

## FUJITSU GLOVIA, INC.

200 Continental Blvd., 3<sup>rd</sup> Floor, El Segundo, CA 90245, U.S.A.  
Telephone: (310) 563-7000      www.glovia.com



### GLOVIA ON DEMAND PROFESSIONAL SERVICES TERMS & CONDITIONS

PLEASE NOTE: THE PROVISIONS OF THIS DOCUMENT WILL BE LEGALLY BINDING ON CUSTOMER UPON EXECUTION OF ONE OR MORE GLOVIA ON DEMAND PROFESSIONAL SERVICES ORDERS. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE EXECUTING THE ORDER.

**1. General.** Customer acknowledges and agrees that the Professional Services described on any Glovia On Demand Professional Services Order signed by Customer and accepted by Fujitsu Glovia, Inc. ("Glovia") are subject to all of the provisions contained in these Terms & Conditions (the "Terms"). These Terms, together with any Professional Services Orders, Addenda, Schedules and/or Amendments expressly agreed to in writing by Glovia and the Customer, shall be referred to collectively as the "Professional Services Agreement".

#### **2. Definitions.**

The terms set out in Schedule 1 of these Terms will have the meanings provided in that Schedule when used in these Terms. Any capitalized terms used but not defined in these Terms will have the meanings otherwise provided in the Professional Services Agreement.

#### **3. Title.**

Glovia will at all times have and retain all title, ownership, copyright, and other proprietary rights in and to all Work Products and Documentation (collectively, the "Licensed Materials") and Customer will not acquire or otherwise have any such rights in or to the Licensed Materials by virtue of the Professional Services Agreement or otherwise.

#### **4. License.**

**4.1. License Grant.** Subject to payment of any Fees owed by Customer to Glovia in connection with the Professional Services, Glovia grants to Customer, and Customer accepts in accordance with the provisions of these Terms, a non-transferable, non-assignable (by operation of law or otherwise), license to access and use the Licensed Materials in conjunction with Customer's subscription to the Glovia On Demand Services only, and strictly for Customer's Normal Operations. Customer's license in the Licensed Materials is referred to in these Terms as the "Services License".

**4.2. Restrictions & Limitations.** EXCEPT BY PRIOR WRITTEN APPROVAL OF GLOVIA, CUSTOMER IS AT ALL TIMES STRICTLY PROHIBITED FROM CAUSING OR PERMITTING:

**4.2.1.** any access to or use of the Licensed Materials in violation of the License Grant set forth above;

**4.2.2.** the reverse engineering, disassembly, and/or decompilation of any Licensed Materials delivered by Glovia save to the extent expressly permitted by applicable law;

**4.2.3.** the re-license, sublicense, transfer, and/or other distribution of any copy or portion of the Licensed Materials to any third party, either temporarily or permanently, and either with or without charge;

**4.2.4.** the removal or modification of any portion of copyright, trademark, service mark, and/or other proprietary markings contained on or in any portion of the Licensed Materials;

**4.2.5.** the direct or indirect violation of the Export Laws;

**4.2.6.** the direct and/or indirect timesharing or rental of any portion of the Licensed Materials for the benefit of Customer or any third party other than as contemplated by this Professional Services Agreement;

**4.2.7.** the use of the applicable Documentation, including but not limited to the Work Instructions, other than in support of Customer's use of the Service and Licensed Materials relating to their Normal Operations; and

**4.2.8.** the copying of any proprietary materials provided as part of the Service, except for Customer's back-up and/or archival purposes as permitted by applicable law.

