



MASTER SERVICES & LICENSING AGREEMENT

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Master Services & Licensing Agreement

THIS MASTER SERVICES & LICENSING AGREEMENT dated <Date>, 2014, sets out the terms and conditions upon which Q5 SYSTEMS LTD., a corporation under the laws of the Province of Newfoundland and Labrador, Canada, having a place of business at 15 Hallett Crescent, Suite 203, St. John's, NL, Canada, A1B 4C4 (and together with its agents and subcontractors, "Q5") is willing to provide access to the Q5 Software and Q5 Services to Customer noted below.

Customer:	
Applicable Business Unit/Entity:	
Billing/Contact Address: Service Address:	
Telephone:	
Facsimile:	
Contact Name(s): Signatory to Contract:	

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - AGREEMENT

Section 1.1 Purpose and Structure

The purpose of this Master Services & Licensing Agreement is to set out the framework and standard terms and conditions to govern the provision by Q5 of such portions of the Q5 System as are requested by Customer in the Purchase Orders accepted by both parties and referencing this Master Services & Licensing Agreement from time to time.

Section 1.2 Agreement

In this Agreement, unless something in the subject matter or content is inconsistent therewith:

(1) "Agreement" means this Master Services & Licensing Agreement together with:

- (a) The Software Licence Terms attached as Appendix A;
- (b) The End-User License Agreement attached as Appendix B;
- (c) The Technical Support Services Terms attached as Appendix C;
- (d) The Hosting Service Terms attached as Appendix D;
- (e) The Purchase Order is attached as Appendix E; and
- (f) Such other Appendices as are accepted by the parties referencing this Agreement; and

as any of the foregoing may be amended from time to time in accordance with this Agreement, but expressly excludes any Custom Development Agreement.

(2) "Confidential Information" means all proprietary or confidential information, including but not limited to, performance, sales, financial, contractual, technical data, operational data, employee data and Intellectual Property, marked as "Confidential Information" or otherwise identified in writing as such by a party (the "Disclosing Party") as being "Confidential Information", but excluding information which: (i) is already in the public domain at the time of the disclosure, (ii) is already in the possession of the non-disclosing party (the "Receiving Party") without restriction, (iii) is known to by the Receiving Party at the time of disclosure of such information, (iv) is furnished on a non-confidential basis to the Receiving Party by a third party under no duty of confidence with respect to such information, or (v) enters the public domain through no fault of the Receiving Party. Notwithstanding this definition, "Confidential

Information” shall also include any and all Customer Data, regardless of whether or not it is marked as “Confidential Information.”

- (3) “**Content**” means works, data, text, information, audio, video, trade-marks, trade names, logos, domain names or other distinguishing features, graphics, advertisements, graphical user interface elements and designs, photography and other works, in any form or medium whatsoever.
- (4) “**Custom Development Agreement**” means a separate agreement between the parties for the development of custom software by Q5 for Customer, if any.
- (5) “**Customer**” means the customer of Q5 as shown on the first page of this Agreement, and where the context provides, includes its agents and employees with Licences to access the Q5 System.
- (6) “**Customer Data**” means all information, text, data or Content, entered onto Customer Forms or Q5 Forms, or stored within the Q5 Software, or media in electronic format that is uploaded to the Q5 Software by Customer, including all image files, electronic documents, scanned files, and hyperlinked files.
- (7) “**Customer Forms**” means the checklists and data entry forms provided by Customer and imported or created in the Q5 Software by Customer, or by Q5 for Customer, for the purpose of inputting Customer Data.
- (8) “**Documentation**” means any documentation in any form whatsoever, including any reports, records, written designs, specifications, requirements, user manuals, user guides, operations manuals, training materials, instructions, blueprints, invention disclosures, patterns, flow charts, equipment part lists, drawings or plans, and includes the user instructions, training materials and tutorials for the Q5 Software and the Q5 Forms.
- (9) “**End User License Agreement**” or “**EULA**” means the terms and conditions for use of each Module of Q5 Software by end users, and includes the minimum terms set forth in [Appendix B](#), and such additional click through terms which accompany such Module upon installation thereof.
- (10) “**Fees**” means all amounts payable by Customer under this Agreement, including all recurring and non-recurring License Fees and all recurring and non-recurring Service Fees.
- (11) “**Force Majeure**” in respect of a party shall mean, to the extent beyond control of such party, any governmental action, change of law, war (whether or not declared), insurrection, riot or revolution, fire, flood, drought, other natural calamity, affecting such party, any similar event affecting a major supplier of goods or services to such party, or any other accident, condition, cause, contingency or circumstance (including, without limitation, acts of God) beyond the reasonable control of such party.
- (12) “**Governmental or Regulatory Authority**” means any national, provincial, state, county, municipal, quasi-governmental or self-regulatory department, authority, organization, agency, commission, board, tribunal, dispute settlement panel or body, bureau, official, secretary, minister, or court or other law, rule or regulation-making entity having or purporting to have jurisdiction over Q5, Customer, or any Person, property, transaction, activity, event or other matter related to this Agreement, including subdivisions of, political subdivisions of and other entities created by, such entities.
- (13) “**Hosting Services**” means the services set forth in the Hosting Services Terms attached as Appendix D and includes the hosting, security maintenance and server infrastructure whereby the Q5 Software resides with Q5, or a third party hosting service company selected by Q5, or by the Customer, and as further defined in this section as In-House Hosted and Q5-Hosted.
- (14) “**In-House Hosted**” means the Q5 Software is hosted on Servers owned by Customer and located in its facilities, or facilities to which it has the ability to grant Q5 access.
- (15) “**Installation Services**” means the Q5 Software installation services set forth in a Purchase Order, if any.
- (16) “**Intellectual Property**” means:
 - (a) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide a right in either Software, Content, Documentation, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such Software, Content, Documentation, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how;
 - (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and

- (c) all licenses and waivers and benefits of waivers of the intellectual property set out in (a) and (b) above, all future income and proceeds from the intellectual property set out in (a) and (b) above, and all rights to damages and profits by reason of the infringement or violation of any of the intellectual property set out in (a) and (b) above.
- (17) “**Licences**” means the all licences granted in this Agreement and Appendices to use the Q5 Software.
- (18) “**License Fees**” means the fees paid or payable by Customer to receive Q5 Software during the applicable License Term for such Q5 Software, as set forth in a Purchase Order.
- (19) “**License Term**” means, in respect of each Module of Q5 Software, the period of time set forth in the applicable Purchase Order during which such Module of Q5 Software is proposed to be licensed and for which payment has been received.
- (20) “**Module**” refers to the stand alone application software modules of Q5 Software specified in a Purchase Order.
- (21) “**Out-of-Pocket Expenses**” means reasonable and actual out-of-pocket expenses incurred by the Q5, for equipment, materials, supplies, or Q5 Services provided to Customer in connection the provision of the Q5 System, but not including the Q5’s overhead costs, the License Fees, the Service Fees, administrative expenses or any mark-ups.
- (22) “**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate or Governmental or Regulatory Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.
- (23) “**Personal Information**” means information about an identifiable individual or other information that is subject to any Privacy Law.
- (24) “**Purchase Order**” means each purchase order or Quotation accepted by both parties and referencing this Agreement and attached as Appendix E.
- (25) “**Privacy Laws**” means all federal, provincial, state, municipal or other applicable statute, law or regulation of any Governmental or Regulatory Authority in any jurisdiction governing the Handling of information about an individual.
- (26) “**Q5**” has the meaning set forth in the first paragraph of this Agreement.
- (27) “**Q5 Associates**” has the meaning set forth in Section 9.2(3).
- (28) “**Q5 Forms**” means the checklists and data entry forms provided as part of the Q5 System, other than Customer Forms.
- (29) “**Q5 Hosted**” means the Q5 Software is hosted on Servers owned or leased by Q5, and located in its facilities, or facilities to which Q5 has access.
- (30) “**Q5 Materials**” has the meaning set forth in Section 9.2(3)(a).
- (31) “**Q5 Services**” means such of the following services provided by Q5, which Customer as ordered and agreed to pay for pursuant to a Purchase Order, if any:
- (a) Hosting Services;
 - (b) Installation Services;
 - (c) Technical Support Services; and
 - (d) Training Services; but
 - (e) expressly excludes Customization Services which may be performed pursuant to a separate Custom Development Agreement.
- (32) “**Q5 Software**” means the Internet-based software, in modular format, and all related Documentation, as well as all Upgrades, revisions, additions and enhancements to any of the foregoing, licensed by Q5 hereunder, as further described in Appendix A.
- (33) “**Q5 System**” means the Q5 Software licensed and the Q5 Services provided to Customer pursuant to this Agreement.
- (34) “**Quotation**” means each quotation for Q5 Software or Q5 Services referencing this Agreement and provided by Q5 to Customer for consideration.
- (35) “**Service Fees**” means the fees paid or payable by Customer to receive Q5 Services during the applicable Service Term, as set forth in a Purchase Order.

