

# **TROJAN DIGITAL SERVICES AGREEMENT / TERMS AND CONDITIONS FOR CUSTOMER LICENSE**

## **1. TERMS AND CONDITIONS**

These “Terms and Conditions” mean collectively, the terms and conditions contained herein which form an agreement (“Agreement”) between Trojan Technologies Group ULC (“Trojan”) and Customer. Any terms and conditions originating with Customer are superseded by these Terms and Conditions and shall not be or become part of the Agreement unless specifically accepted in a writing signed by a duly authorized officer of Trojan. Trojan’s commencement of work shall not be construed as acceptance of an order from Customer containing additional or different terms and conditions. Trojan shall have no liability to Customer of any nature until Customer signs and delivers to Trojan the Digital Services Agreement incorporating these Terms and Conditions.

### ***Scope of TROJAN Digital Services***

**Data Access and Storage Services.** Trojan agrees to provide access to a Customer-specific web page on TROJAN’S STREAM™ web site (“Customer’s Web Page”), accessible only by Trojan, Customer, Customer’s Administrator and Authorized Customer Users, through which Customer Data may be accessed by Customer.

**Service Levels.** Subject to all limitations of liability contained herein, Trojan will endeavor to provide Customer with access to Customer’s Web Page twenty-four (24) hours a day, Monday through Sunday, excluding periods of routine planned maintenance and upgrade services (the “Routine Window”) and emergency services. Such periods are subject to change upon notice to Customer. Trojan may provide maintenance and upgrades to TROJAN DIGITAL SERVICES, including Customer’s Web Page, during the Routine Window unless deferral of such maintenance or upgrades would materially and adversely affect the performance or security of TROJAN DIGITAL SERVICES, Trojan’s network, data center or other customers. Trojan may endeavor to perform such maintenance or upgrades in such a manner so as to not adversely impact Customer’s use of TROJAN DIGITAL SERVICES. To the extent practicable, Trojan shall notify Customer as far in advance as practicable of any maintenance or upgrades outside the Routine Window.

**Data Analysis.** No consulting, development or other services are provided by Trojan to Customer. Customer acknowledges and agrees that Trojan does not review, edit, investigate, confirm or analyze Customer Data or exercise any form of control over Customer Data other than those specific collection and storage services set forth herein.

Control Changes. In certain circumstances, Trojan has the ability to make changes to the control program of your system upon your direction. A separate agreement in writing is required for this application. This service involves you providing specific instructions for changes to the control panel, with Trojan implementing such changes (typically capable of being done remotely). Trojan's responsibility for this application is expressly limited to carrying out the instructions provided for the change following written instruction from you. In no event will Trojan have any liability or responsibility, of any nature or kind, for any claims or obligations relating to or arising from the changes made to the control program.

### ***Scope of Customer Responsibilities***

Customer Administrator. Customer agrees to designate a single individual (its "Administrator") who shall be Customer's agent in designating those employees of Customer who may, through unique Passwords, Customer IDs or other security means, access Customer's Web Page and Customer Data. Each Customer employee authorized to access Customer's Web Page and to whom a unique Password or Customer ID is assigned and issued shall be an "Authorized Customer User." The Administrator shall be responsible for the relationship between Trojan and each Authorized Customer User. Only the Administrator may contact Trojan to update Authorized Customer User profiles, approve new and close Authorized Customer User accounts. Trojan shall issue and provide to each Administrator all security certificates, passwords and Customer identifications (collectively "Passwords and Customer IDs") for distribution to Authorized Customer Users. Customer shall keep full and accurate records of all issued, active and inactive passwords and Customer IDs. The right to use passwords or Customer IDs terminates immediately upon the earlier of termination of (a) the Agreement or (b) an Authorized Customer User authorization to access TROJAN DIGITAL SERVICES. Customer is responsible for issuing, administering, updating and ensuring that proper security measures are in effect with respect to all Passwords and Customer IDs. Customer is solely responsible for monitoring, supervising and terminating, when appropriate, its Authorized Customer User access to TROJAN DIGITAL SERVICES. The use of Passwords and Customer IDs constitutes acts of Customer and Trojan may rely upon the instructions, consent given and all action taken, without verifying the identity or authority of any person accessing TROJAN DIGITAL SERVICES by means of such Passwords and Customer IDs. Although each Authorized Customer User is personally responsible for its use of TROJAN DIGITAL SERVICES, Customer's Web Page and Customer Data, Customer is responsible for

