

The Answer Company | www.theanswerco.com

Standard Terms and Conditions

Prepared by:



Products and Services Provided

1. In consideration of the Customer purchasing from The Answer Company Consulting Inc. ("ANSWERCO") and paying the fees for the Software, Hardware, and/or Professional Services as set out in writing by ANSWERCO in the document(s) (the "Documents") attached hereto, ANSWERCO will provide to the Customer such Software, Hardware, and/or Professional Services, subject to the terms set out in the Documents and these Terms and Conditions. The Documents and these Terms and Conditions shall hereafter together be referred to as the "Agreement").
2. The terms under which Customer shall be entitled to use any Software are available online from the Software developer (the "Software License") and a link to each applicable Software License is provided in the Documents. The Software License contains the only representations and warranties made with respect to the Software provided by ANSWERCO, and Customer specifically acknowledges that ANSWERCO is solely an authorized reseller of such Software, and is not responsible for the operation, performance or content of the Software.
3. ANSWERCO is not obligated to provide any products or services other than those specifically set out in this Agreement.
4. This Agreement is effective on the date on the Documents (the "Effective Date").

Customer Obligations

5. The Customer will: (a) respond to requests from ANSWERCO on a timely basis; (b) have 1 contact present during regular business hours to provide information and assistance to ANSWERCO; (c) provide ANSWERCO with timely and accurate information and documentation; (d) make available to ANSWERCO, personnel familiar with Customer's requirements and with the expertise to permit ANSWERCO to undertake and complete its obligations under this Agreement; (e) maintain a proper operating environment for the Software; (f) provide a safe area for ANSWERCO to perform any Professional Services required to be performed on Customer's site; (g) provide for all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required; and (h) provide access to Customer's systems as reasonably requested by ANSWERCO.
6. Customer is solely responsible for complying with all applicable licenses, laws, rules and regulations, including those regarding use of the Software.
7. Customer is solely responsible for the management, administration, and security of Customer's information or technology systems, including all Customer data. Except as may otherwise be specifically set-out in the Documents, in no event is ANSWERCO responsible for any Customer hardware or software failures, data loss or corruption.
8. Customer shall maintain a backup copy of all files, data and information contained on Customer's information technology systems, and Customer will at all times be

responsible for maintaining applicable backup and disaster recovery processes for all such Customer files, data and information. Unless otherwise agreed to in writing by ANSWERCO, ANSWERCO shall not be responsible for any losses or damages of any kind whatsoever incurred by Customer resulting from inadequate or non-existent backup or disaster recovery procedures. Customer agrees and acknowledges that it is solely responsible for implementing any and all backup and disaster recovery procedures to protect itself against any such losses or damages.

Fees, Invoices, Payment

9. Customer shall pay ANSWERCO all fees as specified in the Documents.
10. In addition to the fees, the Customer will pay all applicable sales, value added, use, stamp, withholding and excise taxes and any other assessment a tax, duty or charge relating to or arising from the provision of any Software, Hardware, and/or Professional Services under this Agreement.
11. All fees plus applicable taxes, duties or charges are due and payable to ANSWERCO on date of invoice.
12. Reasonable travel and living expenses incurred for the provision of the on-site Professional Services provided under this Agreement will be invoiced monthly in arrears, at cost, plus all applicable taxes. All such travel and living expenses will submitted to Customer with receipts.
13. Any deposits received in respect of Professional Services, will be applied against the fees invoiced for such Professional Services over the first year of this Agreement or, if the Term of this Agreement (as defined below) is less than one year, the Term of this Agreement.
14. Additional fees calculated at ANSWERCO's standard rates, will be invoiced to Customer, for services which are required to remedy problems that ANSWERCO determines stemmed from changes to or defects in hardware or software not supplied by ANSWERCO.
15. The Customer will pay all invoiced amounts when due before as well as after breach, notice of breach or termination by either Party. In the event that an invoice is not paid by the Customer within 15 days after it becomes due, ANSWERCO may stop the provision of Software, Hardware and/or Professional Services until all overdue invoices and any other amount owing hereunder has been paid. All times estimated for ANSWERCO's performance or delivery will be extended by the number of days that payments are late.
16. Any invoice unpaid after 15 days will accrue interest at 1% per annum compounded monthly not in advance (12.56% annually).

Services Not Provided

17. Except to the extent specifically set out in the Documents, the following services are not provided by ANSWERCO pursuant to this Agreement: Services required to remedy problems that stem from changes to or defects in hardware or software not supplied by ANSWERCO; communication charges related to providing remote support in rendering services; telephone training to the

Customer contacts who have not received appropriate training from the software developer or ANSWERCO; consulting, customization, or development services.

18. Except to the extent specifically set out under the Documents, all remedies for problems with the operation, performance or content of the Software are provided solely and exclusively by the developer of the Software and set-out within the terms and conditions of the applicable Software License(s).

Additional Work; Change Requests

19. If during the Term of this Agreement, the Customer wishes ANSWERCO to provide any software or service including any services which alter, amend, enhance, add to, or delete from the Professional Services: (a) the Customer will provide a written request for a change ("Change Request") in a form specified by ANSWERCO; (b) within 7 business days of receipt of the Change Request, ANSWERCO will respond in writing to the Customer specifying whether it is willing to accept the Change Request and, if so, setting out any modified terms to the Change Request ANSWERCO may require and the resources required to satisfy the Change Request, and any resulting changes to the completion date and fees; (c) if no response is received by the Customer within 7 business days, ANSWERCO will be deemed to have rejected the Change Request; (d) within 7 business days of receipt of a response from ANSWERCO indicating it will accept the Change Request, if the Customer is satisfied with the response, the Customer will authorize ANSWERCO in writing in the form specified by ANSWERCO to perform the Change Request ("Accepted Change Request") and ANSWERCO will commence to provide the services in accordance with the Accepted Change Request; (e) if no response is received by ANSWERCO within 7 business days the Customer will be deemed to have rejected the response to the Change Request; (f) ANSWERCO will not perform any services in respect of a Change Request in advance of an Accepted Change Request; and (g) each Accepted Change Request will be deemed incorporated into this Agreement and each such Accepted Change Request will constitute a change to this Agreement adjusting fees and completion date as agreed in each Accepted Change Request.

Confidentiality

20. Each Party acknowledges that it may receive Confidential Information from the other Party in the course of ANSWERCO providing the Software, Hardware and/or Professional Services. Each Party agrees to maintain the confidentiality of the other Party's Confidential Information and agrees not to use it except in performing its obligations under this Agreement and not to disclose the Confidential Information to anyone except to such of its directors, officer, employees, contractors, consultants, advisors and agents ("Representatives") who need access to the Confidential Information to perform their obligations under this Agreement. Each Party confirms that each of its Representatives shall be informed of the non-disclosure and non-use obligations in this Agreement and shall

agree to protect the disclosure and use of Confidential Information in accordance with the terms herein.

21. Confidential Information includes all trade secrets and all knowledge, know-how, information, including hardware configuration and third-party software design and customization identified or reasonably identifiable as confidential and proprietary information of a Party not generally available to third parties. Confidential Information will not include any information which (i) is publicly available at the time of disclosure or subsequently becomes publicly available through no fault of the recipient Party or (ii) is rightfully acquired by the recipient Party from a third party who is not in breach of an agreement to keep such information confidential or (iii) written records of the receiving Party evidences was independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information.
22. The above confidentiality provisions will not be construed to prevent disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority, providing however that the responding Party shall first have given notice to the other Party (unless prohibited by law) to enable the disclosing Party to seek a protective order or take other appropriate action.
23. Each Party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of the confidentiality obligations set forth herein, and that such breach would cause irreparable harm to the nonbreaching Party; therefore, notwithstanding anything to the contrary in this Agreement, the non-breaching Party shall be entitled to seek immediate injunctive relief from any court of competent jurisdiction, in addition to whatever remedies it might have under this Agreement.
24. Promptly upon receipt of a written request from the other Party, a Party will return or destroy any of the other Party's Confidential Information in its possession or control.
25. The terms of this Agreement, including without limitation all terms respecting fees and other payments hereunder, are ANSWERCO's Confidential Information.

Intellectual Property

26. As between the Parties, all Work Product and (as applicable) any Integrated ANSWERCO Modules, and all Intellectual Property Rights associated with or relating to the foregoing are and shall remain the property of ANSWERCO. "Work Product" means the results of the Professional Services, including without limitation any deliverables, customizations, information and tangible embodiments thereof (in all forms of output, whether in electronic or physical form and irrespective of the media or device upon which stored), developed, created or acquired by ANSWERCO solely or in conjunction with others, for Customer under this Agreement, including all ideas, specifications, writings, drawings, data, inventions, techniques, modifications, processes, improvements, designs, parts, machines, and works of authorship. "Integrated ANSWERCO Modules" means any such

deliverables, customizations, information and tangible embodiments thereof that as of the Effective Date (as between the Parties) are owned by ANSWERCO and/or that during the Term are developed, created or acquired by ANSWERCO independently and outside of this Agreement, that are incorporated into the Work Product in the course of providing the Professional Services hereunder. “Intellectual Property Rights” means all current and future worldwide rights under patent law, copyright law, trade secret law, moral rights law, and other similar rights associated with or relating to the Work Product or Integrated ANSWERCO Modules.

27. To the extent necessary for the Customer to utilize the results of the Professional Services, ANSWERCO herein provides the Customer with a perpetual, irrevocable, non-transferable, non-exclusive, royalty free, fully paid up, worldwide license to use the Work Product and Integrated ANSWERCO Modules, and the Intellectual Property Rights related thereto.

Non-Solicitation; Competitive Considerations.

28. During the Term of this Agreement and for a period of 1 year thereafter the Customer including any of its Representatives or affiliates will not solicit, employ or hire, nor engage as a consultant or subcontractor any employee, subcontractor or Representative of ANSWERCO or any of its affiliates.
29. The Customer acknowledges and agrees that ANSWERCO may provide Software, Hardware and/or Professional Services to persons or entities other than the Customer including, without limitation, persons or entities competitive with or in the same industry as the Customer.

Warranties; Limitation of Liability

30. Customer warrants that it has all requisite power and authority to execute and deliver this Agreement.
31. ANSWERCO warrants that, as of the Effective Date, it is the duly-authorized re-seller for the Software, and all Professional Services will be performed by ANSWERCO by qualified personnel. Except for the foregoing warranties, all Professional Services are provided on a “where is, as is” basis.
32. Except as explicitly set out in Sections 30 and 31 above, neither Party makes any other warranties, and expressly and fully disclaims any other warranties of any kind, either express or implied by law, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose.
33. ANSWERCO makes no representations or warranties whatsoever with respect to Software or Hardware. The Software License as provided by the developer of the Software sets out the sole and exclusive representations, warranties and remedies available to Customer with respect to Software.
34. Each Party’s total liability to the other Party and all other parties in connection with the Software, Hardware, Professional Services or this Agreement, under all claims and classes of action, including breach of contract, breach of warranty, tort (including negligence), product liability, liability for personal injury and otherwise, shall be limited to the amount of payments actually received by

ANSWERCO from Customer [for Professional Services] during the 12 month period immediately prior to the date of the event giving rise to any liability.

35. In no event shall either Party be liable to the other Party or to any other party for any special, incidental, punitive, indirect, exemplary, or consequential damages, including without limitation any damages for lost profits, lost revenues, loss of use, loss of data, downtime, lost savings, or loss of goodwill or reputation, arising out of or in connection with the Software, Hardware, Professional Services or this Agreement, whether such liability arises from any claim or class of action based upon breach of contract, breach of warranty, tort (including negligence), product liability, liability for personal injury or otherwise, and whether or not a party has been advised of the possibility of such damage and even if such damages were or are foreseeable.

Term and Termination

36. This Agreement shall continue in full force and effect from the Effective Date to the earlier of (i) the date of completion of the contracted Professional Services or (ii) such other date as may be specified in the Documents (the “Term”).
37. This Agreement may be terminated by either Party upon written notice (i) if the other Party breaches any material term or condition of the Agreement and such material breach continues for 30 days following written notice from the Party specifying the breach; or (ii) the other Party ceases its business operations or becomes subject to insolvency or bankruptcy proceedings.
38. Either Party may suspend performance of any or all of its obligations under this Agreement without liability, if the other Party defaults in the performance or observance of any of its obligations hereunder and in such case, in addition to all other rights and remedies available to the non-defaulting Party, may suspend such performance until the default is remedied, but this Section will not permit the Customer to suspend its obligation to make payments accruing due and payable hereunder.
39. ANSWERCO may terminate this Agreement at any time without cause upon thirty (30) days prior written notice to the Customer.
40. The Customer may terminate this Agreement at any time without cause upon thirty (30) days prior written notice to ANSWERCO and provided that the Customer pays to ANSWERCO on or before the effective date of termination all amounts owing to ANSWERCO pursuant to this Agreement up to and including the effective date of termination.
41. Survival. All rights and obligations of the Parties set forth herein that expressly or by their nature survive the termination or expiration of this Agreement, including Sections 6-12, 15-16, 18, 20-29, 32-35, and 41-42, will survive any termination or expiration of the Agreement.

Dispute Resolution; Arbitration

42. Any and all claims, disputes or controversies (“Disputes”) arising under, out of, or in connection with this Agreement, which have not been resolved by good faith negotiations between senior executives of the Parties

shall be resolved by final, binding arbitration as set forth herein, regardless of the legal theories upon which such Disputes are based. The Parties irrevocably waive the right to resolve any Disputes in any other forum or to demand trial by jury. All Disputes must be submitted to arbitration within 2 years of the event giving rise to such dispute and will be resolved by a single arbitrator pursuant to the provisions of the American Arbitration Association Commercial Arbitration expedited proceeding rules or any successor rules or legislation then in force. The arbitration will be conducted at Seattle, Washington, if the Customer is in the United States of America, or Vancouver, British Columbia, if the Customer is in Canada, and the total arbitration will be conducted within a maximum period of 2 (8 hour) days, the said time to be divided equally between the Customer and ANSWERCO. The arbitrator will not award damages that are inconsistent with this Agreement. Each Party will be responsible for its own costs of the arbitration, including any arbitration fees, expert fees, arbitration costs and attorney's costs; the cost of the arbitrator and any external arbitration venue will be shared equally. Any award of the arbitrator will be final and binding upon the Customer and ANSWERCO, and both Parties will comply with said award without delay. The award may be enforced by any court having jurisdiction over the party against which the award has been rendered. Neither Party will resort to any court except to compel arbitration, or to enforce a rendered award.

General

43. Entire Agreement. This Agreement is the complete and exclusive understanding and statement of the agreement between the Parties with respect to the subject matter contained herein and supersedes all prior representations, proposals, negotiations, commitments, understandings and all other communications or agreements, oral or written, express or implied, between the Parties relating to the matters contained herein.
44. Amendment. This Agreement may not be modified or altered except by an Accepted Change Order or other written instrument duly executed by authorized signatories of both Parties.
45. Force Majeure. Dates or times by which either Party is required to perform under this Agreement, excepting the payment of any amount due hereunder, will be postponed automatically to the extent that any Party is prevented from meeting them by causes beyond its reasonable control.
46. Notices. All notices in connection with this Agreement must be made in writing and shall be considered given when delivered (i) personally or (ii) if faxed, the business day following the day the notice is faxed, provided a hard copy acknowledgment of successful faxed notice transmission is retained; or (iii) if given by mail, postage pre-paid, certified or registered with return receipt requested, on the business day following the day it is received by the recipient. All such notices shall be directed to the address set out on the first page of the Documents, or any other address that pursuant to this provision a Party provides notice to the other.
47. Assignment and Subcontracting. Neither this Agreement nor any rights or obligations under this Agreement may be assigned or encumbered by the Customer and no licenses granted herein may be assigned, sub-licensed, transferred or encumbered in any way whatsoever without the express prior written consent of ANSWERCO. Notwithstanding the foregoing, either Party may assign the whole of this Agreement without consent to any person or entity acquiring all or substantially all of the business or assets of such Party, or of the business division or product line associated with the Agreement.
48. Governing Law. The Parties agree that the laws of British Columbia and the laws of Canada in force therein govern the interpretation of this Agreement, without regard to any conflict of law rules.
49. Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators, and permitted assigns of the Parties hereto.
50. Independent Contractors. It is understood and agreed that the relationship between the Parties is that of independent contractors and that nothing in this Agreement shall be construed as authorization for either Party to act as agent for the other.
51. No Implied Rights. Neither Party shall acquire any intellectual property or other rights of the other Party, by implication, estoppel or otherwise, except as expressly set forth in this Agreement.
52. Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the Parties shall substitute, by mutual consent, valid provisions for such invalid or unenforceable provisions which valid provisions in their economic effect are sufficiently similar to the invalid or unenforceable provisions that it can be reasonably assumed that the Parties would have entered into this Agreement with such valid provisions. In case such valid provisions cannot be agreed upon, the invalid or unenforceable provisions shall not affect the validity of this Agreement as a whole.
53. No Waiver. The failure of any Party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions and the waiver of any right will not be deemed to waive such right in the future.
54. Counterparts. The Parties may execute and deliver this Agreement in counterparts, including by way of PDF or other electronic copies delivered by e-mail, and all such counterparts when so executed and delivered shall be deemed to be an original and when taken together shall constitute one and the same instrument.