



## FLOW FIT TMS SOFTWARE AS A SERVICE AGREEMENT

This software as a service agreement (“**Agreement**”) is entered between Consoltec inc (“**Consoltec**”) and the customer mentioned in the Proposal or in the documentation exchanged with the customer (“**Customer**”), to govern the access rights to the FlowFit translation management solution described herein, as well as the performance of related services by Consoltec. Consoltec and Customer are individually referred to as a “**Party**” and collectively as the “**Parties**”.

This Agreement comprises the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior contracts, understandings, negotiations, and discussions, whether oral or written, between the Parties. This Agreement prevails over any of Customer’s general terms and conditions of purchase, regardless of whether or when Customer has submitted such terms. Fulfilment of this Agreement by Consoltec does not constitute acceptance of any of the Customer’s terms and conditions and may not be interpreted as modifying this Agreement.

### 1. DEFINITIONS

- 1.1 “**Affiliate(s)**” means any legal entity that controls, is controlled by, or is under common control with a Party. For the purpose hereof, “**Control**” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
- 1.2 “**Defect**” shall mean a failure in program logic or functions of the FlowFit Solution which prevents it from operating in all material respects as described in the Documentation.
- 1.3 “**Customer Equipment**” means Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems and networks, whether operated directly by Customer or through the use of third-party services.
- 1.4 “**Documentation**” shall mean printed and/or electronic materials relating to the FlowFit Solution (excluding any source code of programming documentation), including users’ manuals, data sheets, cue cards and technical manuals provided by Consoltec to Customer, as it may be modified from time to time by Consoltec.
- 1.5 “**Effective Date**” means the date on which the Proposal accepted by Customer is confirmed by Consoltec or the date on which Customer accesses the FlowFit Solution, whichever occurs first.
- 1.6 “**FlowFit Solution**” means the FlowFit translation management solution offered by Consoltec for the management of linguistic projects, as well as all services (including hosting), software, equipment and technology related thereto.

- 1.7 “**Licensed Materials**” shall mean collectively the FlowFit Solution and the Documentation.
- 1.8 “**Personal Information**” means any information that relates to an individual person and identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information.
- 1.9 “**Privacy Laws**” means any law, rule, regulation, decree, statute, or other enactment, applicable to a Party relating to data security, data protection and/or privacy, including, without limitation: (i) the *Personal Information Protection and Electronic Documents Act* (Canada), (ii) Regulation 2016/679 of the European Parliament and of the Council on the General Data Protection Regulation; (iii) the United Kingdom General Data Protection Regulation; and (iv) any other federal, provincial or state privacy legislation now in force or that may in the future come into force applicable to a Party and as it may be amended from time to time.
- 1.10 “**Proposal**” refers to the final version of the proposal describing the FlowFit Solution prepared by Consoltec and accepted by Customer, which forms an integral part of this Agreement.
- 1.11 “**Services**” means the services provided by Consoltec to enable and optimize Customer’s use of the FlowFit Solution, as described in the Proposal, in this Agreement or otherwise agreed between the Parties.
- 1.12 “**Updates**” means modifications to the FlowFit Solution to fix or by-pass known Defects or to make minor changes to its functionality, including patches and bug fixes, released by Consoltec from time to time at its discretion, to the exclusions of Upgrades.
- 1.13 “**Upgrades**” means new modules or versions which add material functional capabilities or new features to the FlowFit Solution.
- 1.14 “**User(s)**” shall mean the employees, subcontractors or other representatives of Customer who are authorized to access and use the FlowFit Solution.
- 1.2 Additional terms and expressions used in a particular context are defined elsewhere in this Agreement and shall have the meaning expressly assigned to them.

## 2. SCOPE

- 1.1 Subject to the fulfilment of all its obligations hereunder, Consoltec hereby grants to Customer a non-exclusive and limited right to access and use the FlowFit Solution for its own internal business purposes. Such rights are non-transferable, except as expressly permitted under this Agreement or by law. For the sake of clarity, the FlowFit Solution is licensed and not sold and this Agreement does not grant Customer the right to access or obtain the source code of the FlowFit Solution.
- 1.2 Customer shall be liable to provide and to maintain, at all times and at its own costs, the Customer Equipment required to use the FlowFit Solution, as indicated in the Documentation or instructed by Consoltec from time to time.
- 1.3 Customer shall control access to and use of the FlowFit Solution by the Users and is responsible for any use of the FlowFit Solution by the Users that does not comply with this Agreement.

