

**GENERAL TERMS AND CONDITIONS**

(v01-Apr-21)

These General Terms and Conditions ("General T&Cs") are by and between the legal entity ("Company"), as further detailed in the applicable Quotation and/or Statement of Work, and sets forth the terms, conditions, rights and restrictions for which Nymi Inc., a Canadian Company located at 82 Peter Street, Suite 500, Toronto, ON M5V 2G5, Canada, and any of its subsidiaries and affiliates (collectively or individually referred to as "Nymi") is willing to sell devices ("Hardware") and license Nymi's proprietary software, firmware residing on such Hardware (collectively referred to as "Software") and third-party software, and provide maintenance and technical support services to Company (the Hardware and Software may be collectively referred to as the "Device(s)"). Unless otherwise governed by a signed contract between Company and Nymi, only these General T&Cs will apply to any Quotations made for Nymi's Devices. Nymi's provisioning of Devices, Services and Company's use thereof is expressly contingent upon Company's acceptance of these General T&Cs, "AS IS".

All additional and conflicting terms and conditions presented with or in any communication, including but not limited to those set forth in any P.O., except with respect to price, quantity, and location are hereby rejected, and shall be deemed *null* and *void*.

**1. Definitions.**

"**Active User(s)**" shall mean a single individual, which is synchronized and authorized to use one or more Devices.

"**API(s)**" shall mean the software application interfaces and workflow methods made generally available by Nymi in certain Devices to enable integration, implementation, and interoperability with third-party hardware and software.

"**Data Protection Act**" shall mean the EU General Data Protection Regulation (GDPR) (EU 2016/679), US Health Information Portability and Accountability Act (HIPAA) (29 U.S. Code § 1181, *et seq.*), US Gramm Leach Bliley Act (GLBA) (15 U.S. Code § 1681), and other applicable and like regulations, which seek to protect the processing and storage of personal information.

"**Documentation**" shall mean any installation guides, reference guides, operation manuals and release notes provided with the Devices in printed, electronic, or online form.

"**Fees**" shall mean the applicable fees due to Nymi, as detailed in a Quotation and/or SOW, payable by Company in consideration for Nymi providing to Company the Devices, Subscription Services, Maintenance & Support, Professional Services, and/or license grants, set forth herein.

"**Function(s)**" shall mean additional features or usages of the Devices for which Nymi may charge an additional fee.

"**Inactive User(s)**" are individuals, which Company has yet to authorize or no longer are authorized to use Nymi Devices and/or Services.

"**License Term**" shall mean the period of time for which Company may use and access the Software, as set forth herein, as further detailed in the applicable Quotation.

"**Maintenance & Support**" &/or "**M&S Services**" shall mean those maintenance and support services provided to the Company as further set forth in the then-current Nymi Solution Support Guide M&S Schedule, a copy of which may be reviewed at <http://www.nymi.com/termsandconditions>.

"**Nymi Enabled Application(s)**" &/or "**NEA(s)**" shall mean the applications, devices and services that Company has chosen to associate in order to interoperate with the Devices in order to enable biometric authentication.

"**Personal Data**" shall mean any information relating to an identified or identifiable natural person (hereafter a "Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

"**Professional Services**" shall mean (i) configuration and installation services performed by Nymi's personnel and/or agents for the benefit of Company as reflected in an applicable Statement of Work(s) and/or

Quotation(s); (ii) SOWs; or (iii) per a pre-configured serviced package; and/or (iv) training services provided by Nymi's personnel and/or agents for the benefit of Company's personnel, agents or representatives.

"**Purchase Order(s)**" & "**P.O.(s)**" shall mean a purchaser order document, in tangible or intangible form (*e.g.* .rtf, .pdf, formats, etc.), issued by Company, indicating Company's acceptance of the reference Quotation therein and these General T&Cs, without regards to any conflicting terms and conditions presented therein, except with respect to price, quantity, and location of Devices or Services.

"**Quotation**" &/or "**Quote**" shall mean the document under which Nymi offers for sale and licenses its Devices, Services, and other services.

"**Registered User**" shall mean a single user identification number ("ID") and password, which is authorized to use the Software.

"**Services**" shall mean collectively the M&S Services, Professional Services and Subscription Services.

