

## MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT (this "**Agreement**" which includes all attachments hereto, all of which are hereby incorporated herein and form an integral part hereof) is entered into as of \_\_\_\_\_ (the "**Closing Date**") by and between LIBRESTREAM TECHNOLOGIES INC., a corporation with offices located at Suite 110-895 Waverley Street, Winnipeg, MB R3T 5P4 ("**LIBRESTREAM**"), and \_\_\_\_\_, a corporation with offices located at \_\_\_\_\_ ("**PURCHASER**"). LIBRESTREAM and PURCHASER may also both be referred to as a "**Party**" and collectively as the "**Parties**".

### ARTICLE 1: DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meaning ascribed thereto. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings there indicated.

1.1 "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 "**Closing Date**" means the date that this Agreement is signed by both Parties.

1.3 "**Computing Device**" means any electronic and/or computing device that is capable of running the Software, including a Product.

1.4 "**Confidential Information**" means material or information proprietary to a Party or designated as "Confidential" and not generally known by third parties. Confidential Information includes, but is not limited to: discoveries; ideas; concepts; software in various stages of development; marketing and development plans and procedures; information related to customers; price lists; pricing policies and financial information. For greater certainty, LIBRESTREAM's Confidential Information includes (a) the Software and any portions, components or sub-files thereof; (b) the structure, sequence, internal design and organization of the Software and the concepts, methods of operations and ideas disclosed therein, together with all associated interface information; (c) any trade secrets relating to the Software and/or any Product; (d) any tangible items marked "confidential" or with a similar designation by LIBRESTREAM, and/or any information disclosed visually or verbally and identified by LIBRESTREAM as confidential at the time of disclosure; and (e) the terms and conditions of this Agreement.

1.5 "**Documentation**" means the materials provided or made available by LIBRESTREAM relating to the Software and/or to any Product which describe the operation, function and performance of Software and/or that Product.

1.6 "**EULA**" means LIBRESTREAM's form of end-user license agreement that any individual who will be provided with access to or who will be using any Software and/or any Product is required to agree to prior to being provided with such access or using that Software and/or Product.

1.7 "**External Guest User Account**" means a User Account that is not an Individual User Account and that is intended for use by a variety of individuals not directly employed by PURCHASER on a short-term, temporary basis. An External Guest User Account is only available with a Master License.

1.8 "**Individual User Account**" means a User Account that has been assigned to a specific individual.

1.9 "**Intellectual Property**" means, to the extent that any of the following are recognized in any jurisdiction world-wide: (a) all intellectual property and/or proprietary rights, whether registered or unregistered, including without limitation copyrights, and patent rights (including without limitation applications for patent protection); (b) all publicity rights, trade dress, registered or otherwise protected trademarks, trade names, service marks and protections from trademark dilution; (c) all trade secrets, as defined in the Uniform Trade Secrets Act or its successor (which such definition is hereby adopted for purposes of this Agreement, regardless of the fact that this is federal United States legislation and that LIBRESTREAM is a Canadian company), and (d) all proprietary products, services, know-how, techniques, business processes, configurations, and business methods.

1.10 "**LIBRESTREAM Software**" means any Software that is proprietary to LIBRESTREAM and that is not Third Party Software.

1.11 "**Order**" means the order form, purchase order, or other documentary evidence of any nature or kind whatsoever that is related to this Agreement and that was submitted to and accepted in writing by LIBRESTREAM.

1.12 "**Product**" or "**LIBRESTREAM Product**" means any product developed by or for LIBRESTREAM that incorporates any of the Software in any manner whatsoever.

1.13 **“Purchaser Data”** means any content, images, videos, materials, data and information that Purchaser or its authorized Users enter into the Software. Purchaser Data does not include any component of the Software or material provided by or on behalf of LIBRESTREAM.

1.14 **“Service(s)”** means the service(s) provided or required to be provided by or through LIBRESTREAM under this Agreement, including but not limited to Maintenance and Support Services, Engineering and Design Services, web-based services, implementation services, reporting services, consulting, training and other advisory services, project management and customization services, or as otherwise specified.

1.15 **“Software”** means, collectively, the LIBRESTREAM Software and the Third Party Software, as well Upgrades, and includes:

(a) all of the contents of the files, disk(s), CD-ROM(s) or other media or downloads of any of the Software which are installed on any Computing Device (including firmware), or which are otherwise made available online by LIBRESTREAM, including:

- (i) all LIBRESTREAM computer information or software; and
- (ii) any and all related instructional or supplementary documentation in human or machine readable form supplied or otherwise made available by LIBRESTREAM.

1.16 **“Subscription License”** or **“Subscription Licensing”** means a license that is granted by LIBRESTREAM pursuant to this Agreement to use the Software for a specified period of time, subject to termination in accordance with the provisions of this Agreement.

1.17 **“Third Party Licensors”** means, collectively, those third parties who are the respective owners of the Third Party Software, and **“Third Party Licensor”** means any such third party.

1.18 **“Third Party Software”** means the software of a person other than LIBRESTREAM that is embedded with the LIBRESTREAM Software or that is otherwise provided to a PURCHASER by LIBRESTREAM along with the LIBRESTREAM Software.