1.4 Customer may offer the FlowFit Solution for use by its Affiliates upon prior written authorization from Consoltec. If it does, the rights granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Consoltec. Customer will remain responsible for all obligations of its Affiliates' under this Agreement and for compliance with its terms.

1.5 All rights, title and interests that are not expressly set out in this Agreement are expressly reserved by Consoltec.

## **2. TERM AND DURATION**

2.1 This Agreement shall enter into force as of the Effective Date and shall remain in force for the duration set forth on the Proposal. If no duration is set forth in the Proposal, this Agreement shall remain in force for an initial period of one (1) year ("**Initial Term**"). This Agreement shall then automatically renew for successive renewal terms of one (1) year (each a "**Renewal Term(s)**"), except if otherwise provided in the Proposal.

2.2 Each Party can terminate this Agreement at its own discretion upon a written notice given to the other Party not less than 60 days prior to the expiry of the Initial Term or of a Renewal Term. For the avoidance of doubt, termination for convenience under this section shall be effective at the expiration of the Initial Term or of the then current Renewal Term

## **3. PRICE AND PAYMENT**

1.1 In consideration for the rights granted herein and the performance of Services by Consoltec, Customer shall be liable to pay the fees and cash expenses set forth in the Proposal for the Initial Term.

1.2 The FlowFit Solution fees will be increased once in a year by up to five percent (5%) for each Renewal Term.

1.3 Unless otherwise expressly set forth in the Proposal, all prices are expressed in USD and fees shall be paid in that currency. If the Proposal is issued in another currency, payment shall be made in such currency.

1.4 The net amount of the fees for the Initial Term or any Renewal term as well as for the performance of any Service hereunder shall be paid in advance by Customer, within thirty (30) days of the corresponding invoice issued by Consoltec.

1.5 All amounts payable under this Agreement shall be non-refundable.

1.6 Prices shall be exclusive of any tariffs, duties or taxes imposed or levied by any government or governmental agency, which shall be invoiced in addition to the fees provided for herein when applicable.

1.7 Payments not received by the due date shall bear interest at the rate of 1% per month (12% per year), compounded monthly, or the maximum rate permitted by law, whichever is less.

1.8 Consoltec may further suspend the use of the FlowFit Solution and the performance of the Services without terminating this Agreement during any period in which Customer is in default to perform its payment or other obligations under this Agreement, upon a five (5) days prior notice

to Customer. Consoltec won't be responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay or failure with respect to the foregoing.

- 1.9 Fees and charges related to the FlowFit Solution and the technical support service are based on a utilization within the limits set forth in the Proposal or, failing such, deemed reasonable by Consoltec. In case of requests considered excessive by Consoltec, additional charges may apply.
- 1.10 Upgrades are not included in the rights granted to Customer pursuant to this Agreement, unless otherwise indicated in the Proposal. A separate written agreement shall be executed between the Parties should Customer wish to obtain such Upgrades.

## 2. PERFORMANCE OF SERVICES

- 2.1 Consoltec undertakes to supply the Services provided for in this Agreement, to the extent provided for in the Proposal, subject to the full payment thereof by Customer and fulfilment of its other obligations.
- 2.2 Customer may require the performance of Services not included herein, such as complementary training, project management, technical consulting and development, etc. ("**Additional Services**"), in which case it shall submit the details of its request in writing to Consoltec.
- 2.3 Services shall in no event include the diagnosis and rectification of any event resulting from: (i) unauthorized use of the FlowFit Solution or use in violation of Customer's obligations under this Agreement; (ii) any use of the FlowFit Solution not in accordance with the Documentation or otherwise contrary to Consoltec's instructions; (iii) FlowFit Solution reconfiguration due to computer crash, computer replacement or other failure of Customer Equipment; (iv) inadequate training by Customer of the Users on the use of the FlowFit Solution; (v) damage due to abuse, misuse, negligence, theft, vandalism, etc. (altogether the "**Not covered Service(s)**").
- 2.4 Consoltec may agree to perform Additional Services or Not covered Services, subject to their feasibility, availability of its personnel and agreement with Customer on the financial and technical terms and conditions. No modification to the scope of the Services to be performed under this Agreement shall be binding upon the Parties unless agreed in writing by both of them.
- 2.5 Consoltec may, from time to time, in its discretion engage third parties to perform any of its obligation under this Agreement (each, a "**Subcontractor**"), provided that Consoltec shall remain liable towards Customer for the compliance by the Subcontractors with the terms hereof.

