

## **GLOBAL SERVICES AGREEMENT (GSA)**

**These terms of service (this “Agreement”)** form a legal agreement between you and Carbon60 Operating Co. Ltd. and its Affiliates (“C60”, “We” or “Us”). IN ORDER TO ACCESS THE SERVICES (AS DEFINED BELOW) YOU MUST FIRST EXECUTE AND CONTINUE TO BE SUBJECT TO: (1) A STATEMENT OF WORK (AS DEFINED BELOW), AND; (2) AGREE TO THIS GLOBAL SERVICES AGREEMENT (“GSA” or “MSA”). By submitting a Statement of Work (as defined below) to C60, You indicate that You agree on Your own behalf and on behalf of each entity for whose benefit You act (together “You” or “Your”) that You agree to this Agreement and that You may not use the Services (as defined below) without agreeing to this Agreement first. If You have any questions or concerns about this Agreement, please contact Us at [legalinfo@carbon60.com](mailto:legalinfo@carbon60.com). If, prior to using the Services (as defined below): (a) You decide You are unwilling to agree to this Agreement and/or You are not currently subject to a Statement of Work (as defined below), do not indicate your agreement to any Statement of Work. C60 and You are each a “Party” and collectively the “Parties” to this Agreement. Please contact us at [legalinfo@carbon60.com](mailto:legalinfo@carbon60.com) if you would like to discuss the basis for your inability to accept the GSA.

NOW THEREFORE THIS GSA WITNESSES that in consideration of the mutual covenants set out herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Composition of Agreement.**

Each agreement between the parties shall include this Global Services Agreement (“GSA”), the schedule(s) containing the terms and conditions applicable to the specific type of Service(s) ordered hereunder (each a “Terms and Conditions”) and any schedule(s) that may be referenced within such Terms and Conditions, any Statement(s) of Work that refer to this GSA and/or Terms and Conditions, and together constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto (the combination of the above forming an “Agreement”). No Agreement can be altered, amended or modified except in writing that is agreed to by an authorized senior representative of each party. The terms of this GSA and any accompanying Terms and Conditions may be amended by the parties in the relevant SOW. Any term not defined herein shall have the definition ascribed thereto in the accompanying Terms and Conditions or Statement(s) of Work.

### **2. Definitions.**

- (a) “Affiliates” means any entity directly or indirectly controlling, controlled by or under common control with a party;
- (b) “Billing Commencement Date” shall be the date defined in the relevant Terms and Conditions attached hereto;
- (c) “C60 Tools” means any programs or tools, and all updates thereto, both in object code and source code form which (a) C60 has developed prior to the Effective Date, (b) which C60 develops for use in creating any Work Product hereunder, or (c) which C60 independently licenses from a third party;
- (d) “Customer Properties” shall mean all text, pictures, sound, graphics, video, Personal Information, and other data supplied by Customer to C60;
- (e) “Fees” shall have the meaning set out in Section 4.1 of this GSA;
- (f) “GSA Term” has the meaning set out in section 3.2 of this GSA;
- (g) “Personal Information” shall mean (a) any “personal data” or “personally identifiable information” as defined by the Privacy Laws that are applicable to the Services, and; (b) any information that relates to a living individual who can be identified either from that information alone or when combined with other information;
- (h) “Professional Services” shall mean (i) the consulting services to be provided by C60 to Customer, and/or (ii) the development of Work Product and associated C60 Tools, all as set forth in a Statement of Work;
- (i) “Privacy Laws” shall mean the laws, regulations or other binding rules regarding the processing of Personal Information that are applicable to the Personal Information and the Services;
- (j) “Services” shall mean the services as defined in one or more applicable Terms and Conditions attached hereto;
- (k) “Service Level Agreement” or “SLA” shall mean the service levels governing the supply of certain Services as defined in the applicable Terms and Conditions attached hereto;

- (l) "Service Term" has the meaning set out in section 3.3 of this GSA;
- (m) "Statement of Work" or "SOW" shall mean the ordering document incorporating the GSA and the relevant Terms and Conditions specifying the Services executed by both parties hereto regardless of how such document is entitled (Order Form, Service Order Form, etc...), and;
- (n) "Work Product" shall mean all HTML files, Java files, graphics files, animation files, data files, technology scripts and programs, both in object code and source code, all documentation related thereto and any other testable deliverable prepared for Customer by C60 in accordance with the terms of an Agreement, but excluding Customer Properties, C60 Tools, and any third party products. For clarity, the provision of staff to perform work at Customer's direction and control shall not be considered 'Work Product' and, therefore such staff are not subject to acceptance testing.

### **3. Delivery and Term.**

3.1 Delivery of Services. Services are acquired from C60 by using SOW(s), email request with approval or ticket request with approval. Each SOW shall be in C60's standard form and must be executed by both C60 and Customer prior to becoming effective. Upon each SOW becoming effective, it shall, along with this GSA and the applicable Terms and Conditions and any schedules referenced therein, form an Agreement, each Agreement being considered by the parties to be a separate and distinct agreement between them.

3.2 GSA Term. This GSA (and the Terms and Conditions specific to the Services ordered) shall become effective on the Effective Date and shall continue until the completion of all Services described in each Statement of Work that refers to this GSA unless earlier terminated as provided herein or in the applicable Terms and Conditions ("GSA Term"). The issuance and acceptance of a Statement of Work after the completion of a prior Statement of Work shall reinstate this GSA (and the Terms and Conditions specific to the Services ordered).

3.3 Service Term and Renewal. Services shall commence on the latter of C60's receipt of any Initial Retainer as may be stated in an SOW or the Billing Commencement Date and shall continue until the expiry of the Service Term stated in such SOW unless otherwise terminated as set forth in this GSA or the applicable Terms and Conditions. The Service Term for recurring Services shall automatically renew for additional successive terms of equal duration to the initial Service Term (the "Renewal Term") unless either party delivers to the other party written notice of its intention not to renew the SOW no less than thirty (30) days prior to the expiration of the Service Term or Renewal Term, as applicable. The Service Term for Professional Services shall be as set out in the SOW for such Professional Services.

3.4 Quebec Waiver. Customer hereby irrevocably waives any and all right to terminate any Agreement formed hereunder pursuant to Section 2125 of the Quebec Civil Code.