1.19 **“Upgrades”** means all revisions, updates, upgrades, modifications, corrections, releases, versions, fixes, program temporary fixes, replacement products and enhancements of or to any Software (including related and revised Documentation) which are provided, installed or made available online or otherwise by LIBRESTREAM or any Third Party Licensor.

1.20 **“User”** means each and every individual who uses any Software pursuant to any User Account that is issued or created pursuant to this Agreement, and who is referred to as a “Licensee” in the EULA.

1.21 **“User Account”** means an account required for any individual or group of individuals who wish to use a Subscription License.

## **ARTICLE 2: ORDERS**

2.1 All orders are subject to acceptance by LIBRESTREAM. Orders that are special, custom, and/or specifically identified by LIBRESTREAM as non-standard are non-cancelable and non-returnable (**“NCNR”**). PURCHASER may not cancel or reschedule orders for standard Products without LIBRESTREAM’s written consent, which shall not be unreasonably withheld.

2.2 Software is licensed on a subscription basis for the term stated in the order. Additional Software licenses may be added during the term at the same pricing as the order pricing, pro-rated for the portion of that term remaining at the time the licenses are added. Any added licenses will terminate on the same date as the order.

## **ARTICLE 3: TERMS OF PAYMENT**

3.1 Payment of the total invoice amount, without offset or deduction, is due 30 days from the invoice date. On any past due invoice, LIBRESTREAM may charge interest from the payment due date to the date of payment (at 1.5% per month), plus reasonable attorney fees and collection costs. LIBRESTREAM may change the terms of PURCHASER’s credit at any time. LIBRESTREAM may apply payments to any of PURCHASER’s accounts.

3.2 In the event that PURCHASER wishes to dispute any invoice issued by LIBRESTREAM, PURCHASER will:

- a) promptly (and in any event within 15 days from the invoice date) notify LIBRESTREAM of the amount in dispute and PURCHASER's explanation for disputing that amount; and
- b) pay the undisputed portion of that invoice in accordance with Article 3.1.

Failure to notify LIBRESTREAM within the 15 day period contemplated in Section 3.2(a) will result in PURCHASER not being able to dispute any portion of that invoice.

- 3.3 In the event that PURCHASER disputes any portion of any invoice in accordance with Section 3.2, the Parties will work together in good faith for the purpose of resolving the disputed amount as quickly as possible. In the event that any amount remains in dispute as of the 30<sup>th</sup> day following the PURCHASER's notice to LIBRESTREAM pursuant to Section 3.2(a), either Party may refer that dispute to binding arbitration pursuant to Section 16.22.
- 3.4 Librestream will invoice PURCHASER for each year of the Agreement annually in advance.
- 3.5 LIBRESTREAM hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by PURCHASER. In the event of any conflict, this Agreement shall take precedence over any other terms and conditions.

#### **ARTICLE 4: DELIVERY AND TITLE**

- 4.1 PURCHASER is responsible for all shipping costs and any applicable surcharges. Title and risk of loss pass to PURCHASER upon delivery of the Products to the carrier. LIBRESTREAM's delivery dates are estimates only and LIBRESTREAM is not liable for delays in delivery. LIBRESTREAM reserves the right to make partial shipments and PURCHASER will accept delivery and pay for the Products delivered. A delayed delivery of any part of an order does not entitle PURCHASER to cancel the balance of that order or any other deliveries.

#### **ARTICLE 5: LICENSE GRANT**

- 5.1 Subject to PURCHASER's compliance with the terms and conditions of this Agreement, LIBRESTREAM hereby grants to PURCHASER, during the term of this Agreement, a worldwide, non-transferable, non-exclusive, revocable, royalty-free limited license to use the Software for PURCHASER's internal business purposes only. Any default or non-compliance on the part of PURCHASER or those for whom it is responsible in law with the terms and conditions of this Agreement shall constitute default and non-compliance by PURCHASER with this Agreement.
- 5.2 Software is licensed on a subscription-basis and PURCHASER's usage shall not exceed to the number of purchased licenses.
- 5.3 PURCHASER acknowledges and agrees that each User shall be required to agree to be bound by the EULA prior to that User being provided with access to, or making any use of, the Software.
- 5.4 Any use of the Software which is not expressly authorized by this Agreement is strictly prohibited. Without limiting the generality of the foregoing and notwithstanding any other provision of this Agreement, in no event may PURCHASER do any of the following or permit any third party to do any of the following:
  - a) transfer, assign or sublicense any of its license rights to any other person; or
  - b) distribute, license, sublicense, rent, lease or sell the Software or any portion thereof as a standalone product - any such distribution, license, sublicense, rent, lease or sale shall be null and void; or
  - c) circumvent in any manner whatsoever the activation process that needs to be followed in order to use the Software as authorized by this Agreement; or
  - d) make error corrections to or otherwise modify or adapt the Software or any portion thereof; or
  - e) reverse engineer, decrypt, disassemble or decompile the Software or any portion thereof, or otherwise reduce the Software of any portion thereof to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this prohibition; or

