

## eState Planner SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS

**These Software as a Service (SaaS) and Services Terms and Conditions** (“**Terms**” or this “**Agreement**”) govern the purchase of the license to the Software, the access to Services and the use of the Website by the Firm and its Users (“**you**”, “**your**”, and terms of similar meaning) made available by Vested Software Inc. (“**we**”, “**us**”, “**Provider**” and terms of similar meaning) and its suppliers.

By accepting this Agreement, by (a) clicking a box indicating acceptance, (b) accepting or executing an Order Form that references this Agreement, or (c) otherwise accessing or using the Services or the Website, you agree to be bound by these Terms, and all terms, policies and guidelines incorporated by reference in these Terms. If a Firm registers for a free trial of the Services, the applicable provisions of these Terms will also govern that free trial.

If the individual accepting this Agreement is accepting on behalf of a company or legal entity, such individual represents that they have the authority to bind such entity and its affiliates to these Terms, in which case the term “Firm” or “Firm User” (as the case may be) shall refer to such entity and its affiliates. If the individual accepting this Agreement does not have such authority, or does not agree with these Terms, such individual must not accept this Agreement and may not use the Services or the Website.

Order Forms are automatically deemed to include all of the terms and conditions of these Terms; provided that whenever the provisions of the Order Form expressly conflict with these Terms, the conflicting provisions of the Order Form control and shall take precedence over the conflicting provisions of the Terms.

### 1 DEFINITIONS

- 1.1 “**Administrator**” means a person or persons assigned by the Firm to have the authority to act as the administrator of the subscription on behalf of the Firm.
- 1.2 “**Applicable Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, permits, licenses, authorizations, directions and agreements with all applicable government authorities, agencies, bodies or departments, having jurisdiction over this Agreement or the supply or use of the Services.
- 1.3 “**CASL**” means any applicable federal, provincial and local laws, regulations and rules governing the sending of commercial electronic messages.
- 1.4 “**Client**” means a client of the Firm.
- 1.5 “**Client Data**” means data or content inputted into the Software by a Client, or by the Firm and/or any of its Administrators and/or employees pertaining to the Client.
- 1.6 “**Cloud Provider**” has the meaning given in Section 5.1.
- 1.7 “**Fees**” means the fees to be paid by the Firm pursuant to an Order Form, these Terms and any applicable Schedules.
- 1.8 “**Firm**” shall mean the individual or organization who is bound by the terms of an Order Form and these Terms and Conditions.
- 1.9 “**Firm Data**” means any data or content, excluding Client Data, inputted into the Software by the Firm or any of its Administrators and/or employees and hosted on the servers of the Cloud Provider, including, but

not limited to Firm agreements, precedents, templates, summaries, and/or marks, signature lines and pre-drafted headers/footers, and branding materials.

- 1.10 **“Firm Marks”** means the Firm’s trademarks (registered and unregistered), trade names, designs, logos and other indicia of origin that are uploaded by the Firm or its employees onto the Software or Website.
- 1.11 **“Firm User”** means an individual user who (i) accesses the Website and/or is permitted to use the Software; and (ii) agreed to these Terms, but specifically excludes Clients. Firm Users may include employees or contractors of the Firm.
- 1.12 **“Order Form”** means (i) the eState Planner platform as a Service (SaaS) Order Form; (ii) an online order through the Website specifying the Services to be provided hereunder, that is entered into between the Firm and the Provider, including any Schedules, addenda and supplements thereto. For greater certainty, the selection of a particular plan constitutes an online order.
- 1.13 **“Personal Information”** means any information relating to identifiable individuals, the collection, use or disclosure of which is regulated by Privacy Laws.
- 1.14 **“Privacy Laws”** means any applicable federal, provincial, and local laws, regulations and rules governing the collection, use and disclosure of information relating to identifiable individuals, including the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (British Columbia), the *Personal Information Protection Act* (Alberta), and any similar legislation enacted by any province or territory of Canada.
- 1.15 **“Provider Data”** means any data or content made available through the Software by the Provider and/or its licensors.
- 1.16 **“Schedule”** means a schedule, which is attached to this Agreement, or which may be added hereafter by written agreement of the parties.
- 1.17 **“Services”** means the use of the Software and other related services to be provided by the Provider to the Firm pursuant to the Order Form.
- 1.18 **“Software”** means the eState Planner estate management platform as a service (including the Provider Data) licensed to the Firm and the number of User licenses purchased by the Firm pursuant to the terms of the Order Form.
- 1.19 **“Term”** shall have the meaning given in Section 11.1.
- 1.20 **“Third Party Content”** means any data owned or licensed by a third party and inputted into the Software.
- 1.21 **“User”** means an individual user who (i) accesses the Website and/or is permitted to use the Software; and (ii) agreed to these Terms. Users may include employees or contractors of the Firm, and Clients who are authorized to use the Services.
- 1.22 **“Website”** means the eState Planner website made available at e-stateplanner.com or its sub domains or domains with identical names under other top domains and owned by Provider.