### **4. Fees and Payment.**

4.1 Fees. Fees shall include any one or more, as may be applicable, of the Total Monthly Recurring Fee, Total Setup Fee, Ad Hoc Services, Lost Time and/or Professional Service Fee as stated in the SOW, and any other fees charged by C60. Unless otherwise stated in the applicable SOW, all Fees shall be payable in Canadian dollars as stated herein. Any Fees calculated on an hourly basis shall be rounded up to the closest hour. In consideration of C60's delivery of the Services, Customer shall pay the Fees as follows:

- (a) any Total Monthly Recurring Fee set out in the SOW on a monthly basis in advance within thirty (30) days of the date of invoice (unless otherwise stated in the applicable SOW), invoicing to commence on the applicable Billing Commencement Date. Any partial months shall be invoiced on a prorated basis;
- (b) any Fee set out in the SOW in relation to any Third Party Service whereby C60 will be Customer's Paying Agent as defined herein within fifteen (15) days of the date of invoice (unless otherwise stated in the SOW), invoicing to commence on the applicable Billing Commencement Date. Any partial months shall be invoiced on a prorated basis;
- (c) any Total Setup Fee set out in the SOW is billable upon execution of the SOW and payable within thirty (30) days of the date of invoice;
- (d) any Professional Service Fee within thirty (30) days of the date of invoice, and;
- (e) any one-time Fees, including but not limited to Ad Hoc Services, within thirty (30) days of the date of invoice.

4.2 Payment Agent. In the event Customer executes an SOW for the receipt from C60 of Management services related to Third Party Services that obligate C60 to pay fees to a Third Party Provider (as defined in the applicable Terms and Conditions) on behalf of Customer, Customer hereby represents and warrants that C60 has been duly appointed as Customer's Paying Agent. Customer agrees to pay to C60 without deduction, set-off or counterclaim of any kind any fees indicated on an invoice as a disbursement paid by C60 on Customer's behalf to a Third Party Provider for the provision of Third Party Services throughout the Service Term and any Renewal Term as stated at section 4.1(b) hereof. Customer agrees and acknowledges that it is primarily responsible for any and all fees, costs and expenses charged by Third Party Provider for the provisioning of Third Party Services.

4.3 Credit. C60 may at any time perform a credit analysis of Customer. Customer shall provide any credit information reasonably requested by C60. Following such credit analysis, C60 may, in its sole discretion, require Customer to pay the total Fees, or any portion thereof, in advance of providing Services and/or require other assurances to secure Customer's payment obligations under an Agreement.

4.4 Taxes. All amounts set out or referred to in an Agreement are exclusive of all sales, use, value added taxes, duties and levies, however designated or computed (other than taxes based upon C60's net income), and the payment of such taxes are the responsibility of Customer. If Customer is required by applicable laws to withhold or deduct any taxes from payments owed to C60 under an Agreement, then the amount of the payment due and payable by Customer will automatically be increased so that the amount actually received by C60 equals the amount invoiced by C60.

4.5 Late Payment; Interest. Other than payment for Fees of which Customer reasonably disputes in a written notice sent to C60 within fifteen (15) days of receipt of invoice, any payment not made when due, shall accrue interest at the rate of two (2%) per month (twenty four percent (24%) per annum), or the maximum highest rate permitted by law, and C60 may charge an administrative fee for collection of late payments, payable by Customer, in an amount equal to five percent (5%) of the invoice for each month in which the invoice is not paid by Customer.

4.6 Fee Increases. C60 shall be entitled to:

(a) on an annual basis, but not before the first anniversary of the first day of the applicable Service Term or Renewal Term, as applicable, increase the Fees to reflect an increase in the Consumer Price Index, as published by Statistics Canada or equivalent government agency, whereby the Fees may be increased by the same percentage as the increase in the Consumer Price Index, and;

(b) pass on any increase in price by a Third Party Provider of service which is used solely for the provision of Services to Customer through an increase in Fees, provided that in any case C60 has notified the Customer no less than thirty (30) days in advance of such increase excepting where C60 itself has received less than thirty (30) days advance notice, in which case it shall give as much notice as it is reasonably able.

4.7 Service Suspension. C60 may, after two (2) days' notice and opportunity to cure, suspend performance of all or any part of its obligations pursuant to an SOW when, and for so long as, Customer has not paid any invoice submitted to it pursuant to any Agreement formed hereunder within thirty (30) days of the final due date of such invoice (the "Suspension Period"). For greater certainty and subject to other rights C60 may have in an Agreement, if a suspension under this Clause 4.7 occurs, all milestones and timelines related to the provision by C60 of Services hereunder shall be extended by the amount of time of the Suspension Period. C60 may charge the lesser of 50% of monthly fees indicated in each relevant SOW or two hours of Professional Services fees at C60's then standard rate for such services to reactivate Services following the Suspension Period.

4.8 Retainer. C60 may require an initial retainer payable upon execution of each SOW in an amount as set forth in the SOW ("Initial Retainer"). The Initial Retainer shall be applied to overdue invoices issued by C60 pursuant to Section 4.1 hereof. If the Initial Retainer has been set-off in full to pay out overdue invoices, then C60 shall notify Customer of the need to replenish the retainer amount to the Initial Retainer amount or such other amounts as may be mutually agreed. C60 may terminate Services for failure to fund the retainer as required hereunder.

## **5. Warranties, Liability, and Indemnity.**

5.1 C60 Warranty. SUBJECT TO THE QUALIFICATIONS AND LIMITATIONS CONTAINED HEREIN, C60 WARRANTS THAT THE SERVICES WILL, IN ALL MATERIAL RESPECTS, CONFORM TO THE

DESCRIPTION OF SERVICES PROVIDED IN THE SOW. EXCEPT AS EXPRESSLY SET FORTH IN AN AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, C60 MAKES NO WARRANTIES, GUARANTEES, REPRESENTATIONS OR ENDORSEMENTS, EXPRESS OR IMPLIED, AS TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR CONDITION OF MERCHANTABILITY QUALITY OR FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE, CUSTOMER'S ABILITY TO FULFILL ANY COMPLIANCE OR REGULATORY REQUIREMENTS AND ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, ENDORSEMENTS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. MAINTENANCE AND SYSTEM REPAIRS, UPGRADES AND RECONFIGURATIONS MAY TEMPORARILY IMPAIR SERVICES.

