

# Terms & Conditions

## - IR Optimizer



These Terms and Conditions set out the provisions pursuant to which the Subscriber is entitled to access and use the Technology under the terms of the Agreement between the Subscriber and IR Optimizer.

The following Terms and Conditions apply to the use of the Technology in all forms by the Subscriber and apply to any and all of the Subscriber's Representatives. By accessing and using the Technology, the Subscriber is considered to have understood and agreed to all Terms and Conditions contained herein. The Subscriber may not continue to use and access the Technology if the Subscriber chooses at any time not to accept and abide by the following Terms and Conditions governing its relationship with IR Optimizer.

In consideration of the following mutual promises and covenants, the Parties agree to the following terms and conditions:

### 1. DEFINITIONS

1.1. For the purposes of this Agreement:

"Agreement" means the Subscription Agreement entered into between the Parties on the Effective Date and the Terms and Conditions contained herein that are incorporated into the Subscription Agreement by reference and may be updated from time to time;

"Confidential Information" means all information contained in any form whatsoever that is not generally available to or used by the public, that is acquired or developed by or on behalf of either of the Parties in connection with this Agreement, and includes business information, Personal Information, and in the case of IR Optimizer includes the intellectual property rights described in Section 6;

"Customized IRO Presentation Viewer Fees" means those amounts payable to IR Optimizer by the Subscriber for customized branding of the IRO Presentation Viewer. The amount of the fee will depend on the level of customization and will be set out in the Subscription Agreement;

"Default" means an act of default as set out in Article 5 of this Agreement;

"Effective Date" means the date agreed to and listed within the Subscription Agreement between the Parties;

"Excess Upload Fee" means the amount payable to IR Optimizer by the Subscriber per additional Presentation uploaded to the Portal, over-and-above the Upload Allowance set out in the Subscription Agreement;

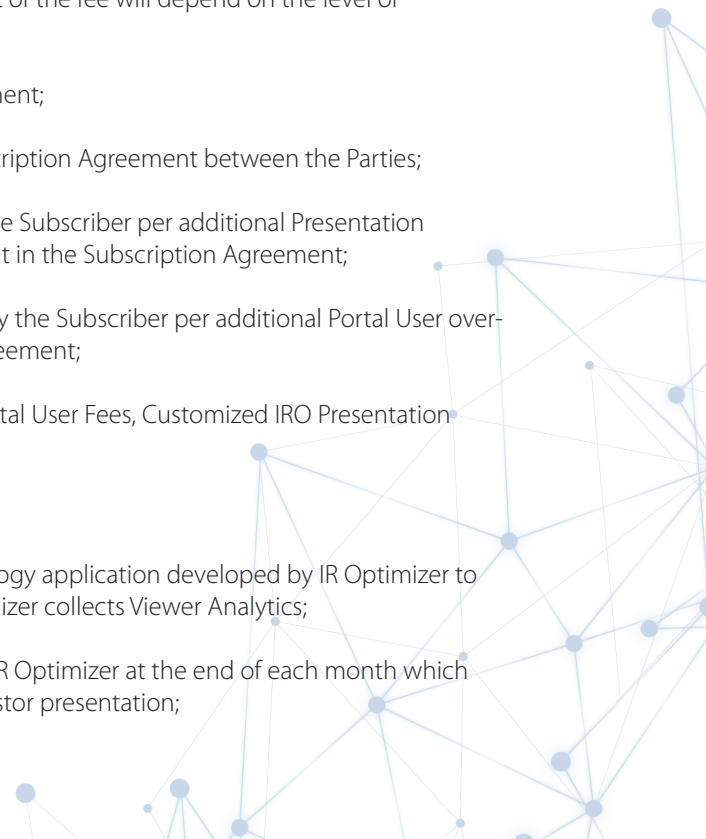
"Excess Portal User Fee" means the amount payable to IR Optimizer by the Subscriber per additional Portal User over-and-above the Portal User Allowance set out in the Subscription Agreement;

"Fees" consists of the Service Fees, the Excess Upload Fees, Excess Portal User Fees, Customized IRO Presentation Viewer Fees and interest for overdue accounts, as applicable;

"IR Optimizer" means IR Optimizer Inc.;

"IRO Presentation Viewer" means the web based information technology application developed by IR Optimizer to allow individuals to view the Presentations seamlessly while IR Optimizer collects Viewer Analytics;

