



STANDARD TERMS AND CONDITIONS FOR SERVICES

The following Standard Terms and Conditions for Services (these "Terms") shall apply to all orders submitted by or on behalf of any Client to Turbonomic, Inc., or its affiliates ("Turbonomic") for Services to be provided to or for the benefit of such Client.

The following Terms shall not apply to the extent that Client and Turbonomic have agreed in writing to different terms and conditions.

BY (I) AGREEING TO PROCURE SERVICES FROM TURBONOMIC, (II) ACCEPTING A QUOTE OR SOW FROM TURBONOMIC WITH RESPECT TO SUCH SERVICES OR (III) ISSUING A PURCHASE ORDER TO TURBONOMIC WITH RESPECT TO SERVICES, (ANY OF THE FOREGOING, A "CLIENT") YOU AGREE TO BE BOUND BY THESE TERMS UNLESS YOU HAVE EXECUTED AN ALTERNATIVE WRITTEN AGREEMENT WITH TURBONOMIC.

1. **DEFINITIONS**

1.1 Deliverable means any work product or item provided or to be provided to Client by or on behalf of Turbonomic in the course of delivering the Services.

1.2 Documentation means the technical specifications contained in the user and system documentation that Turbonomic generally makes available to its licensees for use with the Software.

1.3 IPR means intellectual property rights and includes, to the extent recognized under applicable law, patents, patent applications, copyrights (including rights in computer software), trademarks, service marks, trade dress, trade names, business names, internet domain names, e-mail address names, trade secrets, moral rights, database rights, customer lists, design rights, know-how, techniques, processes, methods, inventions (whether patentable or not), conceptions, discoveries, improvements, chip designs, mask works, proprietary information, technical information, specifications, and all other rights of authorship and intellectual and industrial property rights, and other equivalent or similar rights which may subsist anywhere in the world, in all cases whether registered or unregistered, including any form of application for any of the foregoing, and including any goodwill relating thereto.

1.4 Order Schedule means each Turbonomic ordering document signed by the duly authorized representative of Client (or referenced in a duly issued purchase order by Client) that identifies the Services ordered by Client from Turbonomic and that incorporates these Terms by reference.

1.5 Services means the training, enablement and implementation services provided by Turbonomic for the benefit of Client and its IT members of the Client's staff related to the use and deployment of the Software in accordance with the Documentation, as described from time to time in

Turbonomic service briefs available at www.turbonomic.com or as more particularly described in a Statement of Work, if applicable.

1.6 Software means each Turbonomic software program licensed by Client.

1.7 Statement of Work or SOW means a document describing with greater particularity the Services, timelines and Deliverables Turbonomic has been engaged to perform for Client, which has been accepted or otherwise agreed to in writing by Turbonomic.

2. **SERVICES ENGAGEMENT**

2.1. Engagement. Subject to these Terms, Turbonomic will perform the Services set forth in an Order Schedule and (if applicable) an SOW.

2.2. Out of Scope. Client acknowledges that Turbonomic will deliver and/or perform only the Services set forth in the Order Schedule and the applicable SOW (if any). Any other services, tasks, engagements not so specified will be deemed to be out of scope of the Services. To the extent required, the parties will negotiate in good faith any change orders required in connection with delivering the Services.

2.3. Restrictions. Client acknowledges that any Deliverables must be used only for its own internal use. Client shall not modify, adapt, resell, rent, lease, loan, decompile, disassemble, reverse engineer, create or prepare derivative works based upon the Deliverables or any part thereof. If the immediately foregoing provision is prohibited by applicable law, Client shall provide Turbonomic with a detailed prior written notice of any such intention to reverse engineer the Deliverables and shall provide Turbonomic with a right of first refusal to perform such work.

3. **IPR**

3.1. Pre-Existing Materials. Each of Turbonomic and Client shall retain all right, title, and interest in, to and under any material created or acquired

by or on behalf of such party outside the scope of Services to be provided hereunder, including all IPR therein.

3.2. Ownership of Deliverables. Unless otherwise expressly set forth in an Order Schedule countersigned by a representative of Turbonomic, Turbonomic shall own all right, title, and interest in, to and under the Deliverables, including all IPR throughout the world therein, and that Turbonomic and its assigns shall have the right to obtain and hold in their own name all IPR throughout the world in, to, and under the Deliverables. Client hereby irrevocably and perpetually assigns, transfers and conveys, and shall cause Client's agents and personnel to irrevocably and perpetually assign, transfer and convey, to Turbonomic all right, title, and interest in, to, and under the Deliverables, including all IPR throughout the world therein, and all rights to causes of action and remedies relating to any of the foregoing, effective immediately upon the inception, conception, creation, fixture, development or reduction to practice thereof and will sign, execute and acknowledge any documents and perform any and all such acts as may be necessary, useful or convenient for the purpose of perfecting the assignment of such rights to Turbonomic.

3.3. License to Deliverables. Turbonomic hereby grants to Client a perpetual, royalty-free, worldwide, fully paid-up non-exclusive license to use any Deliverable in accordance with these Terms.

4. FEES AND PAYMENT TERMS

Client shall pay Turbonomic the fees, charges and other amounts specified in an Order Schedule within thirty (30) days of the date of invoice. Turbonomic is expressly authorized by Client to invoice in advance for the provision of Services unless otherwise set forth in the applicable Order Schedule. In addition to paying the applicable fees, Client shall also pay all reasonable travel and out-of-pocket expenses incurred by Turbonomic in connection with delivering the Services. Client shall provide a purchase order or notice that a purchase order is not required for purchase or payment prior to the the provision of any Services. Overdue balances are subject to a service charge equal to the lesser of 1.5% per month or the maximum legal interest rate allowed by law. Client shall be responsible for taxes levied on any transaction under these Terms, including all federal, state, and local taxes, levies and assessments, excluding any tax based on Turbonomic's income.

5. CONFIDENTIALITY

5.1. Confidential Information. Each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential

Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under these Terms. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Software and the terms and pricing of any Order are the Confidential Information of Turbonomic. Client will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Software. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

5.2. Exclusions. Information will not be deemed Confidential Information hereunder if such information: (a) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (b) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (c) becomes publicly known or otherwise publicly available, except through a breach of these Terms; or (d) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

6. LIMITED WARRANTIES

6.1. Warranties. Turbonomic warrants that: (a) it has the necessary skill and expertise to deliver the Services; (b) the Services shall be performed in accordance with applicable law and any Deliverables shall perform in accordance with all laws applicable to the functions they perform; and (c) for a period of thirty (30) days following the completion of the Services: all tangible portions of the Products, Services and Deliverables shall be free from defects in materials and workmanship;

6.2. Third Party Products. Client acknowledges that the Deliverables may contain or be accompanied by certain third party software products ("Third-Party Products"). These Third Party Products, if any, are identified in, and subject

to, special license notices, terms and/or conditions as set forth in the Order Schedule, the Third Party Product packaging and/or in the "notices.txt" file accompanying the Software ("Third-Party Notices"). The Third-Party Products are not warranted by Turbonomic. The Third-Party Notices may include important licensing and warranty information and disclaimers. In the event of conflict between the Third-Party Notices and the other portions of these Terms, the Third-Party Notices will take precedence (but solely with respect to the Third-Party Products to which the Third-Party Notices relate).

6.3. No Other Warranty. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6.4. Remedy. If the above warranties are breached, Turbonomic will, at its option and at no cost to Client, (a) provide remedial services necessary to enable the Software to conform to any applicable warranty, or (b) replace any defective Deliverable, or (c) refund amounts paid in respect of the defective Deliverable. Turbonomic's warranty obligations will only extend to material errors that can be demonstrated to exist in an unmodified version of the Deliverable except where the modifications were carried out by Turbonomic or with its written approval. Client will notify Turbonomic promptly in writing of any breach of warranty. Client will provide Turbonomic with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Client's sole remedies for breach of the above warranties.

