

CLAY SOFTWARE CORPORATION
TERMS & CONDITIONS (CANADA)

The Clay Software Corporation Terms and Conditions (Canada) (the “**Terms & Conditions**”, together with any Order Forms, the “**Agreement**”) form an agreement between the Customer identified in the Order Form accessing, downloading, installing or otherwise using (the terms “**use**” and “**using**” will refer to any of the foregoing) the Clay Services (as defined below) and Clay Software Corporation (“**Clay**”), the supplier of the Clay Services, and is entered into on the Effective Date set out in the applicable Order Form. Each of Clay and Customer shall individually be referred to as a “**Party**” and jointly as the “**Parties**”.

BY ENTERING INTO AN ORDER FORM OR BY USING THE CLAY SERVICES, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ, ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THESE TERMS & CONDITIONS, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 11(I). IF CUSTOMER DOES NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, CUSTOMER WILL IMMEDIATELY CEASE ANY FURTHER USE OF THE CLAY SERVICES. CUSTOMER REPRESENTS AND WARRANTS TO CLAY THAT CUSTOMER HAS THE CAPACITY TO ENTER INTO THIS LEGALLY BINDING AGREEMENT. IF CUSTOMER IS USING THE CLAY SERVICES ON BEHALF OF ANOTHER PERSON, CUSTOMER HEREBY REPRESENTS AND WARRANTS TO CLAY THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH PERSON TO THIS AGREEMENT.

These Terms & Conditions do not, absent the execution of an Order Form create any business relationship or impose any obligation on Clay to provide any license, access, product, or service.

1. Definitions

Capitalized terms used in this Agreement have the meaning ascribed to them in the preamble or in this Section 1 as follows:

- (a) “**Aggregated Data**” has the meaning in Section 3.
- (b) “**Affiliate**” means, with respect to a Party, any corporation or other legal entity which is directly or indirectly controlling or controlled by, or under common control with that Party. As used in this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation or legal entity.
- (c) “**Amendment**” has the meaning in Section 11.
- (d) “**Applicable Laws**” means applicable statutes, by-laws, rules, regulations, orders, ordinances or judgments, in each case of any governmental or regulatory authority.
- (e) “**CASL**” has the meaning in Section 8.
- (f) “**Clay**” has the meaning in the preamble.

- (g) **“Clay Content”** means information obtained by Clay from publicly available sources or its third party content providers and made available to Customer through the Clay Services or pursuant to an Order Form.
- (h) **“Clay Indemnatee”** has the meaning in Section 8.
- (i) **“Clay Metadata”** has the meaning in Section 3.
- (j) **“Clay Property”** has the meaning in Section 3.
- (k) **“Clay Services”** means the Clay Solution Services and the Professional Services, collectively, and any part thereof.
- (l) **“Clay Solution”** means the Clay’s proprietary platform with an integrated business management software and includes each Subscription subscribed for by the Customer.
- (m) **“Clay Solution Services”** means the services through which Clay hosts and makes available the Clay Solution through Subscriptions under which access is made available to Customer. The term “Clay Solution Services” does not but does not include Professional Services, Clay Content, or Third-Party Products.
- (n) **“Customer”** has the meaning in the applicable Order Form.
- (o) **“Customer Client”** means a person who has entered into a Transaction with the Customer and purchased one or more Housing Unit(s).
- (p) **“Customer Agreement”** means any draft agreement or executed agreement together with any other documentation posted by Customer or its Permitted Users that may be viewed on or accessed through the Clay Solution Services related to any Transaction or otherwise.
- (q) **“Customer Data”** means any data, information, content, records, and files that Customer (or any of its Permitted Users) loads or enters into, transmits to, or makes available to the Clay Services, including but not limited to Customer Content and Personal Information.
- (r) **“Customer Content”** means any content, information, scripts, guides, documents, records, and files that is loaded, received through, transmitted to or entered into the Clay Solution Services, including any Customer Agreement.
- (s) **“Customer Indemnatee”** has the meaning in Section 8.
- (t) **“Deliverables”** has the meaning in Section 3.
- (u) **“Documentation”** means Clay’s manuals, instructions or other documents or materials that Clay makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Clay Solution Services.

- (v) **“End User”** means any Person to whom Customer makes the Clay Solution Services available.
- (w) **“Fees”** has the meaning in Section 6.
- (x) **“Feedback”** has the meaning in Section 3.
- (y) **“Housing Unit”** means a single-family attached or detached dwelling (including without limitation a condominium or townhome), including the lot on which such dwelling is located, for which a building permit has been issued and that is or will be available for sale by the Customer.
- (z) **“Initial Order Term”** has the meaning in the applicable Order Form.
- (aa) **“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- (bb) **“Licensed Third Party Technology”** means third party technology that is licensed under separate license terms and not under this Agreement.
- (cc) **“Loss”** or **“Losses”** means any and all losses, damages, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable legal fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- (dd) **“Manager Users”** means those Customer’s employees, individual independent contractors under staff augmentation arrangements with Customer, who may access the Clay Solution Services and use the Subscription pursuant to the access rights granted herein.
- (ee) **“Modifications”** means modifications, improvements, customizations, patches, bug fixes, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations, and **“Modify”** has a corresponding meaning.
- (ff) **“Order Form”** means any order form that incorporates these Terms & Conditions and is executed by both Parties.
- (gg) **“Order Form Term”** has the meaning in the applicable Order Form.
- (hh) **“Person”** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate or governmental or regulatory authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.
- (ii) **“Personal Information”** means information about an identifiable individual transferred by Customer, or Permitted Users, to Clay hereunder.