- f) create any derivative works based upon the Software or any portion thereof or take any actions that would cause the Software or any portion thereof to become subject to the GPL, the LGPL or any other open source license (unless that portion is already expressly subject to the GPL, the LGPL or any other open source license, as expressly noted in the Third Party Software and Third Party Licensor Notices in 5.14); or
  - g) use the Software or any portion thereof to perform services for third parties outside the scope of Licensee's internal business purposes, whether on a service bureau or time sharing basis or otherwise, without the prior express written consent of Librestream. For greater clarity, the Software may be used to perform services for Licensee's employees, customers, contractors, suppliers, and affiliates; or
  - h) use any Software or permit any Software to be used unless and until PURCHASER has paid to LIBRESTREAM, or to any LIBRESTREAM distributor or other representative, the license, subscription, maintenance, support and/or other fee(s) payable for such use.
- 5.5 The Software is licensed, not sold, and is protected by the copyright laws of Canada and other countries and by international treaty provisions. All right, title and interest in and to the Software and any copies thereof, regardless of form or media, shall remain solely with LIBRESTREAM or the Third Party Licensors, as the case may be. Except as expressly provided herein, this Agreement does not grant PURCHASER any rights under any of LIBRESTREAM's or any Third Party Licensor's patents, copyrights, trade secrets, trademarks or other Intellectual Property rights. LIBRESTREAM and each Third Party Licensor retain all rights not explicitly granted herein.
- 5.6 PURCHASER may make such limited copies of the Software as are strictly necessary for backup purposes only, provided that PURCHASER (a) does not copy the Software onto any public or distributed network; and (b) does not remove, obscure or destroy, and reproduces on all copies of the Software so made, any LIBRESTREAM and any Third Party Licensor names, logos, copyright or other notices, trademarks and other proprietary markings which appear on the Software.
- 5.7 User Accounts are only valid for the period of time for which a PURCHASER has paid for the applicable subscription license. Once such period of time expires with no further payment, then that User Account will become invalid and PURCHASER will no longer be able to use the Software via that User Account.
- 5.8 An Individual User Account and the username and password for that User Account are personal to the individual to whom that User Account is assigned, and are not to be shared with any other person under any circumstances. Notwithstanding the foregoing, PURCHASER shall be responsible for any use of the Software licensed to PURCHASER pursuant to this Agreement, regardless of whether or not such use is authorized by this Agreement and/or by PURCHASER.
- 5.9 In the use of Onsite Platform Manager ("OPM") software, PURCHASER may install one copy of OPM as well as one backup copy. As long as PURCHASER has valid on-premise client licenses, PURCHASER may use OPM strictly to manage these licenses and for no other purpose whatsoever. On-premise client licenses are only valid for the period of time for which a PURCHASER has paid for the applicable subscription license. Once such period of time expires with no further payment, then those on-premise client licenses will become invalid and PURCHASER will no longer be able to assign those licenses via OPM. If PURCHASER no longer has any valid on-premise client licenses, PURCHASER must immediately cease the use of OPM and uninstall all copies of OPM.
- 5.10 LIBRESTREAM may suspend any use of the Software or remove or disable any account or content that LIBRESTREAM reasonably and in good faith believes violates this Agreement. LIBRESTREAM will use commercially reasonable efforts to notify PURCHASER prior to any such suspension or disablement, unless LIBRESTREAM reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to LIBRESTREAM or a third party. Under circumstances where notice is delayed, LIBRESTREAM will provide notice if and when the related restrictions in the previous sentence no longer apply.
- 5.11 Schedules providing (A) Librestream Software and Librestream Notices; (B) Third Party Software and Third Party Licensor Notices; and (C) Apple/iOS Terms And Conditions are located at: <https://librestream.com/eula-schedules/>

