

## ACCEDIAN NETWORKS INC. - GENERAL TERMS AND CONDITIONS

IMPORTANT: READ BEFORE USING THE PRODUCT. BY BUYING THE PRODUCT(S) FROM ACCEDIAN NETWORKS INC. OR ONE OF ACCEDIAN NETWORKS INC'S AFFILIATES ("ACCEDIAN") AND USING IT, YOU (HEREINAFTER REFERRED TO AS THE "CUSTOMER") ARE DEEMED TO HAVE ACCEPTED THESE TERMS AND CONDITIONS (THE "T&CS" OR THE "AGREEMENT"). THEREFORE, PLEASE CAREFULLY READ THE FOLLOWING T&Cs BEFORE USING THE PRODUCT. ACCEDIAN OBJECTS TO, AND IS NOT BOUND BY, ANY DIFFERENT OR ADDITIONAL PROVISIONS PROPOSED BY THE CUSTOMER IN ITS PURCHASE ORDER, OR OTHER TRANSACTION DOCUMENTS. ANY PROVISIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THE PRESENT T&CS WILL HAVE NO EFFECT UNLESS THOSE TERMS HAVE BEEN EXPLICITLY ACCEPTED IN A WRITTEN DOCUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACCEDIAN.

### 1. DEFINITIONS

The following words and expressions, when used in these T&Cs shall have, unless incompatible with the context, the following meanings:

**1.1. "Accedian Systems"** means the information technology infrastructure used by or on behalf of Accedian in providing the Cloud Services, including all software, hardware, databases, electronic systems (including database management systems) and networks.

**1.2. "Act of Insolvency"** means i) the filing by, or against, a party of a petition in bankruptcy or a petition seeking reorganization, liquidation or similar relief, or the filing of any such petition which is not dismissed or stayed within 60 calendar days; ii) the adjudication of a party as bankrupt or insolvent; iii) the seeking or consenting to the appointment of a trustee, receiver or liquidator by a party; or iv) the making of a general assignment for the benefit of creditors by a party or a party's admission in writing of its inability to pay its debts as they become due.

**1.3. "Activation Date"** means the date on which an Entitlement is enabled by Accedian.

**1.4. "Affiliate"** means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a party, where control is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**1.5. "Cloud Materials"** means the Accedian Systems and any and all other information, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Accedian in connection with the Cloud Services or otherwise comprise or relate to the Cloud Services or Accedian Systems. Cloud Materials exclude Customer Systems.

**1.6. "Cloud Services"** means a solution of Accedian described in the Ordering Documentation delivered as a software-as-a-service solution.

**1.7. "Confidential Information"** means any material or information related to Accedian and provided to Customer which a reasonable person should know to be confidential, including, without limitation, non-public Accedian technical, financial, commercial or other confidential or proprietary information, Services, Product roadmaps, pricing, software code, Documentation, techniques and systems.

**1.8. "Customer's Internal Business Purpose"** is defined in Subsection 4.1.

**1.9. "Customer Systems"** means the Customer's information technology infrastructure, including software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third party services.

**1.10. "Documentation"** means copies of all electronic or printed documentation, if any, provided to Customer.

**1.11. "Entitlement(s)"** means the right to use, access or consume features of the Software or of the Cloud Services that are specified in the Ordering Documentation, that a Customer may purchase including, but not limited to, objects, sessions, features, capture points, software instances, IP addresses or flow analysis per minute.

**1.12. "Force Majeure"** means any event beyond a party's reasonable control or occurring without its fault or negligence, including any strike, lock-out, other labour dispute, popular uprising, sabotage, fire, flood, explosion, earthquake, epidemic, act of any government or acts of God.

**1.13. "License"** means Perpetual License and/or Subscription License (as defined below).



**1.14. “Ordering Documentation”** means the applicable price quotation, relevant invoice, Statement of Work, Sales Order Acknowledgement and Documentation or specifications for the Products and services purchased or licensed hereunder from Accedian either directly or indirectly.

**1.15. “Perpetual License”** is defined in Subsection 3.2.

**1.16. “Purchase Orders”** is defined in Subsection 2.1.

**1.17. “Product”** refers only to product, spare parts and other items sold or licensed by Accedian and that may be purchased by Customer as further described on the Quote. Notwithstanding the foregoing, where the context so requires, Product shall be deemed to include Software and Cloud Services.

