

EMBAARQHR TERMS AND CONDITIONS

These Terms and Conditions (“Terms and Conditions”, “Agreement”) are binding on and apply to customers (“Customer”, “you”, “your”) using the Platform provided by Business Sherpa Group Inc., its parent company, subsidiaries or its Affiliates (“BSG”, “us”, “we”), from the time that BSG provides you with access to the Platform and related Services. By purchasing a subscription to our Services + Platform, you acknowledge that you have read, understood, and agree to be bound by these Terms and Conditions, along with any and all policies incorporated by reference, such as our Privacy Policy at www.embaarqhr.com.

1 Definitions.

“**Account**” means the account created through the EmbaarqHR Platform and used by Customer (“**Customer Account**”) as part of and to access the Services provided by BSG.

“**Affiliate**” means any entity which directly or indirectly controls, i.e., having direct or indirect ownership or control of more than 50% of the voting interests of the subject entity, is controlled by, or is under common control with the subject entity.

“**Applicable Law**” means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any governmental or regulatory authority that apply to the parties.

“**Customer**” or “**Client**” means the individual or entity who purchases a Subscription under an applicable Subscription Plan or uses the Services.

“**Customer Data**” means all electronic data or information uploaded or transmitted by the Customer in the process of using the Services.

“**EmbaarqHR Platform**” or “**Platform**” means the Platform offered by BSG through which Customers will access the Services.

“**EmbaarqHR Services**” or “**Services**” shall have the meaning ascribed to it under Section 2.1.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. For greater certainty, Personal Data does not include information that is de-identified, anonymized, or aggregated.

“**Register**” means the point at which the Customer creates an Account through the EmbaarqHR Platform.

“**Subscription Plan**” means the payment plans under which BSG provides Customer the Services, available through the EmbaarqHR Platform.

“**Subscription Term**” means the period set out under the Subscription Plan.

“**Quote**” means the purchasing document generated by BSG for the Client’s purchases of Services that are executed by the Parties from time to time, specifying, among other things, a description of the Services purchased by the Client and the pricing terms applicable thereto. Quotes may also be referred to as order forms, statements of work, work orders, or other similar terms.

“**Support Services**” means the support, maintenance and training services provided or to be provided by BSG, or a third-party service provider engaged by BSG, to the Customer.

“**BSG Technology**” means the technology and intellectual property used in providing the products and services offered by BSG, including computer software, programs, connectors, websites, networks, and equipment. BSG Technology does not include third-party applications or other software programs and technology provided or made available to Customer by third parties.

“**Term**” means the period from the effective date of the first Subscription Term for the first Service purchased, to the date of termination or expiration of the final Subscription Term.

“**Users**” means any person authorized by Customer to access the Customer account and use the Services under a valid Subscription Plan, including Customer’s employees, agents, representatives, contractors, and consultants, as applicable.

“**BSG**” means Business Sherpa Group Inc., its employees, contractors, agents, officers, Affiliates, and any other individual authorized by BSG dealing in the matters under these Terms and Conditions.

“**Website**” means the website owned and operated by BSG at <https://www.EmbaarqHR.ca>.

2 Service.

- 2.1 **Description of Service.** The EmbaarqHR service consists of a technology platform providing a cloud-based human resources (“HR”) platform, in concert with HR service offerings delivered by BSG staff (as defined in “The Quote”), for small and medium sized business (both public and private) to manage their business’ HR needs covered by the platform (the “Services”). BSG grants the Customer a limited, non-exclusive, non-transferable, non-assignable, and non-sublicensable worldwide right to access and use the EmbaarqHR Platform and Services during the Term solely for its internal business purposes. Any new features or tools which are added to the current Platform and related Services shall also be subject to these Terms and Conditions. BSG reserves all other rights. Customer shall not use the Platform or any Services that are not set forth in the Subscription Plan they have Registered for through their Customer Account and accepted by BSG, except as otherwise provided in these Terms and Conditions.
- 2.2 **Provision of Service.** BSG shall make the EmbaarqHR Platform and associated services available to Customer and its designated Users during the Term. Customer may subscribe for Services for the number of Users affiliated with Customer Account through Customer Account by selecting and purchasing a Subscription Plan. Customer agrees that its purchase of a Subscription Plan is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by BSG with respect to future functionality or features. Customer acknowledges and agrees that Customer has not relied on any future availability of any service offerings, technology, or enhanced or updated features or functionality.
- 2.3 **Independent Contractor.** The relationship between the Customer and BSG is, for all purposes, one of independent contractors and nothing in this Agreement will constitute or create any partnership, joint venture, master-servant, employer-employee, principal-agent or any other relationship apart from that expressly stated in this Agreement. BSG acknowledges and agrees that it has no authority to and will not exercise or purport to exercise or hold itself out as having any authority to enter into or conclude any contract or to undertake any commitment or obligation for, in the name of or on behalf of the Customer.

