

## Professional Service Agreement - Americas

**IMPORTANT:** DO NOT EXECUTE THE PROFESSIONAL SERVICES ORDER FORM UNTIL YOU HAVE READ THIS SERVICES AGREEMENT. This is an agreement between you ("Client") and Pitney Bowes Software Inc. or the Affiliate indicated in the Professional Services Order Form ("PBSI"). By executing the Professional Service Order Form, you are agreeing to the terms set forth herein (the "Agreement"). IF YOU ARE NOT WILLING TO BE BOUND BY THIS AGREEMENT, DO NOT EXECUTE THE PROFESSIONAL SERVICES ORDER FORM.

1. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"Affiliate" means an entity that Controls, is Controlled by or is under common Control with Client or PBSI;

"Control" means the ownership of more than fifty percent (50%) of an entity's stock or other voting interest;

"Deliverable(s)" means any computer software, written documentation, reports or materials developed by PBSI specifically for Client pursuant to a PSOF;

"PSOF" means the Professional Services Order Form executed by the parties that references this Agreement and describes the Services and Deliverables;

"Services" means the consulting services to be performed by PBSI as described in the PSOF; and

"Warranty Period" means the thirty (30) day period following completion of the Services.

2. Services.

a) PBSI will perform the Services in accordance with this Agreement and the PSOF. PBSI is not obligated to provide any Services unless set out in the PSOF. Unless otherwise set out in the PSOF or as agreed to by the parties, PBSI will commence performance of the Services fifteen (15) business days following execution of the PSOF and the Services will be performed at PBSI's offices. Unless otherwise stated in the PSOF, Services will be performed and billed in contiguous eight (8) hour increments. Changes or delays in the work schedule originating with Client are subject to the project change procedure and may result in an increase in fees.

b) For a time and materials engagement, PBSI estimates that the Services will be completed in approximately the number of hours set out in the PSOF. PBSI does not represent, however, that the Services will be completed within the number of hours specified therein. Any estimates provided in the PSOF, including expected hours to complete the Services and any timeline provided by PBSI, are based on known functional requirements and technical environments as of the effective date of the PSOF.

c) PBSI grants Client a non-exclusive, non-transferable, royalty-free, perpetual license to use the Deliverables on behalf of and for the benefit of Client. PBSI retains all right, title and interest to the Deliverables except for those rights expressly granted to Client and reserves all rights not otherwise expressly granted herein. Deliverables and Services are deemed accepted upon delivery unless otherwise set forth in a PSOF.

d) Any modifications to the Services must be in writing and signed by authorized representatives of each party. The modifications may be set forth in a project change request or other document agreed to by the parties in writing. PBSI personnel performing Services at Client's offices will comply with Client's policies and procedures in effect at such location.

3. Fees; Expenses.

a) Fees. Client will pay PBSI the fees set out in the PSOF or other executed order document (as applicable) for all Services performed by PBSI, and all taxes related thereto. All fees are due within thirty (30) days of receipt of an invoice from PBSI. Client will pay a late payment charge of 1.5% per month on any fees not paid by the due date.

b) Billing Schedule. Fees will be invoiced to Client based on one of the following billing options, as indicated in the PSOF:

i) Time and Materials: For engagements with a time and materials billing schedule, invoices will be issued monthly in arrears as Services are performed, based on the hourly or daily rate set forth in the PSOF or other executed order document. If a minimum number of hours are indicated on the PSOF ("Minimum Hours"), Client will pay for and permit PBSI to perform the indicated number of Minimum Hours. Should any Minimum Hours not be performed within ninety (90) days of the effective date of the PSOF due to delay, unavailability, or other reason within Client's control, Client will promptly pay the fees for such Minimum Hours upon receipt of an invoice by PBSI, which will then be credited against the balance of fees due for completed Services as they are performed. If PBSI performs Services at Client's request on a weekend or federal holiday (for the country where the Services are being performed or if off-site the country where the PBSI resources are performing the Services), Client will pay PBSI one and a half (1.5) times the hourly or daily rate for all Services performed on such weekend or federal holiday.

(ii) Retainer Hours: Invoices will be issued to Client based on the number of hours or days indicated as Retainer Hours prior to commencement of any Services, based on the rates set forth in the PSOF or other executed order document. Retainer Hours are then allocated to Services performed upon execution until the Retainer Hours are depleted. All Retainer Hours will be consumed in eight (8) hour increments and must be used within twelve (12) months of the effective date of the original PSOF purchasing the Retainer Hours. If Client fails to use the Retainer Hours within such time period, PBSI will not refund the unused pre-paid fees and will be under no obligation to perform the Services.

(iii) Fixed Cost: Invoices will be issued upon delivery of milestones, or in accordance with a billing schedule set forth in the PSOF or other executed order document.

c) Client will also pay for all reasonable travel-related and out-of-pocket expenses incurred by PBSI in the performance of the Services in accordance with PBSI's corporate travel and expense policy located at <http://www.pitneybowes.com/us/license-terms-of-use/travel-and-expense-policy-external.html>, which will be billed on a monthly basis and due thirty (30) days following date of invoice.

d) PBSI will provide Client with a monthly project status report accounting for the number of hours of Services performed in the prior month, and the expenses incurred in performance of the Services.

#### 4. Client Obligations.

a) Client will provide any assistance reasonably required by PBSI to perform the Services, including timely review of plans and schedules for the Services and reasonable access to Client's offices for Services performed onsite.

b) Client will designate a project manager for the Services. The project manager will have the authority to make decisions on behalf of Client with respect to changes in the Services, resource allocation, expenditures, resolution of issues, scope changes and other matters involving the Services.

c) Client will maintain a back-up of any data or data files provided to PBSI.

d) Client will be responsible for securing all licenses for third party technology necessary for PBSI to perform the Services (including the right for PBSI to use such technology), and will be responsible for the performance of any third party providing goods or services to Client related to the Services, including such third party's cooperation with PBSI.

5. Warranty.

a) The Services will be performed in a professional manner in accordance with generally accepted industry standards for the software consulting industry. PBSI will use reasonable commercial efforts to complete the Services in accordance with the PSOF. If the Services fail to comply with this warranty during the Warranty Period, Client will promptly notify PBSI in writing specifying in reasonable detail any alleged non-conformities in the Services. Upon such notice, PBSI will, as Client's remedy, promptly re-perform any such Services in accordance with the PSOF and this Agreement.

b) THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND PBSI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

6. Confidentiality. During performance of the Services, each party may receive Confidential Information of the other party.

a) "Confidential Information" means all confidential and proprietary information of either party ("Disclosing Party"), including but not limited to, each party's and its Affiliates: (i) customer and prospect lists, names or addresses, existing agreements with Disclosing Party and business partners; (ii) pricing proposals, financial and other business information, data processes and plans; (iii) research and development information, analytical methods and procedures, hardware design, technology (including the Deliverables); (iv) financial information or personnel data; (v) information concerning the customers and potential customers of either party; (vi) business practices, know-how, marketing or business plans; (vii) this Agreement and the PSOF, technical documentation, user manuals, and training materials; and (viii) any other information identified in writing as confidential or information that the receiving party knew or reasonably should have known was confidential, in each case that is disclosed to the other party ("Receiving Party") or to which the Receiving Party gains access in connection with performance of the Services.

b) The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence, apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, but not less than a reasonable standard of care, and not to disclose such Confidential Information to any third party; and (ii) without the written permission of the Disclosing Party, not to use any Confidential Information of the Disclosing Party except as reasonably required to exercise its rights or perform its obligations under this Agreement and the PSOF. Each party agrees to cause its employees, subcontractors, agents and, if permitted, Affiliates, who require access to such information to abide by such obligations.

c) The foregoing obligations do not apply to information that: (i) is already public or becomes available to the public through no breach of this Section 6; or (ii) was in the Receiving Party's lawful possession before receipt from the Disclosing Party; or (iii) is lawfully received independently from a third party who is not bound by a confidentiality obligation; or (iv) is independently developed by or on behalf of the Receiving Party without use of any Confidential Information.

d) If a Receiving Party is compelled to disclose the Confidential Information by a governmental agency or a court of law having proper jurisdiction, the Receiving Party will give the Disclosing Party reasonable notice as permitted by law to enable such party to try to protect the confidentiality of the Confidential Information.

e) Upon written request of the Disclosing Party, the Receiving Party agrees to promptly return or destroy all Confidential Information in its possession, and certify its destruction in writing, provided, however, that the Receiving Party may retain one copy of the returned or destroyed items for archival purposes in accordance with its records retention policies and subject to this Section 6.

f) Disclosing Party may be irreparably damaged if the obligations under this Section 6 are not enforced and as such may not have an adequate remedy in the event of a breach by Receiving Party of its obligations hereunder. The parties agree, therefore, that Disclosing Party is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Receiving Party's obligations under this Section 6 or any other appropriate equitable order or decree.

## 7. Indemnification.

a) PBSI will indemnify, defend and hold Client, its officers, directors and employees, harmless from all losses, damages, and reasonable costs and expenses to the extent they arise out of a claim by a third party that the Deliverables or Services, as delivered by PBSI, infringe or misappropriate any copyright, trade secret, trademark or patent registered or valid within the country the Deliverables are authorized to be used. PBSI will have control of the defense and will defend at its own expense, any claim or litigation to which this indemnity relates, including the right to settle any such claim. Client must notify PBSI promptly of any such claim and provide reasonable cooperation to PBSI, upon PBSI's request and at PBSI's cost, to defend such claim. PBSI will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without the indemnified party's prior consent. Client may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

b) If the Deliverables are subject to a claim of infringement or misappropriation, or if PBSI reasonably believes that the Deliverables may be subject to such a claim, PBSI will: (i) replace the Deliverables with a functional non-infringing equivalent; (ii) modify such Deliverables while retaining substantively equivalent functionality; or (iii) procure at no cost to Client the right to continue to use such Deliverables. If, however, PBSI determines that none of the foregoing alternatives are commercially reasonable, PBSI may terminate Client's license to the Deliverables and PBSI will, as Client's remedy, refund to Client the fees paid for such Deliverable.

c) PBSI will have no obligation to defend or indemnify Client under this Section 7 if the infringement or misappropriation results from: (i) modifications to the Deliverables by anyone other than PBSI; (ii) combination of the Deliverables with Client's equipment or non-PBSI software programs if such claim of infringement or misappropriation would have been avoided had such combination, operation or use not occurred; (iii) Client's failure to implement modifications (which if delivered to Client expressly to avoid infringement, will be delivered at no additional cost to Client and which will provide substantially the same functionality as the infringing or potentially infringing Deliverables); or (iv) Services performed or Deliverables developed at the direction of Client, where Client specifies the means, manner or method of performing the Services or developing the Deliverables and to the extent PBSI did not exercise its independent judgment and discretion in performing the Services or developing the Deliverables.

## 8. Limitation of Liability.

A) **DISCLAIMER.** NEITHER PARTY NOR PBSI'S THIRD PARTY SUPPLIERS WILL BE LIABLE FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, OR LOST DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

B) **MAXIMUM LIABILITY.** IN ANY EVENT, EITHER PARTY'S (AND PBSI'S THIRD PARTY SUPPLIER'S) MAXIMUM LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT (IN TORT,

CONTRACT OR OTHERWISE) WILL NOT EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO PBSI UNDER THE APPLICABLE PSOF.

C) EXCLUSIONS. THE FOREGOING DISCLAIMER SET FORTH IN SECTION 8(A) (DISCLAIMER) DOES NOT APPLY TO PBSI'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7 (INDEMNIFICATION). THE FOREGOING MAXIMUM LIABILITY SET FORTH IN SECTION 8(B) (MAXIMUM LIABILITY) DOES NOT APPLY TO CLIENT'S OBLIGATIONS TO PAY AMOUNTS DUE UNDER THE PSOF, OR PBSI'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7 (INDEMNIFICATION).

#### 9. Term of Agreement.

a) This Agreement and the PSOF will be effective as of the effective date of the PSOF and will remain in effect until the Services are completed, this Agreement is terminated, or the termination date set out in the PSOF (the "Termination Date"), whichever is later. If no specific Termination Date is designated in the PSOF, Client may terminate the PSOF and this Agreement upon thirty (30) days written notice to PBSI.

b) Either party may terminate this Agreement and any PSOF immediately upon written notice to the other party for cause, if: (i) such party is in breach of a material provision of this Agreement or the PSOF and fails to cure such breach within fifteen (15) days following written notice of such breach; or (ii) the other party ceases to conduct business in its ordinary course; is adjudged bankrupt or insolvent under applicable law; has made a general assignment for the benefit of creditors; files or becomes subject as a debtor to a petition in bankruptcy for liquidation or reorganization; becomes otherwise insolvent; or admits its inability to pay its debts generally as they become due.

c) Upon the effective date of termination of this Agreement or the PSOF, PBSI will cease performance of the Services. Client will pay PBSI for all Services performed prior to the date of termination plus any additional fees that may be due under the PSOF, including the fees for the balance of any unused Minimum Hours (as applicable). For Services performed on a fixed-cost basis, should the PSOF be terminated prior to delivery of any milestone or Deliverable, Client will pay PBSI at the hourly rate for all Services performed up to the date of termination as set forth in the PSOF. If no hourly rate is designated, Client will pay PBSI's then standard hourly rate for such Services.

d) Sections 3 (Fees, Expenses), 5(b) (Warranty), 6 (Confidentiality), 7 (Indemnification), 8 (Limitation of Liability), 9 (Term of Agreement), 10 (Non-Solicitation) 15 (General) and 16 (Applicable Law) will survive termination of this Agreement indefinitely or to the extent set out therein.

10. Non-Solicitation. During the term of this Agreement and for twelve (12) months thereafter, Client will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of PBSI's employees or subcontractors.

11. Force Majeure. Except for Client's payment obligations, neither party is responsible from any delay or failure to perform resulting from causes beyond its reasonable control.

12. Independent Contractor. Each party will act as an independent contractor and employees of each party will not be considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other. Each party assumes full responsibility for the actions of its personnel while performing the Services and such party will be solely responsible for the supervision, daily direction, control of its personnel, and for the payment of all of their compensation.

13. Assignment. Client is not permitted to transfer or assign (by operation of law or otherwise) any of its rights or obligations under this Agreement without the prior written consent of PBSI, which consent will not be unreasonably

withheld, delayed or denied. Any such transfer or assignment without PBSI's written consent will be void and of no force and effect.

14. **Publicity.** Neither party will use the name of the other party in publicity releases or similar activity without the consent of the other party, except PBSI may include Client's name in any PBSI client list.

15. **General.**

a) No waiver of any breach of any provision of this Agreement or the PSOF by either party or the failure of either party to insist on the exact performance of any provision of this Agreement or the PSOF will constitute a waiver of any prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

b) Any notice alleging a breach of this Agreement must be in writing and be sent by overnight courier or delivered in person to the party's address set forth in the PSOF. Any other notice required to be provided by PBSI under this Agreement may be sent by postal mail service or e-mail to the individual designated by Client. Any notice delivered to PBSI hereunder must be sent to the attention of "Contract Administration" at One Global View, Troy, New York 12180 with a copy to [contracts.correspondence@pb.com](mailto:contracts.correspondence@pb.com).

c) If any provision of this Agreement or the PSOF, or portion thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and the remaining provisions of the Agreement or PSOF will remain in full force and effect.

d) Client agrees not to export, re-export, or provide the Deliverables to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.

16. **Applicable Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of New York without regard to its principals of conflict of laws. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in a federal or state court of competent jurisdiction located in New York County in the State of New York. If Client is located in Canada, this Agreement will be governed by the laws of the Province of Ontario. Ontario's principles of conflict of laws or the United Nations Convention on contracts for the international sale of goods will not apply to this Agreement. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in the General Division of the Ontario Court of Justice.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between PBSI and Client, and supersedes all prior agreements, proposals, understandings, representations or correspondence relevant to the subject matter hereof. Client has not been induced to enter into this Agreement or the PSOF by any representations or promises not specifically stated herein. The PSOF will be signed by authorized representatives of PBSI and Client. This Agreement supersedes any pre-printed terms contained on any purchase order or similar document issued by Client and any such terms will have no force or effect.