

**THIS SUBSCRIBER AGREEMENT**

Date: \_\_\_\_\_

BETWEEN

**Ontario Road Builders Association  
(Hereinafter called the “ORBA”)**

- And -

**Hereinafter called the “Subscriber”**

**WHEREAS:**

A. ORBA members are deemed “permitted recipients” through an agreement with the Ministry of Transportation for Ontario (“MTO”), to obtain from the MTO “Driver’s Licence Status Information” and MTO 3-year driver abstracts (the “**Requester Agreement**”);

B. For the purposes of this Subscriber Agreement, Driver’s Licence Status Information consists of the number of the licence, the status of the licence, the class of the licence, air brake endorsement (if applicable) and prescription lenses condition;

C. The Subscriber requires access to Driver’s Licence Status Information and to three-year driver’s abstracts (the “Driver’s Abstracts”) for its own drivers on a periodic basis, and at a reasonable cost for the purpose of verifying its drivers’ licence status and maintaining its safety programs; and

D. Pursuant to the Requester Agreement, ORBA members are authorized to obtain Driver’s Licence Status Information and Driver’s Abstracts for those driver licence numbers provided to it, via ORBA’s agent and subject to the conditions contained in the Requester Agreement.

**NOW THEREFORE ORBA AND THE SUBSCRIBER** agree as follows:

**Scope of Services**

1. The Subscriber will provide to ORBA via web site access a driver roster indicating licence numbers, the required licence class for that driver’s licence number, air brake endorsement information, and prescription lenses information. The Subscriber will provide this information to ORBA in accordance with the procedure set out in Schedule “A” attached to this Subscriber Agreement.
2. The Subscriber agrees that in order for drivers to be eligible for this service, they must be employed by the Subscriber, or are party to an independent contractor agreement with the Subscriber.

3. On a quarterly basis (approximately every three months) ORBA, via its agent will submit to MTO, those driver's licence numbers provided by the Subscriber, and request that MTO provide ORBA, via its agent with the current Driver's Licence Status Information for each driver's licence number ("Status Report").
4. Upon receipt of the Driver's Licence Status Information data from MTO, ORBA, via its agent will determine if there are any data discrepancies between the Subscriber's roster information and the driver's status in the MTO driver database. The subscriber will be notified of any changes in the status of licence, class of licence, applicable endorsement or vision conditions by means of a "Change of Status Report".
5. The Subscriber assumes full responsibility for ensuring the driver roster information on file with ORBA is accurate and complete at the time of the quarterly status check and when ordering MTO driver abstracts.
6. The Subscriber agrees to participate as a subscriber for a minimum term of one year, during which the subscriber's full complement of drivers will undergo the quarterly licence status check (four status checks per driver). The Subscriber agrees to pay to ORBA the fees set out in Schedule "A" for quarterly licence status checks.
7. The Subscriber may request MTO 3-year detailed Driver's Abstracts for any driver listed on the Subscribers driver roster.
8. The Subscriber agrees to pay (using a credit card) the fees set out in Schedule "B", as amended from time to time, for obtaining a MTO Driver's Abstract.
9. The Subscriber agrees that it will use the Driver's Licence Status Information and the Driver's Abstract received for the sole purpose of verifying its drivers' licence status and maintaining its driver safety programs, which are the Authorized Use(s) described in Schedule "C".
10. The Subscriber represents and agrees that it is, and at all times throughout the term of this Subscriber Agreement will remain, in full compliance with all applicable laws, including all privacy laws, including, but not limited to the *Personal Information Protection and Electronic Documents Act, 2000, c.5*, with respect to its receipt of the Driver's Licence Status Information and Driver's Abstracts.
11. The Subscriber acknowledges that, pursuant to section 7.7 of the Requester Agreement, ORBA and its agent must ensure that no information obtained from the MTO is transmitted, stored, or retained by ORBA or a Subscriber outside Canada. The Subscriber agrees that it will not transmit, store, or retain any information obtained pursuant to this Subscriber Agreement outside of Canada.
12. The Subscriber agrees that it will not do, or fail to do, anything that would cause ORBA or its agent to be in breach of the Requester Agreement.
13. The Subscriber will not be entitled to Driver's Licence Status Information or driver abstracts through ORBA and its agent if an ORBA invoice in relation to these services has not been paid.