"**Seats**" shall mean the total number of Active Users and Registered Users.

"**Shipment Date**" shall mean the date that Nymi ships the Devices to the location designated by the Company.

"**Software**" shall mean the applications residing on the Devices and/or provided to Company to be installed upon Company's controlled network system servers, as further described in the applicable Quotation.

"**Software Development Kit**" &/or "**SDK**" shall mean a set of software components, APIs, tools and Documentation that enables the Company to develop API(s) to aid in associating NEAs with the Devices.

"**Statement of Work(s)**" &/or "**SOW(s)**" shall mean the document(s), which detail Professional Services to be performed by Company and associated Professional Services Fees, for the benefit of Company in furtherance of these General T&Cs, which references these General T&Cs and is signed by duly authorized representatives of the Parties.

"**Subscription Services**" shall mean the ability for Company to use the Hardware in conjunction with the Software for the Function(s) licensed, up to the number of Seats, as further set described in the applicable Quotation.

"**Subscription Term**" shall mean the period of time commencing upon the Shipment Date, which Company is entitled to the Subscription Services so long as Company has not lapsed in the payment of all applicable Subscription Services Fees.

"**User(s)**" are collectively all Active and Inactive Users.

2. **Shipment & Delivery Terms.** Nymi ships all Devices hereunder, unless otherwise set forth in the applicable Quotation, *ExWorks Incoterms* (Toronto, Canada). Unless otherwise agreed to by the parties, all shipments will be made using the carrier designated by Nymi at Company's expense. For Software available for electronic download, delivery will be deemed to have

occurred once Nymi has made the Software available for download by Company or Company's designate agent or representative. Unless otherwise stated conspicuously on the face of the applicable Quotation, Nymi reserves the right to fulfill Quotations via multiple shipments. For all Devices shipped internationally, Company will be the importer of record.

3. License Grant & Restrictions. Subject to payment of the applicable Fees set forth in an applicable Quotation, Nymi grants Company a limited, non-exclusive, non-transferable, revocable license to use the Software and Third-party Materials in conjunctions with the Devices for Company's own internal business purposes in accordance with the Documentation for the Subscription Term and/or License Term, as applicable.

3.1 Evaluation License: Should the applicable Quotation indicate that the licenses granted therein are evaluation licenses, Nymi hereby grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Devices solely for internal testing, evaluation, proof-of-concept or demonstration purposes during the evaluation period set forth therein. If Company chooses not to purchase Devices and/or license the Software prior to the termination of such evaluation period, then the Devices must be returned to Nymi, at the Customer's expense *DDP Incoterm* (Toronto, Canada) and the Software must be removed from Company's system(s), as soon as practicable once the evaluation period as set forth therein has expired.

3.2 Pre-Released Devices: Should the applicable Quotation indicate that the licenses granted are for Devices not yet commercially available ("Pre-Released Devices"), then Nymi grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Pre-Released Devices and the associated Documentation, if any, as provided to Company by Nymi solely for internal evaluation purposes. Nymi may terminate Company's right to use the Pre-Released Devices at any time at Nymi's sole discretion. Company's use of the Pre-Released Devices is limited to thirty (30) calendar days unless otherwise set forth in the applicable Quotation. Company acknowledges and agrees that (i) Nymi has not promised or guaranteed to Company that the Pre-Released Devices will be announced or made available to anyone in the future; (ii) Nymi has no express or implied obligation to Company to announce or introduce the Pre-Released Devices; (iii) Nymi may not introduce Devices similar to or compatible with the Pre-Released Devices; and (iv) any use of the Pre-Released Devices or any Devices associated with the Pre-Released Devices is entirely at Company's own risk. During the term of these General T&Cs, if requested by Nymi, Company will provide feedback to Nymi regarding use of the Pre-Released Devices. Company will not disclose any features or functions of any Pre-Released Devices until Nymi makes the Pre-Released Devices publicly available.

3.3 SDK License: Nymi grants Company a limited, non-exclusive, non-transferable revocable license to use the SDK, together with applicable documentation, any sample code, and any sample applications provided with the SDK, to create APIs and NEAs solely in connection with Devices for Company's internal business purposes; provided that Company may not use the SDK in connection with developing a Device or service that competes with Devices.

3.4 Third-party Technology: The Devices may contain embedded third-party technology ("Third-party Materials"). Such Third-party Materials are licensed for use solely with the Devices. Third-party Materials are provided subject to the applicable third-party terms of use ("ToU"). Company agrees to abide by the ToU and/or to obtain any additional licenses that may be required to use the Third-party Materials.

3.5 License Restrictions: Company specifically agrees to limit the use of the Devices, Documentation, and Third-party Materials to those specifically granted in these General T&Cs for the Subscription Term as set forth in the applicable Quotation. Without limiting the foregoing, Company specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Software and/or Third-party Materials; (iii) remove any of Nymi's or

its vendors copyright notices and proprietary legends; (iv) attempt to circumvent, disable or defeat the limitations on Nymi's use of the Devices, which are encoded into the Software and/or Third-party Materials; (v) use the Devices and/or Third-party Materials (a) to infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) to violate any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; and/or (d) such that the total number of Seats used, the Functions purchased, and IDs issued are in excess of the total number allocated to Company, as reflected in the applicable Quotation; (vi) file copyright or patent applications that include the Devices and/or Third-party Materials or any portion thereof; and/or (vii) use the Third-party Materials within any other applications or products other than with the Devices.

3.6 License Audit Rights: Company agrees to maintain records reasonably required to verify its compliance with these General T&Cs, including but not limited to Customer's compliance with the restriction set forth in Section 3.6 "License Restrictions". Within fifteen (15) calendar days of receipt of a written request, Customer shall either (i) provide a certify report indicating the number of Seats being utilized; (ii) conduct a webinar to show Nymi the number of Seats being utilized; or (iii) allow Nymi to remotely access the Company's controlled network system servers.

4. Intellectual Property & Protection. In all instances, Nymi and its third-party, as applicable, retains all rights, title, and interest, including but not limited to all intellectual property rights such as copyright, patent, trademark, service mark, trade secret, and *suis generis* rights in and to the Software, SDK, and Third-party Materials, and all copies thereof including all derivations, modifications, and enhancements thereto. This Agreement does not provide Company with title or ownership of the Software, SDK, and Third-party Materials, but only a right of limited use.

## 5. Warranties.

5.1 Device Warranty: Nymi warrants, for Company's benefit alone, that (i) the Hardware will be free from material defects for a period twelve (12) months commencing upon the Shipment Date ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for during the Subscription Services Term ("Software Warranty Period"), as set forth in the applicable Quotations.

5.2 Professional Services Warranty: Nymi warrants that all Professional Services shall be performed in a professional and workmanlike manner, consistent with then-current industry standards ("Professional Services Warranty"). Customer's exclusive remedy for a breach of the Professional Services Warranty shall be, Nymi's option, either to (i) re-perform such Professional Services and/or training; or (ii) to provide Customer a refund for the allegedly defective Professional Services. Such remedy shall only be available if Company notifies Nymi, in writing, within ninety (90) calendar days of the completion of such Professional Services.

5.3 Return Merchandise Authorization: For Devices which become inoperable during the Hardware Warranty Period, it is the responsibility of the Company to contact Nymi, and to provide sufficient details on the nature of the defect or error. If Nymi's help desk support cannot remedy the defect or error, Nymi will issue a Return Merchandise Authorization ("RMA") to the Company. No Devices may be returned and no Hardware Warranty provided without a validly issued RMA from Nymi. Company is responsible for paying all fees and charges associated with the shipment of such Devices, including but not limited to all duties, taxes, shipping charges, freight cost, insurance, and import/export fee.