- (36) “**Service Term**” means the period during which Q5 Services shall be provided and received as set forth in each Purchase Order for such Q5 Services.
- (37) “**Software**” means any computer program, routine, code, instruction, script, macro, application programming or other interface, tool, document display definition, object library or software tool, or other instruction or set of instructions for Hardware or other Software to follow, whether in source code or object code and whether expressed in any or all languages including embedded program and human interfaces, SQL and other query languages, hyper text markup language and other computer mark-up languages.
- (38) “**Source Code**” means the non-executable, human readable version of any Software, derived from the object code version of the Software following compilation or assembly, recorded in both printed format and on tape or disk in machine readable format containing no passwords or other devices that would prevent or prohibit the use of the source code, with commentary, instructions, programmer specifications, notes (technical or otherwise), manuals, quick reference guides, tutorial literature, explanations, annotations and other Documentation including without limitation, general flow-charts, input and output layouts, field descriptions, volumes and sort sequences, data dictionary, file layouts, proposing requirements and calculation formulae and details of all algorithms and all Software or developer’s tools required to compile and generate object code with the use of the source code.
- (39) “**Specifications**” means, in respect of any Service or Software, the technical, functional, operational, performance or other relevant specifications or requirements therefore set out in this Agreement (including any applicable Appendix or Purchase Order) or the Documentation for such Service or Software, including any specifications, representations, warranties or covenants applicable to such Services or Software.
- (40) “**Subscription Fees**” means the recurring License Fees and recurring Service Fees payable on a periodic basis during the Term, as set forth in a Purchase Order or renewal notice.
- (41) “**Technical Support Services**” means the services set forth in Appendix C to support and maintain the Q5 Software.
- (42) “**Term**” has the meaning set forth in Section 7.1(1), together any renewal thereof in accordance with Section 7.1(2).
- (43) “**Training Services**” means the user training services set forth in a Purchase Order, if any. Training Services purchased by the Customer shall be at the fees set out in the applicable Purchase Order plus all receipted Out of Pocket expenses for travel and reasonable per diem’s in accordance with Q5’s travel policy.
- (44) “**Update**” has the meaning set forth in Appendix C.
- (45) “**Upgrade**” has the meaning set forth in Appendix C.
- (46) “**User Acceptance Testing**” means the testing of any Software to confirm that the Software conforms to the requirements of the applicable Specifications, including testing designed to confirm that all applicable components are integrated with the Q5 System which is conducted by Customer in its discretion, and “**User Acceptance Testing**” means the activity of conducting User Acceptance Tests.
- (47) “**Warranty Period**” means the portion of the Term for which Technical Support Services are received and applicable Subscription Fees have been paid.

Section 1.3 Headings and Table of Contents

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Appendices are to Articles and Sections of and Appendices to this Agreement.

Section 1.4 Extended Meanings

In this Agreement, words importing the singular number only include the plural and *vice versa* and words importing any gender include all genders. The terms “including” and “include” will mean “including, without limitation” and “include, without limitation”, respectively.

Section 1.5 Construction

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided: (a) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period will be excluded, and if the last day of such period is not a Business Day, the period will end on the next Business Day; (b) the terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof; (c) the words “include” and “including” shall not be construed as terms of limitation; (d) the terms “discretion” or “sole discretion”, when used in reference to a party, mean the right to make a decision arbitrarily, without an implied obligation to act reasonably or in good faith or to justify the decision to the other party;

and (e) unless the context otherwise requires, the term “termination” includes an expiration of the Term of this Agreement, a License Term or a Service Term, as applicable.

Section 1.6 Currency

Except where otherwise expressly provided in a Purchase Order, all references to currency herein are to, and will be paid in, the lawful money of Canada.

Section 1.7 Priority of Documents

In the event of any inconsistency between any of the provisions of the terms and conditions of this Master Services & Licensing Agreement, any Appendix or any Purchase Order, the inconsistency will be resolved with preference to the Purchase Orders, then the Appendices then this Master Services & Licensing Agreement.

ARTICLE 2 – SOFTWARE & SERVICES

Section 2.1 Software Licenses

Subject to the terms of this Agreement and payment of the License Fees, Q5 grants to Customer the number and type of Licenses to use the Q5 Software, in the locations and on the servers specified in the Purchase Orders accepted by the parties and referencing this Agreement, and on the terms and conditions set forth in Appendix A and the EULA.

Section 2.2 Services

Subject to the terms of this Agreement and payment of the Service Fees, Q5 will perform, or have performed, on the terms and conditions set out in this Agreement and the applicable Appendices, such of the Services as a specified in the Purchase Orders accepted by the parties and referencing this Agreement.

Section 2.3 Additional Software and Services

From time to time, and upon the reasonable request of Customer, Q5 may provide Quotations for additional Q5 Software or Q5 Services. Any such Quotation shall not be binding upon the parties pursuant to this Agreement unless and until accepted by both parties as a Purchase Order.

ARTICLE 3- FEES

Section 3.1 Fees & Invoicing

- (1) Customer shall pay all Fees as and when provided in each Purchase Order. Unless otherwise specified, all Fees shall be due within 30 days of an invoice, and recurring Fees shall be due monthly in advance. Q5 may invoice Customer for the Fees payable pursuant to each Purchase Order in accordance with any requirements set out in such Purchase Order.
- (2) Customer shall pay all Customer’s federal, state, provincial and local sales, use, value added, excise, duty and other similar taxes assessed with respect to the Q5 Software and Q5 Services.
- (3) In the event Fees are not paid within 30 days of the due date, Q5 shall have the right to suspend access to any portion of the Q5 System, without terminating the Agreement, until all Fees and other amounts owed by Customer to Q5 are paid in full.
- (4) Fees not paid within 30 days of the due date shall bear interest at the rate of 2% per month.

Section 3.2 Procedure for Obtaining Refund, Credit or Discount

If Customer is entitled to a refund, credit or discount pursuant to any provision of this Agreement (including any applicable Appendix or Purchase Order), Q5 may credit such amount against future invoices provided under this Agreement. If any refund or credit is larger than the amount of the final invoice, the remaining amount of the refund, credit or discount due will be paid to Customer within 30 days of the termination or expiration of this Agreement.

Section 3.3 Disputed Fees

Customer may not withhold payment of any portion of any amounts due to Q5 under this Agreement. Customer shall notify Q5 in writing of any specific amounts which it disputes with timely payment thereof, which notice will describe in detail Customer’s reason for disputing any disputes item.

ARTICLE 4- MAINTENANCE OF INFORMATION; AUDITS

Section 4.1 Maintenance of Information

- (1) Customer will maintain all information required to enable Q5 to determine compliance with any licensing restrictions applicable to Customer's use of the Q5 System.
- (2) Customer grants Q5 the rights to access all data, records, reports, Documentation and other information referred to in Section 4.1(1) reasonably necessary to permit Q5 to determine compliance with licensing restrictions applicable to Customer's installation and use of the Q5 System. Where Customer hosts the Q5 System on its own servers, such access shall be provided immediately upon a request from Q5.

Section 4.2 Maintenance of Controls

Customer shall develop and implement internal controls to limit access to the Q5 System to only those agents and employees of Customer who have Licences to access the Q5 System.

Section 4.3 Reimbursement Obligations

In the event that Customer's use of the Q5 System exceeds the grant of rights purchased in the Purchase Orders, Customer shall pay an amount equal to (a) the then current list price for a single annual licence, multiplied by (b) the number of unlicensed users, plus (c) applicable taxes. Customer shall also reimburse Q5 all documented Out of Pocket Costs reasonably incurred by Q5 in connection with any audit of Customer's use of the Q5 System which reveals unlicensed use in excess of 5% of the total number of Licences legitimately acquired.

ARTICLE 5- INTELLECTUAL PROPERTY & CUSTOMER DATA

Section 5.1 Ownership of Intellectual Property

- (1) Q5 is and will be the exclusive owner of all Intellectual Property in the Q5 System.
- (2) Source Code of the Q5 Software shall be treated as Confidential Information of Q5.
- (3) Customer is and will be the exclusive owner of all Customer Data.
- (4) Customer Data shall be treated as Confidential Information of Customer.

