

# IGEL ADVANCED SERVICES TERMS AND CONDITIONS

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 reseller ("**Reseller**") through IGEL's authorized distributor ("**Distributor**"). All Services purchases are made on a SKU basis for the number of hours, days or months purchased pursuant to a Statement of Work or similar agreement entered into between Customer and IGEL ("**SOW**"). The SOW will be a document referred to as such and signed on behalf of the Customer and IGEL. The SOW together with these Conditions will together constitute the "**Agreement**". The "**Services**", 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 America Sales Corp. ("**IGEL**").

1. **SERVICES.** Each SOW will 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, these Conditions shall control; and, any term and condition set forth in a PO, preprinted or otherwise, that 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. Any quotation 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 commits a material breach of a material provision of the Agreement and such breach remains uncured not less than thirty (30) days from the date of receipt of such notice.
- 2.3 **Rescheduling.** Services must be used by Customer within six (6) months of the SOW execution unless the overall term of Services to be provided exceeds one (1) year, in which case the Services must commence promptly after SOW execution. If not used within the six (6) month timeframe, no refunds are permitted and no unused hours will be rolled over or credited to Customer. Unless otherwise agreed by both Parties in writing, if Customer postpones or reschedules a project fewer than ten (10) business days but more than five (5) business days prior to the start date of a project, Customer shall pay IGEL fees equal to the fees quoted for one (1) day of Services under the project or \$2,500, whichever is less. If Customer postpones or reschedules a project fewer than five (5) business days prior to the start date of a project, Customer shall pay IGEL fees equal to the fees quoted for: (i) the number of days of Services postponed, (ii) one week of Services due for the project as if it had been fully performed, or (iii) \$12,500, whichever is less. Any rescheduling of Services under a SOW shall be subject at all times to the SOW's termination provisions and/or any long-stop dates specified in the SOW. IGEL may cancel or reschedule Services upon 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 reschedule.

## 3 IMPLEMENTATION PRACTICES.

- 3.1 **IGEL Know-How.** IGEL uses, develops and refines processes, procedures, best practices, documentation, computer software code, general knowledge, skills, experience, ideas, know-how, and implementation techniques developed by IGEL personnel (alone or jointly with customers) (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, including 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 (as defined below). Upon Customer's payment in full of all sums due, IGEL grants Customer a non-exclusive, non-transferable, royalty-free, perpetual, and limited license to use the Implementation Practices within Customer's organization, for the purpose for which the Services were provided. In the event that the Services involve IGEL software Products licensed to Customer under a separate license agreement, only the terms set out in such separate license agreement shall apply in respect for each such IGEL software Product. For the avoidance of doubt, all tangible materials or property provided by Customer to IGEL in connection with the Services shall remain Customer property.

## 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 to the other party in writing and marked as confidential. Notwithstanding the foregoing, the following information shall always be deemed to be Confidential Information, regardless of whether in writing or marked as confidential: (i) for IGEL: product roadmaps, software, source code, formulae, processes, release dates, feature sets, strategic business plans, and methodologies; and (ii) for Customer: Customer data, strategic business plans, and architecture.
- 4.2 Each party shall: (A) use Confidential Information of the other party only to exercise its rights or performing its obligations under the SOW; (B) restrict disclosure of the other party's Confidential Information to its and its affiliates' employees, consultants, contractors and MSPs (as defined below) who (i) are not a competitor of IGEL, (ii) have a 'need to know' in order to carry out or receive, as applicable, the Services, and (iii) are bound by written confidentiality obligations similar to those set out herein; and (C) use no less than a reasonable level of care to protect against disclosure of such Confidential Information to any third parties, for a period of five (5) years from the date of disclosure provided; however, that Confidential Information that constitutes or contains a party's trade secret shall be protected until such time it is no longer a trade secret under applicable law. Notwithstanding the foregoing, a receiving party may disclose Confidential Information pursuant to a valid order of a court or government authority provided that the receiving party has given the disclosing party prompt notice, to the extent legally permissible, so that the disclosing party may defend, limit or protect against such disclosure. The restrictions on disclosure and use set forth herein shall not restrict or limit the right of the receiving party to (a) 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 (b) 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 confidentiality prior to receipt from the disclosing party; (ii) is in the public domain through no fault of the receiving party; (iii) was independently developed by the receiving party without use of the Confidential Information of 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 through Reseller.** Customer acknowledges that its payment for the Services is subject to the agreement between the Customer and the Reseller on a prepaid and nonrefundable basis. Customer agrees that the Agreement shall apply to Customer's receipt and use of the Services, notwithstanding anything to the contrary in Customer's agreement 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 partial or full refund of prepaid fees if Customer does not use all of the time (hours, days, months) purchased pursuant to the SOW. Customer acknowledges that if IGEL does not receive payment for the Services from the Reseller, IGEL shall have 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 suspension.
- 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 to be included. Once mutually agreed 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 in applicable TRM Documentation. TRM Tasks are the fixed and discretionary Tasks, as more particularly described in the applicable TRM Documentation. The Customer accepts that the TRM Services shall be performed and the TRM Tasks shall be deployed at the reasonable discretion of the relevant TRM, based on the reasonable assessment by the TRM of 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 whilst IGEL will use reasonable endeavors to ensure the same TRM individual is available to the Customer throughout the applicable Services subscription term, IGEL may, acting reasonably, change the Customer's individual TRM on reasonable written notice at any time. Notwithstanding the foregoing and unless otherwise agreed in writing, if the Customer has subscribed to the TRM Services, the minimum term shall be twelve (12) months, with the subscription term commencing on the order date set forth in the applicable PO. Upon expiry of the applicable Services subscription term, the TRM Services shall automatically cease.

## 6 WARRANTY; DISCLAIMERS; 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 this warranty and so notifies IGEL in writing, stating in reasonable detail the nature of the alleged breach within twenty (20) days after IGEL delivers the Services, then IGEL will promptly investigate the matter via remote access to determine the nature and extent of the alleged breach of warranty. If Customer fails to give such notice within such twenty-day period, the Services will automatically be deemed accepted. If there has been a breach of this warranty, then IGEL's sole obligation and Customer's exclusive remedy will be for IGEL to use commercially reasonable efforts to correct or re-perform any affected Services as necessary to cause them to comply with this warranty. Any such re-performance will constitute IGEL's entire liability and Customer's exclusive remedy. The Services are provided at Customer's request and Customer is responsible for ensuring that the Services are suitable for its own needs. Customer bears all responsibility for any malfunction or damage to IGEL Products caused by non-IGEL branded products. IGEL has no obligation to provide Services for third party hardware, software or applications and Services may not be employed in lieu of IGEL's limited warranty coverage.
- 6.2 Customer warrants that any prerequisites (as set out in the relevant SOW) shall be completed fully and accurately prior to the commencement of the Services. In the event that any of the prerequisites listed in the relevant SOW are not completed prior to (or during) delivery of the Services (and failure to do so was not as a direct result of IGEL's actions), the parties shall negotiate in good faith a revised timetable to complete the Services. Should the parties fail to agree a revised timetable within a reasonable period of time, IGEL shall have the right to terminate the SOW and Customer shall remain liable to pay the full charges set out in the SOW.
- 6.3 **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.
- 6.4 **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 MISAPPROPRIATION OF IGEL'S INTELLECTUAL PROPERTY, NEITHER PARTY WILL BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCURRED (INCLUDING LOST DATA AND/OR LOST PROFITS) EVEN AFTER HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF LIABILITY FOR LOST PROFITS SHALL NOT PREVENT IGEL FROM RECOVERING UNPAID FEES WHICH HAVE ACCRUED DUE IN FULL. IGEL'S MAXIMUM LIABILITY FOR ANY ACTION, REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT OR CONTRACT, ARISING UNDER 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 AGREE TO THIS LIABILITY ALLOCATION AND THAT THE FEES FOR THE SERVICES ARE BASED UPON THIS ALLOCATION.
- 6.5 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

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 request. 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, flood, 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 be deemed to be an original and such counterparts together will constitute one 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.