



# Professional Services Agreement

This Professional Services Agreement (“Agreement”) is a legal agreement between you (“Customer”) and Rampiva Global, LLC (together with its affiliate Rampiva Technology Inc., collectively “Rampiva”) (individually, a “Party” and collectively, the “Parties”). By executing a purchase agreement, quote or other document (“Order”), that includes this Agreement by reference, the Customer acknowledges that the Customer has reviewed and accepts this Agreement. If you are entering into this Agreement as an individual, “Customer” refers to you individually. If you are entering into this Agreement as a representative of an entity, you represent that you have the authority to bind that entity and “Customer” refers to that entity.

## 1 DEFINITIONS

- 1.1 “Confidential Information” is any information marked as confidential and all other information that would reasonably be expected to be confidential. Confidential Information does not include information: (a) which is publicly known without any breach of confidentiality under this Agreement; (b) which is disclosed to the other Party without restriction by a third party and without any breach of confidentiality by the third party; or (c) which is developed independently by the other Party without reliance on any of the discloser’s Confidential Information.
- 1.2 “Customer Materials” means any documents, data, software and other materials provided to Rampiva by Customer, including such materials that are designated as customer-owned property.
- 1.3 “Deliverables” mean the documents, products and materials developed by Rampiva or its agents, subcontractors, consultants and employees in relation to the Services, as indicated in the Order.
- 1.4 “Intellectual Property Rights” or “IP” means any and all rights arising from or under any of the following, whether protected, created or arising: patents (including, but not limited to, any applications, extensions, divisions, continuations, continuations-in-part, re-examinations, reissues, and renewals related thereto), copyrights (including, but not limited to, any applications, registrations and renewals related thereto), trademarks and service marks (including, but not limited to, applications, registrations, and renewals related thereto), trade dress, trade names, trade secret and know-how and any other intellectual property or proprietary rights of any nature, by whatever name or term known or however designated.
- 1.5 “Pre-Existing Materials” means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Rampiva in connection with performing the Services, in each case developed or acquired by Rampiva prior to the commencement or independently of this Agreement.
- 1.6 “Services” means the services to be provided by Rampiva to the Customer under this Agreement, as set forth in the Order.

## 2 PROVISION OF SERVICES.

- 2.1 During the Term, Rampiva shall perform the Services set forth in the Order. Rampiva shall make commercially reasonable efforts to deliver the Services in accordance with any agreed or estimated schedules and efforts, as described in the Order.
- 2.2 Any changes to the Order shall be agreed upon in writing by Each Party.

- 2.3 The Customer shall provide such information as Rampiva may reasonably requests, in order to carry out the Services, in a timely manner.

### 3 ACCEPTANCE

- 3.1 Acceptance of any Deliverables will occur when the relevant Deliverables set out in the Order meet the Acceptance Criteria defined in the Order. In the absence of any specifically defined Acceptance Criteria, the Deliverables will be deemed to have been accepted when they are delivered to the Customer.
- 3.2 If the relevant Deliverables do not meet the Acceptance Criteria when offered by Rampiva for the Customer's acceptance, the Customer will give Rampiva written notification of the deficiency or non-conformance within 10 days. Rampiva shall, within 10 days of receipt of such written notification, at its own cost, either correct the deficiency or non-conformance or provide the Customer with a plan for correcting the deficiency or non-conformance. If the deficiency or non-conformance is not corrected or an acceptable plan for correcting the deficiency is not established during such period, then upon request by the Customer, Rampiva shall refund to the Customer any amounts prepaid for the defective or non-conforming Deliverable.

