

PROFESSIONAL SERVICES TERMS (US)

These Professional Services Terms will apply whenever Customer procures Professional Services under a Product Order. In some cases, additional or modified rights to those provided in these Professional Services Terms apply to a particular Product Order, and these are set out in the Product Order.

1. **DEFINITIONS.**
 - 1.1 Capitalized terms used in these Professional Services Terms but not defined below are defined in the Master Terms:

“Acceptance Criteria” means the acceptance criteria for the Deliverables (if any) as described in the Product Order.

“Acceptance Period” means, unless otherwise set out in the Product Order, in relation to a documentary Deliverable, a period of five (5) days following submission of the documentary Deliverables for acceptance and in relation to other Deliverables, a period of ten (10) days following submission of the Deliverable for acceptance.

“Change Order” means any agreed change in writing to a Product Order, as described in Section 5 below. Change Orders will be deemed incorporated by reference in the applicable Product Order.

“Site” means the location at which the Professional Services are to be provided as described in the Product Order.

“Timetable” means the timetable set out in the Product Order for the provision of the Professional Services and delivery of any Deliverables.
 2. **PROVISION OF PROFESSIONAL SERVICES.**
 - 2.1 Retain will provide the Professional Services identified on the Product Order to Customer, subject to Customer’s payment of all applicable fees within the payment period set forth in the Professional Services section of the Product Order.
 - 2.2 The Professional Services will be provided at Retain’s premises (or another location at Retain’s election) unless a Site is specified on the Product Order in which case the Professional Services will be provided at the Site.
 - 2.3 Customer agrees that the purchase of Professional Services is not contingent on the delivery of any future Product functionality or features, other than Deliverables (subject to the terms of the applicable Product Order), or on any oral or written public comments by Retain regarding future Product functionality or features.
 - 2.4 The warranty set out in Section 10.4 (*Representations and Warranties*) of the Master Terms shall apply in relation to the performance of the Professional Services.
 3. **CUSTOMER DEPENDENCIES.**
 - 3.1 Customer will take all reasonable steps to ensure the health and safety of any Retain personnel carrying out the Professional Services while they are at Customer’s premises.
 - 3.2 The provision of the Professional Services is dependent upon Customer, at all times and in a timely manner:
 - 3.2.1 supplying a qualified project manager to represent Customer and co-operate and work with Retain during the entire Professional Services engagement;

- 3.2.2 providing Retain personnel with access to the Site(s) and such Customer Systems and technical services as they may reasonably require for the performance of the Professional Services;
 - 3.2.3 ensuring that Retain has such access to and full co-operation of the technical and managerial personnel of Customer and any applicable third parties who have the appropriate skill, experience and knowledge as Retain may reasonably require;
 - 3.2.4 providing Retain with information, specifications or instructions of sufficient detail, accuracy and completeness as are reasonably required by Retain;
 - 3.2.5 ensuring that any equipment, operating systems and other software (excluding the Product(s)) which Retain is requested by Customer to use or modify and any material or information provided to Retain is either owned by Customer or that Customer has all necessary rights to authorize Retain to use or modify it; and
 - 3.2.6 performing any additional obligations or dependencies specified in the Product Order.
 - 3.3 Retain will not be liable for any failure to comply with any Timetable or any other obligation in the performance of Professional Services to the extent such failure is as a result of Customer's failure to perform or delay in performing its obligations or dependencies in a timely manner. Any delays in the performance of Professional Services or delivery of Deliverables caused by Customer may result in additional applicable charges for resource time.
- 4. **DELIVERY AND ACCEPTANCE.**
 - 4.1 This Section 4.1 will apply where the Product Order specifies that there are Acceptance Criteria for the Deliverables.
 - 4.1.1 Subject to Section 5.4 of Part G of the Product Order Terms, Retain will use reasonable endeavors to complete the Deliverables and submit them for acceptance testing by Customer in accordance with the Timetable.
 - 4.1.2 Upon receipt of a Deliverable, Customer shall promptly test the Deliverable to determine whether it conforms substantially to the Acceptance Criteria. Acceptance of the Deliverable will occur on the earlier of the date: (i) on which Customer indicates in writing to Retain that the Deliverable substantially conforms to the Acceptance Criteria or is otherwise accepted; (ii) on completion of the Acceptance Period if, within that period, Customer fails to notify Retain of any substantial nonconformances to the Acceptance Criteria in accordance with Section 4.1.3 below; (iii) on which Retain can reasonably demonstrate that the Deliverable substantially conforms to the Acceptance Criteria; or (iv) on which the Deliverable is first used by Customer in a production environment.
 - 4.1.3 If Customer, acting reasonably, determines that a Deliverable does not substantially conform to its Acceptance Criteria, Customer shall submit to Retain a list of all such non-conformances together with evidence of such non-conformances in a format reasonably specified by Retain from time to time, and Retain shall use commercially reasonable efforts to correct such non-conformities and

resubmit the Deliverable to Customer for acceptance as soon as reasonably practicable and the provisions of Sections 4.1.2 and this Section 4.1.3 shall apply only to such re-submission(s).