5.4 Warranty Exclusions: The warranties set forth herein do not apply to any failure of the Software or Hardware caused by (a) Company's failure to follow Nymi's installation, operation, or instructions, procedures, or Documentation; (b) Company's mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Devices; (c) modifications or repairs not authorized by Nymi; (d) use of the Devices in

combination with equipment or software not supplied by Nymi or authorized in the Documentation; and/or (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Nymi's reasonable control. Nymi cannot and does not warrant the performance or results that may be obtained by using the Devices, nor does Nymi warrant that the Devices are appropriate for Company's purposes or error-free. If during the Software Warranty Period or Hardware Warranty Period, a nonconformity is reported to Nymi, Nymi, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

5.5. **EXCLUSIVE REMEDY:** THE REMEDIES STATED IN THIS SECTION 5, "**WARRANTIES**", ARE COMPANY'S SOLE AND EXCLUSIVE REMEDY, AND NYMI'S SOLE LIABILITY FOR A BREACH OF WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 5, "**WARRANTIES**", NYMI DISCLAIMS ALL WARRANTIES ON MERCHANDISE SUPPLIED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **Maintenance & Support Services.** So long as Company has not lapsed in its payment Subscription Service Fees due hereunder then during the Subscription Term, Nymi shall provide Company (i) support services as further described in then-current Maintenance and Support Schedule, a copy of which may be reviewed <http://www.nymi.com/termsandconditions>; (ii) all Upgrades and Updates, at no additional charge ((i) and (ii) may individually or collectively be referred to as "M&S Services"). It is the responsibility of Company to obtain and install all upgrades and updates. Nymi reserves the right to withhold all M&S Services if Company (i) has lapsed in payment of the applicable Subscription Fees; (ii) failed to update the Software for over two (2) calendar year; or (iii) is seeking M&S Services for any Devices which had an initial commercial release date that exceeds three (3) calendar years from with date such M&S Services is being sought.

#### 7. **Prices; Payments & Taxes.**

7.1 **Prices:** The prices for Devices, Subscription Services, License Fees are set forth in the applicable Quotation(s); and the prices for Professional Services Fees are set forth in the applicable Statement of Work(s) and/or Quotation(s). Company acknowledges and agrees that all prepaid Fees are non-refundable, and no credits shall be made except as provided for in Section 5, "**Warranties**".

7.2 **Payment:** All invoices shall be due and payable within thirty (30) calendar days after invoice date. Unless otherwise specified in the applicable Quotation are amounts due are in U.S. Dollars. Nymi may impose late charges on overdue payments at a rate equal to the lesser of one and a half (1.5%) percent per month or the highest rate legally permitted by law, calculated from the date payment was due until the date payment is made and all expenses incurred in collection, including reasonable attorneys' fees.

7.3 **Over Deployment:** In the event that Nymi determines that Company has over deployed the Software such that it is utilizing more Seats then licensed hereunder, Nymi shall notify Customer in writing of any alleged discrepancy and Company agrees to pay such amounts within thirty (30) calendar days from receipt of such notification. The amount due shall be calculated from the initial time of over deployment and shall subject to interest at the lesser of one and a half (1.5%) percent per month or the highest rate permitted by law.

7.4 **Taxes:** All Fees are exclusive of and Company shall be liable for payment of all local state and federal sales, use, value-added, withholding, excise, tariffs, or personal property taxes, or other similar taxes or duties that are levied upon and related to the performance of obligations or exercise of rights under these General T&Cs. Therefore, all Fees may be subject to an increase in amounts equal to any such taxes Nymi may be required to collect or pay. Nymi may be required to collect and remit taxes from Company, unless Company provides Nymi with a valid tax-exemption certificate. Nymi will invoice Company for all such taxes based on Devices and/or Services

provided hereunder. In no event will either party be responsible for any taxes levied against the other party's net income.

#### 8. **Confidential Information & Data Rights.**

8.1 **Confidential Information.** "Confidential Information" shall mean any and all non-public technical, financial, commercial or other confidential or proprietary information, Services, Device roadmaps, pricing, software code, Documentation, techniques and systems, and any and all results of benchmark testing run on the Devices. Neither party will disclose Confidential Information to any third party except to the extent such disclosure is necessary for performance of these General T&Cs, or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction. Each party will use the same degree of care to protect Confidential Information as Company uses to protect Company's own confidential information but in no event less than reasonable care.

8.2 **Data Usage Rights.** During the Term, Company may provide to Nymi, certain data about Company's use of the Devices ("Company Data"). Nymi may use such Company Data in connection with the performance of its obligations under these General T&Cs. Company hereby agrees to strictly comply with any and all applicable Data Protection Acts with regards to the transfer, handling, storage and processing of Personal Data. Company acknowledges and agrees that should Company transfer Personal Data to Nymi, or other third-party vendors of Nymi or if the Company Data contains Personal Data, Company will serve as such Personal Data's "Controller", as set forth in the applicable Data Protection Acts. Further, in the event of a breach of Personal Data, attributed to Company's actions or inactions in furtherance of these General T&Cs, in violation of the Data Protection Acts, Company shall promptly (i) take all necessary steps to curtail such breach; (ii) undertake all necessary actions to mitigate damages; (iii) provide the necessary notification and remediation, as set forth in the applicable Data Protection Act; and (iv) aid and assist in Nymi's efforts to do the same, at Company's sole cost and expense.

8.3 **Collected Data Rights.** In furtherance of Nymi fulfilling its obligations under these General T&Cs, Nymi may collect certain data regarding Company's use of the Devices ("Collected Data"). With respect to any such Collected Data, solicited or unsolicited, so long as the Collected Data is not revealed, nothing stated herein or in the parties' dealings arising out of or related to these General T&Cs, restricts Nymi's right to derive, create, alter add-to or modify the Devices and Software, by using the information and know-how gained from analyzing such Collected Data. It is specifically acknowledged and agreed between the Parties that that no compensation, whatsoever, is nor shall be due to Company for any Data or use thereof. Further, Nymi shall have no obligation to incorporate into the Devices or Software, any suggestions or ideas provided by Company, directly or indirectly, related to the Devices and/or Software.

9. **Term & Termination.** The term of these General T&Cs shall be for the duration of the Subscription Term as set forth in the applicable Quotation; thereafter, these General T&Cs shall automatically renew on a year-to-year basis ("Term") until either party hereto provides at least thirty (30) calendar day prior written notice of termination to the other party, which shall be effective at the end of the then-current Term. After the initial Subscription Term, if a subsequent Quotation is not entered into between the parties, Company rights and obligations granted hereunder shall continue on a year-to-year basis for which Company hereby agrees to pay to Nymi the undiscounted then-commercial rate for Devices and Subscription Services, until such time that a subsequent Quotations is entered into between the parties or these General T&Cs are terminated. During Subscription Services Term either party may terminate these General T&Cs, immediately, upon providing written notice of material breach to the other party, if such other party's fails to cure such materially breaches within a period of thirty (30) calendar days following receipt of such written notice. Upon any termination of these General T&Cs, (i) all licenses granted hereunder shall immediately terminate, (ii) Company will either return the Software and Documentation, or with Nymi's prior written consent, destroy the Software and Documentation.



## 10. LIMITATION OF LIABILITY & EXCLUSION OF CONSEQUENTIAL DAMAGES.

**10.1 LIMITATION OF LIABILITY:** NYMI SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE UNLESS SUCH LOSS OR DAMAGE IS DUE TO NYMI'S NEGLIGENCE AND/OR WILLFUL MISCONDUCT. IF NYMI IS FOUND LIABLE, THE AMOUNT OF NYMI'S MAXIMUM LIABILITY FOR ANY AND ALL LOSSES AND/OR DAMAGES (IN CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES ACTUALLY PAID TO NYMI FOR THE RELEVANT NYMI DEVICES, SOFTWARE LICENSES OR SUBSCRIPTION SERVICE(S) WITHIN THE PRIOR SIX (6) MONTHS FROM WHICH SUCH CLAIM ARISES.

**10.2 EXCLUSION OF CONSEQUENTIAL DAMAGES:** EXCEPT FOR VIOLATIONS OF THE NYMI'S INTELLECTUAL PROPERTY RIGHTS, OR FOR MATERIAL BREACH OF SECTION 12 "COMPLIANCE, EXPORT CONTROLS, ANTI-CORRUPTION & ANTI-BRIBERY", IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, AND/OR INCIDENTAL DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. NOTWITHSTANDING THE FOREGOING NOTHING STATED HEREIN SHALL BE CONSTRUED AS TO LIMIT OR HINDER THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 INDEMNIFICATION".