## 3. TECHNICAL SUPPORT SERVICES

- 3.1 Consoltec agrees to provide remote technical support via telephone, chat, email or other efficient communication method between 9AM and 5PM EST, Monday to Friday, except holidays as observed by Consoltec. The purpose of the remote assistance service is to attempt to identify and resolve functional problems in the FlowFit Solution as well as to give information as to the use of the FlowFit Solution.
- 3.2 Each call received will be given a severity level by Consoltec according to the following guidelines:
  - a) Critical Problem: when the FlowFit Solution is not operational, and the users are not able to connect and work at all;

- b) Major Problem: when the FlowFit Solution is not operational or has suffered a major loss of capability resulting in the inability to use the FlowFit Solution, or if a failure is so frequent that it precludes productive use of the FlowFit Solution or when the FlowFit Solution is operational but its capability is severely degraded, such as the inability to run a major application within the FlowFit Solution, a critical product feature or function does not work, or a failure that requires on-going intervention in order to maintain productive use;
  - c) Minor Problem: when the FlowFit Solution is operational, and the problem does not result in a significant impact on the performance of the FlowFit Solution.
- 3.3 Consoltec shall exercise all commercially reasonable efforts to meet the following response times:
- a) Critical Problems will be acknowledged within 2 business hours and resolved as soon as possible;
  - b) Major Problems will be acknowledged within 4 business hours and resolved within reasonable delays; and
  - c) Minor Problems will be acknowledged within 1 business day and resolved in a subsequent Update.
- 3.4 The call-back response time are not guaranteed during events out of Consoltec's control (i.e. storms, electrical failure, etc.) or if the communication is not established through Consoltec official support channels (*consoltec.atlassian.net or support@consoltec.ca and/or 514 312 2485*).
- 3.5 The technical maintenance and support Services shall not include services: (a) in respect of hardware problems; (b) in respect of education, training or customization; (c) in respect of a FlowFit Solution installed on equipment that does not meet the Consoltec's recommended system and network configuration for use of the FlowFit Solution set forth in the Documentation; (d) in respect to the use of the FlowFit Solution in violation of this Agreement; (e) in respect of Defects in or caused by third party softwares; (vi) requiring on-site support.
- 4. CORRECTION OF DEFECTS AND UPDATES**
- 4.1 Consoltec shall deploy all reasonable efforts to correct reproducible Defects reported by Customer. Customer agrees to communicate to Consoltec, by email or by calling Consoltec's technical support service, all the details of which it is aware concerning any Defects affecting the FlowFit Solution, in order to allow Consoltec to properly perform its obligations hereunder. If, following such communication by Customer, Consoltec is unable to reproduce the Defect or otherwise concludes that such Defects (i) were non-existent, (ii) were caused by third party equipment or software not supplied by Consoltec used in conjunction with the FlowFit Solution, or (iii) resulted from abuse or misuse of the FlowFit Solution, Consoltec may, at its discretion, require Customer to pay for time spent to detect and, if applicable, correct such Defects, at the applicable hourly consultation rate in force at such time. If Consoltec is unable to correct a reproducible Defect reported to Consoltec or to provide a work around solution after using commercially reasonable efforts for a reasonable period of time, then Customer's sole and exclusive remedy shall be to terminate this Agreement.