### 4 FEES AND PAYMENT

- 4.1 In consideration of the provision of the Services by Rampiva, the Customer shall pay the Fees set forth in the Order.
- 4.2 Purchases through reseller. Notwithstanding anything herein to the contrary, in the event that Customer is purchasing the Services from a Rampiva authorized reseller, Customer's obligations to Rampiva with respect to payment set forth herein shall be deemed to be obligations by Customer to such reseller.
- 4.3 Taxes. The fees and any other amounts payable pursuant to the terms and conditions herein are exclusive of any taxes or duties, now in force or enacted in the future, in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Rampiva, Customer must pay the amount of such taxes or duties in addition to any fees owed under this Agreement.

### 5 CHANGE ORDERS

- 5.1 Any material change in the Services will be confirmed in writing and approved by each party ("Change Order"). It is important that potential changes are identified early, documented carefully, and resolved at the appropriate levels of responsibility. In order to manage change properly, a change control process (as described in the Agreement) has been established to identify, record, assess, and approve changes to the project. Change Orders need to be clearly defined, including cost and schedule implications, to allow Rampiva and Customer management to make appropriate decisions. Rampiva will always require an executed Change Order before starting work on changes.

### 6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Unless otherwise provided in this Agreement, as between Customer and Rampiva, all Intellectual Property Rights and all other rights in and to the Deliverables (except for any Confidential Information of Customer or Customer Materials) and the Pre-existing Materials, shall be owned by Rampiva. Rampiva hereby grants Customer a license to use all such rights free of additional charge

and on a non-exclusive, worldwide, royalty-free and perpetual basis to the extent necessary to enable the Customer to make reasonable use of the Deliverables and the Services.

- 6.2 Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Rampiva shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

## 7 TERM AND TERMINATION

- 7.1 Term. This Agreement will commence as of the Effective Date designated in the applicable Order, or in absence thereof the Accepted Date of the executed Order and will continue in effect unless superseded or otherwise terminated pursuant to this section.
- 7.2 Termination. Without prejudice to any other rights, either Party may terminate this Agreement if the opposite Party fails to comply with the terms and conditions of this Agreement.
- 7.3 Survival. Unless by its nature a provision cannot survive this Agreement, the provisions of this Agreement shall survive the expiration or any termination of this Agreement.
- 7.4 Unless by its nature a provision cannot survive this Agreement, the provisions of this Agreement shall survive the expiration or any termination of this Agreement.
- 7.5 Upon the termination of this Agreement, Customer shall pay all amounts due and payable to Rampiva under this Agreement.

- 8 NON-DISCLOSURE. Both Parties recognize that each Party may obtain proprietary and/or Confidential Information of the other Party in the course of their business and fulfilling their respective obligations and exercising their respective rights under this Agreement. Each Party agrees to protect each other's Confidential Information as follows:

- 8.1 Time and Method. Both during the term of this Agreement and thereafter, to hold each other's Confidential Information in confidence and to protect the disclosed Confidential Information by using the same degree of care to prevent the unauthorized use, dissemination or publication of the Confidential Information as they use to protect their own confidential information of a like nature.
- 8.2 Permitted Disclosure to Employees. Each Party agrees that it will only disclose Confidential Information to its, employees, contractors, professional advisors and representatives and agents who have a bona fide need to know and who are bound by agreement or by law or professional standards to keep such information confidential.
- 8.3 Other Permitted Disclosures. Each Party may disclose Confidential Information (a) as authorized by the other Party in writing or (b) to the extent required by applicable law, court, or government/administrative/regulatory agency, or pursuant to applicable professional standards, provided that the Party required to disclose Confidential Information promptly notifies the other Party to the extent permitted by law and cooperates with any efforts by the other Party, at the other Party's expense, to limit such disclosure by means of seeking a protective order or requesting confidential treatment.

## 9 WARRANTY AND DISCLAIMER

- 9.1 Rampiva warrants that (i) it and each of its employees that provide and perform the Services have

the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the Services; and (ii) the Services will be performed for and delivered to Customer in accordance with industry standards, laws and governmental regulations applicable to the performance of such services. Rampiva's ability to successfully perform hereunder is dependent upon Customer's provision of timely information, access to resources, and participation. If through no fault or delay of Customer, the Services do not conform to the foregoing warranty, and Customer notifies Rampiva within ten (10) days of Rampiva's delivery of the Services, Rampiva's entire liability and Customer's sole remedy will be for Rampiva to either, at Rampiva's discretion, (i) re-perform the non-conforming portions of the Services or (ii) refund the fees paid by Customer in the applicable Order for the non-conforming portions of the Services.

- 9.2 THE WARRANTIES STATED IN SECTION 9.1 ABOVE ARE THE EXCLUSIVE OBLIGATIONS OF RAMPIVA, AND THE SOLE REMEDIES OF CUSTOMER, RELATED TO THE SERVICES AND DELIVERABLES TO BE PERFORMED FOR AND DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT AND ANY ORDER. WITHOUT LIMITING ANY GUARANTEE, CONDITION, WARRANTY OR TERM IMPOSED BY APPLICABLE LAW AND WHICH CANNOT BE EXCLUDED, RAMPIVA DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. RAMPIVA DOES NOT WARRANT THAT THE DELIVERABLES OR SERVICES ARE ERROR-FREE OR THAT THE PRODUCTS PROVIDED WILL OPERATE WITHOUT INTERRUPTION.
- 9.3 IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE PRODUCT, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO THE DURATION OF THE TERM.
- 9.4 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RAMPIVA, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

## 10 LIMITATION OF LIABILITY.

- 10.1 EXCEPT FOR OBLIGATIONS UNDER SECTION 8 (NON-DISCLOSURE) AND SECTION 12 (INDEMNIFICATION), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES OR LOSSES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, DATA, GOODWILL OR OTHER PECUNIARY LOSS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR THE USE OR INABILITY TO USE THE PRODUCT, OR UNAUTHORIZED ACCESS OR HACKING INTO THE PRODUCT, OR ANY BREACH OF EITHER PARTY'S WARRANTIES OR OBLIGATIONS, EVEN IF SUCH DAMAGES OR LOSSES WERE FORESEEABLE OR SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, AND EACH PARTY WAIVES, RELEASES AND AGREES NOT TO ASSERT ALL SUCH CLAIMS.
- 11 EXCEPT FOR OBLIGATIONS UNDER SECTION 8 (NON-DISCLOSURE) AND SECTION 12 (INDEMNIFICATION), IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE LESSER OF (i) \$2,000,000; AND (ii) THREE (3) TIMES THE AGGREGATE AMOUNT OF FEES PAID BY THE CUSTOMER UNDER THIS AGREEMENT OVER THE

IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## 12 INDEMNIFICATION

12.1 Customer shall defend, indemnify, and hold the Rampiva, its affiliates, and their officers, directors, employees, agents, successors and permitted assigns harmless from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding arising out of, related to, or resulting from this Agreement, or any Scope or Work, or any Services performed by Rampiva pursuant to this Agreement.

12.2 Rampiva shall defend, indemnify and hold harmless the Customer from and against Losses awarded against a Customer in a final judgment based on a claim that any of the Services or Deliverables delivered by Rampiva or Customer's receipt or use thereof infringes any Intellectual Property Right of a third party, provided, however, that Rampiva shall have no obligations under this Section with respect to claims to the extent arising out of: (i) any Customer Materials or any instruction, information, designs, specifications or other materials provided by Customer to Rampiva; (ii) use of the Deliverables in combination with any materials or equipment not supplied to Customer or specified by Rampiva in writing, if the infringement would have been avoided by the use of the Deliverables not so combined; or (iii) any modifications or changes made to the Deliverables by or on behalf of any third party other than Rampiva. In the event the Services or Deliverables are held or are believed by Rampiva to infringe, Rampiva shall have the option to: (iv) modify the Services or Deliverables to be non-infringing, provided that they materially perform the same function; or (v) obtain for Customer a license to continue using the Services and Deliverables. If it is not commercially reasonable to perform either of the above options, then Rampiva may terminate this Agreement and refund the fees paid by Customer in the applicable Order. This section states Rampiva's entire liability and Customer's exclusive remedy for infringement.

