

IMPORTANT:

PLEASE READ THESE TERMS CAREFULLY AS THEY ARE FOR AN AGREEMENT AND IMPACT A VISITOR, USER AND/OR CUSTOMER'S LEGAL RIGHTS.

Terms and Conditions

The following Terms and Conditions should be embedded into all SUPERWISE® Statements of Work (SOWs) as an Addendum unless a valid Master or General Services Agreement for Professional Services ("Agreement") between the Parties is in force at the time the SOW is executed, in which case the Agreement shall be identified in the Statement of Work ("SOW") and the terms of the valid Agreement shall govern.

1. Customer shall pay all Charges within thirty (30) days of the date of SUPERWISE®'s invoice, without any set-off, counterclaim or deduction. SUPERWISE® may add interest Charges, from the due date to any past due amounts at a rate of 1.5% per month or the maximum rate permitted by law, whichever is less. Customer will, no later than thirty (30) days from the date of invoice, notify SUPERWISE® in writing of any amount in an invoice that it, in good faith, disputes, including the reasons for the dispute. Customer must pay all undisputed amounts when due. Disputes shall be resolved promptly, and any resolved amount shall be paid or credited within thirty (30) days following resolution.
2. SUPERWISE® will invoice and Customer will pay all Charges in U.S. Dollars. Charges are exclusive of all applicable taxes (including but not limited to value-added, sales, use and excise taxes), custom duties, and regulatory and other fees or surcharges (excluding taxes on the net income or net worth of SUPERWISE®) and any interest and penalties attributable to Customer (collectively, "Taxes"). Customer will pay all such Taxes except to the extent a valid exemption certificate is provided by Customer to SUPERWISE® prior to the delivery of any Products or Services. In the event that payment of any Charges becomes subject to withholding tax, deduction, levy or similar payment obligation, Customer will pay SUPERWISE® or indemnify it for such additional amounts so that the net amounts received by SUPERWISE® after all deductions and withholdings are not less than what would have been received in the absence of any such requirement to make such deduction or withholding. Should the Customer withhold any amounts without first grossing up its payments, or indicate that it will do so, SUPERWISE® may gross up its Charges to reflect such withholding, or otherwise include such amounts on its invoices (resulting in SUPERWISE® being subject to tax by reference to the grossed-up amount, while only receiving the net amount). In all cases, the Customer will provide SUPERWISE®, free of charge, with appropriate certificate (s) from the relevant authorities confirming the amount of taxes, deduction, levies, or similar payments withheld by Customer.
3. Confidentiality: Each Party shall keep in confidence all documentation, know-how, business information, or other materials belonging to the other Party that a reasonable person would recognize as being confidential to the other Party ("Confidential Information") and will not disclose it to any party other than, in confidence, to (a) its employees or employees of its entities controlling, controlled by or under the common control of the respective Parties ("Affiliates"); (b) its professional advisors; or (c) employees of its subcontractors, in each case only to those who have a need to know such Confidential Information and to the extent necessary for the performance of this SOW or the use of the Services. These obligations shall not apply to information that is: (a) in the public domain other than in breach of this SOW; (b) in the possession of the receiving Party before such divulgence has taken place; (c) obtained from a third party who is free to divulge the same; or (d) developed by the receiving party independently of and without access to Confidential Information. If either Party receives a demand from a governmental authority or court to disclose the other Party's Confidential Information to disclose the other Party's Confidential Information, it may comply with such demand if it has (a) satisfied itself that the demand is lawful; (b) where possible, given the other Party the maximum written notice permissible under the demand in order for it to object to the demand in order for it to object to the demand; and (c) marked the required information as Confidential Information of the other Party. The receiving Party must, for a period of three (3) years following disclosure, comply with this Section with respect to the other Party's Confidential Information. The receiving Party shall return or destroy any Confidential Information upon the request of the disclosing Party. The Parties acknowledge that a violation of these obligations Section may cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate, and injunctive relief may be sought for a breach of these confidentiality obligations.

4. Intellectual Property. All intellectual property rights of a Party either pre-existing or created by the Party during its performance under this SOW shall remain the absolute property of that Party or its licensors, unless expressly set forth otherwise in this SOW. SUPERWISE® has rights in, and as part of performing Services specified by this SOW, SUPERWISE® obtains rights in concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models, such as functions, process, system and data models; templates; the generalized features of the structure, sequence, and the organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence, and methods of operation of systems (collectively, the "SUPERWISE® Technology"). Except as provided in this Section 4, when SUPERWISE® receives all payments when due, the items specified as deliverables or work product in this SOW (the "Deliverables") will become Customer property. When the Deliverables contain SUPERWISE® Technology, SUPERWISE® grants to Customer, after SUPERWISE® receives all payments when due, a royalty-free, fully paid, worldwide, and non-exclusive license to use SUPERWISE® Technology solely in connection with the Deliverables. When SUPERWISE® uses its property, such as SUPERWISE® Technology or SUPERWISE® hardware or software, as part of the Services, that property remains SUPERWISE®'s property and, except for the license granted in this Section, Customer acquires no right or interest in that property. Customer agrees that SUPERWISE® is free to provide consulting or other services to other entities, as SUPERWISE® considers appropriate, in its sole discretion. In addition, and regardless of anything in this SOW to the contrary, the Parties acknowledge and agree that (a) SUPERWISE® claims all rights of ownership in and to the SUPERWISE® Technology and (b) SUPERWISE® may exploit the SUPERWISE® Technology in all ways, including SUPERWISE®'s ability to provide services and create programming and materials for other customers.

