (the "**Lease Term**") on the terms of this Agreement, including the following:

1. Capital Lease. AIAI leases to Customer, and Customer leases from AIAI, the Leased Hardware during the Lease Term in the quantities and at the fees set forth in the Order Form and upon the terms and conditions set forth in this Agreement and the Order Form.

(a) Lease Term. The Lease Term for each piece of Leased Hardware begins upon delivery of the Leased Hardware (as described below in this Section 2.3) and lasts for the period specified in the Order Form.

(b) Lease Down Payment. Prior to delivery of any Leased Hardware, Customer shall pay an upfront down payment in the amount set forth in the Order Form (the "**Lease Down Payment**"). The Lease Down Payment is non-refundable.

(c) Recurring Lease Payments. In addition, Customer shall pay a recurring fee during the Lease Term in the amount set forth in the Order Form and which may be monthly or quarterly, as specified in the Order Form (the "**Recurring Lease Payments**"). The Recurring Lease Payments include the rent for the Leased Hardware. Recurring Lease Payments are due and payable to AIAI on the first day of the applicable month or quarter.

(d) Transfer of Title After Lease Term. The Parties intend the terms for the Leased Hardware to be a capital lease. Accordingly, at the end of a Lease Term where Customer has complied with this Agreement and the Order Form, unless otherwise agreed by the parties in writing, title to the applicable Leased Hardware transfers to Customer at no additional cost. The Parties will cooperate in good faith to execute any documents necessary to effect such title transfer, if any.

2. Title to Leased Hardware During Lease Term. During the Lease Term, title to all Leased Hardware remains with AIAI, and Customer has no other right, title, or interest in it except as expressly set forth in this Agreement. Customer, at its expense, will protect and defend AIAI's title to the Leased Hardware and will keep the Leased Hardware free and clear from any and all claims, liens, encumbrances and legal processes of Customer's creditors and other persons. Although the Parties intend these lease terms to be a capital lease, AIAI assumes no liability as to the treatment by Customer of this Agreement, the Leased Hardware, or the payments under this Agreement for financial statement or tax purposes. All Leased Hardware remains at all times personal property, notwithstanding that any such Leased Hardware may now or hereafter be affixed to realty. AIAI is hereby permitted to display notice of its ownership of the Leased Hardware by affixing to each piece of Leased Hardware an identifying label, stencil, or any other indicia of ownership. Customer will not alter, deface, cover, or remove such ownership identification.



**B. Loaned Hardware.** If the Order Form specifies that AIAI is to provide hardware as Loaned Hardware, then AIAI leases the Loaned Hardware to Customer during the Subscription Period on the terms of this Agreement, including the following:

1. True Lease. AIAI leases to Customer, and Customer leases from AIAI, the Loaned Hardware during the Subscription Period in the quantities and at the fees set forth in the Order Form and upon the terms and conditions set forth in this Agreement and the Order Form.

(a) Term of Lease/Loan. AIAI leases the Loaned Hardware to Customer for a period coterminous with the Subscription Period.

(b) Deposit. Prior to delivery of any Loaned Hardware, Customer shall pay a deposit in the amount set forth in the Order Form (the "**Deposit**"). If Customer has complied with this Agreement and the Order Form, and if Customer returns the Loaned Hardware undamaged at the end of the Subscription Period, except for reasonable wear and tear due to normal usage as determined by AIAI in its sole discretion, AIAI will refund the Deposit to Customer for the returned Loaned Hardware within 45 days of the conclusion of the applicable Subscription Period.

(c) Rent. The rent for the Loaned Hardware is the amount stated in the applicable Order Form ("**Rent**"). Rent may be payable monthly or quarterly, as set forth in the applicable Order Form. Rent is due and payable to AIAI on the first day of the applicable month or quarter.