Section 5.2 No Assignment

- (1) Except as may be set forth in any separate Custom Development Agreement, all Q5 Software provided pursuant to this Agreement is licensed, not sold.
- (2) Customer grants to Q5 the limited, non-exclusive, royalty free licenses necessary to permit Q5 to implement Customer Forms into Customer's installation of the Q5 Software, and to permit Q5 to provide the Q5 Services to Customer.

Section 5.3 Residual Rights in Forms

The parties acknowledge and agree that the Q5 Forms and the Customer Forms may contain general business information, and either party may use such general business information, or other information developed or created in the course of performing or receiving the Q5 Services which relates to the Q5 Services and which may be retained in the unaided memory of such party's personnel, provided that in doing so such party does not breach its obligations set out in Article 6, or infringe, violate or constitute a misappropriation of any Intellectual Property of the other party or any third party.

Section 5.4 Responsibilities Regarding Data

- (1) Q5 is not responsible in any manner for the accuracy of Customer Forms or Customer Data. Customer agrees it will be solely responsible for all information or data added, posted, stored, entered, submitted, modified or deleted or otherwise inputted for use with or in the Q5 Software. The input of Customer Forms and Customer Data in the Q5 Software by Customer does not create any express or implied approval by Q5 of the nature of such content, nor does it indicate that such content complies with the terms of this Agreement.
- (2) Customer will not knowingly use the Q5 Software or Services with (a) any material which violates or infringes any copyright, trade mark, trade secret, patent, statutory, common law or other proprietary rights of others; (b) any material that is libellous or slanderous; (c) any material which is or contains anything obscene or pornographic.
- (3) Subject to any Service Levels set forth in the Appendices, Q5 is not responsible for lost or deleted Customer Data.

ARTICLE 6- CONFIDENTIALITY AND PRIVACY

Section 6.1 Confidentiality Covenant

- (1) Each party agrees that, in its capacity as a Receiving Party, it will:
 - (a) not use Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under this Agreement or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in this Agreement;
 - (b) not disclose any Confidential Information of the Disclosing Party or provide access to any Confidential Information of the Disclosing Party to any third party except as expressly permitted in this Agreement;
 - (c) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it uses to protect its own Confidential Information; and
 - (d) if it suspects or becomes aware of any unauthorized access, copying, use or disclosure of any Confidential Information of the Disclosing Party:
 - (i) immediately notify the Disclosing Party of the details of such activities or suspected activities of which it is aware;
 - (ii) take all commercially reasonable steps to enforce against any Person that is or may be engaging in such unauthorized activities any rights that the Receiving Party has to require such Person to comply with any obligation of confidence to the Receiving Party and to cease such unauthorized activities; and
 - (iii) do all things, execute all documents and give all assistance reasonably required by the Disclosing Party (other than financial assistance) to enable the Disclosing Party to enforce against any Person that is or may be engaging in such unauthorized activities any rights that the Disclosing Party has to require such Person to comply with any obligation of confidence to the Disclosing Party and to cease such unauthorized activities.
- (2) Each Receiving Party may disclose Confidential Information of the Disclosing Party to its employees and agents under a duty of confidence, but solely for the purposes of accepting, executing and administering this Agreement, and providing and using the Q5 System as permitted pursuant to this Agreement.
- (3) If a Receiving Party is required or compelled to disclose Confidential Information pursuant to legal process, civil investigative demand or similar process, it shall, to the extent permitted by law, notify the Disclosing Party so that it may take steps to prevent or limit such disclosure, or if notification of the Disclosing Party is not permitted by law, take all steps available to preserve the confidentiality of the Confidential Information, and in the case of Customer Data, Q5 shall not surrender or release any proprietary information to any third party without the prior written consent of Customer or until receiving a final order of a court having jurisdiction over the parties and the subject matter.
- (4) Each Receiving Party shall securely store the Disclosing Party's Confidential Information until such Confidential Information is returned or destroyed as described in this Section 6.1(4). Each Receiving Party shall destroy all documentation in any medium that contains, refers to or relates to the Disclosing Party's Confidential Information (or the portion of such Confidential Information specified by the Disclosing Party) or shall return such documentation to the Disclosing Party or its designee, in the format and on the media reasonably prescribed by the Disclosing Party, as follows: (a) upon request, within thirty (30) days of the expiration or termination of this Agreement and completion of the Receiving Party's obligations hereunder; and (b) within thirty (30) days of a request from the Disclosing Party to do so, provided that such Confidential Information is no longer required by Receiving Party to perform its obligations or use the Q5 System pursuant to this Agreement. The party returning or destroying the other party's Confidential Information shall deliver to the other party written certification of its compliance with this paragraph signed by an authorized representative of such party. Notwithstanding the foregoing, either party may retain one copy of the other party's Confidential Information in its legal department as and to the extent required to comply with Applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the Applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute.

Section 6.2 Privacy

Customer acknowledges and agrees that it is responsible for all Personal Information collected or accessible within the Q5 System as Customer Data, and for the collection, use and disclosure of such Personal Information in accordance with Privacy Laws.

Section 6.3 Consent to Injunctive Relief

Q5 and Customer, as Receiving Parties, each acknowledges and agrees that any violation of the provisions of this Article 6 may cause irreparable damage or injury to the Disclosing Party, the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to the Disclosing Party, the Disclosing Party is entitled to proceed immediately to court in order to obtain, and the Receiving Party agrees to consent to, interim, interlocutory, and final injunctive relief restraining the Receiving Party from breaching, and requiring the Receiving Party to comply with, its obligations under this Article 6, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made.

ARTICLE 7 - TERM AND TERMINATION

Section 7.1 Term and Renewal of Agreement

- (1) This Agreement will begin on the Effective Date and shall continue until the last to expire of the Purchase Orders accepted and Licences granted hereunder, unless earlier terminated in accordance with this Agreement (the “**Term**”).
- (2) Subject to termination of this Agreement and any other renewal terms set forth in the applicable Purchase Order, the Licences and subscriptions to the Q5 System set forth in the Purchase Orders shall renew for successive one (1) year periods, or in the case of a multi-year Licences and subscriptions, for the multiple annual periods specified in the applicable Purchase Order, on the anniversary of the Effective Date in the year in which the applicable Purchase Order was otherwise set to expire (each a “**Renewal Term**”), unless Customer or Q5 has given the other party notice of its intention not to renew no less than 30 days prior to the renewal date.
- (3) Q5 may amend the Subscription Fees or terms and conditions on which the Q5 Software or Q5 Services are provided during subsequent Renewal Terms by providing Customer no less than 60 days notice prior to the renewal date. Continued use of the Q5 Software or acceptance of the Q5 Services following the renewal date shall be deemed to be an acceptance of any changes to pricing or terms of which Customer was given 60 days prior written notice.

Section 7.2 Termination

- (1) Either party may suspend or terminate this Agreement, or any of the Appendices or Purchase Orders, by providing notice to the other party of such termination in each of the circumstances set out below:
 - (a) if the other party commits a material breach of this Agreement, or the applicable Appendix or Purchase Order, and fails to cure such breach within 30 days of receipt of notice of such breach from the terminating party, or if the material breach is not capable of being cured; and
 - (b) in the event the other party is insolvent or otherwise unable to pay its debts as they come due, commits any act of bankruptcy, or if any insolvency or bankruptcy proceedings are commenced by or against the other party, or any trustee is appointed to manage or liquidate the business or affairs of the other party.

Section 7.3 Survival

- (1) Neither the expiration nor the earlier termination of this Agreement will release either of the parties from any obligation or liability which accrued prior to such expiration or termination.
- (2) Perpetual Licences which themselves have not been terminated for breach, shall survive termination or expiry of the other provisions of this Agreement which have been terminated or have expired.
- (3) The parties agree that the provisions of this Agreement requiring performance or fulfilment after the expiration or earlier termination of this Agreement, including Article 3, Article 4, Article 5, Article 6, Section 9.1, Article 9 and Article 11, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or earlier termination of this Agreement.

Section 7.4 Effect of Termination

- (1) In the event of termination of this Agreement, if requested in writing by a party in a termination notice, the other party, at the requesting party's expense, shall return all Intellectual Property, and in the case of a request by Customer, all Customer Data in Q5's possession or control, in a database format provided by Q5 at Q5's hourly rate for consulting services at the time of the request. Customer Data will otherwise be deleted.
- (2) Except in the case of perpetual Licences, in the event of a Termination of this Agreement, all Licences shall also terminate; and at the request of Q5, a senior officer of Customer shall certify that all instances of the Q5 Software have been deleted from Customer's systems upon the effective date of termination.