- (jj) **“Permitted User”** has the meaning set out in Section 2 (a).
- (kk) **“Professional Services”** means the consulting, training and other professional services described in an Order Form. The term “Professional Services” does not include Clay Solution Services.
- (ll) **“Professional Services Fees”** means the Fees for the Professional Services.
- (mm) **“Renewal Term”** has the meaning in the applicable Order Form.
- (nn) **“Subscription”** means a limited right to use and access the Clay Solution Services as set out in an applicable Order Form.
- (oo) **“Subscription Fees”** means the Fees for each Subscription as set out in an applicable Order Form.
- (pp) **“Term”** has the meaning in Section 10.
- (qq) **“Terms and Conditions”** has the meaning in the preamble.
- (rr) **“Third-Party Products”** has the meaning in Section 2.
- (ss) **“Transaction”** or **“transaction”** means a sale of a Housing Unit which will be completed if certain conditions are met (as agreed) by the Customer Client and Customer to the transaction.
- (tt) **“Website”** means launchclay.com.

2. Clay Services

- (a) Provisioning of the Clay Solution Services. Subject to Customer’s and its Permitted Users’ compliance with the terms and conditions of this Agreement:
 - (i) Clay hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable right to access and use the Clay Solution Services through each Subscription provided under an applicable Order Form during the applicable Order Form Term, provided that, Customer will use the Clay Solution Services or Clay Content solely for Customer’s internal business use. Customer may permit its Manager Users and End Users (collectively **“Permitted Users”** and references to **“user”** in an Order Form means Permitted Users) to access and use the Clay Solution Services; and
 - (ii) Clay will provide the support services set out at [X].
- (b) Restrictions on Use. Customer will not itself, and will not permit others to:
 - (i) sub-license, sell, rent, lend, lease or distribute the Clay Solution Services, Clay Content or any Intellectual Property Rights therein or otherwise make

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the Clay Solution Services or Clay Content available to others other than Permitted Users;

- (ii) use the Clay Services to permit timesharing or service bureau use for third parties;
 - (iii) use or access the Clay Services or Clay Content: (A) in violation of any Applicable Law or Intellectual Property Right; or (B) in a manner that threatens the security or functionality of the Clay Solution Services;
 - (iv) use the Clay Solution Services or Clay Content to create, collect, transmit, store, use or process any Customer Data, or provide to Clay any algorithms or other materials, that:
 - (A) contain any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
 - (B) Customer does not have the lawful right to create, collect, transmit, store, use or process; or
 - (C) violate any Applicable Laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity);
 - (v) Modify the Clay Solution Services or Clay Content;
 - (vi) reverse engineer, de-compile or disassemble the Clay Solution Services;
 - (vii) remove or obscure any proprietary notices or labels on the Clay Solution Services or Clay Content, including brand, copyright, trademark and patent or patent pending notices;
 - (viii) access or use the Clay Solution Services for the purpose of building a competitive product or service;
 - (ix) perform any vulnerability, penetration or similar testing of the Clay Solution Services; or
 - (x) use or access the Clay Services or Clay Content in a manner that is contrary to any additional restrictions set out in the Order Form or for any purpose or in any manner not expressly permitted in this Agreement.
- (c) Subcontracting. Clay may subcontract or delegate its obligations under this Agreement. The delegating or subcontracting of all or any part of Clay's obligations under this Agreement to any third party will not relieve Clay from any obligation or liability under this Agreement.
- (d) Suspension of Access; Scheduled Downtime; Modifications. Clay may from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity:

