

AvanTax Filing Services

Services Agreement

This Services Agreement (this "**Agreement**") is entered into by and between **ELM COMPUTER SYSTEMS INC.**, an Ontario corporation (the "**Service Provider**"), and the **Customer** (the Customer and the Service Provider are each a "**Party**" and collectively, the "**Parties**"), and is dated as of the date of receipt by the Service Provider of an Order Form from the Customer (the "**Effective Date**"),

1. Services. Service Provider shall provide to Customer the services (the "**Services**") set out in the **Order Form**. Service Provider shall provide the Services in accordance with the terms and subject to the conditions set forth in this Agreement.
2. Fees and Expenses. Before Service Provider commences the Services, Customer shall pay to Service Provider the total amount invoiced to Customer if less than \$1,000, or fifty percent (50%) of the total amount invoiced to Customer if \$1,000 or more. The remainder of the total amount invoiced shall be paid before distributing slips to recipients or submitting XML returns to CRA or Revenu Québec.
3. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party, including, but not limited to, tax information or information that could identify individuals such as the Customer's employees, contractors, affiliates or students ("**Confidential Information**"); *provided, however*, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 3; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, *provided that* such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (c) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 3 only,

Receiving Party's Group shall mean the Receiving Party's and its employees, officers, directors, agents, lawyers, accountants and financial advisors.

4. Customer Data.

- (a) The Customer agrees to promptly provide all information ("**Customer Data**") required by the Service Provider to provide the Services. The Customer shall ensure that all Customer Data is provided to the Service Provider in the correct format.
- (b) The Customer designates on the Order Form the employee, officer or director as its contact person and authorizes the Service Provider to rely on any instructions and/or information provided to the Service Provider by such contact person on behalf of the Customer.
- (c) The Customer shall deliver the Customer Data to the Service Provider through the Service Provider's secure client portal at www.avantax.ca/afspportal unless otherwise requested by the Service Provider in writing.
- (d) In the event the Customer fails to provide the Customer Data to the Service Provider in the correct format, the Customer agrees to pay the Service Provider at Service Provider's then current hourly rate for the time spent to reformat the Customer Data into the correct format. The Customer agrees that it shall also be responsible for paying any penalties and/or fees incurred for any late filing of information returns which resulted from the Customer providing the Customer Data in an incorrect format.
- (e) All Customer Data is and shall remain the sole and exclusive property of the Customer. The Service Provider agrees to use the Customer Data for the sole purpose of providing the Services.
- (f) Upon completion of the Services, the Service Provider shall retain a copy of the Customer Data for 60 days or until receiving the Customer's request in writing to delete the data, whichever comes first. At such time the Service Provider shall delete the Customer Data from its servers and shall return to the Customer all physical copies of the Customer Data, if any.

5. Term. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services unless sooner terminated pursuant to Section 6 (the "**Term**").

6. Termination. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within fifteen (15) days after receipt of

written notice of such breach, unless the cure period is otherwise specified in this Agreement; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) days or is not dismissed or vacated within thirty (30) days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. Notwithstanding anything to the contrary in this section, Service Provider may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder and such failure continues for fifteen (15) days after Service Provider's written notice to Customer of non-payment.

7. Independent Contractor. The details of the method and manner for performance of the Services by Service Provider shall be under its own control, Customer being interested only in the results thereof. The Service Provider shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give Customer the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Service Provider is for all purposes hereunder an independent contractor and in no event will Service Provider be considered an agent or employee of Customer or any of its subsidiaries or affiliates for any purpose.

8. Limited Warranty. Service Provider warrants that it shall perform the Services (a) using personnel of industry standard skill, experience and qualifications; and (b) in a timely, workmanlike and professional manner in accordance with generally recognized industry standards for similar services. SERVICE PROVIDER (a) MAKES NO WARRANTIES EXCEPT FOR THOSE SET OUT ABOVE; AND (b) DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREE AND CLEAR TITLE. Service Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of the limited warranty set out in this Section shall be for Service Provider to use commercially reasonable efforts to cure any such breach. If Service Provider cannot cure the breach in compliance with the warranty set forth above within a reasonable time (but no more than fifteen (15) days) after Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 6. Service Provider shall within thirty (30) days after the effective date of such termination, refund to Customer a portion of the fees previously paid by Customer as of the date of termination corresponding to the defective Services.

9. Limitation of Liability. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS

FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT.

10. Miscellaneous.

- (a) Further Assurances: Each Party shall use reasonable efforts to, from time to time at the request of the other Party, without any additional consideration, furnish the other Party such further information or assurances, execute and deliver such additional documents, instruments, and conveyances, and take such other actions and do such other things, as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.
- (b) Notices: Each Party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by facsimile or email (with confirmation of transmission), or by recognized overnight courier service, and addressed to the other Party at the addresses set forth on the signature page of this Agreement (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by a nationally recognized overnight courier, signature required; (iii) when sent, if by facsimile or email (with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.
- (c) Governing Law: This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort or statute, are governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (d) Choice of Forum: Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario. EACH

PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (i) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION, LITIGATION OR PROCEEDING; AND (ii) WAIVE ANY OBJECTION TO THE VENUE OF ANY ACTION OR PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM[]; (iii) WAIVES ANY RIGHT TO TRIAL BY JURY; AND (iv) WAIVES PERSONAL SERVICE AND AGREES TO SERVICE BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY LAW, SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION, LITIGATION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. Each Party agrees that a final judgment in any such suit, action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

- (e) Entire Agreement: This Agreement, including all exhibits attached hereto, contain the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral understandings, agreements, representations and warranties with respect to such subject matter.
- (f) Severability: The invalidity, illegality or unenforceability of any provision herein does not affect any other provision herein or the validity, legality or enforceability of such provision in any other jurisdiction.
- (g) Amendments and Modifications: The Parties may not amend this Agreement except by written instrument signed by the Parties.
- (h) Waiver: No waiver of any right, remedy, power or privilege under this Agreement ("**Right(s)**") is effective unless contained in a writing signed by the Party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right.
- (i) Cumulative Remedies: The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise; *provided that* the parties intend that the remedy set out in Section 8 (Limited Warranty) is Customer's exclusive remedy for the Service Provider's breach of the limited warranty set out in Section 8.
- (j) Assignment and Delegation: Neither Party may directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this

Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving entity), operation of law, or any other manner, without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void.

- (k) Successors and Assigns: This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.
- (l) No Third-Party Beneficiaries: Except for the Parties, their successors and permitted assigns, there are no third-party beneficiaries under this Agreement.
- (m) Survival: All terms of this Agreement which, by their nature, are intended to survive termination of this Agreement will survive termination, including all payment obligations, confidentiality obligations, ownership terms, customer data terms, warranty disclaimers, indemnification obligations, disclaimers, exclusions and limitations of liability, effect of termination and general terms.
- (n) Counterparts: This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. The Parties adopt any signatures received via fax or "pdf" format as original signatures.

11. Force Majeure. The Service Provider shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, *provided that*, if the event in question continues for a continuous period in excess of thirty (30) days, Customer shall be entitled to give notice in writing to Service Provider to terminate this Agreement.