ARTICLE 8 REPRESENTATIONS, WARRANTIES & DISCLAIMER

Section 8.1 Customer Representations, Warranties and Covenants

- (1) Customer represents and warrants to and covenants with Q5 that:
 - (a) Customer is duly constituted, validly existing and in good standing under the laws of its jurisdiction, and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in all jurisdictions in which qualification is necessary in order to transact its business and perform its obligations set out in this Agreement;
 - (b) this Agreement is binding upon Customer, and Customer shall perform its obligations and exercise its Licenses to use the Q5 Software and receive the Q5 Services, solely in accordance with this Agreement;
 - (c) Customer shall not reverse engineer, decompile, translate, modify or disassemble the Software, except as expressly permitted by Applicable Law, and solely for the limited purposes of Applicable Law; and
 - (d) Customer shall enforce this Agreement against its employees and agents to the extent they breach the limited licences to use the Q5 System or the representations and warranties hereunder.

Section 8.2 Q5 Representations, Warranties and Covenants

- (1) Q5 represents and warrants to and covenants with Customer that:
 - (a) Q5 is duly constituted, validly existing and in good standing under the laws of its jurisdiction, and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in all jurisdictions in which qualification is necessary in order to transact its business and perform its obligations set out in this Agreement;
 - (b) this Agreement is binding upon Q5, and Q5 shall perform its obligations in accordance with this Agreement;
 - (c) to the knowledge of Q5, the Q5 Software does not infringe, misappropriate or violate (and there are no pending lawsuits alleging that such items infringe or violate) any Intellectual Property of any third party, and if any part of the Q5 Software is found to infringe any intellectual property or proprietary right, Q5 shall exercise all commercially reasonable efforts to remove or replace the infringing component(s) without any material loss of functionality or increased cost to the customer;
 - (d) the Q5 Services shall be provided in a competent and workmanlike manner, in accordance with standards common and prevalent in the industry;
 - (e) the Q5 Software will perform substantially in accordance with the Documentation and Specifications generally made available by Q5, provided Customer has properly accessed, installed, operated, and used the Q5 Software in accordance with this Agreement and such Documentation and Specifications, provided that Q5 reserves the right to alter, modify or update the Specifications and Documentation as may be required from time to time by posting the current versions to the Q5 website, including but not limited to, infrastructure, hardware, database and Internet browser specifications for the Q5 Software and Q5 Services.
- (2) Customer must provide Q5 with written notice reasonably describing any failure of the Q5 System to satisfy the limited warranty set forth in this Section 8.2, and subject to any service levels in the Appendices and Article 9 (immaterial defects) below, the repair or replacement of the applicable deficient portion of the Q5 System shall be Customer's sole and exclusive remedy for any such failure, unless repair or replacement is impracticable, in which case Customer may terminate the Agreement and be entitled to a refund of any pro-rated prepaid Fees.

Section 8.3 Warranty

Subject to Article 9 and provided that Customer is currently in good standing under this Agreement, including payment of all Fees related to Technical Support Services, Q5 shall use commercially reasonable efforts to ensure that the Q5 Software complies materially with its Specifications, and shall correct any defects in the Q5 Software in accordance with Appendix A and Appendix C, as applicable.

ARTICLE 9 - DISCLAIMER AND LIMITATION OF LIABILITY

Section 9.1 Disclaimer

EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 8.2(1), SECTION 8.3 OR REFERENCED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS OF EITHER PARTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED

WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, Q5 DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE Q5 SOFTWARE, OR THAT THE OPERATION AND USE OF THE Q5 SERVICES, OR THE Q5 SYSTEM WILL MEET CUSTOMER REQUIREMENTS, THAT USE OF THE Q5 SYSTEM SHALL BE ENTIRELY WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL IMMATERIAL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) WILL BE CORRECTED. IN ALL OTHER RESPECTS, THE Q5 SYSTEM IS PROVIDED "AS IS" WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED.

Section 9.2 Limitation of Liability

- (1) The Fees have been negotiated by the parties based on the following allocation of risk, which is reasonable in respect of the requirement for Customer to conduct its own User Acceptance Testing to determine for itself whether or not the Q5 System is suitable for its purposes, and Customer is responsible for any redundancy required to support and verify the results of any safety or other audits or event reporting carried out using the Q5 System.
- (2) Neither party shall be obligated to perform any term or condition of this Agreement if the performance would violate any applicable Federal, State or Provincial law or regulation.
- (3) Except for any wilful or professional misconduct or negligence by Q5, Q5, its subsidiaries, resellers, contractors, suppliers, co-branders, and other similar entities, nor the officers, directors, employees, representatives, and agents of any of the foregoing (all such persons and entities as listed heretofore in this sentence, collectively, (the “**Q5 Associates**”), shall not be liable to Customer or to any third party for any loss, cost, damage, or other injury, whether in contract, tort, negligence, strict liability or otherwise, arising out of or in connection with:
 - (a) Customer’s use or non-use, or Customer’s reliance on or failure to rely on, the Q5 Software or the Q5 Services, or any other materials (including, but not limited to, any Documentation, Q5 Forms and any reports, advice, and recommendations, in any form) provided or made available by Q5 or its contractors in connection with this Agreement (collectively, the “**Q5 Materials**”); and it is the responsibility of Customer to be aware of applicable due diligence and compliance requirements purportedly addressed by the Q5 Forms to ensure that Customer complies with all applicable laws and regulations governing the workplace its purpose in using the Q5 System;
 - (b) Any decisions made or not made, or actions taken or not taken, by Customer or any third party with regard to, in reliance on, or as a result of, use of the Q5 Software or Q5 Services or any Q5 Materials; and
 - (c) Any damages whatsoever as a result of loss, misuse, or alteration of Customer Data caused by a malicious infiltration or security breach of the Q5 Software In-House Hosted by Customer; and;
 - (d) Subject to Q5 meeting the standards set forth in Section 8.2 or Section 8.3, any damages whatsoever as a result of loss, misuse, or alteration of Customer Data caused by a malicious infiltration or security breach of the Q5 Software hosted by Q5 or a third party designated by Q5.
- (4) Under no circumstances shall the Q5 Associates be liable to Customer or any third party for any indirect, consequential, incidental, punitive, special, or similar damages or costs (including, but not limited to, lost profits or data, loss of goodwill, loss of or damage to property, loss of use or downtime of facilities, equipment, or services, costs of cover, business interruption, and claims of third parties) arising out of or in connection with this Agreement or use of the Q5 Software or Q5 Services or any Q5 Materials, even if it has been advised of the possibility in advance.
- (5) The liability of Q5 to Customer will not, in the aggregate, exceed the Fees paid by Customer under this Agreement during the 12 months preceding the event giving rise to the claim or action.
- (6) This Article 9 will apply irrespective of the nature of the cause of action, demand or Claim, including but not limited to, breach of contract (including fundamental breach), negligence, tort or any other legal theory, and will survive a fundamental breach or breaches of this Agreement or of any remedy contained herein.

ARTICLE 10 - INDEMNITY

Section 10.1 Customer Indemnity

Except for damage arising out of any breach of Section 8.2 or Section 8.3, Customer agrees to indemnify and hold Q5 harmless from and against any and all claims, losses, liabilities and expenses (including lawyers’ fees) related to or arising out of its use of the Q5 Software, Q5 Forms, Customer Forms and Q5 Services under this Agreement, including claims made by any third party for which the parties have agreed in Article 9 that Q5 should not be liable.

Section 10.2 Q5 General Indemnity

Subject to Article 9 including the limitation to direct damages in the amounts specified therein, Q5 agrees to indemnify and hold Customer harmless from and against any and all claims, losses, liabilities and expenses (including lawyers' fees) related to any third party claim, proceeding or suit (referred to in this Article 10 as a "Claim") related to or arising out of a breach of this Agreement by Q5.

Section 10.3 Q5 IP Indemnity

- (1) Q5 will defend at its own expense any Claim brought against Customer to the extent such Claim alleges that the Q5 Software, but not the Q5 Forms, furnished hereunder infringes any copyright, patent or registered trademark of a third Person, and will indemnify and pay all damages which by final judgment or settlement may be assessed against Customer on account of such infringement, provided that the alleged infringement does not result from any non-permitted uses, alterations, modifications or enhancements carried out by Customer or on its behalf by a third Person.
- (2) If a Claim of the type identified in Section 10.3(1) has occurred, or in Q5's opinion is likely to occur, Customer agrees to permit Q5 at its option and expense, either to procure for Customer the right to continue using the Q5 Software, to replace or modify the same so that it becomes non-infringing without material loss of functionality, or if none of the foregoing alternatives is reasonably available and at Q5's discretion, terminate this Agreement and all Licences granted hereunder and refund the current amount of any pre-paid Subscription Fees. The foregoing states the entire obligations of Q5 with respect to any infringement of Intellectual Property of any third party.