- 4.2 Consoltec shall not be responsible to correct any Defect or other failure of performance of the Product caused by the following: (a) failure to maintain an installation and an operating environment and the FlowFit Solution in accordance with this Agreement, the Documentation or any notice sent by Consoltec to Customer from time to time; (b) failure of Customer to install the then current Update; (c) use of the FlowFit Solution that materially deviates from the Documentation; (d) modification, customization, alteration or addition or attempted modification, customization, alteration or addition to the FlowFit Solution undertaken by any person other than Consoltec, without Consoltec's prior written approval; or (e) the abuse or misuse of the FlowFit Solution.
- 4.3 Consoltec may update the FlowFit Solution from time to time and grant access to Customer to Updates by making the applicable software package accessible by Customer on a physical media or through electronic distribution. Customer shall perform the installation of the Update under Consoltec's remote instructions, if necessary. The Update shall be presumed to have been accepted when it has been successfully installed.
- 4.4 Consoltec shall be under no obligation to provide maintenance and support Services with respect to versions of the FlowFit Solution which have no longer been the most current version for a period of one (1) year or more.

## **5. OBLIGATIONS OF CUSTOMER**

- 5.1 Customer shall not, and shall cause the Users and its representatives not to:
- i. copy, modify, or create derivative works of the Licensed Material;
  - ii. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the FlowFit Solution, including in connection with any time-sharing, service bureau, software as a service or other technology or service, except as permitted under this Agreement;
  - iii. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the FlowFit Solution, in whole or in part;
  - iv. bypass or breach any Consoltec security device, or protection used by the FlowFit Solution or access or use the FlowFit Solution other than by an User;
  - v. input, upload, transmit, or otherwise provide to or through the FlowFit Solution any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
  - vi. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the FlowFit Solution, or Consoltec's provision of services to any third party;
  - vii. remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark or other intellectual property or proprietary rights notices;
  - viii. access or use the FlowFit Solution in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law;
  - ix. access or use the Services or the FlowFit Solution for purposes of competitive analysis of the FlowFit Solution, the development, provision or use of a competing software service or product, or any other purpose that is to the Consoltec's detriment or commercial disadvantage;
  - x. otherwise access or use the Services or the FlowFit Solution beyond the scope of the authorization granted under this Agreement; and

- xi. authorize or encourage any third party to do the above mentioned.
- 5.2 Consoltec may verify Customer's and its Affiliates' compliance with this Agreement at any time upon a 30 days' prior notice. To do so, Consoltec may engage an independent auditor or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that Consoltec or the auditor reasonably requests related to the verification and access to systems running the FlowFit Solution. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Consoltec other remedies, if unlicensed use is 5% or more of Customer's total use of the FlowFit Solution, Customer must reimburse Consoltec for its costs incurred in the audit process verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.
- 6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**
- 6.1 **Confidential Information** means any information provided by or made available by a Party (the "**Disclosing Party**") or its representatives to the other Party (the "**Receiving Party**") or that becomes known by the Receiving Party in connection with this Agreement, including any information in any form that is secret, confidential, privileged, or not generally known by the public, whether or not it is identified as confidential at the time of disclosure. By way of illustration and without limitation, "Confidential Information" includes information relating to or about, a Party's clients, potential clients, vendors, strategies and any other related information as well as the Intellectual Property and the Personal Information. Confidential Information does not include information that: (i) is or becomes publicly available through no breach by the Receiving Party of this Agreement; (ii) was previously known to the Receiving Party prior to the date of disclosure and not subject to an obligation of confidentiality, as evidenced by contemporaneous written records; (iii) was acquired from a third party without any breach of any obligation of confidentiality; (iv) was independently developed by a party hereto without reference to Confidential Information of the other party; or (v) is required to be disclosed by law, provided, however, that the party compelled by law shall promptly inform the other party in writing (unless notice is precluded by the applicable process), and shall only disclose that Confidential Information necessary to comply with applicable law.
- 6.2 Each Receiving Party agrees: (i) to treat as strictly confidential any and all Confidential Information; (ii) not to use any Confidential Information for any purpose other than as necessary for the performance of this Agreement; (iii) not to disclose the Confidential Information to any other person, except as permitted under this Agreement; (iv) to use the same care and discretion to avoid disclosure of the Confidential Information as it uses with its own similar information; and in all case with a minimum of commercially reasonable care; and (v) to restrict access to the Confidential Information to such of its personnel or representatives, if any, who have a need to access such Confidential Information and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement.
- 6.3 Each Party further agrees not to (i) use the other Party's name or logo in any marketing materials without that Party's prior written consent or (ii) disclose to any person or entity any of the terms or conditions of this Agreement.
- 6.4 Customer recognizes and agrees that all trade-marks, inventions (whether patentable or not), works protected by copyright, trade secrets, know-how or other intellectual property

(“**Intellectual Property**”) in or related to the Licensed Materials are the exclusive property of Consoltec or are otherwise controlled by Consoltec. While this Agreement is in effect and at anytime thereafter, Customer and its Affiliates shall not take any action that challenges the Intellectual Property of Consoltec.

- 6.5 Consoltec represents and warrants that (i) it is and will be the owner or licensee of all Intellectual Property rights in the Licensed Materials and has the full power and authority to grant the rights provided for herein without the consent of any other person; and (ii) the Licensed Material does not and will not infringe or misappropriate the Intellectual Property rights of any third party.
- 6.6 Customer shall not reproduce the Documentation, except for a reasonable number of copies of the Documentation as is necessary to use the FlowFit Solution pursuant to this Agreement and for its internal use only. Customer shall reproduce all confidentiality and proprietary notices on all copies of the Documentation made pursuant to the provisions of this section.
- 6.7 Customer may submit comments, information, questions, data, ideas, description of processes, or other information to Consoltec while using the FlowFit Solution or in the course of receiving the Services, excluding however information related to Customer’s or the Users’ identity (“**Feedback**”). Consoltec may, in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback, without any obligation, royalty or restriction based on Intellectual Property rights, for any purpose whatsoever. Feedback will not be considered Customer's Confidential Information and nothing in this Agreement shall restrict Consoltec's right to independently use, develop, evaluate, or market any such Feedback.

## 7. **PRIVACY**

- 7.1 The Parties acknowledge that data processed in the course of use of the FlowFit Solution or performance of this Agreement will constitute at least in part Personal Information within the meaning of Privacy laws. Such data will be mainly collected and processed by Customer, whereby Consoltec acknowledges that it will collect Personal Information of Users for the purpose of implementing the FlowFit Solution. Consequently, each Party undertakes, during the period of validity of this Agreement and for the entire duration provided for by Privacy Laws, to fully comply with such Privacy laws while collecting and processing Personal Information entrusted to each of them and to indemnify and hold the other Party harmless from any violation of its obligations in this regard. This concerns more specifically, but not exclusively, the obtention of the required consents from the data subjects, restriction of Personal Information treatments and of disclosure to third parties, Personal Information transfers, protection of confidentiality, secure storage, destruction within the prescribed time limits, etc. Each Party further undertakes to publish, maintain and comply at all times with a privacy policy that meets the requirements of applicable Privacy Laws.
- 7.2 Without limiting the generality of the foregoing, to the extent a Party collecting Personal Information (a “**Data controller**”) provides access to or transfers such Personal Information to the other Party (a “**Data processor**”), the Data processor agrees:
  - i. to process the Personal Information strictly in accordance with the written instructions of the Data controller;
  - ii. not to process the Data controller’s Personal Information in a manner that will or is likely to result in the Data controller breaching its obligations under Privacy Laws;



- iii. to provide a reasonable assistance to enable the Data controller to comply with its obligations under Privacy laws, including with respect to requests of data subjects for the exercise of their rights;

## **8. SECURITY AND AUDIT**

- 8.1 Consoltec will maintain the FlowFit Solution at a reputable third party hosting facility and maintain appropriate technical and organizational measures, including industry standard information security policies and safeguards, to preserve the security, integrity and confidentiality of Customer's Confidential Information and Personal Information and to protect such information against loss or theft, or unauthorized, accidental or unlawful use, or any other act or omission that compromises its security, confidentiality or integrity (hereinafter, a "**Security Incident**").
- 8.2 Consoltec will notify Customer as soon as reasonably practicable upon becoming aware of an actual or potential Security Incident and take all reasonable steps to mitigate the impact of such Security Incident and provide all reasonable assistance required by Customer in investigating and resolving the Security Incident.
- 8.3 Consoltec will ensure that all personnel and other representatives, prior to providing the Services, have cleared all background checks performed by Consoltec in the ordinary course of its business, including checks to confirm that such personnel do not have criminal records.

## **9. WARRANTY AND LIMITATION OF LIABILITY**

- 9.1 Consoltec warrants that the Services shall be performed in a professional and workmanlike manner and that it will make all commercially reasonable efforts to maintain the FlowFit solution in good working order.
- 9.2 CONSOLTEC MAKES NO OTHER WARRANTY OF ANY TYPE OR OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- 9.3 IN NO EVENT SHALL CONSOLTEC OR ITS AFFILIATES OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR THE LOSS OF PROFIT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SUPPLY, DELIVERY AND USE OF FLOW FIT SOLUTION, EVEN IF CONSOLTEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, EXCEPT FOR DAMAGES RESULTING FROM CONSOLTEC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

9.4 CONSOLTEC, ITS AFFILIATES OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS TOTAL COLLECTIVE LIABILITY TO CUSTOMER FOR DAMAGES OF ANY KIND AND ANY INDEMNITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER CLAIMED IN CONTRACT, EQUITY, TORT, WARRANTY OR OTHERWISE, SHALL IN ALL EVENTS BE LIMITED TO THE SUM OF CA \$100,000.00 EXCEPT FOR CLAIMS PERTAINING TO DAMAGES RESULTING FROM CONSOLTEC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

9.5 It is agreed that the limitation of remedies/liability set forth herein allocates the commercial risks between Consoltec and Customer arising out of or in connection with this Agreement, including but not limited to Defects, and that the financial terms of section 4 and the other terms and conditions hereof reflect this allocation of risk.

## 10. INDEMNIFICATION AND INSURANCE.

10.1 Consoltec shall indemnify and hold harmless Customer (including its affiliates, officers, directors, employees, partners and agents) from and against any and all damages, losses, costs and fees (including reasonable legal fees) finally awarded in a non-appealable judgment ("Losses") from third party claims, loss demands, expenses, lawsuits or actions, to the extent resulting or arising out of any claim by a third party alleging that Customer's or a User's use of the FlowFit Solution in compliance with this Agreement infringes an Intellectual Property right.

10.2 Customer shall defend at its own expense and indemnify and hold harmless Consoltec (including its affiliates, officers, directors, employees, partners and agents) from and against any and all Losses from third party claims, loss demands, expenses, lawsuits or actions, to the extent resulting or arising out of Customer use of the FlowFit Solution in breach of this Agreement.

10.3 Consoltec shall at all times during the term of this Agreement maintain the following policies of insurance at their expense; with reputable insurers

- i. **Commercial General Liability insurance** with a minimum limit of CAD \$2Million per occurrence and in the aggregate for bodily injury and property damage, including but not limited to: premises, operations, independent contractors, products-completed operations, personal and advertising injury, and contractual liability.
- ii. **Errors and omissions (professional) liability insurance** appropriate to Consoltec's profession. Coverage shall be provided for an error, act, or omission arising out of the scope of Consoltec's Services as defined in this Agreement. Coverage shall be written with limits of no less than CAD \$2 million per loss or claim and in the aggregate.
- iii. **Cyber insurance** with coverage for data security breaches, losses and violations of applicable data and Privacy laws with limits of no less than CAD \$2 million per loss or claim.

## 11. TERM AND TERMINATION

11.1 Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party:

- i. breaches this Agreement, and such breach remains uncured ten (10) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

- ii. ceases to carry on business in the ordinary course, makes a general assignment for the benefit of its creditors, becomes subject to any involuntary proceeding under any domestic or foreign bankruptcy law, commences or institutes any application, proceeding, or other action under any law relating to bankruptcy, insolvency, winding-up, reorganization, administration, plan of arrangement, relief or protection of debtors or similar laws.

11.2 Consoltec may terminate this Agreement, effective on written notice to Customer, if Customer :

- i. fails to pay any amount provided for hereunder, and such failure continues more than thirty (30) days after Consoltec's delivery of written notice thereof;
- ii. is in violation of the confidentiality and Intellectual Property provisions of this Agreement; or
- iii. uses of the FlowFit solution in violation with the terms of this Agreement.

