

## POINT SYSTEMS PROFESSIONAL SERVICES AGREEMENT

**ATTENTION! THE FOLLOWING POINT SYSTEMS PROFESSIONAL SERVICES AGREEMENT WILL BE LEGALLY BINDING ON THE CUSTOMER UPON EXECUTION OF AN APPLICABLE SOW OR POINT SYSTEMS ESTIMATE/ORDER FORM FOR PROFESSIONAL SERVICES (INCLUDING POINT SYSTEMS TRAINING). CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING POINT SYSTEMS PROFESSIONAL SERVICES AGREEMENT BEFORE EXECUTING THE APPLICABLE SOW OR POINT SYSTEMS ESTIMATE/ORDER FORM.**

If the hyperlink location of this Professional Services Agreement (the "PSA") is referenced in a Statement of Work (as defined below) signed by both an authorized representative of the procuring party (the "Customer") and Point Systems, Inc. ("Point Systems"); or is referenced in the description for an item on a Point Systems Estimate/Order Form signed by Customer, or in an agreement between Point Systems and Customer, then the Professional Services procured by Customer shall be subject solely to the terms and conditions of this PSA and not the Main Terms (as defined below).

In addition to any Point Systems Professional Services provided to Customer pursuant to this PSA, Point Systems may also provide Customer with access to its Software-as-a-Service application (the "Service") if the Customer has entered into a License Agreement, Subscription Services Agreement or similar agreement (or in the absence of any such agreement under the then-current version of Point Purchasing Main Terms of Service located at <http://www.pointpurchasing.com/legal/>) (such agreement is the "Main Terms").

**1. Scope of Services.** Subject to the terms and conditions of this PSA, Point Systems will provide Customer with Professional Services as set forth in the applicable statements of work executed by Point Systems and Customer and/or Estimate/Order Forms executed by Customer (each, a "Statement of Work" or "SOW"). From time to time, the parties may enter into SOWs that specify the professional services and/or training to be provided to Customer hereunder (the "Professional Services"). Each Statement of Work will include, at a minimum: (i) a description of the Professional Services and any deliverables and/or training materials to be provided to Customer (each, a "Deliverable"); (ii) the scope of Professional Services; and (iii) the applicable fees and payment terms for such Professional Services, if not elsewhere specified. All Statements of Work shall be deemed part of and subject to this PSA.

### 1.1. Terms and Conditions for Training.

**1.1.1. Training Deliverables.** Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only. Customer is prohibited from: (a) modifying the training Deliverables, unless otherwise authorized in writing by Point Systems or set forth in an applicable SOW; (b) reselling or sublicensing any training Deliverables; (c) utilizing the training Deliverables to replicate or attempt to perform the training, unless otherwise authorized in writing by Point Systems or set forth in an applicable SOW; and (d) developing or attempting to develop any of the products described in such training Deliverables. Customer may not record, stream or otherwise capture any performance or aspect of the training Professional Services. Training Deliverables are not subject to any maintenance, support or updates.

**1.1.2. For Onsite Delivery.** Customer is responsible for providing appropriate training facilities for the training delivery, including without limitation Internet connectivity, student access to a Demo Account to which Customer may be granted access (pursuant to Section 1.1.3 below), projector, student computers and other reasonable classroom amenities.

**1.1.3. Access to Demo Account.** In connection with Point Systems' provision of training hereunder, Point Systems may provide attending Customer employees ("Training Users") with temporary and limited access to the Service solely for such Training Users' non-commercial use and receipt of training hereunder ("Demo Account"). Such Training Users' access to the Demo Account shall be subject to the terms and conditions that appear upon the initial provisioning or use of the Demo Account ("Trial Account Agreement"). The Trial Account Agreement may also be found at <http://www.pointpurchasing.com/legal/>. By selecting "I Agree" and/or accessing or using the Demo Account enabled for Customer by Point Systems, Customer and the Training Users agree to the terms of such Trial Account Agreement in connection with Customer's use and the use by its Training Users of the Demo Account. Point Systems has no obligation to provide any maintenance, support or updates with respect to Customer's use of the Demo Account.

**1.1.4. Cancellation and Use Policy.** Customer may reschedule or cancel previously scheduled training registration without penalty up to ten (10) business days prior to the scheduled start date. Registrations that are cancelled or rescheduled within ten (10) business days will be charged the full course price. In addition, all training courses must be completed or commenced no later than one (1) year from the date of initial purchase, unless otherwise specified in an Estimate/Order Form. If Training courses are not completed or commenced within such one (1) year period, then Customer will forfeit the right to use or schedule such training courses and will not receive any refund or credit for such forfeited training.

**2. Change Management Process.** If Customer or Point Systems requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Point Systems will prepare a change order describing the proposed changes to the Statement of Work and the applicable change in fees and expenses, if any (each, a "Change Order"). Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management officers for

resolution.

