

# SimpliPhi Solutions Agreement

## 1. Scope and Description

This agreement sets forth the terms and conditions that govern Your access to and use of Our Solutions. Please contact SimpliPhi if You have any questions about this agreement.

## 2. Ordering Procedures

We will provide You access to Our Solutions and deliver the Services detailed in the applicable Agreement To Purchase (ATP). The ATP, along with its attachments, which may include a Proposal or Statement of Work for Services (SOW), this agreement, the Acceptable Use Policy (“AUP”) and the Cyber Security Policy constitutes the complete and entire agreement, and supersedes all other agreements between Us concerning Our Solutions. In the event of a conflict between this agreement, an ATP, or a Proposal/SOW, the following order of precedence shall apply: (1) ATP; (2) this agreement; (3) Proposal/SOW.

## 3. Subscription Access And Use

- a. Access. You and Your employees may access and use Subscriptions and Documentation for Your internal business purposes during the Term of this agreement which shall commence on the date set forth in the ATP and continue for one (1) year thereafter (the “Initial Term”). Unless either party notifies the other in writing at least one (1) month prior to the expiry of the applicable Term of its intention not to renew, this agreement shall automatically renew for successive one (1) year terms (each a “Renewal Term” and together with the Initial Term, the “Term”). SimpliPhi undertakes to send You a notice, at least sixty (60) days and no more than ninety (90) days prior to the expiry of the applicable Term reminding You of the renewal to come and of your right not to renew this Agreement.
- b. Suspension; Acceptable Use Policy. We may suspend access to any Solution upon at least 30 days written notice if You fail to pay fees when due, violate this agreement, or violate SimpliPhi’s AUP and fail to cure such default within the 30 day notice period. Suspensions are rare and exercised in a manner proportionate to the severity of the violation. We agree to work with You in good faith to address any violations in a reasonable manner, to prevent similar violations, and to reinstate the affected Solutions as quickly as possible.

## 4. Fees, Expenses, And Payment

The financial terms for the Solutions are set forth in the applicable ATP.

## 5. Confidential Information

- a. Definitions. “Confidential Information” means (i) all information disclosed by one of Us (“Owner”) to the other (“Recipient”) electronically, visually, orally or in a tangible form; (ii) the terms and/or existence of this agreement and the relationship between the parties,

Our architecture, software, data, and technology that comprise the Solutions, ATP(s), Proposal/SOW(s), and any proposals or other documents that preceded this agreement; and (iii) donor, student, prospect and financial information. Recipient shall not obtain any rights, title, or interest in any Confidential Information of Owner. The obligations in (b) below shall not apply to: information generally known to the public; information independently developed by Recipient without access to Confidential Information; information in the possession of Recipient without an obligation of confidentiality; or information required to be disclosed by court order or applicable law after Owner has been notified.

- b. Treatment of Confidential Information. Recipient may only (i) use Owner's Confidential Information to carry out the purposes of the ATP; and (ii) disclose Owner's Confidential Information to those third parties operating under non-disclosure provisions no less restrictive than those set forth in this agreement, who require access to such Confidential Information to carry out the purposes of the ATP and who have been authorized to access such Confidential Information by Owner. Recipient is responsible for any mistreatment of Confidential Information by such third parties. Recipient must protect Owner's Confidential Information using the same degree of care it uses to protect its own confidential and proprietary information, but in any case, not less than reasonable care, and protect such information in accordance with applicable laws. Upon termination of this agreement, Recipient must return or destroy all Owner Confidential Information in its possession or control, if feasible. If not destroyed, Recipient will continue to protect such information as required above.