## **Non-Disclosure Agreement**

14. The Subscriber agrees to enter into, and provide an original to ORBA of a Permitted Recipient Non-Disclosure Agreement, in the form attached hereto as Schedule “C” (the “Non-Disclosure Agreement”).

15. The Subscriber agrees to fully comply with the Non-Disclosure Agreement and to advise ORBA forthwith of any breach or incident of non-compliance with the Non-Disclosure Agreement. A breach by the Subscriber of the Non-Disclosure Agreement shall constitute a breach by the Subscriber of this Subscriber Agreement.

16. The Subscriber acknowledges that, pursuant to the Requester Agreement, ORBA and its agent are obligated to ensure that the Subscriber complies with the Non-Disclosure Agreement. The Subscriber agrees that, in light of that obligation, ORBA has the right to take whatever measures, including, but not limited to, inspecting the books and records of the Subscriber, which ORBA or its agent, in its sole discretion, believes necessary to satisfy itself that the Subscriber has complied with the Non-Disclosure Agreement.

## **Term**

17. This Subscriber Agreement is effective as of the date first set out above (“**Effective Date**”) and shall continue in force for an initial term of twelve (12) months. This Subscriber Agreement may be extended for further periods each a minimum of twelve (12) months, on terms and conditions agreed to by the ORBA and the Subscriber.

## **Representation and Warranties**

18. ORBA and its agent will use their best efforts to ensure that the Driver’s Licence Status Information it provides to the Subscriber is accurate, complete, and up-to-date. However, ORBA and its agent make no representations or warranties with respect to the Driver’s Licence Status Information, including any representations or warranties that any Driver’s Licence Status Information will be accurate, complete, up-to-date, or free of errors or omissions, in whole or in part, or that any Driver’s Licence Status Information will be fit for any purpose.

19. The Subscriber acknowledges and agrees that ORBA and its agent does not represent or warrant that the Driver’s Licence Status Information is accurate, complete, up-to-date, or free of errors or omissions, in whole or in part, or that any Driver’s Licence Status Information will be fit for any purpose.

20. ORBA and its agent make no representations or warranties with respect to the Driver’s Abstract, including any representations or warranties that any Driver’s Abstract is accurate, complete, up-to-date, or free of errors or omissions, in whole or in part, or that any Driver’s Abstract will be fit for any purpose.

21. Notwithstanding subscribing to this service, the Subscriber and its drivers remain fully responsible for complying with all the requirements of, including, but not limited to, the driver licensing requirements of the *Highway Traffic Act*, R.S.O. 1990, c. H8. Subscribers remain fully responsible for complying with the requirements of all privacy laws, including, but not limited to, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5.

## **Limitation of Liability**

22. ORBA and its agent shall have no liability of any kind to the Subscriber, including, but not limited to, negligence, product liability or breach of contract whether or not a fundamental breach or breach of a fundamental term of this Subscriber Agreement. This limitation of liability is intended to be, and will be considered to be, exhaustive in scope, and the Subscriber acknowledges that this is the only basis on which ORBA and its agent will provide Driver's Licence Status Information or a Driver's Abstract to the Subscriber.

23. In no event will ORBA or its agent be liable for any damages or claims, including any claims for the loss of profits or other incidental or consequential damages, arising out of the Subscriber's use of, or inability to use or access, any Driver's Licence Status Information or a Driver's Abstract, or from delays, or from failure to supply Driver's Licence Status Information or a Driver's Abstract, or from inaccurate, incomplete or out-of-date information contained in any Driver's Licence Status Information or a Driver's Abstract.

24. The Subscriber releases and forever discharges ORBA and its agent, and their officers, employees, agents and contractors, from any claims relating to the delivery of the Driver's Licence Status Information or a Driver's Abstract by ORBA to the Subscriber.