**1.18. “Professional Services”** means those services relating to installation of Products, training and other services, but excluding support and maintenance.

**1.19. “Quote”** means the quotation document issued by Accedian that lists a price for a particular Product or Service.

**1.20. “Sales Order Acknowledgment”** means a document issued by Accedian listing the Product, price, delivery dates and other specific information for orders placed by Customer.

**1.21. “Software”** refers to all and/or each instance of firmware, application software or other computer program in object form. In the event Customer purchases a support service package, Software includes any updates (maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Licensor customers generally as part of support services provided pursuant to a valid support contract).

**1.22. “Subscription License”** is defined in Subsection 3.3.

**1.23. “Subscription Term”** means the period identified in the Ordering Documentation during which the Customer is permitted to use or access the Software and/or the Cloud Services pursuant to the terms set forth in this Agreement.

**1.24. “Statement of Work”** means the document that describes the Professional Services to be provided by Accedian to Customer for a fee which includes, without limitation, deliverables, delivery dates and fees.

## **2. SALE OF PRODUCTS AND PROFESSIONAL SERVICES**

**2.1.** Accedian agrees to sell to Customer who hereby agrees to purchase the Products and/or Professional Services identified on the Quote and/or the Statement of Work, the whole subject to acknowledgement and acceptance of the purchase order (“**Purchase Orders**”) by Accedian.

**2.2.** Customer may not, at any time, resell any of the Products and/or Professional Services to any third party, without the prior written approval of Accedian.

## **3. GRANT OF LICENSES**

**3.1.** Subject to payment of the applicable license fee and the terms set forth in this Agreement, the Customer may install and use the Software or the Cloud Services as permitted by the license type described below up to the number of Entitlements specified in the Ordering Documentation.

**3.2. *Perpetual.*** To the extent that Customer ordered and paid Software and/or Cloud Services on a perpetual basis, Accedian hereby grants to Customer a worldwide, perpetual, non-sublicensable, non-transferable (except as set forth in Subsection 27.1) and non-exclusive license to i) use the object code version of the Software identified in the Ordering Documentation and/or ii) to access and use the Cloud Services up to the number of Entitlements that the Customer paid for and that are described in the Ordering Documentation (the “**Perpetual License**”). Subject to Sections 4.2 and 6.1.5 and unless otherwise agreed to in writing, the term of a Perpetual License is effective from the Activation Date and remains in force in perpetuity or until terminated pursuant this Agreement, whichever is earlier.

**3.3. *Subscription.*** To the extent that Customer ordered and paid Software or Cloud Services on a subscription basis, Accedian hereby grants to Customer a worldwide, non-sublicensable, non-transferable (except as set forth in Subsection 27.1) and non-exclusive license to i) use the Software identified in the Ordering Documentation, and/or ii) to access and use the Cloud Services during the Subscription Term (the “**Subscription License**”). The Subscription License is limited to the number of Entitlements that the Customer paid for and that are specified in the Ordering Documentation. Subject to Section 4.2 below and unless otherwise agreed in the Ordering Documentation accepted by Accedian, the Subscription Term is effective from the Activation Date until the expiration date of the subscription set forth in the Ordering Documentation or until terminated pursuant this Agreement, whichever is earlier.



3.4. Except as set forth herein, no license is hereby granted to Customer in, and the License does not include the human readable code of the Software (source code).

#### 4. GENERAL LICENSE TERMS

4.1. Customer is permitted to i) use the Product solely to analyse Customer's network traffic and detect application performance issues only in connection with Customer's internal business purpose or as otherwise contemplated in the Documentation ("**Customer's Internal Business Purpose**"); and ii) use, copy, reproduce in whole or in part, adapt and modify any Documentation only for Customer's Internal Business Purpose.

4.2. Each License is granted for a limited number of Entitlements. If Customer wants to use the Software or the Cloud Services for a number of Entitlements that exceeds the number of Entitlements paid for ("**Overage**"), then Customer shall purchase additional Entitlements. Accedian reserves the right to calculate periodically the total number of Entitlements that are used by the Customer, if the Customer is in a situation of Overage, then Accedian reserves the right to invoice Customer for the applicable additional tier of Entitlements. Under a Subscription License, Accedian may invoice the Customer on a pro rata basis for the remaining period in Customer's Subscription Term, so that all Customer Subscription Terms coincide and are co-terminus. If the Customer is in a situation of Overage, it constitutes a material breach of the Agreement. Accedian reserves the right, without limiting its other rights and remedies under this Agreement, to terminate this Agreement, suspend the use of the Software, the Cloud Services and/or the support services should the Customer fail to pay the invoice that corresponds to the applicable additional tier of Entitlements.

4.3. Accedian has the right to audit Customer's use of the Products or require written certification, signed by an authorized representative of Customer, to confirm that Customer's use of the Products is in compliance with this Agreement and applicable laws and that the number of Entitlements used by Customer does not exceed the number of Entitlements paid for by Customer. Customer shall provide all reasonable assistance and information to Accedian in relation to the audit and/or the written certification. In the event that such audit reveals any use of the Products by Customer other than in full compliance, Accedian reserves the right to charge Customer for all reasonable expenses related to such audit in addition to any other liabilities and overages applicable as a result of such non-compliance.

4.4. Customer is wholly responsible for the compliance by any employee, consultant or other individual who benefits from the License.

4.5. The Products may come bundled or otherwise be distributed with open source or other third-party software, which is subject to the terms and conditions of the specific license under which it is distributed. OPEN SOURCE SOFTWARE IS PROVIDED BY ACCEDIAN "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH OPEN SOURCE SOFTWARE, ACCEDIAN SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer may request a copy of the relevant source code. Additional details are available upon request to Accedian.

#### 5. EVALUATION LICENSES

5.1. Accedian may grant to Customer a license to evaluate the Product for a limited period of time for internal use and evaluation purposes only. If Accedian provides remote access to the Product or delivers the Product to Customer for evaluation purposes only, the Product may be used by Customer at no cost during the Evaluation Period (as defined below). Unless otherwise set forth in the Ordering Documentation, Customer acknowledges that a license for evaluation purposes only expires 90 days after the Activation Date for all Products, and after 15 days for Skylight Sensor: On-Premises and Cloud Product, or any other period agreed to in writing by Accedian (the "**Evaluation Period**"). If the Customer wishes to continue using the Product upon expiration of the Evaluation Period, it shall purchase such Product or licenses to use it. If the Customer does not purchase such Product at the end of the Evaluation Period, it shall immediately remove from its systems any installed Product and destroy all permitted copies of such Product.

5.2. During the Evaluation Period, the Product is provided to Customer "as is" without warranty of any



kind, whether express, implied, statutory, or otherwise. ACCEDIAN AND ITS LICENSORS BEAR NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE PRODUCT BEING EVALUATED THROUGHOUT THE EVALUATION PERIOD.

**5.3.** Accedian has no obligation to provide support to Customer during the Evaluation Period.

## **6. PRODUCT SPECIFIC LICENSE TERMS**

### **6.1. TERMS SPECIFIC TO THE CLOUD SERVICES**

**6.1.1.** Accedian retains control the operation, provision, maintenance and management of the Cloud Materials.

**6.1.2.** Customer retains control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and responsibility for all access to and use of the Cloud Services by any person or entity, including i) the results obtained from any use of the Cloud Services; and ii) the conclusions, decisions or actions based on such use.

**6.1.3.** Customer retains control and responsibility for any third party products, software, hardware or services which are linked to, configured or programmed for the Cloud Materials, even if Accedian approved or acknowledged such linking, programming or configuration.

**6.1.4.** Accedian reserves the right, in its sole discretion, to make any changes to the Cloud Services and the Cloud Materials that it deems necessary or useful, provided Accedian does not substantially reduce the functionality of the Cloud Services.

**6.1.5.** If the Cloud Services are purchased on a subscription basis, the Cloud Services fees include the hosting and support for the benefit of Customer. If the Cloud Services are purchased on a perpetual basis, the support and hosting fees shall be charged separately from the Cloud Services fees, and the right to use the Cloud Services hosted by Accedian is subject to the payment of the support services fees and the hosting fees. Accedian reserves the right to suspend the right to use the Cloud Services granted on a perpetual basis if the Customer is not up-to-date on the payment of the applicable hosting fees and the support fees.

### **6.2. TERMS SPECIFIC TO SKYLIGHT PERFORMANCE ANALYTICS: SLA PORTAL SOFTWARE**

**6.2.1.** In order to access and use *Skylight performance analytics: SLA Portal Software*, Customer may be required to register with Accedian and select a user name and password or otherwise activate *Skylight performance analytics: SLA Portal Software* for use (the "**Account Information**"). This Account Information shall be used only by Customer and Customer may not share or otherwise disclose

Customer's Account Information to any other party. Customer shall be responsible for the security, confidentiality and integrity of Customer's Account Information and for any authorized or unauthorized access and use of Customer's Account Information. Customer agrees that Accedian may collect and use technical and related information regarding Customer's system and use of *Skylight performance analytics: SLA Portal Software*, including, without limitation, technical information about Customer's computer, system and application software, and peripherals, that is gathered periodically to facilitate and improve the provision of updates, support and other services (if any) related to *Skylight performance analytics: SLA Portal Software* and to verify compliance with these T&Cs.

**6.2.2.** Should Customer wish to use the geo-mapping feature available with *Skylight performance analytics: SLA Portal Software*, Customer shall obtain a valid Google API Maps license key (the "**Google Key**") and provide same to Accedian in order to enable the geo-mapping feature. It is understood that in no event shall Accedian be liable with respect to the use of the Google Key, nor to pay any charge or cost incurred to obtain and/or use the Google Key.

**6.2.3.** Customer has the option to buy a License to use *Skylight performance analytics: SLA Portal Software* with a 30-day term (the "**30-day Skylight performance analytics: SLA Portal License**"). Such License is renewable on a monthly basis prior to its expiry by paying Accedian's then applicable renewal fee. The 30-day Skylight performance analytics: SLA Portal License shall commence on the Activation Date and shall expire on the last day of the month of the Activation Date (by way of example, if the Activation Date is October 15, the 30-day Skylight performance analytics: SLA Portal License shall expire on October 31 and the 30-day price shall be prorated accordingly).

**6.2.4.** Customer also has the option to buy a License to use *Skylight performance analytics: SLA Portal Software* with a 1-year term (the "**1-year Skylight performance analytics: SLA Portal License**"). Such License shall be renewable on a yearly basis prior to its expiry by paying Accedian's then applicable renewal fee. The 1-year Skylight performance analytics: SLA Portal License shall commence on the Activation Date and shall expire on the last day of the year of the Activation Date (by way of example, if the Activation Date is October 15, the 1-year Skylight performance analytics: SLA Portal License shall expire on December 31 and the yearly price shall be prorated accordingly).

**6.2.5.** Purchase Orders for 30-days and 1-year Skylight performance analytics: SLA Portal Licenses shall not be for less than a full calendar month.

## **7. RESTRICTIONS**

**7.1.** Except as otherwise provided herein or expressly agreed by Accedian, Customer shall not, and will not





direct or authorize a third party to: i) modify, translate or create derivative works based upon the Software; ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software, in whole or in part; iii) copy, clone, reproduce, republish, upload, post or transmit the Software in any way; iv) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber by any means (including by lien, hypothecation or otherwise) in whole or in part the Software; v) use the Software or the Cloud Services for the purpose of competing with Accedian, including without limitation developing competitive intelligence; or vi) use the Software in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications. Any violation of these restrictions will be cause for immediate termination by Accedian of this Agreement and any licenses granted hereunder.

## **8. UNITED STATES GOVERNMENT END USERS**

**8.1.** The Software and any other software covered under this Agreement is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire the Software with only those rights set forth therein. Any use, modification, reproduction, release, performance, display or disclosure of the object code or the accompanying documentation by the U.S. government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the provisions hereof. Any technical data provided that is not covered by the above provisions is deemed to be "technical data" and "commercial items" pursuant to 48 C.F.R. 252.227-7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of 48 C.F.R. 252.227-7015(b).

## **9. PRICE**

**9.1.** The price required by Accedian for the acquisition of the Product and/or for the provision of Professional Services shall be as indicated on the Quote and/or the Statement of Work. Prices payable hereunder do not include taxes, shipping or duties, which shall be Customer's sole responsibility.

## **10. PAYMENT TERMS AND LATE PAYMENTS**

**10.1.** Payment terms shall be as indicated on the Quote and/or the Statement of Work. If no payment is indicated on the Quote or the Statement of Work, the

payment term shall be prepaid on the date on the invoice. In the event of default or delay in payment by Customer, Accedian may choose to decline further shipments, deactivate the Software or cease to provide the Cloud Services, in whole or in part, modify payment terms or terminate this Agreement pursuant to Section 22.

**10.2.** Late payments shall bear an interest charge of one and one half percent (1.5%) per month or the highest percentage allowed by law, whichever is less, to be calculated on a daily basis and be payable from the date payment was due until payment is received by Accedian.

## **11. TAXES**

**11.1.** In addition to all charges and fees due under this Agreement, Customer agrees to pay amounts equal to any taxes, tariffs, duties and fees however designated, and any interest, fines and penalties (hereinafter, collectively called the "Taxes") resulting from or arising from this Agreement, exclusive of taxes levied by the United States of America, Canada, the Province of Quebec or any other country, based on Accedian's net income. Customer shall pay on Accedian's behalf Taxes levied upon Accedian or reimburse Accedian for any such Taxes paid by Accedian. This Subsection shall apply during and after the termination of the Agreement whenever Accedian must pay and/or collect the Taxes from Customer according to the applicable laws as interpreted by the appropriate revenue authorities.

**11.2.** In the event that the Customer is a non-resident of Canada and that withholding Taxes are applicable on the Products and/or Professional Services in the jurisdiction of Customer, Customer may deduct such withholding Taxes from the amount owed to Accedian and pay them to the appropriate taxing authority; provided however, that Customer promptly secures and delivers an official receipt for those withholding Taxes and other documents reasonably requested by Accedian to claim a foreign tax credit or refund. Customer will ensure that any Taxes withheld are minimized to the extent possible under applicable law. Customer remains obligated to pay Accedian for the amount of tax withheld until Customer provides to Accedian the official receipt and other documents reasonably requested.

## **12. DELIVERY DATE**

**12.1.** Shipment is subject to availability. Accedian will use commercially reasonable efforts to meet the shipment date indicated on the Sales Order Acknowledgement. Accedian further agrees to use commercially reasonable efforts to meet the date indicated on the Statement of Work with respect to the start date of the performance of Professional Services.



However, Accedian reserves the right to reschedule either date, at its own reasonable discretion.

### **13. TITLE AND SHIPPING**

**13.1.** Ownership, risks and title to the hardware components of the Products shall pass to Customer from the moment Accedian makes the Product available for collection by Customer at Accedian's normal shipping facility indicated to Customer. Notwithstanding the above, the Software is copyrighted work and is the sole and exclusive property of Accedian, its Affiliates, and/or its and their suppliers. This Agreement conveys a limited right to operate the Software and shall not be construed to convey title to the Software to Customer. There are no implied rights. Customer shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Software or any portion thereof, to any other party. In the event that Accedian has not received full payment for the Product, including related Taxes prior to its delivery, it is agreed that Accedian shall retain a lien and security interest on the Product until payment therefore is received in full.

**13.2.** Accedian shall deliver the hardware components of the Products to Customer "EXW Accedian", as defined in the International Chamber of Commerce Terms of Trade (INCOTERMS 2010) document, from Accedian's normal shipping facility indicated to Customer. Customer understands that Accedian is not responsible for loading the goods on the vehicle provided by Customer or for clearing the goods for export. Customer shall assume all costs involved in taking the goods from the Accedian's shipping facility to the desired destination. Absent specific shipping instructions from Customer, Accedian may select a common carrier and/or freight forwarder carrier on Customer's behalf, but shall not thereby assume any cost, liability or tracking responsibilities in connection with the shipment of any Products delivered hereunder.

### **14. PACKAGING, MARKING AND EXPORT/ IMPORT CLEARANCE**

**14.1.** Product shall be packaged and marked by Accedian in accordance with Accedian's customary standards. Should Customer require any different or additional packaging or marking, Accedian has the sole discretion to decide to comply with any reasonable request. Customer agrees to assume all costs and expenses in relation thereof.

**14.2.** Customer shall be responsible to obtain: all documentation, permits and other approvals necessary or required to import the Product into its country of destination and shall be further responsible to pay all fees and expenses in relation thereof.

**14.3.** If Customer wishes to re-export the Product, Customer shall be responsible to obtain all documentation, permits, licenses and other approvals required in relation thereof and shall comply with all applicable laws and regulations.

### **15. ORDERS RESCHEDULING**

**15.1.** If Customer reschedules the order within 2 weeks prior to shipment or performance, rescheduling fees equal to 30% of the order shall be due within 10 days from the date of the rescheduling notice. Notwithstanding the above, order cannot be rescheduled within the last week prior to shipment or performance.

### **16. ACCEPTANCE OF PRODUCT/RETURNS**

**16.1.** Product shipped to Customer shall be deemed accepted by Customer from the moment the Product is delivered to Customer in accordance with the applicable Incoterm unless Customer advises Accedian otherwise in writing within 5 days of receipt as per the following provision.

**16.2.** In addition to any Product warranty provision, in the event that Customer notifies Accedian within the above 5 day delay that such Product does not meet published performance at time of shipment, Customer may elect to return, at its cost, such Product for replacement or full credit, at Accedian's sole discretion, by indicating the details of such failure(s) in writing. Should Accedian elect to replace the Product, it shall return the Product to Customer at Accedian's cost. If the Product is damaged in transit, Customer's sole recourse shall be limited to claims against the carrier/forwarder.

### **17. PROFESSIONAL SERVICES**

**17.1.** The Professional Services and the fees associated thereto will be detailed in the Ordering Documentation.

**17.2.** It is understood that, where applicable, Customer shall grant Accedian and/or its suppliers appropriate access to its facilities, network and/or Product in order for Accedian to perform the Professional Services. Unless otherwise set forth in a Statement of Work, such Professional Services shall be deemed accepted by Customer upon delivery of the deliverables.

**17.3.** Customer shall reimburse Accedian for all reasonable and documented travel, living and other expenses attributable to the performance of the Professional Services, unless otherwise agreed to in a Statement of Work.

**17.4.** It is understood that when Accedian provides enablement, connect or consulting days ("Professional Services Days") to Customer, such



days shall be consumed by Customer within 1 month from the date of acceptance, unless otherwise agreed in a Statement of Work. Beyond this period, Accedian will invoice Customer for such Professional Services Days, even if not consumed by Customer.

**17.5.** If Customer purchases additional Professional Services Days to be provided by Accedian, such days will be invoiced to Customer on the earlier of: i) consumption by Customer or ii) 180 days after the Purchase Order is placed. Unless otherwise agreed by both parties, purchased Professional Services Days will expire if not consumed by Customer within 12 months of the date of the Purchase Order.

## **18. WARRANTIES, SUPPORT AND RMA PROCESS**

**18.1.** The provisions regarding the warranties, support services and RMA process are set out at [https://accedian.com/wp-content/uploads/2020/03/Updated-Warranties-Support-and-RMA-Process-End-User\\_03032020.pdf](https://accedian.com/wp-content/uploads/2020/03/Updated-Warranties-Support-and-RMA-Process-End-User_03032020.pdf).

**18.2.** Accedian is entitled, at any time and at its sole discretion to modify the fee for the support services, modify and/or discontinue some of the support services upon a 6-month notice, in each case, without obligation to modify or change any Products previously delivered or to supply new Products meeting earlier specifications.

## **19. RIGHTS IN INTELLECTUAL PROPERTY**

**19.1.** Accedian reserves ownership and all right, title and interest in and to any patents, copyrights, trade secrets, trademarks, trade names, service marks, confidential information and any intangible property or proprietary rights relating to any Product or intangibles embodied therein. Customer shall not acquire any intellectual property rights into the Product and supporting documentation other than the right to use the Products and supporting documentation provided hereunder. Any modification or improvement made upon the Products or the supporting documentation provided hereunder shall belong to Accedian or to its licensors, as the case may be pursuant to an agreement entered into between Accedian and such licensor, and Customer shall execute any document reasonably requested by Accedian or its licensors to give effect to the above. Customer further agrees not to remove any product identification, trademark, copyright or other notices contained in or on the Product.

## **20. CONFIDENTIALITY**

**20.1.** Customer shall not disclose Confidential Information to any third party except if such disclosure is necessary for the performance of this Agreement, in

which case disclosure must be limited solely to the information necessary to achieve such performance. In addition, disclosure is allowed if it can be documented that Confidential Information is in the public domain and/or has been made available to the general public without restriction.

**20.2.** Customer shall use the same degree of care to protect Confidential Information as Customer uses to protect its own confidential information and shall not provide access or disclose Confidential Information to any third party without the prior written consent of Accedian.

## **21. INDEMNIFICATION AND LIMITATION OF LIABILITY**

**21.1.** Accedian will defend or, at its option, settle any claim, action or proceeding brought against Customer by a third party, relating only to the Product furnished by Accedian to Customer and alleging that the Product infringes a patent, copyright, trade secret (“**Infringement Claim**”). Accedian will indemnify Customer against the direct damages and costs (excluding the costs of legal representation) finally awarded by a Court against Customer in any action or proceeding which results from the Infringement Claim.

**21.2.** If an Infringement Claim is made, Accedian is entitled, at its expense and in its sole discretion to i) replace the affected Product with a non-infringing functional equivalent; ii) modify the Product to avoid infringement; iii) acquire for Customer the right of continued use or (iv) terminate this Agreement upon written notice to Customer.

**21.3.** Accedian will not be liable under this Section 21 unless Customer i) promptly notifies Accedian in writing of the Infringement Claim; ii) gives Accedian sole control to defend or settle the Infringement Claim; and iii) gives Accedian full authority, information and assistance in its defense against it. Customer is entitled, at its own expense, to engage separate counsel and participate in the defense of the Infringement Claim.

**21.4.** Despite any other provision in this Agreement, Accedian will not be liable for any Infringement Claim arising out of i) any information design, specification, instruction, data or material furnished by Customer and incorporated in a deliverable by Accedian at Customer’s request; or ii) the use or resale of an older or altered release of a Product if the infringement could have been avoided by the use or resale of a more current release; or iii) the use of the Product with any third party product or service including Customer’s



product and/or services; or iv) any modification to the Product not made by Accedian.

**21.5.** Customer will indemnify and hold Accedian, its directors, officers, employees, affiliated, subsidiary and parent companies harmless against all loss, damage, liability, cost or expense incurred by each, some or all of them in connection with Customer's acts or omissions including each claim, fine and liability in connection with i) any loss or damage to property and/or of personal injury including death, which may be caused by Customer; ii) any breach, or violation, of any law, rule or regulation of any jurisdiction which may apply to Customer's obligations and undertakings under this Agreement; and iv) any breach by Customer of any of its obligations in this Agreement.

**21.6.** IN NO EVENT SHALL ACCEDIAN BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS, REVENUES, GOODWILL, DATA, OR BUSINESS INTERRUPTION OR DOWNTIME, OR LITIGATION COST INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACCEDIAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**21.7.** NO ACTION SHALL BE BROUGHT FOR ANY BREACH HEREOF MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION EXCEPT FOR PAYMENTS DUE UPON AN OPEN ACCOUNT.

**21.8.** IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF ACCEDIAN (INCLUDING ITS EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS OR AGENTS), FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SALE OF PRODUCTS AND PROFESSIONAL SERVICES PROVIDED HEREUNDER, EXCEED THE LESSER OF I) THE AMOUNT OF PROVEN DIRECT DAMAGES, OR II) THE AMOUNT RECEIVED BY ACCEDIAN FROM CUSTOMER UNDER THE AGREEMENT FOR THE PRODUCT AND PROFESSIONAL SERVICES IN THE 12 MONTH PERIOD PRECEDING THE CLAIM FOR DAMAGES. THE FOREGOING PROVISION SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR A BREACH OF A FUNDAMENTAL TERM OR CONDITION.

