

# EMPOWERED NETWORKS INC. ("Empowered")

## GENERAL TERMS AND CONDITIONS FOR SERVICES

**1. QUOTATION.** Unless otherwise stated, Empowered's quotation for services (the "Quotation") shall be null and void unless accepted by the client (the "Client") within 30 days from the date of the Quotation by the Client submitting to Empowered an order for services (the "Order").

**2. SERVICES RETAINED.** Empowered's acceptance of the Client's Order shall constitute a service agreement (the "Agreement") whereby the Client retains Empowered to perform certain services (the "Work") in accordance with the Quotation, any Statement of Work, the general terms and conditions for services contained herein (the "General Terms"), and, for orders including the Integration Service Bundle, the Supplemental Terms and Conditions.

**3. MODIFICATIONS.** Any modification to the Agreement must be approved in writing by the Client and Empowered prior to its inception and execution.

**4. COST OF MODIFICATIONS.** In addition to adjustment of price that may be caused by any approved changes, the Client agrees to pay Empowered at Empowered's standard time and material rates for any time spent evaluating and responding to a change request made by the Client.

**5. ADJUSTMENT.** The price and conditions quoted in the Quotation are strictly based upon the information supplied by the Client and notwithstanding section 3 herein the Client agrees to any adjustment to the price and conditions quoted if there is any change to the information supplied by the Client upon which the Quotation is based including but not limited to change to Work requirement, supply of new information, correction of errors or omissions, or if the Client fails to provide necessary resources/logistics in accordance with Work requirement or time frame.

**6. PERFORMANCE OF WORK.** Unless otherwise agreed by the parties, all Work shall be performed during normal business hours and Empowered reserves the right to make partial performance of Work and to submit invoices for partial performances. The Client agrees to provide to Empowered reasonable and safe access of all its facilities required for Empowered to perform the Work.

**7. SALE OF GOODS.** If the Quotation includes both performance of Work by Empowered and sale of goods by Empowered, the sale of the goods shall be governed by Empowered's General Terms and Conditions of Sale and the performance of Work shall be governed by this Agreement.

**8. REVIEW WORK.** Unless otherwise agreed by the parties, the Client will have five (5) days following the performance of any Work to review the Work and to advise Empowered, in writing, of any deficiency. If no such notice is given to Empowered the Client will be deemed to have accepted the Work performed. However, the five (5) day review period does not in any way suspend or terminate the Client's payment obligations contained herein.

**9. CHARGES AND PAYMENT.** The Client will pay Empowered the amounts specified in the Quotation. In addition, the Client will reimburse Empowered for all out-of-pocket expenses relating to the performance of the Work, including without limitation, all travel, lodging and meals. Unless otherwise specified, all amounts will be invoiced in U.S. dollars. If any invoiced amount is not paid by the Client within thirty (30) days of the invoice date, the Client shall pay Empowered interest on the invoiced amount from the invoice date until the date of payment in full, at a rate of 18% per annum. In addition to any other remedy available to Empowered in law or under this Agreement, Empowered will be entitled to suspend the Work without penalty until the Client pays all overdue invoices and outstanding interest.

**10. TAXES.** All sales, use or goods and services taxes, customs duties or similar levies of any kind arising with respect to any Work are in addition to Empowered's charges and are the sole responsibility of and will be paid by the Client. To the extent that Empowered is required to collect and remit such taxes, they will be shown on the applicable invoice; however, failure of Empowered to invoice any tax shall not relieve the Client of the Client's obligation to pay the tax.

**11. PROPRIETARY RIGHTS.** Unless the parties otherwise agree, all intellectual and industrial property rights in and to all materials or services in whatever form created by Empowered during the course of performing any Work hereunder (the "Work Products") shall belong to Empowered. Upon payment by the Client of all amounts owing under this Agreement, Empowered grants to the Client the non-exclusive right to use and reproduce the Work Products solely for its own internal business purposes. Empowered hereby retains all other worldwide rights to reproduce, translate and publish all Work Products and all updates, modifications or translations thereof, to distribute or to charge payment for such works to third parties, and to protect such works under all applicable intellectual property laws.

**12. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.** Empowered does not represent that it has authority to grant any licences to the Client for any third party intellectual property. The Client is responsible for ensuring that it has or obtains the requisite right to use, permission, or licence from any and all third party suppliers of software, materials and services when the Client uses any Goods, Work or Work Product delivered or used by Empowered and the Client is responsible for ensuring such use by the Client does not constitute a misappropriation of any trade secrets or constitute a patent, copyright or trademark infringement.

**13. WARRANTY.** Empowered warrants that Work will be performed in accordance with industry standards and practices reasonably applicable to performance of the services and that Work will be free of defect for a period of thirty (30) days from the Review Work completion date, as per Section 8 above. This warranty will not extend past thirty-five (35) days from completion of all Work effort and any warranty work effort will not exceed the original Work effort. Warranty will not apply to any Client changes beyond the specifications of the original work. Should work performed under warranty be: a) determined not to be the results of any defects in Empowered's Work; or b) the result of Client changes beyond the specifications of the original Work effort, the warranty work effort will be billed to Client at the then Empowered applicable daily rates.