## **Indemnification**

25. The Subscriber agrees to indemnify and hold harmless ORBA, and its officers, employees, directors, agents or contractors, from and against any and all claims and damages that may occur, by reason of:

- a. any breach or deemed breach of this Subscriber Agreement by the Subscriber; or
- b. any breach or deemed breach of the Non-Disclosure Agreement by the Subscriber; or
- c. any negligent, improper or unauthorized use or dissemination of Driver's Licence Information or a Driver's Abstract by the Subscriber or by its directors, officers, partners, employees, contractors or agents; or
- d. inaccurate or out-of-date information contained in the Driver's Licence Information or a Driver's Abstract provided to the Subscriber by ORBA via its agent; or
- e. any act or failure to act by the Subscriber which causes ORBA or its agent to be in breach of the Requester Agreement.

## **Termination**

26. This Subscriber Agreement shall be terminated by the occurrence of any of the following:

- a. the expiry of the term of this Subscriber Agreement in accordance with Paragraph 18;

- b. the breach of this Subscriber Agreement, or the Non-Disclosure Agreement by the Subscriber;
- c. MTO revokes ORBA's "permitted recipient" status;
- d. the Subscriber becomes bankrupt;
- e. the Subscriber has not paid an invoice issued to the Subscriber by ORBA in relation to services to be provided or provided under this Subscriber Agreement.

### **General Terms**

27. Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party, including acts of God, acts of war, fires, floods or other disasters, strikes, walkouts, lockouts, communication line or power failure, or failure, inoperability or destruction of computer hardware, software or firmware, unless caused by the negligence of that party, or any negligence, wilful misconduct or breach of this Subscriber Agreement by the other party.

28. The Subscriber may not assign or transfer this Subscriber Agreement, or any right under this Subscriber Agreement, either in whole or in part. Subject to this restriction, this Subscriber Agreement shall ensure to the benefit of, and bind, the parties and their respective successors and assigns.

29. This Subscriber Agreement shall be deemed to have been formed in the Province of Ontario and shall be governed by the laws in force in Ontario and the laws of Canada applicable in Ontario. Each party irrevocably submits to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under, or related to, this Subscriber Agreement.

**IN WITNESS WHEREOF** the parties hereto have hereunto duly executed this Subscriber Agreement as of the day and year first above written.

**FOR THE SUBSCRIBER**

**FOR THE ONTARIO ROAD BUILDERS ASSOCIATION**

Signature: \_\_\_\_\_

Name:

Title:

Date:

Per: \_\_\_\_\_

Name:

Title:

Date:

## **SCHEDULE “A”**

The Subscriber is responsible for maintaining (on-line) an accurate and current driver roster comprised of driver’s licence numbers, the required class for each driver’s licence number, and applicable air brake endorsement and prescription lenses requirements. The Subscriber shall provide this information to ORBA via the web site: <https://licencestatuscheck.orba.org/> once the Subscriber has been issued a User ID and password to log on to the system.

Driver surname and given name are optional fields. Prescription Lenses, and Air Brake Endorsement and Code W fields on the “add a driver” screen can be set to “Yes” or “No” or NA (Not Applicable) at discretion of the Subscriber.

The Subscriber agrees to pay ORBA a fee of \$1.49 per quarterly driver status check, plus applicable taxes. Fee subject to change year over year.

## **SCHEDULE “B”**

The Subscriber can at any time throughout the year request a 3-year MTO detailed Driver’s Abstract for any or all drivers that are listed on the Subscriber’s driver roster. The Subscriber agrees to pay (using a credit card at time of order) a fee of \$10 plus applicable taxes for each abstract ordered with overnight delivery, or \$11.00 plus applicable taxes for each abstract ordered with immediate delivery.



**SCHEDULE “C”  
PERMITTED RECIPIENT NON-DISCLOSURE AGREEMENT**

<b>Subscriber/Permitted Recipient Name:</b>	<b>(“you” or “your”)</b>
<b>Key Contact Information:</b>	<b>(Name &amp; email)</b>
<b>Requester Name:</b>	Ontario Road Builders Association and its Agent: The Ontario Motor Coach Association (the “ <b>Requester</b> ”)
<b>Authorized Use(s):</b>	AU10 -Verifying employee driving records and maintaining driver safety programs.