5. Warranties and Acceptance. SUPERWISE® will perform the Services in a professional and workman-like manner and in conformance with the requirements of this SOW. Except as expressly set forth in this SOW, SUPERWISE® makes no representations or warranties of any kind or nature and hereby disclaims any representations or warranties, expressed or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose and any and all implied warranties arising from Statute, course of dealing, course of performance or usage of trade. Unless otherwise specified above, the Services and Deliverables will be deemed accepted unless Customer notifies SUPERWISE® inwriting within ten (10) working days after performance that the Services or Deliverables were not in conformance with this SOW.

6. Limitations on Liability.

6.1. Neither Party excludes or restricts any way its liability for Death or Personal injury resulting from its own negligence or willful misconduct or that of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation.

6.2. Subject to Section 6.1, neither party shall be liable to the other, whether in Contract, Tort, under statute or otherwise how so ever arising in connection with this SOW for (a) any loss of profits, business contracts, anticipated savings, reputation, goodwill (including pecuniary losses arising from loss of goodwill), or revenue; (b) loss or opportunity, business interruption, contracts, loss of expenditure or time by personnel or wasted expenditure, any loss or corruption or destruction of data; (c) any special, indirect or consequential loss or damage whatsoever; and/or (d) any loss arising from the transmission of viruses, whether or not that party was advised in advance of the possibility of any such losses or damages.

6.3. The Liability of either Party to the other, whether in Contract, Tort, under Statute or otherwise how so every arising in connection with this SOW, subject to Sections 6.1 and 6.2, shall be limited to proven direct damages not to exceed the amounts paid by Customer under this SOW. Nothing contained herein limits amounts paid and owing to SUPERWISE®.

7. Non-Solicitation. During the term of this SOW and for twelve (12) months thereafter, neither Party will solicit for employment any employee or contractor of the other if such Party was introduced to the employees directly or indirectly as a result of this SOW. A general advertisement or a request for employment, which is initiated by an employee or contractor of the other, shall not be considered a solicitation pursuant to this section.

8. Governing Law and Venue. The validity, interpretation and performance of this SOW will be governed by the laws of the State of Tennessee, USA, excluding its conflict-of-laws provisions, and further excluding the United Nation Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the nonexclusive jurisdiction of the courts in Nashville, TN, USA.

9. Compliance with Laws. Each Party agrees to comply with all laws and regulations applicable to their respective actions or activities under this SOW. Further, in connection with such actions or activities or in connection with the relationship between the Parties, neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010, or any other law that prohibits bribery or similar activity. Each Party shall ensure that neither it nor its Affiliates, subcontractors and agents: either directly or indirectly, seek, received, accept, give, offer, agree, or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for other otherwise on account of favorable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions. Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws. To the extent permitted by the relevant authority, each Party shall promptly inform the other Party of any official investigation with regard to alleged breaches of the above laws that are related in any way to this SOW.

10. General. This SOW constitutes the entire agreement between the Parties and may not be amended except in a writing signed by both Parties with reference to this SOW. The terms on the Customer's standard forms including any purchase order shall not apply to this SOW. Either Party reserves the right to assign all or part of this SOW at any time to any Affiliate that can sufficiently execute the obligations under this SOW, subject to providing the other Party prior written notice of such assignment. Any assignment to a party other than an Affiliate requires the prior written agreement of the other Party. This SOW will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns. SUPERWISE® may subcontract the performance of its obligations under this SOW, but without relieving SUPERWISE® from its obligations to the Customer. The Parties' rights and obligations, which, by their nature would continue beyond the termination, cancellation or expiration of this SOW shall survive termination, cancellation or expiration hereof. Neither Party shall be liable for failure or delay in the performance of its obligations caused by or resulting from acts or events that are outside of its reasonable control, including, but not limited to any extremely severe weather, flood, landslide, earthquake, storm, lightning, fire, subsidence, epidemic, acts of terrorism, biological warfare, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes, or other labor unrest, civil disturbance, sabotage, or expropriation by government authorities. Notices given under this SOW must be in writing to the office addresses of SUPERWISE® Legal Office and Customer shown on the SOW.