## ARTICLE 6: AUDIT RIGHTS AND INDEMNITY

- 6.1 PURCHASER shall, within thirty (30) days following PURCHASER's receipt of written request from LIBRESTREAM, fully document and certify all uses of the Software and each Product that PURCHASER or any User has made within the period of twelve (12) months prior to the date of receipt of such request. In addition, PURCHASER shall, upon reasonable advance written notice and during normal business hours, provide access and allow LIBRESTREAM to inspect PURCHASER's books, records and computer systems in order to confirm PURCHASER's and/or its Users' compliance with this Agreement
- 6.2 In the event that any such request, response or audit determines that PURCHASER and/or any User is or was using the Software and/or any Product in a manner that exceeds or exceeded its license or other usage rights, PURCHASER shall immediately pay to LIBRESTREAM any amount(s) that are required to rectify such excessive use.
- 6.3 In the event that any such request, response or audit determines that PURCHASER and/or any User is otherwise not in compliance with this Agreement, this Agreement may be subject to termination as contemplated in Article 15. Such termination shall be in addition to, and not in lieu of, any other right or remedy that LIBRESTREAM may have pursuant to this Agreement or otherwise with respect to such non-compliance.
- 6.4 PURCHASER shall indemnify LIBRESTREAM and save LIBRESTREAM harmless from and against any and all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) that arise out of or are attributable in any manner whatsoever to any non-compliance on the part of PURCHASER, any User and/or those for whom it is in law responsible with any provision of this Agreement.
- 6.5 LIBRESTREAM will defend, indemnify and hold harmless the PURCHASER against any claim that the LIBRESTREAM Software infringes any third party intellectual property right. In the event that any LIBRESTREAM Software becomes, or in LIBRESTREAM's opinion is likely to become, the subject of a claim for which LIBRESTREAM is required to indemnify the PURCHASER pursuant to this Section, LIBRESTREAM may, at its discretion: (a) obtain for the PURCHASER, at no additional cost to the PURCHASER, the right to continue using that LIBRESTREAM Software under this Agreement; (b) modify or replace that LIBRESTREAM Software or any portion thereof, at no additional cost to the PURCHASER, to avoid such claim; or (c) if LIBRESTREAM determines that neither (a) nor (b) is commercially practicable, terminate the applicable LIBRESTREAM Software licenses and, if such termination involves all of the LIBRESTREAM Software then licensed to the PURCHASER, this Agreement as well, and provide the PURCHASER with a full refund of all prepaid license fees paid by the PURCHASER for the LIBRESTREAM Software licenses that are being terminated that relate to the balance of the term of such licenses. LIBRESTREAM hereby represents that it is not aware of any such claim or of any rights to make any such claim.
- 6.6 In the event that the PURCHASER shall become aware of any claim, proceeding or other matter (a "Third Party Claim") in respect of which LIBRESTREAM agreed to indemnify the PURCHASER pursuant to Section 6.5 of this Agreement, the PURCHASER shall promptly give written notice thereof to LIBRESTREAM. Such notice shall specify with reasonable particularity (to the extent that the information is available) the factual basis for the Third Party Claim and the amount of the Third Party Claim, if known. If, through the fault of the PURCHASER, LIBRESTREAM does not receive notice of any Third Party Claim in time to contest effectively the Third Party Claim, LIBRESTREAM shall be entitled to set off against the indemnified amount the reasonable amount of any losses, damages, costs and expenses that LIBRESTREAM can prove resulted from the PURCHASER's failure to give such notice on a timely basis if any.
- 6.7 LIBRESTREAM shall, at its expense, promptly assume control of the negotiation, settlement or defense of any Third Party Claim and shall reimburse the PURCHASER for all the PURCHASER's out-of-pocket expenses incurred in acknowledging the Third Party Claim and in advising LIBRESTREAM of the Third Party Claim. The PURCHASER, at its expense (which shall not be subject to reimbursement by LIBRESTREAM), shall have the right to participate in the negotiation, settlement or defense of such Third Party Claim and to retain counsel to act on its behalf. If LIBRESTREAM fails to defend the Third Party Claim within a reasonable period of time after being notified of it, the PURCHASER shall be entitled to assume such control, at LIBRESTREAM's expense, and LIBRESTREAM shall be bound by the results obtained by the PURCHASER with respect to such Third Party Claim; provided that the PURCHASER gives at least ten (10) days' written notice to LIBRESTREAM of its intention to assume such control and LIBRESTREAM fails to defend the Third Party Claim during such notice period.

- 6.8 LIBRESTREAM shall not agree to settle any Third Party Claim without the PURCHASER's written consent unless such settlement: (A) includes a release of all liability pending against the PURCHASER pursuant to the Third Party Claim; (B) allows the PURCHASER to continue using the LIBRESTREAM Software as contemplated by this Agreement; and (C) does not contain an admission of wrongdoing by the PURCHASER.
- 6.9 The PURCHASER shall provide such assistance to LIBRESTREAM as LIBRESTREAM may reasonably request for the purpose of negotiating, settling or defending any Third Party Claim, and LIBRESTREAM shall reimburse the PURCHASER for any expenses reasonably incurred by the PURCHASER in providing such assistance.

## **ARTICLE 7: CONFIDENTIAL INFORMATION**

- 7.1 During and after the Term, Recipient will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.
- 7.2 If Recipient is required by law to disclose Confidential Information of the other Party or the terms of this Agreement, Recipient will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process, and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.
- 7.3 Recipient acknowledges that any actual or threatened breach of this Article 7 may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing Party to the disclosure, the Recipient, in the case of a breach of this Article 7, has the burden of proving that the disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Article 7.

## **ARTICLE 8: NO LIABILITY FOR INDIRECT DAMAGES**

- 8.1 Regardless of circumstances and regardless of the form of action, whether in contract under this Agreement or in tort, including negligence or products liability, and to the maximum extent permitted by applicable law, in no event shall any party, specifically LIBRESTREAM, PURCHASER, and any third party licensor, have any liability for any indirect, incidental, consequential, special, punitive or exemplary losses or damages of any nature or kind whatsoever, arising out of this Agreement and/or PURCHASER's (and/or any of its Affiliate's or any of its user's) use of, delay in using or inability to use the Software, any confidential information and/or any Computing Device, including but not limited to lost or corrupted data, lost profits or lost goodwill, business interruption or loss of information, failure to realize savings, or for any claim or demand against a party, even if the other party may have been advised of the possibility of such losses or damages or even if such losses or damages were reasonably foreseeable.

