

## **1. Services, Change Orders, Fees.**

**1.1 Services** Upon execution of this Professional Services Agreement ("Agreement"), Customer may obtain professional services from MoonHart Consult that primarily consists of installation, implementation and training services ("Services") of any licensed software product ("Software"). The Services shall be set forth in a Statement of Work ("SOW") prepared by MoonHart Consult and executed by duly authorized representatives of both parties which shall be governed by this Agreement. Customer acknowledges that the timely provision of assistance, cooperation, and complete and accurate information and data by its employees and agents are essential to performance of any Services and that MoonHart Consult's ability to complete Services is dependent upon same. MoonHart Consult shall not be responsible for performance of Services under a SOW if software, hardware products or related system environment on or in which MoonHart Consult is to perform the Services, Customer or any other person has substantially changed such software, hardware products or related system environment without MoonHart Consult or his representative's specific consent in writing. Where such unauthorized changes substantially impede or make more costly the provision of Services hereunder, MoonHart Consult shall take such corrective action only if Customer agrees to bear such additional cost, at MoonHart Consult's then prevailing rates.

**1.2 Change Orders.** A Change Order ("CO") is a written document to change the scope of Services described in a SOW, an adjustment of the prices, or an adjustment in the time of performance. The parties shall mutually agree on any changes to the SOW by executing a CO. If a CO changes the cost or time required to complete a SOW, then the CO shall specify any adjusted deadlines or compensation.

**1.3 Fees.** Customer agrees to pay MoonHart Consult the professional services fees specified in a SOW. The Services are provided on a time and materials basis unless otherwise specified in a SOW. It is, in such a case, understood that implementation and/or migration professional services might request additional efforts against original assumptions and estimations. Also, it has to be underlined that some activities (i.e. migration scripts) might have to be repeated in order to provide the expected results and/or level of quality. Here, time and materials calculation applies as well. Customer further agrees to reimburse MoonHart Consult for all reasonable and actual expenses incurred by MoonHart Consult on behalf of Customer that are reasonably necessary in connection with the performance of each SOW. Payment is due within thirty (30) days of the date of invoice. A late charge of one and one half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, will apply to any overdue balance.

## **2. Term and Termination.**

**2.1 Term.** This Agreement commences on the Effective Date and along with each fully-executed SOW will remain in effect in accordance with this Section or as otherwise provided in this Agreement. This Agreement may be terminated as follows:

**a.** By either party upon 30 days written notice specifying breach if the other party fails to comply with any of the material terms or conditions of this Agreement unless, within the notice period, all specified breaches have been cured;

**b.** By MoonHart Consult automatically without notice if Customer has a receiver, administrator or liquidator appointed to the whole or any substantial part of its assets or if an

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order is made or a resolution passed for the winding up of Customer which is not revoked within 7 days.

**2.2** Either party may terminate any SOW or CO upon thirty (30) days' prior written notice to the other party. In the event of termination of this Agreement or any SOW or CO, Customer's obligation is to pay Services rendered and expenses and fees for actual work performed up to and including the date of termination of this Agreement or any SOW or CO.

**2.3** Survival. The following sections shall survive termination of this Agreement: 1.3, 2, 3, 4, 7, 8, 9 and 10.

### **3. Confidentiality.**

**3.1** Either party may disclose technical, product, financial and business information that it considers to be confidential ("**Confidential Information**") to the other party under this Agreement. Confidential Information shall be limited to information clearly identified as confidential.

**3.2** Neither party will reproduce in any form, or provide, disclose, or give access to Confidential Information of the other party to any third party, or to any employee or agent not having a legitimate need to know such Confidential Information, and shall not use the Confidential Information for any purpose other than performing its obligations and exercising its rights under this Agreement.

**3.3** This Agreement imposes no obligation upon either party with respect to Confidential Information that the recipient can establish by legally sufficient evidence: (i) was in the possession of, or was known by, the recipient prior to its receipt from the disclosing party, without an obligation to maintain its confidentiality; or (ii) is obtained by the recipient from a third party having the right to disclose it, without an obligation to keep such information confidential.

**3.4** Each party retains ownership of its own Confidential Information. Neither party acquires any rights in Confidential Information of the other party under this Agreement, except the limited right to use described above.

**3.5** It is, although, agreed, that MoonHart Consult will be allowed to publicly mention the relationship registered by this agreement. This publicity could, amongst other, take the form of internet links, customer cases and stories. It is agreed that customer cases and stories will be submitted to customer's approval prior to publication.

