



## Third Party Terms

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY

THE TERMS AND CONDITIONS OF CLIENT'S PURCHASE OF THIRD PARTY SERVICES ("SERVICES") FROM PROVIDER ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CLIENT") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY RECEIVING THE SERVICE DIRECTLY FROM THE THIRD PARTY SERVICE PROVIDER ("SERVICE PROVIDER") OR BY MAKING PAYMENT TO THE REDESIGN GROUP ("PROVIDER"), CLIENT AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CLIENT AND PROVIDER HAVE SIGNED A SEPARATE AGREEMENT WHICH EXPRESSLY GOVERNS THE RECEIPT OF THIRD PARTY SERVICES, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE SERVICE AND/OR THE RESULTS THEREOF POSTED ON ANY PROVIDER WEBSITE OR MOBILE APPLICATION DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN PROVIDER AND CLIENT.

### 1. Important Information About These Terms and Conditions

- 1.1 These Terms and Conditions constitute a binding contract between Client and Provider and are referred to herein as either "Terms and Conditions" or this "Agreement". In addition to any agreement that references or incorporates these Terms and Conditions, Client accepts these Terms and Conditions by making a purchase from or placing an order with Provider on any Provider website or mobile application (each, a "Site").
- 1.2 These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on a Site at the time Client places an order or signs a Client Service Order Form will govern the order in question, unless otherwise agreed in writing by Provider and Client.
- 1.3 Client consents to receiving electronic records, which may be provided via a web browser or e-mail application connected to the Internet. Individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form upon written request to Provider. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.
- 1.4 Client may issue a Purchase Order for administrative purposes only. Additional or different terms and conditions contained in any such Purchase Order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any Purchase Order or invoice.
- 1.5 These Terms and Conditions and the Client Service Order Form, if applicable, contain the entire understanding of the parties with respect to the subject matters herein and supersede and replace in their entirety any and all other prior and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties hereto with respect to the subject matter hereof.

## 2. Definitions

- 2.1 "Affiliates" means, with respect to Provider, entities that Control, are Controlled by, or are under common Control with Provider; and, with respect to Client, entities that Control, are Controlled by, or are under common Control with Client.
- 2.2 "Confidential Information" means any information or data of a confidential nature of a party, its Affiliates or a third party in oral, electronic or written form that the receiving party knows or has reason to know is proprietary or confidential and that is disclosed by a party in connection with these Terms and Conditions, including but not limited to the terms and conditions of each Service Order Form and/or Purchase Order. Confidential Information does not include information that: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party prior to disclosure; (c) is made known to the receiving party by a third party having the right to disclose it; or (d) is independently developed by personnel of the receiving party who have not had access to such information. Confidential Information does not include Personal Data.
- 2.3 "Control" or "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs of another whether by ownership of shares, ability to appoint officers, contract or otherwise.
- 2.4 "Force Majeure Event" means any event or circumstance arising which is beyond the reasonable control of Provider (including but not limited to any industrial dispute affecting any third party, carrier delays, embargos, acts of God or acts or laws of governmental regulations or government agencies, severe weather conditions, fire, flood, disaster, failure of power, civil riot, war or terrorism).
- 2.5 "Laws" means any applicable federal, state, provincial, local, municipal, regional, foreign, international, multinational or other constitution, law, statute, treaty, rule, regulation, regulatory or legislative requirement, ordinance, license, restriction, judicial or administrative order, code, common law or other pronouncement having the effect of law.
- 2.6 "Personal Data" means data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of, or is likely to come into the possession of, the controller.
- 2.7 "Purchase Order" or "PO" means a document that is in electronic form and that contains an offer by Client to purchase pursuant to these Terms and Conditions at a specified price.
- 2.8 "Service Provider" means the third party providing the Third Party Services directly to Client.
- 2.9 "Services Terms and Conditions" means the Service Provider's standard terms and conditions or such other terms as agreed upon by Client and the Service Provider.
- 2.10 "Subscription Term" means the period during which Client has the right to access or use Third Party Services that are provided on a subscription, term-license, or recurring-fee basis, as specified in the applicable Client Service Order Form, Purchase Order, or Service Provider agreement.
- 2.11 "Third Party Services" or "Services" means products and/or services, including Cloud Services, that are not exclusively operated or controlled by Provider or that involve significant participation from an entity outside of Provider's control.

### 3. Governing Law

3.1 THESE TERMS AND CONDITIONS AND ANY CLIENT SERVICE ORDER FORM WILL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURT IN DELAWARE AND CLIENT CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CLIENT FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING.

3.2 Client and Provider are solely obligated to address and resolve all disputes associated with these Terms and Conditions or any Client Service Order Form, including any damages or injuries to the Client's Affiliates, and all claims related to these Terms and Conditions or any Client Service Order Form will be brought by Client in a State or Federal Court in Delaware as provided in these Terms and Conditions.

3.3 Except in the case of nonpayment, neither party nor any Affiliate may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Provider under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

### 4. Third Party Services

4.1 Client acknowledges that it is receiving the Services directly from the Service Provider pursuant to the Service Provider's Services Terms and Conditions. This Schedule of Third Party Services may be modified or updated by Provider at any time, and in Provider's sole discretion.

4.2 Accordingly, Client shall consider the Service Provider to be the contracting party and the Service Provider shall be the party responsible for providing the Services to the Client. Client will look solely to the Service Provider for any loss, claims or damages arising from or related to the provision of such Services.

4.3 UNDER NO CIRCUMSTANCES WILL PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY CLAIMS CAUSED BY ANY THIRD-PARTY SERVICES. IF HARM OCCURS TO CLIENT AS A RESULT OF THIRD-PARTY SERVICES, CLIENT ACKNOWLEDGES AND AGREES THAT IT WILL ONLY SEEK REMEDIES FROM THE THIRD-PARTY SERVICE PROVIDER. CLIENT REPRESENTS THAT IT HAS REVIEWED AND UNDERSTANDS THE THIRD-PARTY SERVICE PROVIDER'S AGREEMENTS AND POLICIES, AND AGREES THAT ITS RIGHTS WILL BE GOVERNED BY AND LIMITED BY THOSE AGREEMENTS.

4.4 Client and Client's Affiliates hereby release Provider and Provider's Affiliates from any and all claims arising from or relating to the purchase or provision of any such Third Party Services.

4.5 Any amounts, including but not limited to Taxes, associated with Third Party Services which may be collected by Provider will be collected solely in the capacity as an independent sales agent.

## 5. Payment

- 5.1 Provider, or any of its Affiliates on behalf of Provider, may issue an invoice to Client. All invoiced amounts and payments shall be made in United States Dollars. Any objections to an invoice must be made to Provider within fifteen (15) days after the invoice date.
- 5.2 Client agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month calculated daily and compounded monthly (19.56% per annum) or the highest rate allowed by law.
- 5.3 In the event of a default in the payment of an invoice, Client will be responsible for all of Provider's costs of collection, including but not limited to court costs, filing fees and attorneys' fees.
- 5.4 Client may issue a PO to Provider. POs are not binding on Provider until accepted by Provider. Any issuance of a PO is for administrative purposes only. Any additional or different terms and conditions contained in any PO will be null and void.
- 5.5 Subscription Services: Non-Cancellable Payment Obligations. Where Client's payment obligations for Third Party Services are structured such that the applicable fees are payable in installments over a Subscription Term, Client acknowledges and agrees that its payment obligations for the entire Subscription Term are non-cancellable and non-refundable unless otherwise stated in the applicable Statement of Work. Client shall remain financially liable for all installment payments due for the full Subscription Term, regardless of whether Client elects to discontinue use of the Third Party Services prior to the end of the Subscription Term.
- 5.6 Final Sale; No Refunds. Notwithstanding anything to the contrary in any quote, order form, purchase order, or other Client-provided document, Client acknowledges and agrees that, upon placement of a purchase order for Third Party Services, such purchase is final and non-cancellable, and all fees paid or payable to Provider are non-refundable. Termination or expiration of the subscription for any reason shall not relieve Client of its obligation to pay all fees due for the full Subscription Term.
- 5.7 Early Termination. If Client terminates Third Party Services prior to the end of the applicable Subscription Term for any reason other than Provider's uncured material breach of this Agreement, Client shall pay to Provider, within thirty (30) days of the effective date of termination, all unpaid fees that would have become due and payable through the end of the Subscription Term. This amount shall be due as liquidated damages and not as a penalty, reflecting the parties' reasonable estimate of Provider's losses resulting from early termination, which losses would be difficult to calculate precisely.

## 6. Pricing Information; Availability Disclaimer

- 6.1 Provider reserves the right to make adjustments to pricing and Services offerings for reasons including but not limited to changing market conditions, Services discontinuation, Services unavailability, and Service Provider price changes. Provider cannot guarantee that it will be able to fulfill Client's orders.

## 7. Export Sales

- 7.1 If any transaction hereunder involves an export of items (including but not limited to commodities, software and/or

technology) from the United States subject to the Export Administration Regulations, as amended, such export shall be in accordance with such laws or regulations, as applicable.

7.2 Client agrees that it will not divert, use, export or re-export any such items contrary to any applicable Laws in the U.S., Canada, European Union (EU) or United Kingdom.

7.3 Client expressly acknowledges and agrees that it will not export, re-export, dispose of or otherwise provide such items directly or indirectly: (a) to any entity or person within any country that is subject to U.S., Canadian, EU or United Kingdom economic sanctions imposing comprehensive embargoes without first obtaining prior authorization from the applicable government, and (b) to entities and persons that are ineligible under U.S, Canadian, EU or UK law, as applicable, to receive such items.

7.4 Manufacturers' warranties for exported Services may vary or may be null and void for Services exported from the United States.

## 8. Warranties

8.1 Client acknowledges that Provider is not the provider of the Services purchased by Client hereunder and the only warranties offered are those of the Service Provider, not Provider or its Affiliates. In purchasing the Services, Client relies on the Service Provider's service descriptions and the Services Terms and Conditions only and not on any statements, specifications, service descriptions or other specifications representing the Services that may be provided by Provider or its Affiliates.

8.2 Client expressly waives any claim that it may have against Provider or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the Services and also waives any right to indemnification from Provider or its Affiliates against any such claim made against Client by a third party.

8.3 Provider makes no warranties to Client regarding the applicability of all Laws affecting the manufacture, performance, sale, packaging and labelling of the Services which are in force within Client's territory (Local Regulations). Client must satisfy itself that the Services comply with the Local Regulations in force from time to time.

8.4 EXCEPT AS SET FORTH IN ANY CLIENT SERVICE ORDER FORM, AND SUBJECT TO APPLICABLE LAW, PROVIDER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF, OR RELATED TO, THE SERVICES OR THE HARDWARE OR SOFTWARE USED TO DELIVER THE SERVICES. FURTHERMORE, PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS.

8.5 THE DISCLAIMER CONTAINED IN THIS SECTION DOES NOT AFFECT THE TERMS OF ANY SERVICE PROVIDER'S WARRANTY. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

8.6 CLIENT ACKNOWLEDGES THAT NO REPRESENTATIVE OF PROVIDER OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT IN THESE TERMS AND CONDITIONS.

8.7 Data Backup. Client shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Client shall be solely responsible for reconstructing data and software that may be lost, damaged or corrupted during the performance of Services. PROVIDER, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND CLIENT ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.

8.8 Provider shall not be liable for any loss or damage suffered or incurred by Client arising from Provider's delay or failure to fulfil or otherwise discharge any of its obligations under these Terms and Conditions or any Client Service Order Form or PO where such delay or failure is caused by any non-performance of its obligations by Client, industrial dispute, sudden or substantial depletion of Provider's staff, or any Force Majeure Event.

## 9. Limitation of Liability

9.1 UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL EITHER PARTY, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY LOSS OF PROFITS, LOSS OF SALES OR TURNOVER, LOSS OR DAMAGE TO REPUTATION, BUSINESS, REVENUES OR SAVINGS, LOSS, DAMAGE OR CORRUPTION OF DATA OR SOFTWARE, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY.

9.2 THE ENTIRE LIABILITY OF EACH PARTY AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE AMOUNT PAID OR PAYABLE BY CLIENT FOR THE SERVICE(S); OR (B) \$100,000.

9.3 ALL EXCLUSIONS AND LIMITATIONS IN THESE TERMS AND CONDITIONS AND/OR ANY PURCHASE ORDER SHALL ONLY APPLY SO FAR AS PERMITTED BY LAW.

9.4 THE LIMITATIONS SET FORTH IN THIS SECTION 9 SHALL NOT APPLY TO CLIENT'S PAYMENT OBLIGATIONS UNDER SECTION 5, INCLUDING CLIENT'S OBLIGATION TO PAY ALL FEES DUE FOR THE FULL SUBSCRIPTION TERM.

## 10. Confidential Information

10.1 Each party anticipates that it may be necessary to provide access to Confidential Information to the other party in the performance of these Terms and Conditions, the Client Service Order Form and/or any PO.

10.2 Each party agrees that it will maintain the confidentiality of the other party's Confidential Information for a period of three (3) years following the date of disclosure and will do so in a manner at least as protective as it maintains its own Confidential Information of like kind but in no event with less than a reasonable degree of care.

- 10.3 Disclosures of the other party's Confidential Information will be restricted (a) to those individuals with a need to know such Confidential Information in connection with these Terms and Conditions, any Client Service Order Form and/or any PO, and (b) to a party's business, legal and financial advisors bound by a confidentiality obligation.
- 10.4 Each party agrees not to use any Confidential Information of the other party for any purpose other than the business purposes contemplated by these Terms and Conditions, any Client Service Order Form and/or any PO. At the written request of a party, the other party will either return, or certify the destruction of, such party's Confidential Information.
- 10.5 If a receiving party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other party, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

## 11. Arbitration

- 11.1 Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including but not limited to statutory, common law, intentional tort and equitable claims capable in law of being submitted to binding arbitration) arising from or relating to the Services, the interpretation or application of these Terms and Conditions or any Client Service Order Form or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Service Order Form, or Provider's or any of its Affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY OF PROVIDER, CLIENT OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.
- 11.2 If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. The arbitration will be conducted in English and will have one (1) arbitrator. The arbitrator will not have the authority to award punitive damages to either party. Each party will bear its own expenses but shall share equally the expenses of the arbitration tribunal and the AAA.
- 11.3 If arbitration is chosen by any party with respect to a Claim, neither Provider nor Client will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties. Further, Client will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.
- 11.4 Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Delaware.
- 11.5 Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential.

## 12. Miscellaneous

- 12.1 **Assignment.** Provider may assign or subcontract all or any portion of its rights or obligations under these Terms and Conditions to any of its Affiliates or assign the right to receive payments to any of its Affiliates, without Client's consent. Provider shall be responsible for the performance of any of its Affiliates, subcontractors or assignees under

these Terms and Conditions. Client may not assign these Terms and Conditions or any of its rights or obligations herein without the prior written consent of Provider.

12.2 **Severability.** If any term or condition of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof.

12.3 **Amendment; Waiver.** No provision of these Terms and Conditions or any Client Service Order Form will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to enforce such rights thereafter.

12.4 **Independent Contractor.** The relationship between Provider and Client is that of independent contractors and not that of employer/employee, agency, partnership or joint venture. Accordingly, except as expressly authorized herein, no party shall have any authority to act or make representations on behalf of the other party.

12.5 **Notice.** Notices provided under these Terms and Conditions will be given in writing and deemed received upon the earlier of actual receipt, the third (3rd) day after postage prepaid mailing by regular mail or airmail, or the first (1st) day after such notice is sent by courier.

12.6 **Counterparts.** Each Client Service Order Form may be signed in separate counterparts, each of which shall be deemed an original and all of which together will be deemed to be one original.

12.7 **Survival.** The following provisions shall survive termination or expiration of this Agreement: Section 5 (Payment), Section 8 (Warranties), Section 9 (Limitation of Liability), Section 10 (Confidential Information), Section 11 (Arbitration), and this Section 12 (Miscellaneous).