## **ARTICLE 9: LIMITED LIABILITY FOR DIRECT DAMAGES**

- 9.1 Regardless of circumstances and regardless of the form of action, whether in contract under this Agreement or in tort, including negligence or products liability, and to the maximum extent permitted by applicable law, the cumulative liability of LIBRESTREAM and the third party licensors for any direct damages arising out of or resulting in any manner whatsoever from this Agreement and/or PURCHASER's (and/or any of its Affiliate's or any of its user's) use of, delay in using or inability to use the Software, any confidential information and/or any computing device, including without limitation any uncured material default, breach or failure on the part of LIBRESTREAM or any third party licensor under this Agreement, shall in no event exceed 50% of the fees

paid to LIBRESTREAM by PURCHASER pursuant to this Agreement for the product(s) and/or service(s) to which such direct damages are attributable and during the period of 12 months prior to such direct damages being incurred.

- 9.2 For the purposes of Section 9.1, “direct damages” means the actual out-of-pocket expenses incurred by the PURCHASER as a result of, and directly attributable to, any breach by LIBRESTREAM of any of its obligations under this Agreement, that were so incurred for the purpose of putting the PURCHASER in the position that it would have been in had LIBRESTREAM not so breached this Agreement, and that flow naturally from such breach and would be reasonably foreseeable should such a breach occur. For greater certainty, “direct damages” shall not include any other loss or damage, including indirect, special, consequential, incidental, exemplary or punitive losses or damages.

## **ARTICLE 10: FUNDAMENTAL UNDERSTANDING REGARDING RISK ALLOCATION**

- 10.1 PURCHASER acknowledges and agrees that the fees payable by PURCHASER pursuant to this Agreement or any Order have been determined by LIBRESTREAM based upon a specific risk allocation between LIBRESTREAM and the third party licensors, on the one hand, and PURCHASER, on the other hand, and that LIBRESTREAM would not have accepted any Order that relates to PURCHASER and would not have licensed the Software to PURCHASER pursuant to this Agreement in the absence of Articles 8, 9 and 10. PURCHASER further acknowledges and agrees that these Articles shall apply notwithstanding any failure of essential purpose of any limited remedy. In jurisdictions that prohibit exclusion of liability or limitation of implied warranties, Articles 8, 9 and 10 may be limited in their application to PURCHASER and, depending on local law, PURCHASER may have other specific legal rights.

## **ARTICLE 11: FORCES BEYOND LIBRESTREAM’S CONTROL**

- 11.1 LIBRESTREAM is not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond its reasonable control, (for example: acts of God, acts or omissions of the PURCHASER, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, acts of terrorism, delays in transportation, or inability to obtain labor or materials through its regular sources).

## **ARTICLE 12: USE OF PRODUCTS AND OWNERSHIP OF DATA**

- 12.1 Products are not authorized for use in situations contrary to LIBRESTREAM’s Product specifications where such misuse may reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. If PURCHASER uses or sells the Products for use in any such applications, PURCHASER acknowledges that such use or sale is at PURCHASER’s sole risk. PURCHASER will indemnify, defend and hold LIBRESTREAM harmless from and against any and all losses, damages, liabilities and costs arising out of or in connection with such use or sale.
- 12.2 Purchaser Data processed using the Software is and will remain, as between PURCHASER and LIBRESTREAM, owned by PURCHASER. PURCHASER hereby grants LIBRESTREAM the right to process, transmit, store or disclose the Purchaser Data in order to provide the Software and services to PURCHASER as per this Agreement or, subject to the terms of Article 7.2, to comply with any request of a governmental or regulatory body (including subpoenas or court orders) or as otherwise required by law.
- 12.3 PURCHASER is responsible for Purchaser Data (including PURCHASER personal data) as entered into, supplied or used by PURCHASER and its authorized Users with the Software. Further, PURCHASER is solely responsible for determining the suitability of the Software for PURCHASER’s business and complying with any applicable data privacy and protection regulations, laws, or conventions applicable to Purchaser Data and PURCHASER’s use of the Software. PURCHASER grants to LIBRESTREAM the non-exclusive right to process Purchaser Data (including personal data) in accordance with applicable data protection provisions and the technical and organizational measures for the sole purpose of and only to the extent necessary for LIBRESTREAM: (a) to provide the Software and services as per this Agreement; (b) to verify PURCHASER’s compliance with the restrictions set forth in Article 5 if LIBRESTREAM has a reasonable belief of PURCHASER’s non-compliance; and (c) as otherwise set forth in this Agreement.

- 12.4 LIBRESTREAM owns all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the Software, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. All deliverables provided by or for LIBRESTREAM in the performance of the Software and services as per this Agreement, excluding Purchaser Data and Purchaser Confidential Information, are owned by LIBRESTREAM.
- 12.5 PURCHASER agrees that LIBRESTREAM may collect and analyze quantitative data derived from the use of the Software strictly for LIBRESTREAM internal use for the purposes of benchmarking, analytics, marketing, and other business purposes.