Empowered does not warrant any software or other products manufactured by third parties and supplied in connection with the Services, and as to such software or products, the manufacturer's warranty, if any, shall apply.

**14. NO IMPLIED WARRANTIES.** Except as expressly set forth in this Agreement, Empowered makes no representations or warranties or conditions, express or implied, statutory or otherwise, with respect to the Work or the Work Product, including, but not limited to, those of merchantability and fitness for a particular purpose.

**15. LIMITED LIABILITY.** Empowered's liability for any cause, whether in contract or tort, including fundamental breach or negligence, shall be limited to the Client's direct damages and shall not exceed, in the aggregate, the amounts paid by Client to Empowered under this Agreement with respect to the Work giving rise to the damages. In no event will Empowered be liable for any indirect, incidental, special or consequential damages suffered by Client or any other person with respect to any intentional, negligent or accidental acts or omissions of Empowered, including without limitation any loss of revenues or profits, even if Empowered has been advised of the possibility or likelihood of such damages. No action, regardless of form, arising out of or in relation to this Agreement or any Work or Work Product may be brought more than one (1) year after the completion of the Work or the delivery of the Work Product to which the action relates.

To the extent the laws of a territory limits or precludes the exclusion of implied warranties, or the limitation of damages, such implied warranties or damage quantum will be limited to the fullest extent permitted by law.

**16. CONFIDENTIALITY.** Both Empowered and the Client agree to hold all confidential information of the other party in confidence and shall treat such information accordingly.

**17. TERMINATION.** This Agreement shall terminate at the earliest of: (a) the date the Work described in the Quotation is completed; (b) termination by either party by given sixty (60) days written notice; or (c) if the Client is in breach of any obligation under this Agreement, including but not limited to any payment obligations, Empowered has the right, at its sole discretion and without penalty to either (i) suspend all Work until all amounts are paid in full or such breach is remedied to Empowered's satisfaction; or (ii) terminate this Agreement, immediately upon written notice to Client, if payment is not made or the breach not remedied within thirty (30) days following the invoice date or date of breach. Upon termination of this Agreement, Empowered will discontinue all Work hereunder and invoice the Client for all Work performed and Work Product delivered prior to the date of termination. Upon payment by the Client of all amounts owing to Empowered, Empowered will deliver to the Client all Work Product and Work in progress in Empowered's possession to which the Client is entitled as of the date of termination.

**18. INDEMNITY.** The Client will indemnify and hold Empowered harmless from all claims, actions, damages liabilities, costs and expenses suffered or incurred by Empowered arising out of this Agreement or use or possession of any Work Product by the Client or a third party, caused directly or indirectly by the fault or negligence of the Client or any of its employees, agents or representatives; the use or copying by Empowered of any information or material supplied by the Client; the compliance by Empowered with any instructions or specifications provided by Client with respect to any Work or Work Product; or the use, possession or copying of any Work Product by any third party which acquired it directly or indirectly from the Client.

**19. NO SOLICITATION.** During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, the Client agrees not to directly or indirectly solicit, recruit for employment, induce termination of employment from Empowered, offer subcontracting opportunities to, or knowingly employ any employee or contractor of Empowered who has been assigned to the performance of this Agreement, without the prior written consent of Empowered. In the event of a breach of this provision by the Client, the Client shall pay Empowered, as liquidated damages and not as a penalty, an amount equal to twelve month's salary for the employee hired by the Client. The staff of Empowered are not, nor shall they be deemed to be at any time during the term of this Agreement, the employees of the Client.

**20. GENERAL.** (a) Force Majeure. Neither party shall be liable for delay or failure in performance, except the payment of money, resulting from acts beyond the control of such party, including, but not limited to Acts of God, acts of war, embargoes, fire, flood, or other disaster, act of government, strike, lockout, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, shortage of labour, materials or manufacturing facilities, communication line or power failures, failure, inoperability or destruction of any computer equipment or software; (b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Client agrees to submit to the jurisdiction of the courts of Ontario for the determination of any dispute arising from this Agreement; (c) Successors and Assigns. The Agreement shall be binding upon and enure to the benefit of the parties thereto and their respective successors and assigns. The Client shall have no right to assign or transfer this Agreement without the express written permission of Empowered; (d) Language. Empowered and the Client declare that the parties agree that this Agreement and any related documents are to be in English language only. Empowered et l'acheteur déclarent vouloir que ce document et ceux qui s'y rattachent, soient rédigés en la langue anglaise seulement; (e) Entire Agreement. This Agreement, the agreements incorporated by reference, and modifications obtained in accordance with section 2 herein contain the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and no oral or written representation that is not expressly contained in this Agreement is binding on Empowered; (f) Severability. If any provision of the Agreement is declared by a Court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Agreement and the other provisions shall remain in full force and effect; (g) Headings. The headings inserted are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; (h) Time of Essence. Time shall be of the essence of this Agreement