(d) Return. At the end of a Subscription Period where Customer has complied with this Agreement and the Order Form, unless otherwise agreed by the parties in writing, Customer will at its expense deliver the applicable Loaned Hardware to AIAI at a location to be designated by AIAI in writing, for such disposition as AIAI may determine. In the event of default by Customer under this Agreement, Customer will promptly return all Loaned Hardware to AIAI in the same manner. All Loaned Hardware so delivered by Customer to AIAI will be in the same condition as when delivered to Customer, reasonable wear and tear resulting from authorized use thereof alone excepted.

2. Title to Loaned Hardware. Title to all Loaned Hardware remains with AIAI at all times, and Customer has no right, title, or interest in it except as expressly set forth in this Agreement. Customer, at its expense, will protect and defend AIAI's title to the Loaned Hardware and will keep the Loaned Hardware free and clear from any and all claims, liens, encumbrances and legal processes of Customer's creditors and other persons. AIAI assumes no liability and makes no representation as to the treatment by Customer of this Agreement, the Loaned Hardware, or the payments under this Agreement relating to Loaned Hardware for financial statement or tax purposes. All Loaned Hardware remains at all times personal property, notwithstanding that any such Loaned Hardware may now or hereafter be affixed to realty. AIAI is hereby permitted to display notice of its ownership of the Loaned Hardware by affixing to each piece of Loaned Hardware an identifying label, stencil, or any other indicia of ownership. Customer will not alter, deface, cover, or remove such ownership identification.

**C. Purchased Hardware.** If the Order Form specifies that Customer is ordering hardware as Purchased Hardware, AIAI sells such Purchased Hardware to Customer on the terms of this Agreement, including the following:

1. Sale of Purchased Hardware. AIAI shall sell to Customer and Customer shall purchase from AIAI the Purchased Hardware in the quantities and at the prices set forth in the Order Form and upon the terms and conditions set forth in this Agreement and the Order Form. Customer shall pay all amounts invoiced by the due date(s) set forth in the Order Form or, if not specified in the Order Form, then within 30 days of receipt of AIAI's invoice. All such prices are exclusive of any applicable tax, including any sales, use, excise, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be



responsible for all such charges, costs, and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to AIAI's income.

2. Title and Risk of Loss. Title and risk of loss for Purchased Hardware pass to Customer upon delivery of the Purchased Hardware to the customer. As collateral security for the payment of the purchase price of the Purchased Hardware, Customer hereby grants to AIAI a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Purchased Hardware, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under applicable law (including the applicable Uniform Commercial Code).

#### **D. Delivery of Hardware.**

1. The Hardware will be delivered to the Customer at a time that is mutually agreed by the parties (including orally or via email), subject to availability of the Hardware, using AIAI's standard methods for packaging and shipping such Hardware. Customer agrees to accept the Hardware as per the ordering agreement. AIAI shall not be liable for any delays, loss, or damage in transit, or for any costs or fees as a result of Customer's failure to accept delivery when tendered by the carrier.

2. Unless otherwise specified in the Order Form, the prices and fees for Hardware excludes the costs of shipping and installation by AIAI and are otherwise FOB, Incoterms 2020.

3. AIAI may, in its sole discretion, without liability or penalty, make partial shipments of Hardware to Customer. Each shipment will constitute a separate lease or sale, as applicable, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the quantity specified under the Order Form.

4. If for any reason Customer fails to accept delivery of any of the Hardware when delivery is tendered at the Customer Facility, or if AIAI is unable to deliver the Hardware to the Customer Facility because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Hardware shall pass to Customer; (ii) the Hardware shall be deemed to have been delivered; and (iii) AIAI, at its option, may store the Hardware until Customer picks it up, in which case Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5. The quantity of any installment of Hardware as recorded by AIAI when shipped is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence to the contrary. AIAI shall not be liable for any non-delivery of Hardware (even if caused by AIAI's negligence) unless Customer gives written notice to AIAI of the non-delivery within 5 days of the date when the Hardware would in the ordinary course of events have been received. Any liability of AIAI for non-delivery of the Hardware shall be limited to delivering the Hardware within a reasonable time or adjusting the invoice respecting such Hardware to reflect the actual quantity delivered.