## 2 PRIVACY AND SECURITY

- 2.1 Please refer to the privacy policy by clicking [here](#) (the **“Privacy Policy”**) for information on how we or our licensors collect, use and disclose your Personal Information. By using the Services and the Website, you

agree to the use, collection and disclosure of personally identifiable information in accordance with the Privacy Policy.

### 3 FIRM USER ACCOUNTS

- 3.1 *Provisioning and Firm User Accounts.* Upon agreeing to an Order Form, the initial Administrator of the Firm will be permitted to register for a Firm User account. The initial Administrator may add other Administrators and authorize Firm Users subject to the limitations and additional terms described in the Order Form. The Initial Administrator and other Administrators shall be deemed to have the authority to manage (including adding and removing) Firm Users. Administrators may deactivate any Firm User if the Administrator wishes to terminate access to the Service for any Firm User. Access to specific features of the Services is only available to specific user types.
- 3.2 *Free Trial.* If a Firm agrees to a free trial pursuant to an Order Form or registers for a free trial on the Website (“**Free Trial**”), the Provider will make the applicable Services available to the Firm on a trial basis free of charge until the earlier of (a) the end of the Free Trial period for which the Firm registered to use the applicable Services, or (b) the start date of the Initial Term under an Order Form. Additional trial terms and conditions may appear on the Website’s Free Trial registration page. Any such additional terms and conditions are incorporated into these Terms by reference. Any Firm Data and/or Client Data accumulated by a Firm User during a Free Trial will be permanently lost unless the Firm User, on behalf of a Firm, agrees to an Order Form or exports such Firm Data and/or Client Data before the end of the Free Trial period. Notwithstanding anything to the contrary in Sections 9 and 10, during the Free Trial, the Services are provided “as-is” without any warranty, support or service levels and the Provider shall have no indemnification obligations nor liability of any type with respect to the Services for the Trial Period unless such exclusion of liability is not enforceable under Applicable Law in which case the Provider’s liability with respect to those Services provided during the Free Trial shall not exceed \$1,000.
- 3.3 *Registration.* Upon logging into the Software for the first time, the Administrators and Firm Users will be prompted to register for a Firm User account. Administrators and Firm Users agree to: (a) provide accurate, current and complete information as may be prompted by any registration forms on the Software or the Website (“**Registration Data**”); (b) maintain the security of their password; (c) maintain and promptly update the Registration Data, and any other information they provide to the Software or the Website, and to keep it accurate, current and complete; and (d) accept all risks of unauthorized access to the Registration Data and any other information provided to Provider. The Firm shall be responsible for all activity by Firm Users on the Software, including the activity performed on the Software through the Firm User accounts by an agent, representative, employee (including former employees who maintained access to the Services), or any other person acting on behalf of such Firm User. It is the responsibility of the Firm to delete Firm User accounts or otherwise remove access to Firm Users who should no longer be active (e.g. a Firm User who is no longer an employee or contractor of the Firm or a Vendor of the Firm).

### 4 LICENSE TO SOFTWARE, WEBSITE AND LICENSE RESTRICTIONS

- 4.1 *License to Software and Website by Firm and Firm Users* Provider hereby grants to Firm and Firm Users a non-exclusive, non-transferable license to use the Software and the Website and solely permit the Firm and Firm Users to use the Website and the functionality contained within the Software for legitimate purposes during the Term.
- 4.2 *License to Software and Website by Clients* Provider hereby grants to Clients who are authorized by a Firm or Firm User a non-exclusive, non-transferable license to use limited services of the Software and the Website (specifically the questionnaire) and solely permit Client to use the Website and the limited functionality contained within the Software for legitimate purposes during the Term.
- 4.3 *License Restrictions.* Except as set forth in this Agreement, the Order Form, any Schedule and to the extent contrary by Applicable Law: the Firm and Users may not (a) make or distribute copies of the Software or

