

## **SUCCESS STANDARD TERMS**

Last Updated December 14, 2018

SUCCESS Computer Consulting, Inc.'s ("SUCCESS") Standard Terms apply to all work SUCCESS performs for its customers (individually, a "Client"), including under the Engagement Agreement (the "Agreement") and any Statements of Work ("SOW"). You, as the customer ("Client"), and SUCCESS are collectively referred to as "Parties." All capitalized terms herein not defined shall be interpreted based on the definition in the Agreement.

1. **Services and Deliverables.** SUCCESS will provide Client with the Services and Deliverables (defined to be any work product created, procured, or prepared by SUCCESS) specified on one or more SOWs executed by the Parties. Such SOWs, which are subject to the Agreement and these Terms, shall only be valid and binding once signed by both Parties. Unless otherwise provided in the SOW, all Services under the Agreement shall be deemed to take place in the State of Minnesota at SUCCESS's offices.

2. **Fees, Expenses, and Payment.** Unless explicitly provided otherwise in an applicable SOW: (i) all sums for projects, licenses, subscriptions, equipment, and block time are due and payable in advance by Client; (ii) Client shall pay SUCCESS its standard hourly rates in effect at the time of the provision of the Services; (iii) Client shall reimburse SUCCESS for all travel and living expenses incurred pursuant to the provision of any Services outside of SUCCESS's offices; and (iv) all Services are provided on a time and materials basis, meaning Client will be billed on the actual amount of hours and cost of materials provided, including all out-of-pocket costs incurred by SUCCESS.

Emergency Services may be provided at one hundred fifty percent (150%) of the standard hourly rate. Emergency Services are defined as those Services which Client requests of SUCCESS, and which SUCCESS agrees to provide, which occur between the hours of 12:01 a.m. to 7:00 a.m. and 5:30 p.m. to Midnight Central Time on weekdays (Monday through Friday), and anytime during the weekend (Saturday and Sunday). Emergency Services are billed with a minimum of two (2) hours per request.

SUCCESS's invoices are based on timesheets and records kept in the ordinary course of business. SUCCESS bills time in fifteen (15) minute intervals. If Client fails to object to any invoice within seven (7) days of receipt of the same or after ten (10) days of the date of the invoice, whichever occurs sooner, the invoice will be conclusively deemed to reflect a valid amount due and owing from Client.

All payments related to the Agreement are payable in United States dollars, non-refundable, and not subject to setoff. Client is responsible for all taxes, duties, and customs fees, excluding taxes based on SUCCESS's income. All past-due amounts shall bear interest at one and one-half percent (1.5%) per month, which interest shall start accruing thirty (30) days after the date of the invoice. SUCCESS shall also be entitled to its reasonable attorneys' fees and all costs of collection of all past due amounts under the Agreement regardless of whether the expenses result in actual litigation or are incurred for collection of a judgment against Client.

If Client disputes any portion of an invoice in good faith, Client shall promptly pay SUCCESS all undisputed amounts of the invoice. With respect to any disputed amounts, if the Parties are unable to resolve the dispute before the deadline for the invoice to be paid, Client shall immediately pay an amount equal to the disputed amounts into an interest-bearing escrow account with an independent and reputable third-party financial institution until the dispute may be resolved. Late payment interest shall continue to accrue on the balance of amounts that are rightfully due from Client regardless of if the principal sum was escrowed. Client shall be

responsible for paying SUCCESS such interest.

SUCCESS may immediately discontinue Services and suspend software licenses ("Software") if Client has any overdue payments or has otherwise breached any term of the Agreement. Software is defined to be any computer, web-based, or operating program, including Software as a service that provides functionality on electronic devices, computer equipment, or similar apparatuses.

SUCCESS accepts payment in a variety of mediums, and reserves the right to charge Client for all transaction costs associated with receiving payment from Client (e.g. wire transfer, credit or debit card charges). Returned checks are subject to a \$75 administrative charge in addition to any applicable late payment interest.

3. Pre-payment Discount. Client may purchase and pre-pay for blocks of time for Services if allowed by the applicable SOW. Discounts for such purchases are provided on SUCCESS's standard rate sheet. In consideration of the discount provided, all pre-paid amounts are non-refundable even if the time purchased is not full exhausted at the time the Agreement terminates. Payment for all pre-paid blocks of time is due before any Services are commenced by SUCCESS.

4. Software License. Unless otherwise provided in an applicable SOW, Client is provided with a non-exclusive, non-transferrable, limited and revocable license to Software provided by SUCCESS. SUCCESS will not revoke any such license from Client unless SUCCESS believes in good faith that Client is in breach under the Agreement, including but not limited to failure to fully pay for said license or Services.

5. Non-Solicitation. Client agrees that they shall not directly or indirectly: (i) solicit, (ii) employ, or (iii) otherwise retain SUCCESS's employees, contractors, or any personnel assigned hereunder during the term of the Agreement and for a period of one (1) year after termination of the Agreement. If Client breaches this Section 5, then at SUCCESS's election, in addition to all other remedies SUCCESS may have, Client shall pay SUCCESS as liquidated damages one hundred thousand dollars (\$100,000) for each affected individual.

6. Confidentiality and Non-Disclosure. In the course of the Agreement, it is anticipated that both parties may learn of information that the other party regards as confidential or proprietary. Both parties will take industry-reasonable steps to protect the integrity of such information and keep confidential this information and any other information which that party may acquire with respect to the other party's business, including, but not limited to, information developed by a party and information relating to its business affairs, marketing and operational plans and programs, market studies, corporate strategies, new products, customers, pricing, sales and financial information, know-how and practices, unless and until the disclosing party, in its sole discretion, consents in writing to disclosure, or unless the receiving party can establish that such information was in its possession prior to disclosure by the other party or such knowledge and information is or otherwise becomes generally available to the public through no fault of the receiving party or is acquired by the receiving party from third-parties not under obligation of confidentiality, nondisclosure or secrecy to the disclosing party. This undertaking to keep information confidential will survive the termination or expiration of the Agreement. Notwithstanding anything herein, SUCCESS will, if requested by Client, require each of its employees or agents performing services to execute a reasonable Confidentiality Agreement. Either party may seek injunctive relief for any breach of this Section.

Client shall maintain the confidentiality of all confidential and proprietary information of SUCCESS and shall not take any steps, or allow any third-party, to reverse engineer, decompile, modify, translate, or create derivative works of any Deliverable or Software without the express advance written approval from SUCCESS.

7. Acceptance of Deliverables. Deliverables shall be deemed accepted by Client after receipt of the same, which shall occur upon shipment, delivery, or download of media (e.g., DVD, installation file, etc.); installation or use of any Deliverable; or upon completion of any Deliverable (e.g., training); whichever comes first. Unless

explicitly provided in a SOW, SUCCESS shall own all Deliverables created under the Agreement. Any of Client's rights in Software shall be exclusively limited to the rights set forth in the applicable End User License Agreement ("EULA").

8. Licenses and Equipment. Given the type of Services involved, SUCCESS may not own the rights of all materials and equipment that may be reasonably necessary for SUCCESS to perform Services, including but not limited to Software licenses and electronic equipment. The cost to obtain all reasonably necessary licenses, materials, and equipment for SUCCESS to perform its Services shall be Client's responsibility. SUCCESS shall be allowed to use Client's name and logo(s) for the purposes of providing references to other clients and/or advertising SUCCESS's services during the Term of the Agreement and for a period of one (1) year thereafter.

9. Client Representations and Warranties. Client represents and warrants as follows: (i) that it will only use the Deliverables and Services for lawful purposes; (ii) Client shall cooperate with SUCCESS, act in good faith at all times, and provide reasonable access to Client's facilities, including but not limited to its computer network, upon request from SUCCESS; (iii) Client shall at all times maintain the appropriate number of licenses and be responsible for paying such licensing fees to third-parties, including but not limited for the use of Software; (iv) Client possesses the legal rights to all of its software, hardware, computer network, and similar materials to which Client provides SUCCESS access or in which any Deliverable will be used/implemented; (v) the person who signs for Client has the requisite authority to legally bind Client; (vi) Client understands and shall be solely responsible for all data storage, security, and backups unless explicitly stated otherwise in an applicable SOW; and (vii) Client is in compliance with, and continues to comply with, all applicable laws.

10. Beta Testing. In some instances, Client may be allowed to beta test certain Software. Such Software is expected to contain bugs and/or other limitations in its performance. Client understands the risks of using beta testing and such Software that has not been approved for distribution to a wider market. In using beta Software, Client agrees to cooperate with SUCCESS and provide feedback about the Software to SUCCESS, including but not limited to aiding SUCCESS in identifying and correcting bugs, enhancing functionality, and improving operability of the Software. Client shall keep its use of any beta Software confidential as well as all information related to Client's use and critique of such Software. Client shall not sell nor distribute any information about the Software to third parties.

11. Independent Contractor Status. SUCCESS performs its obligations pursuant to the Agreement as an independent contractor, not as an employee of Client. Nothing in the Agreement is intended to create or be construed as the existence of a partnership, joint venture, or agency relationship between the Parties.

12. Notice. All notices shall be in writing and sent by regular mail, registered mail, overnight mail, courier, transmitted by facsimile or delivered personally to the addresses indicated on the Agreement, or such other address. Notices to SUCCESS shall be addressed to SUCCESS, Attn: IMPORTANT LEGAL NOTICE (Tammie Coleman). Notices made pursuant to this Section shall be effective on the date shown on the receipt evidencing delivery or the facsimile confirmation, or if sent by first class United States mail, three (3) business days after the postmarked date.

13. Insurance. The Parties shall each maintain adequate general liability insurance, and workers' compensation and employer's liability as required by applicable law.

14. Indemnification. A. To the fullest extent permitted by law, each party waives any right of contribution and shall indemnify and hold harmless the other party and its directors, officers, employees and agents from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and court costs, ("Claim(s)"), arising out of or resulting from or in connection with: (i) the performance or non-performance by reason of the action, inaction, omission, negligence, or other neglect of the other party, its officers, employees, agents, or subcontractors; or (ii) the party's breach of the Agreement.

B. Each party shall defend the other party and its directors, officers, employees and agents from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and court costs, arising out of or resulting from or in connection with Claims. The indemnification obligations contained herein are conditioned upon the indemnified party providing to the indemnifying party: (i) prompt written notice of all such Claims; (ii) the right, but not the obligation, to control the defense and disposition of all such Claims; and (iii) reasonable assistance, at the indemnifying party's expense, in connection with the defense and disposition of all such Claims.

C. In no event shall SUCCESS be assessed special, incidental, exemplary, punitive, or consequential damages. SUCCESS's total aggregate liability under the Agreement, including but not limited to this Section, shall not exceed the total amount actually paid by Client under the Agreement for Services within the past twelve (12) months of when the Claim arose. No action arising out of the Services provided under the Agreement may be brought by either party more than one (1) year after the claim arose, except that an action of nonpayment of amounts due by Client may be brought by SUCCESS within the established statute of limitations.

15. Intellectual Property Rights. Unless stated otherwise in an applicable SOW, all intellectual property rights associated with any Deliverables, Software, or Service provided under the Agreement shall be deemed confidential and be the property of SUCCESS and/or its third-party suppliers. Client is provided with a license to use such Deliverables, Software, and Service only consistent with the terms of the Agreement and any applicable EULA.

16. Subpoenas. If SUCCESS receives a subpoena or becomes a witness to any legal proceeding by a third party, including but not limited to any governmental investigations, SUCCESS shall be compensated by Client at SUCCESS's standard hourly rate listed in its rate sheet for all time that SUCCESS spends in preparing for, and responding to, the subpoena and providing testimony. Clients shall also be responsible for paying all reasonably-necessary duplication, copying, data transfer, or other similar charges that SUCCESS may incur.

17. Limitation of Warranty. SUCCESS MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES, WITH RESPECT TO THE SERVICES OR SOFTWARE PROVIDED UNDER THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT AGREES THAT IT WILL NOT HOLD SUCCESS LIABLE OR ASSERT A CLAIM AGAINST SUCCESS FOR LOST PROFITS OR CONSEQUENTIAL DAMAGES, EVEN IF SUCCESS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCCESS DOES NOT WARRANTY ANY MATERIALS PROVIDED TO CLIENT. HOWEVER, IF ANY MATERIALS ARE PURCHASED BY SUCCESS FOR CLIENT (E.G., COMPUTER HARDWARE), AND WHERE SUCH MATERIALS BECOME THE PROPERTY OF CLIENT AS PROVIDED IN AN APPLICABLE SOW, ANY MANUFACTURER (THIRD-PARTY UNRELATED TO SUCCESS) WARRANTY ON SUCH MATERIALS SHALL TRANSFERRED TO CLIENT (AS APPLICABLE AND ALLOWED BY THE MANUFACTURER). SUCH MANUFACTURER'S WARRANTY SHALL BE THE SOLE AND EXCLUSIVE WARRANTY TO ANY SUCH MATERIALS.

18. Severability. SUCCESS and Client expressly agree that by entering into the Agreement neither of them intends to violate any public policy, statute, or rule of law, and that if any sentence, paragraph, clause, or portion of the Agreement is held to be in violation of any applicable law or public policy, such sentence, paragraph, clause, or portion shall be of no effect, and the remainder of the Agreement shall be binding. In the event that any part of the Agreement is determined by a court of competent jurisdiction to be unenforceable, invalid, or void in any respect, SUCCESS and Client jointly intend and hereby request that said court substitute a judicially enforceable provision in its place, that as closely follows the intent of the Parties in the Agreement. SUCCESS and Client agree that the Agreement as so modified shall be binding.

19. General. Client acknowledges that it has read the Agreement and these Terms, understands them, and agrees to be bound by them, and further agrees that the Agreement, including the SOW(s) and Terms, is the

complete and exclusive statement of the agreement between the parties, which supersedes all proposals, estimates, and responses to request for proposals, oral or written, and all other communications between the parties relating to the subject matter of the Agreement, provided, nevertheless, that Client and SUCCESS may alter, amend, or modify the Agreement by mutual agreement in writing and signed by the authorized employee(s) or agent(s) of Client and SUCCESS. The individual signing the Agreement on behalf of Client personally guarantees performance of all of Client's obligations in the Agreement, including but not limited to payment of Services. The use or attempt of Client to add additional terms or stipulations on any purchase order or any communication shall be deemed ineffective and of no effect unless the document specifically amends the Agreement with signatures from both Parties, or is a validly signed SOW. The Agreement was mutually negotiated and drafted by the parties with consideration and understanding that these Terms are an integral part of the Agreement. Any ambiguity in the Agreement shall be interpreted in an unbiased way, without being construed in favor or against any Party by reason of that Party's drafting of a particular section or term.

The rights and duties of the parties under the Agreement may not be assigned without the consent of the other, which shall not be unreasonably withheld, conditioned, or delayed. SUCCESS shall be allowed to subcontract. The rights in the Agreement, including those in Section 2, are not intended to be an exclusive remedy, and instead, shall be in addition to all other rights the Parties may have. A failure or delay by any Party in enforcing any provisions or exercising any right under the Agreement shall not be construed as a waiver of the same. Any waiver must be signed in writing by the Party waiving the right and specifically identify the applicable section(s) of the Terms and provisions being waived. The SOW shall govern any conflict with the Agreement and these Terms. The Terms shall govern any conflict with any other documents.

20. Dispute Resolution. The Parties will attempt in good faith to resolve any dispute related to the Agreement. If after ten (10) days of written notice, the dispute remains unresolved, either party may seek to compel a formal mediation conducted by any agreed-upon mediator within fifteen (15) miles of SUCCESS' offices. An in-person mediation shall take place within thirty (30) days or as soon as reasonably possible given the selected mediator's schedule. The cost of the mediator shall be divided evenly between the Parties, unless the mediator determines one party acted in bad faith, in which case the mediator may assign which party is responsible for all of the mediator costs. If the Parties are still unable to resolve the dispute after the in-person mediation, they may pursue litigation in a court of competent jurisdiction. This Section 20 shall not apply to disputes over the non-payment of fees or costs by Client.

21. Governing Law and Venue. The Agreement will be governed and construed in accordance with the laws of the State of Minnesota without regard to conflicts of laws, or principles thereof. All disputes between the Parties shall be exclusively venued in the state or federal courts located in the State of Minnesota in the county where the Services substantially occurred. In all other situations, including circumstances where the Services were provided remotely (i.e., not at Client's site), the venue of any dispute shall be Hennepin County, Minnesota. The Parties waive their right to a jury on all disputes about the Agreement, including but not limited to any award of attorneys' fees.

22. Termination. Client may terminate the Agreement by giving SUCCESS written notice of termination, provided that: (i) all fees due under the Agreement and any SOW for Services performed through the date of termination are paid by Client to SUCCESS immediately upon the effective date of such termination; (ii) Client shall not receive any refund or credit in relation to Services already performed or for pre-paid block hours, which shall be deemed forfeited; and (iii) Client is responsible for paying all remaining sums due under all SOWs with an unexpired term. In the event of a termination, Client shall immediately discontinue use of the Software and Services unless otherwise authorized by SUCCESS. SUCCESS may terminate the Agreement with ten (10) days' notice for good cause, which may include but not be limited to a material breach of the Agreement by Client, or without cause with sixty (60) days' notice. SUCCESS may offer transition Services to Client. Any such Services must be paid in advance by Client prior to Success performing the Services.

23. Default. SUCCESS shall not be in default of the Agreement, unless Client provides SUCCESS with written notice and at least twenty (20) business days to cure the issue. SUCCESS may enforce the Agreement against Client, and SUCCESS shall be entitled to all of its attorneys' fees, court costs, and other expenses that were reasonable necessary, within SUCCESS's discretion, to enforce the Agreement, regardless of whether formal litigation was commenced.

24. Force Majeure. SUCCESS shall not be liable to Client for any failures or delays in its performance under the Agreement arising out of conditions beyond its reasonable control, including, but not limited to, acts of war, terrorism, work stoppages, fire, civil disobedience, acts of God, earthquakes, flood, embargo, riot, sabotage, governmental act, or failure of the Internet.

25. No Export. Client shall not export any Deliverable or Software outside of the United States.

26. Authorized Representative. The only authorized representative to modify or amend the Agreement on behalf of SUCCESS is its President.

27. Modifications. These Terms may be modified from time to time by SUCCESS. Any updates to the Terms will be effective on Client upon sixty (60) day advanced written notice. Client may object to the modification by providing SUCCESS written notification of the objection within fifteen (15) days after receipt of SUCCESS's notice of the proposed modification. If such a timely objection is received by SUCCESS from Client, then prior Standard Terms shall continue to apply.

28. Entire Agreement. The Agreement, which includes these Terms, any addendum, and any SOWs, constitutes the sole and complete agreement between the Parties and supersedes all other agreements between the Parties.