

**TERMS AND CONDITIONS OF SALE
ESPIAL INC.**

1. SCOPE

- 1.1 For the purposes of these terms and conditions, "Espial" means Espial Inc. and its Affiliates, "Affiliates" means entities that control, are controlled by, or are under common control with Espial, "Customer" means the customer identified on the face of this form, and "Products" means those products and services to be delivered by Espial to Customer. Sale to Customer when referring to a software Product means a license to Customer.
- 1.2 These terms and conditions of sale apply to all quotations, and any subsequent sales of Products by Espial to Customer. Acceptance of Customer's order is made upon the express understanding that it will be governed by the terms and conditions set out herein, and that any additional or conflicting terms and conditions accompanying Customer's order shall, absent express agreement to the contrary as hereinafter provided, be void and of no force or effect. These terms and conditions shall be applicable whether or not they are attached to or enclosed with the Products.

2. QUOTATION

Quoted prices will remain open for acceptance by the Customer for a period of ten (10) business days from the date of quotation. Unless otherwise stated, prices for the Products are firm but may be subject to adjustment for foreign exchange, purchase or sales tax, customs tariff or other direct taxes, between the date of quotation and the date of shipment.

3. ORDERS AND SUPPORT

Customer's orders are subject to final acceptance by Espial and Espial reserves the right to accept or to reject any order from the Customer, in whole or in part. Espial may, without prejudice to any other remedy which it may have at law or in equity, cancel or suspend delivery of any uncompleted order in the event of non-payment or other breach of these terms and conditions by Customer. Espial shall have no liability to Customer for any costs, losses, or damages of any kind whatsoever arising as a result of any such suspension or cancellation. Upon the cancellation of any order, the Customer undertakes to indemnify Espial against all losses and expenses arising out of the order and its cancellation. Renewal price for the second year of support for the Products is priced at the same rate as the first year of support. Support will automatically renew annually and will be invoiced annually in advance, unless Customer provides Espial with written notice of cancellation of support for the following year at least sixty (60) days prior to the expiration of an annual support term. Should Customer elect to resume support following support cancellation by Customer, Customer shall pay Espial one hundred and fifty percent (150%) of the support fees for all cancelled support periods together with the annual support fee for the subsequent support period. Terms of support, which may be updated from time to time, may be accessed online at http://www.espial.com/static/support_agreement/ username: support_docs; password: splsupport

4. DELIVERY

- 4.1 Software Products delivery shall be deemed completed once Espial makes such Software available for electronic accessing by Customer.

5. TAXES

All taxes, levies or duties of any nature applicable to the sale or license of the Products shall be paid by the Customer, or in lieu thereof, the Customer shall provide Espial with a tax exemption certificate acceptable to the taxing authorities.

6. PAYMENTS AND RECORDS

- 6.1 All orders are generally prepaid or covered by a letter of credit prior to shipment. Should open credit be extended, orders are subject to credit approval prior to acceptance and payment is due and payable thirty (30) days from the date of invoice. All payments made by check shall be mailed to Espial Inc., 200 Elgin Street, Suite 1000, Ottawa, Ontario, K2P 1L5 Canada attn: Finance Dept. Banking information for wire transfers will be listed on the invoice and may be obtained in advance, by request.
- 6.2 If, in Espial's opinion, the Customer's financial condition does not at any time justify the terms of payment specified, Espial may cancel any unfilled orders upon written notice unless the Customer immediately pays any outstanding amounts and/or agrees to pay in advance for all Products ordered but not delivered, at Espial's option.
- 6.3 Interest shall accrue against any amount which remains unpaid by the Customer under this Agreement for more than thirty days from the date of invoice. Interest shall be payable to Espial at the rate of 1.5% per month compounded (19.6% per annum, actual rate), or the maximum allowed by law, whichever is less, and shall be payable monthly in arrears.
- 6.4 Customer shall keep true, accurate and consistent records containing regular entries relating to the disposition of each copy of software Product used or distributed by Customer. These records shall be available for examination during normal business hours by accountants representing Espial, who shall be entitled to perform an audit and to make copies and extracts and to receive any explanations that may reasonably be requested. Espial is responsible for payment of the accountant's fee, except that Licensee shall be responsible for such fees in the event an examination discloses a discrepancy in Espial's favour of more than five (5) percent of the payment of the aggregate fees and charges due by Customer to Espial.

7. WARRANTY

- 7.1 Espial warrants that the software Products will function substantially in accordance with the functional description set out in the user manual supplied with the software for a period of thirty (30) days from the date of shipment to Customer.
- 7.2 Espial's sole obligation and Customer's sole remedy for a breach of this warranty shall be Espial's good faith efforts to rectify the non-conformity or, if after reasonable efforts Espial is unable to rectify the non-conformity, Espial shall accept return of the software and refund to Customer the purchase price thereof. This warranty is available only once in respect of each licensed software program. Espial shall have no obligation under this warranty if the software is modified or if the software is used with hardware or software not supplied or approved by Espial.
- 7.3 **IN NO EVENT SHALL ESPIAL'S LIABILITY TO CUSTOMER OR TO ANY OTHER PARTY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES EXCEED THE PURCHASE PRICE PAID BY CUSTOMER TO ESPIAL FOR THE DEFECTIVE HARDWARE OR SOFTWARE PRODUCT.**
- 7.4 **THE EXPRESS WARRANTIES SET OUT IN THIS SECTION 7 ARE IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR DURABILITY, OR THOSE ARISING FROM STATUTE OR USAGE OF TRADE. CUSTOMER SHALL NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE PRODUCTS OR TO ESPIAL, WHICH EXCEED THOSE MADE BY ESPIAL IN THIS SECTION 7.**

8. INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY AND INDEMNITY

- 8.1 Customer recognizes and acknowledges the great value of the goodwill associated with the name and trademarks of Espial, and the identification of the Products therewith. Customer shall not obscure, effect or permit the removal or alteration of any trademarks, patent numbers, labels, serial numbers or the like affixed to or displayed on any Product, related materials or packaging.
- 8.2 Customer expressly acknowledges and agrees that any software Product is not sold, but rather is licensed to Customer. All rights, title and interest in and to the software Product and in and to any deliverable resulting from services provided by Espial to Customer shall remain vested in Espial or its third party suppliers, and Customer is granted only a limited license to use the software Product. Customer shall not, and shall prevent others from copying, translating, modifying, creating derivative works, reverse engineering or decompiling the software Product.
- 8.3 Customer agrees to maintain any non-public information relating to the Products or to Espial ("Information") strictly as confidential and not to disclose the Information to any person except its employees who have a need to know and provided that Customer obtains from each employee, in advance, a written agreement to keep the Information in strict confidence. Customer acknowledges that a breach of the confidentiality of the Information will cause serious damage to Espial and may irreparably harm Espial and agrees to indemnify Espial from any and all damages, losses or expenses including but not limited to direct, indirect, incidental, consequential or special damages and losses of profits or revenues resulting from a breach of the confidentiality of the Information.
- 8.4 Espial agrees to defend, indemnify and hold harmless Customer from any claim or action brought against Customer alleging that Espial's Product infringe any third party's rights under U.S. or Canadian patent law, copyright law or trade secret law, provided Customer (i) provides Espial written notice of any such claim within fifteen (15) days from when Customer becomes aware of the same, (ii) grants Espial sole control and authority

over the defense or settlement of such claim or action and (iii) provides Espial with proper and full information and assistance in defending and/or settling such claim or action. Espial may, at its sole option and expense, (i) procure for Customer the right to use the infringing material licensed hereunder, (ii) replace the infringing material with noninfringing materials or (iii) accept return of the same and refund the value of the same provided that in no event will Espial be liable for more than the fees paid by Customer. The foregoing states the sole obligation and exclusive liability of Espial, and Customer's sole recourse and remedy, for any infringement or claim of infringement by Espial's proprietary software.

- 8.5 Espial shall have no liability for any claim of infringement based on (i) use of other than the latest commercially available version of the software Product provided to Customer, to the extent the infringement would have been avoided by use of such version; (ii) modification of the software Product by Customer to the extent the infringement would have been avoided without such modification; (iii) compliance with Customer's specifications or express requirements; or (iv) the combination or use of the software Product with materials not furnished by Espial to the extent such infringement would have been avoided by use of the software Product alone.

9. ASSIGNMENT

The Customer shall not assign its order or any interest therein, or any rights accruing under these terms and conditions, without the prior written consent of Espial.

