These Consulting Services Terms and Conditions ("Conditions") set forth the terms and conditions under which Customer engages IGEL to provide certain consulting services to Customer for IGEL hardware and software ("Products") purchased from IGEL’s authorized distributors ("Reseller") through IGEL’s authorized distributor ("Distributor"). All Services purchases are made on a SOW basis for the number of hours, days, weeks, months or years purchased pursuant to a SOW signed by the applicable authorized distributor ("Authorized Distributor") and IGEL ("SOW"). The SOW will be a document referred to as such and signed on behalf of the Customer and IGEL. The Conditions set forth the terms and conditions between the "Parties", together and individually, as applicable, are the services described in the relevant SOW purchased by Customer. All references to ‘Customer’ shall be deemed to mean the customer set forth in the applicable SOW. This is a legal agreement between the Customer and IGEL Americas Sales Corp. ("IGEL").

1. SERVICES. Each Services shall be signed by the parties and shall include a detailed description of the Services to be provided. In the event of any conflict or inconsistency between these Conditions and the SOW, and the SOW, and, any term and condition set forth in a PO, proposal, or otherwise, is not expressly allowed by these Conditions, or that is in addition to or conflicts with the terms and conditions of these Conditions, will have no force and effect. Agreement for Services shall not constitute an offer and shall only be valid for a period of one (1) month from its date of issue.

2. TERM AND TERMINATION. 2.1. Term. The Agreement shall commence on the date of last signature of the SOW, whichever is later, and shall remain in force for a period of twelve (12) months, unless terminated in accordance with its terms. The duration for each SOW shall be specified in the respective SOW. For the avoidance of doubt, upon termination of the Agreement all Services shall automatically terminate.

2.2. Termination for Breach. Either party may terminate the Agreement in the event that the other party breaches any provision of the Agreement and such breach remains uncured not less than thirty (30) days from the date of receipt of such notice of breach.

2.3. Rescheduling. Services must be used by Customer within six (6) months of the SOW's execution unless the overall term of Services to be provided exceeds one (1) year, in which case the Agreement shall be extended for the minimum period that is necessary to provide the agreed upon Services. If Customer requests extensions to the SOW, all extensions shall be documented in writing and executed by the Parties.

3. IMPLEMENTATION PRACTICES.

3.1. IGEL Know-How. IGEL uses, develops and refines processes, procedures, best practices, documentation, computer software code, general knowledge, skills, expertise, information and other intellectual property and other technologies developed by IGEL personnel (alone or jointly with others) (collectively, "Implementation Practices") by providing implementation and configuration services to many customers. Customer benefits from those Implementation Practices and agrees that IGEL owns and is free to use the Implementation Practices in its sole discretion. IGEL will also make changes to Implementation Practices developed or refined in the course of providing Services to Customer, so long as the Implementation Practices do not include the use of or reference to the Customer’s Confidential Information or any other information peculiar to Customer. Upon Customer’s payment of all sums due, IGEL grants Customer a non-exclusive, non-transferable, royalty-free, perpetual, and limited license to use the Implementation Practices within the scope of the Services provided to Customer. If the Services do not include the use of or reference to the Customer’s Confidential Information or any other information peculiar to Customer, IGEL will provide Customer with the following rights:

- The rights to use the Implementation Practices in connection with the Services provided to Customer.
- The right to share the Implementation Practices with its employees, consultants, contractors and MSPs (as defined below) for the purpose of performing the Services provided to Customer.
- The right to develop new Implementation Practices and to use such new Implementation Practices in connection with the Services provided to Customer.
- The right to incorporate into the Implementation Practices any improvements or innovations made by IGEL.

3.2. Customer’s Obligation in Respect of IGEL’s IP Rights. Customer shall have the right to use the Implementation Practices for its internal business purposes only, provided that Customer shall not disclose the Implementation Practices to any third party, without restriction.

3.3. Customer’s Confidential Information. Customer shall not disclose any Confidential Information to any third party, without restriction.

4. CONFIDENTIALITY. The following terms will apply in the absence of a valid, signed nondisclosure agreement between Customer and IGEL ("NDA").

4.1. "Confidential Information" means any information or materials provided by one party to the other party which are in tangible form and labelled as confidential or, if disclosed orally, are identified as being confidential at the time of disclosure and within thirty (30) days thereafter are summarized in the other party’s written or electronic records. Confidential Information includes, but is not limited to, (a) any confidential customer information of IGEL, its affiliates, employees, consultants, contractors and MSPs (as defined below) or (b) any confidential third party information.