3 Account.

- 3.1 **Customer Account.** BSG shall enable a Customer Account for Customer to manage their Subscription Plan and related Services. BSG shall allow Customer to create a username and password for Customer Account. Customer must Register for a Customer Account by providing a first name, last name, phone number, and valid email address, and any other information required by BSG. BSG may, in its sole and absolute discretion, reject an application for an Account for any reason, and BSG reserves the right to refuse service to anyone for any reason at any time.

Customer shall maintain the confidentiality of all usernames, passwords, access, and account information (“**Customer Login**”) under their control. Except to the extent caused by BSG’s breach of this Agreement, including its obligations under Section 8 (Confidentiality), BSG is not responsible for unauthorized access to any Account.

Customer shall contact BSG promptly if (i) the Account information is lost, stolen, or disclosed to an unauthorized person; (ii) Customer reasonably believes that the Account has been

compromised, including any unauthorized access, use, or disclosure of account information; or (iii) any other breach of security in relation to Customer Login or BSG's Platform or Services that may have occurred or is reasonably likely to occur. BSG will not be liable for any loss, damage, or claims, whether instigated by Customer or otherwise, directly or indirectly resulting from your failure to maintain the security of Customer Login or Customer Account. Customer is solely responsible and liable for the acts, omissions and defaults arising from its Users use of Customer Accounts in the performance of obligations under these Terms and Conditions as if they were Customer's own acts, omissions, or defaults.

3.2 **Customer Account Requirements.** To Register for a Customer Account and receive a Customer Login, you must

(i) have attained the age of majority in your jurisdiction where you reside.

Persons under the age of majority in their jurisdiction or are less than 18 years of age ("**Minor**") may not create or use Customer Accounts.

3.3 **Communication.** You acknowledge that BSG may use the Personal Data you provide to BSG at the time of Registration or as updated by you from time to time to communicate with you on matters related to the EmbaarqHR Platform and Services, and for other purposes as set out in BSG's Privacy Policy www.EmbaarqHR.ca.

4 Use of the Service.

4.1 **BSG Responsibilities.** BSG shall: (i) maintain the integrity of the Platform and related Services; (ii) provide certain Support Services to Customer and Users, at no additional charge; and (iii) use commercially reasonable efforts to make the Platform and Services available 24 hours a day, 7 days a week, except for (each of the following being an "**Exception**"): (a) planned downtime (of which BSG shall give at least 8 hours' notice via the Service and which BSG shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. EST Friday to 3:00 a.m. EST Monday); or (b) any unavailability caused by circumstances beyond BSG's reasonable control, including without limitation, acts of God, acts of government, government declared states of emergencies, government restrictions on businesses, epidemic, pandemic (including COVID-19), plague, flood, fire, earthquakes, tornado, tsunami, hurricane, civil unrest, war, insurgency, armed insurrection, civil war, riots, acts of terror, security breaches, strikes or other labour problems (other than those involving BSG employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within BSG's possession or reasonable control, and denial of service attacks.

Inquiries from a Customer via telephone or email will be responded to within one business day.

- 4.2 **Customer Responsibilities.** Customer is responsible for all activities that occur in Customer Accounts and for Users' compliance with these Terms and Conditions. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use the Platform and Services in compliance with the Use Guidelines described in Section 0; (iii) use reasonable efforts to prevent unauthorized access to, or use of, the Platform and Services, and notify BSG promptly of any such unauthorized access or use, including any such improper or unauthorized use by Users; (iv) accept and abide by these Terms and Conditions and/or ensure that Users affiliate with Customer Account accept and abide by these Terms and Conditions; and (v) comply with all Applicable Laws in using the Platform and Services.
- 4.3 **Use Guidelines.** Customer shall use the Platform and related Services, and ensure that Users use the Platform and Services, solely for their internal business purposes during the Term as contemplated by these Terms and Conditions and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or related Services available to any third party, other than to Users or as otherwise contemplated by these Terms and Conditions; (ii) send spam or otherwise duplicative or unsolicited messages in violation of Applicable Laws; (iii) send or store infringing, obscene, pornographic, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party intellectual property or privacy rights; (iv) send or store Malicious Code (whether intentional or inadvertent); or (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein. You are responsible for all activity and content uploaded by you or your Users through the EmbaarqHR Platform, including without limitation, photographs, images, videos, graphics, written content, code, information, and other data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited in connection with your Account.
- 4.4 **Monitoring & Enforcement.** BSG reserves the right, but does not assume the obligation, to monitor and investigate violations of these Terms and Conditions or misuse of the Platform. Failure to comply with or breach of these Terms and Conditions shall be deemed by BSG to constitute a material breach of the terms and conditions upon which You are permitted to use the Platform, and, at any time, may result in BSG taking any and all actions in its sole discretion, including with immediate effect based on BSG's reasonable judgment, up to and including:
- (i) warnings;
 - (ii) suspending or terminating access to the Services;
 - (iii) removing, or prohibiting access to, or modifying content that violates this Policy or any agreement that Evidence has with You for use of the Service; and/or
 - (iv) legal proceedings against You for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.

Without notice to You (unless required by law BSG may report any activity that BSG suspects violates any law or regulation to appropriate law enforcement authorities, or regulators. BSG's reporting may include disclosing Your account information and/or Your User Content/Data. BSG may also cooperate with law enforcement agencies or regulators to help with the investigation

and prosecution of illegal conduct by providing information related to alleged violations of these Terms and Conditions. BSG excludes and disclaims all liability for actions taken in response to breaches of these Terms and Conditions. The responses described in these Terms and Conditions are not limited, and BSG may take any other action it reasonably deems appropriate.

5 Fees & Payment.

- 5.1 **User Fees.** Customer shall pay all fees specified under its Subscription Plan, accessed through Customer Account and agreed between BSG and the customer. The customer shall pay the Fee to BSG upon receipt of the invoice. Any amounts not paid by the customer when due to BSG shall be subject to interest charges at the rate of 1.5% per month on any amount standing after 30 days, or the highest interest rate allowable by law (whichever is less), payable monthly.
- 5.2 **Pre-Authorized Debits.** Plooto facilitates Pre-Authorized Debit payments (“PAD”) on BSG’s behalf. The customer is responsible for maintaining accurate and up-to-date PAD information and an appropriate balance in any account used for PAD to accommodate payment, and Plooto will have no liability to the customer for any issues arising as a result of the customer’s failure to do so. In the event that the Fee is unsuccessfully debited from the customer’s bank account, the customer shall be responsible for payment of any charges or other penalties charged to BSG by Plooto or an applicable financial institution as a result of the unsuccessful debit, and to pay BSG the amount of the charge incurred (“Failed Transaction Fee”).
- 5.3 The customer’s use of the Plooto service is governed by its Terms and Conditions as outlined on its website: <https://www.plooto.com/terms-and-conditions>, and its Privacy Policy available at: <https://www.plooto.com/privacy-policy>.
- 5.4 The customer hereby acknowledges that they have carefully reviewed Plooto’s Terms and Conditions and Privacy Policy at the above links, and agrees that the customer shall be legally bound by and subject to such terms.
- 5.5 Except as otherwise provided all fees are quoted and payable in Canadian Dollars. Except as otherwise specified in these Terms and Conditions, under the Subscription Plan: (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable, and (iii) fees paid are non-refundable.
- 5.6 **Subscription Plans.** Customer’s Subscription Plan for the Services and status thereof is specified in Customer Account. Subject to Section 0, Customer may not reduce Customer’s commitment under the Subscription Plan specified in Customer Account during the Subscription Term. If Customer wishes to change or amend the Subscription Plan they are under, then Customer must notify BSG before the start of the next Subscription Term for the applicable Service; any changes will be effective at the start of that next Subscription Term.