#### **E. Inspection and Rejection of Nonconforming Hardware.**

1. Customer shall inspect all Hardware upon receipt. Customer will be deemed to have accepted the Hardware delivered unless it notifies AIAI in writing of any Nonconforming Hardware within 5 days and furnishes such written evidence or other documentation as reasonably required by AIAI. "Nonconforming Hardware" means only the following: (a) product shipped is different than identified in the Order Form; or (b) the product's label or packaging incorrectly identifies its contents.



2. If Customer timely notifies AIAI of any Nonconforming Hardware, AIAI shall, in its sole discretion, (i) replace such Nonconforming Hardware with conforming Hardware. AIAI shall ship, at its expense and risk of loss, the Nonconforming Hardware. AIAI shall, after receiving Customer's shipment of Nonconforming Hardware, ship to Customer, at AIAI's expense, the replaced Hardware to the Customer Facility.

3. Customer acknowledges and agrees that the remedies set forth in Section 2.3(E)(2) are Customer's exclusive remedies for the delivery of Nonconforming Hardware. Except as provided under such Section, all sales of Purchased Hardware to Customer are final, and Customer has no right to return Purchased Hardware purchased under this Agreement to AIAI.

#### **F. Risk of Loss; Insurance.**

1. Risk of Loss. All risk of loss, damage, theft, or destruction to each piece of Hardware will be borne by Customer (ordinary wear and tear excepted with respect to Loaned Hardware). No such loss, damage, theft, or destruction of Hardware, in whole or in part, will impair the obligation of Customer under this Agreement, all of which will continue in full force and effect. Customer is and will be subrogated to AIAI's rights with respect to any insurance policies or claims for reimbursement by others with respect to loss, damage, theft, or destruction of Leased Hardware or Loaned Hardware.

2. Insurance. Customer, at its own expense, must insure the Leased Hardware and Loaned Hardware at all times against all hazards and liability, including but not limited to fire, theft, and other liability or damage, including extended coverage insurance in such amounts and with such insurers as are reasonably satisfactory to AIAI. All such insurance policies must name AIAI as a named insured. The proceeds of any insurance policies with respect to the Leased Hardware and Loaned Hardware must be payable solely to AIAI and will be applied by AIAI toward the payment of Customer's obligations under this Agreement with respect to Leased Hardware and Loaned Hardware, and any balance of the proceeds will be the property of AIAI, provided that at AIAI's option such proceeds may be used for the repair or replacement of the affected Leased Hardware and Loaned Hardware. AIAI may act as attorney for Customer in making, adjusting, or settling any claims under any insurance policies insuring the Leased Hardware and Loaned Hardware. Customer will not cancel or fail to renew any insurance policy applicable to the Leased Hardware or Loaned Hardware without AIAI's prior written consent unless such policy is immediately replaced with another policy that complies with this Agreement and is reasonably satisfactory to AIAI. In no event will the coverage provided by the insurance policies be for less than the fair market value of the Leased Hardware and Loaned Hardware. Customer will furnish certificates of insurance to AIAI as evidence that such insurance is in effect.

#### **G. Additional Hardware Terms.**

1. Use of Hardware; Inspections. Customer may possess and use the Leased Hardware and Loaned Hardware solely in connection with Customer's permitted use of the BIDS and in conformity with all applicable laws and insurance policies. Customer shall use its commercially reasonable efforts to ensure that the Leased Hardware and Loaned Hardware are secure. AIAI has the right, upon reasonable prior notice to Customer and during Customer's regular business hours, to access the Leased Hardware and Loaned Hardware wherever such Hardware may be located, including for purposes of inspection, installation, maintenance, and/or removal. Customer will promptly notify AIAI of all details arising out of any change in location of the Leased Hardware or Loaned Hardware, any alleged encumbrances thereon, or any accident allegedly resulting from the use or operation of such Hardware. Customer may use the Leased Hardware and Loaned Hardware for no other purpose than for performing operations for which they were intended in connection



with the BIDS. If an inspection by AIAI (whether in-person or over-the-air) indicates misuse, damage, or other problems with a piece of Leased Hardware or Loaned Hardware, AIAI may disable such Hardware (including remotely via over-the-air controls).

