

TOPDOWN PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. Performance by TopDown

The parties may from time to time issue statements of work (the "Statement of Work"). Upon execution by both parties, each Statement of Work shall become part of this Agreement, and will be subject to the terms and conditions contained herein. TopDown shall use commercially reasonable efforts to provide the professional services (the "Services") identified in each Statement of Work.

2. Payment for Services

a. *Fees.* Company will pay TopDown fees for the Services calculated in accordance with the fee schedule set forth in the applicable Statement of Work. Except as otherwise expressly provided in a Statement of Work, all Services will be provided by TopDown on a time and materials basis, with an eight (8) hour minimum for on-site work. Any Statement of Work requiring international travel shall be billed in accordance with the TopDown International Travel Policy Guidelines. Additional support for holidays and weekends may be quoted separately upon request for off-hour support.

b. *Out-of-Pocket Expenses.* Company will reimburse TopDown for all reasonable out-of-pocket expenses incurred in performance of the Services, including, without limitation, travel and lodging incurred by TopDown's employees and subcontractors when performing Services at Company's sites.

c. *Payment.* TopDown will invoice Company on the 15th and last day of each month for Services performed. Unless otherwise stipulated in the applicable Statement of Work, Company will pay all invoices within fifteen (15) days of receipt. All payments shall be made in the currency of US Dollars.

d. *Late Payment.* TopDown may, without prejudice to any other rights and remedies, at its option, charge Company interest on any past due payments at the lesser of (i) one and one half (1.5%) percent per month, or (ii) the maximum rate permitted by law. Company agrees that it shall be responsible for all expenses reasonably incurred by TopDown during the course of recovering late payments pursuant to this Agreement.

e. *Taxes.* All fees payable under this Agreement are net amounts and are payable in full. TopDown will not deduct for any sales, use, excise, value-added, withholding or any similar taxes or duties that may be applicable to Company's purchase of Services from TopDown or third party software licenses. Company will be responsible for, and will promptly pay, all taxes and duties of any kind associated with this Agreement, except for taxes based on TopDown's net income.

f. *Records and Auditing.* TopDown shall maintain records relating to its performance, expenses and invoices under this Agreement and each Statement of Work. During the term of this Agreement, but no more than once per calendar year, Company shall have the right to engage a nationally-recognized auditing firm to inspect and audit those TopDown books and records that are directly related to its performance under this Agreement, for the purpose of confirming the accuracy of TopDown's invoices. Any such inspection and audit will be conducted during regular business hours on TopDown's premises, upon reasonable advance written notice, and in a manner that minimizes interference with TopDown's normal business activities. Any information accessed or obtained during the course of such inspection or audit shall be considered TopDown Confidential Information (as defined below).

3. Obligations of Company

In addition to any Company obligations set forth in a Statement of Work, Company agrees to make available to TopDown, upon reasonable notice, computer programs, data, information, documentation and any other materials reasonably required by TopDown to perform the Services ("Company Materials"). Company also agrees to provide TopDown, its employees and subcontractors with access to any Company premises, sites or facilities as reasonably required to perform the Services.

4. Ownership; Grant of License.

As between TopDown and Company, TopDown will retain all right, title and interest in and to any data, software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, and techniques used or developed by TopDown or its employees or subcontractors in connection with performing Services hereunder. To the extent that any deliverables are delivered to Company as part of the Services, and provided that Company has paid TopDown all amounts owed for the Services, TopDown hereby grants to Company a non-exclusive, royalty-free, perpetual license to use and display such deliverables solely for its own internal business purposes.

5. Recruitment

During the term of this Agreement and for one (1) year thereafter, Company agrees not to solicit for employment employees who are currently employed (or who were employed in the last year) by TopDown unless written permission is obtained from TopDown. This provision shall not restrict the right of either party to engage in general public solicitation or recruitment efforts, nor shall it prohibit either party from hiring an employee of the other who responds to such public solicitations or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

6. Warranties

a. *Services Warranty.* TopDown warrants that Services will be performed in a good and workmanlike manner, consistent with generally accepted industry standards. As Company's sole and exclusive remedy and TopDown's entire liability for any breach of the foregoing warranty, TopDown will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or, if TopDown is unable to re-perform the Services to conform to the foregoing warranty, refund to Company the fees paid for the non-conforming Services.

b. *Warranty Disclaimer.* TopDown makes no warranties and accepts no liability for any third party software (including, without limitation, Hyperion software products and documentation), hardware, or other third party products that are provided with the Services or with which the Services interact. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, INCLUDING WITHOUT LIMITATION ANY MATERIALS, WORK PRODUCT, OR DELIVERABLES PROVIDED BY TOPDOWN HEREUNDER, ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED.**

7. Cancellation

Company shall provide written notice of cancellation at least five (5) business days prior to the project start date. In the event TopDown is unable to re-assign the committed consulting resources, Company shall pay in-full the non-refundable expenses incurred by TopDown (i.e. airfare, hotels, and other allowable and reasonable expenses incurred) in addition to the scheduled work efforts calculated daily (based upon the hourly rate). If the original schedule for the SoW was equal to or greater than one week, Company will be charged for a maximum of one week of work efforts along with the non-refundable expenses. Notwithstanding the foregoing, TopDown will make reasonable efforts to re-deploy consultant(s) on an alternative engagement. If successful, no cancellation fees will apply.

8. Termination

a. *Term.* This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with Section 8(b).

b. *Termination.* Either party may terminate this Agreement or any Statement of Work upon written notice to the other:

i. if the other party or its employees, consultants or agents breach any material provision of this Agreement, including any Statement of Work, and such breach is not remedied within thirty (30) days of the party's receipt of written notice of the violation;

ii. at any time in the event the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under federal or state statute, or becomes subject to direct control by a trustee or similar authority;

iii. for convenience with thirty- (30) day prior written notice.

c. *Obligations Upon Expiration or Termination.* Upon expiration or termination of this Agreement or any Statement of Work: (i) TopDown shall promptly return to Company all Company Materials; (ii) each party will return to the other all Confidential Information (as defined below) of the other party in its possession or control; and (iii) Company will, within thirty (30) days of receipt of TopDown's invoice, pay all fees and expenses accrued by TopDown as of effective date of expiration or termination.

d. *Survival.* The rights and obligations of the parties under Sections 2(d), 4, 5, 6(b), 7, 8(c), 8(d), 9, 10, 11, and 12 will survive any termination or expiration of this Agreement.

9. Confidential Information

a. *Definition.* For purposes of this Agreement, "Confidential Information" means any technical or business information disclosed by one party to the other party that: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (iii) under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.

b. *Exclusions.* Confidential Information will not include information that: (i) is now or thereafter becomes generally known or available to the public, without breach of this Agreement by the receiving party; (ii) was known by the receiving party prior to receiving such information from the disclosing party and without restriction as to use or disclosure; (iii) is thereafter rightfully acquired by the receiving party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; (iv) is independently developed by the receiving party without access to any Confidential Information of the disclosing party; or (v) is disclosed with the prior written consent of the disclosing party.

c. *Restrictions on Use and Disclosure.* Each party agrees to maintain the other party's Confidential Information in confidence using at least the same degree of care to protect such Confidential Information as it uses for its own information of similar importance, but in all events at least a reasonable degree of care. Each party agrees not use the other party's Confidential Information for any purpose except as necessary for the performance of this Agreement. Each party agrees not to disclose the other party's Confidential Information to any person except to its employees and consultants who have a bona fide need to know such Confidential Information for the performance of this Agreement; provided that each such person is already bound by a written agreement that contains use and nondisclosure restrictions at least as protective of such Confidential Information as those set forth in this Agreement; provided that it is understood access to the disclosing party's Confidential Information shall not restrict the receiving party's assignment of any employee or contractors. The provisions of this Section 9.c will not restrict a party from disclosing the other party's Confidential Information to the extent required by any law or regulation; provided that the party required to make such a disclosure uses reasonable efforts to give the other party reasonable advance notice of such required disclosure in order to enable the other party to prevent or limit such disclosure.

10. Indemnification

TopDown shall defend or settle at its option and expense any third-party claims brought against Company, to the extent that it is based on a claim for personal injury (including death) to any person, or damage to tangible property directly resulting from the negligence or willful misconduct of TopDown, its employees or subcontractors and will pay all damages and costs (including reasonable legal fees) awarded by a court of

final appeal attributable to such claim, provided that Company notifies TopDown in writing of any such claim as soon as reasonably practicable and allows TopDown to control, and reasonably cooperates with TopDown in the defense of any such claim and related settlement negotiations. TopDown will have no obligation under this Section to the extent any claim is based on the negligent acts or willful misconduct of Company, or its employees or subcontractors.

11. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. TOPDOWN'S TOTAL LIABILITY TO COMPANY, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AGGREGATE AMOUNTS PAID TO TOPDOWN BY COMPANY UNDER THE STATEMENT OF WORK GIVING RISE TO THE LIABILITY.

12. Other Provisions

a. *Status as Independent Contractor.* TopDown and Company are contractors independent of one another and neither party's employees will be considered employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party. Nothing in this Agreement will be deemed to prohibit or limit TopDown's right to perform similar services for any other party.

b. *Applicable Law.* This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to the conflicts of laws or principles thereof. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California, and the parties hereby irrevocably consent to personal jurisdiction and venue therein. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's proprietary rights.

c. *Notices.* Any required notices or other communications hereunder shall be given in writing and delivered by hand, or by registered or certified mail, postage prepaid and return receipt requested. If to TopDown: Attn: Contracts Department, 236 West Portal Ave #390, San Francisco, Ca. 94127. If to Company the address set forth above, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein.

d. *Waiver.* No waiver by either party of any breach by the other party of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

e. *Entire Agreement.* This Agreement, including each Statement of Work, constitutes the entire agreement of the parties regarding its subject matter and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter. This Agreement may only be modified by a written document executed by duly authorized representatives of both parties. In the event of a conflict between the terms of this Agreement and any Statement of Work the terms of the applicable Statement of Work will prevail. The terms of this Agreement and applicable Statement of Work shall prevail over all preprinted forms, including purchase orders, and invoices, as any terms and conditions on such preprinted forms shall be null and void unless otherwise agreed to in writing by both parties.

f. *Severability*. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

g. *Force Majeure*. Except for the payment of fees due pursuant to this Agreement, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.