



ACOL*

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. "Agreements" shall mean the ACOL Client Application, these Terms and Conditions, the Product Description(s), and the ACOL Financial Agreement between the Client and the Province(s) /Territory(ies) of the selected Databases.
- 1.2. "ACOL Service" shall mean electronic access to Database(s) selected by Clients for purposes including, but not limited to, registration, search, update and discharge of interest, input and information retrieval, administrative and support activities related thereto, all as more specifically described in these Agreements.
- 1.3. "Authorized Location" shall mean the address of the Client as specified in the Client Application.
- 1.4. "Client" shall mean those persons or entities authorized by these Agreements to use the ACOL Service.
- 1.5. "Client Account" shall mean the non-interest bearing account established by Unisys into which the Client will pay the Initial Deposit and maintain the Minimum Balance thereafter, as required by these Terms and Conditions and the ACOL Financial Agreement.
- 1.6. "Client Fees" shall mean the payment(s) described in the Product Description to be made by the Client to the Applicable Province(s)/Territory(ies) for use of the ACOL Service.
- 1.7. "Database" shall mean each electronic file selected on the Client Application, and further described in the applicable Product Description, to which the Client is to be granted electronic access pursuant to these Agreements.
- 1.8. "Financial Agreement" shall mean the agreement between the Province(s)/Territory(ies) of the selected Database(s) and the Client authorizing the transfer of funds from the Client to the Client Account to be used for payment of Client Fees.
- 1.9. "Minimum Balance" shall mean the minimum sum of money, described in the Financial Agreement, which the Client is required to maintain in the Client Account.
- 1.10. "Product Description" shall mean the document provided to the Client respecting the applicable Database, and describing the services, fees and other relevant information pertaining thereto.
- 1.11. "Provinces" shall mean the Provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island, or one or more of them as the case may be, and "Applicable Province(s)" shall mean the Province(s) of the Client selected Database(s).
- 1.12. "Territories" shall mean the Northwest Territories and Nunavut, or one of them as the case may be, and "Applicable Territory(ies)" shall mean the Territory(ies) of the Client selected Database(s).
- 1.13. "Unisys" shall mean Unisys Canada Inc.
- 1.14. "Workstation" shall mean the Client's computers used for the ACOL Service.

2. LICENSE AND ACCESS RIGHTS

- 2.1. The Applicable Province(s)/Territory(ies) grants to the Client a non-exclusive, non-transferable, limited and personal right to use the ACOL Service in accordance with these Agreements.

* ACOL and Atlantic Canada On-Line are registered official marks of the Provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island.

- 2.2. Subject to the right of the Client to terminate these Agreements pursuant to Section 10.0 hereof, the Applicable Province(s)/Territory(ies) may change, add or withdraw certain materials and features from the ACOL Service, and the Product Description may otherwise be changed, without prior notice to, or consent of, the Client.
- 2.3. The rights granted to the Client pursuant to these Agreements do not include the right to use the business name, logo and related trademarks of any of the Provinces/Territories or any of their agents, licensors or suppliers.

3. ACCESS TO DATABASES

- 3.1. Unisys shall facilitate the provision of the ACOL Service by the Applicable Province(s)/Territory(ies) to the Client pursuant to these Agreements.
- 3.2. Unisys shall provide the Client with a unique account and user ID for each employee or agent of the Client designated by the Client to use the ACOL Service. Each user shall be granted a specific password to restrict access to an account to such user. Only the Client, and such of its employees or agents, may access the Database(s) through its account, user ID(s) and password(s). The Client is responsible for the security of the account, user ID(s) and password(s) and any usage logged on each account using the Client's user ID(s). The Client shall access the ACOL Service only by means of the account and user ID(s) provided by Unisys.
- 3.3. The Client may obtain electronic access to Database(s) only through the ACOL Service.
- 3.4. The Client may restrict or change the nature and extent of access by any of its employees or agents to Database(s) by so advising Unisys in writing.
- 3.5. If the Client accesses a Province's/Territory's database(s) and has no contractual right to do so, the Client shall pay to the applicable Province/Territory the relevant fee(s) for said access, and otherwise shall be bound by these Terms and Conditions, the applicable Product Description and the Financial Agreement.