11.3 Upon termination of this Agreement, Consoltec shall cease to provide access to the FlowFit Solution and to perform the Services.

11.4 If Consoltec terminates this Agreement or if Customer otherwise terminates this Agreement in any other manner than as set forth in this Agreement, all fees that would have become payable had the Agreement remained in effect until expiration of the Initial Term or Renewal Term will become immediately due and payable, and Customer shall pay such fees, together with all previously accrued but not yet paid fees, on receipt of Consoltec's invoice therefore.

11.5 Consoltec makes daily back-ups of all of Customer's data. Once a year and/or upon termination of this Agreement, Consoltec agrees to provide Customer a digital copy in an easily readable format of all Customer data hosted by Consoltec, at no cost to Customer provided it has fulfilled all its payment obligations.

11.6 Notwithstanding termination of this Agreement, all provisions which by their nature are intended to survive such termination shall so survive.

## **12. GOVERNING LAW AND SETTLEMENT OF DISPUTES**

12.1 This Agreement shall be governed and construed in accordance with the laws in force in the province of Quebec, Canada, without giving effect to principles of conflicts of law. The courts having jurisdiction in and for the district of Montreal in the province of Quebec, Canada shall have exclusive jurisdiction in respect of any dispute related to this Agreement.

## **13. NOTICES**

13.1 Any formal notice or communication to be given under this Agreement shall be in writing and sent by international express courier service, email or hand delivered. Any such notice or communication, if sent by email, shall be deemed to have been received on the same business day if sent prior to 5 p.m. (local time of the recipient), otherwise on the next business day, provided proof of sending of such notice can be produced or, if delivered by international express courier service or by hand, shall be deemed to have been received at the time it is delivered. Notices shall be sent to the postal or email address of the contact persons of the Parties set out in the Proposal, any purchase order issued by Customer or other documentation exchanged between the Parties.

**14. MISCELLANEOUS**

- 14.1 No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, power failure, internet network disruption, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 14.2 If any provision of this Agreement is held invalid or unenforceable by any court or agency of competent jurisdiction, it shall be replaced, to the extent possible, by a legally valid and enforceable provision. The remainder of this Agreement shall nevertheless continue in full force and effect.
- 14.3 In the event of any inconsistency or conflict between the terms and provisions of this Agreement and those of any schedule or other document incorporated by reference to this Agreement, the following order of precedence will apply: (i) the Proposal; (ii) this Agreement; and (iii) the Documentation.
- 14.4 Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 14.5 Customer shall not sell, transfer, or assign any right, title or interest it has in this Agreement or any right it has in the Licensed Materials, without the prior written consent of Consoltec. Any assignment not in accordance with this section shall be void. Consoltec may, upon notice to Customer, sell, transfer or assign any right, title or interest it has in this Agreement.
- 14.6 This Agreement does not make either Party the employee, agent or legal representative of the other for any purpose whatsoever. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.
- 14.7 This Agreement can be modified or amended by Consoltec from time to time, including any referenced document or policies. Consoltec will use reasonable efforts to notify Customer of any amendment, for example by sending an email to Customer, posting a notification on its website, etc. If Consoltec modifies the Agreement during the Initial Term or a Renewal Term, the modified version will be effective upon Customer's next Renewal Term. In this case, if Customer objects to the updated Agreement, as its exclusive remedy, he may choose not to renew this Agreement. Customer may be required to click through the updated Agreement to show its acceptance. If Customer does not agree to the updated Agreement after it becomes effective, Consoltec may suspend the access to the FlowFit Solution or the performance of Services.
- 14.8 Customer agrees that this Agreement shall be entered into electronically and that its acceptance of the terms hereof will have the same effect and value as if they had been signed personally. A printed version of this Agreement or of any notice sent by e-mail will be admissible in litigation, as will any other business document or record generally kept in paper form.
- 14.9 The Parties have expressly requested that this Agreement be drawn up in English and that all modifications thereof can be made in this language. *Les Parties ont expressément demandé que ce*

*contrat soit rédigé en anglais et que toute modification à celui-ci puisse se faire également dans cette langue.*