"IRO Monthly Analytics Report" means a tailored report prepared by IR Optimizer at the end of each month which summarizes the Viewer Analytics and trends for the Subscriber's investor presentation;



“Parties” shall mean IR Optimizer and Subscriber, collectively;

“Personal Information” means information about a Viewer that is subject to any Privacy Laws;

“Portal” means the web based information technology application developed by IR Optimizer and accessible by Portal Users, providing (1) the ability to generate and view customizable charts and tables for Viewer Analytics for specific Presentations and types of Presentations; (2) access to the archived IRO Monthly Analytics Report; and (3) access to the email feature to address questions posed by Viewers of the Presentations;

“Portal User(s)” means those Representative(s) authorized by Subscriber to access the Portal;

“Portal User Allowance” means the amount of Portal Users included in the Service Fees;

“Presentations” means the Subscriber’s investor presentations, quarterly presentations, AGM presentations, investor day presentations, investor conference presentations, acquisition and divestiture presentations and any other corporate presentations uploaded to the Portal and accessible to Viewers through the IRO Presentation Viewer;

“Privacy Laws” means any current, amended or future federal, provincial or other applicable statute, law or regulation of any governmental or regulatory authority in Canada relating to the collection, use, storage and/or disclosure of information about any other individual from whom personal information is collected, including the Personal Information and Protection of Electronic Documents Act (Canada);

“Representative” means any employee, contractor or consultant of the Subscriber;

“Services” means the services provided by IR Optimizer pursuant to this Agreement, including access to the Portal, Monthly Analytics Reports, Viewer access to Presentations in digital form through the IRO Presentation Viewer, and support, training, and professional services;

“Service Fees” means those amounts payable by the Subscriber to IR Optimizer for the Services set out in the pricing schedule in the Subscription Agreement;

“Service Level Commitment” means a service level commitment to Subscriber by IR Optimizer contained in Article 10 of this Agreement;

“Technology” means the information technology applications developed by IR Optimizer, namely the IRO Presentation Viewer and the Portal to collect, store and report detailed Viewer Analytics;

“Term” means the period beginning on the Effective Date and ending upon expiry or termination of the Agreement in accordance with the terms of the Agreement;

“Upload Allowance” means the amount of Presentation uploads included in the Service Fees;

“Viewer” means an identifiable individual who views a Presentation;

“Viewer Analytics” means information and analytics on the Viewer and their viewing preferences including: total views, total Viewers, Viewer type (e.g. institutional investor or retail investor), Viewer engagement score using our proprietary algorithm, viewing time per slide, percent of slides viewed and views by city.

## 2. SERVICES

- 2.1. IR Optimizer will provide Services to the Subscriber, as follows:
  - (a) IR Optimizer will make the Portal available to Subscriber and Portal Users. Reasonably promptly after the Effective Date, IR Optimizer will make available the training and other services set out in the Subscription Agreement.
  - (b) After the Effective Date, reasonably promptly upon request by Subscriber or the Representatives, IR Optimizer will make the Subscriber's Presentations accessible to Viewers through the IRO Presentation Viewer.
  - (c) Reasonably promptly upon request by Subscriber, IR Optimizer will discontinue access to the Portal by any or all Portal Users.
  - (d) IR Optimizer will use reasonable commercial efforts to achieve the Service Level Commitments throughout the Term of this Agreement.
- 2.2. Subscriber may not use the Services or its access to the Technology or any of IR Optimizer's intellectual property rights described in Section 6 whether for itself or for any other person, to research, develop or create, or to facilitate any of the foregoing by itself or any other person, any service or technology or product that competes with the Portal, IRO Presentation Viewer or the Services or any other service provided through the Technology, or that is similar thereto.

## 3. FEES

- 3.1. In consideration of the provision of the Services by IR Optimizer under Section 2, Subscriber shall pay to IR Optimizer the Fees described in the Subscription Agreement. The Fees shall be payable in the currency specified in the Subscription Agreement.
- 3.2. Subscriber shall pay all applicable taxes on the Fees.
- 3.3. Fees are calculated as the total of the Service Fees, Excess Upload Fees, Excess Portal User Fees, Customized IRO Presentation Viewer Fees, and may increase with 30 days prior written notice. Unless specified otherwise in the Subscription Agreement under Payment Terms, Fees are calculated annually.
- 3.4. IR Optimizer reserves the right to increase Service Fees in the event of a material increase in Viewers. Any increase will be agreed to in writing by IR Optimizer and Subscriber.

