



## FREE FIELD TECHNOLOGIES

### PROFESSIONAL SERVICES TERMS AND CONDITIONS (Rev March 2012)

#### 1 DEFINITIONS.

- 1.1 “**Agreement**” means these Professional Services Terms and Conditions, together with the Proposal.
- 1.2 “**Deliverables**” means the deliverables specified in the Proposal.
- 1.3 “**Customer**” means the FFT customer identified in the Proposal.
- 1.4 “**FFT**” means the Free Field Technologies entity identified in the Proposal.
- 1.5 “**Proposal**” means FFT’s services proposal, quotation or statement of work incorporating this Agreement, by reference or otherwise.
- 1.6 “**Services**” means the services described in the Proposal; Services include the Deliverables.

**2 SERVICES.** Subject to the terms and conditions of this Agreement, FFT shall provide the Services in accordance with the Proposal. A Proposal may provide a time schedule for completion of the Services (“Schedule”). Schedules shall not be considered firm or fixed performance dates, and are only to be regarded as estimated dates for the tasks and activities to be performed hereunder; FFT agrees to use diligent efforts to meet any such dates. Customer agrees to cooperate with FFT in the performance of the Services, including, without limitation, providing FFT with timely access to data, information, facilities and personnel of Customer. Any changes in the scope of the Services must be mutually agreed upon by the parties in writing.

**3 PRICES AND PAYMENT.** Customer shall pay all fees and expenses payable under this Agreement, including all amounts specified in the Proposal. Fees and expenses are exclusive of taxes, duties or other charges assessed by government authorities; Customer shall pay all taxes, duties and other charges assessed by government authorities in connection with the provision of Services under this Agreement (excluding taxes based on FFT’s net income). Payments are due as set forth in the Proposal. Amounts not paid when due will bear interest until paid at the rate of 1-1/2% per month or the maximum rate of interest allowed by applicable law, whichever is less. In addition, FFT may, without waiving any other rights or remedies to which it may be entitled, suspend performing the Services until all outstanding invoices have been paid and/or seek collection of all amounts due, including reasonable legal fees and costs of collection. All fees due and payable under this Agreement shall be non-cancelable and the sums paid nonrefundable, except as expressly provided herein.

#### 4 OWNERSHIP.

- 4.1 This Agreement does not transfer from FFT to Customer any intellectual or industrial property rights and all such rights in all software, technology, information, data, documentation or other materials brought by FFT into any engagement for the provisions of Services, or which are created or prepared by FFT in the course of or as a result of providing any of the Services, shall belong to and remain with FFT. Customer shall not reverse engineer, decompile or disassemble the Deliverables, except to the extent explicitly permitted by applicable law without possibility of contractual waiver.
- 4.2 Subject to the terms and conditions of this Agreement, and FFT receiving full payment for the Services, FFT grants Customer a non-exclusive, non-transferable license to use the Deliverables, if any, solely for Customer’s own internal use.

#### 5 CONFIDENTIAL INFORMATION.

- 5.1 “Confidential Information” means any non-public information of a party that is disclosed in writing and is conspicuously designated as “Confidential” at the time of disclosure, or that is disclosed orally, is identified as “Confidential” at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure, but excludes any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) the receiving party can demonstrate was rightfully in the receiving party’s possession the time of disclosure, without an obligation of confidentiality; (iii) the receiving party can demonstrate was independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information; or (iv) the receiving party rightfully obtains from a third party without any duty of confidentiality or restriction on use or disclosure.
- 5.2 Each receiving party will: (i) take all reasonable security measures to maintain the confidentiality of the other party’s Confidential Information, but not less than the measures it uses for its own Confidential Information of similar importance; (ii) use the other party’s Confidential Information only for the purpose of exercising its rights and performing its

obligations under this Agreement; and (iii) limit disclosure of the other party's Confidential Information to its employees and contractors that need to access such Confidential Information for the foregoing permitted purpose and are subject to legally binding obligations to maintain the confidentiality of the Confidential Information that are at least as stringent as the obligations under this Section. The receiving party may disclose Confidential Information of the other party to the extent required by applicable law or order of a court, government agency or other government body, but only if the receiving party provides prompt notice of that requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict the disclosure.

**6 LIMITED WARRANTY; DISCLAIMERS.** FFT will provide the Services to Customer in a professional manner consistent with industry standards. Customer must notify FFT in writing of any warranty deficiencies within ninety (90) days from performance of the Services. EXCEPT AS EXPRESSLY STATED IN THIS SECTION AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, FFT MAKES NO WARRANTIES OF ANY KIND, WITH RESPECT TO THE SERVICES. FFT FURTHER EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**7 LIMITATION OF LIABILITY.** IN NO EVENT SHALL FFT, ITS AFFILIATES, SUPPLIERS OR CONTRACTORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOST DATA, SAVINGS, PROFITS OR REVENUES) ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF FFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR CLAIM. FFT'S ENTIRE LIABILITY FROM ANY CAUSE RELATING TO OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, WILL NOT EXCEED IN THE AGGREGATE THE FEES ACTUALLY PAID BY THE CUSTOMER UNDER THE PROPOSAL. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THE AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION ACCRUED.

**8 TERMINATION.** Either party may terminate this Agreement upon thirty (30) days' written notice to the other party in the event such other party breaches a material term of this Agreement and such breach remains uncured at the end of such thirty (30) day period. In addition, FFT may terminate this Agreement if Customer makes a general assignment for the benefit of its creditors, is the subject of an involuntary bankruptcy petition, or is otherwise subject to insolvency or dissolution proceedings unless Customer is released from such proceedings within sixty (60) days. Termination shall not relieve Customer of any payment obligations accrued by Customer prior to the termination. Sections 3, 4.1, 5, 6, 7, 8, 9, 10, 11 and 12 shall survive termination of this Agreement in accordance with their terms.

**9 INDEMNITY.**

9.1 FFT shall, at its own expense and subject to the terms of this Agreement indemnify, defend and hold Customer harmless from and against any claim(s) brought against Customer by a third party alleging that the Deliverables or any portion thereof as furnished under this Agreement and used as permitted under this Agreement infringes any copyrights, trademarks, patents, or violates any trade secrets, provided that Customer gives FFT prompt written notice of such claim, assistance and information reasonably requested by FFT, and the sole authority to defend and settle such claim. Notwithstanding the foregoing, FFT shall have no liability for any infringement arising from: (i) the integration or combination of the Deliverables together with other materials or products not supplied by FFT, if the infringement would have been avoided in the absence of such integration or combination; (ii) modifications to the Deliverables that were not authorized by FFT or were undertaken at the request of or direction of Customer, (iii) Customer's failure to use corrections or enhancements made available by FFT; or (iv) Customer's use of the Deliverables in a manner that does not comply with this Agreement. In the event that a final injunction is issued against the use of the Deliverables by Customer for reason of infringement, or if, FFT reasonably believes that the Deliverables is likely to become the subject of a claim of infringement, FFT may, at its sole option and expense, either: (i) substitute non-infringing materials of substantially similar functionality; (ii) modify the infringing Deliverables so that it no longer infringes but remains substantially similar in functionality; (iii) obtain for Customer, at FFT's expense, the right to continue use of such Deliverables; or (iv) if none of the foregoing is commercially feasible, FFT will take back the infringing Deliverables, and grant Customer a refund for the fees actually paid to FFT for the same less any depreciation as calculated on a five-year straight-line basis commencing with delivery of the infringing Deliverable. THIS SECTION 9.1 STATES FFT'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.



9.2 If Customer provides FFT with materials, specifications, content, data, or other information (collectively “Customer Materials”), Customer shall indemnify, defend and hold FFT harmless from and against any claim(s) brought against FFT by a third party alleging that the Customer Materials or any portion thereof infringes any copyrights, trademarks, patents, or violates any trade secrets. Furthermore, Customer shall indemnify, defend and hold FFT harmless from and against any claim(s) brought against FFT by a third party to the extent that such claim(s) arise out of Customer's negligent use or misuse of the Services.

**10 NON-SOLICITATION.** Customer shall not, during the term of the applicable Services engagement and for one (1) year thereafter, solicit for hire as an employee, consultant or otherwise any of FFT’s personnel who have had direct involvement with the Services, without FFT’s express written consent, provided, however, that Customer shall not be precluded from hiring any employee of FFT who responds to any public notice or advertisement of an employment opportunity.

**11 EXPORT.** Customer agrees to comply with all applicable international and national laws that apply to the Services. Customer further agrees not to export or re-export the Services, technical data or other materials provided under this Agreement without obtaining, at Customer’s sole cost and expense, any required authorization from the applicable governmental authority as may be required by applicable law.

## 12 GENERAL.

- 12.1 Entire Agreement; Amendment: This Agreement constitutes the complete agreement between FFT and Customer with respect to the subject matter hereof and this agreement supersedes all prior oral and written understandings, communications or agreements between FFT and Customer with respect to the subject matter. If Customer issues a purchase order or other instrument covering the Services provided under this Agreement, it is expressly agreed that the terms of this Agreement supersede any different, conflicting or additional terms in a purchase order or other customer issued instrument. This Agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by the authorized representatives of the parties.
- 12.2 Choice-of-Law: This Agreement will be governed by and construed in accordance with the laws of (a) France if Customer acquires the Services in France; (b) Japan if Customer acquires the Services in Japan, (c) the State of California (and, to the extent controlling, the federal laws of the United States) if Customer acquires the Services in the United States or any other country in the Americas; or (d) Belgium if Customer acquires the Services in Belgium or any other country not specified in this Section 12.2. The laws of such jurisdictions shall govern without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 12.3 Severability: If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated.
- 12.4 Independent Contractor: The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement.
- 12.5 Force Majeure: Neither party shall be liable to the other party for any failure to perform any of its obligations (except for Customer’s payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control.
- 12.6 Notices: To give notice under this Agreement, the notice must be in writing and sent by registered mail, receipted courier service or facsimile telecommunication. Notices will be effective upon receipt.
- 12.7 Section Headings: The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 12.8 Assignment; Subcontracting: Customer may not assign or transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of FFT. FFT may assign or delegate its rights and/or obligations, in whole or in part, to any affiliate, parent, subsidiary or successor of FFT. FFT may use subcontractors in the performance of its obligations, in which case FFT will remain responsible for the performance by such subcontractors.
- 12.9 Software; Services: Customer acknowledges that no FFT software products are licensed under this Agreement; the licensing of such software products requires Customer entering into a separate software license agreement and payment of separate fees to FFT. Any services acquired from FFT are bid separately from software licenses, and Customer may acquire either services or software licenses without acquiring the other.