



SOFTWARE AS A SERVICE AGREEMENT

VERSION IN FORCE SINCE JUNE 15, 2019

Please read the Software as a Service Agreement (“**Agreement**”) below carefully. This Agreement defines the terms and conditions between AVANCIE INC. (“**Avancie**”) and any person who uses Todoc (the “**Customer**”) under which they will perform their respective obligations resulting from the Agreement.

Avancie is willing to grant a Customer the right to use or try Todoc only if the Customer accepts all of the terms and conditions of this Agreement, and pays or has paid Avancie, its resellers or agents, all the applicable fees.

When creating a user account and each time accessing or using Todoc, the Customer acknowledges that he has read this Agreement, understands it and agrees to be bound by it and has authority to accept this Agreement on its behalf and on behalf of any person he represents. If the Customer does not agree or do not have authority to agree to all of the terms and conditions in this Agreement, no license to use Todoc shall have been granted and the Customer should not access or otherwise utilize Todoc.

When the client creates a user account, he confirms that the email address used is an active address to which he agrees to receive documents intended to him, to the extent provided by law or an agreement on the conduct of the proceeding.

PREAMBLE

WHEREAS AVANCIE INC. offers an electronic notification system provided to its customers on a *software as a service* (SaaS) basis, which is identified, described and available online at the URL <https://www.todoc.ca> and as further specified in this Agreement (“**Todoc**”); and

WHEREAS you (the “Customer”) desire to access and use and have the right to access and use Todoc;

NOW THEREFORE, in consideration of the above premises and covenants and agreements herein contained, the Parties agree as follows:

1. DEFINITIONS

Whenever used in this Agreement or Annexes to this Agreement, the following terms will have the meaning ascribed to them below.

- 1.1. **Access Fees** has the meaning set forth in the Schedule of Fees annexed to this Agreement.
- 1.2. **Activation Date** has the meaning set forth in Section 10.1.
- 1.3. **Affiliate** for the purposes of this Agreement, (i) one body corporate is an affiliate of another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and (ii) if two bodies corporate are affiliates with the same body corporate at the same time, they are deemed to be affiliates of each other.
- 1.4. **Confidential Information** has the meaning set forth in Section 11.2.
- 1.5. **Core Hours** means the period beginning at 8:30 a.m. and ending at 5:00 p.m. Montreal time on any day from Monday to Friday except on Public holidays in the province of Quebec or any day specified by Avancie namely Easter Monday and the normal working days between Christmas and New Year Day.
- 1.6. **Credit** The right of access allowing a user to make a notification to a recipient.
- 1.7. **Customer** means the person, corporation or other entity who notify his acceptance of this Agreement to Avancie, either tacitly by accessing or using Todoc or expressly;
- 1.8. **Customer Data** has the meaning set forth in Section 4.1.
- 1.9. **Disclosing Party** has the meaning set forth in Section 11.2.
- 1.10. **Documentation** means all of the written, printed, electronic, or other format materials published or otherwise made available by Avancie to customers or the public and that relate to the functional, operational, and/or performance capabilities of Todoc.
- 1.11. **Todoc** has the meaning set forth in the preamble of this Agreement.
- 1.12. **Events of Default** has the meaning set forth in Sections 13.1 or 13.3 depending on the context.
- 1.13. **Initial Term** has the meaning set forth in Section 10.
- 1.14. **Internet Risks** has the meaning set forth in Section 12.1.3.
- 1.15. **Avancie** means AVANCIE INC., a corporation duly constituted under the *Business Corporations Act* (Québec), registered under no. 1165131302.
- 1.16. **License(s)** means any license or licenses granted by Avancie to Customer to use Todoc under this Agreement.
- 1.17. **Notification** means sending of one or more electronic documents through Todoc to one or more recipients.
- 1.18. **Professional Services** means the services provided by Avancie to Customer in relation with Todoc, namely supportservices as expressly described in this Agreement.
- 1.19. **Receiving Party** has the meaning set forth in Section 11.2.
- 1.20. **Recipient** means the person or entity to whom a notification was intended.
- 1.21. **Service(s)** means collectively Todoc and the Professional Services.
- 1.22. **User** means person or entity that joined Todoc.
- 1.23. **Service(s)** means collectively Todoc and the Professional Services.

2. PURPOSE

- 2.1. The purpose of this Agreement is to provide the terms, conditions, and pricing based upon which Avancie will provide the Services to Customer.

3. LICENSE AND SERVICES

- 3.1. **Todoc.** Subject to the provisions of this Agreement as well as the payment of all applicable **Access Fees** set forth in the Schedule of Fees annexed to this Agreement, Avancie will, during the term of this Agreement starting from the Activation Date hereof, provide Todoc to Customer.
- 3.2. **License Grant.** Subject to the provisions of this Agreement as well as the payment of all applicable **Access Fees** set forth in the Schedule of Fees annexed to this Agreement for the term of such Agreement, Avancie hereby grants Customer (and to each employee of Customer who accesses Todoc by means of his own Todoc user's account and an authentication method authorized by Avancie) a worldwide, non-exclusive (without any grant of right to sublicense), non-transferable licence for access to Todoc and Documentation via the Internet and to use Todoc and Documentation, solely for Customer's internal business purposes.
- 3.3. **Trial Period.** Prior to requiring payment of Access Fees, Avancie allows Customer to access and use Todoc on a trial basis according to a limited number of credits specified on Todoc's website (the "**Trial Period**"). During the Trial Period, Avancie will have no obligations and Customer will have no rights under this Agreement except those specified in sections 3.5 to 3.8, 4 to 6, 11, 12 and 14 to 16, notwithstanding any other provision in the Agreement, Without limiting the generality of the foregoing, user accounts, storage space, bandwidth availability, and account features may be limited, modified or suspended during Trial Period and the corresponding account may be terminated by Avancie at any time during Trial Period at its sole discretion without notice or liability to Customer.
- 3.4. **Professional Services.** In consideration of the payment by Customer to Avancie of the Professional Services Fees set forth in the Schedule of Fees annexed to this Agreement, Avancie will provide to Customer the Professional Services in accordance with any reasonable request related thereto that Customer may send to Avancie from time to time.
- 3.5. **Restrictions.** Except as otherwise expressly permitted in this Agreement, and except to the extent the following restrictions are prohibited by applicable law, Customer will not:
 - 3.5.1. Share, cause or allow sharing of any user account or password to access Todoc; without limiting the generality of the foregoing, Customer agrees that (i) any Customer's user account for Todoc must be accessed and used by a single individual user, (ii) the single individual user will only have a one user account, (iii) a user account may not be used to transmit or store items of unaffiliated third parties and (iv) Avancie may require from Customer payment of any damages, including any fees, related to access or use of Todoc that does not comply with the foregoing restriction.
 - 3.5.2. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of Todoc;
 - 3.5.3. modify, adapt, translate or create derivative works based on Todoc;
 - 3.5.4. rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to Todoc;
 - 3.5.5. use Todoc for timesharing or service bureau purposes or otherwise for the benefit of a third party;
 - 3.5.6. remove any proprietary notices from Todoc; or
 - 3.5.7. publish or disclose to third parties any evaluation of Todoc without Avancie's prior written consent.
- 3.6. **No Licence on Avancie's Marks.** This Agreement does not grant Customer any license to use Avancie trade-marks, trade-names or other names or marks associated with the Services or Documentation except in such form and manner as Avancie may approve in advance in writing.

- 3.7. **Modification or Discontinuance of Features.** Avancie reserves the right at any time, from time to time with or without notice, to modify or discontinue, temporarily or permanently, any feature associated with Todoc. Continued use of Todoc following any such modification or discontinuance constitutes Customer's acceptance of the modification or discontinuance.
- 3.8. **Avancie Alterations.** Avancie may make alterations to any Services or software licensed or used to provide Services hereunder as necessary from time to time to comply with specifications, changed safety standards or governmental regulations, including without limitation, to make the Services non-infringing, or to otherwise improve same.

