

**PROJECTMANAGER.COM, INC.  
PROFESSIONAL SERVICES TERMS**

<https://www.projectmanager.com/legal>

If ProjectManager is required under any Sales Order or Statement of Work to provide Professional Services to Customer then these ProjectManager Professional Services Terms (these “**PS Terms**”) apply to such Professional Services. These PS Terms are incorporated into and subject to the Terms of Service (the “**Agreement**”) under which Customer acquired its rights to use the ProjectManager Platform. These PS Terms are an “Additional Terms of Service” for purposes of the Agreement.

**1. Definitions**

Except as otherwise expressly defined in these PS Terms, capitalized terms have the meaning ascribed to them in the Agreement. For the purposes of these PS Terms, the following capitalized words and phrases are ascribed the following meanings:

“**Deliverables**” means any application program interfaces, application configurations, or software code, and any reports or other documentation, required to be delivered by ProjectManager to Customer as part of the Professional Services, as specified in the applicable Sales Order.

“**Invention**” means any work of authorship, invention, know-how, device, design, algorithm, method, process, improvement, expression or discovery, whether or not copyrightable or patentable and whether or not reduced to practice.

“**Professional Services**” means the professional services (typically consulting and configuration) to be performed by ProjectManager that are specified in the applicable Sales Order, or in a mutually agreed, written statement of work attached to the Sales Order as an exhibit, which will be incorporated into the Sales Order.

**2. Professional Services**

**2.1. Performance.** ProjectManager will perform the Professional Services in the manner and to the extent specified in the applicable Sales Order.

**2.2. Customer Resources.** Customer will provide ProjectManager with access to such Customer materials, information, facilities and employees as ProjectManager reasonably requires to perform the Professional Services, including those specified in the applicable Sales Order. Customer acknowledges that ProjectManager’s ability to perform the Professional Services as contemplated in any Sales Order will depend upon the proper fulfillment by Customer of Customer’s obligations under the Sales Order.

**3. Change Control Process**

**3.1.** All changes, modifications, and additions to the obligations of either party to any Professional Services under any Sales Order require a written change order (a “**Change Order**”). Either party may initiate a Change Order by submitting a written request for a Change Order to the other party along with an explanation of reasons as to why the requested modification is desirable or necessary. Proposed Change Orders shall be submitted by and to the applicable ProjectManager Project Manager or Customer Project Manager, or to the representatives, if any, designated by Customer and/or ProjectManager in the applicable Sales Order. All Change Orders must contain: (i) a description of any additional work to be performed and/or changes to the performance required of either party; (ii) a statement of the impact of the work or changes on the Deliverables, schedule, resource allocation and availability, costs, expenses, and other requirements of the applicable Sales Order; (iii) a description of any consequent changes to the Sales Order including the schedule applicable to the Professional Services; and (iv) to be effective, signatures of duly authorized individuals of each party. Within five business days of the submission of a Change Order request from one party to the other, the receiving party will notify the other party of its acceptance or rejection.

**4. ProjectManager Personnel**

**4.1. Employment Relationship.** ProjectManager's employees assigned to perform Professional Services are and will remain employees of ProjectManager whether Professional Services are performed at ProjectManager's facilities or Customer's facilities and will not be considered Customer's employees. ProjectManager will be solely responsible for the payment of salaries and wages, including the withholding or payment of payroll taxes, workers' compensation, unemployment compensation, insurance-related benefits, vacation pay, holiday pay and all such additional legal requirements applicable to ProjectManager's employees.

**4.2. Personnel Replacement Required By Customer.** Upon written notice to ProjectManager, Customer may require ProjectManager to replace any individual who is assigned by ProjectManager to perform Professional Services, if Customer reasonably determines that the individual is unacceptable for any lawful reason; provided, however, that Customer's requiring replacement of an individual will be subject to the parties' agreeing to a Change Order with respect to the replacement, unless the replacement is "For Cause." A replacement will be "For Cause" if the person in question: (i) has failed to comply in a material respect with any applicable laws, ordinances, regulations, codes, or with Customer's security or workplace policies or procedures previously provided by Customer to ProjectManager, or (ii) has failed in a material respect to perform their assignments in a professional and competent manner.

**4.3. Non-Solicitation of Personnel.** During the provision of Professional Services under this Agreement, and for a period of twelve (12) months thereafter, neither party (the "**Relevant Party**") will, without the prior written consent of the other, directly or indirectly solicit, hire or employ any employee or individual independent contractor of the other party who has been involved in the provision of Professional Services during the preceding year to become an employee or individual independent contractor of the Relevant Party. Nothing in this section will make a party liable for general solicitations in the media or on the World Wide Web.