- 5.7 **Suspension or Termination for Non-Payment.** If payment is not provided by Customer, BSG reserves the right to suspend or revoke access to the Services, without liability to BSG, until any outstanding amounts are paid in full. Your Account(s) will be reactivated upon payment of any outstanding amounts including the payment for the next billing cycle. If an outstanding balance remains unpaid on your Account for more than sixty (60) days, BSG reserves the right to terminate your Account.
- 5.8 **Effect of Suspension.** If BSG suspends Customer's ability to access the Services, (i) Customer remains responsible for all fees and charges for suspended Services and for other Services to which Customer continues to have access, if any; and (ii) Customer will not be entitled to any compensation or credits for any period of suspension, unless suspension was due to BSG's error or omission.
- 5.9 **Taxes.** Unless otherwise stated, BSG 's fees do not include any direct or indirect local, provincial, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on BSG 's net income or property. If BSG has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer.

BSG is responsible for making any remittances that might be required for GST/HST, or under the Income Tax Act (Canada), the Employment Insurance Act (Canada), the Workplace Safety and Insurance Act (Ontario) or any other similar statute of Canada or a province or territory thereof, in connection with the performance of the Services or the remuneration received by BSG or the employees, contractors and agents of BSG. BSG hereby covenants and agrees that such remittances will be made in strict accordance with its statutory obligations.

- 5.10 **Annual Increases.** Following the first Subscription Term, Service fees may be subject to increases at the level of then-current pricing under the Subscription Plans, which will become effective beginning upon the first day of each subsequent Subscription Term. BSG shall notify Customer of any increase at least 30 days prior to Customer's subsequent Subscription Term. Such notice may be in the form of notice commonly used by BSG to communicate with Customer. If Customer objects to the increase, then Customer may elect to not renew its Subscription Plan. Customer acknowledges that the following do not constitute fee increases: (i) additional fees for any upgrade or an additional Service that Customer orders, and (ii) expiration of any discount or incentive programs to which Customer was previously entitled.
- 5.11 **Payment Disputes.** Customer must assert any payment dispute in writing to BSG's accounting department at embaarqhr@businesssherpagroup.com within 15 days after the due date of the invoice giving rise to the dispute. BSG shall not exercise its suspension or termination rights or apply interest on late payments if Customer disputes the applicable charges reasonably and in good faith and provides reasonable cooperation to resolve the dispute.

6 BSG Personnel

- 6.1 **BSG's Personnel.** Where BSG provides Services through the use of BSG's employees, contractors or agents ("Assigned Personnel"), including where such Assigned Personnel are part of the EmbaarqHR Platform, the terms of the Business Sherpa Group MSA apply to the use of such Assigned Personnel. The most current version of the MSA can be reviewed by clicking on the hyperlink locate [here](#). By continuing to access or use the Services you agree to all the terms of such new version