Website; (b) alter, merge, adapt or translate the Software or Website, or decompile, reverse engineer, disassemble, or otherwise reduce the Software or Website to a human-perceivable form; (c) sell, rent, lease, host or sublicense the Software (except as is incidental or necessary for the provision of the Software to Users); (d) modify the Software or Website or create derivative works based upon the Software or Website, including specifically, documents generated by eState Planner (including content, layout, format and concept) which is owned by eStatePlanner; *provided however* that the foregoing will not restrict Firm's rights to exploit any Firm Data which may be incorporated into, reside in, or form a part of the Software; (e) use the Services or the Website in a manner that breaches the rights of any third party, any contract or legal duty or violate any Applicable Law; (f) copy the Services or Website or any part, feature, function or user interface thereof; (g) access or use the Services or Website in order to build a competitive product or service; (h) use the Services or Website other than for its intended purposes; and/or (i) do anything to interfere with or impair the intended operation of the Website.

Notwithstanding anything contained herein, documents (including without limitation, in respect of its content, layout, format and concept) ("Documents") generated using the Software, in any form, are subject to copyright and other intellectual property rights which is owned by the Provider and is licenced to the Firm and Firm Users on a limited basis. Documents, other than Firm Data, can only be used for the Client for which they were generated and may not be used, in any way, in whole or in part, for any other purpose other than for that Client's benefit. For example, the copying of any part of a Document for a document other than for the specific Client for which it was generated will violate these Terms of Service and will give rise to claim for specific performance or damages.

## 5 HOSTING AND SUPPORT

- 5.1 *Hosting.* The Provider will cause the Software to be hosted on a cloud server maintained by a reputable third-party provider ("**Cloud Provider**"). The Provider will be responsible for contracting with the Cloud Provider, and for paying all fees and charges of the Cloud Provider. All Firm Data stored on the Services is located on servers operated by the Cloud Provider in Canada.
- 5.2 *Backups.* The Provider will create a backup or cause its Cloud Provider to create a backup of the Software (including all Firm Data) no less frequently than once every twenty-four (24) hours.

## 6 FIRM REPRESENTATIONS AND WARRANTIES; FIRM RESPONSIBILITIES

- 6.1 *Firm Representations and Warranties.* The Firm represents and warrants that the Firm's use of the Services or Website and the use of the Services or Website by the Firm's Users will (a) be consistent with this Agreement and any licenses provided; and (b) comply with Applicable Law, including Privacy Laws and CASL. The Firm shall be liable for the acts and omissions of any of Firm Users, directors, officers, employees, contractors, representatives, or agents as if such act or omission were an act or omission of the Firm.
- 6.2 *Active Law Society License Requirement.* The Firm agrees that access to the Software and Services is conditional upon each Firm User being a licensee in good standing, or being supervised by a licensee in good standing, of its applicable law society or legal regulatory body at all times during the Term. This condition does not apply to Firms and Firm Users that access the Software, but do not generate documents, other than summaries. The Provider reserves the right, in its sole discretion, without any notice or liability to the Firm or any User, to impose limits, change, suspend or terminate the Firm or any User's license to use the Software, or any portion thereof, for failure to comply with this Section 6.2.
- 6.3 *Law Society of Ontario ("LSO") A2I Program* For non-lawyer Firms and Firm Users you are advised that:
- (i) that eState Planner is an LSO approved participant in A2I;
  - (ii) that eState Planner's participation in A2I, and the LSO's approval, is limited to the specific Approved Services set out in the Certificate;

