

Professional Services Agreement

THIS AGREEMENT GOVERNS YOUR PURCHASE AND RECEIPT OF OUR PROFESSIONAL SERVICES. BY ACCEPTING THIS AGREEMENT OR BY EXECUTING A STATEMENT OF WORK (“SoW”) OR ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

You may not receive Professional Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not receive Professional Services for purposes of evaluating or monitoring their quality or performance, or for any other benchmarking or competitive purposes.

This Agreement was last updated on 12 Oct 2015. It is effective between You and Us as of the date of You accepting this Agreement.

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1. Definitions

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means this Professional Services Agreement and any exhibits, schedules and addenda.

“**Change Order**” means any change to an SoW or Order Form, as applicable, as described in the “Change Orders” section below. Change Orders will be deemed incorporated by reference in the applicable SoW or Order Form, as applicable in the absence of an SoW.

“**Deliverable**” means a deliverable under an SoW or Order Form.

“Order Form” means an ordering document specifying the Professional Services to be provided hereunder and that is entered into between You and Us, including any addenda and supplements thereto. Order Forms governed, in whole or in part, by this Agreement must have a SoW attached thereto or expressly state that the Order Form or certain Professional Services provided thereunder are governed by this Agreement.

“Professional Services” means work performed by Us or Our or respective permitted subcontractors under an SoW or Order Form, including Our provision of any Deliverables specified in such SoW or Order Form.

“SoW” means a statement of work describing Professional Services to be provided hereunder, that is entered into between You and Us or which is incorporated into an Order Form that is entered into between You and US.

“We,” “Us” or “Our” means the Acterus company described in Section 13 (Contracting, Notices, Governing Law and Jurisdiction).

“You” or “Your” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. Professional Services

We will provide to You the Professional Services specified in each SoW or Order Form (as applicable), subject to Your payment of all applicable fees as set forth in the “Fees” section of this Agreement.

3. Cooperation

3.1. Cooperation

You will cooperate reasonably and in good faith with Us in Our performance of Professional Services by, without limitation: (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Us to perform Our obligations under each SoW or Order Form; (b) timely delivering any materials and other obligations required under each SoW or Order Form; (c) timely responding to Our inquiries related to the Professional Services; (d) assigning an internal project manager for each SoW or Order Form to serve as a primary point of contact for Us; (e) actively participating in scheduled project meetings; (f) providing, in a timely manner and at no charge to Us, office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, access to Your appropriate and knowledgeable employees and agents, and continuous administrative access to Your Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by Us; and (g) complete, accurate and timely information, data and feedback all as reasonably required.

3.2. Delays

Any delays in the performance of Professional Services or delivery of Deliverables caused by You may result in additional applicable charges for resource time.

4. Delivery, acceptance and change orders

4.1. Delivery of Services.

We will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SoWs or Order Forms.

4.2. Acceptance

Upon completion of each Deliverable under an SoW or Order Form, We will, as applicable: (a) submit a complete copy to You. You are responsible for reviewing all Deliverables in accordance with such SoW or Order Form pursuant to any acceptance criteria mutually agreed upon in writing by the parties for such Deliverable. You will provide Us with written notification of acceptance for each Deliverable promptly upon acceptance; however, failure to reject a Deliverable, as set forth below, will be deemed acceptance. If You, in Your reasonable and good faith judgment, determine that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SoW or as mutually agreed upon in writing by the parties for such Deliverable, You must so notify Us in writing within 10 business days after Our submission of the Deliverable, specifying the deficiencies in detail. We will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to You as soon as practicable. You will again review the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Us in writing within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the requirements specified in the applicable SoW or Order Form after its second resubmission to You, You may either, as Your sole and exclusive remedy: (i) again reject the Deliverable and return it to Us for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Your executive sponsor for the project associated with the SoW or Order Form and Our Program Manager) or (ii) terminate the relevant SoW or Order Form immediately upon written notice and recover all Professional Services fees paid under such SoW or Order Form for such deficient Deliverable. If the parties determine that a Deliverable's requirements specified in a SoW or Order Form require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.

4.3. No Effect on Warranty Remedies

Acceptance of Professional Services, including a Deliverable, will not affect Your rights or remedies under the "Warranty" section below.

4.4. Change Orders

Changes to a SoW or Order Form will require a written Change Order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.

5. Fees, invoicing and taxes

5.1. Fees

You will pay Us for the Professional Services at the rates specified in the applicable SoW or Order Form, or if no rate is specified in the SoW or Order Form, Our standard rates in effect at the time the SoW or Order Form is executed. Professional Services are provided on either a time-and-materials or fixed fee basis, as provided in an SoW or Order Form. Any amount set forth in a time-and-materials SoW is solely a good-faith estimate for Your budgeting and Our resource-scheduling purposes and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, We will continue to provide Professional Services under the same rates and terms. We will periodically update You on the status of the Professional Services and the fees accrued under SoWs or Order Forms.

5.2. Incidental Expenses

You will reimburse Us for reasonable travel and out-of-pocket expenses incurred in connection with Professional Services. If an estimate of incidental expenses is provided in the applicable SoW or Order Form, We will not exceed such estimate without Your written consent.

5.3. Invoicing and Payment

Charges for time-and-materials engagements will be invoiced monthly in arrears unless otherwise expressly stated in the applicable SoW or Order Form. Charges for fixed fee engagements will be invoiced in advance in the manner as provided in the SoW or Order Form, as applicable, unless otherwise expressly stated therein. Invoiced amounts will be due and payable net 30 days from the invoice date. You are responsible for providing Us with Your complete and accurate billing and contact information and notifying Us of any changes to such information.

5.4. Overdue Charges

Subject to the "Payment Disputes" section, if any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future purchases of Professional Services on payment terms shorter than those specified in Section 5.3 (Invoicing and Payment).

5.5. Suspension of Professional Services and Acceleration

Subject to the "Payment Disputes" section, if any amount owing by You under this or any other agreement for our Professional Services is 30 days or more overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our performance of Professional Services until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with the Manner of Giving Notice section, before suspending Professional Services to You.

5.6. Payment Disputes

We will not exercise Our rights under the “Overdue Charges” or “Suspension of Professional Services” sections above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.7. Taxes

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this section, We will invoice You and You will pay that amount, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6. Proprietary rights and licenses

6.1. Your Intellectual Property

You do not grant to Us any rights in or to Your intellectual property except such licenses as may be required for Us to perform Our obligations hereunder.

6.2. Confidential Information

As between the parties, each party retains all ownership rights in and to its Confidential Information.

6.3. License for Contract Property

Upon Your payment of fees due under an applicable SoW or Order Form, We grant You a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for Your internal business purposes associated with Your use of Our online and offline services anything developed by Us for You, including Deliverables, under this Agreement (“Contract Property”). Each party hereto each retains all right, title and interest in its respective intellectual property and We retain all ownership rights in the Contract Property.

7. Confidentiality

7.1. Definition of Confidential Information

“**Confidential Information**” means all information disclosed by a party or its Affiliates (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure. Your Confidential Information includes, without limitation, nonpublic business processes, strategies, technologies and data. Our Confidential Information includes nonpublic technologies, methodologies, tools and templates. Confidential Information of each party includes the terms and conditions of this Agreement and all SoW(s) or Order Form(s), including pricing. However, Confidential Information does not include any information that (i) is or becomes

generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information

Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will use the same degree of care that it uses to (i) to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents that need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations to the Receiving Party not materially less protective than those herein.

7.3. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. Representations, Warranties, Exclusive Remedies and Disclaimers

8.1. Representations

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2. Warranty

We warrant that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of the above warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable Professional Services. If We are unable to re-perform the Professional Services as warranted, You will be entitled to recover the Professional Services fees paid to Us for the deficient Professional Services. You must make any claim under the foregoing warranty to Us in writing within 90 days of performance of such Professional Services in order to receive warranty remedies.

8.3. Disclaimer

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW

9. Indemnification

9.1. Indemnification by Us

We will defend You against any claim, demand, suit or proceeding (“**Claim**”) made or brought against You by a third party arising out of death, personal injury or damage to tangible property to the extent caused by Our personnel in their performance of the Professional Services, and will indemnify You for any damages, attorneys fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, any such Claim, all of the foregoing to the extent caused by Our personnel, provided that You: (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (except that We may not settle any Claim unless it unconditionally releases You of all liability); and (c) give Us all reasonable assistance, at Our cost.

9.2. Mutual Indemnity

Each party (the “**Provider**”) will defend the other party (the “**Recipient**”) against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder (“**Material**”) infringes or misappropriates such third party’s intellectual property rights, and will indemnify the Recipient from any damages, attorneys fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a court-approved settlement of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider’s cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient’s use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it no longer infringes or misappropriates, (B) obtain a license for the Recipient’s continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SoW or Order Form upon 10 days’ written notice given within 30 days after the Provider’s exercise of such option, subject to the “Payment Upon Termination” section below.

9.3. Exclusive Remedy

This “Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of Claim described in this section.

10. Limitation of Liability

10.1. Limitation of Liability

NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU FOR PROFESSIONAL SERVICES UNDER THE APPLICABLE ORDER FORM OR STATEMENT OF WORK,

PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2. Exclusion of Consequential and Related Damages

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER OR PUNITIVE DAMAGES, WHETHER IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW

11. Term and Termination

11.1. Term

This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section

11.2. Termination for Convenience

Either party may terminate this Agreement at any time for convenience upon 10 days' written notice to the other. To the extent there are SoWs or Order Forms in effect when a party terminates this Agreement, such SoWs or Order Forms shall continue to be governed by this Agreement as if it had not been terminated. You may terminate an individual SoW or Order Form for convenience to the extent set forth in such SoW or Order Form

11.3. Termination for Cause

A party may terminate this Agreement and/or any SoW or Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Payment Upon Termination

Upon any termination of an SoW or Order Form, You will pay, in accordance with the Invoicing and Payment section of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that You terminate an SoW or Order Form for cause and You have pre-paid any fees for Professional Services not yet received, We will refund such pre-paid fees. In the event that We terminate an SoW or Order Form for cause, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in an SoW or Order Form

11.5. Surviving Provisions

The sections titled “Contract Property,” “Confidentiality,” “Representations, Warranties, Exclusive Remedies and Disclaimers,” “Indemnification,” “Limitation of Liability,” “Term and Termination” and “General” will survive 5 years any termination or expiration of this Agreement.

12. Insurance

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker’s compensation insurance as required by applicable law.

13. Contracting, Notices, Governing Law and Jurisdiction

13.1. General

You are contracting with: Acterus BV

Notices should be addressed to:

Acterus

Meerenakkerweg 1-09

5652AR Eindhoven

The Netherlands

att. Commercial Director

The governing law is Dutch Law, the court that is having exclusive jurisdiction is Den Bosch, The Netherlands.

13.2. Manner of Giving Notice

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant contact designated by You.

13.3. Agreement to Governing Law and Jurisdiction

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

14. General Provisions

14.1. Anti-Corruption

You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department (legal@acterus.com).

14.2. Entire Agreement and Order of Precedence

This Agreement is the entire agreement between You and Us regarding Our provision and Your receipt of Professional Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or in any other of Your order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency between the provisions in the body of this Agreement and any SoW or Order Form (as applicable), the terms of such SoW or Order Form (as applicable) will prevail.

14.3. Relationship of the Parties

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

14.4. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement

14.5. Subcontractors

We may, in Our reasonable discretion, use subcontractors inside or outside the The Netherlands to perform any of its obligations hereunder. We will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

14.6. Waiver and Cumulative Remedies

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

14.7. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

14.8. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), provided however, either party may assign this Agreement in its entirety (including all SoWs or Order Forms, as applicable), without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.