### **ARTICLE 13: WARRANTY, MAINTENANCE, AND SUPPORT SERVICES**

- 13.1 Commencing upon the date of delivery, LIBRESTREAM shall provide maintenance and support services (“**Maintenance Services**”), including hardware warranty, as per <http://cms.librestream.com/media/LIB-Onsight-Technical-Service-Program-2019.pdf>.
- 13.2 Upgrades are included as part of Maintenance Services, provided that this Agreement is in effect and PURCHASER is not in default under this Agreement:
- a) where PURCHASER has been provided with a non-customized version of Software, LIBRESTREAM shall automatically send to PURCHASER all Upgrades to the Software as soon as such Upgrades have been made available to any of LIBRESTREAM's other customers who are using that non-customized version; and
  - b) where PURCHASER has been provided with a customized version of Software, LIBRESTREAM shall automatically send to PURCHASER all Upgrades to that customized version as soon as reasonably possible following LIBRESTREAM being satisfied with the feedback received by it regarding the Upgrades that it provided to its customers using the non-customized version of that Software.

LIBRESTREAM agrees to give PURCHASER all reasonable remote assistance to install same, at no cost to PURCHASER. LIBRESTREAM shall not be obligated to provide Maintenance Services for any Software that is more than one (1) release behind the then current release of the non-customized version of the Software that is being offered to all of LIBRESTREAM's other customers. For purposes of this Agreement, an Upgrade, once incorporated into the Software, shall be considered "Software" for all purposes hereunder.

- 13.3 LIBRESTREAM warrants that the LIBRESTREAM Software will perform in substantial conformance to the applicable LIBRESTREAM published specifications for that LIBRESTREAM Software for as long as PURCHASER maintains active subscription licenses, provided that (a) the LIBRESTREAM Software remains unmodified by anyone other than LIBRESTREAM; (b) the LIBRESTREAM Software is and has always been operated under normal and proper conditions on the Computing Device on which that LIBRESTREAM Software is licensed to be used; (c) the LIBRESTREAM Software has not been used in any manner for which it was not designed; (d) the LIBRESTREAM Software has not been used with any unauthorized software, hardware or third party equipment; and (e) PURCHASER is not in breach of this Agreement.
- 13.4 PURCHASER's sole and exclusive remedy (at law, in equity or otherwise), and the sole and entire responsibility and liability of LIBRESTREAM, with respect to any software warranty claim, is for LIBRESTREAM to use commercially reasonable efforts to bring the non-warranty-compliant LIBRESTREAM Software into substantial conformance with its published specifications as quickly as reasonably possible under the circumstances.
- 13.5 LIBRESTREAM cannot warrant that the functionality of the Software will satisfy any or all of PURCHASER's requirements, that the Software will work in combination with any hardware or software products provided by third parties, that the operation of the Software will be uninterrupted or error free, or that all errors or defects in the Software will be corrected. Software upgrades, if any, will be provided at the sole discretion of LIBRESTREAM. PURCHASER acknowledges and agrees that software in general is not error-free, and that the existence of minor errors or defects in the Software does not mean that the Software does not perform in substantial conformance with its applicable published specifications. LIBRESTREAM shall not be responsible for the reconstruction of any corrupted or lost data files.

### **ARTICLE 14: EXPORT/IMPORT**

- 14.1 The Software and certain Products sold by LIBRSTREAM and other related technology and documentation are subject to export control laws, regulations, and orders of the United States and the export or import control laws and regulations of other countries. PURCHASER will not directly or indirectly export or divert any of the Software or any of the Products or any other related technology and documentation to any third party or country where such export or transmission is restricted or prohibited. PURCHASER agrees it is responsible to obtain any license to export, re-export, or import as may be required.

## **ARTICLE 15: TERM AND TERMINATION**

- 15.1 This Agreement shall commence on the Closing Date and shall terminate on the third anniversary of the Closing Date (the "**Term**" of this Agreement, and with any reference to "Term" herein being deemed to include any and all renewal periods pursuant to this Section 15.1). This Agreement shall automatically renew on the same terms and conditions contained herein for a series of consecutive one (1) year renewal periods unless either Party advises the other Party in writing at least sixty (60) days prior to the end of the then current Term that it does not wish to renew this Agreement. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time based priced subscriptions will be at Librestream's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription length for any services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term per-unit pricing.
- 15.2 PURCHASER agrees that it may only terminate this Agreement prior to the end of the Term upon providing at least ninety (90) days' written notice to LIBRSTREAM and solely in the event of a failure by LIBRSTREAM to meet its obligations as detailed in this Agreement which remains unremedied at least thirty (30) days after written notice of that failure is provided by PURCHASER to LIBRSTREAM.
- 15.3 Without prejudice to any other right or remedy which may be available to LIBRSTREAM, the licenses and this Agreement may be terminated by LIBRSTREAM immediately upon written notice to PURCHASER in the event that PURCHASER:
- a) fails to comply with Section 5.5 of this Agreement; or
  - b) fails to comply with any other provision of this Agreement and fails to remedy that failure within thirty (30) days of receiving written notice of that failure from LIBRSTREAM; or
  - c) makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to the supervision of a bankruptcy tribunal; or
  - d) has an order made against it, or passes a resolution, for its winding-up, or has a lien holder take possession of, or has a receiver or similar officer appointed over, all or substantially all of its property or assets.
- 15.4 Upon expiration or termination of this Agreement for any reason, PURCHASER agrees to immediately cease use of, and to return or destroy, at LIBRSTREAM's sole option, the Software and any other LIBRSTREAM Confidential Information in PURCHASER's possession, custody or control, together with all copies, including but not limited to deletion of the foregoing from any Computing Device on which the Software or any portion thereof may have been installed, and to certify such return or destruction in writing. PURCHASER also agrees that LIBRSTREAM may immediately terminate all User Accounts that relate to PURCHASER, thereby denying PURCHASER and all of the individuals to whom PURCHASER has assigned a User Account any further access to and use of the Software.
- 15.5 The following provisions of this Agreement shall survive any expiration or termination of this Agreement for any reason whatsoever – Sections 4.1, 5.3 - 5.9, 6.1, 7.1, 8, 10.1, 11.1, 12.1, 14.1 and 15.4, as well as all of Articles 3, 6, 9, 13 and 16, and all relevant definitions, Appendices, Schedules and Exhibits.

