



Consulting Services Terms and Conditions

In this document, "UBS" refers to "Unique Business Services"

1 PROFESSIONAL SERVICES

1.1 Services. Upon request from Customer from time to time, UBS shall provide to Customer the Services set forth in an applicable statement of work (a "**Statement of Work**" or an "**SOW**"), which shall incorporate by reference and be governed by these Consulting Services Terms and Conditions (these "**Terms and Conditions**" or this "**Agreement**"). The Services may include migration of data, installation, training, custom report writing, data repair, support, and/or similar professional services. UBS shall perform the Services according to the specifications and in conformance with any timelines set forth in such Statements of Work.

1.2 Statements of Work. All requests for changes in the scope of Services under a Statement of Work must be documented in an amendment to such Statement of Work which must be signed by authorized representatives of both UBS and Customer. UBS shall not commence any Services pursuant to a change request and Customer shall not be obligated to pay for such Services unless the change request is contained in a properly executed and delivered amendment to the applicable Statement of Work.

1.3 Engagement Assumptions. Customer understands that UBS's performance hereunder is dependent on Customer's timely decisions and approvals. UBS shall be entitled to rely on all of Customer's decisions and approvals in connection with the Services. Customer further understands that UBS is relying upon the information that Customer provides, and Customer represents that such information is true, accurate and complete. Because of the importance of such information to the Services, Customer agrees to release UBS and its personnel from any liability and costs relating to UBS's performance of the Services under this Agreement in reliance on any information provided by Customer.

1.4 Subcontractors. If it becomes necessary for UBS to contract with subcontractors to assist in the performance of the Services, UBS shall advise Customer and obtain written approval from the

Customer to use a subcontractor. UBS shall ensure that the nominated subcontractor shall execute an agreement containing provisions of the character, scope and purpose of this Agreement and UBS expressly agrees to ensure that subcontractor is bound by terms and conditions no less restrictive as stipulated in this Agreement.

1.5 Relationship. UBS, in performance of this Agreement, is acting as an independent contractor providing personal services and has the exclusive control of and maintains independent discretion and judgment regarding the manner and means of performing the work contracted for hereunder.

2 ACCEPTANCE OF DELIVERABLES

Customer will have ten (10) business days after receipt of any Deliverable to test and review such Deliverable for conformance with specifications in the applicable Statement of Work ("**Acceptance Period**"). If a Deliverable does not comply with the acceptance criteria specified herein and in any other applicable materials or documentation, in all material respects, Customer may reject such Deliverable by written notice of rejection to UBS. A written notice of rejection will specify in detail the reasons the Deliverable fails to meet the relevant criteria. UBS will correct any material deficiencies and provide Customer with a revised Deliverable as soon as practicable but, unless otherwise agreed in writing, no later than thirty (30) days after receipt of notice of rejection from Customer. Customer will have the right to accept or reject the corrected Deliverable in accordance with this paragraph. If Customer rejects the corrected Deliverable a second time, the parties will use commercially reasonable efforts to resolve issues with the Deliverable such that Customer will accept the Deliverable. If such commercially reasonable efforts fail to result in Customer's acceptance of the twice rejected Deliverable on or before the thirtieth (30th) day following Customer's second rejection, either party may terminate the applicable Statement of Work and Customer's sole and exclusive remedy and UBS's sole and exclusive liability shall be the refund to Customer of any Fees paid in advance for any Deliverables not yet accepted.

3 COMPENSATION

3.1 Fees. The fees for each project shall be stated in the Statement of Work and invoiced by UBS. All invoices are due and payable upon receipt. All fees are exclusive of, and Customer will pay all, applicable federal, provincial, state and local sales, use, value added, surcharges, excise, franchise,

property, gross receipts, license, privilege, and any other taxes assessable with respect to the Services.

3.2 Material Charges. Customer shall reimburse UBS for the use or acquisition of any software, hardware, manuals, guides or other materials, including applicable taxes thereon where taxes are not refundable under United States federal or state tax law, purchased by UBS in the performance of this Agreement so long as said acquisition that would result in reimbursable charges was approved by Customer in writing in advance of such acquisition.

3.3 Expenses. If travel and other expenses are not included in UBS's service fee pursuant to a Statement of Work, Customer shall reimburse UBS's cost for its reasonable, documented, and necessary direct out-of-pocket expenses (if any) incurred in connection with UBS's performance of Services so long as said travel and other expenses were approved by Customer in writing in advance.

4 PROPRIETARY RIGHTS

4.1 Ownership. Subject to Section 4.2, as between UBS and Customer, all Deliverables shall belong solely and exclusively to Customer for Customer's own internal use.

4.2 Ownership of Pre-Existing Works. Ownership of all proprietary and intellectual property rights in any materials created by or licensed to UBS prior to the provision of Services or outside this Agreement, and any subsequent modifications to same (collectively, "**Pre-Existing Works**") will exclusively remain and vest with UBS or its licensors. Pre-Existing Works includes all (a) systems, designs, architectures, specifications, hardware, firmware, know-how, methodologies, technology, documentation, data files, templates, tools or software (in source and object forms, and including library software and generic subroutines) or any other materials, information or data developed by or licensed to UBS prior to the provision of Services or outside this engagement, and (b) all corrections, improvements and enhancements to Pre-Existing Works, and (c) any such technology conceived, reduced to practice, or developed in the course of UBS's performance under this Agreement that has general applicability in the art. Further, UBS will own all right, title and interest in its working papers. To the extent that any Pre-Existing Works are embedded in any Deliverables, UBS hereby grants Customer a perpetual, non-exclusive, royalty free and paid up license to use such Pre-Existing Works as part of the Deliverables solely for Customer's own internal use and only for the purposes for which they were delivered.

4.3 Accumulated Expertise and General Know-How. Notwithstanding anything to the contrary herein, UBS shall not be prohibited or enjoined at any time by Customer from utilizing any

“accumulated expertise and general know-how” acquired in the course of UBS’s performance under this Agreement. For purposes of this Agreement, “accumulated expertise and general know-how” shall include, without limitation, information retained in the unaided memory of UBS’s personnel, information publicly known or information that could reasonably have been acquired in similar work performed for another client.

5 CONFIDENTIAL INFORMATION

5.1 Confidentiality Obligations. Each party agrees that it shall not disclose or make available the Confidential Information of the other party to any third-party individual, corporation, partnership or other legal entity and will safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material.

5.2 Exceptions to Confidentiality. The obligations of confidentiality and restrictions on use as set forth in this Agreement shall not apply to any Confidential Information that a party proves:

(a) was in the public domain prior to the date of this Agreement or subsequently came into the public domain by other than an unauthorized disclosure;

(b) was previously known to such party free of any obligation to the disclosing party to keep it confidential;

(c) was rightfully received by such party from a third party whose disclosure would not violate a confidentiality obligation and which disclosure was not in breach of this Agreement;

(d) was required to be disclosed in a judicial or administrative proceeding, provided that the disclosing party gives the other party written notice of the information required to be disclosed;

(e) was previously and independently developed by such party without breach of this Agreement or any previous agreement with the other party; or

(f) was approved for release by the written authorization of the other party.

5.3 Rights in Confidential Information. Nothing contained in this Agreement shall be construed as a grant by any party of any right or license to the other party, express, implied or otherwise, to use

any of the Confidential Information of such party. The Confidential Information of a party shall remain the sole property of such party.

5.4 Return of Materials. Upon termination of the Agreement, or at the request of the disclosing party at any time, the receiving party shall promptly return to the disclosing party all Confidential Information of the disclosing party, in whatever format, in the possession or control of the receiving party, including all originals, copies, reprints and translations thereof.

5.5 Equitable Relief. Each party acknowledges that the restrictions set forth herein are fair and reasonable and are necessary in order to protect the business of the other party and the confidential nature of the Confidential Information of the other party. The parties agree that the unauthorized disclosure or use of its Confidential Information may cause irreparable harm and result in significant damages to the party which has the rights to the Confidential Information and that the harm and the damages may be difficult to ascertain. Therefore, the parties agree that in addition to any other remedies they may have at law and in equity, they may have the right to an immediate injunction enjoining any breach of this Agreement.

6 WORK ENVIRONMENT

6.1 UBS Independence. UBS maintains independent discretion and judgment in providing Services to Customer, and maintains direction and control over the adoption of UBS's employment and safety policies and the management of workers' compensation claims, claim filings and related procedures.

6.2 Access and Use of Resources. Customer agrees to provide UBS with reasonable assistance, cooperation and access to Customer's staff, materials and resources, as necessary, for UBS's performance of the Services. Customer represents and warrants that it has the legal rights to authorize UBS's use of the software, systems, hardware, documentation materials and/or resources at Customer's premises.

7 WARRANTIES

7.1 Limited Warranty. For the purpose of this Limited Warranty, "**Deliverable**" only includes custom reporting and data migration services. If, at any time within the period ending ninety (90) days from the acceptance of a Deliverable by Customer, the Deliverable fails to meet the specifications agreed upon in the applicable SOW, Customer shall promptly notify UBS in writing of each alleged deficiency and UBS shall, at its own cost and expense and within thirty (30) days of receipt of such written notification, either correct each deficiency or provide Customer with a plan acceptable to

Customer for correcting the deficiency. The foregoing sets forth Customer's sole and exclusive remedy, and UBS's sole liability with respect to breach of this limited Warranty.

7.2 Third Party Warranties. UBS does not warrant, nor will UBS be responsible for, the performance of any products or materials created by third parties. Customer's sole and exclusive rights and remedies with respect to any products or materials created by third parties, including rights and remedies in the event a product or materials created by a third party gives rise to an infringement claim, will be against the third party and not UBS.

7.3 Disclaimers. THE WARRANTIES STATED WITHIN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, STATUTORY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES AND CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABILITY, DURABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8 TERMINATION

8.1 Duration. This Agreement shall be effective upon the Effective Date and shall remain in force for a period of twelve (12) months, unless earlier terminated as provided herein. Upon expiration of the then current Term, a new Term ("Renewal") will automatically begin for one consecutive 12-month period provided that Customer has not given UBS notice that Customer does not wish to extend the Term for an additional 12 months at least 60 days before the end of the current term. Upon termination, this Agreement shall continue to remain in effect with respect to any Statements of Work already issued hereunder at the time of such termination, until such Statements of Work are themselves terminated and performance is completed.

8.2 Termination For Convenience. Customer may, at its sole option, terminate this Agreement and any or all Statements of Work outstanding, or any portion thereof, upon thirty (30) days written notice. Upon receipt of notice of such termination, UBS shall inform Customer of the extent to which performance has been completed through such date, and collect and deliver to Customer whatever Deliverables then exists in a manner prescribed by Customer. UBS shall be paid for all Services performed through the date of termination on the next Deliverable to be completed under the Statement of Work at its standard hourly professional rates as specified on the cover page of this Agreement, provided that such payment shall not be greater than the payment that would have become due if the Services had been completed. UBS may, at its sole option, terminate this Agreement upon not less than thirty (30) days written notice, provided that this Agreement shall

continue to remain in effect with respect to any Statements of Work already issued hereunder at the time of such termination, until such Statements of Work are themselves terminated and performance is completed.

8.3 Termination for Breach. This Agreement may be terminated by either party upon sixty (60) days written notice, said notice specifically identifying a material breach or condition of this Agreement, provided the breaching party shall not have cured such breach within a thirty-day notice period. Customer may withhold payment on invoices which it reasonably disputes without being found in breach of this Agreement.

8.4 Post-termination Duties. In the event of termination of this Agreement, Customer shall pay UBS all Service Fees, material charges, reimbursable expenses and other expenses provided for in this Agreement, accrued and approved as completed as of the date of such termination with respect to the Agreement

9 LIMITATION OF LIABILITY

9.1 LIABILITY EXCLUSION. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUE, DATA, OR DATA USE) WHETHER AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR BASED ON ANY OTHER LEGAL THEORY EVEN WHERE A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE RESULTING FROM ANY LIMITED REMEDY AND TO THE MAXIMUM EXTENT PERMITTED BY LAW.

9.2 DAMAGE CAP. UBS LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT CUSTOMER ACTUALLY PAID TO UBS UNDER THIS AGREEMENT PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, OR OTHER TORTS. THE FEES FOR THE SERVICES SET BY UBS UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY WITH RESPECT TO THOSE LIABILITIES THAT CANNOT BE LEGALLY EXCLUDED OR LIMITED EVEN IF ANY OTHER PROVISIONS MAY SUGGEST OTHERWISE.

10 INDEMNIFICATION

Each party shall indemnify and save harmless the other party from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of the Services, to the extent such damage or injury is attributable to the negligence of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

11 GENERAL PROVISIONS

11.1 Waiver. Except as expressly provided for, no waiver shall be deemed to have been made by either party unless expressed in writing and signed by the waiving party.

11.2 Enforceability. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provisions of this Agreement. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law.

11.3 Assignment, Subcontracting and Delegation. Neither party may assign this Agreement, or any rights or obligations hereunder, without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the parties hereto. Notwithstanding this Section 1.31, UBS may assign this Agreement and/or its rights and obligations hereunder to an affiliate without the consent of Customer. Any attempt to assign, subcontract, or delegate this Agreement or any rights, duties or obligations hereunder in violation of this Paragraph shall be void and of no effect.

