

Consulting Program Terms

These Program Terms set out the terms for consulting under the Diligent Partner Program.

1. General

- 1.1 Application. These Program Terms apply if Partner wishes to provide customers with consulting services for the implementation, configuration, training or use of Diligent Products (the **"Consulting Services"**).
- 1.2 Products. For purposes of these Program Terms, **"Products"** means the software solutions which Diligent makes available for Consulting Services under the Partner Program in Partner's Territory and for which Partner has met the applicable training or other criteria. Diligent may update the Products available for Consulting Services from time to time.
- 1.3 Training and Certification. Partner will have and maintain personnel who have successfully completed Diligent's consulting training and certification requirements for the applicable Products. Consulting training varies by Product and may not be available for all Products or in all regions, and may be subject to a fee. Diligent may require Partner personnel to complete additional training or certification from time to time in order to ensure such personnel remain current with new Products, features or developments.
- 1.4 Consulting Materials. Partner may be provided with materials and tools related to Consulting Services, such as training materials, services toolkits, and delivery and methodology templates (the **"Consulting Materials"**). Partner may use the Consulting Materials solely for the purposes of its internal education about the Products and performing Consulting Services for the Products. Consulting Materials are Diligent's intellectual property and Confidential Information and are subject to the confidentiality and intellectual property provisions of the Agreement.
- 1.5 Review. Diligent may review Partner's Consulting Services from time to time to verify the quality of the Consulting Services and ensure they are being provided in accordance with the consulting training and certification requirements and the Agreement. Such review may include participating in a Partner project, subject to the customer's consent. Diligent may request feedback from customers regarding Consulting Services performed by Partner. If Partner's Consulting Services fail, in any material respect, to meet the standards and requirements of the consulting training and certification, Diligent may require Partner personnel to obtain further training, re-write a certification exam or revoke a certification.
- 1.6 Liability. Partner will remain responsible and liable for Consulting Services performed by it. Partner's indemnity obligations under Section 7.2 of the General Partner Terms apply to all claims arising out of or related to Partner's Consulting Services.

2. Partner Consulting Services

- 2.1 Consulting Services. Once Partner personnel are trained and certified in accordance with Section 2.1 (Training and Certification), Partner may provide Consulting Services to customers of the Products. Partner will only provide Consulting Services for which Partner has the required training and certification.
- 2.2 Assistance. Partner may request Diligent's assistance with Partner's Consulting Services projects. Diligent may charge Partner for this assistance at Diligent's current consulting rates for its Partners (or such other rate agreed by the parties in writing) and will invoice Partner monthly for any chargeable assistance provided in the prior month. The fact that Diligent has provided assistance to Partner in respect of a Consulting Services project does not render Diligent in any way responsible or liable for Partner's Consulting Services. If Partner wishes to subcontract any Consulting Services to Diligent, the parties will enter into a separate statement of work for such subcontracted services.
- 2.3 Non-Solicitation. During the Term, and for a period of six (6) months after termination of the Agreement, neither party will, without the other party's prior written consent, solicit for the purposes of employment or retain as an independent contractor any of the other party's personnel involved in these Program Terms, or in any activities carried out under them, provided that the foregoing will not prohibit either party from employing any individual who applies for a position in response to an employment advertisement or other general solicitation of employment.
- 2.4 Customer Support. Partner will provide its own customer support for the Consulting Services it provides to customers and will ensure customers are made aware that the Product technical support provided by Diligent does not include or cover the Partner's Consulting Services. Any enquiries from customers which relate to the Consulting Services provided by Partner will be referred to Partner by Diligent. Diligent will provide customers of the Products with technical support for the Products through the Diligent support center in accordance with Diligent's standard terms for the Products. Partner will not provide technical support for the Products, unless otherwise agreed by the parties. Product technical support does not include the provision of, or support for, any Partner Consulting Services, or the development or support of any non-standard configurations or applications.

3. Subcontracted Services

Sections 3 through 7 apply when Diligent engages Partner to perform Subcontracted Services.

