



PROFESSIONAL SERVICES TERMS AND CONDITIONS

SoftInWay Inc., a Massachusetts corporation, with its principal place of business at 20 Burlington Mall Road, Suite 450, Burlington, MA 01803 USA, and/or one of its affiliated companies (collectively referred to herein as “SIW”), has entered into a software license and services agreement with a customer (“Customer”) of SIW, which may have taken the form of a written agreement signed by both parties, a click-wrap, or online agreement agreed to by the customer electronically (referred to herein as the “Agreement”). These terms and conditions (the “Professional Services Amendment”) are specific to professional consulting services provided by SIW or one of its affiliates to Customer. These terms are additional to the terms in SIW’s EULA, the Agreement and, to the extent that these terms are in conflict with the terms of the Agreement, these terms and those of the EULA will take precedence and supersede the terms of the Agreement with respect to professional consulting services provided by SIW.

ARTICLE 1 - DEFINITIONS AND DEFINED TERMS

- 1.1 **Defined Terms.** Each term defined in the preamble and the recitals has its assigned meaning, and each of the following terms has the meaning assigned to it.
- 1.2 **“Confidential Information”** means all non-public, proprietary, technical, financial, commercial and other confidential disclosures and information, whether in oral, written or other form, that SIW designates to Customer as confidential or which under the circumstances surrounding the disclosure thereof Customer knows or has reason to know should be treated as confidential (including but not limited to, any business plans, executive summaries, capitalization tables, budgets, financial projections and un-published financial statements; costs, prices, marketing plans and licenses; employee, customer, supplier, shareholder, partner or investor lists; technology, know-how, business processes, trade secrets and business models; notes, sketches, flow charts, formulas, blueprints and elements thereof; source code, object code, graphical design, user interfaces and other intellectual property).
- 1.3 **“Indemnified Parties”** has the meaning assigned to in Section 7.3.
- 1.4 **“Independent Contractor”** means any person/business who performs services for another under contract, but who is not under the essential control or superintendence of the other person/business while performing those services.
- 1.5 **“Party”** means SIW or Customer.
- 1.6 **“Parties”** means collectively SIW and Customer.
- 1.7 **“Professional Services”** means those professional consulting services set forth in an SOW.
- 1.8 **“Project”** means project as defined in the SOW.
- 1.9 **“Retainer”** means the advance payment of fees for services performed by SIW.
- 1.10 **“Statement of Work”** or **“SOW”** means a written statement of work, mutually agreed upon and executed by the Parties that specifically references this Professional Services Amendment, and documents description of the work and services to be performed by the SIW.

ARTICLE 2 – INDEPENDENT CONTRACTOR

- 2.1 **Independent Contractor.** SIW is an Independent Contractor and not an employee of Customer. Nothing contained herein shall be considered as creating an employer-employee relationship between the Parties to the Agreement.
- 2.2 **Non-Solicitation of Employees.** The Parties agree that while SIW is providing Professional Services under an SOW and for a period of 36 months after the completion of such Professional Services, the parties shall not (i) directly or indirectly recruit, hire, engage, or attempt to recruit, hire, or engage, discuss employment with, or otherwise utilize the Professional Services in any capacity of any person who shall have been an employee, agent of or consultant to the other Party at any given time during and for a period of 36 months after the completion of such Professional Services, and (ii) induce any person who shall have been an employee, agent,



or consultant to the other Party at any time during and for a period of 36 months after the completion of such Professional Services to terminate his or her relationship with the other Party.

ARTICLE 3 – SCOPE OF PROFESSIONAL SERVICES

- 3.1 **Scope.** SIW shall provide all Professional Services under the applicable SOW in accordance with the timeline set forth in said SOW. If SIW has knowledge of anything that may prevent or threaten to prevent the timely performance of the Professional Services under the applicable SOW, SIW will notify Customer in writing.
- 3.2 **Statement of Work.** Each individual SOW will define in detail the Professional Services and any deliverables to be provided by SIW to Customer under such SOW.
- 3.3 **Rates.** SIW shall provide all the Professional Services at the rates set forth in the SOW.