You acknowledge having received or will be receiving confidential driver licence information, and as a condition of receiving Confidential Information from the Requester, you understand and agree as follows:

- I. Under an agreement (the “**Requester Agreement**”) with the Ontario Ministry of Transportation (“MTO”), the **Requester** is licensed to receive confidential and personal information (the “**Licensed Information**”) from files and databases administered by MTO. For the purposes of the agreement (the “Subscriber Agreement”) to which this Schedule “C” is attached, the Licensed Information includes the Driver’s Licence Status Information and the Driver’s Abstract.
- II. The **Requester** and **MTO** are committed to protecting all of this Licensed Information and any information derived from the Licensed Information, (all of which is together referred to as the “**Confidential Information**”) from unauthorized access, use or disclosure.
- III. The following policies, and any future policies issued by **MTO** and the **Requester** and provided to you in writing, (the “**Policies**”) set out your responsibilities for handling and protecting this Confidential Information. As a permitted recipient of the Confidential Information (a “Permitted Recipient”) you are bound by these Policies:
  1. **Ownership:** You acknowledge and agree that the Confidential Information is and will at all times remain solely the property of **MTO**.
  2. **Confidentiality and Use:** You must hold all of the Confidential Information in strict confidence. Without limiting the generality of this obligation, you must NOT directly or indirectly do any of the following:
    - (a) disclose, make available, or provide or permit access to or use of, any Confidential Information to ANY other party (including, but not limited to, any third party contractor) for any purpose. The ONLY exception is that you may permit those of your employees who need to know that Confidential Information for the Authorized Use(s) indicated above. This exception only applies after you have fully informed those employees of, and required those employees to fully comply with, the Policies. You will be fully liable to the **Requester** and **MTO** for any failure of your employees to fully comply with the Policies. Future Policies will be considered to have been “issued” by **MTO** or the **Requester** when you are notified in writing of those Policies;
    - (b) make any full or partial copies (in any format or media) of any of the Confidential Information (other than copies necessary to carry out the Authorized Use(s)); or

- (c) use any of the Confidential Information for any purpose other than the Authorized Use(s). To avoid any doubt, you must never access, use or disclose any of the Confidential Information for any reasons that do not meet both of the above requirements, such as for personal reasons (e.g. looking up someone's address for a friend).
- 3. **MTO Audit:** You must accommodate audits by MTO in accordance with the MTO Audit Policy (a copy of which is appended to and forms part of this Permitted Recipient Non-Disclosure Agreement (the "Non-Disclosure Agreement"), and which you acknowledge having, read and understood), and fully co-operate with and assist MTO in carrying out such audits in accordance with such MTO Audit Policy.
- 4. **Access and Use Only From Premises Approved by Requester:** You may only access and use the Confidential Information from premises approved by the Requester. You must never remove any Confidential Information from such premises.
- 5. **Informed Consent:** Before requesting, accessing or using any Licensed Information for the Authorized Uses, you must obtain the informed consent of the individual to whom the Licensed Information is referable.
- 6. **Disclosures Required by Law:** If you become compelled by applicable law to disclose Confidential Information, you must:
  - (a) immediately notify the Requester (who will in turn notify **MTO**), so that the **Requester** or **MTO** may seek a protective order or other appropriate relief;
  - (b) only disclose that part of the Confidential Information that you are compelled by applicable law to disclose, and only disclose such Confidential Information in the manner and to the extent so compelled by applicable law.
- 7. **Data Matching or Profiling:** Subject to the Authorized Uses referred to above, you must not:
  - (a) develop or derive for any purpose whatsoever, any other product, work or database, in human-readable or machine-readable form or otherwise, that incorporates, modifies, or uses in any manner whatsoever, any personal information contained in or obtained from the Confidential Information. (This does not, however, apply to any specific personal information that you had in your possession prior to receiving the Confidential Information); or
  - (b) place any data which was not obtained directly or indirectly from the **Requester**, into a database containing personal information obtained directly or indirectly from the **Requester**.
- 8. **No Contacting Individuals:** You must not use the Confidential Information directly or indirectly to locate or contact any individual to whom the Confidential Information is directly or indirectly referable, except to the extent (if any) that this is an Authorized Use as provided above.
- 9. **Destroying Confidential Information:**
  - (a) Subject to Policies 9(b) and 9(c) below, you must destroy all full and partial copies of Confidential Information in your possession or control, and all records retained in respect of the Confidential Information, upon or before the earlier of:
    - (i) thirty (30) days following completion or fulfilment of the Authorized Use(s) for which you obtained the Confidential Information;

- (ii) the date on which the **Requester** notifies you that the Requester Agreement has expired or been terminated, or that the **Requester's** account with MTO (or any of the **Requester's** rights or privileges under the Requester Agreement) has been suspended, cancelled, revoked, voluntarily closed or cancelled; or
    - (iii) the termination of the Subscriber Agreement pursuant to section 27 of that agreement.
  - (b) Despite Policy 9(a) above, if you are required by applicable law to retain for any period of time any of the Confidential Information or records referred to in that section, you may retain such of that Confidential Information or those records, in such form, and for such period of time, as is so required by applicable law, subject to all of your obligations in this Non-Disclosure Agreement.
  - (c) Despite Policy 9(a) above, you will not be required to destroy the Confidential Information and records referred to in that section to the extent (if any) that:
    - (i) the Confidential Information was also separately obtained by you from a third party that was not at that time under any obligation to keep such Confidential Information confidential; or
    - (ii) the Confidential Information pertains to an individual who has consented to having you keep that Confidential Information (provided that such consent is given in accordance with (and in any manner or form required by) applicable law).
  - (d) To avoid any doubt, nothing in this Policy 9 will limit or release you from any of your other obligations under this Non-Disclosure Agreement, which obligations will remain in full force and effect.
- 10. **Comply with Law:** You must at all times remain in full compliance with all applicable laws relating to any access, use or disclosure of any personal information contained in the Confidential Information. You must also comply with any written instructions or directions from **MTO** from time to time concerning such personal information (to the extent that the **Requester** notifies you of such instructions or directions).
- 11. **Secrecy of Passwords:** You must take reasonable precautions to maintain the secrecy of any password you use to access Confidential Information electronically. Reasonable precautions include, but are not limited to: not telling others your password or knowingly allowing them to observe while it is entered at a terminal; frequently changing your password (and, if you suspect your password has been used by someone else, changing it immediately); and selecting random passwords that are not easy for others to guess.
- 12. **Access to Terminals:** You must take reasonable precautions to protect data entry terminals and equipment from unauthorized access. Reasonable precautions include, but are not limited to: not leaving your terminal unattended while logged onto the system; exiting the database which contains any Confidential Information when leaving the workstation; securing your terminal with a locking device if one has been provided; and storing in a secure place any user documentation to programs through which electronic access to any Confidential Information may be gained.
- IV. All of your obligations in this Non-Disclosure Agreement will survive the expiry or any termination of your relationship with the Requester, and will continue in full force and effect subsequently until they are satisfied or by their nature expire.

- V. If any provision of this Non-Disclosure Agreement is illegal, invalid or unenforceable, it will be severed. No waiver of any provision of this Non-Disclosure Agreement by the Requester will constitute a waiver of any other provisions (whether or not similar) or a continuing waiver. This Non-Disclosure Agreement will be governed by Ontario law and the laws of Canada applicable in Ontario. You and the Requester agree to attorn to the non-exclusive jurisdiction of the courts of Ontario for the resolution of any disputes arising out of, or in connection with, this Non-Disclosure Agreement. This Non-Disclosure Agreement may not be assigned by you, but otherwise will be binding upon and ensure to the benefit of you and the Requester and the respective heirs, executors, administrators, successors and permitted assigns of you and the Requester.
- VI. **MTO Right to Enforce this Agreement:** You and the Requester acknowledge and agree that:
- (a) While MTO is not a party to this Non-Disclosure Agreement and has no obligations under this Non-Disclosure Agreement, MTO will have the right to directly enforce your obligations in clause III above as if MTO were a party to this Non-Disclosure Agreement;
  - (b) In furtherance of clause (a) above, the Requester will be a trustee of MTO (and MTO's successors and assigns) for the limited purpose of holding your obligations in clause III above in trust for MTO (and MTO's successors and assigns). (And to the extent that clause III incorporates any defined terms, the definitions of such terms as provided in this Non-Disclosure Agreement will be considered to be incorporated into clause III for the purposes of this clause VI);
  - (c) To avoid any doubt, this means that in addition to the Requester enforcing your obligations under this Non-Disclosure Agreement (in the Requester's capacity as a party to this Non-Disclosure Agreement), MTO (and MTO's successors and assigns) may also enforce your obligations in clause III above in MTO's own right (and MTO will not be required to add the Requester as a party to any proceedings for such enforcement); and
  - (d) The trust created in favour of MTO (and its successors and assigns), as contemplated above, being coupled with an interest, may not be revised or revoked without the prior written consent of MTO (or such successors and assigns, as the case may be).

