

## SAP PROFESSIONAL SERVICES TERMS AND CONDITIONS (Rev. 010115)

These Professional Services Terms and Conditions form the general agreement ("Agreement") between Peak-Ryzex and Customer. Peak-Ryzex will provide to Customer such Professional Services as purchased by Customer in accordance with a quote (an "Order") and as further defined herein. Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. SCOPE OF SERVICES.** Peak-Ryzex offers a variety of professional services, such as functional and business process consulting, system design, software development, project management and integration services. Peak-Ryzex will provide to Customer the services described in a statement of work, order, proposal or quote ("Order") executed by the parties ("Professional Services"). The Order will set forth the amount, type and fees for any hardware, software and services purchased from Peak-Ryzex by Customer. The Order shall incorporate any blueprint or investment proposal and shall constitute the complete and exclusive definition and description of the Professional Services. The Order will include the following elements: (a) task description; (b) deliverables and schedule; (c) completion and acceptance criteria for the deliverables; (d) pricing, (e) customer defined requirements; and (f) any special or other terms. Professional Services shall be performed in accordance with Peak-Ryzex's hourly or daily rates and policies specified in an Investment Proposal. Any Professional Services requested by Customer and not included in the Order may be provided by mutual agreement and at Peak-Ryzex's then-current rates.

**2. CHANGES.** Either party may propose a change to an Order by delivering such request to the other party in writing. Each party will evaluate a proposed change to the Order in good faith and will respond in writing within a reasonable time. Peak-Ryzex will determine the impact of any requested or recommended change to the price or schedule for the Professional Services and advise Customer in writing of such impact. Any change to the Order will only become effective upon the execution by both parties of an amendment to the Order. Unless otherwise agreed upon by the parties, until such time as such amendment is effective, Peak-Ryzex will continue to perform, and Customer shall continue to pay for, the Professional Services in accordance with the Order.

**3. CUSTOMER RESPONSIBILITIES.** Customer represents that (a) the information (including Confidential Information) supplied by Customer and used by Peak-Ryzex in preparation of a Order is accurate, current and complete; and (b) it has, and will continue to have during the period of performance of the Professional Services, such legal right and authority to provide Peak-Ryzex with access and use of all software and systems as Customer may be required to provide to Peak-Ryzex in a Order. Customer acknowledges that Peak-Ryzex is not liable for any hardware, software, or any other items or services provided to Customer by any persons other than Peak-Ryzex, except as set forth in the Agreement and any statement of work thereto. Customer shall promptly notify Peak-Ryzex of any anticipated delays or deficiencies in Customer's responsibilities and shall provide prompt assistance in resolving any such delays or deficiencies to Peak-Ryzex's reasonable satisfaction. In the event Peak-Ryzex determines the information, equipment, software, assistance or payments to be provided by Customer are delayed, inaccurate or incomplete, Peak-Ryzex reserves the right to stop work until Customer remedies such delay, inaccuracy or incompleteness to Peak-Ryzex's reasonable satisfaction.

**4. REVIEW OF DELIVERABLES.** Customer shall notify Peak-Ryzex within the later of the timeframe set forth in the Order or ten (10) business days of delivery of a deliverable whether it conforms to the requirements set forth in the Order. Customer shall specify in sufficient detail the nature and scope of any non-conforming deliverable. Upon receipt of such notice, Peak-Ryzex shall act diligently to correct such deficiencies. Customer shall not unreasonably withhold approval of deliverables and corrected deficiencies. In the event that Customer does not notify Peak-Ryzex to the contrary within the later of the timeframe set forth in the Order or ten (10) business days from delivery, the deliverables shall be deemed accepted and approved by Customer.

**5. PAYMENT.** Except as expressly provided herein, all Orders are non-cancellable and non-refundable. Customer shall pay Peak-Ryzex for an Order upon receipt of Peak-Ryzex's invoice. Customer shall pay all applicable taxes excluding taxes based on Peak-Ryzex's income, or provide satisfactory proof of exemption. If Customer fails to make payments when due and such failure continues after Peak-Ryzex notifies Customer of such failure, Peak-Ryzex may refuse to perform any further Services. If Customer fails to make payments when due, Peak-Ryzex may charge Customer interest on the overdue amounts, from the date such amount became due at the lesser of the rate of one and one-half percent (1.5%) per month or the maximum interest rate permitted by applicable law. Peak-Ryzex reserves the right to revoke any credit extended to Customer at any time for good and sufficient cause.

**6. TERM AND TERMINATION.** The initial term of the Agreement shall be for a period of one (1) year from the Effective Date and shall renew automatically unless one party provides the other party with a thirty (30) days written notice of its intent to terminate. Termination of this Agreement shall not affect any Order still in effect as of the date of termination or any Orders placed prior to the date of termination. Either party may terminate this Agreement in the event that a party commits a material breach of this Agreement and such breach is not cured within thirty (30) days of notice to the breaching party. Customer shall pay Peak-Ryzex for all fees and expenses incurred up until the date of termination. Any obligations and duties which by their nature extend beyond the expiration or termination of the relationship between Peak-Ryzex and Customer shall survive this Agreement, including but not limited to Sections 3, 5, 8, and 9.

**7. HIRING OF EMPLOYEES.** Neither party shall solicit or recruit for employment (other than by general advertising), any person who was an employee of the other party during the provision of the Services and for a period of one (1) year thereafter, without the other party's written consent. Any violation of this section shall be deemed a material breach hereof and the non-breaching party may immediately terminate this Agreement.

**8. INDEPENDENT CONTRACTOR.** Peak-Ryzex will manage its personnel and be free to exercise independent judgment as to the manner and method of performance of the Services. Peak-Ryzex is an independent contractor and nothing herein will be deemed to make one party the agent of the other.

**9. INDEMNITY.** Notwithstanding any other provision of this Agreement, each party agrees to indemnify, defend and hold harmless the other party for any liabilities, costs, losses, damages and expenses (including reasonable attorneys fees actually incurred) arising from any claim or action against or incurred by the other party for any claim for personal injury or real or tangible property damage, to the extent such damages are caused by the action or inaction of indemnifying party's personnel while Peak-Ryzex is performing Services at Customer's facility;

provided, however, such obligations and liability are contingent upon: (a) the indemnified party providing the indemnifying party with prompt, written notice of a claim or threat of claim hereunder; (b) the indemnifying party having full control of the settlement and/or defense of the claim; (c) the indemnified party providing the indemnifying party the assistance necessary to settle and defend the claim, and (d) the indemnifying party not entering into any settlement or compromise which admits the fault of, or necessitates payment by, the indemnified party without the consent of the indemnified party.

**10. LIMITATION OF LIABILITY.** Peak-Ryzex's liability for any and all claims, including claims of contract, negligence and strict liability, shall not exceed the amounts paid and payable by Customer to Peak-Ryzex for the Services or Hardware (to the extent that Customer purchased the Hardware from Peak-Ryzex pursuant to this Agreement) giving rise to the claim. Peak-Ryzex shall have no responsibility for defects in hardware, software or services supplied by persons other than Peak-Ryzex or for modifications to any hardware or software manufactured by persons other than Peak-Ryzex. IN NO EVENT SHALL PEAK-RYZEX BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, AND LOSS OF PROFITS. THESE LIMITATION OF DAMAGES AND REMEDIES CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AND MEASURE OF DAMAGES. THESE LIMITATIONS OF DAMAGES AND REMEDIES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

**11. CONFIDENTIAL INFORMATION.** Each party acknowledges that during the course of this Agreement it will acquire information and materials about the other party, including, but not limited to, its business plans, systems, software, technology, methods, know-how and lists of its customers and suppliers and that all such knowledge, information and material so acquired are the trade secrets and confidential and proprietary information of the other party (hereafter "Confidential Information"). All Confidential Information shall be conspicuously marked or identified as such at or prior to the time of disclosure, or shall otherwise be obvious to the reasonable person, given the nature and context of the disclosure, that the information disclosed is confidential and/or proprietary. The party receiving Confidential Information ("Recipient") agrees to maintain and protect the Confidential Information as confidential and proprietary using the same degree of care Recipient uses to protect its own confidential and proprietary information; however in no event less than a reasonable degree of care. Recipient shall not disclose the Confidential Information to any third party, except that Recipient may disclose the Confidential Information to those of its employees, agents and consultants who, on a strict need to know basis: (i) require knowledge or access to the Confidential Information; (ii) are made aware that the Confidential Information constitutes confidential information and/or trade secrets of the disclosing party; (iii) have signed an agreement with Recipient requiring that they protect confidential information with restrictions similar to those contained herein; and (iv) agree to treat and protect the Confidential Information accordingly. Recipient agrees that, as between the parties, any and all Confidential Information is and shall remain the proprietary/confidential information and property of the disclosing party. Recipient agrees that upon request of the disclosing party, Recipient shall, within three (3) days, return to the disclosing party all originals, copies, notes and abstracts of any such Confidential Information that Recipient previously obtained from the disclosing party. Recipient shall certify their compliance with the foregoing, in writing, signed by an officer of Recipient.

Notwithstanding anything contained herein to the contrary, Recipient's obligations as to the Confidential Information shall not apply to any portion of the Confidential Information: (i) which was rightfully known or becomes rightfully known to Recipient without confidential restrictions from a source other than the disclosing party; (ii) which was or becomes publicly available or a matter of public knowledge generally, through no fault of receiving party; (iii) which is approved by the disclosing party, in writing, for disclosure without restrictions; (iv) which is independently developed by Recipient; (v) which is generalized know-how or skills; or (vi) which Recipient is legally compelled to disclose; provided that Recipient has given the disclosing party reasonable notice and opportunity to contest such compulsive disclosure, and Recipient requests that the Confidential Information disclosed be treated as confidential (collectively, the "Exclusions"). In no event shall the foregoing or following be deemed to grant to either party a license (by implication or otherwise) to the other party's copyrights or patents. Nothing in this Agreement, the disclosure of Confidential Information, or any discussions between the Parties shall be deemed to create any partnership, joint venture, or other commercial relationship; or have the effect of impairing the rights of either party to use, make, procure, sell, distribute and/or market any products or services, now or in the future, which may be competitive with those offered or contemplated by the other party. The parties each acknowledge and agree that the breach or threatened breach of any provision of this section by it may result in irreparable and continuing damage to the other party, for which there will be no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to seek an injunction or specific performance to prevent breaches or threatened breaches of any of the provisions of this Agreement by an action instituted in a court having jurisdiction. These specific remedies are in addition to any other rights to which the parties may be entitled at law or in equity. Regardless of the cause of termination of this Agreement, the obligations of the Parties hereunder shall survive for three (3) years from disclosure; provided however, a party's obligations as they pertain to Confidential Information disclosed in source code form, shall remain in effect until the source code falls within one of the limitations on the obligations of confidentiality as set forth in the Exclusions above.

**12. PROPRIETARY RIGHTS.** Unless otherwise specified in the applicable Order, Professional Services provided by Peak-Ryzex under the relevant Order are not performed on a "work for hire" basis and therefore the intellectual property rights related to any Professional Services, including but not limited to all the ideas, concepts, plans, techniques, designs, models, inventions, processes, methodologies, discoveries, formulae, software (other than third party software) of every kind (including all software deliverables, routines, algorithms, applications, programs, operating environments, databases, interfaces or patches), technology, improvements, materials, works of authorship, documentation, programming aids or trade secrets developed, created, designed, invented, authored, or conceived by Peak-Ryzex or any of Peak-Ryzex's personnel or contractors in respect of any Professional Services or any testing, repairs, fixes, replacements, improvements, enhancements or updates to the Professional Services, shall be that of Peak-Ryzex's; provided, however, that Customer is hereby granted a non-exclusive, non-transferable license to use the Professional Services solely for its internal business purposes, subject to the restrictions set out in this Agreement. Notwithstanding anything to the contrary herein, it is understood and agreed by the Parties that any of the aforementioned intellectual property rights that may be developed, created, designed, invented, authored, or conceived by Customer and used by Peak-Ryzex in the construction of, or incorporated into, any Professional Services shall be the property of Customer, and Peak-Ryzex shall not have any right to any such intellectual property rights and Peak-Ryzex understands and agrees that it shall not utilize any such ideas, concepts, methods, know-how, or techniques developed, created, designed, invented, authored, or conceived by the Customer when providing services to any other Peak-Ryzex customers. The foregoing restriction, however, shall not restrict Peak-Ryzex from providing services to or developing solutions for another Peak-Ryzex customer with the same or similar functionality as the solutions that are provided to Customer as part of the Professional Services provided to Customer, so long as the preceding restriction is not violated. For the avoidance of doubt, it is understood and agreed that Customer is not obligated to provide Peak-Ryzex with any code, specifications, or

information regarding any solutions created solely by Customer or on Customer's sole behalf, and Peak-Ryzex agrees not to appropriate any such code, specifications, or information without Customer's knowledge and consent.

**13. WARRANTY.** Peak-Ryzex warrants that it will render any Professional Services in a good and workmanlike manner for a period of thirty (30) days from delivery of a deliverable or as otherwise set forth in an Order. In the event of any material failure to meet such standard, Customer's exclusive remedy and Peak-Ryzex's sole responsibility shall be for Peak-Ryzex to re-perform the Professional Services or, if in Peak-Ryzex's discretion it is not commercially reasonable to re-perform the Services, provide Customer with a refund of the Professional Service fees paid by Customer. Timely completion of Professional Services and delivery of any deliverable resulting from the Professional Services by Peak-Ryzex is subject to the timely satisfaction by Customer of any Customer obligation or requirement. TO THE FULLEST EXTENT ALLOWED BY LAW, THE WARRANTIES PROVIDED IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PEAK-RYZEX DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

**14. FORCE MAJEURE.** Notwithstanding anything in this Agreement to the contrary, Peak-Ryzex shall not be liable for any delay or failure to provide the Hardware and/or Services hereunder, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, delay by subcontractor or the failure of any third party subcontractor, or third party hardware, software, network system equipment, wiring, electrical systems or utilities, or other causes beyond Peak-Ryzex's reasonable control. If any third party subcontractor providing service or hardware with respect to this Agreement, ceases to provide such services or hardware, and Peak-Ryzex cannot find a suitable replacement vendor, then Peak-Ryzex shall have the right to terminate the Agreement by providing thirty (30) days prior written notice to Customer.

**15. MISCELLANEOUS.** (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign or otherwise transfer this Agreement without the prior express written consent of the other party, such consent not to be unreasonably withheld; provided however, either party may assign this Agreement without the other party's consent incidental to a merger, reorganization, change of control, or sale of all or substantially all of its assets or the assets of a division. (b) This Agreement supersedes and merges all prior proposals, understandings and agreements, oral and written, between the parties relating to the subject matter of this Agreement and may not be modified or altered except by written instrument duly executed by both parties. By signing this Agreement, Customer agrees that this Agreement exclusively governs and controls the rights of the parties so that any purchase order or other writing Customer may submit to Peak-Ryzex shall only be for Customer's convenience. Any additional or differing terms, whether or not materially different, set forth in any communication from Customer are hereby expressly rejected. (c) No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. (d) Section headings are for convenience only and do not form a part of this Agreement. (e) The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the enforceability of any other provision, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. (f) This Agreement shall be governed by the internal laws of the State of Maryland, without regard to its conflict of law provisions. The United Nations Convention for the International Sale of Goods shall not apply. (g) All notices hereunder shall be in writing, sent by certified mail, or overnight delivery service addressed to the parties at their respective addresses set forth in the introductory paragraph. (h) Customer hereby grants to Peak-Ryzex, its affiliates, successors, and assigns, all rights to reference Customer and/or its logos, including quotes, photos taken or illustrations from Customer, for advertising and marketing purposes, including but not limited to case studies, print advertisements, reference in Peak-Ryzex marketing materials, press releases, Internet postings and other publications electronic or printed which are produced in the ordinary course of business. (i) In the event of a conflict between the terms of this Agreement and an Order, the terms of the Order shall control. Capitalized terms used in an Order shall have the same meaning as set forth herein.