## **ARTICLE 16: GENERAL PROVISIONS**

- 16.1 This Agreement shall be construed and governed by the laws in force in the Province of Manitoba, excluding its conflict of laws rules. The Parties consent to the jurisdiction of all the courts in Manitoba, and agree that, except for requests for injunctive or other equitable relief, venue shall lie exclusively in Manitoba. The Parties

exclude in its entirety the application to this Agreement of the United Nations convention on contracts for the international sale of goods.

- 16.2 Any notices under this Agreement shall be in writing, and shall be delivered by either Canada Post, or the postal service of the country in which PURCHASER's address for notices pursuant to this Agreement is located, using certified mail or via a reputable express courier service (such as FedEx, UPS). Notices shall be directed to the addresses set forth below and shall be deemed effective upon receipt (or if delivery is refused, on the date of such refusal). Either Party may from time to time change its address for notices by providing written notice of such change to the other Party in accordance with this Section 16.2.

If to PURCHASER: *Company*

*Address*

*Attention to:*

If to LIBRESTREAM: Librestream Technologies Inc.  
895 Waverley St., Suite 110  
Winnipeg, Manitoba  
Canada  
R3T 5P4

- 16.3 The Parties agree that each is being engaged as an independent entity. Nothing contained in this Agreement, nor any action taken by any Party, shall create any agency, employment, partnership, fiduciary or joint venture relationship between the Parties and/or the Parties' representatives. LIBRESTREAM shall be solely responsible for its representatives, regardless of where such representatives are located.
- 16.4 PURCHASER represents and warrants that (i) it is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) it is not listed on any U.S. Government list of prohibited or restricted parties.
- 16.5 The original of this Agreement has been written in the English language, and the governing language of this Agreement shall be English. PURCHASER hereby waives and agrees not to assert any right to have this Agreement written in the language of PURCHASER's place of residence or that of any individual to whom PURCHASER has assigned a User Account.
- 16.6 This Agreement is for the sole benefit of the Parties hereto and nothing herein, express or implied, shall give, or be construed to give, any rights hereunder to any other person, including without limitation, any subcontractors, sub-vendors, or anyone designated as a reseller.
- 16.7 The Parties agree that there will be no public announcement or other disclosure of this Agreement, or any related discussions or negotiations, until they have mutually agreed thereto or unless otherwise required by law or by regulatory rule or policy. If either Party is required by law or regulatory rule or policy to make a public announcement, it will provide as much notice to the other Party as reasonably possible, including the proposed text of the announcement. Subject to the foregoing, the Parties hereto will keep the terms of this Agreement strictly confidential, and will ensure that their respective officers, directors, employees, representatives and agents abide by such confidentiality requirements.
- 16.8 Neither Party shall, without the express written consent of the other Party in each instance:
- a) use the name, trademarks, trade dress or trade names of the other Party or any of its affiliated entities in any advertising, publicity or other materials; or
  - b) disclose the existence of or terms of this Agreement to any third party other than its legal or financial advisors under a duty of confidentiality, except as may be required in order to enforce this Agreement in a court of competent jurisdiction; or
  - c) represent that any product or service provided hereunder has been used, approved or endorsed by the other Party.

Written consent for the foregoing uses may only be granted by the appropriate officer or his/her designee of either Party, and may be revoked by either Party in its sole discretion at any time. In the event consent is granted, both Parties shall follow the other Party's trademark and branding usage guidelines, as amended

from time to time, and any other usage restrictions imposed by the other Party.