11.4 Notices. All notices, requests, demands or communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon: (i) personal delivery (including personal delivery by overnight messenger) to the party to be notified, or (ii) five (5) business days after deposit with U.S. registered or certified mail, return receipt requested, prepaid and addressed to the party to be notified at the address set forth on the Statement of Work to which such notice

relates (or such other address given in writing by either party to the other) and to the attention of the project manager, or (iii) upon receipt of e-mail, if confirmed by reply e-mail.

11.6 Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the state of Michigan, without reference to conflicts of laws, and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in the state of Michigan; provided, however, that neither party will be prevented from enforcing any related judgment against the other party in any other jurisdiction.

11.7 Paragraph Headings. The paragraph headings set forth in this Agreement are for the convenience of the parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect. Unless expressly stated otherwise, any use in this Agreement of the word "including" (or similar words) shall mean "including without limitation."

11.8 Force Majeure. In the event that performance on the part of any party shall be delayed or suspended as a result of circumstances beyond its reasonable control, without its fault or negligence, then the period of performance and term of this Agreement shall be extended to the extent of any such delay and no party shall incur any liability to any other party as a result of such delay or suspension; provided that the party whose performance has been suspended gives the other party immediate notice of such force majeure and diligently attempts to remove the cause of such force majeure. Circumstances deemed to be beyond the control of the parties hereunder shall include: acts of God, such as, fires, floods, earthquakes, or other natural disasters, acts of terrorism and labor strikes. In the event a force majeure suspends or delays a party's performance for more than sixty (60) days, the party to whom performance is due may terminate the affected Statement of Work and/or this Agreement and receive a refund of payments made for Services that were not performed.

11.9 Survival. The respective rights and obligations of the parties under this Agreement, which by their nature would continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement, including Article 4. ("Proprietary Rights"), Article 5. ("Confidential Information"), Article 9. ("Limitation of Liability"), Article 11. ("General Provisions") and Section 7.3 ("Disclaimers"), which shall survive any termination or expiration of this Agreement.

11.10 No Publicity. Except upon the prior written consent of Customer in each instance, UBS shall not use Customer's or any of Customer's Affiliates' names, trademarks, service marks, trade names, logos or other commercial or product designations, in any manner other than is required to perform UBS's obligations under this Agreement.

11.11 Non-Solicitation. During the term of this Agreement and for a period of one year following the expiration of this Agreement, neither UBS nor Customer shall directly solicit employment of any employee of the other who is directly involved in the performance of such Statement of Work without the prior written consent of the other party. However, notwithstanding the above, this paragraph shall not restrict the right of either party to solicit or recruit generally, and shall not prohibit either party from hiring, without prior written consent, the other party's employee who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring party. In the event a party breaches this provision, such party shall immediately be obliged to pay to the other party as liquidated damages an amount equal to thirty percent (30%) of the employee's or contractor's annual salary immediately prior to the solicitation, hiring, employment or retention.

11.12 Policy Adherence. In addition to all applicable laws, UBS agrees that its Personnel shall, at all times, adhere to and comply with the internal policies of Customer as provided to UBS, as they may be amended from time to time.

11.13 Non-exclusivity. This Agreement is nonexclusive, and UBS may contract with other entities to perform Services and/or provide products within the scope of Services set forth in any Statement of Work.

11.14 Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto and delivered in person or by telecopier, each of which, when so executed and delivered, shall be deemed an original, but such counterparts shall together constitute but one and the same agreement.

11.15 Severability. If any part, term or provision of this Agreement is declared or determined by a court to be illegal, invalid or unenforceable, the validity of the remaining parts, terms or provisions will not be affected and will continue to be effective.

12 DEFINITIONS

"Affiliate" – shall mean any entity directly or indirectly controlling or controlled by, or under direct or indirect common control with Customer.

"Agreement" – shall mean the main body of this Agreement, together with any exhibits, which are incorporated herein by reference.

"Confidential Information" – shall mean any information provided by either party that is clearly marked Confidential or that should reasonably be known to the other party to be confidential.

"Deliverable" – shall mean any deliverable specified in a Statement of Work or otherwise prepared for or delivered to Customer by UBS under this Agreement.

"Effective Date" – shall mean the date set forth on the cover page of this Agreement.

"Customer Project Manager" – shall mean a person designated by Customer to be its project leader.

"Services" – shall mean any of the services performed by UBS or its subcontractors in connection with a Statement of Work.

"Statement of Work" or "SOW" – shall mean Customer's standard work order form setting forth Deliverables and specifications for such Deliverables which, to be binding upon UBS, must be counter-signed by an authorized representative of UBS.