**4.3. Third Party Access.** As a condition of being allowed to grant Third Party Access to the Licensed Materials or the Service Customer expressly agrees that:

**4.3.1.** each of Customer's third party consultants, contractors, and/or subcontractors having access to and/or use of the Licensed Materials must, prior to any such access and/or use, first execute a written agreement having materially the same provisions as stated in Section 7 below as to such third party's nondisclosure and proper safeguarding of the Confidential Information;

**4.3.2.** the Third Party Access shall in no event expand the License or diminish Customer's obligations under the Professional Services Agreement;

**4.3.3.** the Third Party Access shall be strictly limited to only the direct support of the Customer's Normal Operations; and

**4.3.4.** Customer will at all times be responsible for, and indemnify and hold Glovia harmless from and against, any and all noncompliance with the provisions of the Professional Services Agreement due to such Third Party Access, including without limitation for Material Cause as described in Sec. 7.2, below.

**4.3.5.** Customer is solely responsible for implementing sufficient procedures and measures to satisfy Customer's requirements for security as related to Customer's data, and hardware and operating systems, including but not limited to the implementation of firewall technologies and checkpoints to avoid unauthorized access and to detect computer viruses. Glovia hereby expressly disclaims, and Customer expressly waives, any and all liability thereof for any claim or cause of action directly or indirectly relating thereto.

**4.4. Compliance.** Glovia will at all times have the express right to enforce Customer's compliance with all of the provisions contained in the Professional Services Agreement, such rights including but not limited to the rights to:

**4.4.1.** incorporate within the Licensed Materials, in their sole discretion, computer software that limits Customer's access to and use of only those portions of the Licensed Materials only as described in the Professional Services Agreement; and

**4.4.2.** audit Customer's pertinent records, provided that such audits will:

**4.4.2.1.** be conducted only during Customer's normal business hours with at least two (2) weeks prior notice;

**4.4.2.2.** not be conducted more than once during any given twelve (12) month period;

**4.4.2.3.** not unreasonably interfere with Customer's normal business operations; and

**4.4.2.4.** be conducted at Glovia's expense except in the event that Customer's material breach of any of the provisions of the Professional Services Agreement is discovered through such audit, in which case Customer will be obligated to fully reimburse Glovia for all commercially reasonable costs and expenses relating to such audit.

**4.4.3.** In the event any material unlicensed use by of any Licensed Materials or the Service by Customer is determined as a result of any such audit (or otherwise), Customer expressly agrees, in addition to fulfilling any and all other obligations it may have under the Professional Services Agreement, to immediately obtain an appropriate license from Glovia and pay to Glovia its then-applicable Fees or other charges relating to the Licensed Materials or the Service.

## **5. INFRINGEMENT INDEMNIFICATION, LIMITED WARRANTIES & REMEDIES.**

**5.1. Unique Requirements.** Customer acknowledges that Work Products specifically developed for Customer by Glovia under the Professional Services Agreement incorporate Customer's unique requirements and not those of the Service offered by Glovia generally, and Glovia will therefore in no event or circumstance whatsoever have any obligations or responsibilities whatsoever to Customer or to any third party with respect to any claim that any portion of the Work Products specifically developed for Customer by Glovia under the Professional Services Agreement infringes or otherwise violates the copyright, patent or other intellectual property rights of any third party.

**5.2. Infringement.** Notwithstanding the foregoing, Glovia warrants that (i) it will not, through any purposeful act or omission, incorporate any element within the Licensed Materials, including any Work Products, that materially infringes or otherwise materially violates the copyright, patent or other intellectual property rights of any third party; and (ii) in the event of such purposeful act or omission that results in such infringement and/or violation, Glovia will, within a reasonable period of time, be obligated to cure such infringement either through (a) its acquisition for Customer of non-infringing Licensed Materials that are materially equivalent to

the infringing Licensed Materials; or (b) refund the amount of Fees actually paid by Customer to Glovia for such infringing Licensed Materials.

Customer will indemnify, defend and hold Glovia harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees)(collectively "Losses") arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Glovia which arise out of or result from a claim by any third party against Glovia which arise out of or result from the infringement of any copyright, patent, trademark, or misappropriation of a trade secret relating to the Professional Services, provided that Glovia (a) promptly gives Customer notice of the claim, suit, action, or proceeding; (b) gives Customer sole control of the defense and related settlement negotiations; and (c) provides Customer with all reasonably available information and assistance necessary to perform Customer's obligations under this Section 5.2.

