

# Terms and Conditions

These Professional Services Terms ("PS Terms"), including any applicable addenda, annexes, exhibits, or other similar agreements, constitute a legal agreement between you, your employer, or other entity on whose behalf you enter into these PS Terms (the "Client"), and The Hunley Group, LLC ("Hunley" or "Hunley Group"). These PS Terms apply only to the extent that Client and Hunley Group execute a Statement of Work ("SOW") or Order Form for the provision of Professional Services to be provided by Hunley Group for Client.

YOU MUST READ AND AGREE TO THESE PS TERMS PRIOR TO USING THE PROFESSIONAL SERVICES. BY CLICKING ON THE "ACCEPT" BUTTON, SIGNING AN ASSOCIATED SOW OR ORDER FORM, AND/OR USING THE PROFESSIONAL SERVICES, YOU ARE AGREEING TO BE BOUND BY THE TERMS ON BEHALF OF THE CLIENT.

IF YOU ARE ENTERING INTO THESE PS TERMS ON BEHALF OF YOUR EMPLOYER OR ANOTHER LEGAL ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY AS THE CLIENT.

Hunley Group may amend these PS Terms from time to time by posting an amended version at its website. Such amendment will be deemed accepted and become effective thirty (30) days after posting an amended version unless Client gives Hunley Group written notice of rejection of the amendment. In the event of such rejection, these PS Terms will continue in its existing form, and the amendment will become effective at the start of Client's next Statement of Work or Order Form following the amendment. Client's continued use of the Professional Services following the amendment will confirm Client's consent thereto. These PS Terms may not be amended in any other way except through a written agreement by authorized representatives of each party.

Whereas, Client wishes to have Hunley Group provide certain Professional Services pursuant to one or more SOW's and/or Order Forms.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1. Professional Services**

- 1.1. **Scope.** Hunley Group will provide such professional services as are specifically described in the applicable SOW or Order Form ("Services"), and Client will reasonably cooperate with Hunley Group with regard to performance of Services. The requirements of a SOW or Order Form may be altered only through a change order executed by both parties pursuant to section 9 below.
- 1.2. **Acceptance.** Unless otherwise set forth in a SOW or Order Form, configured software environments and other materials provided through Services ("Deliverables") will be considered accepted upon written notice thereof (e-mail sufficient) from Client or two (2) business days from delivery if Client has not first provided written notice of rejection, provided Client may only reject Deliverables to the extent that they materially fail to conform to their specifications set forth in the SOW or Order Form. To be effective pursuant to the preceding sentence, notice of rejection must specifically disclose the material failure to conform to its specifications. In response to rejection of a Deliverable, Hunley Group may revise and redeliver the Deliverable, or advise Client as to why the Deliverable is in compliance with the SOW or Order Form.

## **2. Fees & Payment Terms**

- 2.1. **Payment.** Client will pay Hunley Group the fees specified in each SOW or Order Form, as applicable, in the manner described in such SOW or Order Form. Unless the SOW or Order Form provides otherwise, Client will pay Hunley Group upon receipt of invoice and all payments will be made in US dollars.
  - 2.1.1. Payments are to be made to The Hunley Group, 428 South Main St. Ste B-616 Davidson, NC 28036. All invoices will be directed to Accounts Payable.
  - 2.1.2. Payments are non-refundable.
- 2.2. **Taxes.** Unless explicitly set forth otherwise, fees in a SOW or Order Form do not include any local, state, federal or foreign taxes, levies, or duties of any nature ("Taxes"). In the event that Hunley Group is legally obligated to collect Taxes, such taxes will be set forth in the applicable invoice, unless Client provides Hunley Group with a valid tax exemption certificate authorized by the appropriate taxing authority. Client is responsible for paying all Taxes, only taxes based on Hunley Group's income and personal property.
- 2.3. **Overdue Payment.** Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge at the rate of one percent (1%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, plus all reasonable expenses of collection.
  - 2.3.1. Hunley Group may suspend the performance of all Services until payment has been made in full.