4. CUSTOMER DATA AND BACK-UP

- 4.1. **Ownership.** As between Avancie and Customer, Customer will own all data, information or material that Customer enters into Todoc or has been entered on its behalf ("**Customer Data**"). Subject to section 4.2, Customer Data will not be used for any purpose outside of Customer's use of Todoc.
- 4.2. **Analytics.** Avancie may provide analytics or statistical information such as usage or traffic patterns in aggregate form to third parties, but such information will not include personally identifying information.
- 4.3. **Passwords.** Avancie will allow Customer, and all individuals within the Customer's organization who are authorized by Avancie to access and use Todoc, to choose a password to be used in association with their respective Todoc's accounts, provided that Customer has paid the applicable fee. Customer and its users are responsible for (i) the degree of strength of the passwords, (ii) maintaining the confidentiality of all passwords and (iii) ensuring that each password is used only by the authorized user. Customer is entirely responsible for any and all activities that occur under Customer's account. Customer agrees to immediately notify Avancie of any unauthorized use of the Customer's account (including each password of each user accessing Todoc by means of Customer's account) or any other breach of security known to Customer. Avancie has no liability for any loss or damage arising from Customer's failure to comply with these requirements. Avancie will maintain Customer passwords as confidential and will not disclose them to third parties.
- 4.4. **Access.** Except as expressly permitted in this Agreement, Avancie will never access, edit, delete or disclose unencrypted Customer Data unless (i) authorized or requested by the Customer or (ii) Avancie is required to do so by applicable law, including, without limitation, pursuant to a court order or warrant. In so accessing Customer Data, Avancie will use, in as much as possible, all reasonable efforts to ensure that Customer and individuals within the Customer's organization who are subject to ethical obligations pertaining to attorney-client privilege and confidentiality remain in compliance with such obligations in using Todoc.
- 4.5. **Notification.** Avancie will notify Customer of any data demand from the government, if any, whenever it is not prohibited from doing so by applicable law to give Customer the opportunity to address any such data demand from the government.
- 4.6. **Responsibilities for Customer Data.** By using the Services, Customer consents to transfer, processing, and storage of Customer Data. Customer is solely responsible for its use of the Services and the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data. Customer further agrees that any material or data displayed, transmitted, uploaded, downloaded, transacted or otherwise obtained through Todoc is done at Customer's own discretion and risk and that the Customer will be solely responsible for any damage to Customer's computer systems or loss of data or of income that results from the download of such material or data or use of Todoc. Notwithstanding anything contained herein, Avancie assumes no responsibility whatsoever for Customer-made access, sharing, distribution, deletion, destruction, loss, infringement or failure pertaining to Customer Data. Without limiting the generality of the foregoing, Customer acknowledges that Todoc provides features that allow Customer to share Customer Data with others or to make Customer Data publicly available at which point such Customer Data could be further copied, modified, deleted or shared by a third party. Customer will consider carefully what he chooses to share or make public and accepts that Avancie has no responsibility for that sharing or publication of Customer Data and for any consequences resulting therefrom.

- 4.7. **Data Transfer.** In permitting the transfer of data through Todoc, Avancie will use industry-standard, secure and confidential encryption systems, including at a minimum encrypting the data with no less than 256-bit encryption. Customer acknowledges that, notwithstanding commercially reasonable security precautions to prevent unauthorized access to Todoc and Customer Data, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to Todoc and Customer Data. Accordingly, Avancie cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over the Internet.
- 4.8. **Storage.** Avancie reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of Customer Data that Customer may store, post or transmit on or through Todoc.
- 4.9. **Bandwidth usage.** Avancie may impose reasonable limitations on bandwidth usage for the Services. Avancie may, at any time and without prior notice, immediately disable Customer's use of the Services or throttle bandwidth for Customer's use of the Services if Customer's bandwidth usage significantly exceeds the average bandwidth usage of other customers (as determined solely by Avancie), until Customer can reduce its bandwidth usage to a level acceptable to Avancie.
- 4.10. **Backup, Recovery Protocol, Georedundancy and Robustness.** Avancie will provide adequate backup, recovery protocol, georedundancy and robustness for the Services, in accordance with industry-standard practices. Notwithstanding the foregoing, the Services are not backup services for the Customer.
- 4.11. **Personal Information.** Customer is responsible for compliance with all obligations imposed by any applicable law pertaining to protection of personal information and any implementing or amending legislation related thereto as may be enacted from time to time, and Customer will indemnify, defend and hold Avancie harmless from and against any third party claims against Avancie resulting from the use and disclosure by Avancie of personal information consistent with the terms of this Agreement.
- 4.12. **Data Retainment and Export.** Avancie will retain Customer Data for a period of 48 hours after expiration date of notification given by the Customer. After the end of the foregoing retainment period, Avancie may delete and destroy all Customer Data, without further liability to Customer.

5. OTHER CUSTOMER RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

- 5.1. **Independent Determination.** Customer will independently determine if the Services meet its specific requirements and applicable laws in its jurisdiction and that Customer cannot rely on any representation made, or information provided by Avancie to the suitability of the Services for any particular purpose.
- 5.2. **Hardware.** Customer is responsible for obtaining and maintaining all computer hardware, software and communications equipment internally needed to access Todoc, and for paying all third party charges, including, without limitation, charges by providers of telecommunications and/or Internet access services) incurred while using Todoc.
- 5.3. **Conduct.** Customer is solely responsible for (i) its actions, (ii) the actions of its users while using Todoc and (iii) the contents of its transmissions through Todoc. Without limiting the generality of the foregoing, Customer will:
 - 5.3.1. abide by all domestic and international laws and regulations applicable to Customer's use of Todoc;
 - 5.3.2. not deliberately upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of Todoc or another's computer;
 - 5.3.3. use the Services only for lawful purposes;
 - 5.3.4. provide true, current, complete and accurate information in registration and in its use of Todoc;