4. CLIENT FEES

- 4.1. The Client shall pay the Initial Deposit into the Client Account and maintain the Minimum Balance, as specified in the Financial Agreement between the Client and the Applicable Province(s)/Territory(ies).
- 4.2. The Client Fees payable to the Applicable Province(s)/Territory(ies) for electronic access to Database(s), and when such fees are due and payable, shall be as specified in the applicable Product Description. The Client Fees shall be paid by means of the automatic transfer of the applicable amount from the Client Account to the Applicable Province/Territory. Such Client Fees and payment terms may be changed by the Applicable Province/Territory at any time upon notice to the Client.

5. EQUIPMENT

- 5.1. The Client is responsible for the acquisition, installation and operation of Workstation(s) with the capability to accommodate proper operation of the ACOL Service, and which meets the equipment requirements specified in the applicable Product Description. The use of such equipment, including the costs of any communication lines and long distance charges, shall be at the Client's sole risk and expense.

6. DOCUMENTATION AND SOFTWARE SUPPORT

- 6.1. The Client shall be provided with instructions on system procedures and telephone support assistance through the ACOL Client Support Centre, as specified in the Product Description.

- 6.2. Should the ACOL Service not operate in all material respects substantially in conformance with the applicable Product Description, the Applicable Province/Territory shall use reasonable efforts to effect the necessary corrective action at no additional charge to the Client. Notwithstanding the foregoing, the Applicable Province/Territory, or Unisys on its behalf, may charge a fee at its then standard rate to provide support which is required due to: (i) Client operator error, or (ii) as a consequence of any negligent act or omission of the Client or the Client's employees or agents having access to the ACOL Service.

7. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

- 7.1. The Applicable Province(s)/Territory(ies) represent and warrant that they have the right to grant the rights to Clients specified in these Agreements.
- 7.2. The Applicable Province(s)/Territory(ies) do not warrant the accuracy, completeness, currency, merchantability or fitness for a particular purpose of Database(s), any information in the Database(s), the Product Descriptions or any other information provided to the Client, including any information provided by Unisys.
- 7.3. Except only as otherwise provided in the applicable Product Description:
 - 7.3.1. The Provinces/Territories do not warrant that the ACOL Service shall function without failure, error or interruption. If any attempted use of the ACOL Service fails through a fault of the Applicable Province(s)/Territory(ies), the Applicable Province(s)/Territory(ies) shall rebate to the Client the specific Client Fee(s), if any, associated with the failed use of the ACOL Service. The entire risk as to the results and performance of the ACOL Service is assumed by the Client.
 - 7.3.2. All other products and services provided by the Applicable Province(s)/Territory(ies) are provided on an "as is" basis, without any other warranties, representations or conditions, express or implied, including, without limitation, warranties or conditions of accuracy, completeness, currency, merchantable quality, fitness for a particular purpose, or any warranties arising by law or by statute or by usage of trade or course of dealing. The entire risk as to the results and performance of all such other products and services provided by the Applicable Province(s)/Territory(ies) under these Agreements is assumed by the Client.
 - 7.3.3. Subject to Section 7.4 hereof, the Applicable Province(s)/Territory(ies) shall have no liability to the Client, or any other person or entity, for any claims, actions, loss, or damage including, without limitation, loss of revenue or profit or savings, lost or damaged data, or other commercial or economic loss. The Applicable Province(s)/Territory(ies) shall not be liable for any indirect or incidental, special or consequential damages whatsoever, or for claims by a third party, even if they have been advised of the possibility of such claims or damages.
 - 7.3.4. Further subject to Section 7.4 hereof, the maximum liability of an Applicable Province/Territory to the Client for any claim or action whatsoever related to the ACOL Service and any other products or services provided hereunder, shall not exceed the Client Fees paid to the Applicable Province(s)/Territory(ies) by the Client during the month in which the cause of such claim or action occurred. This provision shall apply whether or not the liability results from a claim in tort, including negligence or negligent misrepresentation, or from a breach of a fundamental term or condition or a fundamental breach of these Agreements.
- 7.4. The Applicable Province(s) shall indemnify, hold harmless and defend the Client against any damages, losses and expenses which the Client may incur, suffer or become liable for, arising out of any third party claim or action alleging that the ACOL Service, in the form supplied to the Client and used within the scope of these Agreements, infringes any Canadian patent, copyright, trade secret, trade mark or other intellectual property rights; provided the Applicable Province(s) is given prompt written notice of such claim and permitted to defend or settle the claim with all reasonable assistance provided by the Client. Notwithstanding the foregoing, the Applicable Province(s) shall be entitled, but not obliged, to participate in or assume the defense of any action or claim contemplated by this provision.

8. TITLE

- 8.1. Title to Database(s), and any information or data contained therein, shall at all times remain with the Applicable Province(s)/Territory(ies). No proprietary rights, or other interest, in said Database(s) or information or data contained therein, shall transfer to the Client except only as provided for in these Agreements.

9. RESTRICTIONS ON USE

- 9.1. Any information or data contained in Database(s) may not be extracted from nor copies made by the Client other than as expressly permitted by these Terms and Conditions, the applicable Product Description or the consent of the Applicable Province(s)/Territory(ies). The ACOL Service and any information or data obtained through the ACOL Service may not be used (i) in a computer service or timesharing business; (ii) to create a database in electronic or other format for the purposes of data aggregation or dissemination (other than for the internal archival use of the Client); or (iii) for the purpose of commercial resale of the data and information or components thereof contained in such Database(s). The ACOL Service, or any components thereof, may not be tampered with through attempts to translate, reverse engineer, decompile, disassemble, modify or merge the same with any other system.
- 9.2. The Applicable Province(s)/Territory(ies), Unisys or their authorized representatives, acting reasonably, may upon written request to the Client examine the Client's materials and records relating to the ACOL Service during normal business hours. The Applicable Province(s)/Territory(ies) and Unisys shall keep confidential and not disclose information concerning the business affairs of the Client.
- 9.3. The Client shall adhere to any other restrictions or constraints outlined in the Product Description(s) concerning access to Database(s) or use of any information or data contained therein.

10. TERM AND TERMINATION

- 10.1. Except as otherwise provided herein, these Agreements shall be effective as of the date of acceptance of the Client Application by Unisys, and shall continue on a month-to-month basis unless and until cancelled by the Applicable Province(s)/Territory(ies) or the Client on written notice to the other.
- 10.2. The Applicable Province(s)/Territory(ies) or the Client may terminate these Agreements for the selected Database(s) immediately on written notice for failure of the other party to comply with any of their provisions, including failure of the Client to maintain its Client Account at the Minimum Balance. Any provisions intended to survive the termination of these Agreements, including Client payment obligations, shall survive termination.
- 10.3. In the event of termination of these Agreements, the Applicable Province(s)/Territory(ies) shall render a final statement of Client Fees to the Client for use of the ACOL Service and return the balance, if any, in the Client Account to the Client. Except as otherwise provided in these Agreements, the Applicable Province(s)/Territory(ies) shall have no obligation to provide any rebate or credit to the Client for charges incurred during the term of these Agreements.

11. MISCELLANEOUS

- 11.1. The Applicable Province(s)/Territory(ies) may, from time to time, in their sole discretion, amend these Terms and Conditions and Product Description(s). These Terms and Conditions may be changed at any time upon notice to the Client. The Client may immediately terminate its access to the ACOL Service if any material change in these Terms and Conditions is unacceptable. The Client's continued use of the ACOL Service following notice of a change in these Terms and Conditions shall constitute the Client's acceptance of such change.

- 11.2. These Agreements constitute the entire agreement between the parties with respect to the use of the ACOL Service by the Client and the Client's rights of access to and use of the Database(s). The provisions of these Agreements shall prevail notwithstanding any variance with the terms and conditions of any order submitted by the Client to the Applicable Province(s)/Territory(ies).
- 11.2.1. All Formal notices under these Agreements shall be in writing and sent by registered mail, courier or hand-delivered. All notices shall be deemed to have been delivered upon the date of receipt by the receiving party.
- 11.2.2. All notices under these Agreements by and to the Applicable Province(s)/Territory(ies) shall be transmitted by and to Unisys.
- 11.2.3. Notices of system unavailability and messages of a general operational nature may be transmitted to Client in electronic format.