ARTICLE 4 – COMPENSATION

- 4.1 **Invoicing.** All invoices shall be due and payable on receipt of the invoice.
- 4.2 **Travel and Out of Pocket Expenses.** Customer shall reimburse SIW for all travel and out-of-pocket expenses associated with the applicable SOW, including flights, car rentals, hotels and/or meal charges. SIW shall provide receipts for all travel reimbursements within 30 days of the subject travel.
- 4.3 **Late Payment.** If, and upon depletion of Retainer, any invoice payments unpaid within 7 days after due shall bear an interest rate equal to 1.5% per month on the unpaid amounts, payable from the date of the invoice to the date payment is received. This clause shall be a non-exclusive remedy for SIW.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES

- 5.1 **Customer's Representation and Warranties.** Customer represents and warrants to SIW that:
 - 5.1.1 **Organization.** Customer is a corporation duly organized, validly existing, in good standing in its local jurisdiction.
 - 5.1.2 **Corporate Power and Authority.** Customer has all requisite corporate or other organizational power and authority to execute, deliver, and perform the Agreement and SOW.
- 5.2 **SIW's Representation and Warranties.** SIW represents and warrants to Customer that:
 - 5.2.1 **Organization.** SIW is a corporation duly organized, validly existing, and in good standing under the laws of Massachusetts.
 - 5.2.2 **Corporate Power and Authority.** SIW has all requisite corporate or other organizational power and authority to execute, deliver, and perform the Agreement and SOW.
- 5.3 **Additional Warranties** about use and application:
 - 5.3.1 **Agreement.** Customer agrees that the license software provided by SIW is not for Nuclear Weapon, Chemical Weapon, Military Use or Missile technology and will not be exported to any country or national of another country without prior written permission from SIW and will be in full compliance with ITAR regulation. Customer agrees to defend and indemnify SIW from any claim related to Customer's unlawful and/or unauthorized use, transfer and/or dissemination.
 - 5.3.2 **Agreement.** SIW represents and warrants that the services will be performed in a professional and workmanlike manner. Except as provided in this section, with respect to the Professional Services SIW makes no other warranty, express, implied or statutory, and all such warranties are hereby disclaimed including, but not limited to, any warranty of merchantability or fitness for a particular purpose.



ARTICLE 6 – CONFIDENTIALITY

6.1 Project Intellectual Property.

- 6.1.1 **Ownership of Background Intellectual Property.** The ownership of Background Intellectual Property will not be altered or transferred merely by virtue of its use in the Project.
- 6.1.2 **Use of Background Intellectual Property.**
- a. The Customer grants to the SIW a non-exclusive, irrevocable, non-transferrable, fee-free license to use its Background Intellectual Property to the extent necessary for SIW to fulfill its obligations under this Amendment.
- 6.1.3 **Project Intellectual Property.**
- a. Project Intellectual Property will vest in, and be owned by, the Customer upon Customer's full payment of all project-related SIW invoices.
 - b. The SIW agrees to do all things necessary to ensure that the Customer owns Project Intellectual Property, including:
 - i. executing documentation; and
 - ii. performing such acts, required to transfer or assign ownership to the Customer, provided that nothing in this clause requires SIW to transfer or assign ownership of its Background Intellectual Property.
- 6.1.4 **Use of Project Intellectual Property.**
- a. Subject to clause 6.1.4(b) of this provision, the Customer grants SIW a non-exclusive, non-transferrable, fee-free license to use Project Intellectual Property during the duration of the Professional Services to the extent necessary to fulfill its obligations under this Professional Services Amendment.
 - b. For the avoidance of doubt, the license granted in clause 6.1.4(a) of this provision does not confer a right to sublicense or to Commercialize any Project Intellectual Property.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 **Governing Law.** The internal laws of Massachusetts, without regard to conflict of law principles, govern all matters arising under or relating to this Professional Services Amendment, including torts.
- 7.2 **Merger.** This Professional Services Amendment and SIW's EULA together with each SOW executed by the parties, constitutes the final, exclusive agreement between the Parties on the matters contained in this Professional Services Amendment. All earlier and contemporaneous negotiations and agreements between the Parties on the matters contained in the Agreement are expressly merged into and superseded by this Professional Services Amendment.
- 7.3 **Indemnification.** Customer will defend, indemnify, and hold harmless SIW, its directors, officers, employees, representatives, agents, stockholders, and customers (collectively, the "**Indemnified Parties**") from and against all losses, demands, claims, damages, expenses, judgments or liabilities, including costs, attorneys' fees, taxes, fines, penalties, interest or other awards, that may be imposed on, incurred by or asserted against the Indemnified Parties, arising out of, or occurring in connection with: (i) Customer's breach of the Agreement; (ii) Customer's breach of applicable law; (iii) the infringement of any intellectual property, confidential information, or other proprietary right of any third party; and (iv) Customer's negligent acts or omissions or intentional conduct.
- 7.4 **Severability.** If any provision of this Professional Services Amendment is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, (i) such provision will be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity, and enforceability of the remaining provisions of this Professional Services Amendment will not be affected or impaired thereby.



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7.5 **Construction.** The Parties acknowledge that it or its respective legal counsel have had the opportunity to review and revise this Professional Services Amendment and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Professional Services Amendment or any amendments, schedules, SOW's, or exhibits hereto.

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