7 Proprietary Rights.

- 7.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, BSG reserves all right, title, and interest, including all intellectual property rights, in and to the Platform and Services and all technologies related thereto, including any and all algorithms or processes developed by BSG and all derivatives, modifications, or improvements of or to any of the foregoing made by or for BSG, whether or not created or developed in connection with the Platform or Services. No rights are granted to Customer or Users hereunder other than as expressly set forth herein.
- 7.2 **Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Platform and Services; (ii) frame or mirror any content forming part of the Platform or Services; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Platform or Services, in whole or in part; (iv) access the Platform or Services in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or Services; (v) circumvent or attempt to circumvent security measures implemented by BSG to ensure the integrity and privacy of the Platform and Services; or (vi) disrupt the use of the Services or Platform by any other Customer.
- 7.3 **Customer Data.** As between BSG and Customer, Customer or User, as applicable, exclusively owns all rights, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under these Terms and Conditions. Subject to Section 7.4, BSG shall not access Customer Accounts.
- 7.4 **Usage Data.** BSG may collect certain data and information regarding Customer and/or Users use of the Services, including, but not limited to, data involving functions within the Platform and Services most used by Customer or Users or other items ("**Usage Data**"). BSG may use and exploit Usage Data for any purpose in connection with operating, improving and supporting the Platform and Services and any machine learning technology that underlies the Services ("**Usage Data Purpose**"). Notwithstanding any term in these Terms and Conditions to the contrary, Customer hereby consents to the use of such Usage Data for the Usage Data Purpose, and Customer represents and warrants it has obtained the necessary consent and legal right from Users (if applicable) to do the same, and Customer irrevocably assigns all rights, title and ownership of the Usage Data to BSG, and Customer hereby waives any applicable non-assignable rights to such Usage Data to the extent Customer is legally permitted to do so, and Customer represents and warrants it has obtained the necessary consent and legal right from Users (if applicable) to do the same. BSG represents and warrants that it shall not use the Usage Data for any other purpose other than the Usage Data Purpose.

7.5 **Suggestions.** BSG shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Platform or related Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Platform and Services.

8 Privacy Rights.

8.1 **Privacy Obligations.** Notwithstanding any provisions, representations and warranties to the contrary, BSG and Customer acknowledge that there is a possibility that the Customer Data and Usage Data may contain Personal Data, the use of which data is subject to various privacy laws, including all provincial, state, federal and international laws and regulations and provincial, state, federal and national government agency orders and decrees to which Customer or User(s) may be subject ("**Privacy Laws**"), as well as certain restrictions imposed on the Personal Data by the data subjects or other third party data providers. BSG and Customer agree to strictly abide by all such restrictions pertaining to the Personal Data, as they are promulgated and applied, currently and in the future. If BSG or Customer's use (whether directly or indirectly) of the Personal Data is contrary to any Privacy Law, or contrary to any of the restrictions set forth in these Terms and Conditions, the non-violating party shall have the right to: (a) terminate this Agreement for cause if such breach has not been cured within five (5) days of receipt by the violating party of written notice from the non-violating party, and (b) pursue any other legal and equitable remedies. For greater certainty, BSG's Privacy Policy governs BSG's collection, use, disclosure, retention and disposal of Personal Data, and forms part of these Terms and Conditions.

9 Confidentiality.

9.1 **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of Customer or User disclosed to BSG, whether orally or in writing, or whether disclosed purposefully or inadvertently, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the Customer Data. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Customer or User; (ii) was known to BSG prior to disclosure by Customer or User without breach of any obligation owed to Customer or User; (iii) is received from a third party without breach of any obligation owed to Customer or User; or (iv) was independently developed by BSG without any use of or reference to Customer's Confidential Information.

- 9.2 **Confidentiality.** BSG shall implement and maintain commercially reasonable and appropriate technical, administrative, and physical safeguards and security methods designed to prevent any unauthorized release, access to or publication of Customer Data, Confidential Information, or Personal Data. BSG shall implement processes and maintain procedures designed to comply with Applicable Laws. These Terms and Conditions are Customer's instructions for storing Customer Data, and BSG shall not process Customer Data for any other purpose. BSG may use subcontractors to facilitate its obligations under these Terms and Conditions. BSG shall use commercially reasonable measures to ensure that such subcontractors implement and comply with reasonable security measures in handling any Customer's Data, Personal Data, or Confidential Information. BSG shall not disclose or use any Confidential Information for any purpose outside the scope of these Terms and Conditions, except with Customer or User's prior written permission, subject to Section 0.
- 9.3 **Compelled Disclosure.** If BSG is compelled by law to disclose Confidential Information of Customer or User, including encrypted Customer Data, it shall provide Customer or User, as applicable, with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Customer or User's cost, if Customer or User wishes to contest the disclosure.