**10.3 ESSENTIAL PURPOSE:** THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

**11. Indemnification.** For any claims based on Company's breach of Section titled, "License Grant and Restrictions", "Confidential Information & Data Usage Rights", "Compliance, Export Controls, Anti-Corruption & Anti-Bribery", and/or Company use of Devices, Company hereby agrees to indemnify, defend, and hold Nyimi harmless against such claim(s) at Company's expense and pay all damages that a court of competent jurisdiction finally awards, provided that Nyimi(i) promptly notifies Company in writing of the claim(s); (ii) allows Company to control the defense or any related settlement negotiations; and (iii) cooperates with Company in the defense of any such claim(s); provided, that, Company will not affect any settlement unless such settlement provides Nyimi with a full release.

**12. Compliance, Export Controls, Anti-Corruption & Anti-Bribery.** Company shall comply fully with all applicable laws, rules, and regulations including those of Canada, the United States, and any and all other jurisdictions globally, which apply to Company's business activities in connection with these General T&Cs. Company acknowledges that the Nyimi Devices and/or Nyimi Services are subject to United States Government export control laws. Company shall comply with all applicable export control laws, obtain all applicable export licenses, and will not export or re-export any part of the Devices and/or Services to any country in violation of such restrictions or any country that may be subject to an embargo by the United States Government or to End-Users owned by, or with affiliation to, such countries embargoed by the United States Government. Company will not make or permit to be made any improper payments and will comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Organization for Economic Co-operation and Development ("OECD") Convention on Anti-Bribery, and other applicable local anti-bribery laws and international anti-bribery standards. Company represents and warrants that it will not pay any commission, finder's fee, or referral fee, or make any political contribution, to any person in connection with activities on behalf of Nyimi.

**13. U.S. Government Use Notice.** The Software is a "Commercial Item", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial

Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End-Users (a) only as Commercial Items and (b) with only those rights as are granted to all other End-Users pursuant to the terms and conditions herein. For some components of the Software as specified in the Exhibit, Attachment, and/or Schedule, this Software and Documentation are provided on a RESTRICTED basis. Use, duplication, or disclosure by the United States Government is subject to restrictions set forth in Subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable.

**14. Relationship with Third Parties.** The relationship between the parties established by these General T&Cs is that of independent contractors, and nothing contained in these General T&Cs shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other; (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking or franchise; (iii) allow Company to create or assume any obligation on behalf of Nyimi for any purpose whatsoever; or (iv) allow any Company, End-User, or other person or entity not a party to these General T&Cs to be considered a third-party beneficiary of these General T&Cs.

## 15. General Provisions.

**15.1 Entire Agreement & Integration:** These General T&Cs and all attachments, addendums, exhibits, schedules, Statements of Work, and applicable Quotations, which are incorporated by reference herein, or which reference these General T&Cs and are signed by authorized represent of the parties hereto shall constitute the entire agreement between the parties on the subject matter hereof and supersede all prior discussions, agreements and understandings of every kind and nature between the parties. Neither party shall be deemed the drafter of these General T&Cs. No modification of these General T&Cs shall be effective unless in writing and signed by both parties. All additional and conflicting terms and conditions presented with or in any communication, including but not limited to Company's P.O., except with respect to price, quantity, and location specified in a P.O., are hereby rejected, and shall be deemed null and void.

**15.2 Severability & Survival:** The illegality or unenforceability of any provision of these General T&Cs shall not affect the validity and enforceability of any legal and enforceable provisions hereof. Should any provision of these General T&Cs be deemed unenforceable by a court of competent jurisdiction then such clause shall be re-construed to provide the maximum protection afforded by law in accordance with the intent of the applicable provision. Any provision contained herein, which by its nature should survive the termination of these General T&Cs shall survive, including, but not limited to, the Section titled "Confidential Information & Data Usage Rights", "Limitation of Liability & Exclusion of Consequential Damages", "Indemnification", "Compliance, Export Controls, Anti-Corruption & Anti-Bribery", and "General Provisions".

**15.3 Assignment:** Neither party may assign any rights or delegate any obligations hereunder, whether by operation of law or otherwise, except in the case of a sale of either party's business whether by merger, sale of assets, sale of stock or otherwise, or except with the prior written consent of the other party, which consent will not be unreasonably withheld. These General T&Cs bind the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

**15.4 Applicable Law & Disputes:** The parties specifically agree that the U.N. Convention on the International Sale of Goods, the Uniform Computer Information Transactions Act ("UCITA") shall not apply to any and all actions performed by either party hereunder in furtherance of these General T&Cs.

