



## PROFESSIONAL SERVICES TERMS

These *Professional Services Terms* supplement the *General Terms* when Customer is acquiring Professional Services under an Order. Capitalized terms that are not defined in context shall have the meanings set forth in Section 1 of the *General Terms*.

### 1. PROFESSIONAL SERVICES.

- a. **Professional Services.** Provider shall perform any Professional Services and provide any Deliverables specified in an Order signed by Provider and Customer. Professional Services specified in the Order will be performed either on a time and expenses basis at the hourly rates specified in the Order, or on a fixed fee basis (if so specified). If no hourly rates are specified in an Order, Provider's standard hourly rates as of the effective date of the Order shall apply. The Order, if time and expenses based, also may contain an estimate of the total fees required to perform the Professional Services. This estimate is based on Provider's experience with previous similar engagements and is not a guarantee. Customer will be billed for the actual hours worked, which may be greater or less than the hours estimated in the Order.
- b. **Changes to an Order for Professional Services.** Requests by Customer and recommendations by Provider for changes to an Order for Professional Services, or to a Detailed Project Plan or Business Process Review Document, shall become effective only from the date mutually agreed by the parties in writing via change request. Any such changes are subject to any Provider change management procedures that may be set forth in the Order.
- c. **Customer Materials Required to Perform Professional Services.** If Customer provides Provider with any of its own or any third-party materials or data for use by Provider in the performance of Professional Services, then Customer grants Provider a nonexclusive, royalty-free right and license (or sublicense) to use such materials solely to the extent necessary for Provider to perform its obligations.
- d. **Authorization to Accept Software License Terms.** In the course of providing services, Provider may be required to install copies of Third-Party Software Products or third-party software products not provided by Provider on the Customer Systems. As part of the installation process, Provider may be required to accept "shrink-wrap," "click-wrap" or similar license agreements accompanying such software ("**Shrink-Wrap Terms**") on behalf of Customer. Shrink-Wrap Terms may be in electronic format or contained with the software documentation. Customer acknowledges that it is Customer's responsibility to review Shrink-Wrap Terms at the time of installation and Customer authorizes Provider to accept Shrink-Wrap Terms on its behalf.
- e. **License for Deliverables and Restrictions.** Deliverables are licensed to Customer under the same license, and subject to the same restrictions, as Provider Software Products. The license and restrictions are set forth in Section 12 of this Agreement.
- f. **Scheduling.** In the event Customer schedules Professional Services to be performed by Provider at Customer's site and Customer cancels the Professional Services on less than five business days' advance notice to Provider, Customer will pay Provider for eight hours of time for each Provider consultant scheduled to be on Customer's site for each day they were scheduled to be on site up to a maximum of three days per consultant. All non-refundable airline tickets or other non-refundable travel arrangements made as a result of the scheduled Professional Services will be invoiced to the Customer if the Customer cancels or postpones a scheduled Professional Services trip. Customer may request Provider use refundable airline tickets only, and no airline ticket charges will be incurred by the Customer for cancellation or postponement of a Professional Services trip.
- g. **Reimbursement of Travel and Living Expenses.** Customer is responsible for the reasonable travel and living expenses of Provider personnel traveling to Customer's site to perform Professional Services. Provider personnel will comply with Provider's travel and expense reimbursement policies when traveling to Customer's site, a copy of which is available from Provider upon request. If a project requires a Provider consultant to work at Customer's site for longer than a week, the consultant shall have the option of returning home on weekends at Customer's expense. Provider's travel and expense reimbursement policy is subject to change at any time upon reasonable prior notice to Customer. Provider will give Customer at least thirty days' advance notice of any changes that would result in higher payments by Customer.
- h. **Customer Responsibilities and Dependencies.** Customer shall comply with the general obligations specified in the Agreement and any specific Customer obligations described in the Order. Customer acknowledges that Provider's ability to deliver Professional Services in accordance with its warranty obligations is dependent upon Customer's full and timely cooperation with Provider, and the accuracy and completeness of any information and data Customer provides. Additionally, the parties acknowledge that successful completion of the Professional Services will require their full and mutual good faith cooperation. When agreement, approval, acceptance, consent or similar action by either party is required by the Agreement or otherwise reasonably requested by a party, such action will not be unreasonably delayed or withheld by the other party. Customer agrees that to the extent its failure to meet its responsibilities results in a failure or delay by Provider in performing its obligations under the Agreement, Provider shall not be liable for such failure or delay. Customer shall provide Provider personnel, as reasonably necessary, with (i) use of and access to Customer's systems, facilities, working space, office services, and other resources; (ii) access to and support of qualified Customer personnel; and (iii) accurate, reliable and timely Customer information, data (including test data), and documentation.

- i. **Hiring of Provider Employees.** Each party agrees to not to solicit, or make offers of employment to, or enter into consultant relationships with, the other party's employees or subcontractors involved, directly or indirectly, in the performance of the Agreement during the term of the Agreement and within a one-year period after its termination. Neither party shall be prevented from hiring any such employee or consultant who responds to a general hiring program conducted in the ordinary course of business and not specifically directed at the other party's employees or consultants.
- j. **Similar Services.** Nothing in the Agreement shall prohibit Provider from providing Professional Services or Deliverables similar to those provided under the Agreement to other Provider customers.

## 2. PROFESSIONAL SERVICES AND DELIVERABLES WARRANTIES AND REMEDIES.

- a. **Professional Services Warranty.** Provider warrants the Professional Services will be provided by trained personnel with the requisite skill and knowledge to perform the Professional Services in a professional and workman like manner using good industry practice.
- b. **Deliverables Warranty.** For any Deliverables consisting of a modification to or the configuration of a Provider Software Product ("Software Deliverable"), Provider warrants for a period of thirty days from the date the Software Deliverable is moved into production that the Software Deliverable shall substantially conform to relevant acceptance criteria for the Software Deliverable specified in the Order, provided that if no acceptance criteria are specified in the Order, Provider warrants for a period of thirty days from the date the Software Deliverable is moved into production that the Software Deliverable shall substantially conform to the description of the Software Deliverable set forth in the applicable Order.

For all other types of Deliverables, Provider warrants for a period of thirty days from the date of delivery that the Deliverable shall substantially conform to relevant acceptance criteria for the Deliverable specified in the Order, provided that if no acceptance criteria are specified in the Order, Provider warrants for a period of thirty days from the date of delivery that the Deliverable shall substantially conform to the description of the Deliverable set forth in the applicable Order.

- c. **Exclusive Remedies.** If Professional Services or Deliverables are not provided in accordance with the terms of the Provider warranty and Customer notifies Provider in writing within the applicable warranty period, Provider shall attempt to correct any nonconformance confirmed by Provider within a reasonable period of time by re-performing the Service or correcting the Deliverable without additional charge to Customer. Customer shall provide Provider with sufficient information to permit Provider to confirm the nonconformance and shall provide assistance and cooperation as reasonably requested by Provider to permit Provider to make required corrections. If Provider is unable to comply with the foregoing obligations, Provider shall refund a reasonable portion of the fees paid by Customer for the Professional Services or the Deliverable to compensate Customer for the deficiency in the Professional Services or Deliverable and Customer shall promptly return the Deliverable to Provider. This section states Provider's entire liability and Customer's sole remedy for warranty claims relating to Professional Services and Deliverables.
- d. **Warranty Exclusions.** Provider shall not be responsible for a breach of warranty that would not have occurred but for (i) changes to a Deliverable that were implemented by someone other than Provider personnel or Provider's subcontractors working at Provider's direction; (ii) changes to or errors in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Professional Services otherwise rely (excluding Provider Software Products); or (iii) improper use of a Deliverable.