7. LIMITATION OF LIABILITY.

7.1. Consequential Damage Waiver. EXCEPT AS MAY ARISE OUT OF EITHER PARTY'S BREACH OF SECTION 5, NEITHER PARTY (NOR TURBONOMIC'S SUPPLIERS) WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING COSTS, IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF THE SOFTWARE OR SERVICES, OR THE PERFORMANCE OF ITS OTHER OBLIGATIONS UNDER THESE TERMS, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

7.2. Limitation of Liability IN ANY EVENT, THE TOTAL LIABILITY OF TURBONOMIC (INCLUDING ANY OF ITS SUPPLIERS) TO CLIENT FOR ANY CLAIM UNDER THESE TERMS AND ANY ORDER SCHEDULE, WHETHER IT ARISES BY STATUTE, CONTRACT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS PAID BY (AND NOT OTHERWISE

REFUNDED TO) CLIENT TO TURBONOMIC UNDER ANY ORDER SCHEDULE FOR THE SOFTWARE OR SERVICES IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM. THE FOREGOING LIMIT DOES NOT APPLY TO TURBONOMIC'S OBLIGATIONS UNDER SECTIONS 5 AND 8. THE PROVISIONS OF THESE TERMS ALLOCATE RISKS BETWEEN THE PARTIES. THE PRICING SET FORTH IN THE ORDER SCHEDULES REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN. EXCEPT WITH RESPECT TO CLAIMS RELATED TO CLIENT'S FAILURE TO PAY OR CLIENT'S BREACH OF THE LICENSE GRANT UNDER THESE TERMS, ANY ACTION, CLAIM OR PROCEEDING RELATING TO THESE TERMS MUST BE BROUGHT WITHIN TWELVE (12) MONTHS FOLLOWING THE ACTION OR EVENT GIVING RISE TO SUCH ACTION, CLAIM OR PROCEEDING.

8. INTELLECTUAL PROPERTY INDEMNIFICATION

8.1. Indemnity. Turbonomic shall defend Client (at Turbonomic's expense) against any claim or suit brought by a third party against Client alleging that any Deliverable, or any part thereof, infringes upon a copyright or misappropriates a trade secret of such third party. Turbonomic shall pay any damages finally awarded to such third party by a court of competent jurisdiction resulting from such claim or suit, or agreed to in a written settlement by Turbonomic. Turbonomic's obligations under this Section shall arise only if: (a) Client promptly notifies Turbonomic in writing of any such claim or suit in writing within seven (7) days of learning of any action, or any threatened action; (b) Turbonomic has sole control of the defense and settlement of such claim or suit; and (c) Client fully cooperates with Turbonomic. If any Deliverable, or any part thereof, is held to infringe a copyright or misappropriate a trade secret, or in Turbonomic's sole discretion, is likely to infringe a copyright, Turbonomic (at Turbonomic's sole option) shall (r) procure for Client the right to continue using the Deliverable; (s) replace or modify the Deliverable with products of equivalent functionality; or (t) refund to Client an amount equal to the Client fee paid by Client for the affected Deliverable as depreciated on a straight-line basis over a period of three (3) years following delivery of the Deliverable in accordance with these Terms. Turbonomic shall have no responsibility under this Section if the suit or claim arises from modification of the Deliverable not carried out by Turbonomic or at its direction.

8.2. Sole Obligation. This Section 8 states Turbonomic's sole obligation and Client's sole remedy concerning any claim that the Services or any Deliverable infringes or misappropriates any IPR of any third party.

9. INSURANCE.

Turbonomic it will maintain sufficient insurance coverage required by applicable law and otherwise to enable it to meet its obligations created by these Terms. Without limiting the foregoing, to the extent these Terms create exposure generally covered by the following insurance policies, Turbonomic will maintain (and shall cause each of its agents, independent contractors and subcontractors performing any services hereunder to maintain) at its sole cost and expense at least the following insurance covering its obligations under these Terms:

9.1. Commercial General Liability. "Occurrence" form with policy limits of not less than two million dollars (\$2,000,000) each occurrence (for bodily injury and for damage of damage to property); including coverage for premises and operations, contractual liability, broad form property damage and products and completed operations;

9.2. Workers' Compensation: Employers Liability. Except to the extent prohibited by law, Turbonomic's program for compliance with workers' compensation and occupational disease laws, statutes, and regulations shall provide for a full waiver of rights of subrogation against Client and its officers, employees and agents. If Turbonomic fails to effect and maintain a program of compliance with applicable laws and regulations, and Client incurs liability or fines, or is required by law to provide benefits to such Turbonomic employees or their heirs or legal representatives; or to obtain coverage for such employees, Turbonomic shall indemnify Client therefor.

9.3. Professional Liability/Errors & Omissions Liability: Policy limits of not less than two million dollars (\$2,000,000) each claim. Such insurance shall include coverage for infringement of third party proprietary rights (including without limitation copyright, trade secret and trademark) to the extent reasonably commercially available, as related to performance under these Terms. The retroactive coverage date shall be no later than the effective date of these Terms.

10. TERMINATION

Any Order Schedule hereunder may be terminated (a) by mutual agreement of Turbonomic and Client, (b) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, or (c) by either party if the other party materially breaches these Terms and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof. Upon any termination of an Order Schedule, all applicable licenses are also terminated, and Client shall immediately cease use

of the applicable Deliverable and certify in writing to Turbonomic within thirty (30) days after termination that Client has disabled such Deliverable. However, notwithstanding the termination of any Order Schedule with a Client, these Terms shall continue to govern any other remaining outstanding Order Schedules. Termination of an Order Schedule shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve Client of its obligation to pay all fees that have accrued, have been paid, or have become payable by Client hereunder. Any portion of these Terms that by their nature are intended to survive the termination of these Terms (including, without limitation, the provisions of Sections 4, 5, 6, 7, 8, 10, and 11) shall survive such termination.

11. GENERAL PROVISIONS

11.1. Entire Agreement and Controlling Documents. These Terms, including any Order Schedules, contains the entire agreement between the parties with respect to the subject matter hereof, and supersede all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to these Terms or the applicable Order Schedule and is duly signed by the authorized representatives of both parties may amend these Terms or such Order Schedule. The terms and conditions contained in any purchase order issued by Client shall be of no force or effect, even if the order is accepted by Turbonomic. In the event of a conflict in terms among the Agreement and an Order Schedule, the Agreement shall control unless the Order Schedule expressly states the provision that it intends to amend. These Terms shall apply to all Services ordered by Client or delivered to Client by Turbonomic.

11.2. Assignment. These Terms shall be binding upon and for the benefit of Turbonomic, Client and their permitted successors and assigns. Client may not assign its rights under these Terms either in whole or in part without the prior written consent of Turbonomic. Turbonomic shall have the right to assign these Terms in whole as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of the assets to which these Terms relates. Any attempted assignment or delegation without such consent will be void.

11.3. Governing Law; Jurisdiction. These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these

Terms. Each party consents to, and agrees that each party is subject to, the exclusive jurisdiction of the District Court of Massachusetts or the Suffolk Superior Court of the Commonwealth of Massachusetts with respect to any actions for enforcement of or breach of these Terms.

11.4. Headings; Counterparts. The headings to the sections of these Terms are for ease of reference only and shall not affect the interpretation or construction of these Terms. These Terms may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument. Once signed, any reproduction of these Terms made by reliable means (e.g., photocopy, facsimile) shall be considered an original.

11.5. Relationship of the Parties. Turbonomic and Client are independent contractors, and nothing in these Terms shall be construed as making them partners or creating the relationships of employer and employee, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

11.6. Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

11.7. Notices. Any demand, notice, consent, or other communication required by these Terms must be given in writing and shall be deemed delivered upon receipt when delivered personally or upon confirmation of receipt following delivery by internationally recognized overnight courier service, in each case addressed to the receiving party at its address set forth on an Order Schedule, with a copy to the Legal Department at the address first listed above for each party. Either party may change its address by giving written notice of such change to the other party.

11.8. Waiver and Severability. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under these Terms will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of these Terms will not affect the validity or enforceability of any of the other provisions hereof, and these Terms will be

construed in all respects as if such invalid or unenforceable provision(s) were omitted.

February 2018