## 4. BILLING

- 4.1. IR Optimizer shall invoice Subscriber for the Services as per the Subscription Agreement. Fees shall be payable within 30 days of receipt of a valid invoice from IR Optimizer. Invoices shall be sent in accordance with the Service Fees set out in the Subscription Agreement.
- 4.2. In the event that any of Subscriber's service charges remain unpaid for more than 30 days (from the stated invoice date), in addition to any other remedies, IR Optimizer reserves the right to (1) discontinue services under this Agreement, without notice to Subscriber, and/or (2) alter the billing under this Agreement should Subscriber wish to continue receiving services from IR Optimizer.
- 4.3. Subscriber shall be responsible to pay all collection or legal fees caused by late payments.

## **5. DEFAULT AND TERMINATION**

- 5.1. The following events are considered to be acts of Default by a party where the Default is not cured within the relevant cure period:
- (a) a party fails to perform or observe any of its material obligations under this Agreement (other than achievement of Service Level Commitments, governed by Section 5.3) and the failure continues unremedied for 5 days following receipt of a notice of the failure from the other party;
  - (b) a party becomes insolvent, commits any act of bankruptcy (as set out in the Bankruptcy and Insolvency Act (Canada)) or makes a proposal under the Companies Creditors Arrangement Act (Canada); or
  - (c) a party fails to make payment when due to the other party, and such failure continues unremedied for 30 days following receipt of notice of Default from the other party.
- 5.2. Upon Default, the non-defaulting party may do any or all of the following:
- (a) it may immediately terminate this Agreement by providing the other party with notice of termination and a brief explanation of the default present; and
  - (b) it may exercise any of its other rights and remedies provided for hereunder or otherwise available to it at law or in equity.
- 5.3. IR Optimizer reserves the right, upon 30 days' written notice, to suspend access to the Portal and IRO Presentation Viewer for non-payment of Fees. Upon termination for Default by the Subscriber, the right of Subscriber, Portal Users and Viewers to access or use the Technology immediately ceases.
- 5.4. Any termination for Default shall be only by written notice of the terminating party to the other party setting out the details of the Default.
- 5.5. In the event of termination, IR Optimizer shall reimburse Subscriber an amount equivalent to a prorated portion of the Subscription Fee based on the number days from the date of the termination to the expiry of the Term of the Agreement.
- 5.6. The Term of the Agreement will continue, unless otherwise agreed by Subscriber and IR Optimizer in writing.

## **6. INTELLECTUAL PROPERTY**

- 6.1. The Subscriber's Presentations are the exclusive property of the Subscriber. The Subscriber grants IR Optimizer a non-exclusive, non-transferable license to use, reproduce, modify, display and publish Subscriber's content in connection with IR Optimizer's performance of the Services and for other reasonable uses as necessary within the performance of the Services.
- 6.2. IR Optimizer owns and shall own all intellectual property rights in the Technology, including the look and design of the Portal, the IRO Presentation Viewer, the IRO Monthly Analytics Report, the database designs, the architecture of all information technology, and any elements of such technology that are intrinsic to the Technology.
- 6.3. All of IR Optimizer's information, data, knowledge, know-how, processes, techniques, protocols, plans, ideas, research, trade secrets, concepts, data, research, work product, intellectual property, theories, designs, manuals, software, hardware and equipment used by IR Optimizer to perform the Services and carry out

its obligations hereunder shall remain the absolute property of IR Optimizer and shall not be directly or indirectly disclosed or used by or through the Subscriber.

- 6.4. All inventions, ideas, discoveries, concepts, methodologies, processes, formulae, techniques, models, "know-how", improvements, innovations, developments, designs, drawings, computer programs, compilations and copyrightable material developed, conceived or otherwise generated by IR Optimizer in the performance of the Services shall be the absolute property of IR Optimizer.
- 6.5. Subscriber acknowledges that each Portal User is required to agree to IR Optimizer's Terms of Use prior to being permitted to access and use the Portal. Subscriber acknowledges that if at any time it ceases to agree with these Terms and Conditions, it must notify IR Optimizer immediately, and its access to all Services will be terminated.
- 6.6. Subscriber and its Representatives do not have the right, and agree not to, reverse engineer, recreate, copy, create derivative software from, distribute, transfer or otherwise deal with the Technology or any part of it.