**5.3. Limited Warranties.** Glovia warrants to Customer that (i) the Work Products will be completed in a workmanlike manner consistent with all applicable generally accepted industry standards, and that they will operate substantially in accordance with the specifications listed in the applicable Professional Services Order or Addendum, if any; (ii) all Professional Services performed by Glovia will be performed in a workmanlike manner consistent with all applicable generally accepted industry standards; and (iii) the CDs and/or other media delivered to Customer under this Professional Services Agreement, if any, will be free from defects in materials and workmanship under normal use for ninety (90) days from the date(s) of Glovia's delivery to Customer.

**5.4. Warranty Disclaimers.** EXCEPT AS STATED IN THIS SECTION 5, THE WARRANTIES LISTED IN SECTION 5.3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY GLOVIA. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GLOVIA EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ANY AND ALL GLOVIA WARRANTIES THAT:

**5.4.1.** the Professional Services ordered by Customer will be sufficient for any particular purpose;

**5.4.2.** the Work Products will meet any particular requirements except as expressly stated in the applicable Professional Services Order or Addendum;

**5.4.3.** operation of the Work Products will be uninterrupted or error-free; and/or

**5.4.4.** all errors in the Work Products will be corrected.

**5.5. Exclusive Remedies.** For any breach of the warranties described in Section 5.4 above, Customer's sole and exclusive remedy, and Glovia's entire liability, will be:

**5.5.1.** Glovia's re-performance of the applicable Professional Services, or if Glovia is unable to perform such services as warranted, the refund of the applicable Fees actually paid by Customer to Glovia for such unsatisfactory services, provided always that in all such event Customer must first provide Glovia with commercially reasonable evidence of such unsatisfactorily performed Professional Services resulting from Glovia's failure(s) and not Customer's and provided further that in the event of Customer's determination of any insufficiency of any Professional Services for any particular purpose, Customer's sole and exclusive remedy against Glovia will be to order additional Professional Services for which services Glovia shall be entitled to charge at Glovia's then-standard rates; and

**5.5.2.** for defective media, the replacement of such defective media.

## **6. LIABILITY.**

**6.1.** Excluding only Infringement Indemnification which is solely governed by the provisions above, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH GLOVIA IS CHARGING IN CONNECTION WITH THE PROFESSIONAL SERVICES AGREEMENT DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY GLOVIA OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), ARISING FROM BREACH OF WARRANTY OR BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT. Glovia's liability to Customer for any claim or cause of action under the Professional Services Agreement is strictly limited to direct damages, such direct damages in an aggregate amount in no event whatsoever exceeding the Fees actually paid by Customer to Glovia during

the twelve (12) months immediately preceding the date of the claim which directly relate to the claim or cause of action; and

**6.2.** GLOVIA EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ANY AND ALL LIABILITY FOR ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY RELATING TO:

**6.2.1.** ANY PORTION(S) OF THE LICENSED MATERIALS WHICH HAVE BEEN MODIFIED OR OTHERWISE ALTERED BY ANYONE OTHER THAN GLOVIA;

**6.2.2.** ANY USE OF AND/OR RELIANCE ON THE LICENSED MATERIALS BY ANY PERSON(S) AND/OR ENTITY(IES) OTHER THAN CUSTOMER

**6.2.3.** ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES, OR ANY DAMAGES RELATING TO ANY LOSS OR CORRUPTION OF DATA, OR ANY DAMAGES RELATING TO ANY LOSS OF REVENUES, PROFITS, GOODWILL, USE, OR OTHERWISE.