10 Warranties & Disclaimers.

- 10.1 **Mutual Warranties.** Each Party represents and warrants to the other Party that (i) it has the authority to enter into this Agreement and perform its obligations hereunder; (ii) the Agreement does not conflict with any other agreement entered into by it; and (iii) it does not conduct business for any unlawful purpose.
- 10.2 **Customer Warranties.** Customer represents and warrants that for any Customer Data or Personal Data controlled by it, any Personal Data controlled by Users affiliated with Customer Account, or any other Customer Data or Personal Data provided or transmitted by Customer or User to BSG, whether advertent or otherwise, Customer or User, as applicable, has obtained the necessary consent or legal right to provide or transmit such data.
- 10.3 **BSG Warranties.** BSG represents and warrants that (i) it will provide the Platform and Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the functionality of the Platform and Services will not be materially decreased during the Term; (iii) the Platform and Services will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (iv) it owns or otherwise has sufficient rights in the Platform and Services to grant to Customer the rights to use same granted herein; and (v) the Platform and Services do not infringe any intellectual property rights of any third party.

10.4 **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE DOCUMENTATION, PLATFORM, AND SERVICES ARE PROVIDED “AS IS,” AND BSG MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE DOCUMENTATION OR THE SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY BSG. BSG DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT THE OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

11 Indemnification

11.1 **Indemnification by Customer.** Subject to these Terms and Conditions, Customer shall defend, indemnify and hold BSG harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against BSG by a third party alleging that the Customer Data, or Customer's use of the Platform and/or Services: (i) infringes the intellectual property rights of such third party, or (ii) has harmed such third party because Malicious Code was uploaded or inputted by Users, (iii) electronic data or information was uploaded or inputted by Users without such third party's authorization or permission, or (iv) violates any Applicable Law, or has otherwise harmed a third party; provided, that BSG (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases BSG of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

Further, the CLIENT shall indemnify BSG, its officers, directors, servants, contractors and agents against all costs, charges and expenses, including any amounts paid to settle any action or satisfy any judgment, reasonably incurred by BSG in respect of any civil, criminal or administrative action or proceeding to which it is made a party by reason of the performance of the Services pursuant to this Agreement, if (a) BSG acted honestly and in good faith, and (b) in the case of a criminal or administrative action or proceeding, BSG had reasonable grounds for believing that the conduct was lawful.

- 11.2 Indemnification by BSG. BSG agrees to indemnify and save harmless the Customer, its officers, directors, servants, contractors and agents from:
- i) any and all liability for any tax, assessment, penalty, interest or any other amount of any kind whatsoever, arising under one or more of the Income Tax Act (Canada), the Employment Insurance Act (Canada), the Workplace Safety and Insurance Act (Ontario) or any other similar statute of Canada or a province or territory thereof, that may arise in consequence of the Corporation entering into, or making payments to BSG under this Agreement; and
 - ii) any and all costs, charges, legal fees and expenses reasonably incurred by BSG or such persons as aforesaid in connection with defending any civil, criminal, statutory or administrative action, proceeding or other remedy with respect to any such alleged liability relating to payments to BSG under this Agreement.
- 11.3 **Notice.** In the event of any claim subject to indemnification pursuant to this Agreement, the party seeking indemnification hereunder agrees to: (a) provide written notice to the indemnifying party of any claim for indemnification hereunder promptly after such party has knowledge of such a claim, (b) permit the indemnifying party to assume full responsibility for the investigation of, preparation for, and defense of, any claim for which indemnification is being sought, provided however that no indemnifying party shall settle any claim that includes any admission of liability of an indemnitee without that party's prior written consent (c) reasonably assist the indemnifying party, at the indemnifying party's reasonable expense, in the investigation of, preparation for, and defense of, any such claim, and (d) not compromise or settle any such claim without the indemnifying party's prior written consent, which shall not be unreasonably withheld or delayed if such compromise or settlement requires it to take any action, refrain from taking any action.