2. Further Assurances. Customer will execute and deliver to AIAI, upon AIAI's request, such instruments and assurances as AIAI deems necessary for the confirmation or perfection of the lease of the Leased Hardware and/or Loaned Hardware under this Agreement and AIAI's rights under this Agreement with respect to such Leased Hardware and Loaned Hardware. AIAI may file or record this Agreement (and any applicable Order Form) or a financing statement with respect to it so as to give notice to any interested parties. Any such filing or recording will not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. If a court of competent jurisdiction deems this transaction to be a lease intended for security, Customer hereby grants AIAI and its assigns, without any further action by either Party, a purchase money security interest in the Leased Hardware and/or Loaned Hardware and in all attachments, accessories, additions, and proceeds.

3. Repairs. AIAI will use its commercially reasonable efforts to make repairs necessary for the ordinary operation of the Leased Hardware and Loaned Hardware to the extent such repair is caused by a manufacturer defect or by AIAI. However, if AIAI determines that it is not reasonably able to make a repair or replacement, it may engage a third party (including, without limitation, the hardware OEM) to perform a repair or replacement and may pass the costs of such repair or replacement on to Customer. Repairs or replacements for Purchased Hardware are not included in the purchase price and are subject to applicable fees.

4.. Warranty; Disclaimer. AIAI shall use commercially reasonable efforts to pass through any manufacturer warranty applicable to the Hardware, if any. AIAI OTHERWISE PROVIDES ALL HARDWARE "AS IS" AND MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO THE HARDWARE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**2.4. Support Services.** Subject to Customer's compliance with this Agreement . If the client doesn't elect any additional paid services, AIAI will provide Customer with the following support services with respect to the BIDS and the Hardware:

**A. Email Support.** AIAI will provide Authorized Users with email support (support@AIAI.com) for use by Authorized Users Monday through Friday, 9am – 5pm Eastern Time, US holidays excluded, for problem resolution assistance, and AIAI will respond to all support requests within two (2) business days.

**B. Hardware Support.** Subject to payment of the separate fee for support of the Hardware, as set forth in the applicable Order Form, AIAI shall provide its reasonable assistance to make repairs and/or replacements to the Hardware, as necessary for the ordinary operation of the Hardware at the costs specified to the client. However, Customer is responsible and liable for any theft of or damage to the Hardware.

**C. Support Exclusions.** AIAI will have no responsibility or liability of any kind, whether for breach of warranty or otherwise, arising or resulting from: (i) Customer's or Authorized Users' use of any version of the BIDS or Hardware other than the then-current unmodified version provided to Customer; (ii) nonconformities resulting from abuse, negligence, or improper or unauthorized use of all or any part of the BIDS or Hardware; (iii) problems or errors caused by Customer's, or other



third parties' products, services or equipment; or (iv) material modification, amendment, revision, or change to the BIDS or Hardware by any party other than AIAI or AIAI-authorized representatives. Any use of or reliance on data or data output contained in the BIDS is Customer's sole responsibility.

**2.5. Restrictions on Usage.** Customer shall not use the BIDS, Hardware, or Documentation for any purposes beyond the scope of the rights granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Customer shall not, and shall not permit any Authorized User or other party to, (a) reverse engineer, disassemble, or decompile any component of the BIDS or Hardware; (b) rent, lease, lend, sell, sublicense, resell, or otherwise distribute any Customer rights under this Agreement (except as expressly authorized hereunder) or otherwise use the BIDS or Hardware for in any way related to this Agreement; (c) modify, copy or make derivative works based on any part of the BIDS or Documentation; (d) use the BIDS or Hardware to build a competitive offering; (e) remove any proprietary notices from the BIDS, Documentation, or Hardware; or (f) use the BIDS or Hardware in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

**3. CONFIDENTIALITY.** From time to time during the Subscription Period, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. Notwithstanding the foregoing, if the receiving Party is required to disclose the disclosing Party's Confidential Information pursuant to a duly authorized subpoena, court order or other government authority, the receiving Party will provide prompt written notice to the disclosing Party prior to such disclosure so that the disclosing Party may seek a protective order or other appropriate remedy.