- (i) suspend Customer's, any Permitted Users' access to or use of the Clay Services, Clay Content, or any component thereof and may monitor or remove any Customer Data submitted to the Clay Services:
 - (A) for scheduled maintenance for which Clay has provided ten (10) days' prior written notice;
 - (B) due to a Force Majeure;
 - (C) due to Customer's or its Permitted Users breach of this Agreement;
 - (D) to address any emergency security concerns that may have an impact on the security of the Clay Services or Customer Data;
 - (E) if Customer or any Permitted User posts Customer Content that is offensive, libelous, obscene, indecent, harassing, defamatory, hateful, infringing, illegal, or that otherwise violates any provisions of Clay's policies, Applicable Laws or this Agreement;
 - (F) if required to do so by a governmental or regulatory authority or as a result of a change in or as required by Applicable Law, provided that Clay will provide prior written notice if legally permitted; or
 - (G) otherwise as permitted under this Agreement; and
 - (ii) Modify the Clay Services.
- (e) Third-Party Products. The Clay Solution Services may contain the use of Licensed Third Party Technology or other third party products that are owned by third parties (collectively "**Third-Party Products**"). For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to Customer for acceptance within the Clay Solution Services by website link or otherwise. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install, access, or use such Third-Party Products. Clay cannot guarantee the continued availability of such Third-Party Products features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Products ceases to make the Third-Party Products available for interoperation or otherwise in connection with the corresponding service features in a manner acceptable to Clay. Clay is not responsible for any disclosure, Modification or deletion of Customer Data resulting from access by such Third-Party Products or its provider.
- (f) Use of the Clay Solution Services. any Subscription purchased after the the Initial Order Form as set out in an Order Form executed by the Parties must be purchased as an individual Subscription via a separate Order Form. Any added Subscriptions will terminate upon the expiry or termination of this Agreement.
- (g) Customer Responsibilities.

- (i) Customer will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Clay Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “**Equipment**”).
- (ii) Customer will ensure that: (A) all Permitted Users comply with this Agreement; and (B) none of the Permitted Users bring or maintain any Action against Clay, its partners, employees, officers, directors, Affiliates, agents, contractors, successors, and assigns and those of its Affiliates in respect of any matter related to or in connection with the subject matter of this Agreement. Customer shall be liable for any breach by a Permitted User of this Agreement.
- (iii) Clay does not verify the information in Customer Client profiles and does not represent or warrant that the information in these profiles is accurate. Customer agrees and understands that any Customer Content that Customer or its Permitted Users provides or accepts may be viewed by the general public and will not be treated as Confidential Information.
- (iv) Clay may (unless prohibited by Applicable Law) delete Customer Data that Clay, deems to be in violation of any Applicable Law (including trademark and copyright law), to be in violation of this Agreement, or to be abusive, defamatory, obscene or otherwise unacceptable.
- (v) Clay does not guarantee that it will pre-screen Content or Customer Content. Clay does not guarantee that the Clay Services will be free from Customer Content or Content that is inaccurate, deceptive, offensive, threatening, defamatory, unlawful or otherwise objectionable. Even in the event that Clay chooses to monitor any Content or Customer Content, Clay assumes no responsibility for, or any obligation to monitor or remove, such Content or Customer Content. Clay reserves the right to edit, remove, or refuse to post any Content or Customer Content.
- (h) Customer-provided Software and Implementation Activities. Customer acknowledges that Clay’s ability to provide the Clay Solution Services is dependant on certain hardware, software, and systems provided by Customer, as well as any integrations or configurations to be provided pursuant to the Professional Services. For the avoidance of doubt, Customer will be required to continue to pay Fees if Clay is unable to provide the Clay Services due to Customer’s failure or delay in providing any of the foregoing.
- (i) Data Back Up. The Clay Services do not replace the need for Customer to maintain regular data backups or redundant data archives.
- (j) Professional Services. Clay will perform Professional Services set out in an applicable Order Form. The Parties may also set out deliverables to be delivered by Clay (“**Deliverables**”) in an Order Form. Customer acknowledges and agrees that Clay’s performance of the Professional Services is dependent on Customer’s

performance of certain activities and tasks as may be reasonably requested by Clay to facilitate Clay's timely performance of the Professional Services, including, without limitation, providing Clay with access to sufficiently qualified employees of Customer, Customer facilities, or working space or office support at such Customer facilities ("**Dependencies**"). Clay will not be liable for any delay or non-performance of any Professional Services caused by Customer's non-performance or inadequate performance of any Dependencies. All Professional Services will be performed remotely unless otherwise indicated in an Order Form as being an on-site provided service.

3. **Ownership; Reservation of Rights**

- (a) Customer retains all rights, title and interest including all intellectual property rights in and to Customer Data. Customer grants to Clay a nonexclusive, worldwide, royalty-free, transferable, sublicensable, fully paid-up license to access, collect, use, process, store, disclose, transfer, transmit, copy, Modify and display Customer Data to: (i) provide the Clay Services; (ii) improve and enhance the Clay Services and its other offerings; and (iii) produce or generate data, information, or other materials that are anonymized and not identified as relating to a particular individual or company (such data, information and materials, the "**Aggregated Data**"). Aggregated Data will not contain any Personal Information. Clay may use, process, store, disclose and transmit the Aggregated Data to improve the Clay Services for Customer and for its other customers.
- (c) Clay or its licensors retain all ownership and Intellectual Property Rights in and to: (i) the Clay Services; (ii) Clay's Confidential Information including Documentation; (iii) anything developed or delivered by or on behalf of Clay under this Agreement including Deliverables, Aggregated Data, Clay Metadata (as defined below), and any output or reports generated for Customer by the Clay Services; and (iv) any Modifications to the foregoing (i), (ii), or (iii) (collectively "**Clay Property**").
- (d) Clay grants to Customer a perpetual, non-exclusive, royalty-free, non sublicensable, non transferable license to use and copy the reports generated for Customer by the Clay Solution Services solely for Customer's internal use.
- (e) Clay or its licensors retain all rights, title and interest including all Intellectual Property Rights in and to the technical metadata that is generated by the Clay Solution Services resulting from the processing of the Customer Data and that results from the ordinary course of the operation of the Clay Solution Services ("**Clay Metadata**"), provided that in no event will Clay Metadata include any Personal Information or Confidential Information of Customer. Clay's Confidential Information includes Clay Metadata.
- (f) Customer grants to Clay and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Clay Services, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Permitted Users relating to the operation of Clay's or its Affiliates' Clay Services ("**Feedback**"). Nothing in this Agreement will restrict our right to

use, profit from, disclose, publish or otherwise exploit any Feedback, without compensation to the Customer or Permitted Users and without any obligation to the Customer or any Permitted User. Clay is not obligated to use any Feedback.

- (g) All rights not expressly granted by Clay to Customer under this Agreement are reserved.

4. Privacy

Customer understands that Personal Information will be treated in accordance with Clay's privacy policy located at <https://www.launchclay.com/privacy> or such other place as may be updated by Clay's from time to time (the "**Privacy Policy**").

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5. Customer Admin Account

- (a) Upon Customer's request, Clay will issue one or more administrator accounts (the "**Administrator Accounts**") to Customer that provides Customer with the capability to create user accounts for Manager Users (each, a "**Manager User Account**") that Customer wishes to have access to and use of the Clay Solution Service. Upon Customer's request, Clay will issue one or more accounts (each, a "**User Account**") to Customer for use by End Users. User Accounts may be administered directly within the Clay Solution Services by an authorized employee of Customer or by Clay upon instruction of Customer.
- (b) Customer will ensure that each Permitted User will only use the Clay Solution Services through its assigned Administrator Accounts, Manager User Account, or User Account. The Customer will not allow any Permitted User to share its Administrator Accounts, Manager User Account, User Account or user credentials with any other person. The Customer is responsible for identifying and authenticating all Permitted Users. The Customer will promptly notify Clay of any actual or suspected unauthorized use of the Clay Solution Services. Clay reserves the right to suspend, deactivate, or replace an Administrator Accounts, Manager User Account, or User Account if it determines that an Administrator Accounts, Manager User Account, or User Account may have been used for an unauthorized purpose.

6. Fees and Payment

- (a) Fees.
 - (i) Customer will pay to Clay the fees described in each Order Form (the "**Fees**"). All Fees are identified in the applicable currency set out in an Order Form. The Fees are non cancelable and non-refundable, except as stated herein, and quantities purchased cannot be decreased during the relevant Order Form Term.
 - (ii) Usage Limits.
 - (A) Clay Services or Clay Content are subject to usage limits or service capacities specified in Order Forms.

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- (B) If Customer exceeds a contractual usage limit or service capacities, the Parties may mutually agree to Fees for additional quantities of the Clay Services, and if the Parties are unable to agree to such Fees, then Clay may suspend the provision of the Clay Services.
- (b) Changes to the Fees. Unless otherwise set out in an Order Form, at the commencement of the Renewal Term of any Order Form, Clay may increase any Fees and institute new charges and Fees, upon ninety (90) days notice to Customer prior to the effective date of such Renewal Term, provided that no such increase in Fees will exceed the greater of (i) 5%; or (ii) CPI. For purposes of this Section, CPI refers to the Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items for Urban Wage Earners and Clerical Workers (1982-1984=100).
- (c) Invoicing. Clay will send all invoices to Customer, the applicable Customer department, or the applicable Customer's Affiliate as identified in an Order Form. Customer will ensure that all invoices are paid within 30 days of the invoice date.
- (d) Disputed Invoices or Charges. If Customer believes Clay has charged or invoiced Customer incorrectly, Customer must contact Clay no later than 30 days after having been charged by Clay or receiving such invoice in which the error or problem appeared in order to request an adjustment or credit. In the event of a dispute, Customer will pay any undisputed amounts in accordance with the payment terms herein, and the Parties will discuss the disputed amounts in good faith in order to resolve the dispute.
- (e) Late Payment. Customer may not withhold or setoff any amounts due under this Agreement. If Customer's payment is overdue, Clay will provide notice that Customer's use of the Clay Services may be suspended. Clay will send such notice to Customer at least 30 days prior to suspending the Clay Services. After Customer's receipt of such notice and upon Customer's request, Clay may discuss a resolution plan to cure the overdue payment with Customer, and such resolution plan may include extending the period of time suspension by another 60 days bringing the total period of time to cure an overdue payment to 120 days before Clay suspends the Clay Services.
- (f) Taxes. The Fees set out in this Agreement do not include applicable sales, use, gross receipts, value-added, Goods and Services Tax (GST) or Harmonized Sales Tax (HST), personal property, or other taxes. Customer will be responsible for and pay all applicable taxes, duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with this Agreement, other than taxes based on the net income or profits of Clay.
- (g) Suspension. Any suspension of the Clay Services by Clay pursuant to this Agreement will not excuse Customer from its obligation to make payments under this Agreement for any undisputed Fees.

