



# Master Terms of Service

These Master Terms of Service (this “**Agreement**”) set out the terms and conditions for the provision and use of Services set out on a Sales Contract between Igloo Inc. (“**Igloo**”) and the entity identified as Customer (“**Customer**”) on such Sales Contract.

## 1. DEFINITIONS

- 1.1 “**Account**” means an account enabled by Igloo that is held by an Authorized User in an Igloo Environment.
- 1.2 “**AUP**” means Igloo’s Acceptable Use Policy for use of the Igloo Environment(s). The current version of the AUP is available at [https://customercare.igloosoftware.com/legal/acceptable\\_use\\_policy](https://customercare.igloosoftware.com/legal/acceptable_use_policy) and is incorporated by reference herein.
- 1.3 “**Authorized User**” means an individual with an Account who is authorized by Customer to access and use an Igloo Environment.
- 1.4 “**Content**” includes text, messages, files, photos, video, sounds, musical works, works of authorship, links, emails, postings, code, data, images, graphics, video, chat, files, works of authorship or other materials.
- 1.5 “**Customer Data**” means any Content (including Personal Information) uploaded or posted to, entered or stored in, or displayed or transmitted using the production instance of an Igloo Environment by Customer and/or Authorized Users, but excludes any uniform resource locators or domain names that are used by Customer in connection with an Igloo Environment.
- 1.6 “**Documentation**” means the then-current version of the materials provided by Igloo to Customer under this Agreement in connection with the Services and made available at <https://customercare.igloosoftware.com>.
- 1.7 “**Igloo Applications**” means the non-hosted offerings made available by Igloo to Customer for utilization in connection with an Igloo Environment.
- 1.8 “**Igloo Environment**” means Igloo’s proprietary online environment that is hosted and maintained by Igloo for Customer under this Agreement. The Igloo Environment does not include the Customer Care environment available at <https://customercare.igloosoftware.com>.
- 1.9 “**Igloo Platform**” means the Igloo Environment(s) and Igloo Applications.
- 1.10 “**IP Rights**” means any right that is granted or recognized under any applicable legislation regarding patents, copyrights, neighbouring rights, moral rights, trademarks (including trade names and service marks), trade secrets, confidential information, industrial designs, design rights, mask work, integrated circuit topography, privacy and publicity rights and any other statutory provision or common or civil law principle regarding intellectual and industrial property, whether registered or unregistered, and including rights in any application for any of the foregoing.
- 1.11 “**Person**” means a natural person or any legal, commercial, or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any Person acting in a representative capacity.

- 1.12 **“Personal Information”** means information: (i) that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular natural person or household; and/or (ii) relating to an identified or identifiable natural person.
- 1.13 **“Professional Services”** means all professional services that Igloo provides to Customer pursuant to this Agreement, which may include implementation, analytics, training, visual design, consulting and project management, or third-party integrations. All Professional Services shall be provided by Igloo pursuant to an applicable Sales Contract or SOW.
- 1.14 **“Sales Contract”** means an ordering document outlining the Services that have been selected by Customer that references this Agreement and that is entered into between Customer and Igloo, including any addenda and supplements thereto.
- 1.15 **“Services”** means any of the Igloo Platform, Professional Services, and/or Support Services provided by Igloo under this Agreement pursuant to an applicable Sales Contract.
- 1.16 **“SOW”** means a written statement of work for the provision of Professional Services by Igloo that is entered into between Customer and Igloo, including any addenda and supplements thereto, that references this Agreement or an applicable Sales Contract.
- 1.17 **“System”** means the Igloo proprietary and third-party information technology systems used by Igloo to provide the Igloo Platform.

## 2. IGLOO PLATFORM

- 2.1 **Customer’s Right to Use the Igloo Platform.** Subject to the terms and conditions of this Agreement, Igloo grants to Customer and its Authorized Users a non-exclusive, royalty-free, worldwide, non-sublicensable, revocable (only in accordance with the terms and conditions of this Agreement), non-assignable and non-transferable (except as permitted by Section 14.4), and limited right and license to access and use the Services and the Documentation, each in accordance with the Documentation and an applicable Sales Contract and/or SOW, solely for Customer’s internal business use. Igloo reserves all rights not expressly granted in this Section 2.1 with respect to use and access to the Igloo Platform and Documentation.
- 2.2 **Authorized Users and Accounts.** Customer shall be entitled to allow up to the number of Authorized Users for which Customer has subscribed in one or more Sales Contracts to access an Igloo Environment by means of an Account using a unique username and password. Further information related to Accounts is provided in the “Member Account Guidelines” available in the Documentation. Customer agrees that it shall remain responsible for all activity that occurs under all Authorized User Accounts and shall require each Authorized User to use the Igloo Platform only in accordance with the terms of this Agreement and all restrictions set forth in the AUP.
- 2.3 **Customer Responsibilities.**
- (a) Customer is solely responsible for obtaining and maintaining all equipment, computers, mobile devices, and communications required to access and utilize the Igloo Platform and for all expenses related thereto.
- (b) Customer is solely responsible to ensure that its Authorized Users use a supported release version of any applicable Igloo Applications. At any time during the Term, unless Igloo provides Customer with written notice otherwise, the two most recent release versions of an Igloo Application will be supported by Customer’s Igloo Environment.

- (c) Customer will notify Igloo immediately of any actual or suspected unauthorized use of an Igloo Environment or any Account, other breach of security or violation of the AUP in relation to the Igloo Platform, Customer Data or the System of which Customer becomes aware.
- 2.4 **Suspension and Termination.** If Customer or any Authorized User, in Igloo's reasonable opinion, is in material violation of any terms of this Agreement or breaches this Agreement in a way that presents a material risk to Igloo, the Services, or the System, Igloo reserves the right, in Igloo's sole discretion and without notice, to immediately suspend Customer's or such Authorized User's access to the Services until such breach is corrected or to terminate the Account of such Authorized User.
- 2.5 **Subcontractors.** Customer acknowledges that Igloo may utilize service providers ("**Subcontractors**") in the provision and maintenance of the System. The cost of any such Subcontractors utilized by Igloo shall be the sole responsibility of Igloo and shall not be in addition to the fees payable by Customer hereunder.
- 2.6 **Hosting Environment.** The cloud hosting environments utilized by Igloo to provide the Igloo Environment are located in the Hosting Jurisdiction identified on the initial Sales Contract.
3. **CUSTOMER DATA**
- 3.1 **Representations as to Customer Data.** Customer is solely responsible for the accuracy, quality, integrity and legality of Customer Data and the means by which Customer, or its Authorized Users acquire Customer Data. Customer represents and warrants that Customer is the owner or licensor of all rights to all Customer Data or otherwise has the rights to grant the license set forth in Section 3.3 and that if such Customer Data includes Personal Information that such Personal Information has been collected and transferred in accordance with applicable data privacy laws in the territory in which such Personal Information was collected.
- 3.2 **Monitoring.** Customer shall be solely responsible at all times for monitoring Customer Data and for ensuring that all Customer Data complies with this Agreement. Igloo has no obligation to monitor or pre-screen any Customer Data.
- 3.3 **Rights to Customer Data.** As between Customer and Igloo, Customer owns all Customer Data. Customer hereby grants to Igloo a non-exclusive, non-transferable (subject to Section 14.4) royalty-free, worldwide right and license during the Term, that is revocable upon termination of this Agreement, to use Customer Data solely on and through the Igloo Platform and the System to provide the Services to Customer and as allowed under Section 3.4 below.
- 3.4 **Use of Aggregate and Usage Data.** During the Term, Igloo may use aggregate, de-identified Customer Data from the Igloo Environment for purposes of improving the Services so long as no identifiable Personal Information is utilized by Igloo for such purpose. Customer acknowledges that Igloo is entitled to generate usage data based on Customer's and its Authorized Users' respective use and operation of the Services, and use such data to improve the Services, so long as such usage data does not include any Personal Information.
- 3.5 **Data Export.** Customer may request export of Customer Data at any time during the Term or up to thirty (30) days after termination. Such export shall be performed as Professional Services and will be based on terms mutually agreed to by the parties in a SOW.
- 3.6 **Data Security.** Igloo shall, during the Term, maintain commercially reasonable administrative, physical and technical safeguards as set forth in Igloo's Data Security Standards ("**DSS**"), the current version of which is available at [https://customercare.igloosoftware.com/legal/data\\_security\\_standards](https://customercare.igloosoftware.com/legal/data_security_standards). Upon or before execution of this Agreement, and thereafter upon Customer request (such requests not to exceed once per annum), Igloo will provide to Customer a copy of Igloo's then-current SOC 2, Type 2 audit report (or such audit/report's

equivalent or replacement). Igloo shall promptly notify Customer of any material failure of such safety and security procedures or any security incident related to the System or Igloo's network in accordance with the DSS.

- 3.7 **Customer Audit Right.** Customer shall have the right during the term of this Agreement and for up to one (1) year after the termination of this Agreement, upon reasonable written notice and during normal business hours, and no more than once annually (unless a prior audit reveals noncompliance), to request records from Igloo related to Igloo's existing information security program and practices contemplated by the DSS in order to verify compliance with the terms of this Agreement. If an audit reveals Igloo is not compliant with its obligations under the DSS or is utilizing Customer Data in a manner not permitted by this Agreement Igloo agrees to promptly take, at Igloo's expense, all reasonable corrective action requested by Customer.

#### 4. PROFESSIONAL AND SUPPORT SERVICES; SERVICE LEVELS

- 4.1 **Professional Services.** Igloo may provide Professional Services as set forth in an applicable Sales Contract or SOW subject to the terms of this Agreement. Customer shall promptly provide all reasonably required information, materials and resources as necessary to enable Igloo to carry out the Professional Services. Subcontractors performing Professional Services may only be utilized by Igloo upon prior approval of Customer.