#### **4. LIMITATION OF LIABILITY**



**4.1.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, OR COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**4.2.** THE CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, AND INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED, THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO AIAI UNDER THIS AGREEMENT DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**4.3. Exclusions from Limitation on Liability.** The limitations on liability in Sections 10.1 and 10.2 will not apply to (a) a breach by a Party of its confidentiality obligations, (b) a Party's indemnification obligations, (c) a Party's gross negligence or willful misconduct or (d) in the case of Customer's liability, Customer's breach of Section 2.1, 2.3 or 2.5.

**4.4. Essential Basis of the Agreement.** The limitations of liability set forth in Sections 10.1 and 10.2 are intended to apply without regard to whether other provisions of this Agreement have been breached or proven ineffective. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## **5. FEES, PAYMENT AND SUSPENSION OF SERVICES**

**5.1. Fees and Payment.** Customer shall pay all applicable fees, including the Subscription Fees and any fees applicable to Hardware, in accordance with the payment terms set forth in the applicable Order Form. The Subscription Fees and, if applicable, the support fee for Hardware, shall also be paid to AIAI for each Renewal Period, as applicable; provided, however, AIAI reserves the right to increase such fees applicable to any Renewal Period upon written notice provided to Customer at least thirty (30) days prior to the commencement of the next Renewal Period. Payment of invoices shall be due within thirty (30) days of receipt of invoice. All fees under this Agreement are exclusive of any sales, use, excise, and other taxes, as well as applicable export and import fees, customs duties, and similar charges, if any, that AIAI is obligated to collect, except for taxes based on AIAI's net income. To the extent AIAI is not so obligated, all such taxes are the responsibility of Customer.

**5.2. Payment Default.** If Customer fails to make any payment when due, in addition to all other remedies that may be available: (a) AIAI may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (b) AIAI may suspend Customer's license to the BIDS and/or retake possession of Hardware for any period during which any payment owed to AIAI has not been made by Customer. AIAI also reserves the right to charge Customer a reinstatement fee of no more than one (1) month's Subscription Fee applicable to the suspended services in the event of suspension, at AIAI's sole discretion.





**6. OWNERSHIP.** AIAI retains all right, title and interest, including all intellectual property rights, in and to the BIDS, Documentation, and all associated materials. Other than as expressly set forth in this Agreement, no licenses, subscriptions or other rights in the BIDS or Hardware are granted to Customer.

## **7. TERM AND TERMINATION**

**7.1. Term.** As to each applicable Order Form, this Agreement commences on the Effective Date of such Order Form and continues for the duration of the Subscription Period (and, if different, the Lease Term), unless earlier terminated in accordance with this Section 7. As to each applicable Order Form, the Subscription Period for the BIDS will begin on the Effective Date of such Order Form and continue for the duration of the Initial Subscription Period set forth in such Order Form.

**7.2. Termination by AIAI.** At any time and for any or no reason, AIAI may terminate this Agreement and any Order Form with thirty (30) days' written notice to Customer.. In addition, AIAI shall refund to Customer the unearned portion of all amounts pre-paid under this Agreement in respect of the BIDS, and Customer shall pay any outstanding amounts due to AIAI under this Agreement or any Order Form, including all Rent and/or Recurring Lease Payments that would become due for Leased Hardware during the remainder of the Lease Term.

**7.3. Termination for Cause.** Except for breach of payment terms as specified in Section 5, for which no notice period shall be necessary, either Party may terminate this Agreement for a material breach by the other Party of any of its terms and conditions upon a minimum of thirty (30) days' written notice, provided the breach is not remedied during the notice period.

**7.4. Effect of Termination.** Upon any expiration or termination of this Agreement, Customer's right to Loaned Hardware shall automatically terminate. In addition, upon any termination of this Agreement by AIAI for cause, Customer's right to possess and/or use the Leased Hardware shall automatically terminate. Upon any expiration or termination of this Agreement, and each Party shall (a) immediately discontinue all use of the other Party's Confidential Information; (b) delete the other Party's Confidential Information from its computer storage or any other media, including, without limitation, Customer Data, as applicable, but excluding Usage Data; (c) return to the other Party or destroy (with written certification), all copies of such other Party's Confidential Information then in its possession; and (d) promptly pay all amounts due and remaining payable hereunder.

## **8. WARRANTY; DISCLAIMER.**

### **8.1. Limited BIDS Warranty.**

A. AIAI represents and warrants that the BIDS will substantially conform to the Documentation for the ninety (90) days following the date that the BIDS is first made available to Customer for Customer's use. This warranty does not apply if the BIDS (i) has been altered, except by AIAI or its authorized representative; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by AIAI; or (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident. In the event of a breach of this Section 8.1.A., as Customer's sole and exclusive remedy, AIAI shall repair, replace, or cause the refund of the fees paid for the non-conforming BIDS. This remedy is conditioned upon Customer reporting the non-conformance in writing within the warranty period.

B. If AIAI is unable to correct any breach of this section within thirty (30) days after receipt of Customer's written notice, Customer may terminate this Agreement with respect to the BIDS and



receive a refund of the unearned portion of all amounts paid under this Agreement in respect of the BIDS. Such refund will be payable within thirty (30) days after the effective date of termination of this Agreement. In addition, AIAI will warrant the components of the BIDS system in accordance to the specific original manufactures warranty.

**8.2. Disclaimer** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) THE AIAIPLATFORM, DOCUMENTATION, AND HARDWARE ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND (B) AIAIEXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE IN TRADE. AIAIDOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE AIAIPLATFORM AND DOCUMENTATION WILL BE ACCURATE, WITHOUT INTERRUPTION OR ERROR FREE.

## **9. INDEMNITY.**

**9.1. By AIAI.** If any action is instituted by a third party against Customer based upon a claim that the BIDS, as delivered without modification and used as specified in all applicable documentation, infringes any third party's U.S. intellectual property rights, AIAI will defend such action at its own expense on Customer's behalf and will pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement.

**9.2. Exceptions.** Section 9.1 will not apply if the alleged claim arises, in whole or in part, from (a) a use or modification of the BIDS by Customer in a manner inconsistent with any applicable documentation, or outside the scope of any right granted or in breach of this Agreement, (b) a combination, operation or use of the BIDS with other software, hardware or technology not specifically authorized by AIAI, or (c) the Customer Data (the “**Customer Indemnity Responsibilities**”).

**9.3. Infringement or Likely Infringement.** If the BIDS is enjoined or, in AIAI's determination is likely to be enjoined or otherwise infringing, AIAI, at its option and expense (a) procure for Customer the right to continue using the BIDS, (b) replace or modify the BIDS so that it they are no longer infringing but continue to provide comparable functionality, or (c) terminate Customer's use of the BIDS and refund any amounts previously paid for the BIDS attributable to the remainder of the then-current Initial Subscription Period or remaining value. This section sets forth the entire obligation of AIAI and Customer's exclusive remedy against AIAI for any claim that the BIDS infringes a third party's intellectual property rights.

**9.4. By Customer.** If any action is instituted by a third party against AIAI or its affiliates (collectively the “**AIAI Indemnitees**”) relating to (i) Customer's gross negligence or willful misconduct, (ii) Customer's or Authorized Users' breach of obligations under this Agreement or any Order Form, including, without limitation, the possession or use of the BIDS, Documentation, or Hardware in a manner not authorized or contemplated by this Agreement, (iii) use of any version of the BIDS other than the most current version of the BIDS delivered by AIAI to Customer or (iv) Customer Indemnity Responsibilities, Customer will defend such action at Customer's own expense on the AIAI Indemnitees' behalf and will pay all damages attributable to such claim which are finally awarded against the AIAI Indemnitees or paid in settlement of such claim. This subsection will not apply to the extent that AIAI has any indemnification obligation with respect to such claim pursuant to Section 9.1.