**6.3.** CUSTOMER EXPRESSLY AGREES THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS ARTICLE SHALL SOLELY GOVERN IN ANY ACTION UNDER THE PROFESSIONAL SERVICES AGREEMENT, WHETHER SUCH ACTION IS IN CONTRACT OR IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR OTHERWISE) OTHER THAN ANY LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY NEGLIGENCE, EVEN IF GLOVIA IS ADVISED OF THE POSSIBILITY OF DAMAGES HEREUNDER AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED FOR IN THESE TERMS. CUSTOMER FURTHER EXPRESSLY AGREES THAT THE PROVISIONS OF THIS ARTICLE, IN CONJUNCTION WITH THE FEES, PROPERLY AND EQUITABLY REFLECT THE RESPECTIVE RIGHTS AND OBLIGATIONS OF GLOVIA AND CUSTOMER AS EXPRESSLY SET FORTH IN THESE TERMS. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH GLOVIA'S PROVISION OF PROFESSIONAL SERVICES TO CUSTOMER AND THAT, WERE GLOVIA TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS STATED IN THE PROFESSIONAL SERVICES AGREEMENT, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER.

## **7. Confidential and Proprietary Information.**

**7.1. Confidential Information.** For purposes of this Professional Services Agreement, confidential information shall include the terms of the Professional Services Agreement, Customer Data, and any information that is clearly identified in writing at the time of disclosure as confidential ("Confidential Information"). Each party agrees: (a) to keep confidential all Confidential Information disclosed to it by the other party or by a third-party; (b) not to use the Confidential Information of the other party except to the extent necessary to perform its obligations hereunder; and (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information). Glovia will restrict its employees' access to Customer's Confidential Information to only those employees necessary to successfully provide the Professional Services. Glovia may disclose Confidential Information on a need-to-know basis to its contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services for Glovia in connection with the performance of this Professional Services Agreement. Confidential Information shall not include information which: (1) was known by Customer prior to the date of disclosure as clearly documented by its written records; or (2) is lawfully disclosed to Customer by a source(s) other than the disclosing party which is rightfully in possession of the Confidential Information without obligation of confidence; or (3) either before or after the date of disclosure by the disclosing party becomes published or otherwise publicly known, other than through the sale of a license in the ordinary course of business, through no act or omission on the part of Customer or an affiliated party; or (4) is independently developed by or for Customer without reference to or reliance on the Confidential Information; or (5) is required to be disclosed by Customer to comply with applicable laws, to defend or prosecute litigation or to comply with governmental regulations, provided that Customer provides prior written notice of such disclosure to Glovia and/or to the Licensor(s), as applicable, and takes all commercially reasonable and lawful actions to avoid disclosure and/or to minimize the degree of disclosure to the maximum extent commercially reasonable. The parties agree to give the other party prompt notice of the receipt of any subpoena or other similar request for such disclosure. With respect to any information received by either party from the other as a result of any other relationship between the parties other than under this Professional Services Agreement (i.e., business

development, partnership, alliance, etc.), the parties will abide by the terms and conditions of any Nondisclosure Agreement (or similar agreement) executed between the parties.

## **7.2. Customer further expressly agrees that:**

**7.2.1.** in the event of unauthorized disclosure despite Customer's good faith, commercially reasonable exercise of such standard of care, Customer will, solely at its own expense, immediately thereafter take all actions required to terminate any and all further such disclosures and cooperate fully in obtaining full and complete restitution to Glovia of any and all damages resulting from such disclosure; and

**7.2.2.** in the event of any such unauthorized disclosure due to Customer's wrongful act(s) or omission(s) of reckless abandon, willful misconduct, and/or gross negligence that results in material and irreparable harm to Glovia (collectively, the "Material Cause"), Customer will, in addition to its foregoing obligations above, also be wholly obligated to compensate Glovia, as applicable, for the full amount of all damages directly and/or indirectly resulting from such disclosure, such damages wholly without limitation of any kind, and Glovia will have the express right to wholly and immediately thereafter terminate the Professional Services Agreement and all licenses granted under the Agreement.

**7.3. Proprietary Rights.** Customer acknowledges and agrees that the Licensed Materials and any necessary software used in connection with the Professional Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges that its use of such proprietary materials shall be limited to the use described in the Professional Services Agreement.

**7.4. Trademark Information.** Glovia On Demand, Glovia, glovia.com, Fujitsu and the Fujitsu logo and other service marks, trademarks, logos and product and service names are marks of Fujitsu Limited ("Fujitsu")(collectively, the "Fujitsu Marks"), used by Glovia with the permission of Fujitsu. Customer agrees not to display or use the Fujitsu Marks in any manner without Fujitsu's or Glovia's express prior written permission.

## **8. Fees and Payment.**

**8.1. Fees.** All amounts payable by Customer to Glovia under the Professional Services Agreement are payable in full within no more than thirty (30) days after the date of each Glovia invoice. Glovia's invoices will be generated (i) for all Fees relating to the Professional Services, upon completion or monthly, in Glovia's discretion; and (ii) for all Taxes, Travel Expenses, Premium Fees, Travel Fees, and Cancellation Fees, upon the date incurred or monthly, in Glovia's discretion. All amounts are exclusive of Taxes, and the full amount of Taxes will be payable by Customer to Glovia.

**8.2. Scheduling.** In order to properly coordinate the performance of the Professional Services by Glovia for Customer, Customer must, in addition to ordering the Professional Services under a Services Order, also specifically schedule and confirm the dates of such performance with a Glovia Professional Services Manager. Once scheduled, Customer must notify the Professional Services Manager at least ten (10) normal non-holiday business days prior to any and all reschedules and/or cancellations in order to avoid the Cancellation Fees.

**8.3. Pricing.** Unless otherwise mutually agreed in advance, the Fees listed in an Order for Professional Services that is executed by Customer and accepted by Glovia will apply for up to one (1) year following the Effective Date of the Order Form. In the event the Professional Services are not performed within this period through Customer's failure and not Glovia's, Customer expressly agrees that Glovia's then-current applicable Fees will thereafter apply for any and all such remaining non-performed Professional Services.

**8.4. Estimated Charges.** All Fees relating to any and all Professional Services ordered by Customer under a Professional Services Order represent Glovia's good faith, commercially reasonable estimates for the Professional Services based upon the information that Customer has provided to Glovia as of the date of the Order. In the event that such information is subsequently proven to be inaccurate and/or incomplete, and/or in the event that Customer materially changes any of Customer's requirements relating to the Professional Services, Glovia reserves the express right to charge Customer additional Fees in Glovia's good faith discretion, and Customer agrees that any such change(s) may also delay Glovia's completion of the Professional Services and/or impair and/or negate Glovia's ability to perform the Professional Services. In the event of any such change(s) and/or negation(s), Customer expressly agrees to pay Glovia the full amount of any applicable additional Fees.

## **9. Term & Termination.**

**9.1. Term.** Except as otherwise expressly provided in the Professional Services Agreement, the Professional Services Agreement shall become effective as of the date Customer's initial Professional

Services Order is accepted by an authorized headquarters representative of Glovia and shall continue thereafter in full force and effect unless terminated in accordance with the provisions set forth below.

**9.2. Termination.** Subject to the Force Majeure provisions below, either party may terminate the Professional Services Agreement upon thirty (30) days written notice to the other party in the event of a breach of a material provision of the Professional Services Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach (the "Cause"). Upon termination or expiration of the Professional Services Agreement, Customer shall have no rights to continue use of the Licensed Materials. If the Professional Services Agreement is terminated as a result of a breach on Glovia's part, Glovia will refund the pro rata portion of any fee that may have been paid by Customer for any portion of the Professional Services not yet furnished to Customer. IN NO EVENT OF ANY TERMINATION BY GLOVIA FOR CAUSE OR MATERIAL CAUSE WILL GLOVIA HAVE ANY OBLIGATION WHATSOEVER OF REFUND OF ANY PROFESSIONAL SERVICES FEES.

**9.3. Suspension For Delinquent Account.** Glovia reserves the right to suspend Customer's access and/or use of the Licensed Materials for any accounts for which any payment is due but unpaid but only after Glovia has provided Customer three (3) email notices over no less than a thirty (30) day period. Customer agrees that Glovia shall not be liable to Customer nor to any third party for any suspension of such access and/or use resulting from Customer's nonpayment of fees as described in this Section 9.3.

**9.4. Suspension For Ongoing Harm.** Customer agrees that Glovia may with reasonably contemporaneous telephonic notice to Customer suspend Customer's access to the Licensed Materials if Glovia reasonably concludes that Customer use of the Licensed Materials is causing immediate and ongoing harm to Glovia or others. In the extraordinary event that Glovia suspends Customer's access to the Licensed Materials as provided in this Section 9.4, Glovia will use commercially reasonable efforts to resolve the issues causing the suspension of such access and/or use. Customer agrees that Glovia shall not be liable to Customer or to any third party for any suspension of such access and/or use of the Licensed Materials under such circumstances as described in this Section 9.4.

#### **9.5. Effects of Termination.**

**9.5.1.** The following obligations shall survive termination of the Professional Services Agreement for any reason:

**9.5.1.1.** all obligations relating to non-use and nondisclosure of the Confidential Information;

**9.5.1.2.** all applicable obligations relating to indemnification and protection of proprietary rights;

**9.5.1.3.** all obligations relating to the maintenance of records regarding the Licensed Materials;

**9.5.1.4.** all obligations to make payments of amounts that are or become due under the Professional Services Agreement prior to the effective date of termination (except as otherwise provided in the Professional Services Agreement); and

**9.5.1.5.** all provisions regarding the limitations and exclusions of liability, warranty, and remedy.

**9.5.2.** Termination of the Professional Services Agreement (or any license granted under it) for any reason will not limit Glovia and/or Customer from pursuing any other remedies in equity or at law that may be available to either of them under the Agreement, including but not limited to injunctive relief.

**9.5.3.** If any license granted under the Professional Services Agreement is terminated for any reason whatsoever, Customer expressly agrees to:

**9.5.3.1.** immediately thereafter cease using such Licensed Materials for any purpose; and

**9.5.3.2.** certify to Glovia in writing within no more than one (1) month after the effective date of such termination that it has returned to Glovia all portions and copies of the Licensed Materials, and all Confidential Information specific to the terminated Agreement, provided, however, that notwithstanding the foregoing, Customer will be entitled to retain one (1) copy of the Documentation solely for its archival purposes for a period of one (1) year after the effective date of such termination.

**9.5.4.** THE REQUIREMENTS OF THIS SECTION APPLY TO ALL COPIES OF ALL LICENSED MATERIALS IN ALL FORMS, PARTIAL AND COMPLETE, IN ALL TYPES OF MEDIA AND COMPUTER MEMORY, AND WHETHER OR NOT MODIFIED OR MERGED INTO OTHER MATERIALS AND/OR COMPUTER SOFTWARE.

## 10. GENERAL TERMS

**10.1. Governing Law and Jurisdiction.** The Professional Services Agreement, and all matters arising out of or relating to the Professional Services Agreement, will be governed by the procedural and substantive laws and regulations of the State of California, United States of America, without reference to the choice of law principles thereof provided. Unless expressly otherwise agreed by the parties, the parties agree to submit to the exclusive jurisdiction of state or federal courts located in Los Angeles County, California, United States of America.

**10.2. Attorneys' Fees And Costs.** If either party to the Professional Services Agreement brings any action, suit, counterclaim, appeal, arbitration, or mediation against the other party regarding the terms of this Professional Services Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs as determined by the Court, arbitrator, or mediator.

**10.3. Assignment.** Customer may not assign or otherwise transfer the Professional Services Agreement or any license, right, or obligation under this Professional Services Agreement without Glovia's express prior written consent. Any attempted unauthorized assignment by Customer shall be wholly null and void and of no force or effect whatsoever.