### **4. Ownership Rights.**

MoonHart Consult owns all right, title and interest in any software or hardware tools, ideas, concepts, methodologies, processes, inventions and utilities developed by or on behalf of MoonHart Consult pursuant to the Services, including the format of any templates that may be required to display the data and/or information included in the Services ("MoonHart Consult Property"). MoonHart Consult reserves the right to develop, use and distribute works that perform functions the same as or similar to the MoonHart Consult Property along with any residuals pursuant to the Services, except for data pertaining solely to Customer.

### **5. Warranty and Disclaimer.**

For a period of ninety (90) days following completion of the Services pursuant to a SOW or CO, MoonHart Consult warrants that Services will be performed consistent with generally

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accepted industry standards. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. For any breach of this warranty, Customer's exclusive remedy, and MoonHart Consult's entire liability, shall be the re-performance of the Services.

## **6. Limitations of Liability.**

IN NO EVENT SHALL MOONHART CONSULT OR ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR COVER DAMAGES, IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN CONTRACT OR TORT, EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MOONHART CONSULT'S AND ITS SUBCONTRACTORS' AND SUPPLIERS' LIABILITY FOR DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER, UNDER THE APPLICABLE SOW, FOR THE RELEVANT SERVICES.

## **7. Notices.**

All notices required by this Agreement must be in English, delivered in person or by means evidenced by a delivery receipt. All such notices must be addressed to the address specified in the signature field below. Either party may change its address upon written notice to the other party.

## **8. Miscellaneous.**

**(a)** MoonHart Consult is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each party will maintain all necessary worker's compensation for its employees as well as general liability insurance. **(b)** This Agreement is the parties' entire agreement relating to its subject matter. It supercedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgement, or other communication between the parties relating to its subject matter prior to or during the term of this Agreement. Each party has reviewed this Agreement and agrees that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. No modification to this Agreement will be binding, unless in writing and signed by a duly authorized representative of each party. **(c)** Customer may not assign this Agreement or any rights or obligations herein except with the prior written consent of MoonHart Consult, and any attempt to assign (by operation of law or otherwise) this Agreement or any part thereof without such consent shall be null and void. **(d)** This Agreement shall be governed by and construed under the laws of Belgium, without reference to its conflicts of law provisions. **(e)** The parties agree and hereby irrevocably submit any suit, action, or proceeding arising out of



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or related to this Agreement or any of the transactions contemplated by this Agreement to the jurisdiction, and court of the Brabant Wallon. **(f)** In addition to any other relief, the prevailing party in any dispute arising under this Agreement will be entitled to all reasonable legal fees and costs. **(g)** Neither party's waiver of a breach or delay or omission to exercise any right or remedy shall be construed as a waiver of any subsequent breach or as a waiver of such right or remedy. **(h)** This Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one Agreement. **(i)** A party is not liable under this Agreement for non-performance, if the non-performance is caused by events or conditions beyond that party's control including but not limited to Acts of God, war, civil unrest, and natural disasters provided the party makes reasonable efforts to perform under the circumstances. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. This provision does not relieve Customer of its obligation to make any payments then owing.

**9. Non-Solicitation.**

During the term of any SOW, and for a period of twelve (12) months following the completion, expiration or termination thereof, neither party will, except with the other party's prior written approval, hire or solicit for hire, either directly or indirectly, the personnel of the other party. This prohibition does not apply to personnel of either party who respond to a public advertisement or who otherwise participate in a public job solicitation. This prohibition includes contracting with an independent contractor to utilize the services of a party's personnel who have performed services under the SOW.

**IMPORTANT NOTICE:** UPON EXECUTION OF THIS AGREEMENT BY DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES, CUSTOMER MAY OBTAIN MOONHART CONSULT PROFESSIONAL SERVICES PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND EACH SOW. BY SIGNING THIS AGREEMENT, CUSTOMER AGREES TO ALL THE TERMS AND CONDITIONS SET FORTH HEREUNDER.

<b>MOONHART CONSULT</b>	<b>CUSTOMER:</b> _____
By: _____ Signature	By: _____ Signature
Name: _____ Print or Type	Name: _____ Print or Type
Title: _____	Title: _____
Address: 1 Rue Capitaine Delvaux, B-1325 Dion-le-Val	Address: _____
Date of Acceptance: _____ ("Effective Date")	Date: _____

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