### **3. Project Materials.**

**3.1 Deliverables.** Point Systems shall own all rights, title and interest in and to the Deliverables (excluding any Customer Confidential Information provided to Point Systems for its provisioning of Professional Services), and related intellectual property rights. Point Systems shall have the right to use any such Customer Confidential Information solely for the purpose of providing the Professional Services to Customer hereunder. Deliverables are Point Systems Confidential Information and Customer may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license, sublicense or grant a security interest in all or any portion of the Deliverables. Subject to terms and conditions of this PSA, and during the Term, Point Systems hereby provides Customer with a limited, non-exclusive, non-transferable (except in connection with an assignment under Section 14 of this PSA and terminable license to use the Deliverables solely for Customer's internal operations in connection with its authorized use of the applicable Service.

**3.2 Tools.** Notwithstanding any other provision of this PSA: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Point Systems to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables or as otherwise agreed by Customer; and (ii) the term "Deliverables" shall not include the Tools. Tools are Point Systems Confidential Information.

### **4. Professional Services Warranty.**

**4.1 Professional Services Warranty.** Point Systems warrants that (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with this SOW; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards, laws and governmental regulations applicable to the performance of such services. Point Systems' ability to successfully perform hereunder is dependent upon Customer's provision of timely information, access to resources, and participation. If through no fault or delay of Customer the Professional Services do not conform to the foregoing warranty, and Customer notifies Point Systems within sixty (60) days of Point Systems' delivery of the Professional Services, Customer may require Point Systems to re-perform the non-conforming portions of the Professional Services.

**4.2 Disclaimer.** EXCEPT AS STATED IN SECTION 4.1 ABOVE, POINT SYSTEMS DOES NOT REPRESENT THAT THE CUSTOMER'S USE OF THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE PROFESSIONALS SERVICES, DELIVERABLES AND/OR TOOLS WILL BE CORRECTED OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 4.1 ABOVE ARE THE SOLE WARRANTIES AND REMEDIES FOR CUSTOMER AND EXCLUSIVE OBLIGATIONS OF POINT SYSTEMS RELATED TO THE PROFESSIONAL SERVICES, DELIVERABLES AND/OR TOOLS TO BE PERFORMED FOR AND DELIVERED TO CUSTOMER PURSUANT TO THIS PSA AND ANY STATEMENT OF WORK. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. EXCEPT AS PROVIDED HEREIN, THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS PROVIDED TO CUSTOMER ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ARE FOR COMMERCIAL USE ONLY.

### **5. Payment Provisions.**

**5.1 Fees and Payment.** Fees and expenses for each applicable project shall be set forth in the applicable SOW. Customer shall pay the fees and expenses as specified in the applicable SOW.

**5.2 Taxes.** Point Systems fees do not include any local, state, federal or foreign taxes, VAT, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity on the transactions contemplated by this PSA, excluding only taxes based on Point Systems' income. If Point Systems has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Point Systems with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **6. Term and Termination.**

**6.1 Term.** This PSA shall commence on the effective date of the agreement, Estimate/Order Form or SOW referencing this PSA and shall continue in effect until terminated as provided herein. Each SOW shall commence on the date it is last signed, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order Form shall be non-cancelable, except as otherwise explicitly stated in such SOW or Estimate/Order Form. Sections 4.2 and 5 through 17 shall survive termination of this PSA.

**6.2 Termination.** This PSA will terminate automatically when the Main Terms and all SOWs and agreements referencing this PSA are terminated or expired. Additionally, either party may terminate this PSA for convenience upon written notice in the

event there are no active SOWs hereunder. Upon termination or expiration of this PSA, Customer shall have no rights to continue use of the Deliverables and Tools.

## **7. Confidentiality.**

For purposes of this PSA, "Confidential Information" means: (a) the terms of this PSA; (b) the pricing and other terms reflected in all SOWs and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this PSA or an SOW, that: (i) in the case of information in tangible form, is marked "confidential" or "proprietary;" (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. The following shall not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party's possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party's Confidential Information; and (5) aggregate data collected or generated by Point Systems or on behalf of Point Systems regarding Point Systems' products and services (for purposes of providing or improving Point Systems products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Customer-specific information.

Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this PSA or as directed by Customer. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section. Nothing in this PSA will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

**8. Limitations of Liability for Professional Services.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF CUSTOMER DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), WHETHER SUCH LIABILITY ARISES FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THE APPLICABLE SOW. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE APPLICABLE SOW OR THIS PSA THE MAXIMUM LIABILITY OF POINT SYSTEMS TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY PROFESSIONAL SERVICES, DELIVERABLES AND/OR TOOLS WHETHER SUCH LIABILITY ARISES FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THE APPLICABLE SOW, SHALL BE THE AMOUNT PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES UNDER THE APPLICABLE SOW. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS PSA AND ANY SOW. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THE PROFESSIONAL SERVICES AND THAT, WERE POINT SYSTEMS TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO A CUSTOMER'S BREACH OF SECTION 7 OF THIS PSA OR WITH REGARDS TO AMOUNTS DUE BY CUSTOMER UNDER THIS PSA. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER. NOTHING IN THIS PSA EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

**9. Subcontracting.** Point Systems' relationship with Customer pursuant to this PSA will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in this PSA shall be deemed to create any agency, partnership or joint venture relationship between the parties. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of this PSA. Point Systems reserves the right to use third parties (who are under a covenant of confidentiality with Point Systems), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation and custom code development processes.

**10. Non-Impediment.** Provided that Point Systems does not use any Customer Confidential Information except as permitted herein, nothing in this PSA shall be construed as precluding or limiting in any way the right of Point Systems to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

**11. Dispute Resolution.** Each party agrees that before it seeks mediation, arbitration, or any other form of legal relief it shall provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the

parties which are allegedly being breached). Within thirty days after such notice knowledgeable executives of the parties shall hold at least one meeting (in person or by videoconference or teleconference) for the purpose of attempting in good faith to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section 11 shall not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

**11.1 Arbitration.** Except as provided in Section 11.1, any and all disputes, claims or controversies ("Disputes") arising out of or relating to this PSA or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in either San Francisco or San Mateo County, California and before a single arbitrator. The arbitrator selected shall be a retired judge who has had experience with technology disputes. In any arbitration arising out of or related to this PSA, the parties agree the arbitrator is not empowered to award punitive or exemplary damages, and the parties waive any right to recover any such damages. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in disputes exceeds \$250,000 USD and its JAMS Streamlined Arbitration Rules and Procedures when lesser amounts are in issue. The arbitrator shall issue a written reasoned decision. Each party shall bear their own costs in connection with the arbitration, although the arbitrator shall award the prevailing party its reasonable costs and attorneys' fees.

**12. Notices.** Customer's email address for communication and notice purposes relating to this PSA shall be set forth on the applicable Estimate/Order Form (or subsequent email addresses as advised by Customer). Customer agrees to accept emails from Point Systems at the above e-mail address. Point Systems may provide any and all notices, statements, and other communications to Customer through either e-mail, posting on the Service (or other electronic transmission) or by mail or express delivery service. Point Systems recommends that the main and billing contact email addresses be group addresses (such as billing@customer.com) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, Point Systems may rely and act on all information, authorizations and instructions provided to Point Systems from the above-specified e-mail address.

**13. Force Majeure.** Neither party shall be liable for any loss or delay (including failure to meet the service level commitment) resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage (other than those involving Point Systems employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Professional Services shall be extended to the extent of any delay resulting from any force majeure event.

**14. Assignment.** This PSA shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this PSA without written consent of the other, except to a related entity or the successor of all or substantially all of the assignor's business or assets to which this PSA relates.

**15. Non-Solicitation.** To the extent permissible by applicable law, during the Term and for a period of twelve (12) months following termination or expiration of the PSA, Customer agrees that it will not directly solicit the engagement or employment of any of the employees or contractors of Point Systems who have been engaged in the provision of Professional Services, without written permission of Point Systems. The foregoing will not apply to persons who have independently responded to general solicitations (such as general newspaper advertisements and internet postings) not targeting such persons.

**16. Entire Agreement.** The parties acknowledge that they have had previous discussions related to the performance by Point Systems of Professional Services for Customer and the possible strategies which may be used by Point Systems to implement the Service to achieve the requirements identified by Customer. This PSA, together with the attached exhibits that are incorporated by reference constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this PSA and such exhibits. The parties expressly disclaim any reliance on any and all prior agreements, understandings, RFPs, verbal and/or written communications related to the Professional Services to be provided by Point Systems. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this PSA be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this PSA, regardless of any failure of Point Systems to object to such terms, provisions, or conditions. No other act, document, usage or custom shall be deemed to amend or modify this PSA unless agreed to in writing signed by a duly authorized representative of both parties. In the event of any inconsistency or conflict between the terms of this PSA, and an SOW, the terms of the SOW shall control with regards to the project described therein.

**17. General Provisions.** This PSA shall be governed in accordance with the laws of the State of California and any controlling U.S. federal law. If the subject matter of a Dispute does not permit the parties to use the dispute resolution procedures set forth in this PSA or such dispute resolution procedures are deemed unenforceable, then any such Dispute arising out of or in connection with this PSA and/or any SOW shall be subject to the exclusive jurisdiction of the state and federal courts located in San Mateo or San Francisco County, California. If any provision is held by a court of competent jurisdiction (or in arbitration, the arbitrator) to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this PSA shall otherwise remain in full force and effect. A waiver of any breach under this PSA should not constitute a waiver of any other breach or future breach. This PSA may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this PSA executed in ink by both parties.

CUSTOMER ACKNOWLEDGE THAT THEY HAVE READ THIS PSA, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING THIS PSA, THE APPLICABLE ESTIMATE/ORDER FORM, AND/OR STATEMENT OF WORK HAS BEEN AUTHORIZED TO DO SO.