## **5. Acceptance Testing**

**5.1. Test Plan and Acceptance Criteria.** Deliverables will be subject to acceptance testing only if and to the extent specified in the applicable Sales Order. Any acceptance testing will be conducted under and in accordance with a written test plan to which both of Customer and ProjectManager will have mutually agreed (a "**Test Plan**"), solely to determine the conformance of the Deliverables to written acceptance criteria to which both of Customer and ProjectManager will have mutually agreed ("**Acceptance Criteria**").

**5.2. Completion and Acceptance.** Deliverables will be deemed completed and accepted upon the first to occur (the "**Acceptance Date**") of: (i) acceptance in writing by Customer; (ii) completion of the Test Plan and conformance of the Deliverables with the Acceptance Criteria, or (iii) any use of any Deliverables by Customer outside the parameters of the applicable Test Plan.

**5.3. Non-Conformances.** If, during acceptance testing, Customer discovers any non-conformances of the Deliverables with their applicable Acceptance Criteria, then Customer will so inform ProjectManager, describing the non-conformances in reasonable detail. ProjectManager will use all commercially reasonable efforts to correct the non-conformances within 30 days from receipt of such notice. If the applicable Deliverables conform to their Acceptance Criteria, then Customer will issue a written notice of acceptance to ProjectManager. If ProjectManager is unable to correct such non-conformances within the 30 day period, then Customer will be entitled, in its sole discretion, to do any one of the following: (i) extend the acceptance period under the Test Plan to a mutually agreeable date; provided, however, that any such extension will not affect Customer's right to terminate the Professional Services to be provided under the applicable Sales Order if such non-conformance has not been corrected at the end of such extension period; (ii) require correction of the non-conforming Professional Services by ProjectManager at ProjectManager's expense so that the non-conforming Professional Services will conform to the Acceptance Criteria in a time frame mutually agreeable to both parties; provided, however, that any decision to extend the Acceptance Period will not affect Customer's right to terminate the Professional Services to be provided under the Sales Order if such non-conformance has not been corrected at the end of such extension period; (iii) the parties may mutually agree in writing upon an appropriate adjustment to the fees for the affected Professional Services; or (iv) Customer may immediately terminate the Professional Services to be provided under the Sales Order and receive a refund of all fees paid to ProjectManager to date with respect to the non-conforming Deliverables.

## **6. Payment Terms for Professional Services**

**6.1. Fees.** ProjectManager will invoice Customer for Professional Services as specified in the applicable Sales Order or Statement of Work. If not so specified, then ProjectManager will invoice Customer at the end of each month in which ProjectManager provided the Professional Services, or at such longer interval as ProjectManager may reasonably elect.

**6.2. Expenses.** ProjectManager will invoice Customer for reimbursable expenses (if any) incurred in its provision of Professional Services as specified in the applicable Sales Order. If not so specified, then ProjectManager will invoice Customer at the end of each month in which ProjectManager incurs the expense, or at such longer interval as ProjectManager may reasonably elect. Such expenses will be limited to those described in the applicable Sales Order as being the responsibility of Customer, and to previously approved travel and living expenses that ProjectManager incurs in the performance of the Professional Services. Such expenses will be deemed approved if incurred in accordance with Customer's travel and living expenses policy attached to the Sales Order or, if not so attached, ProjectManager's travel and living policy. ProjectManager will submit the expenses to Customer in reasonable detail, together with copies of supporting documentation.

**6.3. Payment Terms.** ProjectManager will direct invoices for payment of fees and expenses for the Professional Services to the Customer representatives, if any, designated by Customer in the applicable Sales Order. Customer will pay ProjectManager's invoices in US dollars within such periods or at such times as may be specified in the Sales Order and, if not so specified, within 30 days of receipt. Except as otherwise specified in this Section 6, the provisions of the Agreement apply to payment of fees and expenses for Professional Services.

## **7. Ownership of Deliverables**

**7.1. Customer IP.** As between ProjectManager and Customer, Customer will retain all rights in and be the sole owner of (i) all Inventions owned, created or conceived and reduced to practice by Customer or its other suppliers (excluding derivative works of or improvements or enhancements to any ProjectManager Platform that are not created or conceived and reduced to practice in accordance with an applicable license granted by ProjectManager or its licensors), (ii) any Deliverables with respect to which the parties agree Customer is to be the owner, as explicitly agreed in a written document (such as the applicable Sales Order) executed by Customer and ProjectManager (such Deliverables, "**Assigned Deliverables**"); and (iii) all Intellectual Property Rights therein (items (i)-(iii), collectively, "**Customer IP**"). Customer grants no licenses to ProjectManager to use the Customer IP other than for the purposes of fulfilling its obligations under this Agreement.

**7.2. ProjectManager IP.** As between ProjectManager and Customer, ProjectManager will retain all rights in and be the sole owner of (i) all Inventions owned, created or conceived by ProjectManager, including Deliverables, with the exception of Inventions created or conceived by ProjectManager in the course of its provision of Professional Services to the extent that they contain Customer IP, and with the further exception of any Assigned Deliverables; and (ii) all Intellectual Property Rights therein; (items (i)-(ii), collectively, "**ProjectManager IP**"). ProjectManager grants no licenses to Customer to use the ProjectManager IP except as expressly specified in this Agreement.

**7.3. Assignment Mechanics.** To the extent that title to any Customer IP or ProjectManager IP may not vest in the proper entity by operation of law, the other party hereby transfers, assigns and conveys all and any right, title, and interest therein to the owner party, and waives any associated moral rights. An assigning party, will, at the owner party's reasonable expense, promptly take all such action and execute all such further agreements and instruments as are necessary to vest full title in the applicable IP. Customer will not obtain title to Assigned Deliverables until Customer has paid all applicable Professional Services fees for the Deliverable.

**7.4. Customer's License Rights to Non-Assigned Deliverables.** ProjectManager hereby grants to Customer, subject to payment of all Professional Services fees under the applicable Sales Order, a perpetual, non-exclusive, royalty-free, non-transferable license, without right to sub-license, to use those elements of the ProjectManager IP embodied in the Deliverables in Customer's ordinary course of business, solely as so embodied. ProjectManager reserves all other rights in and to the ProjectManager IP.

## **8. Limited Warranties**

**8.1. Services Warranty.** ProjectManager warrants to Customer that ProjectManager will perform the Professional Services in a professional and workmanlike manner, consistent with applicable industry standards. If ProjectManager's performance of Professional Services fails to conform to this warranty, then Customer's exclusive remedy and ProjectManager's sole obligation will be as follows: (i) following notice of non-conformance,

ProjectManager will have 30 days in which to correct the non-conformance at no additional charge; (ii) if ProjectManager has not corrected the non-conformance within such period, then ProjectManager will refund Customer the fees paid to ProjectManager for the non-conforming Professional Services.

**8.2. Deliverables Performance Warranty.** ProjectManager warrants to Customer that during the 60 day period commencing on their final delivery date or, if acceptance testing applies, their acceptance date, the Deliverables, in the provided by ProjectManager, will conform in all material respects to their applicable specifications specified in the applicable Sales Order. If any Deliverable fails to conform to this warranty and Customer provides written notice of the non-conformance to ProjectManager within the warranty period then, as Customer's exclusive remedy and ProjectManager's sole obligation: ProjectManager will either repair or, at its option, replace the non-conforming Deliverables with conforming Deliverables or, if ProjectManager is unable to correct the non-conformance within 30 days of receipt of such written notice from Customer, ProjectManager will refund the fees paid to ProjectManager for the non-conforming Deliverables, and terminate Customer's license and other rights to the same.

**8.3. Infringement.** ProjectManager warrants to Customer that ProjectManager's provision to Customer of the Professional Services and Deliverables, in the form provided by ProjectManager, does not infringe any third party patent existing under the laws of the United States, Canada, any member state of the European Economic Area, the United Kingdom, Australia, New Zealand, Singapore, Brazil, South Korea, India or Japan, or infringe any third party copyright, trademark or service mark, or result from misappropriation by ProjectManager of any third party's trade secrets (collectively, an "**ProjectManager Infringement**").

**8.4. Disclaimer Of Implied Warranties.** ProjectManager makes no representation or warranty in connection with the Deliverables or Professional Services, except as expressly so set forth in this Section 8. PROJECTMANAGER DISCLAIMS ALL IMPLIED WARRANTIES AS SPECIFIED IN THE AGREEMENT.

## **9. Indemnification**

### **9.1. ProjectManager's Infringement Indemnification.**

9.1.1. *Defense and Indemnity.* If any third party makes any claim against Customer that, if true, would constitute an ProjectManager Infringement then, upon notification of such claim, ProjectManager will, at its sole cost and expense, defend Customer against such claim and any related proceeding brought by such third party against Customer, and indemnify Customer from and against all damages finally awarded against Customer or agreed to be paid by Customer in a written settlement approved in writing by ProjectManager, and resulting from the ProjectManager Infringement. ProjectManager's obligations under this Section 9.1.1 are conditioned upon Customer's compliance with the Indemnification Conditions.

9.1.2. *ProjectManager's Mitigation Rights.* If any Professional Services or Deliverables supplied by ProjectManager become (or in ProjectManager's opinion are likely to become) the subject of any infringement or misappropriation claim, ProjectManager may, and if Customer's use of the Professional Services or Deliverables is enjoined, ProjectManager must, at its sole expense, either: (i) procure for Customer the right to continue using the relevant Professional Services or Deliverables; (ii) replace or modify the relevant Professional Services or Deliverables in a functionally equivalent manner so that they no longer infringe; or (iii) terminate Customer's rights to obtain or use affected Professional Services or Deliverables, and refund to Customer: (a) if Professional Services are terminated, a pro-rata amount of any Professional Services fees prepaid to ProjectManager and applicable to the terminated Professional Services; or (b) if rights to use Deliverables are terminated, an amount equal to the fees paid to ProjectManager for such Deliverables, depreciated on a straight-line basis over a three year life.

9.1.3. *Exclusions.* Notwithstanding the foregoing, ProjectManager will have no obligation this Section 9.1 or otherwise with respect to any infringement or misappropriation claim to the extent based upon (i) any use of the Professional Services or Deliverables not in accordance with their applicable license rights, (ii) the combination of the Professional Services or Deliverables with other products, equipment, software, services or data not supplied by ProjectManager where the infringement would not have occurred but for such combination, (iii) ProjectManager's compliance with Customer's specifications, configuration requirements, or other instructions (except to the extent that ProjectManager knew that such compliance would infringe a third party's Intellectual Property Rights), (iv) any use of any version of any Deliverables other than the most current version made available to Customer after notice from ProjectManager that Customer must upgrade to such release to avoid an infringement or misappropriation claim and Customer has had a reasonable time in which to implement such upgrade, (v) any modification of the

Professional Services or Deliverables not made by ProjectManager or at its express direction, (vi) any third party open source software, or (vii) any information or data not provided by ProjectManager.

## **10. Termination**

**10.1. Customer's Termination For Convenience.** Customer may terminate Professional Services for convenience by giving ProjectManager not less than 30 days' prior written notice of termination. If Customer wishes to terminate some, but not all Professional Services under a Sales Order, then Customer may initiate a Change Order request. If Customer terminates for convenience, then Customer will not be entitled to any refund of fees that Customer has prepaid for Professional Services, nor relief from fees payable for Services due prior to termination.

**10.2. Termination On Breach.** In the event of a material breach of these PS Terms by either party, the non-breaching party may terminate the Professional Services directly affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("Termination Notice"), the Professional Services will terminate within the time period specified in the Termination Notice. Customer's failure to pay any overdue fees and expenses within 15 days of ProjectManager's notifying Customer of the overdue payment, which notice may include informing Customer's project manager or accounts payable representative of the overdue payment in writing (including by email), will constitute a material breach of this Agreement.

**10.3. Fulfillment of Obligations on Termination.** Termination of any Professional Services will not relieve Customer from any obligation to pay fees or reimburse expenses for Professional Services performed prior to termination.

**10.4. Effect of Termination Upon Fixed Fee Professional Services.** If Customer wishes to terminate some, but not all of any Professional Services that are to be provided on a fixed fee basis ("Fixed Fee Professional Services"), then any such termination will be subject to the parties' agreement to a Change Order in respect of the terminated Fixed Fee Professional Services and the remaining Fixed Fee Professional Services. If Customer terminates Fixed Fee Professional Services, then Customer will (i) pay ProjectManager the fees for Professional Services provided by ProjectManager through termination on a time and materials basis, determined by applying the applicable rates then in effect between ProjectManager and Customer or, if none, ProjectManager's then current list rates, and (ii) reimburse all expenses incurred prior to termination.

**10.5. Survival.** The provisions of Sections 1, 4.1, 4.4, 6, 7, 9 and 10.3-10.5 of these PS Terms will survive any termination or expiration of any Professional Services, Sales Order, or the Agreement.