5.2 Limitation of Liability. EXCEPT FOR CLAIMS ARISING FROM SECTIONS 5.3, 5.4, 5.5, 5.6, OR 6 OF THIS GSA AND ANY CLAIMS SPECIFICALLY EXEMPTED IN ANY TERMS AND CONDITIONS ATTACHED HERETO, NEITHER C60 NOR CUSTOMER SHALL BE LIABLE TO THE OTHER UNDER AN AGREEMENT IN CONNECTION WITH ANY SINGLE EVENT OR SERIES OF EVENTS FOR ANY COVER, SET-OFF, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS REVENUE, LOST OR DAMAGED DATA, FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE OR BASED UPON ANY OTHER LEGAL OR EQUITABLE THEORY. FURTHERMORE, CUSTOMER AGREES THAT CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR C60'S FAILURE TO PROVIDE SERVICES IN ACCORDANCE WITH ANY APPLICABLE SLA SHALL BE AS SET OUT IN SUCH SLA. EXCEPT FOR LIABILITY OR BREACH RELATED TO BODILY INJURY, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR UNAUTHORIZED USE OR DISCLOSURE OF CUSTOMER'S CONFIDENTIAL INFORMATION BY AN AUTHORIZED AGENT OF C60, C60 SHALL IN NO EVENT BE LIABLE TO CUSTOMER FOR AN AMOUNT GREATER THAN THE AMOUNT PAID BY CUSTOMER TO C60 FOR SERVICES IN THE SIX (6) MONTHS PRIOR TO NOTICE OF THE CLAIM. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SET FORTH HEREIN CONSTITUTE AN ESSENTIAL ELEMENT OF EACH AGREEMENT BETWEEN THE PARTIES AND THAT IN THE ABSENCE OF SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS: (A) THE FEES AND OTHER TERMS IN EACH AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT, AND; (B) C60'S ABILITY TO OFFER AND CUSTOMER'S ABILITY TO PURCHASE SERVICES OR ANY PORTION THEREOF UNDER AN AGREEMENT WOULD BE IMPACTED.

5.3 Customer Properties. C60 is not aware of and does not monitor the type, nature or value of Customer Properties either passing over C60's network or being stored on C60 supplied devices (physical or virtual), nor does C60 audit, view or manipulate Customer Properties in the ordinary course of business. As a result, Customer must be aware of all Customer Properties that it chooses to send or make accessible to C60 for processing. As Customer is responsible for the Customer Properties which are sent or made accessible to C60, Customer is responsible for ensuring that any Customer Properties which are not strictly necessary for the delivery or use of the Services and which should be protected or restricted on a need to know basis (such as payment card information or cardholder data, protected health information, classified government information, Personal Information or other data that requires special or additional protections) should not be sent or made accessible to C60 and C60 shall not bear any responsibility or liability for such Customer Properties even if sent to C60 by Customer in error.

C60 has taken the following steps to address its regulatory requirements regarding Personal Information (including, but not limited to, the General Data Protection Regulation (EU 2016/679), Article 28) where Customer Properties includes Personal Information that is sent or made accessible to C60 in order to facilitate the delivery or use of Services as specified in this section 5.3. Where such Customer Properties are sent to or made accessible to C60 in order to facilitate the delivery or use of Services, C60 shall:

- (a) Only provide the Services documented and agreed to under an Agreement and any other supplemental Services agreed to in writing by the parties;
- (b) Ensure all C60 personnel and service providers with access to Customer Properties commit to respecting confidentiality through written agreements;

- (c) Implement appropriate technical and organizational security safeguards to protect Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services from accidental loss, theft, destruction or damage in respect of its own internal systems and processes used to provide the Services. User access controls, including password practices, to Customer Properties always remain Customer's sole responsibility;
- (d) Require that its service providers and data subcontractors with access to Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services implement appropriate technical and organizational security safeguards to protect such Customer Properties;
- (e) Insofar as possible and at Customer's cost, assist Customer in meeting any legal obligations to respond to a request of an individual who is exercising their rights when Customer Properties of the individual is under the Customer's control;
- (f) Inform Customer of a security incident if known to C60 that may affect Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services within 24 hours of discovery of the incident, if the incident could result in a data breach that may pose a real risk of harm to individuals. C60 shall also provide, at Customer's cost and expense, any other reasonable support to Customer, insofar as possible, in order to assist Customer with its compliance obligations, such as communicating with regulatory authorities;
- (g) Remove and permanently delete any Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services upon termination of an Agreement, except for residual copies of such Customer Properties that may temporarily remain in back-ups of C60's systems. Where Customer requests a copy of such Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services prior to termination, and where the Services provided permit recovery of such data, C60 will use reasonable commercial efforts to provide Customer with a copy of such data, subject to Customer's payment of any fees quoted by C60 in association with Customer's request, and;
- (h) If known and available, provide to Customer any information requested in order for Customer to demonstrate compliance with any regulatory obligations with regard to Customer Properties made accessible to C60 as strictly necessary for the delivery or use of the Services, as well as cooperate and contribute to any audits or inspections conducted by Customer or mandated upon Customer by a regulatory authority in respect of such data. Any such audits or inspections conducted by Customer or mandated upon Customer by a regulatory authority shall be subject to the following conditions: (i) the scope and timing of such inspections shall be subject to C60's prior approval (not to be unreasonably withheld or delayed) as well as to C60's supervision during each such audit; (ii) C60 is to receive one full, unedited copy of any audit report and its accompanying notes immediately upon its completion; (iii) such audits shall not restrict or affect in any way C60's ability to provide continuous, uninterrupted services to its third party clients, and; (iv) all audit costs and C60 expenses incurred by C60 shall be borne by Customer, including, but not limited to the then prevailing Professional Services fees for any involvement of C60 staff.

5.4 Intellectual Property Indemnity. If either party (the "Indemnitee") promptly notifies the other (the "Indemnitor") in writing of a claim against Indemnitee or its Affiliates that any of the Customer Properties, Excluded Application(s), Customer Software, C60 Software or any other thing or matter supplied by one party to the other infringes a presently existing proprietary right of a third party, and if the Indemnitee specifies in such notice that the claim is based to any extent upon an alleged infringement enforceable in Canada or the United States by any portion of the Indemnitor's properties, the Indemnitor, with respect to and to the extent of the portion of the claim pertaining to the Indemnitor's properties, shall indemnify and defend such claim at its expense and pay any costs or damages (including reasonable attorney's fees) that may be incurred or finally awarded against the Indemnitee or its Affiliates. THIS SECTION SETS FORTH THE COMPLETE LIABILITY OF THE PARTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

5.5 PIPEDA/ CASL. Notwithstanding any limitation of liability otherwise contained in the Agreement, Customer agrees that it shall indemnify, defend and hold C60 and its Affiliates, their respective officers, directors, employees and contractors harmless from any and all claims, costs, liabilities and damages which arise from or relate to Customers failure to comply in the conduct of its business with any Privacy Laws including, but not limited to, the Gramm Leach Bliley Act (1999), the Health Insurance Portability and Accountability Act (1996), the Health Information Technology for Economic and Clinical Health Act (HITECH), Canada's Anti-Spam Law (S.C. 2010, c.23) ("CASL") and/or the Personal Information Protection and Electronic Documents Act.

5.6 No Control. Customer acknowledges that C60 does not own or have any control over the content, availability, accuracy or any other aspect of any information, data, files, pictures or content in any form or

any type ("Content") made accessible or available by or to Customer or Customer's end users through the use of the Services and C60 does not monitor the use of the Services by Customer or its end users except as provided in each Agreement. Customer shall indemnify, defend and reimburse C60 and its Affiliates for, and hold C60 and its Affiliates harmless from, any and all claims or lawsuits of any person and resulting costs (including reasonable attorney's fees), damages, losses, consequences, awards and judgments:

- (a) based on the use by Customer or any third party of Content retrieved from or produced by the Services, or;
- (b) for injury to any person or property attributable in whole or in part, directly or indirectly, to any operation, function or malfunction of the Services or any part thereof.

## **6. Confidentiality.**

6.1 Confidential Information. The parties acknowledge that it will be necessary for each of them to disclose or make available to each other information and materials, including but not limited to business information concerning a party and its clients, specifications, research, software, trade secrets, discoveries, ideas, know-how, designs, drawings, flow charts, data, marketing plans and financial or business information that is disclosed whether orally visually or in a material form (collectively the "Confidential Information") that may be confidential or proprietary or may contain valuable trade secrets, and that such information may already have been disclosed prior to the Effective Date. Prior to disclosure, the disclosing party shall use reasonable efforts to designate all Confidential Information by marking the information with the word "Confidential" or similar wording. However, Customer and C60 agree that, even if not so marked, any Customer Software, C60 Software, C60 Hardware, Customer Foundation, C60 Tools, information concerning the Facility and all documents, descriptions and embodiments of any of them (each as may be defined in the applicable Terms and Conditions), shall be deemed Confidential Information.

6.2 Non-Disclosure. Both during and after the GSA Term each of the parties agree:

- (a) to use commercially reasonable efforts to protect the Confidential Information of the other party from unauthorized use or disclosure and to use at least the same degree of care with regard thereto as it uses to protect its own Confidential Information of a like nature;
- (b) to use and reproduce the Confidential Information of the other party only as permitted under any Agreement formed hereunder or as needed to perform its duties hereunder, and;
- (c) not to disclose or permit access to the Confidential Information of the other party to any third party, without the other party's prior written consent.

6.3 Exceptions. Information will not be considered Confidential Information if it:

- (a) is already, or otherwise becomes, publicly known by third parties as a result of no act or omission of the receiving party;
- (b) is lawfully received, after disclosure hereunder, from a third-party having right to disseminate the information without restriction on disclosure;
- (c) is furnished to others by the disclosing party without restriction on disclosure, or;
- (d) can be shown by the receiving party to have been independently developed by such party prior to the execution of an Agreement.

6.4 Injunctive Relief. The parties agree that any breach by either party or any of its officers, directors, or employees, of any provisions of this Section 6 may cause immediate and irreparable injury to the other party and that, in the event of such breach, the injured party will be entitled to seek injunctive relief as well as any and all other remedies at law or in equity.

## **7. Intellectual Property.**

7.1 Work Product. As between C60 and Customer, Customer shall always be and remain the sole and exclusive owner of the Work Product. To the extent that any work performed by C60 under an SOW may be covered by the definition of "Work Product", C60 hereby assigns and conveys its entire right, title and interest therein and all copies thereof, and all copyright and other proprietary rights therein, without further consideration, free from any claim or lien or retention of rights, to Customer. If requested by Customer, C60 shall cooperate in good faith with Customer for the purpose of securing and protecting the intellectual property rights as specified in this Article 7.1, at Customer's sole cost and expense.

7.2 Customer Properties. As between C60 and Customer, Customer will always be and remain the sole and exclusive owner of the Customer Properties. Nothing in this Agreement gives C60 any right, license, title or interest in or to the Customer Properties or any portion thereof, subject only to C60's right to access and use the Customer Properties for the benefit of Customer in connection with providing Services pursuant to an Agreement. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use the Customer Properties. Customer represents that it has and will have the right to provide Customer Properties to C60 in connection with the Services pursuant to an Agreement, including, but not limited to, obtaining applicable consents from identifiable individuals.

7.3 Title to C60 Hardware, C60 Software and C60 Tools. Title to the C60 Hardware, C60 Software and C60 Tools remains with C60 or its suppliers, as the case may be, and except as specifically granted hereunder, no right title or interest in or to the C60 Hardware, C60 Software or C60 Tools passes to Customer. Accordingly, Customer shall not dispose of or suffer a lien or encumbrance upon the C60 Hardware, C60 Software or C60 Tools. Customer further agrees to not (i) modify any part of the C60 Software or C60 Tools, (ii) translate, decompile, disassemble, decrypt, reconstruct, or reverse engineer the C60 Software or C60 Tools, (iii) remove any proprietary notices, labels or marks from the C60 Software, C60 Hardware or C60 Tools, (iv) authorize or acquiesce in the use of the C60 Software or C60 Tools by persons other than Customer and C60, or (v) copy the C60 Software, C60 Tools or documentation.

7.4 License. C60 grants to Customer, and Customer accepts, a non-exclusive, non-sublicenseable, royalty free, license to utilize the C60 Software in conjunction with the Services throughout the Term and any extension thereof. C60 grants no other rights than those explicitly granted herein and Customer shall not exceed the scope of its license. Customer agrees that it does not obtain any real property interest in the Facility and agrees not to register against the title to the Facility any mortgage, charge, notice or other encumbrance.

## **8. General.**

8.1 Customer References. Customer hereby grants C60 and its Affiliates a non-exclusive, non-sublicenseable, royalty free, worldwide license to use Customer's trademarks, service marks, trade names, logos, or other commercial or product designations (collectively the "Marks") for the purposes of marketing and promoting C60's services to the public. Customer may terminate C60's right to use the Marks, in whole or in part, if the usage of such Marks does not adhere to Customer's then current standards for such Marks.

8.2 Headings. Section headings are provided for convenience of reference only and do not constitute part of an Agreement. Any references to a particular section of an Agreement shall be deemed to include reference to any and all subsections thereof.

8.3 Severability and No Waiver. If any provision of any Agreement formed hereunder is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the spirit and intent of the invalid provision. The waiver by either party of a breach of any provision of an Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

8.4 Assignment. Neither party may assign nor delegate any or all of its rights (other than the right to receive payment) or its duties or obligations hereunder without the consent of the other party, which consent shall not be unreasonably withheld or delayed, provided however, that either party may assign its duties or obligations hereunder without the need to obtain consent of the other party to an affiliate of such party or to a successor in interest to substantially all of the business of that party. An assignee of either party authorized hereunder shall be bound by all the terms of the subject Agreement and shall have all of the rights and obligations of the assigning party set forth therein. The provisions contained herein are for the sole benefit of the parties hereto.

8.5 Independent Contractors. The parties to each Agreement are independent contractors, and no agency, partnership, joint venture or employment relationship is intended or created hereby. Neither party shall have the power to obligate nor bind the other party. Personnel supplied by C60 shall work exclusively for C60 and shall not for any purpose be considered employees or agents of Customer.

8.6 Notices. Any notice required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by:

- (a) registered mail, return receipt requested or via overnight courier postage prepaid, to the address of the receiving party as set forth on the initial page hereof or such other address as may be specified by such party in a notice delivered to the other party in accordance with this Clause, or;
- (b) via hand delivery or email.

Notices shall be deemed delivered when received by the party being notified.

8.7 **Governing Law, Jurisdiction and Venue.** Each Agreement created hereunder shall be deemed to have been made in and shall be construed pursuant to the laws of the Province of Ontario, Canada and any action or proceeding arising out of or related to an Agreement shall be brought only in the courts of such jurisdiction. The parties hereby consent to such jurisdiction and venue.

8.8 **Counterparts.** This GSA, the Terms and Conditions (and any schedules attached thereto) and each Statement of Work may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

8.9 **Force Majeure.** "Force Majeure" means an event, the cause of which is beyond the reasonable control of the party affected thereby and which could not reasonably have been foreseen and provided against, including, without limitation, acts of god, epidemics or pandemics, strikes, lock outs or other labour or industrial disturbances, accidents, fires, explosions, weather conditions materially preventing or impairing work, inability to secure fuel, power, materials, contractors or labour, mechanical breakdown, failure of equipment or machinery, delays in transportation, wars, civil commotion, riot, sabotage, applicable legislation and regulations thereunder, interruption by government or court orders and future orders of any regulatory body of competent jurisdiction. Notwithstanding any other provision of an Agreement, if by reason of Force Majeure, either party is wholly or partly unable to perform certain elements of its obligations hereunder, it shall be relieved of those obligations to the extent, and for the period, that it is affected by Force Majeure, provided that the affected party gives the other party prompt notice of such inability. The party affected by Force Majeure shall use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable speed, the cause of its inability to perform, provided that there shall be no obligation on a party so affected to settle labour disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction.

8.10 **No Employee Solicitation or Hiring.** Unless otherwise agreed in writing by the parties, during the GSA Term and for a period of six (6) months following its termination for any reason, Customer agrees not to solicit for employment any current employee of C60. This restriction does not prevent the hiring of such employees who respond to indirect, passive solicitation such as advertising, job boards, or web sites.

8.11 **Language.** Customer has requested that the Agreement and all related documents be drawn up in the English language with which request C60 agrees. Le Customer a demandé que le present contrat ainsi que toute la documentation d'accompagnement soient rédigés en anglais, requête à laquelle C60 consent.



**TERMS AND CONDITIONS – CARBON60 HOSTING SERVICES**

**1. Composition of Agreement.**

THESE TERMS AND CONDITIONS are applicable to Carbon60 Hosting Services whereby services are provided directly by C60 as further defined herein and are an attachment to the Global Services Agreement ("GSA") by and between Customer and C60 and is effective as of the date of the corresponding SOW. The specific type of Carbon60 Hosting Services ordered by Customer will be specified in one or more Statements of Work. Upon these Terms and Conditions being deemed to form a part of an SOW, these Terms and Conditions and each SOW and the GSA shall collectively form an Agreement, each Agreement being considered by the parties to be a separate and distinct agreement between them.

**2. Definitions.**

2.1 "Acceptable Use Policy" or "AUP" shall mean the principles, rules and regulations that govern the use of the Services provided by C60 pursuant to this Terms and Conditions by Customer as posted on C60's website at [www.carbon60.com](http://www.carbon60.com), as amended or updated from time to time.

2.2 "Ad Hoc Services" shall mean a Customer request that changes the configuration within the Customer Software without expanding or adding to the scope of the Services or Customer System.

2.3 "Billing Commencement Date" shall mean the date on which Customer is notified that the Carbon60 Hosting Services have been implemented.

2.4 "Credit Application Form" means the credit application form in the form provided by C60.

2.5 "Customer Hardware" means the computer systems, peripherals, terminals, communications equipment and all other related hardware products (physical or virtual) owned or leased by, or otherwise under the control of Customer that have been specifically approved by C60 as part of the Customer System.

2.6 "Excluded Application" means those computer programs including documentation relating thereto, all updates and new releases thereof, owned by or licensed to Customer by a third party that are installed on the C60 Hardware or Customer Hardware and not included as part of the Customer System.

2.7 "Customer Software" means the computer programs, including documentation relating thereto, all updates and new releases thereof, owned by or licensed to Customer by a third party that has been specifically approved by C60 for inclusion as part of the Customer System.

2.8 "Customer System" shall mean collectively the Customer Hardware, Customer Software, C60 Hardware and C60 Software, all as set out in an SOW.

2.9 "Facility" shall mean the data centre housing the Customer System from which Services may be delivered.

2.10 "C60 Hardware" shall mean the physical or virtual computer systems, peripherals, terminals and all related products, as modified or upgraded from time to time, provided by C60 for inclusion in the Customer System.

2.11 "C60 Software" shall mean the computer programs, including but not limited to the C60 Tools, including documentation related thereto and all updates and new releases thereof, licensed to Customer by C60 and included in the Customer System.

2.12 "Go Live Date" shall mean the date following the Billing Commencement Date on which Customer notifies C60 that it is ready to go live.

2.13 "IP Address Justification Form" means the IP address justification form in the form provided by C60.

2.14 "Services" shall in this Terms and Conditions-Carbon60 Hosting Services mean the Carbon60 Hosting Services provided directly by C60 and applied to the Customer System that are ordered by Customer, all as set out in an SOW.

2.15 "Service Levels" or "SLA" shall mean the predetermined, objective performance standard applicable to the Services.

**3. Services provided by C60.**

3.1 Provision of Services. In consideration of payment by Customer of the applicable Fees and subject to all the terms hereof, C60 shall provide the C60 Hardware and C60 Software and provide the Services specified in the SOW throughout the Services Term and any Renewal Term. All such Services shall be subject to the applicable Service Levels beginning on the Go Live Date.

3.2 Provision of Public IP Addresses. C60 may assign Internet Protocol ("IP") addresses to Customer as part of the Services. Customer has no right to use IP addresses not assigned to it by C60, to move IPs between different servers or accounts or to use IP addresses in any manner not authorized by C60. C60 maintains control of all IP addresses that are assigned to Customer and reserves the right to change or remove them at its discretion with thirty (30) days written notification to Customer. Customer acknowledges that IP addresses are assigned to Customer as part of the Services and are not transferrable and control of the IP addresses remains with C60 and no right, title or interest in or to the IP addresses passes to Customer. Customer agrees that any renumbering required of IP addresses upon termination or expiration of Services is the sole and exclusive responsibility of Customer. Customer acknowledges the allocation of public IP addresses are governed by the policies of the American Registry of Internet Numbers (ARIN). These policies dictate that name-based hosting must be used whenever possible. C60 reserves the right to periodically review IP address usage and revoke authorization to use those IP addresses not being utilized or where name-based hosting could be used.

3.3 Replacement. C60 may at its discretion at any time during the Service Term and any Renewal Term replace, in whole or in part, any of the C60 Hardware or C60 Software provided that such replacements are equal to or better in all material respects, including, but not limited to, quality, operating system compatibility, network compatibility, data storage capacity and processing capacity, then the preceding C60 Hardware or C60 Software, as applicable.

**4. Customer Obligations.**

4.1 Services Contingent. C60's obligations to initiate delivery of and continue to perform the Services shall, where applicable, be contingent upon Customer fulfilling the following obligations at its sole cost and liability notwithstanding section 5.2 of the GSA:

- (a) timely payment of all Fees;
- (b) comply throughout the Service Term with the AUP;
- (c) provide C60 throughout the Services Term with a valid and subsisting right to publicly perform, publicly display and digitally perform the Customer Software and Excluded Applications, if any, over those C60 controlled IP Addresses assigned to Customer by C60;
- (d) to not exercise or otherwise make use of any administrative access rights to the Customer System without first following the procedure set forth in Section 4.3;
- (e) provide C60 with the Customer Hardware and Customer Software, if any, upon request by C60;
- (f) use industry standard security precautions in connection with its use of the Services including, where prudent, encrypting any confidential information transmitted to or from, or stored by, the Customer on the servers or storage devices used by the Customer;
- (g) Customer shall test all patches applied to the Customer System by C60 for compatibility with all Excluded Applications within the time limits specified by C60 in the patch notification sent to Customer by C60, and;
- (h) assign to C60 any maintenance agreements for Customer Hardware and Customer Software with, if necessary, the vendor's approval, or obtain the vendor's consent permitting C60 to act as Customer's agent under the maintenance agreement.

4.2 Customer's Representations and Warranties. Customer represents and warrants that:

- (a) Customer is the true and lawful owner or licensee of the Customer Software and Excluded Applications and has the full right and ability to use such Customer Software and Excluded Applications as contemplated in this Agreement;
- (b) Customer has the right to place Customer Hardware in the Facility and have it incorporated into the Customer System for the purposes of receiving the Services as contemplated herein;

- (c) Customer's use of C60 controlled IP Addresses or use of the Services including any data transmitted, stored or received on the Customer System will not (i) violate any applicable laws or regulations, (ii) cause a breach of any agreement with any third parties, or (iii) interfere with other C60 customer's use of any C60 services or C60's network, and;
- (d) Customer has, where applicable, obtained all necessary consents to conduct its business in compliance with the Canada Anti-Spam Law ("CASL") and applicable Privacy Laws.

4.3 Temporary Administrative Access. Where applicable, C60 retains the right to administrative access to any and all devices on its network for the purposes of management, maintenance, inventory and activities related to the delivery of Services. To facilitate this, all affected devices must have functioning C60 administrative privileges and agents, including a functioning monitoring agent, an administrative agent and an inventory agent. Administrative privileges and agents may be added, removed or modified on relevant devices by C60 at any time. Customer will not tamper, hinder, delete or in any way change the functioning of these administrative tools. Any tampering or removal of the tools used by C60 to manage the Service constitutes a material breach of this Agreement. Where applicable, Customer agrees that it shall not have administrative access to the Services unless specifically agreed to by C60, such administrative access to be subject to the following conditions:

- (a) the Service Levels shall be suspended upon Customer being granted administrative access to the Customer System;
- (b) C60 shall not be liable for, and makes no guarantees whatsoever, express or implied, with regard to the Services performed during the period of time in which the Service Levels are suspended;
- (c) the Service Levels and any liability incurred by C60 under an Agreement shall be reinstated only upon verification by C60 of the operational status of the Customer System following the conclusion of Customer's administrative access, and;
- (d) any corrective action deemed necessary and undertaken by C60 resulting from Customer's administrative access shall be charged, and paid for by Customer, at C60's then prevailing professional service rates.

## 5. **Termination.**

5.1 C60's Termination or Suspension for Cause. Notwithstanding anything to the contrary contained in the GSA, C60 may, at its option and in addition to any other rights and remedies available at law or equity, terminate or temporarily suspend, where applicable, the Services:

- (a) anytime during the Suspension Period upon thirty (30) days prior notice;
- (b) immediately upon the actual breach or documented threatened breach of the warranty contained in Section 4.1(g), 4.1(h) or 4.2(c) hereof;
- (c) upon thirty (30) days prior written notice and opportunity to cure upon the actual breach or documented threatened breach of any warranties or obligations, other than breach of Section 4.1(a), 4.1(g), 4.1(h) or 4.2(c), contained in Sections 4.1 – 4.3, or;
- (d) upon Customer becoming insolvent or bankrupt or making an assignment for the benefit of creditors or appointing (or having appointed) a receiver or trustee in bankruptcy or upon any proceeding in bankruptcy, receivership or liquidation being instituted against Customer and continuing for thirty days without being dismissed.

5.2 Customer's Termination for Cause. Customer may terminate the Services upon C60's failure to cure a material breach within thirty (30) days of C60 receiving written notice of such breach.

5.3 Effect of Termination/Expiry. On termination or expiration of Services, all rights, benefits and obligations under an Agreement terminate other than Customer's responsibilities to pay all outstanding fees. Customer shall cease using the terminated/expired Services and applicable obligations on the part of C60 will cease (including that C60 will disconnect Customer's access to the terminated/expired Services). Furthermore, C60 shall have no responsibility for the restoration of terminated/expired Services. All Excluded Applications, Customer Software and Customer owned data will be deleted. Customer may request a copy of the Excluded Applications, Customer Software and/or customer owned data at any time prior to termination or during the Transition Assistance as per Section 5.4. Customer is solely responsible for all costs associated with the software and/or data recovery and/or restoration of Services at C60's standard business rates.

5.4 Transition Assistance. Upon the natural expiration of Services and a deposit paid to C60 equal to the last month of Total Monthly Recurring Fees set out in the applicable SOW(s), save and except in the

event Customer's account is not current at the time of termination, C60 will, upon thirty (30) days prior written request, continue to provide the Services and will provide the other transitional services referred to in this section 5.4 (the "Transition Assistance") for as long as the Transition Assistance is requested and paid for in advance by Customer, up to a maximum of 90 days after the last day of the Service Term or Renewal Term, as applicable (the "Transition Period"). C60 will co-operate with Customer to assist in a transition of the Services to Customer and/or other service providers but shall in no event be required to disclose any C60 Confidential Information or intellectual property. All services provided by C60 and agreed to in writing by Customer during the Transition Period which are incremental to the standard Services provided by C60 hereunder shall be paid for on a time-and-materials basis by Customer at C60's then standard business rates.

**SERVICE LEVEL AGREEMENT/ SERVICE LEVEL OBJECTIVES**  
(Schedule to the Terms and Conditions-Carbon60 Hosting Services)

**Composition of Agreement.**

This Service Level Agreement/Service Level Objectives are applicable to Carbon60 Hosting Services only and is an attachment to the Terms and Conditions-Carbon60 Hosting Services ("Terms and Conditions") and is effective as of the date of the corresponding SOW. The GSA and the Terms and Conditions are an integral part hereof and are incorporated by reference. The GSA, Terms and Conditions, any schedules referenced within the Terms and Conditions or a SOW are together referred to as the "Agreement".

The purpose of this Schedule is to set forth the service levels at which C60 is to provide certain Services to Customer. Customer agrees that the remedies set out herein are the sole and exclusive remedy for C60's failure to meet a service level. This Schedule applies only while Customer accounts are in good standing.

**1. System Availability SLA**

C60 will make commercially reasonable efforts to maintain availability of the datacenter systems, network systems, storage systems, and computing systems that make up the Customer's hosting infrastructure 100% of the time in any given month as shown below for the applicable Services.

*Managed Virtual Private Cloud:* 100% availability of physical infrastructure and C60 managed virtual operating system instances. Availability guarantee does not apply to any Excluded Application.

*Private Cloud:* 100% availability of physical infrastructure and hypervisors and C60 managed virtual operating system instances. Availability guarantee does not apply to Customer managed virtual operating systems within the private cloud or any Excluded Application, only the hypervisor and physical servers. Customer must subscribe to a minimum of two private cloud servers for redundancy to be eligible for this System Availability SLA.

If Customer experiences availability as described in this section 1(a) less than 100% in any given month, Customer shall be entitled, within 10 business days of the end of the month in which a qualifying Service interruption occurs, to request a reduction of 10% of the monthly recurring fee payable for the affected Service and another 5% for each 60 minutes of additional downtime up to a maximum of 100% of Customer's monthly fee for the affected Service. Downtime is measured from the time a service impacting failure is detected to the time it is resolved as measured by C60's monitoring system. Credits shall not be provided to the Customer if downtime is the result of: a) SLA Suspensions as per Section 4 of this schedule; b) circumstances beyond C60's reasonable control, including but not limited to Force Majeure Events, or; c) a breach by Customer of this Agreement or the AUP. C60 will investigate any report it may receive from Customer with respect to a potential qualifying Service interruption. If C60 acting reasonably determines that the Customer reported Service interruption has been caused by factors outside the scope of C60's obligations, C60 shall be relieved of its obligations with respect to issuing credits hereunder and shall notify Customer of its determination.

**2. Service Desk Service Level Objective (SLO)**

C60 will make commercially reasonable efforts to provide technical support services to Customer 24/7/365 ("**Service Desk**"). Customer will use the Service Desk as the central point of contact for all technical support related to its Services. Customer may call the Service Desk but is strongly encouraged to email C60 at [support@carbon60.com](mailto:support@carbon60.com) or other applicable customer service portal to submit any service requests to the Service Desk. All requests to the Service Desk are logged to C60's internal support systems. To access the Service Desk, Customers must: 1) know their account and user credentials, and; 2) provide a clear and specific description of the incident, problem or request, including information regarding any error messages that were received. An SLO does not constitute a contractual obligation on the part of C60 to achieve any specific performance metric, but instead specifies performance goals that C60 will use reasonable commercial efforts to achieve. Failure to achieve an SLO does not entitle Customer to any form of remedy or penalty.

The Service Desk uses the following guidelines to prioritize requests, respond to, and begin resolving any incident or request.

INCIDENTS (SLO)			
Priority	Criteria	Target Response Time SLO	Target Resolution Time SLO
1 - Critical	Production system is malfunctioning, and business transactions are failing or significantly degraded	15 Minutes	4 Hours
2 - High	Complete or partial failure of service on a non-production system	30 Minutes	8 Hours
3 - Normal	Minor disruption to the business if the workload is unavailable for a short period of time	1 Hour	3 Days

### 3 SLA Suspension(s)

#### 3.1 SLA Suspension

Customer agrees that from time to time, it is necessary for C60 to suspend Services for technical reasons as it relates to infrastructure SHARED BETWEEN CUSTOMERS, including, without limitation, core network and Facility maintenance. Provided C60 provides Customer with reasonable advance notice of no less than five (5) business days of the temporary suspension of Services, such suspensions will not entitle Customer to service credits and will not be deemed an interruption of Services pursuant to section 1 (System Availability SLA).

#### 3.2 Emergency Service Suspension

C60 reserves the right to schedule Emergency Maintenance when deemed necessary in its sole discretion. C60 shall, whenever possible, provide notice to Customer of all Customer affecting Emergency Maintenance. Such Emergency Maintenance will not entitle Customer to credits and shall not be deemed an interruption of the Services for the purpose of calculating service availability pursuant to section 1 (System Availability SLA). C60 will use commercially reasonable efforts to minimize the duration of such a suspension.

#### 3.3 Other SLA Suspensions

An SLA Suspension will also happen or be deemed to have happened when a Force Majeure event or any other service impacting event or condition beyond C60's direct control exists including, but not limited to:

- Acts or omissions of Customer or Customer's employees, agents, contractors, vendors, or third parties;
- Downtime caused by an Excluded Application (as revealed through analysis by C60, the Customer, or expert third party);
- Downtime caused by a Denial of Service (DoS) or Distributed Denial of Service (DDoS) event;
- Downtime caused by bugs or application incompatibility with third party software (as revealed through analysis by C60, Customer, or expert third party);
- Customer has any balances thirty (30) or more days overdue;
- Customer has been granted Administrative access to the Services (based on applicable Service).

Such SLA suspensions will not be deemed a service interruption for the purpose of calculating service availability or SLA credits pursuant to section 1 (System Availability SLA).

## TERMS AND CONDITIONS – PROFESSIONAL SERVICES

### 1. Composition of Agreement.

THESE TERMS AND CONDITIONS-Professional Service are applicable to Professional Services only ("Terms and Conditions") and are an attachment to the Global Services Agreement ("GSA") by and between Customer and C60 and is effective as of the date of the corresponding SOW. The specific type of Professional Services ordered by Customer will be specified in the Statement of Work. Upon these Terms and Conditions being deemed to form a part of a Statement of Work, these Terms and Conditions (and any schedules or attachments referenced herein) and each Statement of Work shall collectively form an Agreement, each Agreement being considered by the parties to be a separate and distinct agreement between them.

### 2. Order Process.

2.1 Statement of Work. C60 will provide the Professional Services all as set forth in each SOW. Each SOW shall contain, at a minimum, the following information:

- (a) a complete and accurate description of the Professional Services;
- (b) Acceptance Criteria, if any;
- (c) a description of required status reports, if any;
- (d) the commencement and termination dates of the Professional Services;
- (e) the Professional Service Fee, and;
- (f) a payment schedule.

2.2 Changes. Additions or modifications to the SOW must be accomplished using a written Change Request and Change Request Evaluation Response. A Change Request Evaluation Response must be in writing and signed by each party in order to be effective. The procedure for creating a Change Request Evaluation Response is as follows:

- (a) Customer shall submit a written request to C60 specifying the additions or modifications to the SOW desired (the "Change Request");
- (b) Customer and C60 shall jointly review the proposed Change Request and either approve it for further study or reject it. The amount and payment of the costs of such review and study shall be agreed to between the parties before such review and study formally commences. The results from this review and study shall be used by C60 to determine the effect that the implementation of the Change Request will have on the Professional Service Fee, the commencement and termination dates and payment schedule set out in the applicable SOW;
- (c) C60 shall submit a written Change Request Evaluation Response to Customer that shall include a complete and accurate description of the additions or modifications to the SOW, a statement of any additional Professional Services Fees and any changes to the delivery dates.

On Customer's written signature to the Change Request Evaluation Response, the Change Request Evaluation Response will become part of the applicable SOW.

2.3 Personnel. C60 shall have the exclusive authority to make staffing decisions with respect to use of its personnel in the provision of the Professional Services. This authority includes the right to reassign personnel, provided however, that the Professional Services shall continue to be provided in accordance with the terms of the Agreement formed hereunder.

### 3. Customer Responsibilities.

3.1 Co-operation. Customer shall co-operate with and assist C60 by providing, within five (5) business

of C60's request, to C60 such information and such access to Customer's personnel, facilities, equipment, databases, software, and other resources as may be described in the SOW or as C60 may reasonably request. All such information and access will be considered Customer's deliverables, the timely, complete, and accurate performance of which is a condition precedent to C60 meeting its delivery dates described in the SOW.

3.2 Customer Acceptance. All Work Product delivered under an Agreement shall be subject to testing by Customer to determine whether the Work Product delivered contains the functionality and other objective

requirements as may be particularly described in the SOW (the "Acceptance Criteria"). This acceptance test shall run for five (5) business days immediately after delivery of the completed Work Product and/or each specific portion thereof unless otherwise specified in the applicable Statement of Work (the "Testing Period"). During the Testing Period, Customer shall either:

- (a) notify C60 in writing of its acceptance of the Work Product, or;
- (b) provide C60 with detailed written notice of any defects that cause the Acceptance Criteria not to be met.

C60 shall use commercially reasonable efforts to cure any defects described in such written notification and Customer will have an additional Testing Period to retest that portion of the Work Product that was corrected by C60 (the "Corrected Work Product") to determine whether C60 has cured the defects listed in Customer's notice. This process shall be repeated until the Corrected Work Product is accepted pursuant to the Acceptance Criteria. Customer shall be deemed to have accepted the Work Product and the Corrected Work Product, if any, if no written notice of defects is provided to C60 within the Testing Period.

3.3 Subcontracting. C60 may subcontract third party service providers to perform all or part of the Professional Services C60 shall remain liable to the Customer for any breach of this Agreement by any such subcontractor and C60's engagement of a subcontractor shall not relieve C60 of an of its obligations under this Agreement.

#### **4. Professional Services Fees and Payments.**

4.1 Fees. The fees for C60's Professional Services will be described in the SOW (the "Professional Services Fees"). Professional Services Fees shall be calculated on either a time and materials basis or a flat fee as set out in the SOW. In the event the Professional Services Fees are calculated on a time and materials basis, Customer acknowledges that any amount in the SOW purporting to represent the total Professional Services Fees is only an estimate provided solely for Customer's convenience and that Customer shall remain obligated to pay all amounts invoiced by C60.

4.2 Expenses. In addition to the Professional Services Fees described in the SOW, Customer shall also reimburse C60 for all reasonable travel, lodging, meals, telephone, postage, courier, and other necessary out of pocket expenses incurred by C60 personnel in the course of performing the Professional Services hereunder. Customer shall also pay to C60 an administration fee of ten percent (10%) in respect of all such expenses.

4.3 Lost Time.

- (a) Lost Time includes, without limitation any commercially unreasonable time C60 stands idle as a result of any failure of Customer to perform Customer's obligations as described in Clauses 3.1 and 3.2 of these Terms and Conditions (or otherwise pursuant to the Agreement formed hereunder).
- (b) All Lost Time shall be chargeable to Customer on a time and materials basis at C60's then current rates for such services.

4.4 Payment Terms. All invoices shall be due and payable on the date specified in the SOW, or, if no date is specified, within thirty calendar days after receipt of invoice (the "Billing Commencement Date"). C60 shall separately invoice Customer monthly for Lost Time.

4.5 Books, Records and Audit Rights. Throughout the term of any SOW deemed to include these Terms and Conditions and stated to have Professional Services Fees calculated on a "Time and Materials" basis, Customer or its agents may audit the books, records and documentation relating to that SOW to verify the accuracy of any invoices submitted. Customer may review such items during C60's normal business hours upon reasonable written notice of at least seventy-two (72) hours to C60. Customer may only undertake such a review twice per calendar year. The cost of the audits will be borne by Customer and any material discrepancy brought to the attention of C60 will be corrected within a reasonable time.

4.6 Funding. Third Party Supplier may from time to time offer funding of certain specified services which may, at Third Party Supplier's sole discretion, include the Professional Services ("Qualified Services"). If the Third Party Supplier deems, in its sole and absolute discretion, the Professional Services to be Qualified Services, C60 shall apply for such financing on Customer's behalf and will notify Customer of any decision or requests for additional information made by such Third Party Supplier. Customer represents and warrants that all information provided to C60 in furtherance of Customer's funding application to Third Party



Supplier is true, accurate and complete. C60's sole obligation with respect to financing offered by Third Party Supplier is to apply for such financing on Customer's behalf. C60 is not a party to any agreement between Customer and Third Party Supplier and C60's performance of the Professional Services shall not be contingent upon the approval of such financing by Third Party Supplier. Customer shall remain primarily liable for all Fees invoiced by C60. Third Party Supplier may refuse or reconsider the application for financing on any grounds and at any delivery stage of the applicable SOW. For purposes of this section 4.6, "Third Party Supplier" shall mean a third party selected solely by Customer to provide services directly to Customer without involvement of C60 including, but not limited to, Amazon Web Services, Inc. or its affiliates and/or Microsoft Corporation or its affiliates.

**5. Professional Services Termination.**

5.1 Termination. Either party may terminate any SOW upon the occurrence of a material breach by the other party, which material breach has not been cured within thirty days after receipt of written notice thereof by the breaching party from the other, unless the cause for termination is failure to pay in accordance with Section 4, in which case the SOW may be terminated on five calendar days' notice and opportunity to cure. In the event of termination, Customer shall pay C60 for all Professional Services performed up to the date of termination and for any hardware and software C60 has ordered on behalf of Customer.