Section 10.4 Indemnity Procedure

Where any Claim is to be indemnified pursuant to this Article 10, the indemnified party shall give the indemnifying party:

- (1) prompt written notice of the Claim or of any allegations or circumstances known to Customer which could result in a Claim;
- (2) all reasonable information and assistance from Customer which Q5 may require to defend the Claim; and
- (3) sole control of the defence of the Claim, and all negotiations for its settlement or compromise thereof

ARTICLE 11 - MISCELLANEOUS

Section 11.1 Entire Agreement.

Except for any Custom Development Agreement between the parties which shall remain in full force and effect, in accordance with its terms, this Agreement constitutes the entire agreement between the parties with respect to the Q5 System and the rights and obligations contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 11.2 Notices.

Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier, Facsimile, or electronic mail receipt acknowledge, and addressed to the addresses set forth on the first page of this Agreement; or in the case of Q5, to support@q5systems.com. A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

Section 11.3 Force Majeure.

Customer and Q5 agree that if either of them is prevented, delayed or stopped from performing any act, obligation or undertaking under this Agreement (other than payment of Fees) by reason of any cause (except financial) beyond the reasonable control of that party, the time for such party's performance shall be extended one day for each day's prevention, delay or stoppage; provided, however, that either party may terminate this Agreement if performance is delayed by an event described in this section for a period in excess of sixty (60) consecutive days.

Section 11.4 Announcements.

No press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated in this Agreement may be made except with the prior written consent and joint approval of the parties, or if required by Law or a Governmental Entity. Where such disclosure is required by Law or a Governmental Entity, the party required to make the disclosure will use its commercially reasonable efforts to obtain the approval of the other parties as to the form, nature and extent of the disclosure.

Section 11.5 No Agency or Partnership.

Nothing contained in this Agreement makes or constitutes any party, or any of its directors, officers or employees, the representative, agent, principal, partner, joint venturer, employer, employee of any other party. It is understood that no party has the capacity to make commitments of any kind or incur obligations or liabilities binding upon any other party.

Section 11.6 Amendments.

Prior to any renewal, this Agreement may only be terminated, amended, supplemented or otherwise modified by written agreement signed by all of the parties. In respect of any renewal, the Appendices pursuant to which the Licenses to the Q5 Software are granted or the Q5 Services are described and provided, may be amended by Q5 posting updated Appendices to its standard Master Services and Licensing Agreement to its website no less than 60 days prior to the applicable renewal – website at www.q5systems.com/legalmsa

Section 11.7 Waiver.

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

Section 11.8 Successors and Assigns.

- (1) This Agreement becomes effective only when accepted by both parties, either by execution or acceptance of the initial Purchase Order referencing this the contract number of this Master Services and Licensing Agreement. After that time, it is binding on and enures to the benefit of the parties and their respective heirs, administrators, executors, legal personal representatives, successors and permitted assigns.
- (2) Except as otherwise provided in this Agreement, neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by Customer without the prior written consent of Q5.

Section 11.9 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 11.10 Governing Law.

- (1) This Agreement is governed by, and is to be interpreted and enforced in accordance with, the laws of the Province of Newfoundland and Labrador and the federal laws of Canada applicable therein.
- (2) Each party irrevocably attorns and submits to the non-exclusive jurisdiction of the Newfoundland and Labrador courts situated in the City of St. John's, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

Section 11.11 Insurance.

Q5 obtains what it believes to be a commercially reasonable amount of general liability insurance suitable for its industry. Any additional insurance required by Customer shall be identified in a Purchase Order.

Section 11.12 Counterparts.

This Agreement may be executed or accepted in any number of counterparts (including counterparts by facsimile or other electronic reproduction) and all such counterparts taken together will be deemed to constitute one and the same instrument. The party sending the facsimile or other electronic reproduction will also deliver the original signed counterpart to the other party, however, failure to deliver the original signed counterpart shall not invalidate this Agreement.

[Signing page follows]

IN WITNESS WHEREOF the parties have accepted this Master Software and Licensing Agreement effective as of the Effective Date.

Q5 Systems Limited

Customer

By : _____

By : _____

Name:

Name:

Title:

Title:

Appendix A – Q5 Software Licence Terms

These “Q5 Software Licence Terms” are made pursuant to the MASTER SERVICES & LICENSING AGREEMENT, between Customer and Q5 (as defined therein, the “**Agreement**”), to which these Q5 Software Licence Terms are attached as an Appendix. The terms of the Agreement are incorporated herein by reference. All capitalized not defined herein, shall have the meanings set forth in the Agreement. Actual Licences to Q5 Software are acquired in the Purchase Orders referencing the Agreement. If a Purchase Order refers to Q5 Software or any scope of licence is not listed here, please contact Q5 for a Quotation containing the applicable software terms.

1. Software Descriptions

1.1. The following Modules of Q5 Software are licensable on the terms and conditions of these Software Licence Terms.

Modules
Audit and Inspection Management
Action Tracking
Event Management
Risk Management
Skills Management
Disconnected Laptop Mobility / mobile applications
Business Intelligence (BI) Tool (applicable JasperSoft licences acquired by Q5)

1.2. Additional Definitions:

- (a) “**Licensed End User**” means, in respect of a Module of Q5 Software, an individual employee or agent of Customer who has a paid up End User Account to use such Module of Q5 Software in accordance with the terms of this Agreement and any additional click through End User License Terms accompanying such Modules of Q5 Software.
- (b) “**Server**” means a server or group of servers used to support the Q5 Software to deliver access to the Q5 System, as well as providing functions such as enterprise backup, monitoring, scheduling, data security, distribution of Q5 Software, service level reporting, asset management, problem management functions, and other typical functions for Internet enabled software packages.
- (c) “**Client**” means the Internet enabled computing device used by a Licensed End User to access the Q5 System.

1.3. Types of Licences - Licences to individual Modules as set forth in the Purchase Orders are granted on the terms herein, in the following categories:

- (a) “**End User Account**” means, in respect of a Module of Q5 Software, for a given License Term, a paid-up individual login user account for such Module of Q5 Software.
- (b) “**Enterprise License**” means an in respect of a Module of Q5 Software, for a given License Term, a paid-up License to an unlimited number of End User Accounts for such Modules within Customer’s business unit, division, or enterprise, as defined in the Purchase Order, for use solely in connection with its internal business purposes.
- (c) “**Perpetual License**” means, in respect of a Module or Modules of the Q5 Software, a License Term with no expiry,

2. Grant

2.1. Subject to the terms of the Agreement and payment of the applicable License Fees, Q5 hereby grants to Customer the limited, worldwide, right and license to operate and use each Module of Q5 Software listed in a Purchase Order to which these Q5 Software Licence Terms apply, during the applicable License Term, only on such Server as is indicated in the Purchase Order, using the number of End User Accounts listed in such Purchase Order, or in the case of an Enterprise License on an unlimited number of End User Accounts solely for Customer’s internal business purposes. For certain, the Customer shall acquire no other right and license to use the Q5 Software and

- Services, and except as may be defined in an escrow agreement between the parties, shall never acquire a right to use the Source Code of the Q5 Software.
- 2.2. The Q5 Software is wholly owned by Q5, and the software code, including, but not limited to, designs, algorithms, organization of processes, database models, user interfaces and Internet pages presenting its use, are the valuable trade secrets and Intellectual Property of Q5. Customer acknowledges and agrees that all right, title and interest in the Q5 Software and Q5 Forms, and any modifications, revisions, additions, customizations and enhancements thereto, shall be owned exclusively and in all respects by Q5. The Q5 logos and trademarks incorporated in the Q5 Software or marketing materials are proprietary to Q5.
 - 2.3. Customer agrees not to reproduce, lease, rent, loan, sell, re-sell, license, sublicense, republish, alter, modify, re-distribute, import, export or otherwise exploit the Q5 Software or any portion thereof, or otherwise use the Q5 Software for any reason other than as permitted in this Agreement, whether for commercial or monetary gain or not, without the prior written consent of Q5.
 - 2.4. Customer agrees that it may not use Q5 trademarks, except insofar as required to comply with the Agreement and to identify printed output produced by the Q5 Software in accordance with accepted trademark practice, including identification of trademark owner's name. Such use of any Q5 trademark does not give Customer any rights of ownership in that trademark. Except for the rights expressly granted herein, this Agreement conveys no right, title, or interest, expressly or by implication, in the Q5 Software, Documentation, or in any copyright, patent, trademark, trade secret or other intellectual property or proprietary right delivered via or with the Q5 Software. Q5 retains sole and exclusive title to all portions of the Q5 Software and copies thereof.
 - 2.5. For greater certainty, but without limiting the foregoing, the Customer agrees not to, and agrees to prohibit its employees and agents from, and agrees not to knowingly allow any third party to:
 - (a) modify, copy, adapt, translate, reverse engineer, de-compile, disassemble or otherwise attempt to ascertain the Source Code of the Q5 Software or create derivative works based upon the Q5 Software, except as permitted by law;
 - (b) hack, illegally gain access to, or attempt to do so, or defeat, disable or circumvent any protection mechanism related to the Q5 Software or Documentation, including without limitation any code which necessitates or solicits acceptance of this Agreement before use of the Q5 Software, or attempt to do so;
 - (c) unless as authorized herein, or in writing signed by an authorized representative of the Customer and Q5, disclose, permit access to, or display or make available to any third party or other software vendors (other than those providing services to Customer, but then only for the purpose of providing those services to Customer and for no other purpose), any portion of the Q5 Software or the Documentation;
 - (d) use the Q5 Software for fee-for-service, commercial or time-sharing purposes, or charge any fee to any Person for access to Licences to use the Q5 System;
 - (e) sell, lease, license, distribute, sublicense or rent to any third party any portion of the Q5 Software or Documentation; or
 - (f) export the Q5 Software or Documentation in violation of any Canadian export restrictions governing Q5, or any Canadian or International export restrictions governing Customer, including any law or regulations prohibiting trade in software or munitions or a named class to which the Q5 Software belongs or to a restricted jurisdiction.
 - 2.6. Any unauthorized copying, redistribution, reproduction or modification of the contents of the Q5 Software or Documentation by any person may be a violation of federal or common law, trademark and/or copyright laws and could subject such person to legal action.
 - 2.7. Notwithstanding anything to the contrary herein, Customer may make a reasonable number of backup and archival copies of the Customer Data and Q5 Software where it hosts the Q5 System on its owned Servers.
 - 2.8. Upon learning of any unauthorized use of or access to the Q5 Software by its Licensed End Users, Customer agrees to notify Q5, to promptly furnish details of such occurrence and to reasonably cooperate and assist Q5 in the prevention of any recurrence.
 - 2.9. Any unlawful or prohibited use of the Q5 System that is not in accordance with the terms of this Agreement may result in irreparable harm to Q5 that cannot be adequately compensated for by damages. Therefore, in addition to any legal remedies available to Q5 for losses or damages resulting from any prohibited or unauthorized use, Q5 may seek injunctive relief in the event such prohibited or unauthorized use is made or caused by any person accessing or using the Q5 System through the Company's End User License Accounts or Servers.



- 2.10. Except in the case where Customer hosts the Q5 System on its owned Servers, Q5 shall maintain control and ownership of all Internet Protocol (IP) numbers and website addresses that Q5 assigns to Customer in connection with the Q5 System. Q5 may in its sole discretion, change or remove any and all IP numbers and website addresses for infrastructure reasons (but not to deny access to the Customer or its Licensed End Users), subject to a prior written notice to the Customer.

3. Term

- 3.1. License Term - The License Term for each Module shall be as set out in the applicable Purchase Order, and in the case of perpetual Licences, shall be deemed to be until the expiry of all Intellectual Property rights in such Module, unless earlier terminated in accordance with the Agreement.
- 3.2. Renewal - Unless otherwise specified in a Purchase Order, the Licences granted herein shall renew in accordance with the Agreement.

Appendix B – EULA

This “**End User Licence Agreement**” or “**EULA**” is provided pursuant to the MASTER SERVICES & LICENSING AGREEMENT, between Customer and Q5 (as defined therein, the “**Agreement**”), reflects the minimum EULA for the Q5 Software, and is in addition to any click through EULA accepted at the time of installation of the Q5 Software or activation of any End User Account. The terms of the Agreement are incorporated herein by reference. All capitalized not defined herein, shall have the meanings set forth in the Agreement. This EULA may be modified from time to time by Q5 publishing the revised EULA on its website at www.q5systems.com/legalmsa, and such amendments shall take effect for a given Module upon the next renewal date of such Module at least 30 days following such publishing of the revised EULA.

EULA

The company through whom you have obtained an end user licence has provided you access to use the Q5 Software in accordance with the Master License and Services Agreement between your Company and Q5 Systems, which are incorporated in this agreement by reference. This End User License Agreement (EULA) reflects the minimum terms of use for the Q5 Software that you must be aware of and accept by installing or using this Q5 Software. IF YOU HAVE ANY QUESTIONS CONCERNING THE TERMS OF USE, YOU MUST CONTACT YOUR COMPANY'S Q5 SOFTWARE REPRESENTATIVE.

"Q5 Software" © Copyright (c) Q5 Systems Ltd. All rights reserved. This license applies to the web-hosted services for "Q5 Software" and the "Customer-On-Site-Installed" "Q5 Software".

"Q5 Software" is the Q5 Internet-based audit, quality and safety management software proprietary to and owned by Q5 Systems Limited, duly incorporated under the laws of the Province of Newfoundland and Labrador, Canada, and includes the Q5 Laptop module and mobile device add-ons, and all related documentation. The term "Q5 Software" also shall include any upgrades or updates licensed by "Q5 Systems". This license provides use of and access to the Internet-based version of the "Q5 Software" and related mobility modules, but specifically excludes access to and use of source code.

Upon your acceptance of this notice, "Q5 Systems", through your company, grants to you a limited, nonexclusive license to use the "Q5 Software", provided that you agree to the following:

1. USE OF THE "Q5 SOFTWARE" ("Purpose")

"Q5 Software" has been provided to you by your company solely for the purpose of conducting, recording and reporting audits, observations, inspections, actions, incidents or assessments on behalf of or for your company, ("the Purpose"). The "Q5 Software" may only be accessed by your single user account and may only be used for "the Purpose". Your user account must contain your first and last name and your valid email address. Your user account may not be shared with other persons.

2. COPYRIGHT AND TRADEMARK RIGHTS

The "Q5 Software" is wholly owned by "Q5 Systems", and its structure, organization and code are the valuable trade secrets of "Q5 Systems". The knowledge base, logos and trademarks incorporated in the "Q5 Software" are proprietary to "Q5 Systems".

You may use trademarks only insofar as required to comply with Section 1 of this Agreement and to identify printed output produced by the "Q5 Software" in accordance with accepted trademark practice, including identification of trademark owner's name. Such use of any trademark does not give you any rights of ownership in that trademark or the "Q5 Software". "Q5 Software" is also protected by Canadian and International Copyright Law and International Treaty provisions. This Agreement does not grant you any intellectual property rights in the "Q5 Software".

3. RESTRICTIONS

You agree not to modify, adapt, translate, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the "Q5 Software", except and solely to the extent expressly permitted by the laws of your jurisdiction. You agree only to use the "Q5 Software" for the "Purpose".



You agree not to display the screens, features, user documentation or use of the "Q5 Software" to other software vendors or distributors. You agree not to use the "Q5 Software" to provide fee-for-service, commercial or time-sharing activities.

For certain, the "Q5 Software" may not be sold, re-sold or exported or used in any commercial manner unless a signed agreement has been entered with "Q5 Systems".

4. INVALIDATION OF WARRANTY

"Q5 Software" may be warranted to perform in accordance with the functionality described in the user and help guides that accompany the "Q5 Software", and on hardware and software infrastructure as supported and documented by "Q5 Systems"; provided that you or the company through whom you have obtained an end user licence subscribes to and pays for product technical support from Q5.

Failure to use the "Q5 Software" in accordance with the user guides that accompany the "Q5 Software"; or using the "Q5 Software" with third party hardware or software not approved by "Q5 Systems", or otherwise in breach of this Agreement, may result in the warranties granted to the company through whom you have obtained an end user licence being rendered invalid by you.

Disclaimer: ANY WARRANTIES ARE PROVIDED SOLELY TO THE COMPANY THROUGH WHOM YOU HAVE OBTAINED AN END USER LICENCE, AND NOT TO YOU DIRECTLY. "Q5 SYSTEMS" DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS NOT EXPRESSLY MADE HEREIN WITH RESPECT TO THE LICENSED "Q5 SOFTWARE" OR ANY PART THEREOF, INCLUDING ANY AND ALL OF THE IMPLIED WARRANTIES OF CONDITION, TITLE, MERCHANTABILITY, INTELLECTUAL PROPERTY RIGHTS OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT "Q5 SYSTEMS" KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE).

5. LIABILITY

IN THE EVENT THAT "Q5 SOFTWARE" DOES NOT PERFORM AS PER THE WARRANTY IDENTIFIED IN SECTION (4.) ABOVE, ANY LIABILITY OF "Q5 SYSTEMS" WILL BE LIMITED EXCLUSIVELY TO PROVIDING ERROR CORRECTION OF THE "Q5 SOFTWARE" OR PRODUCT REPLACEMENT, UPDATES, PATCHES, FIXES OR WORKAROUNDS TO THE COMPANY THROUGH WHOM YOU HAVE OBTAINED AN END USER LICENCE AND NOT TO YOU DIRECTLY.

6. SUPPORT

Product technical support includes error correction fixes, new release upgrades and any between release upgrades or patches, as purchased. If the "Q5 Software" does not perform in accordance to User Guides that accompany the product, the user must contact "Q5 Systems" for product support.

If you have any questions regarding use of the "Q5 Software" please contact customer software support (support@q5systems.com).

7. GENERAL PROVISIONS

You the user agree that by installing or using the Q5 Software agree to be bound by these conditions. This EULA will be governed by the laws and jurisdiction of the Master Services and License Agreement.

8. TERMINATION OF AGREEMENT

If the license to use the "Q5 Software" is for a fixed time period as defined in the Master License and Services Agreement, unless renewed by your Company, your access will expire automatically via a "time out".

EULA v. 2013_04_30

Appendix C –Technical Support Services

These “**Technical Support Services**” are made pursuant to the MASTER SERVICES & LICENSING AGREEMENT 2013, between Customer and Q5 (as defined therein, the “**Agreement**”), to which these service terms are attached as an Appendix. The terms of the Agreement are incorporated herein by reference. All capitalized not defined herein, shall have the meanings set forth in the Agreement. Actual Q5 Services are acquired in the Purchase Orders referencing the Agreement. If a Purchase Order refers to Q5 Services not listed here, please contact Q5 for a Quotation containing the terms applicable to those other Q5 Services.

1. Description of Terms

1.1. Definitions – The following terms are defined for the purposes of these **Technical Support Services** only.

- (a) “**Technical Support Services**” means the email technical support and the 24-hour emergency phone line further defined in Section 2 and 3 of Appendix C, below.
- (b) “**Error**” means any Failures or other performance, compatibility, operational, or quality issues, which result in the Q5 Software or Services not operating in accordance with the Agreement or the applicable Documentation and/or Specifications. An Error may have no appreciable impact on the operation or use of the Q5 Software or Services, or an Error may cause a “**Minor Failure**”, “**Serious Failure**”, or “**Critical Failure**”.
- (c) “**Minor Failure**” means any performance, compatibility, operational, or quality issues that are not Critical Failures or Serious Failures. Minor failure can be a minor bug that does not interrupt critical workflow or inoperability of a function or report, for which an avoidance or workaround is possible.
- (d) “**Serious Failure**” means any performance, compatibility, operational, or quality issues, with the Q5 Software that cause disruption to normal workflow. Serious Failures can be intermittent server downtime or user time-out accessibility issues, individual user data corruption or loss, or repeated inaccessibility by users.
- (e) “**Critical Failure**” means, any performance, compatibility, operational, or quality issue, which result in total inaccessibility of the Q5Software by all users; and may include extended server downtime, major database corruption, or a total system crash. Critical Failure may require disaster recovery procedures.
- (f) “**Error Correction**” means creating a permanent modification to the Q5 Software that enables the permanent resolution of an Error, implemented with an “**Update**” or “**Upgrade**”. Updates and Upgrades are implemented according to a Q5 testing, Q5 acceptance and Q5 implementation schedule. Q5 shall use its best efforts to coordinate Upgrades with the Customer.
- (g) “**Patch**” means the temporary repair or replacement of object or executable code versions of the Q5 Software that enables the temporary resolution of an Error.
- (h) “**Workaround**” means a change in the procedures followed by Customer to avoid an Error without substantially impairing Customer’s access to or use of the Q5 Software.
- (i) “**Update Release**” means any new minor enhancement made to the Q5 Software issued by Q5, which may also contain an Error Correction, and includes any update, patch installation, modification, renovation, refresh, enhancement, addition or substitution to the Q5 Software. Updates will be issued as a new release series number; for example 7.0.1 to 7.0.2.
- (j) “**Upgrade Release**” means any new major enhancement or grouping of enhancements, new functionality or revised or new modules made to the Q5 Software, issued by Q5, and includes a collection of one or more Updates released as an upgrade. Upgrades will be issued as a new version prefix numbers or new release numbers; for example 7.0.2 to 7.1.0, or 7.1.0 to 7.2.0.
- (k) “**Version Release**” means any release of a collection of Updates and/or Upgrades to Q5 Software in respect of which Q5 uses a new version prefix number; for example 7.x.x to 8.x.x.

2. Technical Support Services

2.1. The Technical Support Services set forth in this Section 2 of Appendix C (the “**Technical Support Services**”) are provided in the categories indicated, based upon the selection of such Q5 Services in a Purchase Order, and payment of the applicable Service Fees in accordance with the Agreement.

2.2. The Technical Support Services shall include;

- (a) Access to and use of Q5’s technical support information data-bases, help files, tutorials and user guides regarding the function, operation, and use of the Q5 Software;
- (b) Reporting of **Errors** (see 1. 1.1 (b));
- (c) Assistance with diagnosing and resolving Errors,
- (d) Provision of Workarounds,
- (e) Assistance with installation of Patches, Updates, Upgrades and Version Releases, and
- (f) Assistance with any other technical issue that has been described as supported in a Purchase Order.

2.3. The Technical Support Services shall not include:

- (a) Training regarding how to use the features and functions of the Q5 Software that are provided in the technical support information data-bases, help files, tutorials and user guides that accompany the Q5 Software or by the Training Services;
- (b) Migration to other database management systems;
- (c) Custom Development that is specified as not supported.

2.4. **Email technical support** (support@q5systems.com) is available during normal business hours, defined as Monday to Friday, 7:30 to 16:00 EST, holidays excluded. Minor Failures shall be acknowledged by same day email receipt to the sender. A Patch may not be provided for minor or cosmetic defects that do not significantly or adversely affect functionality.

2.5. **Emergency Support** is available as follows:

- Emergency. 24-hour / 7 day support English-language only call centre answering service
- North America: 1.866.737.7574.
- International +1 709.739.8801

Emergency Support call centre answering service protocol determines if the issue is urgent. If not a “Critical Failure” or “Serious Failure”, the call is logged and forwarded to Q5 support for attention on the next business day.

3. Emergency Response

3.1. Q5 shall provide a Work Around or Patch in accordance with the Section 1.1 Definitions and the guidelines in the Chart 1 below:

Emergency Response			
Call Severity	Acknowledgement by Q5	Q5 Hosted Work Around or Patch Available	Q5 In-House Hosted Work Around or Patch Available
Serious	On receipt of notification from Email Technical Support Line or Emergency Call Centre	Within eight (8) hours	Within twelve (12) hours
Critical	On receipt of notification from Email Technical Support Line or or Emergency Call Centre	Within four (4) hours	Within eight (8) hours

3.2. Where Customer has opted for In-House Hosting (Appendix D), the above timelines shall be extended for any delays in accessing the Servers attributable to Q5’s lack of timely access to the In-House Hosted [Servers].

3.3. Customer agrees to provide Q5 with all reasonably available information and materials requested by Q5 for use in replicating, diagnosing and correcting an Error reported by Customer. Notwithstanding the foregoing, in the event Customer is not running the most current Version of the Q5 Software and Customer encounters an Error which has been corrected in a subsequent release of the Q5 Software, Q5 shall not be obligated to provide an Error Correction to such Error for such release of the Q5 Software. Customer will be entitled to a the most recent



- release if Customer has continuously paid for Technical Support Services since first acquiring the affect Module, or if Customer agrees to purchase Licences to the most current version of such Module, or Customer agrees to pay all Services Fees for Technical Support Services which would otherwise have been paid had Customer selected this option in the initial Purchase Order.
- 3.4. Q5 shall use commercially reasonable efforts to release Upgrades in a timely manner so as to keep the Q5 Software current with changes in operating systems and other key computing platform elements on which, or in connection with which, the Q5 Software is used.
- 4. Exclusions.**
- 4.1. Q5 shall not be obliged to perform, and may suspend performance of, the Q5 Services, in the following instances:
- (a) Customer has modified the In-House Hosted infrastructure environment of the Q5 Software without consent;
 - (b) Customer is in material breach of the Agreement, including failure to pay;
 - (c) Customer's In-House Hosted infrastructure environment fails to meet the minimum requirements for the Q5 System as set forth in the application Specifications;
 - (d) Customer refuses to grant Q5 access to the In-House Hosted Servers; or
 - (e) Customer is using a Version more than 2 Versions older than the current Version available from Q5.
- 5. Term**
- 5.1. Technical Support Services Term - The Term for Technical Support Services shall be as set out in the applicable Purchase Order.
- 5.2. Renewal - Unless otherwise specified in a Purchase Order, the subscription to the Technical Support Services shall renew in accordance with the Agreement.