7. Confidential Information

- (a) Definitions. For the purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the “**Recipient**”, the Party disclosing such information will be the “**Discloser**”, and “**Confidential Information**” of Discloser means any and all information of Discloser or any of its service providers, licensors or customers that has or will come into the possession or knowledge of Recipient in connection with or as a result of entering into this Agreement, including information concerning Discloser’s past, present or future customers, suppliers, technology or business, where Discloser is Customer, Customer’s Confidential Information includes Customer Data and where Discloser is Clay, any Clay Property; provided that, with the exception of Personal Information, Discloser’s Confidential Information does not include: (i) information already known or independently developed by Recipient without access to Discloser’s Confidential Information; (ii) information that is publicly available through no wrongful act of Recipient; or (iii) information received by Recipient from a third party who was free to disclose it without confidentiality obligations.
- (b) Confidentiality Covenants. The Recipient hereby agrees that during the Term and at all times thereafter it will not, except to exercise its license rights or perform its obligations under this Agreement:
- (i) disclose Confidential Information of the Discloser to any person, except to:
 - (A) in the case of Customer to Permitted Users having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writings; or
 - (B) in the case of Clay to Clay’s employees, consultants, agents or Affiliates, having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement; and to its subcontractors and subprocessors to perform the Clay Services;
 - (ii) use Confidential Information of the Discloser; or
 - (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend.

Each Party will take reasonable precautions to safeguard the other Party’s Confidential Information. Those precautions will be at least as stringent as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.

- (c) Exceptions to Confidentiality. Notwithstanding Section 7(b), Recipient may disclose Discloser’s Confidential Information: (i) to the extent that such disclosure is required by Applicable Law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the

Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; (ii) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party's business; or (iii) in the case of Clay: (1) to potential assignees, acquirers or successors of Clay if and to the extent such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of Clay; and (2) to its Affiliates, permitted third-party sub-processors, consultants and any other subcontractors in connection with the provision of the Clay Services.

- (d) Return of Confidential Information. Upon the termination or expiration of this Agreement and all Order Forms under this Agreement, each Party will promptly return to the other Party or destroy all Confidential Information (excluding Customer Data which is addressed in Section 10(c) of the other Party in its possession or control within a reasonable amount of time, in accordance with the Recipient's data destruction practices. Notwithstanding the foregoing, Clay may retain a copy of an electronically archived Customer's Confidential Information, provided that such retained information remains subject to the confidentiality obligations in this Agreement.
- (e) Injunction and other equitable relief. Both Parties agree: (i) that no adequate remedy exists at law if it breaches any of its obligations in this Section 7; (ii) that it would be difficult to determine the damages resulting from its breach of this Section 7 and that such breach would cause irreparable injury to the other Party; and (iii) that a grant of injunctive relieve provides the best remedy for any such breach, without any requirement for the effected Party to prove actual damage or post a bond or other security. Both Parties waive any opposition to such injunctive relief or any right to such proof, bond, or other security.
- (f) Each Party will promptly notify the other Party of any unauthorized access of Confidential Information that comes to its attention and take reasonable steps to contain and mitigate against the harm caused by such unauthorized access.

8. **Warranty; Disclaimer; Indemnities**

- (a) Customer Representations, Covenants and Warranties. Customer represents and warrants to, and covenants with Clay that:
 - (i) it has full power and all necessary rights to enter into this Agreement;
 - (ii) Customer's and its Permitted Users' use of Clay Services will at all times comply with all Applicable Laws applicable to Customer and Permitted Users and will not cause Clay to be non-compliant with any Applicable Laws;

- (iii) it and Permitted Users will use the Clay Services only in compliance with Clay's Documentation and standard published policies then in effect;
 - (iv) the Customer Data:
 - (A) will only contain Personal Information in respect of which Customer has provided all notices and disclosures (including to each Permitted User and Customer Client), obtained all applicable consents, and permissions and otherwise has all authority, in each case as required by and in compliance with Applicable Laws, including applicable privacy laws, to enable Clay to provide the Clay Services, including without limitation with respect to the collection, storage, access, use, disclosure, processing, transmission and transfer of Personal Information, including by or to Clay and to or from all applicable third parties; and
 - (B) will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law; and
 - (v) without limiting the foregoing, to the extent the Clay Solution Services include the sending of any email, text messages or other electronic communications by or on behalf of Customer, Customer: (A) expressly authorizes Clay to send or cause or permit to be sent such messages on behalf of Customer; and (B) represents and warrants to, and covenants that it will: (1) only send or cause or permit to be sent emails, text messages or other commercial electronic messages to recipients from whom Customer has obtained all necessary consents and provided all necessary notices as required by and in compliance with Applicable Laws (which will include all applicable privacy and anti-spam laws, including without limitation Canada's Anti-Spam Legislation ("CASL"); and (2) comply with all Applicable Laws with respect to the content and sending of such messages, including all applicable time periods, message form, content and unsubscribe requirements. Customer will be solely responsible for maintaining records sufficient to demonstrate its compliance with Applicable Laws, including CASL. These obligations are the sole responsibility of Customer, and Clay has no obligation to review or approve any emails, text messages, notices or consents. Any template, sample or other notices provided to Customer by Clay pursuant to this Agreement or otherwise are for reference only and Clay does not represent that such templates, samples or notices are sufficient to meet Customer's obligations under Applicable Laws.
- (b) **GENERAL DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLAY DOES NOT WARRANT THAT THE CLAY SERVICES WILL BE UNINTERRUPTED OR THAT THE CLAY SERVICES, CLAY CONTENT OR CLAY PROPERTY WILL BE ERROR FREE OR THAT

ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE CLAY PROPERTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE CLAY PROPERTY (OR ANY PART THEREOF), AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY CLAY TO CUSTOMER ARE PROVIDED "AS IS" AND "AS AVAILABLE". FOR EXAMPLE: (I) CLAY DOES NOT ENDORSE OR WARRANT THE EXISTENCE, CONDUCT, PERFORMANCE, SAFETY, QUALITY, LEGALITY OR SUITABILITY OF ANY CUSTOMER CLIENT OR THIRD PARTY; (II) CLAY DOES NOT WARRANT THE PERFORMANCE OR NON-INTERRUPTION OF THE CLAY PROPERTY; AND (III) CLAY DOES NOT WARRANT THAT VERIFICATION, IDENTITY OR BACKGROUND CHECKS CONDUCTED ON HOUSING UNITS, TRANSACTIONS OR CUSTOMER CLIENTS (IF ANY) WILL IDENTIFY PAST MISCONDUCT OR PREVENT FUTURE MISCONDUCT. ANY REFERENCES TO THE DISCLAIMERS IN THESE TERMS APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. CUSTOMER EXPRESSLY AGREES THAT CUSTOMER'S USE OF, OR INABILITY TO USE CLAY SERVICES IS ENTIRELY AT CUSTOMER'S OWN RISK. CUSTOMER ASSUMES ALL LIABILITY, FINANCIAL OR OTHERWISE, ASSOCIATED WITH THE USE OR OTHER DISPOSITION OF CLAY SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLAY HEREBY DISCLAIMS ALL IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. CLAY MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OF THE DATA, CONTENT, OR GRAPHICS PUBLISHED ON THIS CLAY SOLUTION SERVICES OR WEBSITE.

- (c) Customer Indemnities. Customer will defend, indemnify and hold harmless Clay and its Affiliates, and their respective employees, officers, directors, agents, contractors, successors, and assigns, (each a "**Clay Indemnitee**") from and against any and all Losses incurred by a Clay Indemnitee arising out of or relating to any claim, action, demand, inquiry, audit, proceeding, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise (collectively, an "**Action**"), by a third party arising from or in connection with: (i) the Customer Data; (ii) unauthorized use of the Clay Solution Services by Customer or any Permitted User; (iii) Customer's breach of Sections 2(b) (Restrictions on Use) and Section 8(a) (Representations, Covenants, and Warranties); (iv) the combination of any Third-Party Products with the Clay Services by Customer; or (v) the Customer Agreements, the Transactions, or Customer's business including any interaction with any Customer Client.

- (d) Clay Indemnity. Clay will defend, indemnify and hold harmless Customer, its employees, officers, directors, agents successors, and assigns (each, a “**Customer Indemnitee**”) from and against any and all Losses, finally awarded by a court of competent jurisdiction, incurred by a Customer Indemnitee arising out of or relating to any Action by a third party (other than an Affiliate of a Customer Indemnitee or Customer Client) that arise from or relate to any allegation that the Clay Solution Services infringe, violate or misappropriate any third-party Intellectual Property Right in Canada. Provided, however, that the obligations of Clay in this Section 8(d) will not apply to any Action or Losses arising out of or relating to any: (i) Third-Party Products; (ii) Modification of the Clay Solution Services by anyone other than Clay or authorized by Clay; (iii) unauthorized use of the Clay Services by Customer or any Permitted Users; (iv) incorporation of any Clay Solution Services into, or any combination, operation, or use of any Clay Solution Services with, any products or services not provided by Clay or authorized by Clay, including Third-Party Products; or (v) Customer’s indemnities in Section 8(c). THIS SECTION 8(D) STATES THE CLAY’S SOLE LIABILITY TO, AND THE CUSTOMER INDEMNITEES EXCLUSIVE REMEDY AGAINST, CLAY FOR ANY THIRD PARTY CLAIM DESCRIBED IN THIS SECTION.
- (e) IP Infringement Remedies. If Customer or any Permitted User is enjoined from using the Clay Solution Services or Clay reasonably believes they will be enjoined, Clay will have the right, at its sole option, to obtain for Customer and its Permitted Users the right to continue use of the Clay Solution Services or to replace or modify the Clay Solution Services so that they are no longer infringing; provided that if neither of the foregoing options is reasonably available to Clay, then this Agreement may be terminated by Clay and Clay’s sole liability, in addition to the indemnification obligations herein, will be to refund prepaid unused Fees attributable to any Clay Solution Services that were to be provided after the effective date of termination. THE FOREGOING IS IN LIEU OF ANY REPRESENTATION, COVENANTS OR WARRANTIES OF NONINFRINGEMENT, WHICH ARE DISCLAIMED.
- (f) Indemnification Process. For any Action covered under Sections 8(c) or 8(d), the indemnified Party will: (i) promptly give written notice of the claim to the indemnifying Party (although a delay of notice will not relieve the indemnifying Party of its obligations under this Section 8 except to the extent that the indemnifying Party is prejudiced by such delay); (ii) give the indemnifying Party sole control of the defense and settlement of the claim (although the indemnifying Party may not settle any claim without the indemnified Party’s written consent; and (iii) provide to the indemnifying Party, at the indemnifying Party’s cost, all reasonable assistance.

9. Limitation of Liabilities

The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

- (a) AMOUNT. SUBJECT TO SECTION 9(c), IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY IN CONNECTION WITH OR UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL CLAY'S THIRD PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.
- (b) TYPE. SUBJECT TO SECTION 9(c), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY: (I) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) LOST OR LOSS OF (1) SAVINGS, (2) PROFIT, (3) USE, OR (4) GOODWILL; (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.
- (c) SECTIONS 9(a) AND 9(b) WILL NOT APPLY TO LIMIT: (I) CLAY'S LIABILITY OR OBLIGATIONS UNDER SECTION 8(D); (II) CUSTOMER'S LIABILITY OR OBLIGATIONS UNDER SECTION 8(C); (III) EITHER PARTY LIABILITY ARISING FROM A BREACH OF SECTION 7 (PROVIDED THAT CLAY'S LIABILITY ARISING FROM UNAUTHORIZED USE, DISCLOSURE, OR PROCESSING OF CUSTOMER DATA WILL BE LIMITED TO THE LIABILITY CAP IN SECTION 9 (A)); (IV) CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6; AND (V) EITHER PARTY GROSS NEGLIGENCE, WILFUL MISCONDUCT, OR FRAUD.

10. **Term and Termination**

- (a) Term and Order Form Term. These Terms & Conditions will commence on the Effective Date and continue to be in effect until the date that all Order Forms have expired or terminated (the "**Term**"). Each Order Form will set out the Order Form Term.
- (b) Termination for Cause. Either Party may terminate this Agreement or any Order Form for cause, by giving to the other Party written notice of termination upon the occurrence of any of the following events: (i) the other Party breaches or defaults on any of the material terms or conditions of this Agreement (including Customer's payment obligations under Section 6) and fails to cure such breach or default within thirty (30) days of receipt of written notice thereof; except that, in the event of any

breach that is incapable of being cured, such termination will be effective immediately; (ii) the other Party makes any assignment for the benefit of creditors or is unable to pay its debts as they mature in the ordinary course of business; or (iii) any proceedings are instituted by or against the other Party under any insolvency laws or for reorganization, receivership or dissolution. If Customer terminates pursuant to this Section 10 (b)(i), Customer shall be entitled to any refund of a pro-rated portion of its prepaid and unused Fees attributable to any Clay Solution Services that were to be provided after the effective date of termination and if Clay terminates pursuant to this Section 10 (b), Customer will be responsible for paying all Fees payable for the remainder of the Order Form Term.

(c) Obligations upon Termination. Upon expiration or termination of this Agreement:

- (i) Customer will immediately cease (and ensure that all Permitted Users immediately cease) accessing or using the Clay Services. Provided, however, for a period of thirty (30) days following termination, Clay will provide Customer with limited access to the Clay Solution Services as required for Customer to retrieve Customer Data in a format suitable for Customer and usable by Customer at no additional charge. Customer may also require assistance in exporting and retrieving its Customer Data in a format determined by Customer and Clay shall diligently assist Customer with such services at Clay's then current rates for such termination assistance. Following such 30 day period and subject to Clay's rights to retain information as set out in this Agreement, Clay will delete or otherwise render inaccessible any Customer Data that remains in the hardware or systems used by Clay to provide the Clay Solution Services. In the event that Applicable Law does not permit Clay to comply with the delivery or destruction of the Customer Data, Clay warrants that it shall ensure the safeguarding of the Customer Data in accordance with Applicable Laws that are applicable to Clay.
- (ii) Customer will return any Clay Property in its possession and certify in writing to Clay that the Clay Property has been returned.
- (iii) Other than as otherwise provided for in this Agreement, no expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.
- (iv) Any amounts due or payable to Clay are immediately due and are to be immediately paid by Customer to Clay.
- (v) All Order Forms will terminate upon the termination of this Agreement. No new Order Forms may be entered into upon the termination of this Agreement.