- 5.3.5. is responsible for sending and collecting the documents sent to him in due course to comply with applicable legal deadlines. He is also responsible for ensuring compliance of its documents with the rules of procedures or applicable rules of practice;
- 5.3.6. not interfere or disrupt networks connected to Todoc;
- 5.3.7. not upload or distribute in any way any unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene, hateful, racially, ethnically or otherwise objectionable material of any kind or nature, unless required in the course of a Customer's court case;
- 5.3.8. not upload or distribute in any way any material that encourages conduct that could constitute a criminal offense or give rise to civil liability, unless required in the course of a Customer's court case; and
- 5.3.9. comply with all regulations, policies and procedures of networks connected to Todoc. Customer acknowledges and agrees that Avancie neither endorses the contents of any customer nor assumes any responsibility for any material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby.
- 5.4. **Authority.** Customer represents and warrants to Avancie that Customer has all requisite power and authority to execute and deliver this Agreement and to perform Customer's obligations hereunder. Customer acknowledges that this Agreement (i) has been duly accepted by Customer, and (ii) constitute a valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.
- 5.5. **Security Breach.** Avancie may, without prior notice, temporarily suspend Customer's or any other party's access to the Services (including, without limitation, any areas hosted within Avancie's networks or systems that are specific to Customer) by deactivating any account(s), password(s) or links to the Internet if Avancie reasonably suspects that Customer or any of its employees, clients or subcontractors are obtaining unauthorized access to such networks, systems or information. These suspensions will be for such periods of time as Avancie may determine is necessary to permit the thorough investigation of such suspected activity.
- 5.6. **Obligation to Minimize Damages.** Customer has an obligation to minimize its damages including, whenever reasonable, giving Avancie the opportunity to re-perform any Services or correct any errors or defects and Customer will, to the extent possible, cooperate with Avancie for the purpose of minimization of such damages.

6. AVANCIE WARRANTY EXCLUSIONS

- 6.1. Todoc is provided "as is" and "as available", with all defects and errors, if any. Avancie makes no representations and no warranties of any kind, express or implied, including, but not limited to, any representations or warranties of performance, merchantability or fitness for any particular purpose, with respect to Todoc. Avancie does not warrant that any software, Documentation or Services will meet Customer's specific requirements or expected results, that the operation of any software or provision of Services will be uninterrupted or error-free, that defects in any software, Documentation or Services may be corrected. No oral or written information or advice given by Avancie or its agents or employees creates a warranty. Avancie assumes no liability for any system from which Todoc is accessed or for any content managed through Todoc.

7. MAINTENANCE AND SUPPORT SERVICES

- 7.1. **Professional Services.** Avancie will perform the Professional Services in a workmanlike manner, in accordance with the standards of care and diligence and the level of skill, knowledge, and judgment normally practiced by information technology services firms in performing services of a similar nature.

- 7.2. **Documentation.** Avancie will provide to Customer Documentation for the proper use of Todoc. From time to time during the term of this Agreement, Avancie may provide to Customer updated versions of such Documentation.
- 7.3. **Support Services to be provided by Avancie.** During the term of this Agreement, Avancie will provide the Customer, only during Core Hours, with support services for Todoc which will comprise the following:
- 7.4. **Email Support.** Email support, including email access and response.
- 7.5. **Direct Support.** Direct support may comprise the following services:
- 7.5.1. advice by telephone on the support lines, email or by post (at the addresses or email address stipulated by Avancie on the use of the Services without any limit on the amount of incident reports;
- 7.5.2. the dispatch out, at Avancie's sole discretion, information regarding forthcoming new releases and technical newsletters;
- 7.5.3. the creation and upload to the Services, from time to time at Avancie's sole discretion, patches and fixes in respect of Todoc;
- 7.5.4. the diagnosis of errors in Todoc and the rectification of such errors (remotely or by attendance on site as determined by Avancie) by the issue of fixes in respect of the Services and the making of all consequential amendments (if any) to the Documentation;
- 7.5.5. any other support service offered to Customer by Avancie from time to time which Avancie may, at its sole discretion, designate as a support service; and
- 7.5.6. the issue of new releases of Todoc.
- 7.6. **Exclusions.** Support Services will not include the diagnosis and rectification of any errors resulting from:
- 7.6.1. any modifications of Todoc made by any person other than Avancie;
- 7.6.2. minor defects in Todoc which do not significantly affect or impair the use of Todoc;
- 7.6.3. any incorrect or improper use of Todoc;
- 7.6.4. the failure by Customer to implement recommendations in respect of any solutions to errors previously advised by Avancie;
- 7.6.5. the use of third-party applications, including, without limitation, mobile applications developed or offered by anyone else than Avancie;
- 7.6.6. the use of operating systems, software or web browsers or any version thereof that may present compatibility issues with Todoc; or
- 7.6.7. the use of Todoc for any purpose for which it was not designed.
- 7.7. **Current Release.** The support services are only provided by Avancie in respect of the release of Todoc current as of the day when support services are requested..
- 7.8. **Customer Obligations.** During the continuance of this Agreement, Customer will:
- 7.8.1. provide Avancie (so far as Customer is able) with a documented example of any error in respect of which a request for diagnosis and rectification has been made under this Agreement;
- 7.8.2. co-operate fully with Avancie's personnel in the diagnosis of any error in Todoc or the Documentation and perform such tests of Todoc as Avancie requests in the evaluation of any request for Support Services by Customer;
- 7.8.3. ensure that the administration functionality of Todoc is used in a proper manner by competent trained employees only or by persons under their supervision; and,
- 7.8.4. save as otherwise expressly provided in this Agreement, not make any translation, adaptation, arrangement or any other alteration of Todoc or make any reproduction, distribution, communication, display or performance to the public of the results of such acts.
- 7.9. **Payment.** The Parties acknowledge that the costs related to support services are included within the Access Fees. In the event that Customer fails to pay any amounts due pursuant to the terms of this Agreement within thirty (30) days of the due date, Avancie is entitled, without prejudice to any other rights and remedies it may have under this Agreement, to cease provision of the support services until such amounts and any interest payable have been paid in full.