## **7. CONFIDENTIALITY**

- 7.1. Each party acknowledges that it would be damaging to the other party if its Confidential Information were used other than as permitted under this Agreement or disclosed to or obtained by third parties. Each party shall make all commercially reasonable efforts during the term of this Agreement and thereafter to prevent the other party's Confidential Information from being disclosed to or obtained by any person or entity for any purpose except as described in this Agreement. Each party's efforts will not be less than those that it takes to prevent disclosure of its own Confidential Information.
- 7.2. It is not a breach of Section 7.1 to disclose Confidential Information required to be disclosed by law, judicial or arbitration process or by governmental authorities.
- 7.3. Each party will collect, use, store, disclose, dispose of and otherwise handle Personal Information collected or accessible by either party under this Agreement in accordance with all applicable Privacy Laws.
- 7.4. Upon the expiration or termination of this Agreement, each party shall return, or at the disclosing party's request, destroy, the Confidential Information of the other party. All rights and obligations regarding Confidential Information shall survive termination.
- 7.5. The termination of this agreement shall not affect any accrued rights and obligations of the parties hereto.

## **8. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY**

- 8.1. Subscriber represents to IR Optimizer as follows:
  - 8.1.1. Subscriber is not running its business for any improper or illegal purpose;
  - 8.1.2. Subscriber shall cooperate in all respects with IR Optimizer in the disclosure and provision of any information required for IR Optimizer to complete the Services or to obtain payment and shall respond to all communication with IR Optimizer in a timely manner;
  - 8.1.3. Subscriber shall pay all invoices as soon as they become due;
  - 8.1.4. This Agreement represents a legal, valid, binding and enforceable agreement between the Parties.
- 8.2. IR Optimizer covenants, represents and warrants to Subscriber that as of the date of this Agreement, to its knowledge, there are no pending or threatened suits, actions or proceedings against against IR Optimizer

alleging that the Technology or the Services infringe any trade-mark, industrial design, patent, trade secret or copyright in Canada or the United States of America and, to its knowledge, the Technology or the Services do not infringe any trade-mark, industrial design, patent, trade secret or copyright in Canada or the United States of America.

- 8.3. Except as specifically set forth in this agreement, IR Optimizer makes no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service. IR Optimizer does not represent or warrant that (a) the use of the Service will be uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the Service will meet the requirements or expectations of Subscriber or Portal Users, (c) any stored data will be accurate or reliable, (d) all errors or defects will be corrected, or (e) the Service or the server(s) that make the Service available are free of viruses or other harmful components. Except as specifically set forth in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantable quality, merchantability, fitness for a particular use or purpose, or non-infringement of third party intellectual property rights, are disclaimed to the maximum extent permitted by applicable law by IR Optimizer.
- 8.4. IR Optimizer shall not have any responsibility for the accuracy, quality, integrity, legality, reliability or appropriateness of the Presentations.
- 8.5. Subscriber shall indemnify IR Optimizer from any and all damages, liabilities, costs, losses, expenses or legal fees arising out of any claim, demand, or action by a third party arising out of any breach of Subscriber's responsibilities or obligations, representations or warranties under this Agreement. IR Optimizer shall promptly notify Subscriber in writing of any third party claim or suit. Subscriber shall have the right to fully control the defense and any settlement of such claim or suit.
- 8.6. The Services and the work product of IR Optimizer are sold "as is". In all situations and circumstances, the maximum liability of IR Optimizer and its director(s), employees, contractors or affiliates to the Subscriber for damages for any and all causes whatsoever, and the Subscriber's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the total fees payable by Subscriber to IR Optimizer in the 12 months immediately preceding the event which caused the damage or injury, less any amounts owing to IR Optimizer by the Subscriber. In no event shall IR Optimizer be liable for any lost data or content, lost profits, business interruptions or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the services provided by IR Optimizer, even if IR Optimizer has been advised of the possibility of such damages. The exclusions and limitations in this section shall apply regardless of whether any action is brought in contract or in tort, (including breach of warranty, negligence and strict liability), or fundamental breach and/or failure of essential purpose of this agreement or of any remedy contained herein and shall survive the expiration, termination or repudiation of this Agreement.
- 8.7. Subscriber and IR Optimizer hereby waive a jury trial in any suit, action or claim arising from or in connection to this Agreement.

## **9. GENERAL**

- 9.1. Neither party shall be liable to the other for any delay or failure to perform due to fire, flood, earthquake, acts of God, acts of war, riots, civil disorder, strikes, lock-outs or labor disruptions, the failure of telecommunications systems (without limiting the obligations of IR Optimizer in respect of disaster recovery set out in Article 11) or any other cause whether similar or dissimilar beyond its reasonable control (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event only for so long as such Force Majeure Event continues and such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.



- 9.2. Notices and other communications required or permitted under this Agreement shall be in writing and addressed to the Parties at the last known addresses of the Parties. Notices shall be sent by delivery (written receipt required), by facsimile transmission (machine confirmation to be retained by sender) or by scanned PDF document by email and the party sending such notice shall telephone to confirm receipt. Either party may change its address or facsimile number for notification purposes by giving the other party notice of the new address or facsimile number and the date upon which it will become effective. A communication shall be deemed to have been received as of the next business day following its transmission by facsimile if transmitted after 4 p.m. Mountain Time.
- 9.3. This Agreement may be executed in counterparts, all of which when executed and delivered, shall constitute one single agreement between the parties. This Agreement may be executed by facsimile or by scanned PDF.
- 9.4. Except as expressly set out herein, nothing contained in this Agreement shall create or imply any agency relationship between the parties, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties.
- 9.5. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected, and each such provision shall be valid and enforceable to the extent granted by law.
- 9.6. This Agreement constitutes the entire agreement between the parties relating to the Services and supersedes all prior contracts, agreements and understandings between the parties hereto pertaining to the subject matter of this agreement. There are no representations, warranties, collateral agreements or conditions affecting this transaction other than as are expressed or referred to herein in writing.
- 9.7. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein, excluding their rules governing conflicts of laws. The courts situated in the City of Calgary shall have exclusive jurisdiction over all disputes. The parties agree that jurisdiction and venue in such courts is appropriate and irrevocably attach to the jurisdiction of such courts.
- 9.8. The terms, conditions, covenants, agreements, obligations and provisions contained in this Agreement shall be binding upon and shall operate for the benefit of the parties signing this Agreement and their respective heirs, executors, administrators, personal representatives and successors and assigns.
- 9.9. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent excusing the breach shall be in writing and signed by the party to be charged by such waiver or consent. A waiver by a party of any provision of this Agreement shall not be construed as a waiver of any further breach of the same or of any other provision of this Agreement.

## **10. SERVICE LEVEL COMMITMENTS**

- 10.1. IR Optimizer shall make best efforts to ensure that its servers and other information technology systems under its control that allow access to the Portal are operating at a rate of 99 percent of potential uptime each calendar month. As a result of a number of factors which may not be in IR Optimizer's control, despite making best efforts, IR Optimizer cannot guarantee that this rate will always apply.
- 10.2. Potential uptime is the number of hours in a particular calendar month less planned downtime of 12 hours per calendar month. Attempts will be made by IR Optimizer to ensure that planned downtime will occur

between Fridays at 10 p.m. and Mondays at 5 a.m. Mountain Time. IR Optimizer will use this planned downtime to implement any changes to the Technology and will use reasonable precautions to ensure that the changes, once implemented, will not disrupt the Services. IR Optimizer will seek to provide 24 hours prior notice to its Subscribers of planned downtime. IR Optimizer is not responsible however if a Subscriber does not receive notice of this downtime for any reason.

- 10.3. IR Optimizer will provide help desk response to Portal Users by way of phone or email during IR Optimizer's head office business hours. IR Optimizer may also provide help desk technical support through an online service, such as an interactive software interface providing instant messaging and remote access assistance, subject to the capabilities of the Subscriber's system.

## **11. SECURITY STANDARDS**

- 11.1. IR Optimizer data is stored at SSAE 16 Type II certified locations.
- 11.2. The IR Optimizer Deal Room software is protected by 256 bit SSL security certificates for data encryption, Network firewalls and anti-virus and intrusion applications, and Application firewalls that actively monitor user behavior to ensure such behavior is within acceptable parameters of application use. Any unusual behavior is flagged and the user session is terminated automatically.
- 11.3. IR Optimizer understands the importance of implementing effective security measures and will, on an ongoing basis, evaluate security issues with respect to the servers and the Portal and use appropriate best practices in the IT industry to address them promptly.