12.3 The party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Action and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the indemnified Party without the indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified Party's failure to perform any obligations under this Section shall not relieve the indemnifying Party of its obligations under this Section except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense.

13 NON-IMPEDIMENT. Provided that Rampiva does not use any Customer Property except as permitted herein, nothing in this Agreement shall be construed as precluding or limiting in any way the right of Rampiva to provide consulting, development, or other services of any kind to any entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Services and Deliverables hereunder).

14 FORCE MAJEURE. Rampiva is not liable hereunder by reasons of failure or delay in the performance

of its obligations hereunder on account of strikes, shortages, riots, insurrection, war, acts of terrorism, fires, flood, storm, explosions, earthquakes, Acts of God, government action, labor conditions, or any other cause which is beyond its control.

- 15 NOTICES. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and in English language, and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the date sent by e-mail with confirmation of transmission if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Party at the address set forth on the Order (or to such other address that may be designated by a Party from time to time in accordance with this Section).
- 16 NO WAIVER. No action taken by either Party pursuant to this Agreement, and no waiver by either Party, whether express or implied, of any provision or right in this Agreement or any breach thereof, and no failure of either Party to exercise or enforce any of its rights under this Agreement, will constitute a continuing waiver with respect to such provision or right or as a breach or waiver or any other provision or right, whether or not similar.
- 17 SEVERABILITY. If any covenant or provision of the Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable covenant or provision shall be deleted from this Agreement and shall not affect or impair the enforceability or validity of any other covenant or provision of this Agreement or any part thereof.
- 18 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Delaware, United States, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).
- 19 ENTIRE AGREEMENT. This Agreement (together with the Order and all other agreements incorporated herein by reference) constitutes the entire agreement of the Parties hereto and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be amended or modified only in a writing signed by both Parties, and shall be enforceable in accordance with its terms when signed by both Parties.
- 20 AUTHORITY. Each Party represents and warrants to the other Party that it has the full power and authority to enter into this Agreement, to grant and assign the rights herein granted and assigned, and carry out its obligations.
- 21 ASSIGNMENT. Customer may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the prior written consent of Rampiva. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to



the benefit of the Parties hereto and their respective permitted successors and assigns.



## Schedule A - Change Order

This Change Order No. \_\_ (“Change Order”), effective as of [DATE], is made pursuant to and a part of a certain Professional Service Agreement, by and between Rampiva and Customer (the “Agreement”).

This Change Order is governed by the terms and conditions of the Agreement. Any defined terms not otherwise defined herein shall have the meanings set forth in the Agreement. Except to the extent otherwise expressly set forth in this Change Order, the terms of the Agreement shall remain in full force and effect. The parties hereto acknowledge having read this Change Order and agree to be bound by its terms.

The modification(s) set forth below will impact the following terms of the Agreement (please check all that apply):

- Services                       Deliverables                       Estimated completion date
- Fees                                       Schedule                                       Other: \_\_\_\_\_ (please specify)

Please provide a detailed description of the proposed modification(s) and their impact on the Agreement:

[ADD DESCRIPTION OF CHANGES / ACCEPTANCE PROCEDURES (IF APPLICABLE)]

[ADD DESCRIPTION OF CHARGES AND PAYMENT SCHEDULE]

Customer shall pay all properly invoiced amounts due to Rampiva within 30 days after Customer’s receipt of such invoice.

IN WITNESS WHEREOF, the parties hereto have each caused this Change Order to be signed and delivered by their duly authorized officers, all as of the date first set forth above.

EXECUTED AS AN AGREEMENT

**Rampiva**

[CUSTOMER NAME] (“Customer”)

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date: