

Ontario Aboriginal Housing Services Standard Terms and Conditions for Purchase Orders

Listed below are the Standard Terms and Conditions which apply to the purchase of all Products and/or Work by Ontario Aboriginal Housing Support Services Corporation from a Vendor and is incorporated into all Purchase Orders, as such terms are defined herein.

PART A – INTERPRETATION

1. **Definitions.** In this Agreement, the following terms shall have the following meanings:

Agreement: means these Standard Terms and Conditions, as same may be updated from time to time and available online at www.ontarioaboriginalhousing.ca/vendor-portal, together with the Purchase Order pursuant to which the Product and/or Work is being provided, all documents specifically referenced herein or in the Purchase Order, any change order, any specifications, and any proof of delivery of the Product to the Vendor.

Applicable Laws: means all current constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, rules, regulations, and by-laws, whether domestic, foreign or international of any governmental authority, and the common law, binding on or affecting any person, property or matter referred to in the context in which such words are used.

Product: means goods, equipment, materials, products, and/or services (whether or not ancillary to the sale of a Product) described in a Purchase Order which are supplied by the Vendor and the purchase of which is governed by the terms of the Agreement.

Purchase Order: shall mean a document, electronic or hard copy, offered by the Purchaser to the Vendor, in the form of a purchase order or similar document, which order refers to these Standard Terms and Conditions, and which document orders the Product and/or Work.

Purchaser: shall mean Ontario Aboriginal Housing Support Services Corporation operating as Ontario Aboriginal Housing Services and any successors or assigns.

Site: shall mean the location specified in the Purchase Order where the Product and/or Work is to be supplied.

Term: shall have the meaning set out in Section 4 herein.

Vendor: shall mean the individual, partnership, corporation or other entity contracting to provide the Product and/or Work described in the Purchase Order and to whom the Purchase Order is issued to by the Purchaser and it shall also include any affiliate, subcontractor or permitted assign of the Vendor.

Work: shall mean the provision of all Products by the Vendor to the Purchaser and includes such labour as may be required in the Purchase Order.

PART B – PURCHASE OF PRODUCT

2. **Acceptance.** A Purchase Order does not constitute an acceptance by Purchaser of any offer or proposal by Vendor, whether in Vendor's quotation, acknowledgement, invoice or otherwise. In the event Vendor's quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made by the Purchase Order. A contract is formed when Vendor accepts the Purchase Order. Each Purchase Order shall be deemed accepted by Vendor upon its terms and these Standard Terms and Conditions unless Vendor sends Purchaser a notice rejecting the Purchase Order within one (1) business day of receipt of the Purchase Order. Acceptance of the Purchase Order is expressly limited to the terms and conditions contained in this Agreement. No purported acceptance of a Purchase Order on terms and conditions which modify, supersede, supplement or otherwise alter the terms and conditions of this Agreement shall be binding upon Purchaser and such terms and conditions shall be deemed rejected and replaced by the terms and conditions of this Agreement unless Vendor's proffered terms or conditions are accepted in writing by Purchaser, notwithstanding Purchaser's acceptance of or payment for shipment of Products or similar act of Purchaser.
3. **Work.** Upon acceptance of the Purchase Order, the Vendor agrees to assume all obligations specified in this Agreement, including such Work as may be described or referenced in the Purchase Order, and any specifications pertaining to the Work as set out in the Purchase Order. Unless otherwise agreed by Purchaser, Vendor shall furnish and promptly pay for all labour and materials required to perform all the Work required pursuant to the Purchase Order including the provision of all permits, licenses, inspections and certificates that are required to complete the Work. If requested by the Purchaser, the Vendor shall provide a copy of any permit, licence, regulatory approval or certificate to the Purchaser.
4. **Date and Term.** The Agreement shall be formed in Sault Ste. Marie, Ontario as of the date set forth on the Purchase Order and shall remain in full force and effect for the period set out in the Purchase Order (the "Term") unless terminated earlier as set out in Section 25.
5. **Purchase Price and Payment.** Purchaser agrees to pay all undisputed amounts for Product and/or Work based on the total price and within the times specified in the Purchase Order or sixty (60) days if there is no time specified in the Purchase Order. In connection with any Work, payments shall be subject to applicable construction, mechanics' and/or vendors' lien laws. All payments for Work are conditional on Purchaser's receipt of current workers compensation clearance certificates and the insurance documentation as specified in Section 14.
6. **Financial Matters.** The Vendor will submit invoice(s) to Purchaser for payment of the Product and/or Work by mail or electronic mail. Invoices shall be submitted in the Vendor's name in a form acceptable to the Purchaser. If applicable, any discounts or rebates set out in the Purchase Order or for early payment shall be identified on the invoice, as well as any applicable service level payments set out in the Purchase Order. All prices listed on the invoice(s) shall be exclusive of all municipal, provincial, or federal taxes and all applicable taxes are to be set out separately on the Vendor's invoice(s). Vendor shall include their harmonized sales tax ("HST") registration number on such invoice(s) in accordance with Applicable Laws and as administered by Canada Revenue Agency. The Purchaser shall pay invoices sixty (60) days from the date the invoice is received by Purchaser by electronic funds transfer or cheque, but Purchaser will undertake all reasonable efforts to process payment on receipt of invoice, subject to acceptance by Purchaser. Purchaser reserves the right to audit such invoices against Vendor's reports and to perform independent verification. As of January 1, 2018, Vendor shall be required to: (i) submit invoices in Adobe Acrobat .pdf format (to the e-mail address of the Purchaser's representative who issued the Purchase Order) upon delivery of the Product and/or Work; and (ii) to accept payment by electronic funds transfer. The Vendor is encouraged to adopt such electronic systems earlier to ensure quicker payment.

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- 7. Revised Purchase Order (i.e. Change Order) Required.** Vendor agrees to not perform extra work and to not make changes to the Product and/or Work specified in the Purchase Order without the prior written consent of Purchaser and understands that Purchaser will not pay for additional work or changes unless expressly authorized by Purchaser in writing. Should the scope of the Work or dollar value outlined in the Purchase Order change, regardless of the reason or amount, Vendor shall forward all requests for changes to the contact person responsible for the Work at Purchaser as shown on the Purchaser Order. Where Purchaser and Vendor agree to the changes, Purchaser will provide Vendor with a written, revised Purchase Order. The changes shall be effective as of the date specified on the revised Purchase Order. The adjustment in the amount for a change shall be determined on the basis of the actual and direct costs and expenditures or savings of Vendor attributable to the change. The revised Purchase Order will reflect the new dollar amount of the total contract and not the incremental change.

PART C – DELIVERY OF GOODS OR PRODUCT

- 8. Delivery and Title.** Delivery of Product shall be as specified on the Purchase Order and in accordance with the Agreement. Title to the Product and risk of loss shall pass on delivery. Delivery shall be deemed to have occurred upon delivery to and acceptance by Purchaser of the Product. Purchaser shall have the right to specify the carrier and/or the method of transportation to be used in transporting the Product. No packing, packaging or transportation charges shall be payable by Purchaser unless specifically stated in the Purchase Order.
- 9. Late Deliveries.** If Vendor does not deliver the Product within the time specified in the Purchase Order, Purchaser shall have the right to require any special method of transportation, including express or where practical air shipment, and Vendor shall pay any resulting additional transportation costs unless the delays are caused by Force Majeure as defined in Section 33. Vendor agrees to pay Purchaser liquidated damages in an amount equal to one percent (1%) of the price of the Product to be delivered in a Purchase Order per week for the duration of delay, to a maximum of five percent (5%). Delays beyond 5 weeks are subject to cancellation of the entire Purchase Order, at the Purchaser's sole and absolute discretion, with no recourse by the Vendor and no damages of any kind or amounts due by the Purchaser to the Vendor.
- 10. Non-Conforming Product.** Acceptance of all or any part of the Product shall not be deemed to be a waiver of Purchaser's right either to cancel or return all or any part of a shipment because of failure to conform to order specifications or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages (a "Non-Conforming Product"). Such right shall be in addition to any other remedies provided by law or in equity. Acceptance of any part of the Purchase Order shall not bind Purchaser to accept future shipments. Purchaser will notify Vendor of any Product that is rejected as not being in accordance with the terms of the Purchase Order or that is to be returned to Vendor. Vendor shall be responsible for all costs related to a Non-Conforming Product and shall pay any and all transportation charges incurred in returning and replacing any Non-Conforming Product.
- 11. Delivery Documentation.** Product requiring a Material Safety Data Sheet ("MSDS") as set out in the Workplace Hazardous Materials Information System shall have the MSDS sheet attached to the shipments, clearly visible, as applicable, for all deliveries.

PART D – VENDOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- 12. Vendor's Obligations.** Vendor shall supply the Product identified in the Purchase Order pursuant to the terms and conditions of the Agreement. Product and/or Work are to be supplied at the locations and by the delivery dates set forth in the Purchase Order. Vendor shall use qualified personnel, equipment and facilities that meet industry standards in the provision of the Product and/or Work. Vendor shall comply with all Applicable Laws and permits pertaining to the Work including work practices and standards required by the profession, industry or trade involved in the Work. Vendor shall maintain records pursuant to Purchaser's instructions on the delivery of the Product, their conformity with the service levels and specifications identified to Vendor, and the application of any service level payments identified in the Purchase Order in the event of non-conformity.
- 13. Training.** Vendor shall ensure its employees and agents have successfully completed all required training under Applicable Laws prior to commencing the Work. Vendor shall ensure its employees and agents refrain from smoking while on a Site unless in a designated smoking area. Vendor shall leave the Site clean and ensure all employees and agents respect and comply with the rules, regulations, ordinances and practices required by Applicable Laws in which the Work is performed. Vendor shall provide Purchaser with records of training required for the Work on request. Vendor is responsible to supply all safety equipment and apparel required to complete the Work.
- 14. Workers Compensation and Property Insurance.** Vendor shall have and maintain workers compensation insurance with coverage limits in compliance with Applicable Laws. Prior to commencing the Work, Vendor shall furnish to Purchaser a clearance certificate from the provincial Workplace Safety and Insurance Board showing that Vendor is in good standing. Vendor shall have and maintain general liability and property damage insurance, with coverage of not less than two million dollars (\$2 million) per occurrence and shall provide certificates of insurance or a waiver, if applicable, under the workers' compensation laws of the Province of Ontario. Vendor shall also have and maintain auto liability insurance in the amount of two million (\$2 million) for each of bodily injury and property damage, if vehicles are being used, and any other insurance as may be required by a prudent business person in the Province of Ontario providing similar work. Any waiver shall not void Vendor's indemnity contained herein. Vendor shall provide thirty (30) days prior written notice to Purchaser of its intent to change or cancel any insurance coverage. Failure of Vendor to maintain valid insurance coverage or provide the thirty (30) days prior written notice of any change or cancellation shall be cause for termination of this Agreement by Purchaser. In the event of an incident or accident at a Site, Vendor shall report the incident or accident immediately to Purchaser.
- 15. Environmental Concerns.** If Vendor encounters hazardous substances on Site, or has reasonable grounds to believe that hazardous substances are present at a Site which were not disclosed prior to commencement of the Work or which were disclosed but have not been dealt with in accordance with Applicable Laws, Vendor shall take all reasonable steps to ensure that no person's exposure to any hazardous substance exceeds the levels prescribed by any Applicable Laws at the Site, and immediately report the circumstances to Purchaser in writing.
- 16. Prior Work.** To the extent Vendor knows or ought to have known that work that precedes Vendor's Work has been done by other third parties in an improper manner, Vendor shall be responsible to report such to Purchaser prior to commencing the Work. In the event Vendor

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fails to provide such report, Vendor shall be liable for any costs, damages and expenses whatsoever accruing to the Vendor or Purchaser and shall indemnify Purchaser for any costs accruing to Purchaser.

17. **Holdbacks.** The Purchaser and Vendor will comply with all construction lien legislation and the Purchaser shall be entitled to holdback from payment of the price those amounts and for such time periods as permitted under Applicable Laws. The Vendor shall provide Purchaser with a statutory declaration or such other forms as may be required by Purchaser certifying substantial completion of the Work. Holdback amounts, if any, shall be paid upon expiration of the lien period applicable or in accordance with Applicable Laws, whichever is earlier, however Purchaser may retain out of the holdback amount such sum as is required by law to satisfy any claims which may be enforceable against the Purchaser. The Purchaser covenants to do any and all things necessary to discharge any lien filed at a Site because of the Work at the Vendor's expense. In the event the Vendor fails to cause any such lien to be discharged, then in addition to any other right or remedy the Purchaser may have, the Purchaser may, but shall not be obligated, to discharge same and all costs and expenses incurred by the Purchaser shall be due and payable by the Vendor to the Purchaser on demand.
18. **Bonds.** If required by Purchaser, Vendor shall furnish evidence of being bondable and upon request will obtain a performance and payment bond. Vendor shall be responsible for bonding any subcontractors of the Vendor. Under no circumstances shall Purchaser be liable or responsible for debts of Vendor or payments to subcontractors.
19. **Protection of Work.** Vendor shall be solely responsible to protect partially completed Work and equipment or materials left at the Site and to be liable for any damage or theft occasioned by Vendor's failure to do so.
20. **Standard Work.** If Purchaser, in its sole discretion, determines that Vendor has failed or is failing to satisfactorily perform any aspect of the Work, Purchaser may, at no extra cost to Purchaser and at its sole option: a) require Vendor to correct, replace and/or re-execute faulty or defective Work done or materials furnished; b) require Vendor to increase the number of workers assigned to the Work and to use overtime labour or work on Saturdays, Sundays or holidays to complete the Work on schedule; or c) terminate this Agreement and complete or correct the Work or retain others to do so. If this Section 20 applies, Purchaser may require materials and equipment of the Vendor to be left on the Site for use in completing or correcting the Work. Vendor shall be responsible for all costs or expenses, including legal fees and expenses on a substantial indemnity basis, incurred by Purchaser as a result of Vendor's failure to satisfactorily perform and complete the Work.
21. **Subcontractors.** In the event Vendor provides Product and/or Work to Purchaser either directly or through a subcontractor, Vendor agrees for itself, or agrees to require any subcontractor who provides such Product and/or Work to Purchaser pursuant to the Agreement, to agree to all terms of the Agreement set forth as a condition of their providing the Work. The Vendor shall not sub-contract any portion of the Work without the prior written approval of an authorized representative of the Purchaser.
22. **Vendor Representations and Warranties.** Vendor represents and warrants that: (i) it is duly incorporated, validly existing and in good standing and has full capacity to enter into the Agreement and perform its obligations hereunder; (ii) no hardware or software or other material used in the supply of the Product and/or Work infringes any intellectual property rights or liens of any third party; (iii) Vendor holds or will hold all right, title and interest in the Product; (iv) it operates in compliance with all Applicable Laws; and (v) this Agreement does not violate any other agreement binding on Vendor. Vendor also represents and warrants that the Product and Work: (i) will be performed in accordance with the service levels and/or specifications of the Agreement; (ii) are free from latent or patent defects in materials, workmanship and design; and (iii) will be performed by well-qualified personnel in accordance with best established industry standards. These warranties are continuous and extend to new or additional Product that may be supplied by the Purchaser to the Vendor. In addition, Vendor acknowledges that Vendor knows of Purchaser's intended use and expressly warrants that all Product and/or Work covered by the Agreement will be fit and sufficient for the particular purpose intended by Purchaser.

PART E – PURCHASER'S OBLIGATIONS

23. **Purchaser's Obligations.** Purchaser shall pay Vendor for the Product and/or Work at the price set forth in the Purchase Order pursuant to the submission of a valid and detailed invoice, subject to the terms of the Agreement. Purchaser reserves the right to inspect the Product and/or Work and reject them in part or completely if they do not meet the service levels and the specifications, and request a replacement, refund or credit at Vendor's cost including transport, and to dispute or reject any associated invoice in part or completely. In no event will acceptance of the Product and/or Work by Purchaser be presumed or deemed, including without limitation due to any act of Purchaser such as the payment of the invoice. Inspection and acceptance by Purchaser does not relieve Vendor of its warranty obligations.

PART F – LIABILITY, INDEMNIFICATION AND TERMINATION

24. **Liability and Indemnification.** Vendor agrees to indemnify and hold harmless Purchaser and Purchaser's affiliates, directors, officers, employees and agents (the "Representatives") against all liabilities, damages, losses, costs, claims, expenses, suits, proceedings and demands with respect to any part of the Product and/or Work covered by the Agreement, including but not limited to legal fees on a substantial indemnity basis and disbursements, suffered or incurred by the Representatives, including for any third party claims, bodily injury to or death of any person, or damage to or destruction of property resulting from the Product and/or Work, regardless of whether Vendor has insurance or a valid letter or waiver of insurance requirements under Applicable Laws, arising out of, occasioned by or in connection with: (i) the failure of any representation or warranty made by Vendor under this Agreement to be true and correct, (ii) negligent acts or omissions or willful misconduct of Vendor and those for whom Vendor is responsible at law for performance of this Agreement, and (iii) actual or claimed intellectual property infringements or any litigation based thereon. Such obligations shall survive acceptance of the Product and/or Work and payment therefore by Purchaser. No third party claim may be settled without the consent of Purchaser, which consent shall not be unreasonably withheld.
25. **Termination.** Without prejudice to any remedy Purchaser may have against Vendor for any breach or non-performance of the Agreement (including, without limitation, failing to meet any service levels or specifications), Purchaser may terminate the Agreement for cause at any time upon the occurrence of any of the following events by Vendor: (a) committing any breach of any of the provisions of the Agreement; (b) committing any misconduct, dishonesty, or wilful neglect in the discharge of its duties hereunder; (c) making any material, false

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representation, report, or claim relative to the Agreement; (d) engaging in any deceptive trade practice under, or committing a violation of, Applicable Law; or (e) becoming insolvent, bankrupt, or making any arrangement with or for the benefit of its creditors, and Vendor shall indemnify Purchaser for all costs, fees and damages suffered by Purchaser as a consequence of the termination for cause. Notwithstanding the foregoing, the Purchaser may terminate or suspend this Agreement with ten (10) days' notice to Vendor for any reason. In the event this Agreement is terminated by Purchaser without cause and prior to completion, Purchaser's sole liability to Vendor hereunder shall be limited to the Vendor's out-of-pocket costs for labour and material for the actual Work satisfactorily performed by Vendor to the date of termination, as determined in the sole discretion of Purchaser, supported by reasonable and sufficient records. Under no circumstances will Vendor be entitled to recover lost profits or other damages from Purchaser as a result of such early termination. In the event of termination of this Agreement for any cause, Vendor will return all physical or intellectual property and confidential information to Purchaser and shall reasonably cooperate with Purchaser in the termination and transition of Product including the transfer of all data regarding the supply of Product over the Term.

26. **Payment of Claims.** Vendor shall promptly and satisfactorily settle and pay all accounts, claims or liens with respect to the Work or the Product. Purchaser agrees to provide Vendor with two (2) days prior written notice to settle and pay such accounts, claims or liens. If Vendor fails or refuses to settle or pay same or provide Purchaser with notice that it has reasonable grounds for disputing same within the two (2) days, Purchaser shall have the right to settle or pay such accounts, claims and/or liens for the account of Vendor. In the event Vendor provides Purchaser with notice that it is disputing an account, claim or lien, Purchaser shall have the right to pay or settle such accounts, claims or liens in such manner that in Purchaser's opinion will not prejudice Vendor's right to dispute same.
27. **Set-off.** If Vendor is in any way indebted to Purchaser, moneys due to Vendor hereunder may be withheld as an offset against such other indebtedness.
28. **Confidentiality.** Vendor agrees to keep confidential all of the information and materials it obtains from Purchaser or its agents in connection with the Agreement, and Vendor agrees not to use or disclose such information to any person, other than for performance of the Work hereunder on a need-to-know basis.

PART F - GENERAL

29. **No Assignment.** Vendor agrees to not assign this Agreement or any part thereof and without the prior written consent of Purchaser.
30. **Modifications to this Agreement.** This Agreement may not be modified orally, and no modifications or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modifications or waiver is sought to be enforced. No acknowledgement of Purchase Order from Vendor containing terms and conditions shall have the effect of modifying these Standard Terms and Conditions.
31. **Independent Contractor.** The Vendor is an independent contractor engaged by the Purchaser to perform the Work. Neither the Vendor nor any of its personnel is engaged as an employee, servant, or agent of the Purchaser. The Vendor is responsible for all deductions and remittances required by law in relation to the Vendor's employees.
32. **Time of the Essence.** Time shall be of the essence. Vendor agrees to complete the Work in accordance with the date specified herein or instructions from Purchaser as provided from time to time. No oral extensions of time for performance of this Agreement shall be accepted, without the prior written agreement of Purchaser. The Vendor and Purchaser may agree to incentives and penalties for early or late, respectively, completion of the Work and any such agreements shall be in writing.
33. **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable for delay or non-performance caused by any of the following circumstances when beyond its control: fire, acts of God, explosions, riots, strikes, storms, floods, earthquakes, extreme natural disasters, wars, sabotage, or terrorism ("**Force Majeure**"). For clarity, Force Majeure shall not include financial hardship of either party. Should an event of Force Majeure make it impossible for a party to perform its obligations hereunder, the affected party shall try to reduce or mitigate the adverse impact of the event. The affected party shall notify the other party that it considers an event of Force Majeure has occurred. If the adverse impact cannot be eliminated completely, such non-performance shall be excused for the duration of the event of Force Majeure. If, however, the event of Force Majeure lasts more than fifteen (15) days from the original notification, this Agreement may be terminated in whole or in part by the non-affected party.
34. **Governing Law and Dispute Resolution.** This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Each party irrevocably attorns to the exclusive jurisdiction of the courts of Sault Ste. Marie, in the Province of Ontario, with respect to any matter arising under or relating to this Agreement if such matter cannot be resolved between the parties.
35. **Notices.** All notices, demands, or other communications authorized or required hereunder shall be in writing or by written telecommunications, and shall be deemed to have been duly given: (i) if delivered by courier, when received by the addressee or (ii) if sent by confirmed telecommunication, one business day following transmission to the addressee: (i) in the case of notice to the Purchaser at: Ontario Aboriginal Housing Services, 500 Bay Street, Sault Ste. Marie, Ontario, P6A 1X5 or Fax: (705) 256-2671; and (ii) in the case of notice to the Vendor, at the address and/or fax number on file held by Purchaser for which the Vendor is responsible to provide address and contact information changes to Purchaser immediately upon such changes.
36. **Entire Agreement.** Except as may be expressly agreed in writing by authorized representatives of the parties, the Agreement constitutes the entire agreement between the Parties related to the Product and/or Work and replaces any earlier agreements, whether oral or written. The Agreement is paramount to any invoice related thereto. The parties agree that there are no other agreements, representations or warranties other than those expressed herein, unless a master agreement exists between Purchaser and Vendor to govern the supply of Products, which master agreement must be identified in the Purchase Order and which terms and conditions will supersede this Agreement.
37. **General.** Except as specifically provided in the Agreement, all amounts in the Agreement are stated and shall be paid in Canadian currency. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. If any provision of the Agreement is determined to be invalid, illegal or unenforceable by any court of competent jurisdiction, that provision will be severed from the Agreement, and the remaining provisions will remain in full

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force and effect. Any clause which by its nature should survive termination will do so, including without limitation Sections 22-24 and 28. The parties are independent contractors and nothing herein shall make them agents, employees, or partners and there shall be no joint and several liability. The non-exercise by a party of a right hereunder does not constitute a waiver of such right. Nothing herein shall be interpreted to create an exclusivity in favour of Vendor unless otherwise set out in the Purchase Order. Vendor shall not use Purchaser's name for the purposes of advertising, press releases, promotion or solicitation without the prior written consent of Purchaser. These Standard Terms and Conditions may be updated by Purchaser from time to time and Vendor commits to review them regularly and to be bound by such updates. Les parties se sont expressément entendues pour que ces termes et conditions soient rédigés en langue anglaise. The parties have expressly agreed that the Agreement should be drafted in English.