4.1.4 If a Deliverable fails to meet its Acceptance Criteria after its second re-submission to Customer, Customer may, as Customer's sole and exclusive remedy: (i) again reject the Deliverable and return it to Retain for further correction and re-submission in accordance with the process described above; or (ii) terminate the relevant part of the Product Order immediately upon written notice and recover all Professional Services fees paid under the relevant part of Product Order for such deficient Deliverable.

4.1.5 If the Parties determine that a Deliverable's Acceptance Criteria specified in a Product Order require modification (for example, due to incorrect assumptions or changed requirements), the Parties will cooperate in good faith to execute a Change Order for such revised requirement.

4.2 If no Acceptance Criteria are specified in the Product Order then Customer shall be deemed to have accepted the Deliverables upon delivery.

5. CHANGES.

5.1 Changes to the Professional Services, the Deliverables, the Timetable or the fees will require a written Change Order signed by the Parties prior to implementation of the changes.

5.2 No requested change shall have effect unless and until each Party has signed the relevant Change Order.

6. USAGE RIGHTS AND RESTRICTIONS, OWNERSHIP.

6.1 Subject to the terms of the Agreement, Retain grants Customer a limited, personal, non-exclusive, non-transferable, right during the applicable Usage Period to use the Deliverables for Customer's internal business purposes to the extent required for the proper enjoyment of the Professional Services. Where the Deliverable includes configuration or modifications to Retain's standard Products, permission to use the Deliverable is granted on the same basis as that which applies to the relevant Product. Note that Section 6 (*Restrictions and Customer Obligations*) of the Master Terms applies to all Deliverables which shall be deemed to be Restricted Items for the purpose of the Agreement.

6.2 Customer agrees that all Intellectual Property Rights in Deliverables developed by or on behalf of Retain as part of the provision of the Professional Services are and will remain the exclusive property of Retain. Notwithstanding the foregoing, in the event that Customer acquires any ownership right, title or interest in or to such Deliverables or any Intellectual Property Rights therein or thereto, Customer hereby perpetually, unconditionally and irrevocably assigns all such right, title and interest to Retain.

7. FEES AND INVOICING.

7.1 Fees. Customer shall pay Retain for the Professional Services at the rates specified in the applicable Product Order, or if no rate is specified in the Product Order, Retain's standard rates then in effect. Professional Services are provided on either a time-and-materials or fixed fee basis, as provided in a Product Order. Any amount set forth in a time-

and-materials Product Order is solely a good-faith estimate for Customer's budgeting and Retain's resource-scheduling purposes and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Retain will continue to provide Professional Services under the same rates and terms. If stated in the applicable Product Order, Retain will periodically update Customer on the status of the Professional Services and the fees accrued under the Product Order.

7.2 Incidental Expenses. Customer shall reimburse Retain for reasonable travel and out-of-pocket expenses incurred in connection with the provision of the Professional Services in accordance with Retain's then-current expenses policy which is available to Customer on request.

7.3 Invoicing and Payment. Charges for time and materials engagements will be invoiced monthly in arrears unless otherwise expressly stated in the applicable Product Order. Charges for fixed fee engagements will be invoiced in advance in the manner as provided in the Product Order unless otherwise expressly stated therein.

7.4 Overdue Charges. If any invoiced amount is not received by Retain by the due date, then without limiting Retain's other rights or remedies including its rights to charge interest on overdue amounts in accordance with the Product Order, Retain may condition future purchases of Professional Services on shorter payment terms.

8. PERSONNEL.

8.1 Retain will take reasonable steps to ensure that any of its personnel performing the Professional Services at the Site will comply with any reasonable security, health and safety or confidentiality requirements of Customer

relating to that Site that are notified by Customer in advance in writing.

8.2 Customer agrees that during the term applying to the Professional Services, and for twelve (12) months thereafter, it will not, without the prior written consent of Retain, directly or indirectly employ or engage or solicit for employment or engagement any employee of Retain provided that Customer shall not be in breach of this Section 8.2 if such employment results from a response to a general public advertisement for employment or talent search engagement not specifically targeted at the relevant employee.

9. TERMINATION.

9.1 Upon any termination of a Professional Services engagement, Customer will pay, in accordance with the Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that Customer terminates a Professional Services engagement for cause in accordance with the terms of the Agreement and Customer has pre-paid any fees for Professional Services not yet received, Retain will refund such pre-paid fees. In the event that Retain terminates a Professional Services engagement for cause in accordance with the terms of the Agreement, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in a Product Order Form.