If the Company is a legal entity established within Canada, then these General T&Cs and all resulting claims and/or counterclaims shall be

governed, construed, enforced and performed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference and/or regard to its conflicts of laws principles. Each party hereby submits to the exclusive jurisdiction of the courts located in the City of Toronto and hereby waives any objections to venue with respect to actions brought in such courts.

If the Company is a legal entity established within the United States, Central or South America than these General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced, and performed in accordance with the laws of the State of Delaware, U.S.A., without reference and/or regard to its conflicts of laws principles. Any such dispute arising out of or in connection or associated with this these General T&Cs and shall be referred to and finally resolved by arbitration in accordance with the Rules of the International Chamber of Commerce (“ICC”) then in force; provided, however, that either party may, at its sole discretion, seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect its proprietary or confidential information. The language used in the arbitral proceedings, and the governing language of these General T&Cs, shall be English. Unless otherwise mutually agreed upon in writing by authorized representatives of the parties hereto, the site of the Arbitration shall be in Boston, Massachusetts, U.S.A. Judgment upon the award of the arbitration may be entered in any court having jurisdiction thereof.

If the Company is a legal entity established outside of North, Central or South America than these General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced, and performed in accordance with the laws of the United Kingdom, without reference and/or regard to its conflicts of laws principles. Any such dispute arising out of or in connection or associated with this these General T&Cs and shall be referred to and finally resolved by arbitration in accordance with the Rules of the International Chamber of Commerce (“ICC”) then in force; provided, however, that either party may, at its sole discretion, seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect its proprietary or confidential information. The language used in the arbitral proceedings, and the governing language of these General T&Cs, shall be English. Unless otherwise mutually agreed upon in writing by authorized representatives of the parties hereto, the site of the Arbitration shall be in London, United Kingdom, U.K. Judgment upon the award of the arbitration may be entered in any court having jurisdiction thereof.

15.5 Force Majeure: Neither party shall be liable for any failure or delay in performing Services or any other obligation under this VAR Agreement, nor for any damages suffered by the other or an End-user by reason of such failure or delay, which is indirectly or directly caused by an event beyond such party’s foreseeable control including but not limited to strikes, riots, natural catastrophes, terrorist acts, pandemic, endemic, epidemic, outbreak(s), governmental intervention, or other acts of God, or any other causes beyond such party’s reasonable control (“Force Majeure Event”). The Party seeking relief under this Section 17.5 “Force Majeure” (“Impacted Party”) shall provide to the other Party hereto notice within fifteen (15) calendar days of a Force Majeure Event, stating a good-faith estimate of the expected time and effect of such Force Majeure Event (“Impact”). The Impacted Party shall use commercially reasonable efforts to mitigate the Impact of such Force Majeure Events. In the event such Impact continues for more than forty (45) days from receipt of such notice, then either Party hereto may terminate this VAR Agreement, without penalty or liability, by providing no less than thirty (30) calendar days prior written notice.

15.6 Waiver: Each party agrees that the failure of the other party at any time to require performance by such party of any of the provisions herein shall not operate as a waiver of the rights of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

15.7 Notices: All notices under these General T&Cs shall be in English and shall be in writing may be sent to a party’s headquarters labelled “Attn: Legal”, sent either by (i) registered airmail; (ii) overnight delivery through a reputable third-party courier; or (iii) electronic mail (email) sent “read receipt” and “delivery receipt”. With respect to Nymi’s receipt of electronic notice set forth in (iii) above, such notice shall only be deemed received once Company receives a confirmation of “read receipt” and “delivery receipt”. Further, such notice shall only be valid if sent to [legal@nyimi.com](mailto:legal@nyimi.com).

#### Nymi’s Notification Information

Nymi Inc., Attn: Legal  
82 Peter Street, Suite 500,  
Toronto, ON M5V 2G5, Canada  
email: [legal@nyimi.com](mailto:legal@nyimi.com)

{End}  
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