Appendix D – Hosting Services Terms

These “**Hosting Services Terms**” are made pursuant to the MASTER SERVICES & LICENSING AGREEMENT, between Customer and Q5 (as defined therein, the “**Agreement**”), to which these Hosting Services Terms are attached as an Appendix. The terms of the Agreement are incorporated herein by reference. All capitalized not defined herein, shall have the meanings set forth in the Agreement. Actual Q5 Services are acquired in the Purchase Orders referencing the Agreement. If a Purchase Order refers to Q5 Services not listed here, please contact Q5 for a Quotation containing the terms applicable to those other Q5 Services.

1. Description of Services

- 1.1. The following services are defined for the purposes of Q5 Hosted and In-House Hosted Services.
 - (a) **In-House Hosted**” means the Q5 Software is hosted on Servers owned by Customer and located in Customer’s facilities, or facilities to which Customer has the ability to grant Q5 access.
 - (b) **“Q5 Hosted”** means the Q5 Software is hosted on Servers selected by Q5 and located in facilities of a hosting service provider selected by Q5 in accordance with Section 2 of this Appendix D.

2. Q5 Hosted Hosting Services

- 2.1. Where Customer has opted for Q5 to host the Q5 Software, the Hosting Services shall be as set forth in this Section 2 of (the “**Q5 Hosted - Hosting Services**”).
- 2.2. Q5 shall have the right to subcontract the Q5 Hosted Hosting Services to a third party, provided that the following service levels are achieved.
- 2.3. Uptime. - During the Hosting Term, the Q5 Software will be available to Customer through the Q5 Website, without Errors, for 99% of all Scheduled Availability Time. “Scheduled Availability Time” shall be defined as twenty-four (24) hours-a-day, seven (7) days-a-week, excluding: (i) Scheduled Maintenance Downtime; and, (ii) any downtime to the extent due to defects caused by Customer or Force Majeure.
- 2.4. Downtime. - Schedule maintenance downtime window for Updates, Upgrades and server maintenance shall be defined as (i) Saturday from 7:30 am to 11:00 am EST and (ii) Sunday from 7:30 am to 11:00 am EST. For any downtime outside of schedule maintenance downtime, Customer and Q5 shall agree on any additional down time requested by Q5. Q5 shall provide Customer with timely notification of any unforeseen maintenance or other down times associated with the Q5 Software or the dedicated Customer hosted server.
- 2.5. Backups. – Full Backups will be initiated once weekly. Differential Backups of all Customer Data will be initiated each day, seven (7) days per week. Backups will be retained for a minimum of thirty (30) consecutive days. Backups are intended for disaster recovery, not the restoration of individual files.
- 2.6. Q5 Hosting Security - Q5 will provide technical and organizational security measures that are appropriate to the risks involved in performing the Hosting Services and which are aimed at protecting the Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or unauthorized access, based on established standards reasonably acceptable within the industry. Customer Data is protected in three ways:
 - (a) Management Policy and Procedures: Customer Data is regarded by Q5 as Confidential Information of the Customer and is treated by Q5 with a duty of care in accordance with industry accepted standards and procedures. Q5 will:
 - (i) Ensure that Customer Data is only processed and accessed by Q5 Personnel for the purposes of Q5 performing the Services;
 - (ii) Employ security and data handling work procedures; and
 - (iii) Ensure that Q5 employees are aware of and follow the work procedures;
 - (b) Hosting Standards and Infrastructure: The hosting services provider shall be selected by Q5 on the basis that the provider’s security policies and procedures include, at a minimum:
 - (i) physical location security measures which monitor and prevent unauthorized access to the Q5’s servers;
 - (ii) server and firewall security protections;
 - (iii) procedures for maintaining security and operating system upgrades and patches; and

(iv) procedures for notifying Q5 of any security violation, including, without limitation, unauthorized access to or use of the Q5 Software or any portion thereof, including the Customer Data.

3. In-House Hosted - Hosting Services

- 3.1. Where Customer has opted to host the Q5 Software itself, the Hosting Services shall be a minimum commitment by Customer to Q5 to host the Q5 Software as set forth in this Section 3 to the standards in Section 2 above, the “**Q5-House Hosted - Hosting Services**”).
- 3.2. Customer shall at all times maintain the physical security of the Servers in the In-House Hosted environment, and shall maintain a log of all access to such Servers.
- 3.3. Servers hosting the Q5 Software shall be enumerated, and may not be relocated without Q5’s consent, not to be unreasonably withheld, or without removing the Q5 Software.
- 3.4. Customer shall maintain dedicated Internet access to the Servers hosting the Q5 Software, and at all times maintain electronic access for Q5 to exercise its rights and obligation under this Agreement in respect of the Q5 Software on such Servers.
- 3.5. Uptime. Customer is responsible for up-time.
- 3.6. Downtime. Scheduled Maintenance downtime window for Updates, Upgrades and Error fixes shall be provided by the Customer, normally, on (i) Saturday from 7:30 am to 11:00 am EST or (ii) Sunday from 7:30 am to 11:00 am EST, or at other times mutually agreed between Q5 and Customer. Q5 shall provide Customer with timely notification of any unforeseen maintenance or other down times associated with the Q5 Software. Customer shall coordinate any of its own scheduled downtime around these windows or with Q5’s consent.
- 3.7. Backups. Customer is responsible for Backups of all Customer Data.
- 3.8. Customer is responsible for all security related to:
 - (a) Hosting Standards and infrastructure and
 - (b) Backups.
- 3.9. Changes to Customer Infrastructure - After the software has been affirmed as “up and running” on Customer’s “In-House Service” and subsequently Customer reports an Error, Customer is obligated to ensure that it has not changed or altered or introduced any changes to its infrastructure that may have caused the product to no longer function or give rise to the reported issue. If Q5 investigates a reported Error and determines that the problem resides with a Customer-introduced change, Q5 will invoice the Customer for all costs incurred in attempts to resolve the issue. Infrastructure change means, but is not limited to:
 - (a) Security modifications
 - (b) Authentication changes/modifications
 - (c) Server upgrades
 - (d) Operating System upgrades
 - (e) Patches not initiated by Q5
 - (f) Database upgrades
 - (g) Changes to Q5 Software dependant applications
- 3.10. Infrastructure Access Requirements
 - (a) Access. Customer shall provide secure remote access for Q5 to the Customer server.
 - (b) Privileges. Customer shall provide a Q5 user account on Customer server to allow modifications to Q5 Software and Q5 Software dependant applications, and Database Owner access to Q5 Application databases.
 - (c) Customer Server Specifications. Customer shall ensure adherence to the minimum infrastructure Specifications provided by Q5 (which may be revised or updated over time).

4. Exclusions.

- 4.1. The Q5 Services provided hereunder shall not include:
 - (a) Migration to other database management systems; and



- (b) Custom Development that is specified as not supported, which additional services may be provided pursuant to separate agreements between Q5 and Customer.
- 4.2. Q5 shall not be obliged to perform, and may suspend performance of, the Q5 Services, in the following instances:
- (a) Customer has modified the installation environment of the Q5 Software without consent;
 - (b) Customer is in material breach of the Agreement, including failure to pay;
 - (c) Customer's installation environment fails to meet the minimum requirements for the Q5 System as set forth in the application Specifications.
 - (d) Customer refuses to grant Q5 access to the Servers

5. Term

- 5.1. Hosting Services Term - The Term for Hosting Services shall be as set out in the applicable Purchase Order.
- 5.2. Renewal - Unless otherwise specified in a Purchase Order, the subscriptions to the Hosting Services shall renew in accordance with the Agreement.



Appendix E – Purchase Order

1. Purchase Order / Acceptance of Quotation

- (a) The Quotation attached hereto is accepted by the parties.
- (b) The Effective Date for the Agreement and the subscriptions is described in the Quotation.
- (c) Except as expressly set out herein or in the Quotation attached hereto, the Agreement remains unchanged, unmodified and of full force and effect.

Attachment