

## **PROFESSIONAL SERVICES TERMS (ESSENTIAL)**

### **1. INTRODUCTION AND SCOPE**

- 1.1 These Professional Services Terms sets forth the general terms and conditions for the Supplier's supply of Professional Services. These Professional Services Terms supplement the General Business Terms and constitutes part of the Agreement.
- 1.2 In case of any conflicting terms between the Terms, the General Business Terms shall take precedence over these Professional Services Terms.
- 1.3 These Professional Services Terms, as valid from time to time, are made available at <http://www.hypergene.com/terms>.

### **2. SUPPLY OF PROFESSIONAL SERVICES**

- 2.1 The Supplier undertakes to supply Professional Services to the Customer in relation to the agreed Consultancy Assignment, as agreed in a Statement of Work, in accordance with the terms and conditions of these Professional Services Terms, the General Business Terms and other agreed terms of the Agreement.
- 2.2 The Supplier is entitled to substitute personnel that supplies Professional Services, provided that the substitute has corresponding qualifications. If the Parties have agreed in the Statement of Work that a certain person(s) shall be considered key personnel, such key personnel may however only be substituted if the Supplier has objective reasons for such substitution, such as the person no longer being available due to change of employment, termination of employment, illness, parental leave, death or similar circumstance. The Supplier shall further substitute personnel if the Customer so requests and presents objective reasons for such request, such as serious cooperation problems or the person not having the required qualifications.
- 2.3 The Parties shall, in the Statement of Work, specify their respective contact persons who shall be responsible for the daily co-operation and decision making within the scope of the Professional Services. For clarity, the contact person shall however only be entitled to change a Statement of Work or other part of the Agreement is duly authorized by power of attorney or otherwise.
- 2.4 The Customer shall duly and timely fulfil its customer obligations in relation to the Professional Services, including (i) cooperating in good faith and providing, upon the Supplier's request, all information that is necessary for the Supplier to perform its obligations; (ii) taking and implementing all required actions and decisions timely; (iii) providing necessary hardware, software, premises, personnel and other resources, and fulfilling such customer obligations as are set out in the Statement of Work, or reasonably can be expected from the Customer; and (iv) performing all such obligations and responsibilities with appropriately qualified and skilled staff and adequate resources.

### **3. DELIVERY, ACCEPTANCE TESTING AND DELAY**

- 3.1 Professional Services shall be supplied in accordance with the time plan set out in the Statement of Work. The Customer agrees and acknowledges however that the time plan is a fair estimate only and may have to be revised for various reasons. The Supplier will only be liable for Delays if specifically stated in the Statement of Work that the Supplier shall have such liability.
- 3.2 For Consultancy Assignments with defined Deliverables (e.g. projects, but excluding Application Management Services), the following procedures for testing and approval of delivery shall apply, unless otherwise agreed in the Statement of Work:
- (a) The Supplier shall supply the Professional Services and supply all Deliverables in accordance with the agreed time plan, including all agreed Milestones as set out in the applicable Statement of Work, and shall complete each Consultancy Assignment on the relevant Agreed Delivery Date.
  - (b) Before submitting the Deliverables to the Customer for acceptance testing, the Supplier must perform all agreed internal tests.
  - (c) The Customer will perform acceptance testing of all Deliverables, based on the Acceptance Criteria. The Customer may perform acceptance testing for several Milestones where so specifically agreed in the applicable Statement of Work. Unless otherwise set out in the timetable in the applicable Statement of Work, the acceptance test period shall be ten (10) calendar days before the Agreed Delivery Date, or if partial deliveries have been agreed, before the relevant Milestone. The Supplier will, upon the Customer's request assist the Customer in the performance of the acceptance tests, at the Customer's cost.
  - (d) Minutes shall be kept of the Customer's acceptance tests. The minutes shall be in writing and approved and signed by both Parties and identify any deviations from the Acceptance Criteria. The Supplier will correct such deviations without delay, whereafter (if necessary) a new acceptance test of the corrected parts may be performed by the Customer. The Supplier's obligations to correct deviations identified during acceptance testing exclude (i) any minor deviations, which may be corrected after approved delivery, and (ii) any other deviations, which the Parties specifically agree may be corrected after approved delivery.
  - (e) The Customer shall not be obliged to proceed to a new Milestone unless a previous Milestone has been fully accepted. The Customer shall approve the Professional Services and the Deliverables for the relevant Milestone when it has been established, applying the Acceptance Criteria, that the Professional Services and the Deliverables meet the agreed Acceptance Criteria.
  - (f) The Consultancy Assignment shall be considered delivered and completed, whereupon the Effective Delivery Date will occur, when: (i) the delivery of the Professional Services and the Deliverables for the final Milestone have been accepted in writing by the Customer, in a written acceptance document presented by the Supplier and signed by the Customer; or (ii) the acceptance test period for the final Milestone has expired without the Customer having notified Supplier that the Professional Services and the Deliverables have failed acceptance testing; or (iii) the Professional Services and the

Deliverables meet the Acceptance Criteria after the Supplier has corrected any deviations identified by the Customer in the minutes of the acceptance test for the final Milestone (excluding such deviations that are excluded according to sub-section (d) above.

- 3.3 Where the Parties have specifically agreed that the Supplier shall be liable for Delay according to Section 3.1, the Supplier will be liable for any Delay as follows: (a) The Supplier will be liable for payment of liquidated damages in the amount of 0.5% of the total contract value of the relevant Statement of Work, for each commenced week of Delay, however maximum 10% of the total contract value of the relevant Statement of Work; and (b) where the Customer has incurred any damage due to the Delay, which exceeds the said liquidated damages, the Supplier will be liable for any such excess damage (within the limitations set out in the General Business Terms); and (c) where the Delay is material (which includes that the maximum amount of liquidated damages is payable), the Customer may terminate the Statement of Work for cause as set out in Section 8 below.
- 3.4 Application Management Services and any other recurring Professional Services will be performed and considered completed upon the expiry of the agreed term for the Consultancy Assignment. Any other Professional Services will be considered performed and completed when the Supplier has performed all tasks and obligations set out in the respective Statement of Work.

#### **4. CHANGE MANAGEMENT**

- 4.1 Each Party shall have the right to request changes to the agreed Statement of Work. The Supplier will not unreasonably reject a change request by the Customer, and will upon any such rejection provide detailed reasoning therefore.
- 4.2 The Supplier shall, when presenting its own request for a change or as a response to the Customer's change request, inform the Customer in writing of the impact of the requested change in respect of the Professional Services, agreed fees, agreed timeframes and other consequences. The Customer will inform Supplier without delay whether the Customer approves the change on the terms proposed by the Supplier. Where the Customer does not approve the change, the relevant Statement of Work will continue to be executed on existing terms.

#### **5. FEES AND PAYMENT**

- 5.1 In addition to what follows from Section 6 of the General Business Terms, the following terms shall apply for the supply of Professional Services.
- 5.2 The fees for the Professional Services shall be specified in the Statement of Work. The fees may, depending on the nature of the Professional Services be based on, (i) for projects, an agreed fixed fee, or fees based on time and material, or any agreed target price model or other incentive model; (ii) for Application Management Services and other recurring Professional Services, an agreed yearly or other periodical fee; (iii) for training services, according to the Supplier's price list as valid from time to time, and (iv) for other Professional Services, fees based on time and material.

- 5.3 The fees will be invoiced (i) for projects, in accordance with any agreed payment plan set out in the Statement of Work, and if no payment plan has been agreed, monthly in arrears; (ii) for Application Management Services and other recurring Professional Services, yearly in advance; and (iii) for general Professional Services, monthly in arrears.
- 5.4 The fees will be based on the Supplier's applicable rates at the time of execution of the Statement of Work, unless otherwise agreed in the specific Statement of Work or otherwise in the Agreement.
- 5.5 The Supplier is entitled to compensation for reasonable expenses (including travel expenses and travel time) incurred by the Supplier when supplying the Professional Services. The Supplier shall upon the Customer's request present receipts or other documentation evidencing costs incurred by the Supplier.
- 5.6 Where the Customer cancels a pre-booked training less than 48 hours in advance, the Customer will be liable for payment of a late cancellation fee corresponding to the agreed fee for the training.

## **6. WARRANTY AND LIABILITY FOR DEFECTS**

- 6.1 Supplier warrants that the Professional Services will be provided in accordance with the Statement of Work and other terms of this Agreement.
- 6.2 The Supplier shall be liable for all Defects reported by the Customer during a warranty period of six (6) months from the completion of the relevant Statement of Work. In case of a Defect for which the Supplier is liable, Supplier shall re-perform the Professional Service or otherwise remedy the Defect as appropriate, at its own expense, with the urgency required under the circumstances, and always within any deadline expressly agreed.
- 6.3 For Application Management Services, the Supplier will be liable for correction of Incidents in relation to Customer Modifications, during the term of the relevant Statement of Work. Reporting and handling of such Incidents will take place in accordance with the procedures set out in the Service Description for Support (as applicable, in relevant parts) as further set out in the Statement of Work. The Statement of Work may, where so specifically agreed, further set out specific Service Levels (Response Times and/or Resolution Times, being target times or guaranteed times as specified therein) in relation to handling of Customer Modifications.

## **7. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

- 7.1 The Supplier shall be the owner of all rights to the Results. The Customer is granted a license to use the Results on the same terms as those applying for the use of Hypergene SaaS as set forth in the General Business Terms.
- 7.2 The Intellectual Property Rights indemnity provided by the Supplier in Section 8 of the General Business Terms shall apply also in relation to the Results.

**8. TERM AND TERMINATION**

- 8.1 The term of the respective Statement of Work shall be as set out therein.
- 8.2 Each Party has the right to terminate a Statement of Work with immediate effect, by giving written notice to the other Party, if the other Party commits a material breach of its obligations under the Statement of Work and does not remedy such material breach within thirty (30) days from the first Party’s written notice hereof (provided that such remedy is possible).
- 8.3 The Customer may terminate a Statement of Work (however excluding Statements of Work for Application Management Services and other recurring Professional Services) for convenience at any time by giving not less than one (1) month’s notice in writing to the Supplier. In the event of such termination for convenience by the Customer, the Customer shall pay an early termination fee corresponding to the agreed fees for the notice period.

**9. NON-SOLICITATION**

- 9.1 The Parties undertake, during the term of the Agreement and for a period of six (6) months thereafter, not without the other Party’s prior written consent encourage or actively try to hire an employee or consultant of the other Party, which has been introduced to the Party for the first time due to the Agreement and that the Party has had contact with during the term of the Agreement.

**10. DEFINITIONS**

In these Professional Services Terms, the following defined words and phrases shall have the meanings set out below.

<b>“Acceptance Criteria”</b>	means the agreed acceptance criteria for approving delivery as set out in the Statement of Work.
<b>“Actual Delivery Date”</b>	means the actual date when a Consultancy Assignment, which is subject to testing and approval of delivery according to Section 3.2, shall be deemed to be completed in accordance with the said Section 3.2.
<b>“Agreed Delivery Date”</b>	means the agreed date when a Consultancy Assignment, which is subject to testing and approval of delivery according to Section 3.2, shall be completed (which normally will be the final Milestone date).
<b>“Application Management Services”</b>	means the supply of Professional Services in relation to application management, including

	support and maintenance of Customer Modifications.
<b>“Consultancy Assignment”</b>	means an agreement on supply of Professional Services, as specified in a Statement of Work. Depending on the nature and scope of the Professional Services to be supplied, the Consultancy Assignment may be supplied e.g. on a project basis (e.g. a configuration project for implementation of Hypergene SaaS, or development of Customer Modifications), as general consultancy services, training, or as Application Management Services.
<b>“Defect”</b>	means a deviation from the agreed requirements set out in a Statement of Work.
<b>“Delay”</b>	means (for a Consultancy Assignment, which is subject to testing and approval of delivery according to Section 3.2 in these Professional Services Terms), that the Actual Delivery Date occurs after the Agreed Delivery Date, provided that (i) such event is due to Supplier or circumstances on Supplier’s side, and (ii) the Parties have specifically agreed in the Statement of Work that the Supplier shall be liable for Delays.
<b>“Deliverables”</b>	means agreed results of the Professional Services or other materials to be provided by Supplier under a Statement of Work, such as software code (including Customer Modifications (in object and source code format), manuals, documentation, data and other materials).
<b>“Milestone”</b>	means defined project milestones in the time plan for a project as set out in the Statement of Work.
<b>“Results”</b>	means the results of the Professional Services supplied by the Supplier, which may be Deliverables (such as Customer Modifications) or other results.
<b>“Statement of Work”</b>	means an agreed specification of Professional Services (in written or digital format), which sets out e.g. the agreed Professional Services, resources and competences, Deliverables, customer obligations, time plan, fees and payment.