- 3.1 Subcontracting. Diligent may, from time to time, engage Partner to perform, or assist Diligent in performing, Consulting Services that Diligent has proposed or sold to a Diligent customer (the "**Subcontracted Services**"). Nothing in this Addendum requires Diligent to subcontract Consulting Services, or any minimum amount of Consulting Services, to Partner. Partner may, in its discretion, choose not to accept any proposed subcontracting engagement. Partner acknowledges that the customer receiving the Subcontracted Services is a third-party beneficiary of Sections 3 through 7 of these Program Terms.
- 3.2 Statement of Work. Diligent and Partner will enter into a statement of work for the Subcontracted Services. No work or charges are authorized or will be performed unless and until a statement of work has been signed by both parties. The terms of this Addendum are incorporated into each statement of work entered into between Diligent and Partner for Subcontracted Services.
- 3.3 Customer Cancellation. In the event the customer fails to purchase the proposed Subcontracted Services from Diligent or cancels the Subcontracted Services either prior to or after commencement of the Subcontracted Services, Diligent may terminate the statement of work with Partner without liability or obligation. Diligent will pay Partner for any Subcontracted Services performed by Partner prior to such cancellation and for which the customer has paid Diligent.
- 3.4 Customer Non-Solicitation. Partner acknowledges that the customer receiving the Subcontracted Services is a direct customer of Diligent. Partner agrees that, for a period of six (6) months following completion of a statement of work, Partner will not: (a) promote, sell or provide consulting services for the implementation, configuration, training or use of Diligent Products to the customer, without Diligent's prior written consent; (b) induce or attempt to induce the customer to cease doing business with Diligent; or (c) in any way interfere with Diligent's relationship with the customer. Diligent acknowledges that Partner is in the business of providing independent consulting services and that the restriction in paragraph (a) of this Section will not apply to any Partner consulting services that are unrelated to the Diligent Products.
4. **Provision of Services**
- 4.1 Subcontracted Services. Partner will perform the Subcontracted Services in accordance with the applicable statement of work. Partner will provide, at Partner's expense, such tools, materials and office facilities as are required in order to deliver the Subcontracted Services. Partner will respect and comply with the applicable policies, rules, and procedures of Diligent and the customer of which Partner has been informed (including, but not limited to, privacy, confidentiality and data access and data security policies). Partner will carry out background checks of Partner Personnel as reasonably required by Diligent or the customer. Partner will perform the Subcontracted Services as an independent contractor and will not act, hold itself out as, or be an agent of Diligent.
- 4.2 Partner Personnel. The Subcontracted Services will be carried out only by employees or individual contractors of Partner ("**Partner Personnel**") who have the skills, knowledge and expertise to perform the Subcontracted Services and who meet the consulting training and certification requirements of the Agreement. Diligent reserves the right to review the qualifications of any Partner Personnel assigned to provide Subcontracted Services and may reject any Partner Personnel who do not meet these requirements. Partner will ensure that it has sufficient qualified Partner Personnel available to meet the requirements of the statement of work and to perform the Subcontracted Services in a timely manner. Partner Personnel are not, and will not be construed as, employees of Diligent or its customer and will not be entitled to any benefits offered by Diligent or its customer to their employees. Partner is responsible and liable for all actions and omissions of the Partner Personnel.
- 4.3 Changes. Diligent and Partner may mutually agree to make changes to the nature or scope of the Subcontracted Services, or any deliverables, by signing a change request document or a new or amended statement of work.
- 4.4 Warranties. Partner represents and warrants that: (a) Partner and the Partner Personnel will perform the Subcontracted Services in a professional manner and in accordance with the standards of care and diligence normally practiced by those who perform similar services in similar circumstances; (b) Partner will use commercially reasonable efforts to ensure that the Subcontracted Services and resulting Work Product (as defined below) do not infringe on any third party intellectual property rights and do not contain any known computer viruses, Trojan horses or similar destructive, disruptive or nuisance programs; and (c) Partner will provide such other warranties as may reasonably be requested by the customer and agreed in the applicable statement of work. Without limiting any other rights or remedies available to Diligent, if any of the Subcontracted Services are not performed as warranted, Partner will, at its sole expense and at Diligent's option, either: (a) promptly re-perform or remedy the Subcontracted Services at no charge; or (b) refund the relevant fees paid to Partner for the defective Subcontracted Services and pay any additional costs reasonably incurred by Diligent to correct such defective Subcontracted Services for the customer.
5. **Fees**
- 5.1 Fees. Diligent will pay Partner the fees set out in the applicable statement of work. Unless otherwise stated in the statement of work, Partner will invoice Diligent as follows: (a) for Subcontracted Services provided on a time and materials basis, monthly in arrears; or (b) for Subcontracted Services performed on a fixed price basis, after Diligent's acceptance of the Subcontracted Services and any applicable deliverables.

- 5.2 Payment. Unless otherwise stated in the statement of work, fees will be paid within thirty (30) days after receipt of Partner's invoice. If a customer refuses to pay Diligent for the Subcontracted Services because of the unsatisfactory performance of Partner, then no fee will be paid by Diligent to Partner, unless or until the issue is remedied and the customer pays Diligent. If the customer only pays part of the fees due for the Subcontracted Services because of the unsatisfactory performance of Partner, then Diligent will hold back from the fees due to Partner, the same proportion as the customer holds back from Diligent. If Diligent is required to refund any fees paid by the customer for the Subcontracted Services because of the unsatisfactory performance of Partner, Partner will refund to Diligent its proportion of the fees that were refunded to the customer.
- 5.3 Expenses. Diligent will reimburse Partner for any reasonable and necessary expenses, such as travel and hotel, to the extent such expenses are reimbursed by the customer. Diligent is not responsible for reimbursing Partner for any expenses that exceed the customer's travel and expense policy or that are not reimbursed by the customer.
- 5.4 Records. Partner will keep complete and accurate records of all activities, hours spent and expenses incurred in performing the Subcontracted Services and will provide a statement to Diligent upon request. Partner will, within ten (10) days after Diligent's written request, provide Diligent (or a third party auditor appointed by Diligent) with sufficient access to Partner's relevant books and records for the purpose of verifying the accuracy of the invoices and expenses submitted by Partner to Diligent, and to provide such verification to the customer, where required. Should such records reveal an over-charge, Partner will refund the amount of the over-charge and, if the over-charge is more than five percent (5%) of the fees payable to Partner for the relevant Subcontracted Services, Partner will also reimburse Diligent for all fees and costs incurred in connection with the audit.
6. **Ownership and Intellectual Property Rights**
- 6.1 Ownership of Work Product. Subject to Section 5.3 (Partner Property), all Work Product (as defined below), and all intellectual property rights in and to such Work Product, is and remains owned solely by Diligent. Except for the fees payable under the applicable statement of work, Partner has no right to compensation in respect of the Work Product. For this purpose, "**Work Product**" means everything that is created, developed, generated or conceived by Partner and the Partner Personnel in the course of providing the Subcontracted Services, including, without limitation, all deliverables, reports, documentation, scripts, analytics, code, designs, data, methods, content, compliance maps and frameworks.
- 6.2 Assignment. Partner hereby irrevocably assigns to Diligent all rights, title and interest Partner may now or in future have in and to the Work Product and all intellectual property rights in the Work Product. Partner will execute such documents and take such actions as Diligent may reasonably request to perfect or register Diligent's rights in the Work Product. Partner hereby waives, and agrees to cause all Partner Personnel to waive, any moral or similar rights in respect of the Work Product. Partner will maintain written agreements with all Partner Personnel that provide for equivalent assignment and waiver obligations in favor of Partner.
- 6.3 Partner Property. Partner has, and will retain, all intellectual property rights in and to Partner's own programs, tools, data, material, frameworks, methods and content which was developed by Partner prior to or independent of the Subcontracted Services and without the use or benefit of Diligent's or the customer's Confidential Information ("**Partner Property**"). To the extent any Partner Property is incorporated into or necessary for proper use of the Subcontracted Services or any Work Product, Partner grants to Diligent, with the right to sublicense such rights to the customer, a worldwide, non-exclusive, irrevocable, royalty-free right and license to use such Partner Property for Diligent's or its customer's internal business purposes in conjunction with the Subcontracted Services and Work Product.
- 6.4 Customer Data. Partner acknowledges that Partner may receive or be given access to materials, data, systems, networks or other information of the customer (the "**Customer Data**"). Partner agrees that: (1) Customer Data is owned by the customer; (2) Partner will treat it as Confidential Information under the Agreement; and (3) to the extent it includes personal information, the DPA applies and Partner is a Processor. Partner will take reasonable measures to protect the Customer Data from unauthorized access, use or disclosure and will notify Diligent immediately upon becoming aware of any unauthorized access, use or disclosure of Customer Data.
7. **Termination**
- 7.1 Termination of Statement of Work. Diligent may terminate a statement of work upon ten (10) days written notice to Partner. Partner may terminate a statement of work if Diligent has breached its obligations under this Addendum and has not corrected such breach within thirty (30) days after receiving notice of the breach from Partner. Either party may terminate a statement of work for cause in accordance with the termination provisions of the Agreement.
- 7.2 Effect of Termination. Upon termination of a statement of work, Diligent will pay Partner all fees for Subcontracted Services performed and authorized expenses incurred by Partner up to and including the effective date of termination, subject to the payment provisions of this Addendum. Partner will provide a statement of the status of all work performed up to the date of termination. Each party will return or destroy all Confidential Information of the other party or the customer in its possession or control.