VII. **You acknowledge that you have read and understand the provisions of this Non-Disclosure Agreement (including, but not limited to, the Policies set out or referred to above), and will comply with them and with any other Policies issued in the future by MTO or the Requester. You understand that failure to comply with the Policies or any such other Policies or changes will be a breach of this Non-Disclosure Agreement and (among other things) may result in civil or criminal prosecution in accordance with applicable statutes.**

**FOR SUBSCRIBER/ PERMITTED  
RECIPIENT:**

\_\_\_\_\_  
Insert Name of Subscriber/Permitted Recipient

\_\_\_\_\_  
Authorized Signature of Subscriber/Permitted  
Recipient

\_\_\_\_\_  
Date:

**FOR REQUESTER/ONTARIO ROAD  
BUILDERS ASSOCIATION:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:

## MTO AUDIT POLICY

Appended to and forming part of the Permitted Recipient Non-Disclosure Agreement

<b>Subscriber/Permitted Recipient:</b>	(“you” or “your”)
<b>Requester Name:</b>	Ontario Road Builders Association and its Agent, the Ontario Motor Coach Association (the “Requester”)

Capitalized terms that are used in this MTO Audit Policy, but not defined in this MTO Audit Policy, have the meanings given to them in the Permitted Recipient Non-Disclosure Agreement (the “Non-Disclosure Agreement”). In this MTO Audit Policy, the following defined terms have the following meanings:

“**Audit**” and similar expressions means the performance by, on behalf of or for MTO of such audits, reviews, investigations, inspections, confirmations, certifications, tests, studies and determinations of or relating to any matter or thing pertaining to what is contemplated in clause (i) or (ii) of **section 1** below.

“**Business Day**” means a day other than a Saturday, Sunday or a statutory, civic or public service holiday observed in the Province of Ontario.

“**include**”, “**includes**” or “**including**” mean “include without limitation”, “includes without limitation” and “including without limitation”, respectively, and the words following “include”, “includes” or “including” will not be considered to set out an exhaustive list.

“**Privacy Default**” means a breach of: (i) any Privacy Laws, or (ii) any of the provisions of the Non-Disclosure Agreement.

“**Privacy Laws**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), and the provisions of any other law from time that are applicable to you and that address the collection, use or disclosure of personal information.

### 1. **Right of Audit.**

MTO will have the right, from time to time, to Audit such of your businesses and operations as relate to, or are involved in, the your possession or control of Confidential Information.

Subject to the provisions of this MTO Audit Policy and applicable law (including the Privacy Laws and the provisions of any other law that are applicable to MTO and that address the collection, use or disclosure of personal information) from time to time (including any disclosures that may be required by such laws), and subject to any agreements between MTO and its employees from time to time, MTO will (and will require any third party representatives referred to in **section 3** to) hold in confidence any of your confidential information which is disclosed or made available to MTO (or such third party representatives) in connection with an Audit carried out under this MTO Audit Policy.

### 2. **Timing of Audits.**

The Audits contemplated in **section 1** may be conducted at any time during your normal business hours upon 24 hours’ prior written notice (or, in the case of Audits relating to possible Privacy Defaults, without prior notice).

3. **Authorized MTO Representatives.**

MTO will have the right to engage third party representatives to perform Audits contemplated in **section 1**.

4. **Privacy Compliance.**

(a) **Privacy-related Audits.** Without limiting the generality of **section 1**, MTO will have the right to conduct the Audits contemplated in **section 1**, to measure your compliance with: (A) the Privacy Laws; or (B) the provisions of the Non-Disclosure Agreement.