4.2. Each party shall: (a) use Confidential Information of the other party only to exercise its rights or perform its obligations hereunder; (b) restrict disclosure of Confidential Information to its and its affiliates’ employees, consultants, contractors and MSPs (as defined below) who are not a competitor of IGEL; (c) have a ‘need to know’ in order to carry out or receive, as applicable, the Services; and (d) are bound by confidentiality obligations similar to those set out hereunder; and (e) use no less than a reasonable standard of care against disclosure of such Confidential Information to any third parties, for a period of five (5) years from the date of disclosure providing that such information constitutes or contains a party’s trade secret which is protected for at least ten (10) years from the date of disclosure under applicable law. Notwithstanding the foregoing, in the event that a party discloses such Confidential Information to another party, the party disclosing such Confidential Information shall promptly inform the other party of such disclosure and shall use its reasonable efforts to prevent such disclosure. The restrictions on disclosure and use set forth herein shall not restrict or limit the right of the receiving party to (i) independently, and without use of the disclosing party’s Confidential Information, design, develop, acquire, market, service, or otherwise deal in, directly or indirectly, products or services competitive with those of the disclosing party; or (ii) assign personnel for any purpose.

4.3. Confidential Information does not include information that: (i) is rightfully in the receiving party’s possession without obligation of confidence prior to receipt from the disclosing party; (ii) is independently developed by the receiving party without the use of Confidential Information in any manner; (iii) was known to the receiving party prior to becoming known to the disclosing party; or (iv) becomes known to the receiving party by a third party, without restriction.

5. PURCHASE OF SERVICES; CHANGE ORDERS; TRM.

5.1. Purchases are made through Reseller. Customer acknowledges that its payment for the Services in the SOW is contingent upon Customer agreeing to the terms and conditions contained in this Agreement and the Reseller’s Agreement. Customer agrees that the Agreement shall apply to Customer’s receipt and use of the Services, notwithstanding any agreements with the Reseller. IGEL shall not be liable for any representations, warranties, indemnities, liabilities, or damages beyond those set forth in the Agreement. Customer shall not receive any part of all fees and charges for use all time (hours, days, months) purchased pursuant to the SOW. Customer acknowledges that if IGEL does not receive payment for the Services for which Customer has the right to suspend the Services until payment is received, without liability to IGEL and Customer shall look solely to the Reseller for any damages or liability associated with such suspensions.

5.2. Change Orders. If the Customer substantially modifies the scope of work under an existing SOW, or isn’t prepared for the commencement of work as specified in a SOW, IGEL will issue a change order (“Change Order”) to Customer, specifying any new fees or charges. If the Change Order is mutually agreed upon by the Parties, the Change Order will become part of the SOW.

5.3. TRM Services. The provision of an IGEL Technical Relationship Manager ("TRM") are more particularly described in the SOW and applicable TRM Documentation. TRM Tasks are the fixed and discretionary Tasks, as more particularly described in the SOW and applicable TRM Documentation. The fixed and discretionary Tasks shall be performed and the TRM Tasks shall be deployed at the reasonable discretion of the relevant TRM, based on the fixed and discretionary Tasks set forth in the Customer’s needs and requirements. IGEL does not warrant that all or any specific TRM Task will be delivered during the applicable Services subscription term. The Customer also accepts that while the TRM is given reasonable endeavours to ensure the same TRM Individual is available to the Customer throughout the applicable Services subscription term, the TRM Services may be performed by an appropriate substitute in the event that the relevant TRM is unable to perform the TRM Services for any reason.

6. WARRANTY; DISCLAIMER; LIMITATION OF LIABILITY.

6.1. Limited Warranty. IGEL warrants that the Services will be performed in a workmanlike manner in accordance with the then-current standards in IGEL’s industry. If Customer believes there has been a breach of IGEL’s warranty, Customer must give written notice to Customer, or replace personnel who may be assigned to deliver the Services. If IGEL cancels a service other than for a termination by IGEL under Section 2.2, Customer may reschedule for a later available date without penalty. IGEL will not be responsible for any loss incurred by Customer as a result of a cancellation or rescheduling.

6.2. Disclaimer and Exclusions. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF (TO THE FULLEST EXTENT PERMITTED BY LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND IGEL DISCLAIMS ALL IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THE SERVICES ARE PROVIDED ON AN "AS-IS" BASIS.

6.3. Limitation of Liability. EXCEPT FOR A PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS (WHETHER UNDER SECTION 4 OR THE NDA), OR CUSTOMER’S MISUSE OR MISAPPLICATION OF IGEL’S INTELLECTUAL PROPERTY RIGHT, NO PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCURRED (INCLUDING LOSS OF DATA AND/OR LOSS PROFITS) EVEN AFTER ADEQUATE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, OR IN FRANCHISE. IN NO EVENT WILL THE aggregate LIABILITY OF THE PARTIES FOR ANY CLAIMS ARISING OUT OF THE AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID AND PAYABLE BY CUSTOMER FOR THOSE SERVICES GIVING RISE TO THE CLAIM. THE PARTIES ALSO-agree THAT THE FEES FOR THE SERVICES ARE BASED UPON THIS ALLOCATION.

Notwithstanding anything to the contrary, nothing in the Agreement shall operate as to limit or exclude the liability obligations which cannot be excluded by applicable law.

7. NON-SOLICITATION. During the term of the Agreement and for a period of one (1) year thereafter, Customer shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any IGEL employee, independent contractor or consultant who performs any of the Services. The foregoing limitation shall not apply to IGEL. Consulting Services Terms & Conditions v.1
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employment subject to a general advertising campaign not specifically targeted at such employees, independent contractors, or consultants.

8 CUSTOMER OBLIGATIONS.

8.1 Cooperation. If IGEL personnel are working on Customer’s premises (a) Customer will provide a safe and secure working environment for IGEL Personnel; (b) IGEL personnel will comply with all reasonable workplace safety and security standards and policies of which the IGEL personnel is notified in writing by Customer in advance. The Customer shall provide IGEL with all necessary co-operation, information and support that may reasonably be required by IGEL for the performance of the Services including, without limitation, access to suitably configured computers, software products and applicable passwords, at such times as IGEL requests. Customer shall further perform such other Customer obligations as specified in the SOW (if any).

8.2 Managed Services Provider. In the event that IGEL delivers Services to Customer’s outsourced managed services provider (“MSP”), such Services shall only be for the benefit of Customer, and; (i) Customer shall ensure that its MSP provides IGEL with all necessary co-operation, information and support that may reasonably be required by IGEL for the performance of the Services including (if required for delivery of the Services) access to suitably configured computers, software products and applicable passwords, at such times as IGEL requests; and (ii) Customer must ensure that its MSP provides IGEL personnel with reasonable access to all buildings, parking, phone systems, internet access, server rooms, and workstations, and will provide all necessary passes, if required, for access to such areas. Customer represents and warrants that it has the authority and required authorizations from its MSP to enter into the SOW with IGEL. Customer shall be liable for the acts and omissions of its MSP as if they were the acts and omissions of Customer itself.

8.3 Customer understands that an uncured failure in any of the above may result in unforeseen delays not attributable to IGEL.

9 GENERAL

9.1 No Assignment. The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of IGEL.

9.2 Notices. Any notices permitted or required under the Agreement shall be in writing and shall be delivered by: (i) pre-paid first-class post or recorded delivery post, with proof of delivery; (ii) in person; (iii) by courier, upon written confirmation of receipt; or (iv) by facsimile or email, with confirmation of receipt. Notices shall be sent to the address, email address and facsimile number specified in the SOW, or quote, where applicable.

9.3 Severance. If any provision of the Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.

9.4 Independent Contractors. The relationship between IGEL and Customer established by the Agreement is that of independent contractors. Nothing in the Agreement shall be deemed to constitute either party as an agent, partner or representative of the other party or otherwise grant either party the authority to bind the other party to any obligation. Customer shall make no representations or warranties on behalf of IGEL with respect to the Services.

9.5 Entire Agreement. The parties agree that the Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all previous communications and agreements (whether written or oral). All terms of any purchase order or similar document provided by Customer or that are implied by trade, custom, practice or course of dealing are expressly excluded and shall be of no legal effect. No employee, agent, representative or affiliate of IGEL has authority to bind IGEL to any warranty concerning the Services; any representation or warranty not expressly set out in the Agreement will not be enforceable.

9.6 Force Majeure. Neither party will incur any liability to the other party for any loss or damage resulting from any delay or failure to perform any part of the Agreement if the such failure or delay is caused by circumstances beyond the party’s reasonable control including, without limitation, food, fire, acts of war, terrorism, earthquake and acts of God; however inability to meet financial obligations is expressly excluded. IGEL shall not be liable for any failure of delay in performing its obligations on account of Customer’s failure to perform its obligations under the Agreement.

9.7 Third Party Rights. A person who is not a party to the Agreement shall not have any rights under or in connection with it.

9.8 Variation. Any variation to the Agreement, shall only be binding when agreed in writing and signed by both parties.

9.9 Counterparts. The SOW may be executed in counterparts, each of which so executed will constitute an original and the same agreement. This SOW may be executed and delivered by facsimile or in Portable Document Format (“PDF”) and the parties agree that such facsimile or PDF execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile, PDF, or e-signatures as evidence of the execution and delivery of this SOW by all parties to the same extent that an original signature could be used.

9.10 Survival. Sections 3, 4, the payment obligation under Section 5.1, and Sections 6, 7, and 9 shall survive the termination or expiration of the Agreement.

9.11 Governing Law. The Agreement will be governed by the laws of the State of California without regard to conflict of laws principles and in any dispute arising out of or in connection with the Agreement the Customer consents to the exclusive jurisdiction and venue in the State and Federal courts within the County of San Francisco, California.