8. OTHER SERVICES

- 8.1. Avancie may, at its sole discretion, offer and provide to Customer other services, such as configuration services and training services, in which case Avancie may charge additional fees to Customer for the performance of such other services in accordance with the Schedule of Fees annexed to this Agreement.

9. PAYMENT OF FEES

- 9.1. **Access Fees.** Starting immediately after Activation Date and thereafter during the term of this Agreement, Customer will pay Avancie Access Fees, including purchase of credits and any other charges in accordance with the Schedule of Fees annexed to this Agreement and billing terms in effect at the time a fee or charge is due and payable.
- 9.2. **Credit.** A credit allows a user to perform a notification to a recipient. The number of recipients of a notification determining the number of credits required for this notification. The credits do not expire.
- 9.3. **Late Payments.** Any amounts owed under this Agreement remaining unpaid following thirty (30) days after the date of invoice is subject to interest at the rate of one and three-quarter percent (1.75%) per month (23.14% annual) or the maximum rate allowed by law, whichever is less.
- 9.4. **Billing Errors.** Customer will contact Avancie in writing no later than seven (7) days after the billing date to report any billing error;
- 9.5. **Taxes.** All fees are stated in Canadian currency and are exclusive of applicable provincial and federal sales and goods and services taxes. Customer is responsible for the payment of any taxes, duties or tariffs applicable to the products and services provided under this Agreement.
- 9.6. **Notice of Increase.** Upon any renewal, Avancie may increase any Access Fees, credit costs or any other fees by giving Customer 30-day prior written notice. In the event that Customer objects to any increase in the fees, Customer may terminate this Agreement by providing Avancie with written notice thereof no later than thirty (30) days after Avancie provides written notice of such increase. An increase applies on the first day of the applicable invoice period on or after the effective date specified in the notice, as set forth herein.
- 9.7. **Refund.** Avancie offers no refunds on purchased credits, whether used or not. Avancie offers no refunds on credits of uncompleted notifications following the entry of incomplete or inaccurate information, or if the recipient did not read the transmission notice or has not downloaded the documentation before the expiry of the notification. To ensure that Todoc meets their needs, customers can take advantage of the trial period.

10. TERM OF AGREEMENT

- 10.1. **Term of Agreement.** The term of this Agreement commences as of the date when this agreement is accepted by both parties (the "**Activation Date**") and continues for a one (1) year term (the "**Initial Term**"). Thereafter, it will continue on a year-to-year basis, until terminated by prior written notice of Customer to Avancie at least sixty (60) days prior to any such renewal or by Avancie by prior written notice to Customer at least ninety (90) days prior to any such renewal.
- 10.2. **Termination without Cause.** Both Avancie and Customer can terminate this Agreement without cause at any time following the first anniversary of the Activation Date by sending a written notice to that effect to the other party of not less than three (3) months.

11. PROPRIETARY RIGHTS, CONFIDENTIALITY, AND SECURITY

- 11.1. **Ownership of Intellectual Property.** Pre-existing intellectual property and all improvements thereto that Avancie develops, uses or provides in connection with performing the Services hereunder (or otherwise) will remain the sole and exclusive property of Avancie.
- 11.2. **Confidential. "Confidential Information"** means any material, data, or information in whatever form or media of a party to this Agreement that is provided or disclosed to the other, except for any information that is:
- (i) publicly available or later becomes available other than through a breach of this Agreement;
 - (ii) known to the Receiving Party or its employees, agents, or representatives prior to such disclosure or is independently developed by the Receiving Party or its employees, agents, or representatives subsequent to such disclosure; or
 - (iii) subsequently lawfully obtained by the Receiving Party or its employees, agents, or representatives from a third party without obligations of confidentiality.
- Confidential Information will include the following categories of information whether disclosed orally or not marked as confidential: network configurations, network architecture, financial and operational information, and other matters relating to the operation of the Party's business, including information relating to actual or potential customers and customer lists, customer usage or requirements, business and customer usage forecasts and projections, accounting, finance or tax information, pricing information, and any information relating to the corporate and/or operational structure of Customer, of Avancie and their respective Affiliates, software, Deliverables, or Services rendered under this Agreement and any amendments thereto, and all information and materials relating to third party vendors, systems integrators, or consultants of Customer that have provided or that may provide in the future any part of Customer's information or communications infrastructure to Customer. The party that has received Confidential Information (the "**Receiving Party**") will exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information to the Receiving Party (the "**Disclosing Party**") that it exercises with respect to its own Confidential Information and in any event, at least diligent and prudent care. The Receiving Party will not directly or indirectly disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Disclosing Party. Notwithstanding the above, either party may disclose Confidential Information if so required by law (including court order or subpoena), provided that such disclosure is notified in time to Disclosing Party to permit it to seek confidential treatment of its Confidential Information. The Receiving Party will exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.
- 11.3. **Return of Confidential Information.** Unless otherwise authorized, upon the earlier of termination of this Agreement or request of the Disclosing Party, with respect to the Disclosing Party's Confidential Information (except for any item paid for by Customer, which Customer has the express right hereunder to retain) the Receiving Party will promptly either:
- (i) return such Confidential Information and provide certification to the Disclosing Party that all such Confidential Information has been returned; or
 - (ii) destroy such Confidential Information and provide certification to the Disclosing Party that all such Confidential Information has been destroyed.
- 11.4. **Employee/Agent Acknowledgment.** Avancie and Customer will not disclose Confidential Information of the other party to any of their employees, agents, or representatives unless and until such employee, agent, or representative has been made aware that his or her obligations under this Agreement are subject to confidentiality restrictions and unless such employee, agent, or representative is the subject of a written confidentiality or nondisclosure agreement that includes equivalent obligations to those provided for in this Section 11.

12. LIMITATION OF LIABILITY

- 12.1. **Avancie Limitation.** Notwithstanding any other provision herein, to the maximum extent permitted by applicable law, Avancie will not be liable for:
- 12.1.1. any special, indirect, incidental, punitive, or consequential damages, including for greater certainty and without limitation, loss of goodwill, revenues, profits, expected savings, business opportunities compatibility or competitive advantage, cost of procurement of substitute products or services or inaccuracy or restoration of data, arising from or related to a breach of this Agreement or any order or the operation or use of the Todoc, even if any such damage was foreseen or foreseeable and even if Avancie has been advised or should have known of the possibility of such damage;
 - 12.1.2. any damages (regardless of their nature) for any delay or failure by Avancie to perform its obligations under this agreement due to Force Majeure; or
 - 12.1.3. inherent risks and limitations associated with the communication of information over the Internet including, without limitation, the possibility that such information may be lost, intercepted or altered or otherwise rendered non-confidential ("**Internet Risks**"). Customer acknowledges and agrees that while Avancie does enable communications through Todoc using industry-standard encryption, Customer is also responsible for enabling and using such encryption, and that no encryption technology is completely secure. Customer acknowledges and agrees that any communication undertaken in connection with the Services, even if encrypted, may be subject to Internet Risks, and that, notwithstanding any other provision herein, Avancie is not in any way responsible or liable for any claim, action, damage or expense arising from such Internet Risks.
 - 12.1.4. Notwithstanding any other provision herein, Avancie's aggregate liability hereunder is limited to the total Access Fees paid by Customer in the twelve month period preceding the event giving rise to the claim.

13. EVENTS OF DEFAULT AND REMEDIES

13.1. **Avancie's Events of Default**

Any of the following Avancie's events of default (in this Section, "**Events of Default**") constitutes a material breach of this Agreement, which will allow Customer, as applicable, to seek only the rights and remedies set forth in Section 13.2.

- 13.1.1. Failure of Avancie to perform any material obligation under this Agreement, provided that such failure is not cured or that Avancie has not taken substantial measures to cure, within thirty (30) calendar days following receipt of written notice of such failure;
- 13.1.2. The institution of bankruptcy, receivership, insolvency, appointment of a receiver for all or substantially all of Avancie's assets or other similar proceedings by or against Avancie if any such event interferes with the fulfillment of this Agreement and if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted.

13.2. **Rights and Remedies of Customer upon Default of Avancie**

- 13.2.1. **General.** Upon the occurrence of an Event of Default by or with respect to Avancie, Customer is entitled to any or all of the following remedies:
 - 13.2.1.1. terminate, in whole or in part, this Agreement by written notice thereof to Avancie within ninety (90) days following the occurrence of the Event of Default; and/or
 - 13.2.1.2. subject to the terms of Section 12, seek to recover damages from Avancie.
- 13.2.2. **No Right to Set Off.** Customer will not have the right to set off any undisputed current or future amounts owed to Avancie against any disputed or undisputed damages or charges assessed by Customer against Avancie. In the event Customer wishes to dispute any amounts charged by Avancie hereunder, Customer will not be entitled to withhold at any given time and all amounts owing under any single invoice.

13.3. **Customer's Events of Default**

Any of the following Customer's events of default (in this Section "**Events of Default**") constitutes a material breach of this Agreement, which will allow Avancie to seek rights and remedies including those set forth in Section 13.5.

- 13.3.1. Customer's failure to timely pay Avancie any undisputed amount (subject to Section 13.2.2) owed to Avancie, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure.
 - 13.3.2. Customer's material breach of any representation or warranty set forth in this Agreement which has a material negative impact on Customer's ability to fulfill its obligations hereunder;
 - 13.3.3. Failure of Customer to perform any other material obligation under this Agreement, provided that such failure is not cured or Customer has not taken substantial measures to cure, within thirty (30) calendar days following receipt of written notice of such failure, provided that the delay to cure is ten (10) calendar days in respect of a breach of any obligations in any of Article 3 or Article 11;
 - 13.3.4. The institution of bankruptcy, receivership, insolvency, appointment of a receiver for all or substantially all of Customer's assets or other similar proceedings by or against Customer if any such event interferes with the fulfillment of this Agreement and if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted.
- 13.4. **Transition Rights**
 In the event Avancie terminates this Agreement pursuant to the terms of this Agreement, and provided Customer has paid all undisputed amounts then owing to Avancie (and is not in continuous breach of any obligations in any of Section 3 or Section 11), Avancie will provide to Customer up to three (3) months of access to Avancie's Services at Avancie's then current rates. At Customer's request, Avancie may provide assistance services to Customer during this period in exporting Customer Data from Todoc. Those services beyond the scope of the Service are charged by Avancie to Customer and paid by Customer to Avancie at Avancie's then current rates.
- 13.5. **Rights and Remedies of Avancie upon Default of Customer**
- 13.5.1. **General.** Upon the occurrence of an Event of Default by or with respect to Customer, Avancie is entitled to any or all of the following remedies:
 - 13.5.1.1. terminate, in whole or in part, this Agreement by written notice thereof to Customer within ninety (90) days following the occurrence of the Event of Default;
 - 13.5.1.2. seek to recover damages from Customer.

14. OBLIGATIONS THAT SURVIVE TERMINATION

Sections 11, 13.2.2, 13.4, 14, 15 and 16 of this Agreement survive the cancellation, termination, or expiration of this Agreement.

15. MEDIATION AND ARBITRATION

- 15.1. **Mediation.** Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, is exclusively submitted to mediation. To this end, the parties hereto agree to participate in at least one mediation session in person by delegating a representative with decision-making authority; the mediator will be a member of the *Institut de médiation et d'arbitrage du Québec* chosen by the parties. If the parties cannot agree to a mediator, it will be chosen by the *Institut de médiation et d'arbitrage du Québec*. The place of mediation shall be Montreal. The language to be used in the mediation shall be French.

- 15.2. **Arbitration.** If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within ninety (90) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by binding arbitration (with a single arbitrator), to the exclusion of all courts, in accordance with the Code of Civil Procedure of the province of Quebec. The place of arbitration is Montreal in Canada. The language to be used in the arbitration is French.