(b) **Privacy Compliance Meetings.** In addition to performing the Audits contemplated under **section 1.4(a)**, MTO may require you to meet with MTO to review the results of such Audits as they relate to the matters referred to in **section 4(a)**. Such meetings will be held at such times and places as MTO may mutually agree upon with you from time to time acting reasonably. However, if as a result of any such Audit MTO has reason to believe that you have committed a Privacy Default, MTO may require such meeting to be held within one (1) Business Day of MTO notifying you in writing that MTO wishes to hold such meeting.

5. **Performance Reviews.**

(a) **Audits Relating to Overall Performance.** Without limiting the generality of **section 1**, MTO will have the right to conduct the Audits contemplated in **section 1**, to measure your overall performance of your obligations under the Non-Disclosure Agreement.

(b) **Meetings to Review Overall Performance.** In addition to performing the Audits contemplated under **section 5(a)**, MTO may require you to meet with MTO to review the results of such Audits as they relate to the matters referred to in **section 5(a)**. Such meetings will be held at such times and places as MTO may mutually agree upon with you from time to time acting reasonably.

6. **Location and Manner of Audits.**

The Audits contemplated in **section 1** may be conducted on-site at the location(s) of: (i) any of your businesses or operations that relate to or are involved in the performance of your obligations to the Requester, or (ii) any media in your possession or control that contains Confidential Information.

Such Audits may be conducted in whole or in part by remote electronic means if your computer systems have the functional capability of facilitating such remote Audits.

7. **Requester Co-operation.**

You must fully co-operate with MTO in facilitating the conduct of any Audits contemplated in **section 1**, including providing such access, documentation, information, copies of documentation and information, and assistance as MTO may reasonably request for the purpose of such Audits.

8. **Duration of Audit Rights.**

MTO's Audit rights as contemplated in **section 1** will be in force from the date you receive a copy of this MTO Audit Policy to the date which is three years after you cease to be a Permitted Recipient.

9. **Correction of Defaults.**

Without limiting or restricting any other obligations you may have, or rights or remedies MTO may have, under this MTO Audit Policy or at law or in equity:

- (a) You will, at your sole cost, correct any Privacy Defaults (including any breaches of the Non-Disclosure Agreement) identified through an Audit (and in respect of which MTO provides written notification to you), and will do so as expeditiously as reasonably possible and in any event within twenty-four (24) hours of receiving notice of such Privacy Default from MTO.
- (b) You will notify MTO in writing upon such breaches having being corrected.
- (c) After receiving such notification from you, MTO may conduct a follow up Audit to confirm that all such breaches have been corrected.
- (d) If requested by MTO in the notification referred to in **section 9(a)**:
  - (i) you will provide to MTO, within five (5) days of receiving the notification referred to in **section 9(a)**, a reasonable written plan outlining the steps you will take to ensure that such Privacy Defaults do not occur again; and
  - (ii) you will implement the plan provided under **section 9(d)(i)**.

10. **Costs of Audit.**

- (a) All costs incurred by you in connection with the Audits contemplated in **section 1** will remain solely your responsibility.
- (b) Except as provided in **section 10(c)**, all costs incurred by MTO in connection with the Audits contemplated in **section 1** will remain solely the responsibility of MTO.
- (c) Despite **section 1.10(b)**:
  - (i) if any Audit contemplated in **section 1** discloses a material uncured default by you under the Non-Disclosure Agreement, then you must reimburse MTO for MTO's reasonable and verifiable costs of conducting such Audit;
  - (ii) if any Confidential Information is in your possession or control at a location outside of Ontario, then you must reimburse MTO for MTO's reasonable and verifiable costs of conducting Audits (as contemplated in **section 1**) at such location(s) outside of Ontario. However, MTO shall only have the right to obtain reimbursement under this **section 10(c)(ii)** in respect of one such Audit in each calendar year. (Note: to avoid any doubt, nothing in this **section 10(c)(ii)** will be considered to in any way reduce or waive your obligations under **section 4** of the Non-Disclosure Agreement.)

11. **Without Prejudice.**

To avoid any doubt, nothing in this MTO Audit Policy will be deemed to limit or prejudice MTO's rights or your obligations under the Non-Disclosure Agreement or at law or in equity.