12 Limitation of Liability.

- 12.1 **Limitation of Liability.** In no event will either party be liable for any incidental, special or consequential damages of any kind or nature whatsoever occurring. Except for claims subject to indemnification under Section 11 and claims for breach of a party's confidentiality obligations, under no circumstances will damages assessed against BSG for any reason whatsoever exceed the total aggregate fees actually paid to BSG in the twelve months preceding the event which resulted in a claim.
- 12.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL BSG HAVE ANY LIABILITY TO CUSTOMER OR USER(S) FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL OR EXEMPLARY DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER OR USER(S) HAS OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12.3 **Limitation of Claims.** EXCEPT WITH RESPECT TO CLAIMS RELATING TO THE MISUSE OF CONFIDENTIAL INFORMATION OR PERSONAL DATA, CUSTOMER SHALL NOT BRING ANY CLAIM RELATING TO THE AGREEMENT MORE THAN TWO YEARS AFTER THE EVENTS GIVING RISE TO THE CLAIM OCCURRED.

- 12.4 **General.** THESE EXCLUSIONS AND LIMITATIONS APPLY EVEN IF THE REMEDIES ARE INSUFFICIENT TO COVER ALL OF THE LOSSES OR DAMAGES OF CUSTOMER OR USERS. WITHOUT THESE LIMITATIONS THE FEE FOR THE PLATFORM AND SERVICES WOULD BE HIGHER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY AND THE PARTIES MAY HAVE ADDITIONAL RIGHTS.

13 Term and Termination.

- 13.1 **Term and Automatic Renewal.** The Term of this Agreement begins on the effective date of the Subscription Term when Customer purchases the Services through the Platform and ends on the date of termination, cancellation or expiration of the Subscription Term. At the end of the then-current Subscription Term, each Subscription Plan will automatically renew for an additional one-year period. Customer may not cancel the Subscription under Section 12.3 below unless: (a) Customer provides written notice of non-renewal and cancellation under Section 12.3 to BSG at least thirty (30) days before the expiration date of the then-current Subscription Term, or (b) BSG provides written notice of non-renewal to Customer at least 90 days before such expiration date. Customers must submit notice of non-renewal or cancellation to embaarqhr@businesssherpagroup.com. Unless another payment method has been specified, BSG will charge Customer's payment information on file for the Subscription Plan for the renewal term.
- 13.2 **Termination for Cause.** BSG may terminate the Agreement or any affected Services by notice to Customer or Users (i) if Customer or User materially breaches their obligations under the Agreement and, if the breach is capable of cure, fails to cure the breach within 30 days of the date of notice of breach; or (ii) upon BSG ceasing to operate in the ordinary course of business, making an assignment for benefit of creditors, or becoming the subject of any bankruptcy, liquidation, dissolution, or similar proceeding that is not resolved within 60 days of filing. Material breach by Customer or User includes the following: (1) Customer or User is unable to resolve any issue leading to suspension of Customer or User's Services to BSG's reasonable satisfaction within 30 days following notice of suspension, or (2) Customer or User's use of the Services is in violation of Applicable Law. Customer will not be entitled to any refunds of any payments to BSG, pro rata or otherwise. Customer and User acknowledge and agree that BSG shall not be liable for costs, fees, damages, lost profits, or the like, as a result of termination or any reason whatsoever under this Section 0.
- 13.3 **Cancellation.** Customer may cancel the Account and any affiliated User Accounts and terminate this Agreement at any time through the Customer Account. Upon such cancellation, Customer shall pay to BSG all undisputed amounts due and payable hereunder, if any. Customer will not be entitled to any refunds of any payments to BSG, pro rata or otherwise.
- 13.4 **Outstanding Fees.** Termination or cancellation shall not relieve Customer of the obligation to pay any fees accrued or payable to BSG prior to the effective date of termination.

- 13.5 **Return and Retention of Customer Data.** Within sixty (60) days after the effective date of termination, Customer, and Users with Accounts affiliated with Customer's Account, may download and close their Account(s). After such 60-day period, BSG shall have no obligation to maintain or provide access to Customer Data and shall thereafter, delete all Customer Data in its systems.
- 13.6 **Surviving Provisions.** The following provisions of these Terms and Conditions shall survive any termination or expiration of these Terms and Conditions: Sections 5 through 13.

14 General Provisions.

- 14.1 **Relationship of the Parties.** These Terms and Conditions do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 14.2 **Verification of Identity.** In the event that you or User requests Support Services, or other Services, from BSG, which require the verification of your identity and right to any Account, BSG reserves the right to request documentation from you or User to determine or confirm Account ownership. Such documentation may include, without limitation, a scanned copy of government issued photo identification, the last four digits of the credit card used for payment under the Account, or your phone number on file, if any.
- 14.3 **No Third-Party Beneficiaries.** Except as otherwise expressed herein, there are no third-party beneficiaries under these Terms and Conditions.
- 14.4 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under these Terms and Conditions shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 14.5 **Severability.** If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms and Conditions shall remain in effect.
- 14.6 **Assignment.** Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the BSG (not to be unreasonably withheld). Notwithstanding the foregoing, BSG may assign this Agreement in its entirety, without consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by Customer to assign its rights or obligations under these Terms and Conditions is in breach of this Section shall be void and of no effect. Subject to the foregoing, these Terms and Conditions shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 14.7 **Dispute Resolution.** Except for Claims related to the infringement of intellectual property rights, all disputes or controversies as between Customer and BSG arising out of or relating to these Terms and Conditions, any BSG Service and its marketing ("**Disputes**") shall be resolved first by good faith negotiations between the parties. If the Parties cannot resolve the Dispute informally within sixty (60) days, then upon notice by either Party to the other, all Disputes shall be finally settled by arbitration in accordance with the rules and regulations of the Arbitrations Act (Ontario) for the conduct of arbitrations in effect at the date of commencement of such arbitration, based upon the following:
- (a) the arbitration tribunal shall consist of one arbitrator appointed by each party who is qualified by education and training to pass upon the particular matter to be decided, together with a third arbitrator appointed by the first two-selected arbitrators;
 - (b) the arbitrators shall be instructed that time is of the essence in proceeding with their determination of any dispute, claim, question or difference and, in any event, the arbitration decision must be rendered within thirty (30) days of the submission of such dispute to arbitration;
 - (c) the arbitration decision shall be given in writing and shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto; and
 - (d) judgment upon the decision rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the decision or any order of enforcement thereof, as the case may be.
- 14.8 **Governing Law and Jurisdiction.** These Terms and Conditions will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to principles of conflicts of laws. Customer agrees that each Party may bring claims against the other only in its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.
- 14.9 **Equitable Relief.** Customer acknowledges that damages may be an inadequate remedy if Customer or the Users violate the obligations under these Terms and Conditions, and BSG shall have the right, in addition to any other rights it may have, to seek injunctive relief without any obligation to post any bond or similar security.
- 14.10 **Notices.** BSG shall communicate announcements of general interest by email or by posting on its Website. BSG shall provide Customer with legal notices by email provided by Customer. Customer shall immediately notify BSG if Customer's email address for notice changes. Except as otherwise specified in these Terms and Conditions, all notices must be in writing to embaarqhr@businesssherpagroup.com.

- 14.11 **Entire Agreement, Amendment and Conflict.** This Agreement and all documents incorporated herein by reference including without limitation and including BSG’s Privacy Policy (located at www.EmbaarqHR.ca) constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic, or oral communications, representations, agreements, or understandings between the Parties with respect thereto. BSG reserves the right to update and change the Terms and Conditions by posting updates and changes to the Website. We strongly encourage you to check the Terms and Conditions from time to time for any updates that may impact you. If you do not accept the updates, you must stop using the Services. Except to the extent expressly specified otherwise, if there is any conflict between these Terms and Conditions and any of the other Agreement documents or policies, then the following order of precedence applies: (i) any addendum negotiated between the Parties, (ii) these Terms and Conditions, (iii) other documents referenced in these Terms and Conditions.
- 14.12 **Supplemental Terms.** Supplemental terms may apply to certain Services, such as rules for activities or promotions, and such supplemental terms will be disclosed to you in connection with the applicable Services. Supplemental terms are in addition to, and shall be deemed a part of, these Terms. Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable Services.