16. GENERAL PROVISIONS

- 16.1. **Injunctive Relief.** Each Party acknowledges that any breach of any of its obligations hereunder could cause the other Party irreparable damage for which monetary damages may be inadequate, and each Party agrees that, without limiting any other available remedies, the other Party may seek injunctive and other equitable relief.
- 16.2. **Publicity.** Avancie may use Customer's name as part of a general list of customers and may refer to Customer as a user of the Services in its general advertising and marketing materials. Each Party will obtain the other Party's permission prior to using the other Party's name for any other marketing or promotional purposes. The Parties agree that any press release or other public comments issued by either Party relating to this Agreement, any dispute under this Agreement, or Customer's subscription to or use of the Services, will be prepared jointly between Avancie and Customer and will be issued upon mutual agreement of the Parties.
- 16.3. **Assignment.** This agreement is binding on and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Customer may not assign this Agreement without Avancie's prior written consent, not to be unreasonably withheld. Avancie may assign this Agreement to any parent, subsidiary or Affiliate or to any successor to its business. Avancie may also subcontract any or all of its obligations hereunder, but will nevertheless remain responsible for the performance of its obligations hereunder.
- 16.4. **Independent Contractor.** All work performed by Avancie in connection with Todoc and/or Services described in this Agreement is performed by Avancie as an independent contractor and not as the agent or employee of Customer. Avancie is free to choose the means of performing this Agreement and no relationship of subordination exists between Avancie and Customer in respect of such performance. Without limiting the generality of the foregoing, Customer acknowledges and agrees that Avancie may use third party contractors or providers of services, notably to provide the necessary hardware, software, networking, storage and related technology required to perform the Services.
- 16.5. **Governing Law.** The validity, construction, interpretation, and performance of this Agreement is governed by and construed in accordance with the domestic laws of the province of Quebec in Canada except as to its principals of conflicts of laws.
- 16.6. **Prescription.** Customer agrees that any action arising out of or related to this Agreement must be brought within one (1) year after the cause of action arose; otherwise, such cause of action is permanently prescribed.
- 16.7. **No Waiver.** No waiver of any default, condition or breach of this Agreement is deemed to imply or constitute a waiver of any other default, condition or breach of this Agreement, whether of a similar nature or otherwise.
- 16.8. **Force Majeure.** Neither party is responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by an event of *force majeure*. If any such an event of *force majeure* occurs and such event continues for thirty (30) days or more, the party delayed or unable to perform will give immediate notice to the other party, and the party affected by the other's delay or inability to perform may elect at its sole discretion, as sole remedy, to:
- (i) terminate this Agreement; or
 - (ii) suspend the Services for the duration of the condition.
- 16.9. **Incorporation of Annexes.** Annexes referred to in this Agreement and attached hereto are integral parts of this Agreement and are incorporated herein by reference.

- 16.10. **Severability.** In the event that any one or more of the provisions of this Agreement are invalid or otherwise unenforceable, the enforceability of remaining provisions is unimpaired.
- 16.11. **Counterparts.** By checking the checkbox "I accept the terms of use Todoc" when registering, accessing or using Todoc, the Customer acknowledges that he has read this Agreement, understands it and agrees to be bound by it. This agreement may be executed in two counterparts, each of which is deemed to be an original, and both of which together will constitute one agreement.
- 16.12. **Facsimile Execution.** The Parties agree that transmission to the other party of this Agreement via fax or as a .PDF file by email or any other agreed means of telecommunication with its facsimile or scanned signatures will suffice to bind the party transmitting same to this Agreement in the same manner as if an original signature had been delivered.
- 16.13. **Entire Agreement.** This Agreement, the appendices, and subordinate documents referenced in this Agreement constitute the entire agreement between the Parties with respect to the subject matter contained herein, superseding all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby.
- 16.14. **Changes to Agreement.** Avancie may change the terms and conditions of this Agreement at any time at its sole discretion. If a change, in Avancie's sole discretion, is material, Avancie will notify Customer of the change in writing or electronically (including without limitation, by email) or by posting a notice on Todoc's website that the terms have been "updated" or similar words). Any changes will also appear in this document, which Customer can access at any time by going to the Terms of Use link at the footer of Todoc's website. Customer signify that Customer agree to be bound by such changes by using a Todoc after changes are made to this Agreement.
- 16.15. **Headings.** The headings in this Agreement are for purposes of reference only and will not limit or otherwise affect the meaning hereof.
- 16.16. **Languages.** In case of divergence that the ordinary rules of interpretation do not resolve properly, the French text of this Agreement shall prevail over the English text.
- 16.17. **Notices.** Any communication (including any notice, consent, approval or instructions) provided for under this Agreement is in writing in the French or English language and may be given to the person to whom it is addressed by delivering the same to or for such person at the postal address, email address or facsimile number of such person at such address or number as such person will have notified to the other party. Any communication so addressed and delivered as aforesaid is deemed to have been sufficiently given or made on the date on which it was so delivered.

SCHEDULE OF FEES

All prices below are in Canadian dollars. Applicable tax will apply.

Access Fees

Commencing upon Activation Date, Customer will pay Avancie, the Access the access rights in the form of prepaid credit, calculated as follows:

Packages	Credit Cost	Package Cost
Credit by unit	4.00 \$	Not applicable
20 credits	3.50 \$	70.00 \$
100 credits	3.00 \$	300.00 \$
1000 credits	2.00 \$	2000.00 \$

Other Fees

Any work beyond the scope of the Services will be considered on a separate time and materials basis at the then current Avancie hourly rates. Without limiting the generality of the foregoing, any of the following services are beyond the scope of the Services:

- Configuration services;
- Training services;
- Advanced support services;
- Non-Core hours support services;
- Assistance services to export Customer Data;
- Development services; and
- Any premium features that Avancie may add to Todoc from time to time.