## 6. Security

- a. It takes both of Us to protect Your Data and Our Solutions. We have implemented and will maintain administrative, physical, and technical safeguards designed to: (i) protect against threats or hazards to the security of Your Confidential Information, and (ii) protect against unauthorized access to or use of Confidential Information that could harm You. Our technical safeguards include firewalls, virus and intrusion detection, and authentication protocols. In order to continually improve our safeguards, We reserve the right to make changes to the physical and technical safeguards, policies, and data security programs at any time, provided We will at all times maintain commercially reasonable information security procedures and standards in accordance with all agreements between You and US. You will be notified of any changes. You commit to take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Your Data and Our Solutions.
- b. We will maintain and provide, upon request, an audit trail of all access to Your Data for a rolling eighteen (18) month period. The audit trail will include for each access (i) the time of access; (ii) the date of access; (iii) user name used for access; (iv) application used for access; (v) the specific request for information; (vi) the actions taken upon access (i.e. create, read, update, delete).
- c. Within twelve (12) hours of discovery, We will report to You any Security Breach affecting Your Confidential Information and outline the actions and timelines to assess and remedy Security Breach. "Security Breach" means unauthorized access, use, disclosure, modification, or destruction of Confidential Information. Security Breaches shall not

- include: (a) “pings” on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Your Confidential Information.
- d. In the event of a Security Breach, We will use commercially reasonable efforts to mitigate any negative consequences resulting directly from the Security Breach and will use commercially reasonable efforts to implement procedures to prevent the recurrence of a similar Security Breach.
  - e. We will use industry standard methods for the destruction of Your Confidential Information in accordance with Section 16(b) (Effect of Termination).

## 7. Hosted Solution

- a. Should the ATP include a Hosted Solution, We hereby grant You a worldwide, non-exclusive license to use our Hosted Solution for your internal business purposes during the Term as stipulated by the ATP. This license may only be used by your officers, employees, agents and subcontractors. You may not sub-license its right to access and use the Hosted Solution;
- b. You must not conduct or request that any other person conduct any load testing on the Platform or Hosted Services .
- c. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this agreement: (a) a Force Majeure Event, (b) a fault or failure of the internet or any public telecommunications network, (c) a fault or failure of the Customer's computer systems or networks, (d) any breach by the Customer of this agreement; or (e) scheduled maintenance carried out in accordance with this agreement. We will use commercially reasonable efforts to mitigate downtime and ensure the security and integrity of Your Data all the while keeping You informed by email about the event and its resolution.
- d. You must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- e. For the avoidance of doubt, You do not have rights to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- f. We are continuously improving our Hosted Solutions and may apply updates from time to time. For updates or planned maintenance that may affect the availability of Your Hosted Solution, We will provide you with 72 hours notice. In the rare instance where an update is required within 72 hours, We will provide you with as much notice as possible for unplanned emergency updates.

## 8. Your Obligations

Solutions may only be used or accessed from Your devices and systems that are authorized and meet the Solution’s Requirements. You agree to administer and monitor the use of Your login IDs, passwords, and all accesses to the Solutions by Your employees pursuant to the instructions You will receive when Your Solutions are activated.

## 9. Indemnity

Each Party (the “Indemnifying Party”) shall indemnify, defend and forever hold the Indemnified Party, harmless from and against any and all Losses arising directly or indirectly out of, or relating to, claims of third parties regarding (i) breach of any express representation or warranty or covenant made herein, (ii) actual infringement, violation, or misappropriation of any patent, copyright, trademark, trade name, trade secret, or other proprietary rights with respect to any product or service provided or (iii) a security breach or other unauthorized disclosure involving Confidential Information. An Indemnified Party shall notify the Indemnifying Party in writing of the nature of the claim as soon as practicable after the Indemnified Party receives notice thereof; provided, however, that the failure to give prompt notice shall not relieve the Indemnifying Party of its obligations except to the extent that the Indemnifying Party does not receive actual notice and is damaged as a result. The Indemnifying Party shall have the right to control the defense and the Indemnified Party shall have the right at its own expense to employ separate counsel and to participate in (but not control) any such action. No Indemnified Party shall be liable for any settlement of an action effected without its written consent (which consent shall not be unreasonably withheld) unless such settlement includes as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party a release from all liability with respect to the claim.

In the case where the end user of the Solutions directly receives a claim pertaining to IP infringement by us, we undertake to intervene, take on and assume the defense, for and on behalf of the end user, against such claim.

## 10. Representations, Warranties, And Disclaimer

- a. Mutual Representations and Warranties. Each party represents and warrants that (i) it has the right and power to enter into this agreement, (ii) it has not been convicted of a crime related to health care and is not currently listed by a federal agency as debarred or excluded, (iii) an authorized representative has accepted this agreement, and (iv) it will comply with all applicable laws and regulations pertaining to this agreement.
- b. SimpliPhi Limited Warranties. Solutions will perform pursuant to their then-current Documentation. All Services will be performed in a professional manner in accordance with industry standards. If You believe that a Solution fails to perform as described in the Documentation, You must notify SimpliPhi in writing within thirty (30) days of the occurrence of the problem, and SimpliPhi will use reasonable efforts to repair or replace the Solution without charge. If a Service has been improperly performed, You must notify SimpliPhi in writing within thirty (30) days of the occurrence of the problem, and SimpliPhi will reperform the Service without charge. This process is compulsory for any Solutions or Services that You believe do not comply with the foregoing promise and said process must be fully completed before seeking any other remedy.
- c. Intellectual Property Warranty. SimpliPhi represents and warrants that the Solutions do not infringe, violate, or misappropriate the intellectual property rights of any third party. If SimpliPhi violates this warranty at any time during this agreement, SimpliPhi will, at its sole expense, make reasonable efforts to modify or replace the infringing Solutions so that they comply with this warranty or to obtain the right for You to continue to use the

Solutions. If SimpliPhi is unable to modify or otherwise obtain the right for You to continue to use the Solutions, You will be entitled to terminate this Agreement with a ten (10) days' notice to SimpliPhi.

- d. Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, SimpliPhi EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW.

## 11. Limitation Of Liability

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 (ii) and 9(iii); AND CLAIMS PERTAINING TO INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, WILLFUL OR RECKLESS CONDUCT, OR BODILY INJURY; AND YOUR PAYMENT OBLIGATIONS, FOR WHICH THERE SHALL BE NO CAP, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE GREATER OF (X) \$25,000 OR (Y) THE AMOUNT OF FEES PAID OR PAYABLE BY YOU FOR THE SOLUTION FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AND SimpliPhi AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

## 12. Ownership

- a. Your Ownership and License. You own Your Data, Your Confidential Information and any artwork, logos, trade names, and trademarks that You provide to SimpliPhi ("Your Data"). For the sole purpose of providing the Solutions, You grant to SimpliPhi and its authorized suppliers a nonexclusive, fully paid-up license to use, reproduce, store, modify, and display Your Data. SimpliPhi may aggregate Your usage information with usage information from other customers, and use and disclose such results on an aggregated and anonymized basis, with the intent of monitoring as well as producing performance and usage statistics, provided We do not individually identify You, Your Confidential Information, or Your use of Solutions. For greater certainty and clarity, in no circumstances will Your Data be sold to third parties or used by SimpliPhi for other purposes than those provided for in this agreement.
- b. SimpliPhi Ownership and License. Subject to Your rights to Your Data set forth above, SimpliPhi has all right, title, and interest in and to any expressions and results of Solutions, the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, other technical information, and all derivatives of the foregoing created in connection with this agreement ("Work Product"). SimpliPhi grants to You a nonexclusive, fully paid-up license to use Work Product, solely to the extent necessary for You and Your end users to use Solutions in accordance with this agreement. If You provide any feedback, comments, suggestions, ideas, requests, or recommendations for modifications or improvements to SimpliPhi, You hereby assign all right, title, and interest in any such feedback to SimpliPhi

to be used for any purpose. All rights not expressly granted to You hereunder are reserved by SimpliPhi.

### **13. Notice**

All notices or other communications sent pursuant to or in connection with this agreement shall be made in writing and sent to the applicable address set forth in the ATP, or as designated from time to time in writing by either of Us. Notice shall also be sent to the address set forth below. All notices shall be deemed given if delivered receipt confirmed using registered or certified first class mail, postage prepaid, or recognized courier delivery or email with confirmation of reception by electronically signed document.

### **14. Force Majeure**

Neither party shall be deemed in default or otherwise liable under this agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, substantial snowstorm, epidemic, pandemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, terrorism, act of God, or any municipal, county, state, provincial or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause not under such Party's control.

### **15. Governing Law**

This agreement shall be governed by and in accordance with the laws of the province of Quebec and the federal laws of Canada applicable therein, without regard to conflicts of laws principles.

### **16. Term And Termination**

- a. Default. Either party may terminate this agreement if the other party defaults in performing its obligations under this agreement and the default remains uncured for at least thirty (30) days following receipt of written notice from the party requesting termination. In addition, this agreement may be terminated by either party upon written notice if the other party makes an assignment for the benefit of creditors or dissolves its entity.
- b. Effect of Termination. Upon termination of this agreement or termination of a Solution, SimpliPhi may immediately cease providing the terminated Solution(s). If SimpliPhi has Your Data in its possession upon termination, to the extent technologically feasible, SimpliPhi will provide You with a copy of Your Data in its then-standard database format and delete and all Your Data and Confidential Information. All earned and unpaid fees and expenses are due upon termination.

### **17. General**



Except as specifically stated herein, remedies are cumulative. No failure or delay in enforcing any term or exercising any option shall be construed as a waiver unless agreed to in writing by Us. If any provision of this agreement is held to be unenforceable, the other provisions shall remain in full force and effect. No purchase order or other ordering document that purports to modify or supplement the printed text of this agreement or any attached or referenced document shall add to or vary the terms of this agreement. All proposed modifications to this agreement, ATP(s) or Proposal/SOW(s) are objected to and deemed material unless otherwise mutually agreed to in writing. ATPs may be executed electronically, and in counterparts, which together form one legal instrument. A copy of an executed ATP and any purchases within a Solution and made by reliable means, including electronic acceptance, shall be considered an original. You may not assign Your rights or obligations under this agreement without Our written consent, Notwithstanding the other dispositions of this section 17, You may assign your rights in this agreement to a successor in connection with the sale of substantially all of Your assets and ownership interests without SimpliPhi written consent, provided that you give reasonable notice to SimpliPhi. Each party performs its obligations under this agreement as an independent contractor, not as the other party's employee, partner, or agent. Sections 5, 9, 10, 11, 12, 13, 15, 16.b, 17 and 18 survive the termination of this Agreement. You have accepted this agreement by the signing of an ATP by Your duly authorized officer or officer representative.

## 18. Definitions

- "AUP" means SimpliPhi's Acceptable Use Policy.
- "SimpliPhi", "Our", and "We" mean SimpliPhi (9102-3531 Québec Inc.) and its affiliates, subcontractors and subsidiaries.
- "Documentation" means applicable manuals and documentation that SimpliPhi generally provides or makes available for Solutions.
- "Effective Date" means the date of Your signature on the ATP.
- "ATP" means the SimpliPhi Agreement to Purchase signed by You (electronically or otherwise) and accepted by SimpliPhi setting forth the Solutions You have ordered on the date of the ATP.
- "Services" means services provided by SimpliPhi other than Subscriptions that are pursuant to the ATP (and Proposal/SOW if applicable) and may include professional, consulting, or training services.
- "Solutions" means Subscriptions and Services collectively.
- "Hosted Solution" means any Solution for which SimpliPhi is providing hosting.
- "Subscription" means any SimpliPhi subscriptions, including maintenance, support, application services and payment services provided by SimpliPhi pursuant to the ATP.
- "Solution's Requirements" supported technical requirements as defined on SimpliPhi's website
- "Us" means SimpliPhi and You collectively.
- "You" and "Your" mean the client set forth on the ATP.
- Indemnified Party means the Party receiving indemnification, including such Party's affiliates, and all of their respective present and former officers, members,

shareholders, directors, employees, representatives and agents, and their successors, heirs and assigns.

- Losses means losses, liabilities, costs, damages and expenses (including, without limitation, fines, forfeitures, reasonable attorneys' fees, disbursements and administrative or court costs) incurred by an Indemnified Party.