- 4.2 **Support Services.** Igloo shall provide any support services at the support package level selected by Customer in the applicable Sales Contract(s) ("**Support Services**").

- 4.3 **Service Levels.** Igloo shall provide the Services in accordance with the Service Level Agreement ("**SLA**") set forth here: [https://customercare.igloosoftware.com/legal/service\\_level\\_agreement](https://customercare.igloosoftware.com/legal/service_level_agreement).

- 4.4 **Disaster Recovery.** In connection with the provision of the Igloo Environment, Igloo has adopted a disaster recovery plan that sets out specific policies and procedures to recover from an unexpected disaster. Igloo will implement such disaster recovery plan, as described in the DSS, in the event of such an unexpected disaster.

#### 5. INSURANCE

- 5.1 **Insurance Coverage.** During the Term, Igloo shall maintain:

- (a) commercial general liability insurance coverage of at least two million Canadian dollars (CAD\$2,000,000) per occurrence and five million Canadian dollars (CAD\$5,000,000) in the aggregate;
- (b) umbrella insurance coverage of at least ten million Canadian dollars (CAD\$10,000,000) on both a per occurrence and in the aggregate basis; and
- (c) cyber liability insurance coverage (including professional liability insurance for errors and omissions of Igloo) of at least eight million United States dollars (USD\$8,000,000) for each wrongful act and eight million United States dollars (USD\$8,000,000) in the aggregate.

- 5.2 Upon Customer request, but no more than once per calendar year, Igloo will provide Customer with a certificate of insurance to evidence such insurance.

#### 6. THIRD PARTY SERVICES

6.1 **Integration with Third Party Services.** The Igloo Platform interoperates with certain third party applications and services. Customer may utilize certain of the features and functionalities of the Igloo Platform (“**Integrations**”) to enable such interoperation with such third party applications and services (“**Third Party Services**”). Integrations (but not the applicable Third Party Services) set out in the applicable Sales Contract are deemed to be part of the Igloo Platform. If the provider of a Third Party Service for which Igloo offers an Integration (i) ceases to make such Third Party Service available for interoperation or (ii) introduces a fee with respect to such Integration with the Third Party Service and Customer is unwilling to pay the amount of such fee to Igloo as an additional fee, Igloo, in its sole discretion, may cease providing such Integration and the corresponding features of the Igloo Platform at any time and without entitling Customer to any refund, credit, or other compensation. To the extent Igloo is reasonably able, Igloo shall provide Customer with advance notice should the interoperation of any Integration be discontinued.

6.2 **Third Party Services.** Customer is responsible to purchase and maintain all license agreements for Third Party Services. Customer’s access to and use of Third Party Services are governed solely by the terms and conditions of Customer’s agreement(s) with the providers of such Third Party Services, and Igloo does not endorse, is not responsible or liable for, and makes no representations and warranties as to any aspect of the content or operation of any Third Party Services or any interaction between Customer and the providers of such Third Party Services. Customer acknowledges and agrees that, except for Igloo’s gross negligence or wilful misconduct, Igloo is not responsible or liable for any damage or loss (including damage or loss of Customer Data) proximately caused or alleged to be proximately caused by or in connection with Customer’s (or its Authorized Users’) enablement of, access to or use of any such Third Party Services, or any reliance on the privacy practices, data security processes or other policies of such Third Party Services. By installing or enabling any Integration, Customer is expressly permitting Igloo to: (i) access Customer Data; and (ii) permit the provider of the applicable Third Party Service to access Customer Data, each as required for the operation of such Integration.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 **Igloo Ownership.** The Igloo Platform, Documentation, and the registered and unregistered trademarks, trade names, logos or service marks of Igloo as used by Igloo in connection with the Services and Feedback (as defined in Section 7.3) and all improvements, enhancements, modifications and derivative works thereof (excluding all Customer Data), and all IP Rights therein (collectively, “**Igloo Property**”), are and shall remain the sole and exclusive property of Igloo and its licensors and are protected by domestic and international laws and treaties. Customer agrees not to, and not to cause or permit others to: (i) remove any proprietary notices, markings and legends appearing on or contained in Igloo Property; or (ii) change any security or right management technology used in connection with any Igloo Property. Customer agrees that Customer shall take commercially reasonable measures to protect Igloo’s proprietary and IP Rights in Igloo Property and will comply with the terms of this Agreement to protect Igloo’s proprietary and IP Rights in Igloo Property. Except as Igloo may otherwise expressly agree in writing, any discoveries, enhancements, improvements, customizations, translations or other modifications made to, or derived from, Igloo Property, and all related IP Rights therein, shall be owned exclusively by Igloo.

7.2 **Customer Ownership.** Customer owns all rights in and to Customer Data and Customer Confidential Information.

7.3 **Feedback.** Any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Authorized Users to Igloo relating to the Services (collectively “**Feedback**”) shall become Igloo’s sole property. Customer hereby assigns, on behalf of itself and its Authorized Users, all IP Rights to any Feedback.

7.4 **Deliverables.** Igloo may perform customized services upon request of Customer pursuant to an applicable SOW that shall include features and customizations that adapt the Igloo Platform to Customer's specific requirements ("**Customization Deliverable**"). The Customization Deliverables may incorporate Customer Data and/or Igloo Property and will require access to the Igloo Platform pursuant to the terms of this Agreement in order for Customer to utilize the Customization Deliverables. Unless set forth in the SOW, no ownership rights are transferred with respect to the Customer Data or Igloo Property, respectively, by delivery of the Customization Deliverables. All details related to performance of any professional services by Igloo that may result in a Customization Deliverable and all rights thereto shall be as described in an applicable SOW.

## 8. FEES AND PAYMENT

8.1 **Fees.** Customer shall pay to Igloo the fees specified in, and in accordance with the terms set out in, all Sales Contracts and SOWs. Unless otherwise specified in this Agreement, payment obligations are non-cancellable and all fees are non-refundable.

8.2 **Terms of Payment.** Unless otherwise set forth in an applicable Sales Contract or SOW, Customer shall pay all undisputed invoices within thirty (30) days of receipt. Any dispute of an invoice must be notified to Igloo within fifteen (15) days of receipt of the subject invoice. The Parties shall work in good faith to resolve any disputed invoice in a timely manner.

8.3 **Taxes.** All fees are net of any sales, use, excise, value added and similar taxes imposed by any governmental authority as well as any international shipping charges, brokerage fees, consular fees and customs duties, all of which shall be the responsibility of Customer. Customer shall pay all such taxes or charges or provide Igloo with a tax or levy exemption certificate acceptable to the taxing or levying authority. In the event that Igloo is required to pay any taxes or other charges for which Customer is responsible hereunder, Customer shall promptly pay the same to Igloo upon receipt of Igloo's invoice therefor. For certainty, Igloo shall be responsible for any taxes related to its income or gross receipts. If, pursuant to local law, Customer is required to withhold any taxes, duties or other amounts from amounts payable to Igloo, then: (i) Customer will promptly notify Igloo; (ii) the amount payable to Igloo will be automatically increased to the full extent required to offset such tax, duty or other amount so that the amount remitted to Igloo, net of all taxes, duties and other like amounts, equals the amount payable to Igloo pursuant to this Agreement or pursuant to an invoice from Igloo, as applicable. For the purpose of determining and calculating any sales tax applicable to the transactions contemplated by this Agreement, Igloo assumes that the Services will be consumed by Customer at the Customer billing address noted on the applicable Sales Contract.

8.4 **Late Payment Terms.** Amounts owed by Customer hereunder that remain unpaid fifteen (15) days after the applicable due date shall accrue interest at the lesser of (x) one percent (1%) per month and (y) the maximum rate permitted by law. Following notice of late payment from Igloo to Customer, if Customer fails to make payment in full of such undisputed amounts within the ten (10) day period from receipt of such notice, then, without limiting Igloo's other rights and remedies available at law or granted to Igloo in this Agreement, Igloo reserves the right to suspend Customer's access to the Services (which would suspend the access to Igloo Environments for Authorized Users) with contemporaneous notice to Customer. Customer will continue to be charged and remain liable for the applicable fees and other charges for the Services during any suspension period.

## 9. CONFIDENTIALITY

9.1 **Definition. "Confidential Information"** includes any information, document, material, idea or data which is disclosed by one party hereto to the other party hereto, whether orally, electronically or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the

information, document, material, idea or data and the circumstances of the disclosure, including information regarding a party's products and services, technology, business plans, prices, financial information and other trade secrets or confidential information, and anything tangible from which such information may be obtained. Confidential Information includes Customer Data and the terms and conditions of this Agreement (but not the fact that Customer is a customer of Igloo). Confidential Information, however, shall not include any document, material, idea, data or other information which: (i) is known to the receiving party under no obligation of confidence, at the time of disclosure by the other party; (ii) is lawfully obtained by the receiving party from a third party who, in making such disclosure, breaches no obligation of confidence to the other party; (iii) is or becomes publicly known through no wrongful act of the receiving party; (iv) is independently developed by the receiving party without the use of the disclosing party's Confidential Information; or (v) is disclosed by the other party to a third party under no obligation of confidence. The onus of proving that any of the above-mentioned exceptions applies is on the receiving party. Confidential Information of Customer shall include any Personal Information of each Authorized User that is uploaded, generated or stored by Customer or such Authorized User in an Igloo Environment.

- 9.2 **Protection.** Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information disclosed in connection with this Agreement by using at least the same degree of care as such party employs with respect to its own Confidential Information of a like kind or nature, but no less than a reasonable degree of care. Each party agrees not to use the Confidential Information of the other party for any purpose not expressly permitted by this Agreement and shall limit the disclosure of the Confidential Information to employees, contractors, subcontractors, agents or representatives of the receiving party whose knowledge of such Confidential Information is reasonably necessary to the performance of the Services in accordance with this Agreement and any Sales Contract or SOW and who are bound in writing by confidentiality terms no less restrictive than those contained herein.
- 9.3 **Compelled Disclosure.** The receiving party may disclose Confidential Information of the disclosing party if it is compelled by law to do so, provided that the receiving party: (i) gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure; and (ii) discloses only such Confidential Information as is legally required. If the receiving party is compelled by law to disclose the disclosing party's Confidential Information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not contesting the disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 10. LIMITED WARRANTY

- 10.1 **Representations and Warranties.** Igloo represents and warrants to Customer that all work performed by Igloo under this Agreement (including the provision of any Services) will be performed: (i) with due care and skill and in accordance with industry practice; (ii) using only properly skilled, qualified and experienced personnel; (iii) that the Services will be performed in accordance with the Documentation; and (iv) in accordance with applicable US, Canadian, UK and European Union laws and regulations.
- 10.2 **Disclaimer.** SUBJECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, DOCUMENTATION AND ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT (INCLUDING THE USE THEREOF) ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND. IGLOO DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING BY LAW, STATUTE, USAGE OR TRADE, OR COURSE OF

DEALING REGARDING OR RELATED TO THIS AGREEMENT, THE SERVICES, DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. IGLOO DOES NOT WARRANT THAT THE SERVICES OR DOCUMENTATION WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. CUSTOMER AGREES THAT IGLOO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTION IGLOO TAKES TO REMOVE OR RESTRICT ACCESS TO ANY CUSTOMER DATA THAT VIOLATES ANY OF THE TERMS OF THIS AGREEMENT. EXCEPT FOR IGLOO'S OBLIGATIONS THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE IGLOO PLATFORM OR DOCUMENTATION REMAINS WITH CUSTOMER.

## 11. LIMITATION OF LIABILITY

- 11.1 **Limitation on Types of Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR RELATED TO THE SERVICES, OR ANY RELATED PROVISIONS OF THIS AGREEMENT.
- 11.2 **Limitation on Liability of Igloo for Misuse of Platform.** CUSTOMER ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL IGLOO BE LIABLE, DIRECTLY OR INDIRECTLY, TO CUSTOMER OR AUTHORIZED USERS FOR ANY LOSS OR DAMAGE AS A RESULT OF ANY ACTIVITY CARRIED OUT USING VALID ACCOUNT CREDENTIALS AND CORRESPONDING PERMISSIONS; PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO THE EXTENT THAT ANY UNAUTHORIZED ACCESS WAS INITIATED BY ANY IGLOO PERSONNEL OR PROXIMATELY CAUSED BY: (X) THE FAILURE OF THE IGLOO ENVIRONMENT TO RESTRICT ACCESS IN ACCORDANCE WITH VALID ACCOUNT CREDENTIALS AND CORRESPONDING PERMISSIONS; OR (Y) THE FAILURE OF IGLOO TO COMPLY WITH SECTION 3.6 (OR OTHER APPLICABLE OBLIGATION OF IGLOO UNDER) OF THIS AGREEMENT.
- 11.3 **Liability Limit.** OTHER THAN IN RESPECT OF: (I) A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12; (II) BREACH BY A PARTY OF ITS CONFIDENTIALITY AND PRIVACY OBLIGATIONS UNDER THIS AGREEMENT; OR (III) THE FRAUD, GROSS NEGLIGENCE, INTENTIONAL ACTS OR WILFUL MISCONDUCT OF A PARTY, EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY HEREUNDER SHALL NOT EXCEED THE LESSER OF (1) TWO TIMES (2X) THE TOTAL FEES PAID BY CLIENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM RESULTING IN LIABILITY AND (II) ONE MILLION UNITED STATES DOLLARS (\$1,000,000 USD) (THE "DAMAGES CAP").
- 11.4 **Enhanced Damages Cap.** NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY AND PRIVACY OBLIGATIONS UNDER THIS AGREEMENT, OR FOR DIRECT DAMAGES RESULTING FROM EITHER PARTY'S INDEMNIFICATION OBLIGATION UNDER SECTION 12.1(i) OR SECTION 12.4(i), AS APPLICABLE, THE DAMAGES CAP SHALL AUTOMATICALLY INCREASE, WITHOUT FURTHER ACTION REQUIRED BY THE PARTIES, TO FOUR MILLION UNITED STATES DOLLARS (\$4,000,000 USD). FOR THE SAKE OF CLARITY, THERE SHALL BE NO LIMIT ON THE DAMAGES PAYABLE BY: (A) IGLOO IN RESPECT OF AMOUNTS OWING TO ANY THIRD PARTY THAT INITIATED A CLAIM COVERED BY SECTION 12.1(i); (B) CUSTOMER IN RESPECT OF AMOUNTS OWING TO ANY THIRD PARTY THAT INITIATED A CLAIM COVERED BY THE INDEMNITY SET FORTH IN SECTIONS 12.4(i); OR (C) EITHER PARTY IN RESPECT OF A CLAIM RESULTING FROM FRAUD, GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF SUCH PARTY; WHERE, IN THE CASE OF (A), (B) OR (C), SUCH DAMAGES ARE EITHER AWARDED BY A COURT OF COMPETENT JURISDICTION OR PAID IN RESPECT OF A SETTLEMENT WITH THE APPLICABLE THIRD PARTY.



## 12. INDEMNIFICATION

- 12.1 **Igloo Indemnity.** Subject to Section 11.4 above and Sections 12.2 and 12.3 below, Igloo shall indemnify, defend and hold Customer harmless from and against any third party claims, including any losses, damages or expenses (including reasonable legal fees) arising from such third party claims, arising from or relating to: (i) infringement of any United States or Canadian patents, copyrights, trademarks or trade secrets of a third party that is specifically in connection with Customer's use of the Igloo Platform in accordance with this Agreement (an "**Infringement Claim**"); or (ii) any violation of applicable law by Igloo or its personnel; provided that Customer: (a) provides Igloo with written notice of such claim within a reasonable period of time after learning of the claim; (b) agrees to allow Igloo to fully control any litigation and settlement related to such claim (provided any such settlement does not require Customer to make any payment or admission of liability); and (c) reasonably cooperates in response to Igloo's request for assistance.
- 12.2 **Exclusions – Infringement Claim.** Igloo shall have no liability with respect to any Infringement Claim to the extent that such Infringement Claim: (i) would have been avoided but for the combination, operation or use of the Igloo Platform with any product, service, equipment or software not provided by Igloo; (ii) is based on the operation or use of the Igloo Platform in a manner not consistent with the Documentation or in violation of this Agreement; (iii) would not have arisen but for the combination or incorporation of particular Customer Data together with the Igloo Platform; or (iv) is based on or would have been avoided but for any modifications to the Igloo Platform made without Igloo's express written approval. Igloo shall not be liable for any damages with respect to any Infringement Claim to the extent that they are calculated on the basis of the cost or value of any product or service provided to Customer by any third party.
- 12.3 **Remedy – Infringement Claim.** Should the Igloo Platform become, or if Igloo reasonably believes that the Igloo Platform may likely become, subject to an Infringement Claim, then Igloo may, at its sole option and expense: (i) procure the right for Customer to continue using the Igloo Platform; (ii) replace the same with other software, services or other material of equivalent functions and efficiency that is not subject to an Infringement Claim; (iii) modify the Igloo Platform so that the same is no longer infringing; or (iv) if Igloo determines that option (i), (ii) or (iii) cannot be achieved on a commercially reasonable basis, terminate this Agreement and refund to Customer the unused portion of any fees paid in advance by Customer for use of the Services, based on the number of full months, if any, remaining in the Term. Igloo's liability to Customer in the event of infringement or claimed infringement shall be strictly limited to the obligations set forth in this Section 12.
- 12.4 **Customer Indemnity.** Subject to Section 11.4, Customer shall indemnify, defend and hold Igloo harmless from and against any third party claims, including any losses, damages or expenses, (including reasonable legal fees) arising from such third party claims, arising from or relating to: (i) Customer's representations as to Customer Data and/or any infringement, misappropriation or violation of any IP Rights or privacy rights by Customer or Authorized Users; (ii) any violation of applicable law by Customer or Authorized Users; or (iii) Customer's or Authorized Users' use of the Services in violation of this Agreement; provided that Igloo: (a) provides Customer with written notice of such claim within a reasonable period of time after learning of the claim; (b) agrees to allow Customer to fully control any litigation and settlement related to such claim (provided any such settlement does not require Igloo to make any payment or admission of liability); and (c) reasonably cooperates in response to Customer's request for assistance.

## 13. TERM AND RENEWAL

- 13.1 **Term and Renewal.** This Agreement commences on the Effective Date and shall continue so long as an outstanding Sales Contract or SOW remains active ("**Term**"). This Agreement shall terminate at the end of any period of thirty (30) days in which no outstanding Sales Contract or SOW remains active as between the Parties.

- 13.2 **Termination for Breach.** In the event that either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured by the breaching party or the notice of breach is not withdrawn by the non-breaching party within thirty (30) days, the non-breaching party shall have the right to terminate this Agreement without further notice. In the event of a termination of this Agreement under this Section 13.2: (i) Igloo will refund any amounts prepaid for the Igloo Platform on a prorated basis if Igloo is the breaching party; and (ii) there will be no refund of any fees paid to Igloo if Customer is the breaching party. The foregoing cure period shall not apply to breaches relating to the license grants, confidentiality provisions, any outstanding amounts that are more than thirty (30) days past due, or an instance of Chronic Failure (as defined in the SLA). In the event of early termination permitted by this Agreement, Customer shall immediately cease use of the Igloo Platform and pay any amounts owing hereunder.
- 13.3 **Immediate Termination.** Either party may terminate this Agreement effective immediately (without providing a right to cure or refund of any portion of fees) if the other party institutes or if any proceeding is commenced against or affecting the other party: (i) seeking to adjudicate it as bankrupt or insolvent; (ii) seeking liquidation, dissolution, winding up, arrangement, protection, relief or composition of it or any of its property, assets or debt; (iii) making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (iv) seeking to appoint a receiver, trustee, agent, custodian or other similar official for it or for all or part of its assets or property.
- 13.4 **Changes or Discontinuance of a Service.** Igloo may change or terminate features (for example, blogs, calendars, file sharing, tasks and wikis) or functionality of a Service in its sole discretion at any time. In the event of any material change to the Igloo Platform resulting in termination of features or general degradation of the Services, Igloo will: (i) use commercially reasonable efforts to notify Customer of such change or termination and, (ii) permit the Customer to terminate this Agreement without cause, provided that Customer provides Igloo with at least thirty (30) days' prior written notice of the termination of this Agreement and such notice is provided within ninety (90) days of the effective date of such change to or termination of a feature or the functionality of a Service. Change to or termination of a particular feature or functionality of a Service by Igloo shall not automatically terminate this Agreement and the terms and conditions of this Agreement and any other agreements between the parties shall remain in full force and effect, unaffected hereby.
- 13.5 **Effect of Termination.** Upon the termination, expiration or non-renewal of this Agreement: (i) Customer shall pay all undisputed fees and other amounts owing to Igloo at such time; (ii) Customer's rights to use the Igloo Platform shall be terminated and Customer shall immediately cease use of the Igloo Platform; (iii) all Customer Data (save and except for any Customer Data contained in Usage Data) shall be promptly irretrievably deleted from the Igloo Environment(s) and the System by Igloo either upon termination or earlier if requested by Customer; and (iv) each of the parties shall return or destroy all Confidential Information of the other party that is in its possession, care or control (and that, in the case of Igloo, is not Customer Data). Notwithstanding the foregoing, each party receiving Confidential Information will not be obligated to delete electronic Confidential Information (that, in the case of Igloo, is not Customer Data) that is stored in any disaster recovery or back-up/archival storage in accordance with its policies, provided that any such retained Confidential Information will continue to be subject to Section 9 of this Agreement. Any terms and conditions of this Agreement, which by their nature extend beyond the termination or expiry of this Agreement, shall survive the termination or expiry of this Agreement, including Sections 1, 3.1, 3.5, 3.6, 7, 8.4, 9, 10, 11, 12, this Section 13.5 and 14.

## 14. MISCELLANEOUS

- 14.1 **Entire Agreement and Amendments.** This Agreement, including all Sales Contracts, SOWs and all other documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings, representations and agreements, written or oral, regarding such subject matter, including any terms contained in Customer's purchase order. The terms and conditions of any agreements (including purchase orders) supplied by Customer shall not be applicable even if Igloo has purportedly accepted the same, unless accepted in writing by an authorized officer of Igloo. Except where expressly stated otherwise in this Agreement, all amendments to this Agreement must be made in a writing executed by an authorized representative of each party to be effective.
- 14.2 **Severability.** In the event that any provision of this Agreement is determined to be unenforceable or invalid under any applicable law or by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.
- 14.3 **Waiver.** The waiver by either party of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver of any other breach or of any succeeding breach of such provision or the waiver of the provision itself.
- 14.4 **Assignment.** This Agreement may not be assigned by either party without the prior written approval of the other party, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without consent of the other party, assign this Agreement as part of a merger, corporate reorganization or similar transaction, provided that the assignee to whom this Agreement is assigned will have the same or better fiscal capacity to fulfill the terms of this Agreement as did the assignor at the time of assignment. The parties agree that a change of control of either party shall not be deemed to be an assignment of this Agreement by that party. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.
- 14.5 **Independent Contractors.** Igloo and Customer are independent contractors and this Agreement, including the provision of any Services by Igloo to Customer, will not establish any relations of partnership, joint venture, employment, franchise or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this Agreement.
- 14.6 **Force Majeure.** Except with respect to payment obligations hereunder, time for performance shall automatically be extended by that period by which one party is prevented from meeting its obligations by any cause beyond its reasonable control ("**Force Majeure Event**"). Each party will use commercially reasonable efforts to prevent or avoid any event, condition or circumstance that would result in such Force Majeure Event. Failing prevention of the occurrence of such Force Majeure Event by the use of such efforts, the party unable to perform as a result of such Force Majeure Event will: (i) notify the other party immediately; and (ii) use commercially reasonable efforts to recommence performance of its obligations under this Agreement whenever possible, including through the use of alternate sources, workaround plans, implementation of a disaster recovery plan or other means.
- 14.7 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (also called the Vienna Convention) will not apply to this Agreement or the transactions contemplated by this Agreement.

- 14.8 **Jurisdiction of Disputes.** The parties agree to the exclusive jurisdiction of the courts of the State of New York for the conduct of any legal proceedings under, or related to, this Agreement.
- 14.9 **Disputes.** In the event of a claim of breach of contract or other dispute arising between the parties (a “**Dispute**”), excluding claims for breach of Sections 3.6 (Data Security), 9 (Confidentiality), or 12 (Indemnification), a party shall deliver written notice to the other party stating the nature of the dispute (the “**Dispute Notice**”) and representatives of each party that have not been directly involved in previous efforts to resolve the Dispute shall negotiate in good faith in an effort to resolve the Dispute. No formal proceedings for resolution of any Dispute shall be commenced until the earlier of the following: (i) the representatives of Igloo and Customer conclude in good faith that amicable resolution through continued negotiation is not likely to occur; (ii) thirty (30) days have elapsed since delivery of the Dispute Notice and a meeting between the parties has not been convened, or a party has not acted in good faith; or (iii) either party desires injunctive relief. If the parties are unable to settle the Dispute within thirty (30) days following the delivery of the Dispute Notice, then such Dispute shall be resolved, if possible, by a process of mediation agreed upon by the parties, acting reasonably. Such mediation shall be held in English and shall be held within sixty (60) days following the delivery of the Dispute Notice. If the parties are unable to settle the Dispute within ten (10) days of the commencement of the mediation described herein, then either party may commence formal proceedings subject to Sections 14.7 and 14.8.
- 14.10 **Injunctive Relief.** Notwithstanding Section 14.8 or Section 14.9, nothing in this Agreement shall prevent either party from applying to a court of competent jurisdiction for injunctive or other equitable relief in the case of an infringement of IP Rights or the breach of an obligation of confidentiality, to preserve or protect real or tangible property from continuing damage or risk of same or to preserve a legal right for which the applicable limitation period is about to expire.
- 14.11 **Language.** The parties hereto have expressly required that this Agreement be drawn in the English language. C’est la volonté expresse des parties que la présente convention soient rédigés en Anglais.
- 14.12 **Limitation Period.** No action, regardless of form, arising from this Agreement or any Services provided or to be provided hereunder may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought at any time.
- 14.13 **Titles.** The Section titles in the Agreement are solely used for convenience of the parties and have no legal or contractual significance.
- 14.14 **Authority.** Each party represents and warrants that: (i) it is an entity validly subsisting under the laws of the jurisdiction in which it is organized; (ii) it possesses full power and authority to enter into this Agreement and to perform its obligations hereunder; (iii) its performance of the terms of this Agreement will not breach any separate agreement by which such party is bound; and (iv) it shall at all times comply with applicable laws.
- 14.15 **Legal Compliance.** Igloo Property is subject to the export control laws of various countries, including Canada. Customer agrees that it will not submit Igloo Property to any government agency for licensing consideration or other regulatory approval without the prior written consent of an authorized representative of Igloo, and that it will not export Igloo Property to countries or Persons prohibited by such laws. Customer shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered and any foreign countries with respect to the use of the Igloo Property by Customer and its Authorized Users.
- 14.16 **United States Government End Use.** As applicable, Igloo provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the

public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Igloo to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

- 14.17 **Notices.** Any notice or other significant communication given to either party pursuant to this Agreement shall be in writing sent by email to the receiving party’s address for notice set out on the initial Sales Contract.
- 14.18 **Marketing.** Customer grants to Igloo permission to use Customer’s name and logo on Igloo’s website or in any other promotional material to identify Customer as a customer of Igloo. Customer retains all title and rights to its name and logo. If allowed by Customer, Igloo may place an “Igloo” button or similar branding in the bottom right-hand corner of each page in any Igloo Environment.
- 14.19 **Counterparts and Electronic Delivery.** This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.
- 14.20 **Conflicts.** To the extent of any conflict or inconsistency between the provisions of this Agreement and any Sales Contract or SOW, the inconsistency or conflict shall be resolved in the following descending order of priority: (i) the Sales Contract; (ii) the SOW; then (iii) this Agreement.

<b>Version</b>	<b>Date</b>
<a href="#">1.0</a>	March 20, 2009 - April 26, 2010
<a href="#">1.1</a>	April 27, 2010 - August 30, 2010
<a href="#">1.2</a>	August 31, 2010 – April 3, 2013
<a href="#">2.0</a>	April 4, 2013 – July 28, 2013
<a href="#">2.1</a>	July 29, 2013 - March 2014
<a href="#">2.3</a>	March 2014 - August 2015
<a href="#">3.0</a>	August 2015 – April 2021
<a href="#">3.1</a>	April 2021 – February 12, 2023
3.2	February 13, 2021 - Current