10. LIMITATION OF LIABILITY

- 10.1 IN NO EVENT WHATSOEVER, REGARDLESS OF THE FORM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT OR THE NUMBER OF CLAIMS, AND WHETHER IN RESPECT OF A BREACH OR DEFAULT IN THE NATURE OF A BREACH OF CONDITION OR FUNDAMENTAL TERM OR A FUNDAMENTAL BREACH OR AS A RESULT OF NEGLIGENCE, SHALL ESPIAL, ITS EMPLOYEES', DIRECTORS', OFFICERS' AND AGENTS' TOTAL COLLECTIVE LIABILITY TO CUSTOMER FOR ANY CLAIM EXCEED THE AMOUNT PAID FOR THE SPECIFIC ITEM OR PRODUCT THAT IS THE SUBJECT MATTER OF OR THAT IS DIRECTLY RELATED TO THE CLAIM; PROVIDED HOWEVER THAT IN NO EVENT SHALL THE TOTAL COLLECTIVE CUMULATIVE LIABILITY OF ESPIAL, ITS EMPLOYEES, OFFICERS, AGENTS AND DIRECTORS FOR ALL CLAIMS ARISING UNDER OR RELATED TO THE PURCHASE ORDER REFERRED TO IN THIS DOCUMENT EXCEED THE AMOUNT PAID TO ESPIAL BY CUSTOMER PURSUANT TO SUCH PURCHASE ORDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE MOST RECENT CLAIM.
- 10.2 ESPIAL, ITS EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS SHALL NOT BE LIABLE IN ANY WAY WHATSOEVER, WHETHER AS A RESULT OF A CLAIM OR ACTION IN CONTRACT OR TORT OR OTHERWISE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OR LOST BUSINESS REVENUE, LOST BUSINESS, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND WHATSOEVER, OR FOR ANY DAMAGES, DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL ARISING OUT OF ANY CLAIM AGAINST CUSTOMER BY ANY PERSON WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT ESPIAL, ITS EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3 THE FOREGOING PROVISIONS LIMITING THE LIABILITY OF ESPIAL'S EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS SHALL BE DEEMED TO BE TRUST PROVISIONS FOR THE BENEFIT OF SUCH EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS, AND SHALL BE ENFORCEABLE BY SUCH AS TRUST BENEFICIARIES.

11. HAZARDOUS USES PROHIBITION

Customer acknowledges that Espial products are intended for standard commercial uses. Without the appropriate network design engineering, the Products must not be sold, licensed or otherwise distributed for use in any hazardous environments requiring fail safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, weapons systems, or any other application in which the failure of the Products could lead directly to death, personal injury, or severe physical or environmental damage. Customer hereby agrees that the use, sale, license or other distribution of the Products for any such application without the prior written consent of Espial shall be at Customer's sole risk. Customer agrees to defend and hold Espial harmless from any claims for loss, costs, damage, expense or other liabilities which may arise out of or in connection with the use, sale, license or other distribution of the Products for such applications.

12. EXPORT RESTRICTIONS

Customer shall comply with all export regulations pertaining to the Products in effect from time to time. Without limiting the generality of the foregoing, Customer expressly warrants that it will not directly or indirectly export, re-export, or transship the Products or any part thereof in violation of any export laws, rules or regulations of Canada, the United States, Japan or the European Union member states.

13. INTERPRETATION

This is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. Any modification of these terms and conditions shall be in writing, and shall be signed by each party's authorized representative. This Agreement shall be governed by the laws of the Province of Ontario, Canada (except for its conflict of laws provisions), and the courts of that Province shall have exclusive jurisdiction over all matters arising hereunder. The parties expressly exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention, 1980), from the terms of this Agreement.

14. CHOICE OF LAW, JURISDICTION, VENUE AND ARBITRATION

With respect to claims by Espial which include a demand for payment relating to Customer's payment obligations, and unless Espial elects to pursue arbitration as specified herein, this Agreement is made under and will be governed in accordance with the laws of the Province of Ontario Canada (without regard to the principles of conflicts of law) and the parties hereby exclusively submit to the personal jurisdiction of the courts located in Ottawa, Ontario. All other disputes, controversies or differences between the parties arising out of or in connection with or in relation to this Agreement, shall, unless settled by amicable arrangements of the parties, be finally settled by arbitration in accordance with the rules of the International Chamber of Commerce, in Ottawa, Ontario, Canada. The procedural law of Ontario shall apply where the rules are silent. The arbitrator may award attorneys' fees and costs as part of his award. The award rendered in such arbitration shall be final and binding upon both parties and may be entered as a judgment in any court of competent jurisdiction. Notwithstanding any obligation under this Section, the provisions herein shall not be construed as prohibiting a party from applying to any court of competent jurisdiction for such injunctive or other provisional relief as may be necessary to protect that party from irreparable harm or injury or to preserve the status quo pending resolution of a dispute or controversy.

15. MARKETING

Espial may reference Customer as a customer in its marketing collateral, press releases and presentations provided that Customer must approve in writing such reference prior to its publication, which approval will not be unreasonably withheld or delayed.

16. SEVERABILITY

The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of competent jurisdiction, it shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

17. FORCE MAJEURE

The parties shall be relieved from their obligations for the duration of any act or event outside the control of the parties which would reasonably render the performance of their obligations impossible. However, the party so relieved of its obligations shall take all reasonable steps to prevent, correct or amend the act or event which renders its performance of obligations impossible.

Initials _____
Espial _____ Customer _____