



PROFESSIONAL SERVICES ADDENDUM

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Master Subscription Agreement (the "Agreement") between Brightly Software ("Company") and Subscriber, as defined in the Agreement. This Addendum applies to the extent that Subscriber and Company execute an Order Form that includes a Statement of Work ("SOW") for the provision of Professional Services to be provided by Company for Subscriber.

BY ACCEPTING THIS ADDENDUM, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY RESELLER PURCHASE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS ADDENDUM OR BY OTHERWISE ACCESSING AND USING THE PROFESSIONAL SERVICES, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

1. PROFESSIONAL SERVICES.

1.1 Scope. Company will provide such Professional Services and supply Deliverables to Subscriber in accordance with the terms of the Agreement and all applicable SOWs or Order Forms. Unless otherwise specified in an applicable SOW or Order Form: (i) Company will perform the Professional Services during workdays, Monday through Friday, up to 8 hours a day; (ii) any estimate of hours or costs are reasonable, good faith estimates only; and (iii) each task is performed as firm fixed price work or time and materials. Company is only obliged to supply Professional Services as expressly stated in the SOW and shall not be obliged to supply any Professional Services and/or Deliverables until both Parties have approved the applicable SOW.

1.2 Scheduling. Company requires at least 6 weeks advanced notice from the acceptance of an Order Form or reseller purchase to schedule Professional Services delivery dates when travel is required. Onsite Professional Services shall be delivered consecutively in a single onsite visit unless the applicable Order Form or reseller purchase includes the additional fees and incidental expenses associated with multiple visits.

1.3 Unused Professional Services. Unless otherwise specified in the applicable SOW, any unused order for Professional Services will expire 6 months from the date of order, and Subscriber will not be entitled to receive a refund for any fees prepaid for such expired Professional Services.

1.4 Relationship to Other Services. The Addendum is limited to Professional Services and does not convey any right to use any other Company Services. Subscriber agrees that Professional Services is not contingent on the delivery of any future Service functionality or features other than Deliverables, or on any oral or written public comments by Company regarding future Service functionality or features.

1.5 Subscriber Cooperation. Subscriber will cooperate reasonably and in good faith with Company in its performance of Professional Services by: (i) providing access to Subscriber Data, (ii) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Company to perform its obligations under the SOW or Order Form, and (iii) actively participate in scheduled project meetings. Any delays in the performance of Professional Services or delivery of Deliverables caused by Subscriber may result in additional applicable charges for resource time.

1.6 Acceptance. Any Deliverables are stated in the SOW or Order Form. Unless otherwise specified in the applicable SOW, Deliverables will be considered accepted upon Subscriber's written notice thereof (e-mail is sufficient) or two (2) business days from delivery whichever is sooner, provided Subscriber's rejection is limited to failure to materially conform to the SOW's specifications. An effective notice of rejection must specifically disclose the material failure to conform to its specifications. In response to rejection, Company may revise and redeliver the Deliverable, and thereafter the procedures of this Section will repeat.

1.7 Change Order. Changes to Professional Service defined in an Order Form, SOW or reseller purchase, shall require a written Change Order signed by the parties prior to implementation of such change(s). Changes may include, for example, alterations to the Professional Service scope of work, Deliverables or changes to fees or schedule.

2. FEES & PAYMENT TERMS.

2.1 Payment. Subscriber will pay Company the fees specified in each SOW or Order Form contained therein. Unless the SOW or Order Form provides otherwise, Subscriber will pay Company within thirty (30) calendar days from the date of invoice. Where multiple onsite visits are scheduled, the Professional Services, fees and incidental expenses shall be invoiced upon the completion of each visit.

2.2 Incidental Expenses. Subscriber will reimburse Company for travel and related business expenses incurred in connection with Professional Services. If an estimate of incidental expenses is included in the applicable SOW or Order Form, Company will not exceed a 5% inflation such estimate without the written consent of Subscriber.

3. TERM AND TERMINATION.

3.1 Term. Each SOW term shall begin on the effective date specified in the applicable SOW or Order Form and end on the date that the Professional Services are completed. Unless earlier terminated as set forth below, the terms of this Addendum will continue until termination or expiration of the applicable SOW. Termination shall be in accordance with the Agreement.

3.2 Termination. Either party may terminate a SOW or this Addendum for the other's material breach of such SOW or this Addendum, as applicable, on thirty (30) days' written notice, provided that if the other party cures the breach before expiration of such notice period, the SOW will not terminate. Additionally, all SOWs will immediately terminate upon termination or expiration of the Agreement.



3.3 Effect of Termination. Upon termination of a SOW: (1) if such SOW provides for an hourly or per unit fee, Subscriber will pay Company such fee for the work performed up to the date of termination; and (2) if the SOW provides for a fixed fee, Subscriber will pay Company the reasonable value of the Professional Services rendered by Company up to the termination date. Termination of a SOW for any reason, including without limitation for cause, will not terminate any other SOW.

4. PROPRIETARY RIGHTS AND LICENSES.

4.1 Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information as set forth in the Agreement.

4.2 Subscriber Data. Subscriber does not grant to Company any rights in or to Subscriber's intellectual property except such licenses as are required for Company to perform its obligations under the Agreement.

4.3 License for Deliverables. Upon payment of fees due under an applicable SOW or Order Form, Company grants Subscriber a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for its internal business purposes associated with its use of Company's Services any Deliverables created by Company solely for Subscriber under this Agreement. Company and Subscriber each retain all right, title and interest in their respective Intellectual Property and Company retains all ownership rights in the Deliverables.