ensuring that it's Administrator and each Authorized Customer User is aware of and complies with this Agreement.

Customer Equipment. Certain hardware, software and telecommunications and other services and equipment (collectively "Customer Equipment") are required to access and use TROJAN DIGITAL SERVICES. Customer is responsible for obtaining, implementing and operating and maintaining all Customer Equipment and bearing all related costs and expenses. Trojan does not provide and Customer agrees it is not relying on Trojan to provide advice or other assistance in selecting and acquiring Customer Equipment necessary for Customer to access TROJAN DIGITAL SERVICES. Trojan is not responsible for any change to TROJAN DIGITAL SERVICES that may cause Customer Equipment to become obsolete, require modification or alteration or otherwise affect the performance of TROJAN DIGITAL SERVICES.

## **2. LIMITED LICENSE**

Trojan grants to Customer during the term hereof a simple, limited, nonexclusive, non-transferable, non-sublicensable, revocable license to access Customer's Web Page solely through Trojan's network, solely for (a) Customer's internal business operations, and (b) accessing Customer Data retrieved from Customer's Monitoring Sites. Trojan grants no rights other than those granted explicitly herein and reserves and retains for itself and/or its licensors all title, copyright and other proprietary rights in TROJAN DIGITAL SERVICES and Customer's Web Page, including all updates, custom modifications and derivatives, all of which shall become the property of Trojan.

## **3. SERVICES**

Restrictions and Requirements. Customer is responsible for all activities that occur under its Authorized Customer User accounts. Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of TROJAN DIGITAL SERVICES, and notify Trojan promptly of any such unauthorized use; (c) adhere to all Customer requirements set forth in the Scope of Customer Responsibilities above; and (iv) comply with all applicable local, state, federal, and other applicable laws in using TROJAN DIGITAL SERVICES and, if using TROJAN DIGITAL SERVICES outside of the United States, not use TROJAN DIGITAL SERVICES in a manner that would violate any federal or state laws of the United States if conducted therein.

Use Guidelines. Customer shall, and shall cause its Administrative and Authorized Customer Users to, use TROJAN DIGITAL SERVICES solely for its own internal business purposes as contemplated by this Agreement and

not that of any third party and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make TROJAN DIGITAL SERVICES available to any third party, other than as contemplated by this Agreement; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (d) send or store material containing software viruses, worms, Trojan Horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of TROJAN DIGITAL SERVICES, the data contained therein or the web page of other Trojan customers; (f) attempt to gain unauthorized access to TROJAN DIGITAL SERVICES, its related systems or networks or the web page or data of other Trojan customers; or (g) cause or permit the reverse engineering, disassembly or decompilation of TROJAN DIGITAL SERVICES or of Customer's Web Page. Customer shall not (h) modify, copy or create derivative works based on TROJAN DIGITAL SERVICES or Trojan technology; (i) create Internet "links" to or from TROJAN DIGITAL SERVICES, or "frame" or "mirror" any content forming part of TROJAN DIGITAL SERVICES, other than on Customer's own intranets or otherwise for its own internal business use for the purposes set forth in this Agreement; or (j) disassemble, reverse engineer, or decompile TROJAN DIGITAL SERVICES or Trojan technology, or access it in order to (I) build a competitive product or service, (II) build a product or service using similar ideas, features, functions or graphics of the Service, or (III) copy any ideas, features, functions or graphics of TROJAN DIGITAL SERVICES.

#### **4. FEES; PAYMENTS; TAXES**

Customer shall pay all Fees specified in the currency stated in the Digital Services Agreement pursuant to any payment terms set forth therein.

#### **5. COMPLIANCE WITH LAWS**

Customer shall conform to and comply with this Agreement and all applicable laws, rules, regulations, orders and other governmental requirements, now or hereafter in force, related to TROJAN DIGITAL SERVICES and Customer's use thereof. Trojan may, in its sole discretion, restrict, suspend, refuse access and/or terminate the access should Trojan learn of any violation of this Agreement, or any laws, rules or regulations.

#### **6. TERM AND TERMINATION**

This Agreement is effective on the date set forth in Trojan's quotation, and shall continue for the term set forth therein. After the initial term, this Agreement shall renew on an annual basis unless terminated by either party upon thirty (30) days written notice to the other party given prior to the expiration of the applicable term.

Except as otherwise provided for herein, either party may terminate this Agreement upon the breach of the other party, if such breach remains uncured for thirty (30) days following written notice to the breaching party. The foregoing notwithstanding, Trojan may terminate immediately upon Customer's breach of Sections 2, 3, 5, or 8 or upon Customer's second breach of any other Section. Trojan may take other immediate protective action if Customer's utilization of TROJAN DIGITAL SERVICES or any related activities violates Sections 2, 3, 5, or 8, or any laws or regulations, including blocking and/or deleting the activities.

Upon any termination of this Agreement, all rights to access TROJAN DIGITAL SERVICES and Customer's Web Page terminate. Trojan may destroy all backup and stored Customer Data within thirty (30) days of the expiration or termination of this Agreement. Termination of this Agreement for cause shall not limit Trojan from pursuing other remedies available to it..

## **7. INTELLECTUAL PROPERTY RIGHTS**

TROJAN DIGITAL SERVICES and the Customer's Web Page, including all Intellectual Property Rights therein, created or developed under this Agreement are, will be and remain the sole and exclusive property of Trojan and/or its licensors or suppliers. For purposes herein, "Intellectual Property Rights" shall mean any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) all TROJAN DIGITAL SERVICES data, content, software, text, typefaces, graphics, and any other documents or information of any kind relating to TROJAN DIGITAL SERVICES and Customer's Web Page including selection and arrangement of materials therein and "look and feel" thereof (but excluding Customer Data); (e) patents, designs, algorithms and other industrial property rights; and (f) all other intellectual and industrial property rights, whether arising by operation of law, contract, license, or otherwise. Neither Customer, its employees, Administrator, Authorized Users nor agents shall assert or claim any ownership interest in TROJAN DIGITAL SERVICES or Customer's Web Page.

## **8. NON-DISCLOSURE OF INFORMATION**

Customer Data is confidential and proprietary information to Customer. Trojan acknowledges that it will have access to Customer Data in the course of providing TROJAN DIGITAL SERVICES and agrees to reasonably hold Customer Data in confidence and not to release or give access to Customer Data to any third party unless such individual or entity has a need for such knowledge to perform Services in the furtherance of this Agreement. Trojan further agrees not to make use of Customer Data for its own benefit or for the benefit of any third parties, other than for the performance of this Agreement or providing analysis or recommendations to Customer based on Customer Data regarding system utilization and efficiency and potential replacement parts, preventative maintenance, troubleshooting assistance, or service. Notwithstanding the foregoing, Trojan may retain Customer Data for the purpose of analysis and research and to aggregate it with that of other Trojan customers for statistical analysis, marketing, trends or other industry-related purposes so long as such use does not result in the identification of Customer.

TROJAN DIGITAL SERVICES technology and architecture, terms of this Agreement, and any information that comes into Customer's possession or knowledge in connection with Trojan's interests, including without limitation its methods, equipment, financials, or marketing and sales information (collectively "Trojan Confidential Information") consists of confidential and proprietary information of Trojan, its affiliates, licensors, or third parties. Customer agrees to hold Trojan Confidential Information in confidence and agrees not to release such information to any individual whether employee, subcontractor or subcontractor employee, unless such individual has a need for such knowledge for the performance of this Agreement. Customer further agrees not to make use of Trojan Confidential Information for its own benefit or for the benefit of any third parties other than as specifically required in the performance of this Agreement.

The above limits on disclosure do not include information which the receiving party can prove (a) is or becomes known publicly without its fault; (b) is learned by it from a third party entitled to disclose the information; or (c) is already known to it before receipt from the disclosing party.

In the event of any breach of these confidentiality obligations, each party acknowledges that the non-breaching party would be irreparably injured and shall be entitled to seek equitable relief, including injunctive relief and specific performance, in any court of competent jurisdiction. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement. Upon termination of this Agreement, such Confidential Information shall, upon request of the party who disclosed the information, be returned thereto or

permanently destroyed. The terms of this Section shall survive the termination of this Agreement.

## **9. REPRESENTATIONS AND WARRANTIES**

Trojan warrants that Trojan Digital Services will be provided in a professional and workmanlike manner and will be of a quality conforming to general standards of care.

TROJAN DOES NOT GUARANTEE THE AVAILABILITY OF TROJAN DIGITAL SERVICES OR THAT ACCESS WILL BE UNINTERRUPTED OR ERROR FREE. TROJAN MAY INTERRUPT, LIMIT, SUSPEND OR TERMINATE TROJAN DIGITAL SERVICES FROM TIME-TO-TIME FOR MAINTENANCE, UPGRADES OR ANY REASONABLE PURPOSE PROVIDED THAT WHEN PRACTICABLE TROJAN WILL USE COMMERCIALY REASONABLE EFFORTS TO NOTIFY CUSTOMER IN ADVANCE. CUSTOMER'S EXCLUSIVE REMEDY AND TROJAN'S ENTIRE LIABILITY FOR ANY BREACH OF THIS WARRANTY SHALL BE RE-INSTITUTION OF THE SPECIFIC NON-CONFORMING SERVICE.

TROJAN MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Customer for itself and on behalf of its Administrator and each Authorized Customer User represents and warrants to Trojan that it, its Administrator and Authorized Customer Users shall comply with all terms and conditions and policies for use of TROJAN DIGITAL SERVICES.

Customer shall and hereby agrees to defend, indemnify and hold Trojan and its affiliates, suppliers and licensors harmless from and against any and all claims, losses, damages, liabilities, obligations, judgments, causes of action, costs, charges and expenses (including without limitation, reasonable attorneys' and consultants' fees and such fees and penalties as any third party licensors may impose) arising out of or in connection with: (a) any breach of this Agreement by Customer and/or its Authorized Customer Users; (b) any Customer and/or Authorized User negligence, recklessness or willful misconduct; or (c) any violation of, or non-compliance with applicable laws. Customer's obligations hereunder do not apply to the extent of damages directly caused by the gross negligence of Trojan.

## **10. LIMITATION OF LIABILITY**

IN NO EVENT SHALL TROJAN, ITS AFFILIATES, SUPPLIERS, OR SUBCONTRACTORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, OR FOR CORRUPT OR UNAVAILABLE CUSTOMER DATA, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT OR STRICT LIABILITY, EVEN IF TROJAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING NOTWITHSTANDING, IN NO EVENT SHALL TROJAN'S LIABILITY FOR DAMAGES HEREUNDER TO CUSTOMER EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER PURSUANT TO THE APPLICABLE SERVICE ORDER UNDER THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM GIVING RISE TO THE LIABILITY. CUSTOMER HEREBY INDEMNIFIES, HOLDS HARMLESS AND AGREES TO DEFEND TROJAN. AGAINST ANY THIRD PARTY CLAIM.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE FOREGOING DISCLAIMERS AND LIMITATIONS SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## **11. INITIAL DISPUTE RESOLUTION/JURY WAIVER**

All disputes shall be referred to the parties' respective representative designated by each party. If such designated representative(s) are unable to resolve the dispute within seven (7) business days, the parties shall submit the dispute to a senior executive from each party for resolution. Thereafter if the dispute remains unresolved for an additional seven (7) day period, the parties may pursue resolution through any lawful means.

## **12. GENERAL**

(a) As between themselves, the parties are independent contractors with no authority to contract for or in any way to bind or to commit the other to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other.

(b) This Agreement shall be governed by the laws of the Province of Ontario without giving effect to principles of conflict of laws and shall benefit and be binding upon the parties hereto and their respective successors and assigns. The United Nations Convention on the International Sale of Goods shall not



apply. However, if Customer acquired TROJAN DIGITAL SERVICES in any country in Europe (EEA or EFTA), the laws of that country apply.

(c) Any notice given pursuant to this Agreement must be in writing and will be given by overnight courier service, personal delivery, or by United States certified mail, return receipt requested, postage prepaid, to the addresses appearing in the quotation and/or order. Notice will be deemed effective on the date delivered to the addressee as confirmed by the applicable delivery service. Either party may change its address for notice purposes by giving the other party notice of such change in accordance with this Section.

(d) The failure of either party to insist upon a strict performance of or to seek remedy of any one of the terms or conditions of this Agreement or to exercise any right, remedy or election set forth herein or permitted by law shall not constitute nor be construed as a waiver or relinquishment for the future of such term, condition, right, remedy or election, but such items shall continue and remain in force and effect. All rights or remedies specified in this Agreement and all other rights or remedies that either party may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised by the party seeking enforcement or not, shall be deemed to be in exclusion of any other right or remedy. Any consent, waiver or approval by either party of any act or matter must be in writing and shall apply only to the particular act or matter to which such consent or approval is given. If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

(e) Neither this Agreement nor any license granted hereunder may be assigned by Customer without the prior written consent of Trojan which may be withheld for any reason and any such assignment is void.

(f) The captions are for convenience and in no way define, limit or enlarge the scope of this Agreement or any of its Sections.

(g) If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, or the application of such provisions or circumstances shall be valid and shall be enforced to the fullest extent permitted by law.

(h) Trojan shall have no liability for delays, failure in performance or damages due to fire, explosion, terrorism, lightning, power surges or failures, strikes or

labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities, inability to secure materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers or any other causes beyond Trojan's reasonable control.

(i) Customer agrees to comply fully with all relevant export laws and regulations of the United States, and their own country, and to assure that neither the Trojan Intellectual Property Rights nor any direct product thereof are (a) exported directly or indirectly, in violation thereof; or (b) are intended to be used for any purposes prohibited thereby.

(j) The definitions wherever located and any other provisions or terms that by their nature should survive, shall survive the expiration or termination of this Agreement.

(k) Any claim by a Customer arising out of or in connection with this Agreement shall be brought within one (1) year of the date on which the claim first arose.

(l) In dealings between Trojan and Customer, Trojan shall be entitled to rely upon any assent by a person using its assigned Password and User ID.

(m) Trojan shall have the right, upon reasonable notice to Customer and during normal business hours, to periodically conduct an audit of Customer's usage, subject to the confidentiality provisions of this Agreement, in order to verify Customer's compliance with this Agreement.

(n) Trojan may disclose that Customer is approved to conduct or is conducting business through Trojan Digital Services and may provide a brief description of Customer's business and appropriate Customer contact information to current and potential customers, other customers, Trojan suppliers and/or in marketing and advertising material promoting Trojan. and/or Trojan Digital Services.

(o) These Terms and Conditions constitute the entire Agreement between the parties and supersede any and all previous representations, understandings, discussions or agreements, oral or written, between Customer and Trojan. This Agreement may only be amended by an instrument in writing signed by Customer and Trojan.