- (iii) that the LSO has not certified or endorsed the effectiveness of the Services;
  - (iv) information about how to contact eState Planner in order to provide feedback or make a Complaint;
  - (v) eState Planner is not a law firm. Though eState Planner may be owned in whole or in part by lawyers, use of the Approved Services shall not create a lawyer-client relationship between the user and any owner of eState Planner. Some of the people who manage eState Planner are not lawyers or paralegals licensed and regulated by the LSO.
  - (vi) A lawyer who is licensed and regulated by the LSO oversees eState Planner's delivery of the Approved Services to users;
  - (vii) Use of eState Planner by licensees does not:
    - (a) Render the licensee a participant in A2I.
    - (b) In any way alter the licensee's professional obligations or their client's rights under the Law Society Act, the By-Laws and the Rules of Professional Conduct.
  - (viii) Some of the people involved in the provision of Approved Services by eState Planner are not LSO Licensees. Accordingly, some service protections applicable to legal services provided by an LSO Licensee may be different or may not be available, including:
    - (a) any communications with or information provided to eState Planner may not be subject to solicitor-client privilege;
    - (b) eState Planner may be required under law to disclose information provided to it by the user, including to authorities or third parties;
    - (c) another party involved in the matter may be using the same Approved Services provided by eState Planner; and
    - (d) there is no statutory complaints process available for the Approved Services.
  - (ix) The LSO shall not be responsible or liable to users for any claims, losses, damages, or matters arising from the advertising of Services, the provision of Approved Services, the non-suitability of the Approved Services for the purposes intended by any user, or any other quality, availability, or service issue, failure, or liability of the Services or eState Planner.
  - (x) Your Personal Information, may be disclosed to the LSO to ensure eState Planner's compliance with the terms of A2I and the evaluation of A2I by the LSO
- 6.4 *Additional Responsibilities.* The Firm agrees (a) that it shall be responsible for providing and maintaining its own Internet access with the necessary bandwidth speeds as recommended by the Provider and all necessary telecommunications equipment, services, software and other materials (collectively, "**Firm Equipment**") at the Firm's location(s) necessary for accessing the Services; (b) the Firm represents and warrants that it has the right to enter into this Agreement and to allow the Provider to perform the Services; and (c) the Firm is solely responsible for providing, updating, uploading, modifying and maintaining the Firm Data.
- 6.5 *Firm Indemnity Regarding Use of Services and Website and Firm Data.* The Firm shall be solely responsible for all inputs, selection and use of the Services and Website and all Firm Data or other data transmitted, received or created using the Services or Website, even if transmitted, received or created by someone else, and the Firm agrees to defend, indemnify and hold the Provider, its directors, officers, employees, agents, contractors and affiliates harmless from any loss, damage or liability which may result therefrom or from any breach by the Firm or Firm Users of this Agreement.
- 6.6 *Acceptable Use of the Services and Website.* The Firm and Firm Users may not:
- (a) use, or encourage, promote, facilitate or instruct others to use the Services or the Website for any illegal, harmful or offensive use or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful or offensive;
  - (b) use the Services or the Website to violate the security or integrity of any network, computer or communications system, software application, or network or computing device;

- (c) make network connections to any users, hosts, or networks unless the Firm has permission to communicate with them; and/or
- (d) distribute, publish, send or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising or solicitations (like 'spam'), including commercial advertising and informational announcements.

The Provider reserves the right, but does not assume the obligation, to investigate any violation of this Section or misuse of the Services or Website.

## 7 FEES, EXPENSES AND PAYMENT

- 7.1 *Fees.* In consideration for the Services described herein, the Firm shall pay to the Provider, in advance, the Fees more particularly described in the Order Form and any applicable Schedules. Except as otherwise specified herein or in the Order Form, (i) the Fees are based on the Services purchased and not actual usage, (ii) payment obligations are non-cancelable and Fees paid are non-refundable, and (iii) a subscription type (pertaining to certain User quantities) cannot be decreased during the relevant subscription term.
- 7.2 *Invoices and Payments.* The Provider shall invoice the Firm, in advance, for the Services in accordance with the terms of the Order Form. The Firm shall pay such invoices within five (5) calendar days of receipt (or such other time as specified in the Order Form or any Schedule). Taxes shall be identified and shown as separate items on each invoice. Late payments are subject to interest in the amount of two percent (2%) per month on overdue amounts and interest thereon.
- 7.3 *Taxes.* The Firm shall be responsible for all applicable sales, goods and services, harmonized sales, value added, use, excise, other similar taxes, levies and charges not otherwise included in the Fees imposed by applicable tax authorities on the provision of Services hereunder. The Firm shall pay to the Provider such taxes, levies and charges which the Provider is registered to charge and collect.
- 7.4 *Suspension of Service and Acceleration.* If any charge owing by the Firm under these Terms or any other agreement is six (6) days or more overdue, the Provider may, without limiting its other rights and remedies, accelerate the Firm's unpaid fee obligations under such agreements, so that all such obligations become immediately due and payable, and suspend the Services until such amounts are paid in full.
- 7.5 *Modification of Fees.* Unless as otherwise provided in the Order Form, the Provider reserves the right to amend the Fees on or related to the Services from time to time, upon providing the Firm with thirty (30) days advanced written notice, by e-mail to an Administrator of the Firm, prior to any Renewal Term (defined below). If the Firm does not accept the amended or new Fees, the Firm must terminate these Terms prior to the end of the thirty (30) day period. If the Terms are not terminated prior to the start of the Renewal Term, the Firm or any of Firm Users' continued use of the Services after the effective date of the change indicates the Firm's agreement with the new or changed Fees.