5. WARRANTY.

Company represents and warrants that all Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 5, Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

6. DISCLAIMER.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH SECTION 5 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, Company AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND RELATED TO THE DELIVERABLES OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Company DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE DELIVERABLES OR THE RESULTS SUBSCRIBER MAY OBTAIN BY USING THE DELIVERABLES. IN PARTICULAR, Company DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF THE DELIVERABLES, THAT THE DELIVERABLES WILL CONTINUE TO FUNCTION WITH ANY SUBSCRIPTION SERVICES AFTER THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, OR THAT Company WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

7. NON-EXCLUSIVITY OF PROFESSIONAL SERVICES.

Notwithstanding the Confidentiality obligations set forth in Section 8 of the Agreement and this Addendum, Subscriber acknowledges and agrees that (i) multiple Subscribers may require similar Professional Services or Deliverables and that Company may be developing similar Professional Services and Deliverables for other third parties, (ii) Company may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information of Subscriber, (iii) nothing will prohibit Company from developing or having developed for it customizations, configurations, feature, concepts, systems or techniques that are similar to the Deliverables, and (iv) nothing will prohibit Company from re-using with another Subscriber or making generally available as part of Subscription Services all or part of any customization, configuration, feature, concept, system or technique developed hereunder.

8. IP INDEMNITY.

8.1 Indemnification by Company. In addition to the indemnification obligations set forth in Section 6 of the Agreement and subject to this Addendum, Company will (i) defend, or at its option settle, any claim, demand, action or legal proceeding ("**Claim**") made or brought against Subscriber by a third party alleging that the use of the Deliverable(s) as contemplated hereunder directly infringes the intellectual property rights of such third party, and (ii) pay (a) any final judgment or award directly resulting from such Claim to the extent such judgment or award is based upon such alleged infringement or (b) those damages agreed to by Company in a monetary settlement of such Claim. Company's obligations to defend or indemnify will not apply to the extent that a Claim is based on (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverable(s) with non-Company products or services; or (III) any use of the Deliverable(s) not in compliance with this Addendum. In the event of a Claim, Company may, in its discretion and at no cost to Subscriber (A) modify the Deliverable(s) so that they are no longer the subject of an infringement claim, (B) obtain a license for Subscriber's continued use of the Deliverable(s) in accordance with this Addendum, or (C) suspend use of the Deliverable in question and refund to Subscriber a pro rata portion of the fees paid for every month during which Subscriber is prevented from using the infringing Deliverable as a result of such infringement, during the first three years after delivery of such Deliverable.

8.2 Indemnification by Subscriber. To the extent permitted by law and subject to this Addendum, Subscriber will (i) defend, or at its option settle, any Claim made or brought against Company by a third party alleging that (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverables with non-Company products or services; or (III) Subscriber's use of the Deliverables, other than as authorized in this Addendum, violates applicable law or regulations or infringes the intellectual property rights of, or has otherwise harmed, a third party; and (ii) pay (a) any final judgment or award directly resulting from such Claim, or (b) or those damages agreed to in a monetary settlement of such Claim.



THIS SECTION 8 STATES COMPANY'S SOLE OBLIGATION, AND SUBSCRIBER'S SOLE REMEDY, WITH REGARDS TO CLAIMS THAT THE DELIVERABLES INFRINGE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATION OF LIABILITY. IN ADDITION TO THE OBLIGATIONS UNDER THE AGREEMENT, IN NO EVENT SHALL COMPANY, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE TOTAL AMOUNT PAID BY SUBSCRIBER UNDER THE APPLICABLE SOW TO WHICH THE CLAIM RELATES. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. UNDER NO CIRCUMSTANCES SHALL COMPANY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR PRODUCTS LIABILITY. NOTHING IN THIS SECTION SHALL LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 4 OF THE AGREEMENT.

10. MISCELLANEOUS

10.1 Order of Precedence. In the event of a conflict, the provisions of an authorized SOW will prevail over those of this Addendum. Neither party's acts nor omissions related to Professional Services, to a SOW, or to this Addendum, including without limitation breach of a SOW or of this Addendum, will give the other party any rights or remedies not directly related to the SOW in question.

10.2 Independent Contractor. The parties are independent contractors and nothing in this Agreement should be construed to create a partnership, agency, joint venture, fiduciary or employment relationship between the parties. Neither party is authorized to make any representation or commitment on behalf of the other party. Each party assumes full responsibility for the actions of its personnel while performing 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.

10.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.4 Force Majeure. Neither party will be responsible for failure or delay of performance of a SOW if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either party may cancel unperformed Professional Services upon written notice.

10.5 Non-Solicitation. Except where prohibited by law, during the Term of this Addendum and for twelve (12) months thereafter, Subscriber will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of Company's employees or subcontractors without Company's prior written consent. For the purposes herein, "solicit" does not include broad-based recruiting efforts, including without limitation help wanted advertising and general posting open positions.

10.6 Subcontractors. Company may, in its reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. Company will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with Company's obligations under this Addendum, except as otherwise specified herein.

10.7 Severability. If any provision of this Addendum is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Addendum will remain in effect.

11. DEFINITIONS.

11.1 "Change Order" means a Company change order that changes the Professional Services as set forth on a SOW, Order Form or defined in a reseller purchase. Change Orders executed by both parties shall be incorporated by reference into the applicable SOW, Order Form or reseller purchase. A Change Order cannot change Services, as defined in the Agreement to include SaaS applications.

11.2 "Deliverable" means a deliverable under an SOW or Order Form.

11.3 "SOW" means a statement of work describing Professional Services to be provided hereunder, that is entered into between Subscriber and Company or which is incorporated into an Order Form that is entered into between Subscriber and Company. A Company Affiliate that executed an SOW with Subscriber will be deemed to be Company as such term is used in this Agreement. SOWs or Order Forms are deemed incorporated herein by reference.

All other capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.