

Terms and Conditions for Professional Services

THIS AGREEMENT GOVERNS YOUR PURCHASE AND RECEIPT OF OUR PROFESSIONAL SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A STATEMENT OF WORK (“SOW”) OR ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

This Agreement was last updated on May 15, 2016. It is effective between You and Us as of the date of Your accepting this Agreement.

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means this Professional Services Agreement and any exhibits, schedules and addenda.

“**Change Order**” means any change to an SOW or Order Form, as applicable, as described in the “Change Orders” section below. Change Orders will be deemed incorporated by reference in the applicable SOW or Order Form, as applicable in the absence of an SOW.

“**Deliverable**” means a deliverable under an SOW or Order Form.

“**Online Services**” means any online, web-based services and associated offline components made available by Us (or one or more of Our Affiliates) to You under a separate agreement.

“**Order Form**” means an ordering document specifying the Professional Services to be provided hereunder and that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. Order Forms governed, in whole or in part, by this Agreement must have a SOW attached thereto or expressly state that the Order Form or certain Professional Services provided thereunder are governed by this Agreement. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

Notwithstanding any language to the contrary in the Order Form, all Professional Services purchased under an Order Form are purchased separately from the Online Services and all references to “Order Form” herein shall not apply in any way to any Online Services, including without limitation, with respect to payment obligations and termination rights.

“**Professional Services**” means work performed by Us, Our Affiliates, or Our or their respective permitted subcontractors under an SOW or Order Form, including Our provision of any Deliverables specified in such SOW or Order Form.

“**SOW**” means a statement of work describing Professional Services to be provided hereunder, that is entered into between You and Us or any of Our Affiliates or which is incorporated into an Order Form that is entered into between You and US or any of Our Affiliates. An Affiliate of Ours that executes an SOW with You will be deemed to be “Us” as such term is used in this Agreement. SOWs or Order Forms will be deemed incorporated herein by reference.

“**We**,” “**Us**” or “**Our**” means the company described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. PROFESSIONAL SERVICES

2.1. Scope of Professional Services. We will provide to You the Professional Services specified in each SOW or Order Form (as applicable), subject to Your payment of all applicable fees as set forth in the “Fees” section of this Agreement.

2.2. Relationship to Online Services. This Agreement is limited to Professional Services and does not convey any right to use Online Services. Any use of Online Services by You will be governed by a separate agreement. You agree that Your purchase of Professional Services is not contingent on the delivery of any future Online Service functionality or features, other than Deliverables, subject to the terms of the applicable SOW or Order Form, or on any oral or written public comments by Us regarding future Online Service functionality or features.

3. COOPERATION

3.1. Cooperation. You will cooperate reasonably and in good faith with Us in Our performance of Professional Services by, without limitation:

- (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Us to perform Our obligations under each SOW or Order Form;
- (b) timely delivering any materials and other obligations required under each SOW or Order Form;
- (c) timely responding to Our inquiries related to the Professional Services;
- (d) assigning an internal project manager for each SOW or Order Form to serve as a primary point of contact for Us;
- (e) actively participating in scheduled project meetings;
- (f) providing, in a timely manner and at no charge to Us, office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, access to Your appropriate and knowledgeable employees and agents, and continuous administrative access to Your Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by Us; and
- (g) complete, accurate and timely information, data and feedback all as reasonably required.

3.2. Delays. Any delays in the performance of Professional Services or delivery of Deliverables caused by You may result in additional applicable charges for resource time.

4. DELIVERY, ACCEPTANCE AND CHANGE ORDERS

4.1. Delivery of Services. We will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs or Order Forms.

4.2. Acceptance. Upon completion of each Deliverable under an SOW or Order Form, we will, as applicable: (a) submit a complete copy to You; and (b) at Your request, demonstrate its functionality to You. You are responsible for reviewing and testing all Deliverables in accordance with such SOW or Order Form pursuant to any acceptance criteria or test plans mutually agreed upon in writing by the parties for such Deliverable. You will provide Us with written notification of acceptance for each Deliverable promptly upon acceptance; however, failure to reject a Deliverable, as set forth below, will be deemed acceptance. If You, in Your reasonable and good faith judgment, determine that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SOW or as mutually agreed upon in writing by the parties for such Deliverable, You must so notify Us in writing within 10 business days after Our submission of the Deliverable, specifying the deficiencies in detail. We will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to You as soon as practicable. You will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Us in writing within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the functional requirements specified in the applicable SOW or Order Form after its second resubmission to You, You may either, as Your sole and exclusive remedy: (i) again reject the Deliverable and return it to Us for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Your executive sponsor for the project associated with the SOW or Order Form and Our Engagement Manager) or (ii) terminate the relevant SOW or Order Form immediately upon written notice and recover all Professional Services fees paid under such SOW or Order Form for such deficient Deliverable. If the parties determine that a Deliverable's functional requirements specified in a SOW or Order Form require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.

4.3. No Effect on Warranty Remedies. Acceptance of Professional Services, including a Deliverable, will not affect Your rights or remedies under the "Warranty" section below.

4.4. Change Orders. Changes to a SOW or Order Form will require a written Change Order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.

5. FEES, INVOICING AND TAXES

5.1. Fees. You will pay Us for the Professional Services at the rates specified in the applicable SOW or Order Form, or if no rate is specified in the SOW or Order Form, our standard rates in effect at the time the SOW or Order Form is executed. Professional Services are provided on either a time-and-materials or fixed fee basis, as provided in an SOW or Order Form. Any amount set forth in a time-and-materials SOW is solely a good-faith estimate for Your budgeting and Our resource-scheduling purposes and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, We will continue to provide Professional Services under the same rates and terms. We will periodically update You on the status of the Professional Services and the fees accrued under SOWs or Order Forms.

5.2. Incidental Expenses. You will reimburse Us for reasonable travel and out-of-pocket expenses incurred in connection with Professional Services. If an estimate of incidental expenses is provided in the applicable SOW or Order Form, we will not exceed such estimate without Your written consent.

5.3. Invoicing and Payment. Charges for time-and-materials engagements will be invoiced weekly in arrears unless otherwise expressly stated in the applicable SOW or Order Form. Charges for fixed fee engagements will be invoiced in advance in the manner as provided in the SOW or Order Form, as applicable, unless otherwise expressly stated therein. Invoiced amounts will be due and payable net 10 days from the invoice date. You are responsible for providing Us with Your complete and accurate billing and contact information and notifying Us of any changes to such information.

5.4. Overdue Charges. Subject to the “Payment Disputes” section, if any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future purchases of Professional Services on payment terms shorter than those specified in Section 5.3 (Invoicing and Payment).

5.5. Suspension of Professional Services and Acceleration. Subject to the “Payment Disputes” section, if any amount owing by You under this or any other agreement for our Professional Services is 10 days or more overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our performance of Professional Services until such amounts are paid in full. We will give You at least 10 days’ prior notice that Your account is overdue, in accordance with the Manner of Giving Notice section, before suspending Professional Services to You.

5.6. Payment Disputes. We will not exercise Our rights under the “Overdue Charges” or “Suspension of Professional Services” sections above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.7. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this section, We will invoice You and You will pay that amount, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6. PROPRIETARY RIGHTS AND LICENSES

6.1. Your Intellectual Property. You do not grant to Us any rights in or to Your intellectual property except such licenses as may be required for Us to perform Our obligations hereunder.

6.2. Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information.

6.3. License for Contract Property. Upon Your payment of fees due under an applicable SOW or Order Form, We grant You a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for Your internal business purposes associated with

Your use of Our online and offline services anything developed by Us for You, including Deliverables, under this Agreement (“**Contract Property**”). Each party hereto each retains all right, title and interest in its respective intellectual property and We retain all ownership rights in the Contract Property.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement and all SOWs or Order Forms (including pricing), as well as business and marketing plans, strategies, data, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any SOW or Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7.4. Publicity. DARUMA shall have the right to identify Customer as a user of the Service. Customer agrees that DARUMA may use any logo and/or name associated with Customer on DARUMA’s website or other materials in order to identify Customer as a Daruma user.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

8.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2. Warranty. We warrant that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of the above warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable Professional Services. If We are unable to re-perform the Professional Services as warranted, You will be entitled to recover the Professional Services fees paid to Us for the deficient Professional Services. You must make any claim under the foregoing warranty to Us in writing within 90 days of performance of such Professional Services in order to receive warranty remedies.

8.3. Disclaimer. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

9.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding (“**Claim**”) made or brought against You by a third party arising out of death, personal injury or damage to tangible property to the extent caused by Our personnel in their performance of the Professional Services, and will indemnify You for any damages, attorney’s fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, any such Claim, all of the foregoing to the extent caused by Our personnel, provided that You: (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (except that We may not settle any Claim unless it unconditionally releases You of all liability); and (c) give Us all reasonable assistance, at Our cost.

9.2. Mutual Indemnity. Each party (the “**Provider**”) will defend the other party (the “**Recipient**”) against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder (“**Material**”) infringes or misappropriates such third party’s intellectual property rights, and will indemnify the Recipient from any damages, attorney’s fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a court-approved settlement of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider’s cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient’s use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it no longer infringes or misappropriates, (B) obtain a license for the Recipient’s continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SOW or Order Form upon 10 days’ written notice given within 30 days after the Provider’s exercise of such option, subject to the “Payment Upon Termination” section below.

9.3. Exclusive Remedy. This “Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of Claim described in this section.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU FOR PROFESSIONAL SERVICES UNDER THE APPLICABLE ORDER FORM OR STATEMENT OF WORK, PROVIDED THAT IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION ABOVE.

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER OR PUNITIVE DAMAGES, WHETHER IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1. Term. This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section.

11.2. Termination for Convenience. Either party may terminate this Agreement at any time for convenience upon 10 days’ written notice to the other. To the extent there are SOWs or Order Forms in effect when a party terminates this Agreement, such SOWs or Order Forms shall continue to be governed by this Agreement as if it had not been terminated. You may terminate an individual SOW or Order Form for convenience to the extent set forth in such SOW or Order Form.

11.3. Termination for Cause. A party may terminate this Agreement and/or any SOW or Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Payment Upon Termination. Upon any termination of an SOW or Order Form, You will pay, in accordance with the Invoicing and Payment section of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that You terminate an SOW or Order Form for cause and You have pre-paid any fees for Professional Services not yet received, We will refund such pre-paid fees. In the event that We terminate an SOW or Order Form for cause, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in an SOW or Order Form.

11.5. Surviving Provisions. The sections titled “Contract Property,” “Confidentiality,” “Representations, Warranties, Exclusive Remedies and Disclaimers,” “Indemnification,” “Limitation of Liability,” “Term and Termination” and “General” will survive any termination or expiration of this Agreement.

12. INSURANCE

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker's compensation insurance as required by applicable law.

13. WITH WHOM YOU ARE CONTRACTING, NOTICES, GOVERNING LAW AND JURISDICTION.

13.1. General. With whom You are contracting under this Agreement, to whom You should direct notices under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on where You are domiciled.

DARUMA Contracting Entity*

Daruma Tech, LLC
3651 FAU Blvd, Suite 400
Boca Raton, FL 33431

Address for Notices

Daruma Tech, LLC
Attn.: Legal Department
3651 FAU Blvd, Suite 400
Boca Raton, FL 33431

* If the Services purchased hereunder have been purchased via credit card, debit card or other payment card, this legal entity will provide recourse to the Customer cardholder in case of a refund or chargeback.