**10.4. Force Majeure.** Excluding only Customer's material obligations of Confidentiality and payment, neither party will otherwise be responsible to the other party for any nonperformance or delay in the performance of its obligations under the Professional Services Agreement due to Acts of God, acts of governments, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, riots, accidents in transportation, criminal acts of third parties, or other causes beyond the commercially reasonable control of the nonperforming party, provided, however, that in the event of any such nonperformance, the nonperforming party shall be required to promptly notify the other party of such nonperformance and of the date when such performance has resumed.

**10.5. Notices.** Any notice which is or may be required to be given under the Professional Services Agreement must be in writing. Customer agrees to provide Glovia with Customer's e-mail address, to promptly provide Glovia with any changes to Customer's e-mail address, and to accept e-mails (or other electronic communications) from Glovia at the e-mail address Customer specifies. Customer further agrees that routine notices concerning the Service, Professional Services, Licensed Materials or changes in Glovia's standard Terms or Terms of Service may be given by e-mail as provided above. However, all notices concerning breach or termination of the Professional Services Agreement will be sent by registered or certified mail, postage prepaid, return receipt requested, or by commercial courier service, fees prepaid. All notices will be deemed to have been given when received, addressed to Customer at the address most recently provided by Customer to Glovia in writing as of the date of the notice, and to Glovia at the following address: Fujitsu Glovia, Inc. Attn: General Counsel, 200 Continental Blvd., 3<sup>rd</sup> Floor, El Segundo, CA 90245.

**10.6. Severability.** In the event that any provision contained in the Professional Services Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability will not affect (i) the other provisions of the Professional Services Agreement; (ii) the application of such provision to any circumstance other than that for which the Professional Services Agreement was held to be illegal, invalid, or unenforceable; and (iii) the legality, validity, or enforceability of the Professional Services Agreement as a whole.

**10.7. Waiver.** The waiver by Customer or Glovia of any default or breach of the Professional Services Agreement will not constitute a waiver of any other or subsequent default or breach. Except for actions relating to Customer's nonpayment and/or material breach of the Professional Services Agreement, no action, regardless of form, arising out of the Professional Services Agreement may be brought by Customer or Glovia more than one (1) year after the cause of action has accrued.

**10.8. Purchase Orders.** Except for identifying the licenses and/or services that Customer is ordering under the Professional Services Agreement only for Customer's own internal purposes, the charges, terms and conditions contained or referenced in Customer's purchase order or other ordering document will be of no force or effect whatsoever and shall in no way alter or modify any portion of the Professional Services Agreement.

**10.9. Amendment.** Except as otherwise provided in these Terms, no portion of the Professional Services Agreement may be modified or amended except in a writing signed by Customer's and Glovia's authorized representatives, and no other act, document, usage, or custom will be deemed to amend or modify the Professional Services Agreement in any way.

**10.10. Integration.** This Professional Services Agreement constitutes the entire understanding of the parties as to the subject matter hereof and shall entirely supersede all prior and contemporaneous

agreements, understandings, and representations, written and oral. There are no undertakings, restrictions, promises, warranties or covenants except as expressly stated herein.

## Schedule 1

1. "Cancellation Fees" means (a) fifty percent (50%) of the applicable Fees for the first day of the applicable Professional Services ordered and scheduled by Customer if Customer cancels or reschedules any such Professional Services with less than ten (10) but five (5) or more normal, non-holiday business days' advanced notice to Glovia; and (b) one hundred percent (100%) of such first day Fees, plus the Travel Expenses and Travel Fees, if applicable, if such Professional Services are canceled or rescheduled by Customer with fewer than five (5) normal, non-holiday business days' advanced notice to Glovia or with no such notice.
2. "Consulting Services" means Glovia's consultation services ordered by Customer under a Professional Services Order, including but not limited to those relating to use of the Software, technical information processing, general business practices, and general project management.
3. "Contractor" means any third party acting expressly on Glovia's behalf with respect to the provision(s) of the Professional Services to Customer. Glovia will at all times have the express right to appoint the Contractors in its sole discretion, and for all purposes under this Professional Services Agreement, the Contractors will have the same rights and obligations as Glovia unless otherwise expressly stated in these Terms & Conditions.
4. "Documentation" means the written descriptions of the Service's features, functions, and methods of operation, and the instructions provided for the use thereof by end users, and other personnel responsible for the use and administration of the Service, including the Work Instructions.
5. "Export Laws" means all then-relevant laws and applicable laws and regulations that restrict and/or limit the use in and/or the direct or indirect export or transfer of the Licensed Materials to geographic areas, and/or the use of the Licensed Materials for any purpose relating to nuclear, chemical and biological weapons proliferation;
6. "Fees" means Glovia's then-applicable charges for its performance of the respective Professional Services during the Normal Hours.
7. "Normal Hours" means 8:00 AM to 5:00 PM local time during normal non-holiday commercial business days, Monday through Friday.
8. "Normal Operations" means Customer's use of the Licensed Materials or the Service solely in direct support of its normal commercial information processing, the results of such processing solely for the benefit of Customer and the divisions, subsidiaries, and/or affiliates thereof in which it or its parent owns or otherwise controls at least fifty-one percent (51%) of the assets and/or voting shares.;
9. "Other Services" means any other of Glovia's services mutually agreed by Customer and Glovia under a Professional Services Order for performance by Glovia.
10. "Premium Fees" means an amount equivalent to one hundred fifty percent (150%) of the Fees for all Professional Services performed by Glovia outside of the Normal Hours at Customer's request, prorated on an hourly basis, as applicable and mutually agreed.
11. "Professional Services Addendum" means the separate agreement(s) executed by Customer and Glovia that defines and describes in detail the deliverables specifically relating to and/or any and all additional terms and conditions that may apply for the Professional Services ordered by Customer from Glovia for Glovia's performance, if any. Such detailed descriptions may include such things as functional specifications, charges and scheduled completion dates, as applicable and mutually agreed by the parties.
12. "Professional Services" are collectively the optional Consulting Services, Implementation Services and Other Services, as applicable, provided by Glovia to Customer under a Professional Services Order.
13. "Taxes" means all applicable sales, use, property, value-added and other taxes directly relating to the Professional Services that are levied or otherwise imposed by a taxing authority of competent jurisdiction, excluding only taxes based upon Glovia's income and that of its affiliates, divisions, subsidiaries and licensors. All amounts payable under the Professional Services Agreement are exclusive of the Taxes, and the Taxes are payable by Customer in full in addition to such amounts.



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14. "Third Party Access" means the access to, use of the Licensed Materials by Customer's third party consultants, contractors, subcontractors, customers and/or vendors solely as part of the Normal Operations, all such access strictly subject to the provisions of this Professional Services Agreement;
15. "Travel Expenses" means Glovia's expenses for commercially reasonable travel, meals and accommodations directly relating to Glovia's performance of the Professional Services at Customer's location(s).
16. "Travel Fees" means an amount equivalent to two (2) days of the applicable Fees for all Professional Services ordered by Customer for Glovia's performance at any location(s) designated by Customer for which the total time required for one-way travel of Glovia's assigned personnel from their home or office to the Customer's site exceeds six (6) hours; The Travel Fees will be invoiced to Customer in each instance when such travel is required by Glovia, and for each of Glovia's personnel engaged in such travel.
17. "Work Products" means, without limitation, all computer programs, methods of processing, ideas, techniques, works of authorship, flow charts, know-how, copyrights, trademarks, service marks and any and all other proprietary information and/or materials embodied within and/or relating directly or indirectly to the deliverables resulting from the Professional Services ordered by Customer and performed by Glovia under the Professional Services Agreement.