**9.5. Procedure.** Any Party that is seeking to be indemnified under the provision of this Section 9 (an “**Indemnified Party**”) must (a) promptly notify the other Party (the “**Indemnifying Party**”) of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a “**Claim**”) and (b) give the Indemnifying Party the sole control over the defense of such Claim.

## **10. GENERAL PROVISIONS**

**10.1. Publicity.** Except with Customer’s prior written consent, AIAI may not use any name, trademark, logo, or trade name of Customer (or any contraction, abbreviation, adaptation, or other variant thereof), or the name or likeness of any of Customer employees or staff, in any news/press/publicity release, advertising, publication, promotional material, or other commercial communication.

**10.2. AIAI Right to Subcontract.** Customer agrees that AIAI may subcontract any aspect of its obligations under this Agreement to qualified third parties; provided that any such subcontracting arrangement will not relieve AIAI of any of its obligations hereunder.

**10.3. Applicable Law and Venue.** This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with, and governed by, the laws of the state of Delaware without giving effect to such jurisdiction’s rules regarding conflicts of laws.

**10.4. Independent Contractors.** Customer and AIAI acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

**10.5. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original, and electronically stored copies of such counterpart(s) will be deemed an original, so long as any such counterpart is in an unalterable format, such as a PDF file; all of which when taken together will constitute one Agreement.

**10.6. Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

**10.7. Entire Agreement.** This Agreement sets forth the entire understanding between the Parties related its subject matter and supersedes all prior oral and written understandings between the Parties related thereto. Neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement. This Agreement will govern the relationship of the Parties. Purchase orders provided by Customer including any additional or conflicting terms and conditions will be for administrative purposes only and will have no force or effect. Only signed Order Forms will have binding effect on the Parties. In the event of a conflict between these Terms and Conditions and the Order Form, the terms of the Order Form shall govern.

**10.8. Modifications.** This Agreement contains the entire understanding and agreement of the Parties and supersedes any and all previous and contemporaneous understandings. Only a writing signed by both Parties may modify this Agreement.

**10.9. Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will



not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing.

**10.10. Export Compliance.** Customer represents that, except as allowed under applicable U.S. Government export laws and regulations, no technical data, hardware, software, technology, or other information furnished under this Agreement by AIAI shall be disclosed by Customer or anyone authorized by Customer to any foreign person, firm, or country, including foreign persons employed by or associated with Customer. Furthermore, Customer shall not allow any re-export of any technical data, hardware, software, technology, or other information furnished by AIAI, without first complying with all applicable U.S. Government export laws and regulations. Prior to exporting any technical data, hardware, software, technology, or other information furnished by AIAI hereunder, Customer shall receive AIAI's advance written approval. Customer shall indemnify, defend, and hold AIAI harmless from and against any and all claims, demands, actions, suits, proceedings, losses, damages, penalties, obligations, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising directly or indirectly from breaches of this provision by Customer.

**10.11. Survival.** The following Sections shall survive any termination of this Agreement: 2.2, 2.3(A)(1)(d), 2.3(A)(2), 2.3(B)(1)(d), 2.3(B)(2), 2.3(C)(2), 2.3(F), 2.3(G)(1), 2.3(G)(2), 2.3(G)(4), 2.5, 3, 6, 7.4, 8.2, and 9-11.

**10.12. Assignment.** Neither Party may assign or transfer this Agreement without the other Party's prior written approval, except that AIAI may assign this Agreement to an entity that acquires or is merged with AIAI or that purchases all or substantially all of the assets of AIAI.

**10.13. Notice.** All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to Customer at the addresses set forth on the Order Form; if to AIAI at: Chief Executive Officer, AIAI, 50 Carroll St, Unit 110, Toronto, ON Canada M4M 3G3, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision.

**[End of Agreement]**