## **3. Term and Termination**

- 3.1. **Term.** Each SOW or Order Form will continue for the term set forth therein, if any. Unless earlier terminated as set forth below, these PS Terms will continue until termination or expiration of the SOW or Order Form.
    - 3.1.1. Unless otherwise set forth on the Order Form for Managed Services, at the end of each such period of performance, each Order Form for Managed Services will automatically renew for a successive term of the contract, unless either party gives written notice of non-renewal at least 30 days before the renewal date. The fees for each renewal term will increase by 5% over the fees for the prior twelve months.
  - 3.2. **Termination.** Either party may terminate a SOW or Order Form at any time during the term, for any or no reason, by giving the other party thirty (30) days' notice in writing. Hunley Group may terminate this Agreement with immediate effect upon written notice to Client, if Client:
    - 3.2.1. Fails to pay any amount when due; or
    - 3.2.2. Has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors
  - 3.3. **Effect of Termination.** Unless the SOW provides to the contrary, Client is obligated to pay for any work performed and expenses through termination.
4. **Client's Acts or Omissions.** If Hunley Group's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, Hunley shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.
  5. **Confidentiality.** Hunley agrees that during the term of this Agreement and for one year thereafter that it will take all steps reasonably necessary to hold Client's Proprietary Information in trust and confidence, and will not disclose or use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement or authorized by Client. By way of illustration but not limitation "Proprietary Information" includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques (hereinafter collectively referred to as "Inventions"); (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (c) information regarding the skills and compensation or other matters relating to current or former employees of Client. Notwithstanding the foregoing, it is agreed that Proprietary Information shall not include any information which: (a) is known to Hunley Group at the time of disclosure to Hunley Group by Client; (b) has become publicly known through no wrongful act of Hunley Group; (c) has been rightfully received by Hunley Group from any third party without restriction on disclosure and without breach of any agreement with Client; (d) has been independently developed by Hunley Group; (e) has been approved for release by written authorization executed by an authorized officer of Client; or (f) is required to be disclosed by Hunley Group pursuant to a requirement of law. Further, Proprietary Information shall not include "Residuals," designed to mean information retained in the memory of Hunley Group's members to the extent used without reference to written materials containing Proprietary Information in order to refresh recollection to facilitate such use. This section shall survive the termination of this Agreement for a period of one year.
6. **License**
    - 6.1. **License Grant.** During the course of this Agreement, Hunley may create unique software solutions and customizations ("Customizations") available to Client for use by the Client, pursuant to the terms of this Agreement and grants Client a limited, non-exclusive, non-transferable, right to install, use and modify the Customizations solely for Company's own internal business purposes. Company acknowledges and agrees that the terms and conditions listed herein will govern Client's use of the Software, unless explicitly stated otherwise in a written agreement between the parties.
    - 6.2. **Third-Party Software.** The Customizations may utilize or include certain third-party software. Client's use of such software is governed by the applicable Third-Party software terms and conditions where applicable. Client may use Third-Party Plug-Ins to add functionality to the Customizations, provided that such use is limited to internal use by Client in a manner that does not violate any provisions of this Agreement.
    - 6.3. **Restrictions.** Client will not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (i) the Customizations, (ii) any modified version or derivative work of the Customizations created by the Client or for the Client, for any purpose including timesharing or service bureau purposes; (b) remove or alter any copyright, trademark or proprietary notice in the Customizations; or (c) reverse engineer, decompile or modify any encrypted or encoded portion of the Customizations; (d) copy any features, functions, processes, design elements, or graphics of the Customizations for any purpose other than what is expressly authorized in this Agreement; (e) use

the Customizations, or allow it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Hunley Group's prior written authorization; (f) use or modify the Customizations in any way that would subject the Customizations, in whole in or in part, to a Copyright License; (g) access the Customizations for the purpose of building a competitive product or service or copying its features, processes or user interface or (h) send, store, or authorize a third party to send or store spam, unlawful, infringing, obscene or libelous material, or malicious code.

7. **Ownership**

- 7.1. **Proprietary Rights.** Given that Hunley brings substantial intellectual capital to bear in solving Client problems from similar historical engagements, and must be able to continue to do the same for others, Hunley shall own all right, title, and interest to the Customizations, technology, information, code or software provided to Client, including all intellectual property rights, software interpretation, and all portions, copies or modifications thereof created by Hunley. Client shall have a limited, non-exclusive, non-transferable, right to install, use and modify the Customizations solely for Client's own internal business purposes.
- 7.2. The Hunley Group name, logo, trade names and trademarks are owned by Hunley, and no right is granted to Client to use any of the foregoing except as expressly permitted herein or by written consent of Hunley Group.
- 7.3. **Suggestions.** Hunley shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any product or service any suggestions, enhancement requests, recommendations or other feedback provided by Client relating to the operation of any product or service owned by Hunley Group.
- 7.4. **Data Ownership.** Client owns rights, title and interest in and to all of its data. Client is solely responsible for the accuracy, integrity, and legality of Client's data.

8. **Reimbursable Expenses.** The following may be billed in addition to compensation:

- 8.1. Travel expenses, including airfare, hotels, mileage, parking, meals, and travel time up to 8 hours per team member per trip.
- 8.2. Phone, and/or fax charges;
- 8.3. Printing and reproduction charges; and
- 8.4. Other expenses resulting directly from performance of Services in the Agreement. Any expenses will be billed separately from other payments due to Hunley Group. Expenses are due and payable upon receipt of invoice. Travel expenses and any other expenses incurred over \$500 shall be pre-approved by the Client.

9. **Change Orders.**

- 9.1. If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. Hunley shall, within a reasonable time after such request, provide a written estimate to Client of:
  - 9.1.1. the likely time required to implement the change;
  - 9.1.2. any necessary variations to the fees and other charges for the Services arising from the change;
  - 9.1.3. the likely effect of the change on the Services; and
    - 9.1.3.1. any other impact the change might have on the performance of this Agreement.
    - 9.1.3.2. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing executed by both parties.
    - 9.1.3.3. Notwithstanding the foregoing, Hunley Group may, from time to time change the Services without the consent of Client provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Agreement.
    - 9.1.3.4. Hunley may charge for the time it spends assessing and documenting a change request from Client on a time and materials basis in accordance with the rates as set forth in the Agreement.

10. **Warranty.** Hunley warrants that Services will be performed in accordance with generally and currently accepted industry standards for similar services. Client understands and agrees that no implied warranties whatsoever apply to the Services provided, including but not limited the implied warranty of fitness for a particular purpose, and that the only express warranty is as set forth in the first sentence of this section. Client's sole remedy and Hunley Group's sole liability and responsibility for breach of any warranty will be for Hunley Group to re-perform the Services in question, including creation of Deliverables.

11. **Limitation of The Hunley Group Liability.** In no event shall Hunley, it's members, agents, employees and independent contractors, be liable to customer, Client or to any third party for any loss of use, revenue or profit, or loss of data or diminution in value, or for consequential, incidental, indirect, special or punitive damages (including, without limitation, attorneys' fees) whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not

Hunley has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall Hunley Group's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the aggregate amounts actually paid to The Hunley Group pursuant to this Agreement in the three month period preceding the event giving rise to the claim.

12. **Indemnification of The Hunley Group by Client.** The Client will indemnify, defend, and hold harmless Hunley for any claim or liability arising out of the performance of Hunley Group's Services, except those that arise from willful misconduct by Hunley. This provision survives termination or expiration of this Agreement, with Client continuing to indemnify Hunley.
13. **Relationship of Parties.** It is agreed that Hunley Group's Services are made available to Client on the basis that Hunley shall retain status as an independent contractor to Client and not as a Client employee. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Hunley shall use its own discretion in performing the tasks assigned, subject to the general direction of Client and subject to the express condition that The Hunley Group shall at all times comply with applicable law. Hunley warrants that it is not an employee of Client, and Client has no responsibility for workers compensation, state disability, or general liability related to services provided hereunder. Hunley assumes responsibility for all applicable U.S. Federal, State and Local withholding taxes, sales taxes, and unemployment taxes, as well as Social Security Tax and all other payroll charges arising from actual compensation paid.
14. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these terms.
15. **No Solicitation by Client.** During the term of this Agreement, and for a period of twelve (12) months after expiration or termination of this Agreement for any reason, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any Hunley Group employee or Agent of Hunley Group who has been assigned to perform tasks under this Agreement or who has otherwise been in possession of Confidential Information of Client or which is in any way related to the scope of this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that Hunley Group shall be entitled to an agency commission to be the greater of, either (a) 40 percent of said person's starting salary with Client, or (b) 40 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Client. Hunley Group, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity, including injunctive relief.
16. **No Solicitation by Hunley Group.** During the term of this Agreement, and for a period of twelve (12) months after expiration or termination of this Agreement for any reason, Hunley Group agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any employee or consultant of Client who has been assigned to perform tasks under this Agreement or who has otherwise been in possession of Confidential Information of Hunley Group or which is in any way related to the scope of this Agreement. In the event such employment, consultation or work-for-hire event occurs, Hunley Group agrees that Client shall be entitled to an agency commission to be the greater of, either (a) 40 percent of said person's starting salary with Hunley Group, or (b) 40 percent of fees paid to said person if engaged by Hunley Group as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Hunley Group. Client, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity, including injunctive relief.
17. **Force Majeure.** Hunley shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Hunley including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or

telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 30 days, Client shall be entitled to give notice in writing to Hunley to terminate this Agreement.

18. **Resolution of disputes.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the North Carolina Revised Arbitration Act, N.C. Gen. Stat. § 1-569.1, et seq., and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration proceedings will take place in or near Davidson, North Carolina. The arbitrator(s) will also determine who pays the fees for arbitration and associated legal costs and expenses. No legal action of any kind relating to the Services or this Agreement can be initiated by Client against Hunley after one year from the completion of the Services or termination of this Agreement, whichever occurs first. This section shall survive the termination of this Agreement.
19. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.
20. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, successor and assigns regardless of any form of corporate restructuring, renaming or merger. This Agreement may not be assigned by either party without the written consent of the other party, and any such attempted assignment shall be void and of no effect.
21. **Severability.** If any one or more provisions (or any part thereof) of this Agreement shall be held invalid, illegal or unenforceable in any respect, that provision shall be construed so as to most closely reflect the original intent of the parties, but still be enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) shall not in any way be affected or impaired thereby.
22. **Survival.** Any term or condition which by its nature is clearly intended to survive the expiration or termination of this Agreement, shall survive any expiration or termination of this Agreement, including the rights and obligations contained in Sections 5 (Confidentiality), 6 (License), 7 (Ownership), 10 (Warranty), 11 (Limitation of The Hunley Group Liability), 12 (Indemnification of The Hunley Group by Client), 15 (No Solicitation by Client), 16 (No Solicitation by Hunley Group), and 18 (Resolution of Disputes).
23. **Notices.** All notices, requests and other communications under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or by national overnight delivery service (such as Fed Ex), or delivered by hand to the party to whom such notice is required or permitted to be given, or sent by email and confirmed as received by the other party. If mailed, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by hand, any such notice will be considered to have been given when received by the party to whom notice is given, as evidenced by written and dated receipt of the receiving party. The mailing address for notice to Hunley Group is 428 South Main St. Ste B-616 Davidson, NC 28036. The mailing address for notice to Client will be as shown on the particular SOW or Order Form. Either party may change its mailing address by notice as provided by this section.
24. **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by both parties. The terms of this Agreement will govern all project assignments and services undertaken by The Hunley Group for Client, unless agreed otherwise, in writing.