(d) Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or

expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 3 (Ownership; Reservation of Rights), Section 6 (Fees and Payment), Section 7 (Confidential Information), Section 8 (Warranty; Disclaimer; Indemnities), Section 9 (Limitation of Liabilities), Section 10(d) (Survival), and Section 11 (General Provisions).

11. General Provisions

- (a) Notices. Notices sent to either Party will be effective when delivered in writing and in person or by email, one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the Party to whom a notice is being given. Notices must be sent to the addresses and contact information set out in the Order Form. Notices must be sent: (i) if to Clay, to the address set out in the Order Form; and (ii) if to Customer, to the current postal or email address that Clay has on file with respect to Customer. Clay may change its contact information by posting the new contact information on the Website or by giving notice thereof to Customer. Customer is responsible for keeping its contact information on file with Clay current at all times during the Term.
- (b) Assignment. Customer will not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Clay. Any purported assignment or delegation by the Customer in violation of this Section will be null and void. Clay may assign this Agreement without the consent of the Customer to its Affiliates or in connection with a merger, acquisition, corporate reorganization, sale of all or substantially all of its assets or a change in control. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns. Any purported assignment or delegation by the Customer in violation of this Section will be null and void.
- (c) Governing Law and Attornment. This Agreement and any action related thereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Toronto, Ontario, Canada, and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. Notwithstanding the foregoing, this choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation of Intellectual Property Rights or confidentiality obligations in any appropriate jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- (d) Export Restrictions. Customer will not to directly or indirectly export or re-export any of the Clay Services without first obtaining all required licenses, permits and permissions required under Applicable Law. Clay makes no representation or warranty that the Clay Services may be exported without Customer first obtaining appropriate licenses or permits under Applicable Law, or that any such license or permit has been, will be, or can be obtained.

- (c) Construction. Except as otherwise provided in this Agreement, the Parties' rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms "consent" or "discretion", means the right of a Party to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to the other Party.
- (f) Force Majeure. Neither Party will be liable for delays or failures of performance caused by any event or circumstances beyond that Party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, computer attacks or malicious acts, pandemics or public health emergencies, strikes or other labour problems (other than those involving that Party's employees), Internet service failures or delays, or the unavailability or Modification by third parties of telecommunications or hosting infrastructure or third party websites (each, a "**Force Majeure**"). This Section does not apply to any of Customer's obligations under Sections 2, 6, 7 or 8.
- (g) Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be invalid, illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.
- (h) Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- (i) Customer Lists. Clay may identify Customer by name and logo as a Clay customer on the Website and on other promotional materials. Any goodwill arising from the use of Customer's name and logo will inure to the benefit of Customer.
- (j) Independent Contractors. Clay's relationship to Customer is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, and neither Party will represent to any third party that it has, any authority to act on behalf of the other Party.
- (k) Entire Agreement. This Agreement, the Order Forms and all SOWs constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other communications between the Parties, whether written or oral. Any terms and conditions appearing on a purchase order or similar document issued by Customer, or in Customer's procurement, invoicing, or vendor onboarding portal: (i) do not apply to the Clay Services; (ii) do not override or form a part of this Agreement (including without limitation any Order Form or SOW); and (iii) are void.

- (l) Amendments. SUBJECT TO THE FOLLOWING SENTENCE, NO AMENDMENT, SUPPLEMENT, MODIFICATION, WAIVER, OR TERMINATION OF THIS AGREEMENT AND, UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THIS AGREEMENT, NO CONSENT OR APPROVAL BY ANY PARTY, WILL BE BINDING UNLESS EXECUTED IN WRITING BY THE PARTY OR PARTIES TO BE BOUND THEREBY. NOTWITHSTANDING THE PRECEDING SENTENCE, CLAY MAY UNILATERALLY AMEND THIS AGREEMENT, IN WHOLE OR IN PART (EACH, AN “AMENDMENT”), BY GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT OR POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY CLAY, ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON THE WEBSITE (WHICHEVER IS THE EARLIER)
- (m) No Third Party Beneficiaries. Except for Clay’s licensors and except as provided in Sections 8 (c) and 8 (d), nothing in this Agreement, express or implied, is intended to or will confer upon any person other than the Party and their respective successors and permitted assigns any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.
- (n) Order of Priority. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) these Terms and Conditions; and (2) the applicable Order Form.
- (o) English Language. The Parties confirm that the essential stipulations of this agreement reflect the mutual agreement of the Parties further to negotiation, and were not imposed by either Party, even when drawn up by one of the Parties. The Parties further confirm that it is the express wish of all Parties that this agreement, all documents related to this agreement and all communications between the Parties in the context of the performance of this agreement be in English only. *Les Parties confirment que les stipulations essentielles de la présente entente reflètent le résultat de discussions libres de gré à gré et n’ont pas été imposées par l’une ou l’autre des Parties, même lorsque rédigées par l’une des Parties. Les Parties confirment également que c’est la volonté expresse des Parties que la présente entente, tout document s’y rattachant et toute communication entre les Parties dans le cadre de l’exécution de cette entente soient uniquement en anglais.*