- 16.9 The Parties acknowledge that they are responsible for compliance at all times with applicable privacy laws which govern the collection, use and disclosure of personal information acquired by or disclosed to the Parties pursuant to or in connection with this Agreement (the “**Disclosed Personal Information**”), and each Party hereby agrees to comply with all such applicable privacy laws. Neither Party shall use the Disclosed Personal Information for any purposes other than those relating to the performance of this Agreement.
- 16.10 Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by PURCHASER without LIBRESTREAM’s prior written consent, which shall not be unreasonably withheld or delayed; PROVIDED THAT it shall not be unreasonable for LIBRESTREAM to withhold its consent if the assignee is an entity that LIBRESTREAM, in its sole discretion, would not have signed a Master Service Agreement with. LIBRESTREAM may assign this Agreement and all of its rights, interests and obligations hereunder to a third party that is acquiring all or substantially all of LIBRESTREAM’s assets or all or substantially all of the Products and/or Software that is/are the subject of this Agreement.
- 16.11 Each Party shall pay all of its own fees, costs and expenses incurred by it in connection with this Agreement unless otherwise expressly stated herein to the contrary.
- 16.12 Unless otherwise expressly stated, all dollar amounts in this Agreement are expressed in US dollars.
- 16.13 In the event that PURCHASER is a governmental entity, only the department(s) or agency(s) specifically licensed in the Purchase Order to use the Software shall have the right to use the Software. Governmental departments or agencies not so specifically licensed must have a separate license and must pay additional license fees.
- 16.14 PURCHASER hereby acknowledges that its breach of this Agreement may cause irreparable harm and significant injury to LIBRESTREAM and/or one or more of the Third Party Licensors in an amount that may be difficult to ascertain and for which a remedy at law may be inadequate. Accordingly, PURCHASER hereby agrees that, in addition to any other rights and remedies it may have, LIBRESTREAM shall have the right to seek injunctive or any other form of equitable relief in any court of competent jurisdiction to enforce PURCHASER's obligations under this Agreement, in the event of any breach or threatened breach of any such obligation(s).
- 16.15 This Agreement (and any appendices, exhibits, or addendums thereto) may not be modified or amended except by a written document executed by a duly authorized representative of each Party.
- 16.16 No rights of a Party or breach by the other Party of any provision hereunder shall be waived by any act, omission, delay or knowledge of a Party, except by a written document executed by a duly authorized representative of the waiving Party. Any waiver on one occasion shall not constitute a waiver of any prior, concurrent or subsequent occasions. A waiver of any default hereunder or of any of the terms or conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided at law or in equity.
- 16.17 If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, the provision shall be amended and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement shall continue in full force and effect.
- 16.18 This Agreement (which includes any addendums thereto) may be signed electronically using a means reasonably designed to acknowledge assent. If this Agreement is electronically signed, it:
- a) is considered a "writing" or "in writing",
  - b) is deemed for all purposes as physically "signed",
  - c) is deemed an "original" when printed or copied from electronic files or records established and maintained in the normal course of business, and
  - d) satisfies any legal formalities requiring that agreements be in writing.

Neither Party shall contest the admissibility of copies of this Agreement (or printed version of same) under either the business records exception to the hearsay rule or the best evidence rule or otherwise on the basis that the Agreement was originated, signed or maintained in electronic form. Other than an original hand written signature or an electronic signature of the same formality used to originally execute this Agreement, no other communication between the Parties (such as email, voice mail or fax without a signature) shall be construed as a signature to this Agreement (or any amendments hereto or any waiver hereof)

- 16.19 This Agreement, and any amendments hereto and any waiver hereof, may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties. If electronic signatures are used for this purpose, either Party may print out the faxed or imaged version of the Agreement signed by the other Party and then sign in the designated space.
- 16.20 The captions and Article and Section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretations of this Agreement. The term "including" as used herein means "including without limitation." The terms "herein," "hereof," "hereunder," and similar terms refer to the Agreement as a whole, rather than any particular provision. Each Party acknowledges that it has had the opportunity to review this Agreement with legal counsel. Any rule of construction that resolves ambiguities against the drafting Party shall not apply in the interpretation of this Agreement.
- 16.21 This Agreement constitutes the entire agreement between the Parties with respect to the license of the Software and the other subject matter of this Agreement, and supersedes and terminates all other prior and/or contemporaneous verbal and/or written agreements and understandings with respect thereto. No modifications to this Agreement shall be enforceable except when in writing and signed by an authorized signatory of the party to be bound thereby. Without limiting the generality of the foregoing, the terms and conditions of any purchase order or other document submitted by PURCHASER to LIBRESTREAM or to any LIBRESTREAM distributor or other representative shall not be binding on LIBRESTREAM unless definitively accepted in writing by LIBRESTREAM.
- 16.22 Any dispute, action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement (with the exception of any shall be exclusively settled by arbitration administered by and pursuant to *The Arbitration Act* (Manitoba), by a single arbitrator appointed in accordance with the said Act. The seat of arbitration shall be Winnipeg, Manitoba. The arbitration proceedings will be conducted in English, and the award will be rendered in writing in English. Unless otherwise ordered by the arbitrator, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties agree to treat any award made by the arbitral tribunal as final and binding upon them and immediately enforceable against them, and undertake not to exercise or seek to exercise any right of appeal or other challenge against such final award before any court or jurisdiction. Notwithstanding the foregoing, nothing in this Agreement shall prohibit either Party from seeking any preliminary, emergency or interim injunctive relief in any court of competent jurisdiction. Judgment upon any award rendered by the arbitrator may be entered by any court having jurisdiction over the Party against whom enforcement is sought.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Closing Date by the undersigned duly authorized representatives.

PURCHASER:

LIBRESTREAM TECHNOLOGIES INC

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: