

Arcuity, A Division of Abel Solutions, LLC
General Conditions of Service

1. Scope of Services.

DEFINITIONS: (a) "Agreement" shall mean this General Conditions of Service agreement (b) "Company" means Arcuity, A Division of Abel Solutions, LLC (c) "Client" means the company or firm for whom Company is performing Services and (d) "Services" mean all consulting services to be supplied by Company, pursuant to this Agreement; "Deliverables" are the implementation or configuration by Company of any software solutions or related materials.; "SOW" shall be a written statement of work.

2. Acceptance. Client's agreement to the terms and conditions hereof may be express or implied, either by written acceptance, or by Client's failure to object to the terms and conditions prior to the start of the Services. This Agreement, along with Company's SOW, contains the complete, exclusive and binding statement of the terms and conditions governing the Services whether previously agreed to orally or in writing. No addition to or any modification of any of these terms and conditions will be effective unless agreed to in writing and signed by Company.

3. SOW. Each SOW shall specify (a) the Services to be performed, (b) the Deliverables to be provided, (c) the payment rate, and (d) such other terms as may be described in this Agreement or as to which the parties may agree. Subject to the terms and conditions of this Agreement, Company will perform the Services and develop the Deliverables as described in the SOW in a good, prompt and workmanlike manner. All SOWs agreed to between the parties at any time shall be a part of this Agreement and shall be subject to the terms and conditions hereof.

4. Performance Schedule.

Company shall use commercially reasonable efforts to develop the Deliverables in accordance with the milestones and schedule set forth in the SOW. A performance schedule may be reasonably adjusted for delays, in which event, Company shall immediately notify Client in writing of any effect on the time schedule, and the parties shall work in good faith to establish a revised time schedule.

5. Compensation.

Client shall pay Company according to the fee schedule set forth in the applicable SOW for the Services and the Deliverables, Net 30 days from receipt of invoice, or as otherwise set forth in the SOW.

Client shall be responsible for all taxes and regulatory fees of any kind imposed by any federal, national, state, provincial, local, municipal or foreign government on any products, licenses or services provided under this Agreement and any SOW executed pursuant hereto; provided, however, that Company shall be responsible for all taxes based upon Company's income.

If Client reasonably objects to all or any portion of an invoice, Client shall notify Company in writing within ten (10) days from the date of its receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. Failure of Client to provide such written notice within the allowed ten (10) day period shall be deemed to be a waiver of all objections to that invoice.

Client's payment shall represent Client's acceptance of the Services invoiced by Company. Company may suspend performance of Services under this Agreement if (1) Client fails to make payment in accordance with the terms hereof, or (2) Company reasonably believes that Client will be unable to pay Company in accordance with the terms hereof. Should any invoice or part of invoice remain unpaid after thirty (30) days from Company's issuance which has not been disputed as set forth in (h) above, Company reserves the right, upon notification in writing to Client, to suspend such Services, including disabling any Third Party Licensed Material. Such suspension shall continue until Company has been paid in full for all balances past due including applicable service charges and Client provides Company with adequate assurance of Client's ability to make future payments in accordance with the terms hereof. If any such suspension causes an increase in the time required for the performance of any part of the Services, the performance schedule and/or period of performance shall be extended for a period of time equal to the suspension period.

6. Rights and Licenses.

(a) The parties acknowledge and agree that all Deliverables provided under this Agreement and the SOW executed hereunder shall consist of:

- (i) data, computer programs, designs, methodologies and techniques and other material owned or developed by Company prior to, or independent from, its engagement hereunder (“Company Materials”);
- (ii) materials that are owned by third parties (“Third Party Licensed Materials”);
- (iii) works that are in the public domain; and
- (iv) Work Product.

For purposes of this Agreement, the term “Work Product” means the software and related documentation and other materials included in a Deliverable created or developed by Company specifically for Client pursuant to a SOW.

(b) Company retains all right, title and interest in and to all Company Materials. To the extent that the Deliverables include Company Materials not subject to any subscription fee specified in the SOW, Company grants to Client a nonexclusive, nontransferable, perpetual, worldwide, fully paid-up right and license to use the Company Materials as part of the Deliverables. Except as expressly set forth herein or in the SOW, no right is granted hereunder to, and Client shall not directly or indirectly, (i) copy, print, record, display, publish or transmit all or any portion of the Company Materials; (ii) sell, rent, lease, distribute, license or sublicense, or otherwise transfer all or any part of the Company Materials or provide timeshare, service bureau or similar services to any other person using the same; (iii) modify or translate the Company Materials, create any derivative works or otherwise merge or utilize all of any part of the Company Materials with or into other computer programs or other materials for resale purposes; (iv) in any manner decompile, reverse engineer, decode, disassemble, or otherwise attempt to derive source code from all or any part of the Company Materials for resale purposes ; or (v) otherwise use the Company Materials outside of the license granted hereunder. Further, Client shall not remove or alter, or permit any person to remove or alter, any notices on, contained within or affixed to any Company Materials regarding copyright, patent, trademark and other proprietary rights, restrictions on use and confidentiality.

(c) If Client has requested the inclusion of the Third-Party Licensed Materials, Client shall be responsible for obtaining the appropriate license for such Third-Party Licensed Materials.

7. Limited Services Warranty.

Company warrants to Client that the Services shall be performed by qualified personnel in a professional and workmanlike manner.

8. Warranty Limitation; Remedies. (a) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7, COMPANY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, AND Company HEREBY DISCLAIMS THE SAME.

(b) Any claim for breach of the limited warranty must be made by Client in writing within 30 days after the warranty claim arose. If Company, in its sole discretion, determines that the claim is valid, Company will re-perform the work at no cost to client, and the limitations set forth in section 11 shall still apply.

(c) With respect to Third Party Licensed Materials, Company makes no warranties and disclaims any liability for such.

9. Non-Disclosure.

(a) From time to time during the term of this Agreement, a party (the “Disclosing Party”) may disclose Confidential Information (as defined below) to the other party (the “Receiving Party”). Except as permitted by this Agreement, each party agrees that it will maintain the confidentiality of any and all Confidential Information of a Disclosing Party and will not disclose any Confidential Information to any person. Each party agrees it will not use such Confidential Information except as permitted by the Agreement. As used herein, the term “Confidential Information” means any technical, business, and other information related to the other party’s business disclosed or otherwise obtained in connection with this Agreement or the performance of the Services, whether or not in writing, which derives value, actual or potential, from not being generally known to the public or to other persons who can obtain value from its disclosure or use. Anything in the foregoing to the contrary notwithstanding, all Company

Materials shall be considered Confidential Information of Company under this Agreement, and all materials licensed by Client to Company for use in connection with developing the Work Product and the Work Product itself shall be considered Confidential Information of Client under this Agreement.

(b) In addition, each party agrees to hold the terms of this Agreement in confidence and to disclose such terms only to its employees, agents, contractors and representatives who need to know such information to perform their respective responsibilities and who shall be directed to hold such terms in confidence.

(c) The obligations set forth in this Section do not apply if and to the extent the Receiving Party establishes that: (i) the information was already known to the Receiving Party, without obligation to keep it confidential, at the time of its receipt, as evidenced by documents in the possession of the Receiving Party prepared or received prior to disclosure of such information by the Disclosing Party, provided the exception set forth in this subsection (ii) shall not apply with respect to the Work Product; (iii) the Receiving Party received the information in good faith from a third party lawfully in possession thereof without obligation to keep such information confidential; (iv) the information was publicly known at the time of its receipt by the Receiving Party or has become publicly known other than by a breach of this Agreement; (v) the information is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information as evidenced by written records. The restriction contained in this Section shall expire seven years after the expiration or termination of this Agreement and all of the SOWs executed pursuant hereto with respect to information that does not constitute a trade secret under applicable law, which shall remain subject to the terms of this section until the information is no longer a trade secret under applicable law.

(d) Nothing herein shall preclude either party from disclosing information which it is legally required to disclose, whether pursuant to a valid legal process, court order, regulatory requirement or otherwise. A party that is legally required to make disclosures of any matter specified herein shall notify the other, as soon as practicable and in any event in advance of making such disclosure, specifying the information it is legally required to disclose. In addition, such disclosing party shall disclose only that portion of the information it is legally required to disclose and shall cooperate with the

other party to seek any confidential treatment thereof, if available.

(e) The rights and remedies set forth in this Section 10 are in addition to all rights and remedies to which a party may be entitled by law or in equity.

10. Indemnity.

(a) Company and Client shall indemnify, defend and hold harmless the other for any losses for bodily injury or damages to real property resulting directly from the indemnifying party's negligence or willful misconduct, but in no event shall Company's indemnification obligations exceed the total fees paid to Company under the agreement or statement of work that is the subject of the Indemnification.

Each party agrees to notify the other party of any suits or claims that may require indemnification by the other party within thirty (30) days after becoming aware of the suit or claim.

(b) Defense of Infringement Actions by Client. Client, at its expense, shall defend, indemnify and hold Company harmless from any claim, suit or action brought against Company based upon an assertion that the Work Product infringes the valid Intellectual Property rights of any third party; provided, however, such indemnity shall only apply to the extent any such claims, suits or actions are due solely to the inclusion of materials or specifications provided by Client. Notwithstanding anything to the contrary, as a condition precedent to such defense Company must:

(i) notify Client in writing of all available details of any such claim within thirty (30) days of becoming aware of the claim; and

(ii) allow Client the right to control the defense and any related settlement negotiations (with reasonable cooperation from Company at Client's expense).

11. Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF GOODWILL, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS RESULTING FROM THE USE OR INABILITY TO USE

THE DELIVERABLES OR SERVICES, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR COSTS OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE

COMPANY'S TOTAL LIABILITY IS STRICTLY CAPPED AT THE COST OF THE SERVICES TO WHICH THE LIABILITY IS RELATED, OR FROM WHICH THE LIABILITY AROSE.

12. Non-Solicitation.

During the term of this Agreement and for a period of one year thereafter, neither party will directly or indirectly solicit for employment, employ, consult with, or otherwise retain the services of any employee of the other with whom they had material contact as part of the Services. Provided however, that the parties will not be restricted from making any general solicitations for employment through the use of media advertisements or through the use of third-party recruiters that are not specifically directed to target such employees.

13. General.

(c) **Notices.** All required notices and communications shall be in writing and shall be sent by registered mail or overnight courier, return receipt requested with a copy sent to the electronic mail address set forth in the SOW.

(d) **Force Majeure.** Except for each parties' infringement indemnification obligations, neither party hereto shall be liable for any default or delay in the performance of any of its obligations under this Agreement if such default or delay is caused, directly or indirectly, by: pandemic or other public health risks, fire, flood, earthquake or other such catastrophes; wars (declared or undeclared), terrorist attacks, rebellions or revolutions; riots or civil disorder.

(e) **Amendment.** This Agreement may not be amended or modified except by a written document executed by the authorized representatives of both parties.

(f) **Waiver.** A party's waiver of the other party's non-compliance with any provision of this Agreement shall not constitute a waiver of any prior or subsequent non-compliance by the other party of that provision or a non-compliance by the other party of any other provisions of this Agreement. A party's single or partial exercise of any right, remedy, privilege, or power provided for under or pursuant to this Agreement by either party shall not preclude or limit such party from any other or

further exercise thereof or from pursuing any other right, remedy, privilege, or power available pursuant to this Agreement, at law or in equity.

(g) **Severability.** If any term of this Agreement, or any part thereof, not essential to the commercial purpose of this Agreement shall be held illegal, invalid or unenforceable under applicable law, it is the intention of the parties that the remaining terms hereof, or part thereof, shall constitute their agreement with respect to the subject matter hereof, and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision which will implement the commercial purpose of the illegal, invalid or unenforceable provision.

(h) **Governing Law.** This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Georgia, without giving effect to its conflict of law rules. The parties hereby irrevocably submit to the courts serving Cobb County, Georgia, for resolution of all disputes.

(i) **Independent Contractor.** The parties acknowledge that the relationship of Company and Client is that of independent contractors and that nothing contained in this Agreement shall be construed to place the parties in the relationship of principal and agent, master and servant, partners or joint venturers. Neither party shall have, expressly or by implication, or represent itself as having any authority to make contracts or enter into any agreement in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

(m) **Entire Agreement.** This Agreement and the SOW(s) constitute the sole and exclusive agreement between the parties with respect to the subject matter hereof and supersede and cancel any and all prior or contemporaneous agreements or contracts, whether written or oral in relation thereto.

(p) **No Third-Party Beneficiaries or Parent Liability.** This Agreement has been entered into solely between Client and Company, and no third-party beneficiaries are created hereby. All duties, liabilities and obligations undertaken by Company are undertaken exclusively by Company and not by its parent company or any affiliates thereof. Any recourse resulting from this Agreement is likewise limited to Company and not its parent or affiliated company (ies).