

PROFESSIONAL SERVICES TERMS AND CONDITIONS

IMPORTANT NOTICE: THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS (“PROFESSIONAL SERVICES TERMS”) GOVERNS THE PURCHASE BY THE INDIVIDUAL OR ENTITY END USER (“CUSTOMER,” “END USER,” “YOU” OR “YOUR”) OF THE PROFESSIONAL SERVICES (“PROFESSIONAL SERVICES”) SET FORTH ON THE EXECUTED BUSINESS PROPOSAL (“BUSINESS PROPOSAL”) FROM BCD SOFTWARE, LLC (“BCD SOFTWARE,” “WE”, “OUR” OR “US”) OR ITS AUTHORIZED RESELLER. WE ARE WILLING TO PROVIDE THE PROFESSIONAL SERVICES TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE TO ALL OF THE TERMS SET FORTH HEREIN, THEN WE ARE UNWILLING TO PROVIDE THE PROFESSIONAL SERVICES TO YOU, IN WHICH EVENT YOU SHOULD NOTIFY US WITHIN SEVEN (7) DAYS OF THE DATE OF PURCHASE OR SEVEN (7) DAYS PRIOR TO THE COMMENCEMENT OF THE PROVISION OF THE PROFESSIONAL SERVICES, WHICHEVER IS EARLIER, FOR A FULL REFUND OF THE MONIES PAID FOR THE PROFESSIONAL SERVICES.

1. SCOPE. These Professional Services Terms set forth the terms and conditions governing BCD's provision of Professional Services to Customer, as specified on the Business Proposal. Except as expressly set forth herein, these Professional Services Terms do not provide any license of Software to Customer and Customer understands and agrees that the use of the Software by Customer is governed by and subject to the terms and restrictions of the separate Software License Terms and Conditions.

2. OWNERSHIP. BCD owns all rights, title and interest in and to the materials provided to by BCD to Customer in connection with the Professional Services (excluding any separately licensed materials, the “Deliverables”), and related intellectual property rights. BCD hereby provides Customer with a limited, non-exclusive, non-transferable, limited license to use the Deliverables solely for Customer's internal operations in connection the Software. Notwithstanding the foregoing: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise (“Tools”) used by BCD to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables; and (ii) the term “Deliverables” shall not include the Tools.

3. PROFESSIONAL SERVICES.

(a) BCD Obligations. BCD will perform Professional Services as described in the Business Proposal. While performing Professional Services at non-BCD locations as directed by Customer, BCD personnel will comply with Customer's applicable code of conduct and procedures (including policies regarding occupational

health and safety requirements, building access and physical and information security), all as provided in advance by Customer in writing.

(b) Customer Obligations. Customer will: (i) provide BCD's personnel with such information, co-operation and support as may reasonably be required for BCD to perform the Professional Services; (ii) provide BCD personnel with access to such of Customer's systems, networks, premises and property as is necessary to perform the Professional Services, and ensure that BCD is granted sufficient authorization to use any third-party systems, programs or networks running Customer's systems necessary to perform the Professional Services; (iii) take reasonable steps to ensure the health and safety of BCD's personnel providing Professional Services; and (iv) ensure that all necessary consents, authorizations and licenses have been obtained so that performance of the Professional Services does not breach any statutory or regulatory provisions (of whatever jurisdiction) relating to the use of and access to personal data.

(c) Changes. Customer may request changes in the scope or timing of the Professional Services (each a “Change”). Any Change must be in a writing signed by an authorized representative of each of the Parties. Changes may result in an adjustment to the costs and/or delivery schedule, as mutually agreed by the Parties in good faith. In the event Customer requests a Change in delivery schedule or suspension of the Professional Services and BCD personnel engaged in the provision of the Professional Services cannot be reasonably assigned to other work, BCD reserves the right that the Customer shall be responsible for paying for such personnel, at BCD's then-current rates, during the delayed delivery or suspension period.

(d) Project Managers. Each of BCD and Customer will designate a project manager to oversee and coordinate the Professional Services (each, a "Project Manager"). Either Party may change its Project Manager upon written notice to the other Party.

4. CONFIDENTIALITY. You acknowledge that the Deliverables may contain proprietary and confidential property of us and/or our licensors embodying trade secrets. You agree: (a) to maintain the Deliverables in confidence and use a reasonable degree of care to protect the confidentiality of the Deliverables; and (b) to not disclose, provide or otherwise make available the Deliverables to any person other than your employees or contractors who need to have access to it to carry out their duties and who are bound by written agreements to protect the confidentiality of the Deliverables.