## 8 INTELLECTUAL PROPERTY, FIRM DATA AND PRIVACY

- 8.1 *Ownership of the Software and Website.* Except for any grant of licenses in this Agreement or as otherwise expressly provided in this Agreement, the Provider and its licensors, as applicable, shall retain all copyright, patent rights, trade secret rights, trademarks and other proprietary rights or interests ("**Intellectual Property Rights**") in the Software and Website and Documents. Nothing in this Agreement, the Order Form, or any Schedules shall be deemed to convey to the Firm or any other party, any ownership right, in or to Software and Website and Documents.
- 8.2 *Ownership of Firm Data.* The Provider acknowledges and agrees that, as between the Parties, the Firm is the sole and exclusive owner of the Firm Data, and that no right or interest in the Firm Data, other than pursuant



to Section 8.3 of this Agreement, and will be collected, handled and used by the Provider only in compliance with the terms of this Agreement.

- 8.3 *License from Firm to Provider.* The Firm hereby grants to the Provider a non-exclusive, royalty-free, non-transferable, limited right to use during the Term, Firm Data provided to the Provider solely to perform Services pursuant to this Agreement.
- 8.4 *Ownership of Client Data.* The Provider acknowledges and agrees that, as between the Parties, the Client is the sole and exclusive owner of the Client Data, and that no right or interest in the Client Data, other than pursuant to Section 8.5 of this Agreement, and will be collected, handled and used by the Provider only in compliance with the terms of this Agreement.
- 8.5 *License from Client to Firm and Provider.* The Client hereby grants to the Firm and the Provider a non-exclusive, royalty-free, non-transferable, right to use Client Data provided to the Firm and Provider solely to perform Services pursuant to this Agreement.
- 8.6 *All Other Rights Reserved, Further Assurances.* Except as expressly set forth herein or in the Order Form or a Schedule, all Intellectual Property Rights are expressly reserved by the parties. The Firm or the Provider, as applicable, shall execute and deliver such instruments and take such other steps as may be requested by the Provider or the Firm, as applicable, from time to time in order to give effect to the provisions of this Article.
- 8.7 *Third Party/Open Source Content and Software.* The Software may contain or provide the ability to integrate the Service with Third Party Content, third party software and/or open source software, which may be subject to third party licenses and require notices and/or additional terms and conditions (“**Third Party Licenses**”). These Third Party Licenses are made a part of and incorporated into these Terms. By accepting these Terms, the Firm and Firm Users are also accepting the Third Party Licenses, if any, set forth therein. To view the Third Party Licenses, please contact support@e-stateplanner.com. The Firm and Firm Users agree that the Provider has no liability arising from use of any integrations or arising from such Third Party Content, third party software, open source software and related services. The Provider may modify or cancel the integrations at any time, without notice.
- 8.8 *License by Firm to Use Feedback.* The Firm grants the Provider a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by the Firm or Firm Users relating to the operation of the Software, the Services, or the Website.

## 9 DISCLAIMER AND LIMITATION OF LIABILITY

- 9.1 *Disclaimer.* Except as set out in the Order Form or this Agreement, the Services and the Website are provided to the Firm and Firm Users and Clients on an “as is” basis, without warranties from the Provider of any kind, either express or implied. The Provider expressly disclaims all other warranties, express or implied, including, without limitation implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, unless otherwise specified in the applicable Order Form. The Provider disclaims all liability for any content posted on the Website that may be outdated, inaccurate or misleading. The Provider does not warrant that the Services or the Website will be error-free or will operate without interruption.
- 9.2 *Provider Data and Services Disclaimer:* The Provider Data and the Services do not constitute legal advice. While the Provider will use reasonable efforts to ensure that the Provider Data is current and accurate, the Provider does not warrant or guarantee the quality, accuracy, or completeness of the Provider Data.
- 9.3 *No Indirect, Etc. Damages.* Under no circumstances shall either party be liable to the other party for any claim for (i) indirect, special or consequential damages, (ii) compensation for loss of profits, anticipated revenue, savings or goodwill, or (iii) exemplary, aggravated or punitive damages howsoever incurred; in each

case under any theory of law or equity, arising out of or in any way related to this Agreement or any Services, even if advised of the possibility thereof.

