

# Professional Services Terms and Conditions

The following Professional Services Terms and Conditions (these “**Services Terms**”) are entered into by and between the parties listed, and as of the Effective Date stated on the quote, order form or any other agreement that references these Services Terms (the “**Referencing Agreement**”). These Service Terms and the Referencing Agreement are referred to herein as the “**Master Agreement**”. Capitalized terms used but not defined in these Services Terms have the meanings assigned to them elsewhere in the Master Agreement. For clarity, “**Customer**” is the specific entity listed on the Referencing Agreement and does not include parents, subsidiaries or any other affiliated entities (unless specifically listed in the Referencing Agreement).

These Services Terms set forth the terms and conditions pursuant to which Service Provider will provide certain professional services to the Customer. For clarity, the parties agree that to the extent these Services Terms discusses or involves any activity related to software licensed to Customer pursuant to a separate agreement, nothing in these Services Terms modifies the terms of that license.

## 1. TERM

Unless terminated as provided herein, these Services Terms commence on the “**Term Start Date**” and continue through the “**Term End Date**” as set forth on each Referencing Agreement (the “**Term**”).

## 2. SERVICES TO BE DELIVERED

**2.1.** Service Provider will provide the services and deliverables (“**Deliverables**”) described in the Onboarding Services Agreement or Statement of Work attached hereto. Those services are a collection of activities which will be performed during the Term of these Services Terms (the “**Services**”). Any additional scope or activities that extend beyond the Services will require an additional Referencing Agreement. For the avoidance of doubt, the Onboarding Services Agreement or Statement of Work may contain terms and conditions specific to the applicable Services ordered (via a Referencing Agreement) which terms will have no effect on other Professional Services Addenda, Onboarding Services Agreements, or Statement of Work documents.

**2.2.** At the direction and sole discretion of Service Provider, affiliates of Service Provider (the “**Service Provider Affiliates**”) may perform certain tasks related to Service Provider’s obligations and rights under the Master Agreement, including, but not limited to, invoicing, payment, technical support, project management and/or sales support. Customer hereby consents to the Service Provider Affiliates’ role. Customer further agrees and acknowledges that Service Provider and Customer are the only parties to the the Master Agreement, and that any action taken by Service Provider Affiliates in connection with the performance of Service Provider’s obligations under the Master Agreement will not give rise to any cause of action against the Service Provider Affiliates, regardless of the theory of recovery. Service Provider shall at all times retain full responsibility for its Service Provider Affiliates’ compliance with the applicable terms and conditions of the Master Agreement.

## 3. FEES AND EXPENSES

**3.1.** The Services provided under these Services Terms will be billed according to the fee schedule set forth in the Referencing Agreement. Unless otherwise specifically stated in the Referencing Agreement, the fees do not include expenses; Customer shall reimburse Service Provider for all reasonable travel, food, lodging, and other out-of-pocket expenses incurred in performance of these Services Terms. Service Provider agrees to comply with Customer’s expense policies, as long as Customer provides those policies to Service Provider with reasonable advance notice and in writing. If any additional work is performed beyond the Completion Date or scope of these Services Terms, the rate will be

mutually agreed upon by the parties or if no such rate is established, such work will be performed under Service Provider’s standard rate in effect at the time. All charges and fees set out in the Referencing Agreement are quoted exclusive of applicable taxes, duties, or similar charges. Customer shall pay all sales, use, withholdings, excise, or other taxes or duties arising out of these Services Terms, provided, however, that Customer will not be responsible for taxes on the net income of Service Provider. The Customer will pay all import duties, levies or imposts, and all goods and services sales, use, value added or property taxes of any nature, assessed upon or with respect to the Master Agreement. In the event that Customer is tax exempt, it shall furnish appropriate documentation to Service Provider to demonstrate such tax-exempt status.

**3.2.** If the Customer is required by law to make any deduction or to withhold from any sum payable to the Service Provider by the Customer hereunder, then the sum payable by the Customer upon

which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, the Service Provider receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount the Service Provider would have received and retained in the absence of such required deduction or withholding. If the Customer is required by law to make any such deduction or withholding, the Customer shall promptly effect payment thereof to the applicable tax authorities. The Customer shall also promptly provide the Service Provider with official tax receipts or other evidence issued by the applicable tax authorities sufficient to enable the Service Provider to support a claim (if applicable) for income tax credits in the Service Provider’s applicable taxable country. Invoices will be sent by electronic delivery unless requested otherwise by Customer, additional fees will apply.

## 4. PAYMENT

**4.1.** Notwithstanding any provision to the contrary herein, any and all payments required to be made hereunder are to be timely made by the Customer, and no payments to Service Provider will be withheld, delayed, reduced, or refunded if Service Provider’s inability to meet any schedule requirements is caused by Customer’s failure to provide certain of its facilities, computer resources, software, personnel, or business information as are required to perform these Services Terms.

**4.2.** Customer agrees to provide Service Provider with a valid purchase order, if applicable, promptly upon execution of a Referencing Agreement. Notwithstanding anything to the contrary herein, any and all terms contained in invoices, purchase orders, acknowledgments, shipping instructions, or

other forms exchanged between the parties in connection with the Services will be void and of no effect. Customer's failure to issue a purchase order or provide such purchase order to Service Provider, however, will in no way relieve Customer of any obligation entered into pursuant to these Services Terms, including, but not limited to, its obligation to pay Service Provider in a timely fashion.

**4.3.** Any late payment will be subject to any costs of collection (including reasonable legal fees) and bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.

## **5. GENERAL TERMS**

**5.1. Third Parties.** Service Provider will have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees and contractors of Service Provider's Affiliates and subsidiaries, who may also be foreign nationals, ("**Subcontractors**") in performance of its obligations hereunder and, for purposes of these Services Terms, all references to Service Provider or its employees will be deemed to include such Subcontractors. Service Provider will have the right to disclose Customer Confidential Information to such third parties provided such third parties are subject to confidentiality obligations similar to those between Service Provider and Customer.

**5.2. Technical Data.** Customer shall not provide to Service Provider any Technical Data as that term is defined in the International Traffic in Arms Regulations ("**ITAR**") at 22 CFR 120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated project has been removed.

**5.3. Warranty.** Service Provider warrants that it has the right to enter into these Services Terms and that all Services performed under these Services Terms shall be performed in a workmanlike and professional manner. EXCEPT AS OTHERWISE STATED IN THESE SERVICES TERMS, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

## **5.4. LIMITATION OF LIABILITY.**

**5.4.1. LIABILITY CAP.** SERVICE PROVIDER'S (AND SERVICE PROVIDER AFFILIATES, LICENSORS AND AGENTS) LIABILITY ARISING OUT OR RELATED TO THE SERVICES TERMS WILL NOT EXCEED, IN THE AGGREGATE, THE FEE ACTUALLY PAID TO SERVICE PROVIDER FOR THE SERVICES UNDER A QUOTE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

**5.4.2. DISCLAIMER OF DAMAGES.** IN NO EVENT WILL SERVICE PROVIDER (OR SERVICE PROVIDER AFFILIATES, LICENSORS OR AGENTS) BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OR ANY LOSS OF REVENUE, GOODWILL, PROFITS, DATA OR DATA USE ARISING OUT OR RELATED TO THESE

## SERVICES TERMS.

THE LIABILITIES LIMITED BY SECTIONS 5.4.1 AND 5.4.2 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE; (iii) EVEN IF SERVICE PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE, (iv) ATTORNEYS FEES AND COSTS, AND (v) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THIS SECTION 5, SERVICE PROVIDER'S (AND SERVICE PROVIDER AFFILIATES, LICENSORS AND AGENTS) LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

**5.5. Ownership.** All Deliverables produced by Service Provider under these Services Terms will not be considered to be works made for hire and will be exclusively owned by Service Provider and no ownership rights thereto will accrue in any manner to Customer, and Customer hereby agrees, upon written request from Service Provider, to assign any rights of Customer in such Deliverables to Service Provider. However, Service Provider hereby grants to Customer, at no additional charge, a worldwide, nonexclusive, license to (i) modify and otherwise create derivative works based on the Deliverables; and (ii) reproduce, distribute, perform, and display (publicly or otherwise), and otherwise use and exploit the Deliverables and derivative works thereof solely in connection with Service Provider licensed under a separate license agreement. Nothing in these Services Terms will preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of Services hereunder. Except as otherwise expressly provided herein, nothing in these Services Terms will be deemed to grant, directly or by implication, estoppel or otherwise, any right or license with respect to any technology or other intellectual property rights of Service Provider. Service Provider reserves all rights, title and interest in and to the Deliverables, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth.

**5.6. Confidentiality.** Each Party ("**Receiving Party**") agrees to keep confidential all technical, product, business, financial, and other information regarding the business and software programs of the other Party ("**Disclosing Party**"), its affiliates, customers, employees, investors, contractors, vendors, and suppliers (the "**Confidential Information**"). For clarity, the term 'Confidential Information' does not include any personally identifiable information. Receiving Party shall at all times protect and safeguard the Confidential Information and agrees not to disclose, give, transmit, or otherwise convey any Confidential Information, in whole or in part, to any third-party. Receiving Party shall not, by authorized or unauthorized access, review, reverse engineer, disassemble, or decompile any Confidential Information. Except as provided hereunder, Receiving Party agrees that it will not use any Confidential Information for its own purpose or for the benefit of any third-party and shall honor the copyrights and other intellectual property rights of the Disclosing Party and will not copy,

duplicate, or in any manner reproduce any such copyrighted materials. Upon request of Disclosing Party or upon termination of these Services Terms, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including copies thereof) that are in its possession or control.

**5.7. Marks and Publicity.** Service Provider and Customer trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), will be the sole and exclusive property of the respective owning party, which will own all right, title and interest therein. Service Provider may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (iii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally, Service Provider may include Customer's name and/or logo within its list of customers for general promotional purposes. Service Provider shall comply with Customer's trademark use guidelines as such are communicated to the Service Provider in writing and Service Provider shall use the Customer's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

**5.8. Third-Party Rights.** Customer acknowledges that in the event Service Provider provides Services pertaining to any third-party products (including software, hardware, equipment or any other material), all rights in such third-party products ("**Third-Party Rights**") are retained by the respective third-party. Customer shall be required to obtain any Third-Party Rights from the respective third-party directly and any rights in the Service Provider Services related to such Third-Party Rights will be subject to Customer's agreement with the respective third-party.

**5.9. Privacy.** Obligations with respect to personally identifiable information (if any) will be set forth in a separate written agreement between the parties.

**5.10. Reservation of Rights.** Service Provider reserves all rights not specifically granted herein.

**5.11. Termination.** These Services Terms may be terminated prior to the Completion Date in accordance with the following:

**5.11.1. Termination for Cause.** Either party may terminate these Services Terms in the event the other party has failed to perform any obligation required to be performed under these Services Terms and such failure is not corrected within thirty (30) days from receipt of written notice advising of such alleged failure from the other party.

**5.11.2. Termination without Cause.** The Customer may terminate these Services Terms by providing written notice to Service Provider. In the event of termination under this paragraph, an early termination fee will apply that is equal to the fees due during the Term minus the total fees paid for Services at the time of termination.

**5.12. Governing Law; Venue.** The laws of the State of Texas, USA govern the interpretation of these Services Terms,

regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to these Services Terms. The parties agree that the federal and state courts located in Travis County, Texas, USA will have exclusive jurisdiction for any dispute arising under, out of or relating to these Services Terms. Mediation will be held in Austin, Texas, USA.

### **5.13. Dispute Resolution.**

**Negotiations.** Where there is a dispute, controversy, or claim arising under, out of, or relating to these Services Terms, the aggrieved party shall notify the other party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the other party. A representative from senior management of each of the parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective parties.

**Mediation.** Any dispute, controversy, or claim arising under, out of, or relating to these Services Terms and any subsequent amendments of these Services Terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the "**Dispute**"), shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules. The language to be used in the mediation will be English.

**Opportunity to Cure.** Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by Customer for any breach of these Services Terms until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have sixty (60) days from Service Provider's receipt of Customer's notice to complete the cure.

**Injunctive Relief.** The parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The parties, in addition to all other available remedies, shall each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or confidentiality obligations. The choice of venue does not prevent a party from seeking injunctive or any interim relief in any appropriate jurisdiction.

**5.14. Import/Export.** Customer agrees that all Service Provider offerings are subject to U.S. export control laws and regulations, including the Export Control Reform Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the regulations of the Office of Foreign Assets Control ("OFAC"), the Bureau of Industry and Security,

and the Department of State, and similar restrictions under U.S. law, executive order, regulation, or rule (collectively, the "Export Laws"). Customer agrees to comply with all applicable Export Laws in connection with Customer's use of the Service Provider offerings. Customer further agrees that, unless permitted by the Export Laws, it will not allow goods and services that Customers offers through its use of the Service Provider offerings to be used by or for the benefit of any person in any jurisdiction that is the subject of an export embargo or similar restrictions under the Export Laws of any other U.S. law, executive order, regulation, or rule, Currently such jurisdictions are Cuba, Iran, North Korea, , the territory of Crimea the Donetsk and Luhansk oblasts of Ukraine, Russia, Belarus and Syria, which jurisdictions may change from time to time. Further, Service Provider may refuse to provide the Service Provider offerings and/or any other services to the Customer, to any jurisdiction, or to any other person where the Service Provider reasonably believes that the provision of the Service Provider offerings or other services to any jurisdiction or person is prohibited by U.S. or other applicable law, executive order, regulation or rule, including but not limited to the Export Laws. Such a refusal will not be considered a breach of this Agreement and, in the event that Customer or the jurisdiction in which it is incorporated, is domesticated or operates becomes subject to U.S. laws which prohibit the provision of goods, services, technology or other items to Customer or such jurisdiction, this Agreement will automatically terminate. Service Provider may ascertain the jurisdiction and/or identity of the person receiving the Service Provider offerings, by any means of its choosing, including but not limited to an Internet Protocol ("IP") address look-up technology that is designed to identify the location of the IP address and to block IP addresses located in certain territories

**5.15. Miscellaneous.** The provisions of these Services Terms together with the documents referenced herein constitute the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements, oral or written, and all other communications relating to the subject matter of these Services Terms. These Services Terms may only be modified or supplemented by a writing manually signed by the authorized representatives of the parties. Each provision of these Services Terms is a separately enforceable provision. If any provision of these Services Terms is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of these Services Terms will remain in full force and effect and will be interpreted, to the extent possible, to achieve its purposes without the invalid, illegal, or unenforceable provision. Any waiver made by either party of any term or condition of these Services Terms will not be deemed or

construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

Each party is and will remain an independent contractor with respect to all performance rendered pursuant to these Services Terms. The headings of these Services Terms are provided for reference only and will not be used as a guide to interpretation. All notices under these Services Terms will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means (such as e-mail as duly provided by the authorized representatives of either party for the said purpose) or by overnight air courier service, or as of forty-eight (48) hours after deposit in the mail (certified, return receipt requested) to the addresses specified in the Quote. In no event will either party be liable to the other for any delay or failure to perform due to causes beyond the control and without the fault or negligence of the party claiming excusable delay, but only to the extent that such delay could not have been avoided by the taking of reasonable precautionary measures. Such causes include, but are not limited to, acts of God, floods, fire, utility failure, acts of terrorism, and war. The terms of Sections 4 and 5 will survive the termination of these Services Terms. Customer may not assign these Services Terms by operation of law, change of control or otherwise without the prior written consent of Service Provider. Service Provider may assign these Services Terms, sub-contract or otherwise transfer any right or obligation under these Services Terms to a third-party without the Customer's prior written consent.

**5.16. Country-Specific Terms.** If Customer is located outside of the United States, the following terms and conditions may apply to these Services Terms: [coppertree.io/countryspecificterms](http://coppertree.io/countryspecificterms).