5. TERM. These Professional Services Terms shall commence on the date the Business Proposal is executed and expire upon the completion of the Professional Services set forth on the Business Proposal. Sections 2, 4 and 6-11 shall survive the expiration of these Professional Services Terms.

6. WARRANTY.

(a) Limited Warranty. We warrant to you that (a) each of our employees, consultants and subcontractors, if any, that we use to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform such services; and (b) the Professional Services will be performed for and delivered to you in a good and workmanlike manner in accordance with industry standards, laws and governmental regulations applicable to the performance of such services. Our ability to successfully perform hereunder is dependent upon your participation, provision of timely information and access to resources. If through no fault or delay of yours the Professional Services do not conform to the foregoing warranty, and you notify us within sixty (60) days of our delivery of the Professional Services, your sole and exclusive remedy is to have us re-perform the non-conforming portions of the Professional Services.

(b) Disclaimer. THE WARRANTIES STATED IN SECTION 6(a) ABOVE ARE YOUR SOLE REMEDIES AND OUR EXCLUSIVE OBLIGATIONS RELATED TO THE PROFESSIONAL SERVICES AND DELIVERABLES TO BE PERFORMED FOR AND DELIVERED TO YOU PURSUANT TO THESE PROFESSIONAL SERVICES TERMS. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. EXCEPT AS PROVIDED HEREIN, THE PROFESSIONAL

SERVICES AND DELIVERABLES PROVIDED BY US ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusions may not apply to you.

7. LIMITATION OF LIABILITY. WE SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES IN CONNECTION WITH THE PROFESSIONAL SERVICES, DELIVERABLES OR THESE PROFESSIONAL SERVICES TERMS, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SAVINGS, OR DAMAGES ARISING FROM LOSS OF USE, LOSS OF CONTENT OR LOSS OF DATA, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THESE PROFESSIONAL SERVICES TERMS FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, OUR MAXIMUM LIABILITY TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH THE PROFESSIONAL SERVICES, THE DELIVERABLES OR THESE PROFESSIONAL SERVICES TERMS SHALL BE THE AMOUNT PAID BY YOU FOR THE PROFESSIONAL SERVICES. NOTHING IN THESE PROFESSIONAL SERVICES TERMS EXCLUDES OR RESTRICTS ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM OUR NEGLIGENCE.

8. INDEPENDENT CONTRACTORS. The relationship between Customer and BCD is that of independent contractors. Neither Party shall be deemed to be an agent, partner or joint venturer of the other Party. Neither Party shall have the right to bind the other Party, transact any business in the other Party's name or in its behalf or incur any liability for or on behalf of the other Party. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of the Professional Services. BCD reserves the right to use third parties (who are under a covenant of confidentiality with BCD), to provide such Professional Services.

9. GOVERNING LAW. These Professional Services Terms are governed by and construed in accordance with the laws of The Commonwealth of Massachusetts and the federal U.S. laws applicable therein, excluding its choice of law provisions, and you agree to submit to the personal and exclusive jurisdiction of the courts located in Suffolk County, Massachusetts. Notwithstanding the foregoing, you acknowledge that a

breach by you of these Professional Services Terms may cause irreparable harm to us or our licensors for which a remedy at law would be inadequate, and therefore you agree that we may have the right to seek immediate injunctive relief to enforce these Professional Services Terms, in addition to any other rights and remedies we or our licensors may have. You acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Professional Services Terms. The remedies contained herein are cumulative and in addition to any other remedies at law or equity.

10. MISCELLANEOUS. You may not assign your rights or delegate your obligations under these Professional Services Terms without our prior written consent. The failure of either party to require performance by the other party of any provision of these Professional Services Terms shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision of these Professional Services Terms be taken or held to be a waiver of the provision itself. If any provision of these Professional Services Terms is found void and unenforceable, it will be replaced to the extent possible with a provision that comes closest to the meaning of the original provision. These Professional Services Terms, and the documents referenced in these Professional Services Terms, is the entire agreement between Customer and BCD Software relating to the Professional Services, and supersedes any and all prior or contemporaneous purchase order, invoice, communication, advertising, representation, understanding or agreement concerning the Professional Services. These Professional Services Terms may only be amended or modified by a writing that is signed by the duly authorized representatives of both parties.

11. ORDER OF PRECEDENCE. These Professional Services Terms supplement the General Terms. In the event of any conflict between these Professional Services Terms and the General Terms, the General Terms shall control.