- 9.4 *Limitation of Aggregate Liability.* Except as otherwise specifically provided under this Agreement, the liability of either party for any claim, demand or cause of action whether based on contract, tort (including negligence) or otherwise, or for any losses, damages, costs and expense (including but not limited to legal fees) (collectively, “**Losses**”) arising out of or resulting from this Agreement shall not exceed the greater of \$2,500 and the Fees paid or payable by the Firm to the Provider under this Agreement in the six (6) months preceding the Loss.
- 9.5 *Reasonableness of Limitations.* The Provider, the Firm and Users agree that the limitations contained in this Section 9 are reasonable in scope and form an integral part of this Agreement.

## 10 INDEMNIFICATION

- 10.1 *Indemnity by Firm.* The Firm agrees to defend, indemnify and hold the Provider, its directors, officers, employees, agents, contractors and affiliates, harmless from any loss, damage or liability, including all reasonable legal costs, that the Provider may incur as a result of or in connection with any third party claim relating to or resulting from (a) any breach by the Firm of the Firm’s obligations under this Agreement, including its obligation to comply with all Applicable Law; or (b) any third party claim that the Firm’s use of any Firm Data or Third Party Content infringes, misappropriates or otherwise violates the intellectual property rights of any third party.
- 10.2 *Indemnity by Provider.* The Provider agrees to defend, indemnify and hold the Firm, its directors, officers, employees, agents, contractors and affiliates, harmless from any loss, damage or liability, including all reasonable legal costs, that the Firm may incur as a result of or in connection with: (a) any valid claim that the Software or any portion of it infringes the intellectual property rights of any third party; (b) any third-party claim relating to or resulting from any breach by the Provider of the Provider’s obligations under this Agreement, including its obligation to comply with all Applicable Law.

## 11 TERM

- 11.1 *Term.* The term of this Agreement (“**Term**”) shall commence on the effective date or date of acceptance of these Terms set out in the Order Form, and will continue for any term identified as a Free Trial period, and if not terminated prior to expiry of the Free Trial period, then the length of time described in the Order Form as the monthly initial term or the annual initial term, as applicable (each an “**Initial Term**”). Thereafter, this Agreement will automatically renew for successive terms equal to the length of time of the Initial Term (“**Renewal Terms**”), unless terminated in accordance with this Agreement.

### 11.2 Termination.

- (a) *Prior to Renewal.* Except in the case of a month-to-month term, either party may terminate this Agreement by providing written notice to the other party at least (60) days prior to the end of the then current term. For month-to-month terms, the Firm may provide thirty (30) days prior written notice to terminate this Agreement. For greater certainty, such notice may be given prior to the end of such current term but will only take effect at the end of the then current term.
- (b) *Breach.* Either party may terminate this Agreement if the other party materially breaches this Agreement, including any failure to make payments when due, and such other party fails to cure such breach in all material respects within thirty (30) days after being given notice of the breach from the non-breaching party.



- (c) *Insolvency.* Either party may terminate this Agreement, upon written notice to the other party, if such other party is subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily, if a receiver is appointed with or without the other party's consent, if the other party assigns its property to its creditors or performs any other act of bankruptcy, or if the other party becomes insolvent and cannot pay its debts when they are due.
- 11.3 *Early Termination.* If this Agreement is terminated pursuant to Section 11.2 prior to the end of such current term, the Firm shall pay to the Provider, as liquidated damages and not a penalty, an amount equal to the total monthly Fees (as described in the Order Form) multiplied by the number of months remaining prior to the end of such current term.
- 11.4 *Termination and Suspension of Users.* Notwithstanding any provision of these Terms, the Provider reserves the right, in its sole discretion, without any notice or liability to the Firm or Firm User, to (a) terminate a Firm or Firm User's license to use the Software, or any portion thereof; (b) block or prevent a Firm or Firm User's future access to and use of all or any portion of the Software or the Website; (c) change, suspend, or discontinue any aspect of the Software or the Website; and (d) impose limits on the Software or Website.
- 11.5 *Effect of Termination.* If this Agreement is terminated in accordance with Section 11.2, then:
  - (a) Each party shall promptly deliver to the other party, all papers, databases, documents, software programs, and other tangible items (including copies) constituting the other party's Confidential Information in its possession or under its control, or on request, destroy such materials and certify that it has done so;
  - (b) upon a request by the Firm within thirty (30) days of termination, the Provider will within fifteen (15) days of such request, provide to the Firm a copy of the Firm Data in a format that is readable using commercially available third party software and or the Software; and
  - (c) upon a request by the Firm within thirty (30) days of termination, the Provider will delete and cause to be deleted all Firm Data from all computer systems owned and controlled by the Provider.

## 12 CONFIDENTIALITY AND PRIVACY

- 12.1 *Definition of Confidential Information.* "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Firm's Confidential Information includes Firm Data and Client Data. The Provider's Confidential Information includes the Software, the Services and the terms and conditions of this Agreement. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) is independently developed by the Receiving Party.
- 12.2 *Protection of Confidential Information.* The Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

- 12.3 *Compelled Disclosure.* The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party, if permitted by law, gives the Disclosing Party prior notice of the compelled disclosure.
- 12.4 *Destruction.* Each party, upon the request of the other party or within thirty (30) days after termination of this Agreement (whichever is earlier), agrees to return and cause its representatives to return, all copies of Confidential Information belonging to or provided by the other party or destroy such copies as directed by that party and certify their destruction.
- 12.5 *Privacy Laws.* The Firm and authorized Users represent that (a) they have complied with all applicable Privacy Laws in connection with the collection, use and disclosure of Personal Information, and the provision of Personal Information to the Provider complies with all applicable Privacy Laws; and (b) all individuals to whom such Personal Information relates have consented to the Provider's collection, use and disclosure of such Personal Information for the purposes disclosed in this Agreement or our Privacy Policy.
- 12.6 *Indemnity.* Each party agrees to indemnify and hold the other party harmless from and against all loss or damage or any kind and nature suffered by the other party as a result of any breach by it or its representatives of its obligations relating to confidentiality and privacy contained in this Section 12.

### 13 GENERAL

- 13.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. This Agreement shall be treated, in all respects, as an Ontario contract.
- 13.2 *Survival.* Any terms and conditions of this Agreement which by their nature extend beyond termination of this Agreement shall survive such termination. This includes, without limitation Section 8 (Intellectual Property, Firm Data and Privacy) (but not section 8.3 (License from Firm to Provider)), Section 9 (Disclaimer and Limitation of Liability), Section 10 (Indemnification), Section 11.5 (Effect of Termination), Section 12 (Confidentiality) and applicable provisions of Section 13 (General).
- 13.3 *Dispute Resolution.*
- (a) This Section 13.3 sets out the process (the “**Dispute Resolution Process**”) for resolving all disputes, issues, controversies, and/or claims arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement (“**Disputes**”).
  - (b) Either party may initiate the Dispute Resolution Process by sending a notice of a Dispute (a “**Dispute Notice**”) to the other party. Upon delivery of a Dispute Notice to either party, each party shall appoint a knowledgeable, responsible, non-lawyer, management representative to meet and negotiate in good faith with the representative of the other party in order to resolve the Dispute.
  - (c) All Disputes that are not resolved within thirty (30) days following delivery of a Dispute Notice shall be arbitrated and finally resolved, with no right of appeal, even on questions of law, pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. The place of arbitration shall be Toronto, Ontario, Canada. For greater certainty, remote arbitration is allowed when appropriate under section 22 of the Arbitration Act. The language of the arbitration shall be English.
  - (d) Notwithstanding anything contained in the Agreement to the contrary, either party shall be entitled to seek injunctive or other equitable relief from a court of competent jurisdiction whenever the facts or circumstances would permit a party to seek such relief.

- 13.4 *Relationship.* The relationship between the Firm and the Provider will at all times be one of independent contractor and nothing herein shall be construed as implying an employment, partnership, or joint venture relationship. The Provider is not an employee of the Firm and is not entitled to any benefits that the Firm may provide to its employees. Nothing herein shall be construed as empowering either party to act as a representative or agent of the other party. Neither party shall have the authority to enter into any contract, nor to assume any liability, on behalf of the other party, nor to bind or commit the other party in any manner, except as expressly provided in this Agreement.
- 13.5 *Force Majeure.* Except as expressly provided otherwise in this Agreement, dates and times by which the Firm or the Provider is required to perform under this Agreement, the Order Form, or a Schedule (except for any payment obligation) will be postponed automatically to the extent and for the period of time that the Firm or the Provider, as the case may be, is prevented by causes outside of its reasonable control from meeting such dates and times by reason of any cause beyond its reasonable control (provided that a lack of financial resources shall not constitute an event beyond the reasonable control of a party). The following events are deemed to be outside of a party's reasonable control: acts of God, acts of government, acts of war, civil or military unrest, acts of public enemies, epidemics, pandemics, riots, fire, unavailability of communications or electrical power service provided by third parties, governmental regulations superimposed after the fact and earthquakes, explosions, floods or other disasters provided that such causes could not have been reasonably foreseen and the risk and/or consequences of such causes mitigated on a commercially reasonable basis. The parties agree that an event shall not be considered to beyond reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of the Order Form or Schedule would have put in place contingency plans to either materially mitigate or negate the effects of such event. A party seeking to rely on this Section must (i) notify the other party immediately and in detail of the anticipated or actual commencement of and the cause of postponement; (ii) notify the other party promptly of any material changes in the circumstances which resulted in the postponement including when the reason for the postponement is at an end; and (iii) use diligent efforts to avoid or remove such cause of non-performance and to minimize the consequences thereof, including utilizing all resources reasonably required in the circumstances including without limitation obtaining supplies or services from other resources if they are reasonably available.
- 13.6 *Non-Solicitation.* During the Term and for a period of one (1) year following termination of this Agreement for any reason, neither party may, directly or indirectly, (a) solicit for employment any employee or independent contractor of the other party who was materially involved in the performance of this Agreement; or (b) induce or attempt to induce any employee or independent contractor of the other party who was materially involved in the performance of this Agreement to leave his or her employ or contract, as applicable, with such other party. The foregoing will not prevent either party from hiring any employee or independent contractor who responds to a job posting or advertisement that is not specifically targeted at such employee or independent contractor.
- 13.7 *Currency.* Unless otherwise specified in the Order Form, all references to amounts of money in this Agreement refer to Canadian (CAD) currency.
- 13.8 *Notices.* Notices that we give to you (other than notice of amendment of this Agreement), may be provided in any of the following ways. First, we may email the Administrator(s) at the contact information provided in the Order Form or any registration data. Second, we may post a notice on the Website. It is your responsibility to periodically review the Website for notices. The Firm may provide notice to the Provider by (a) submitting a ticket through the helpdesk; or (b) e-mailing the Provider.
- 13.9 *Successors and Assigns.* This Agreement shall ensure to the benefit of, and be binding on, the parties and their respective successors and permitted assigns. The Provider may assign this Agreement, in its sole discretion.

- 13.10 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 13.11 *Entire Agreement.* This Agreement, the Order Form and the Schedules constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever.
- 13.12 *Waiver.* No term or provision of this Agreement is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the party claiming to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.
- 13.13 *Fully Negotiated Agreement.* The Firm and the Provider acknowledge and agree that all of the provisions of this Agreement have been fully negotiated, that neither of them shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favour of one party on the ground that such provision was drafted by the other party.
- 13.14 *Language.* The parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.
- 13.15 *Modification of Terms.* Except for a modification of fees, which shall be governed by section 7.5, the Provider may modify this Agreement at any time by (a) posting a notice on the Website or on the Software; or (b) by e-mailing the Administrator(s) of the Firm. The Provider will also update the “Last Updated” date at the top of the Agreement. You are responsible for checking the Agreement whenever you access or use the Services. By continuing to access or use the Services, you are indicating that you agree to be bound by the modified terms. If the modified terms are not acceptable to you, you must stop accessing and using the Services. Notwithstanding the foregoing, the information and material on the Website, and the Website, may be changed, withdrawn or removed at any time in the Provider’s sole discretion without notice.
- 13.16 *Questions.* If you have any questions regarding these Terms or your use of the Services, please contact us here:

**Vested Software Inc.**  
Support@e-stateplanner.com