**21.9.** ACCEDIAN DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, DETECT, OR IDENTIFY ALL THREATS, MALWARE AND MALICIOUS ACTIVITIES IN THE CUSTOMER'S

NETWORKS, AND CUSTOMER AND ITS AFFILIATES WILL NOT HOLD ACCEDIAN RESPONSIBLE FOR SUCH OR ANY CONSEQUENCES THEREOF.

## **22. TERMINATION**

**22.1.** Either Party may terminate this Agreement if i) the other Party is in breach or default of any material obligation and such breach or default shall continue for a period of 30 calendar days after giving written notice of such breach or default by the non-breaching Party to the breaching Party; ii) an Act of Insolvency occurs with respect to the other Party; or iii) as otherwise allowed hereunder. Any termination of this Agreement shall be without prejudice to any other rights and remedies available to the terminating Party at law or in equity.

**22.2.** In the event that Customer is in material breach and Accedian terminates this Agreement accordingly, as set out in Subsection 22.1, Customer is required to return the Product to the return location indicated by Accedian, securely and properly packaged, with carriage (and insurance at Customer's option) prepaid. If Customer fails to promptly return the Product to the location indicated by Accedian, Accedian will be entitled to enter Customer's premises to repossess such Product.

**22.3.** In all events, upon termination of this Agreement by either Party for any reason, Customer shall pay Accedian all payments accrued but not yet paid hereunder, and the Software licensed on a subscription basis and all Cloud Services shall cease.

**22.4.** Customer will have the right to demand a copy of the customer data in possession of Accedian, if any, within a period of 30 days after the effective date of termination.

**22.5.** Any section or subsection which, by its nature, is meant to survive the termination or expiration of this Agreement shall survive.

## **23. COMPLIANCE WITH LAWS**

**23.1.** Customer agrees to comply with all laws and regulations applicable including the customs and export control laws and regulations and applicable anti-bribery legislation of Canada, the United States and the country in which the Products and/or Professional Services are delivered or performed.

## **24. FORCE MAJEURE**

**24.1.** A party shall not be liable to the other party for any failure to perform hereunder due to events of Force Majeure or acts required to be performed in order to





ensure compliance with any applicable laws and regulations.

respect to the Product and/or Professional Services (including any purchase order issued by Customer).

## **25. GOVERNING LAW**

**25.1.** The laws of the State of New York shall govern this Agreement without reference to the conflict of laws provisions thereof and excluding the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties hereby waives its rights to a jury trial for any claim or cause of action based upon or arising hereunder.

## **26. LANGUAGE**

**26.1.** If there are any inconsistencies between the English language version of this Agreement and any translated version, then the English language version shall prevail. Les parties aux présentes reconnaissent avoir expressément demandées que la présente convention ainsi que tout avis et tous autres documents envisagés par les présentes ou y ayant trait qui seront signés relativement aux présentes soient rédigés en anglais.

## **27. NO ASSIGNMENT**

**27.1.** Neither party may assign, transfer or subcontract its rights or obligations hereunder, in whole or in part, without the other party's prior written consent. Notwithstanding the above, Customer may assign this Agreement to one of its affiliates, provided Customer remains solidarily liable for all obligations hereunder. Notwithstanding the prior statement, Accedian may assign this Agreement, in whole in part, to: i) one of its affiliates or to a third party pursuant to a transfer of all or substantially all of Accedian's business and assets, whether by merger, sale of assets, sale of stock, or otherwise and following such assignment, Accedian shall be deemed fully discharged by Customer of all its obligations under this Agreement; or ii) any financial institution or export development agency (such as Export Development Canada).

## **28. MODIFICATION AND WAIVER**

**28.1.** Accedian reserves the right to modify the terms of this Agreement without restriction from time to time, at its own discretion. Any failure by either party to enforce strict performance by the other party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement.

## **29. ENTIRE AGREEMENT**

**29.1.** This Agreement and, if applicable, the Non-Disclosure Agreement entered into by the parties in relation to the Product and/or Professional Services set forth the entire understanding and agreement between the parties and supersede all prior oral and written statements, understanding and agreements with