



## Carbyne Professional Services Terms and Conditions

These Carbyne Professional Services Terms and Conditions (“Terms”) govern the Professional Services we agree to provide to you in a Statement of Work. Together, these Terms and the Statement of Work form the “Agreement”.

As used in these Terms, “Carbyne”, “us”, “we” or “our” refers to the Carbyne entity indicated in the Statement of Work, and “Customer”, “you” and “your” refers to the customer with whom we’ve entered into the Statement of Work.

### 1. Definitions

**Affiliate** as to a party, means any other legal entity that directly or indirectly controls, or is controlled by or under common control with such party, with “control” as applied to any legal entity being the direct or indirect ownership of more than 50% of the equity or voting interest in such entity.

**Change Order** means an agreed upon written change or modification to the Professional Services.

**Confidential Information** means any and all information (whether oral, written or in some other tangible or permanent form) disclosed by one party or its Affiliates (the “Disclosing Party”) to the other party or its Affiliates (the “Receiving Party”) under or in connection with this Agreement and that is marked as confidential, by its nature is confidential or relates to the business or affairs of the Disclosing Party, including but not limited to the Professional Services and the terms of this Agreement.

**Data Protection Law** means the applicable data protection laws of a relevant jurisdiction to which the affected party is subject.

**Deliverables** means any reports, documentation or work product created by or with us in the course of the provision of the Professional Services, including any works created for or in cooperation with you.

**Intellectual Property** means all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the associated goodwill, derivative works, and all other rights.

**Personal Data** has the meaning given to it in the relevant Data Protection Law.

**Pre-Existing Materials** means any Intellectual Property, made, created, and/or reduced to practice (including all documents and materials provided by us (or any of our subcontractors) relating to the Professional Services) which existed prior to the SOW Effective Date.

**Professional Services** means those services performed by us for you, as further described in an applicable Statement of Work

**SOW Effective Date** for each SOW means the earlier of the date it is fully executed by the parties or our commencement of the performance of the Professional Services to you.

**Statement of Work or SOW** means a written document agreed by the parties describing the Professional Services provided by us to you.

### 2. Services

- a. We will perform the Professional Services outlined in the Statement of Work, subject to the terms of this Agreement.
- b. A party may submit a request for a Change Order to the other party for review and consideration. The receiving party shall provide in writing an understanding of the requested Change Order, and an impact assessment in terms of any cost and timetable variations. We will implement changes to Professional Services only upon mutual written agreement of the Change Order.

- c. Each party acknowledges that the successful and timely rendering of the Professional Services requires good faith and timely cooperation. Both parties will use commercially reasonable efforts to perform their responsibilities and discharge their obligations in accordance with the Statement of Work or any Change Order. You acknowledge that your failure or delay to meet your obligations may impact our ability to perform the Professional Services within the estimated time and cost. If a project is delayed or rendered impossible due to your failure to fulfil its obligations, we reserve the right to issue invoices for Professional Services already delivered to you on the payment dates listed in the SOW irrespective of whether the project has been completed.

### 3. Personnel

We shall perform background investigations in accordance with our policies on all our employees performing Professional Services on-site at your location. While on-site at such location, our employees shall comply with your applicable security and health and safety policies provided to us in writing a reasonable time in advance of such visit.

### 4. Warranty

- a. We warrant that the Professional Services will be performed in a professional and workmanlike manner. As the sole remedy for breach of this warranty, we will re-perform or correct any materially defective Professional Services until they are no longer materially defective, in our sole determination, free of additional charge, provided that (i) you promptly notify us in writing within thirty (30) days of performance of such defective Professional Services and (ii) such defective Professional Services are not caused by, or the result of, your acts or omissions or anyone acting on your behalf.
- b. You warrant that you have all rights and authorizations necessary to provide any materials (including those owned by any third party) you provide to us in connection with this Agreement, and to grant us the right to use them for the purposes of this Agreement.
- c. EXCEPT AS EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES, CONDITIONS OR REPRESENTATIONS FOR THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 5. Charges

- a. Professional Services are charged on a time and materials or fixed price basis, as specified in the Statement of Work. We will invoice you and you agree to pay all applicable charges as outlined in the Statement of Work. The charges are exclusive of applicable taxes. If we perform Professional Services on-site at your designated location, you shall also be responsible for expenses incurred by us in accordance with our then current travel and expense policy, including a per diem meal allowance. All such taxes and reimbursable expenses will be added, where applicable, to an invoice.
- b. All payments are due net thirty days from the date of the invoice. We may charge interest on outstanding sums from the due date for payment until payment is made accruing on a daily basis and compounded monthly at the rate of one and one half percent (1.5%) per month or such maximum annual interest rate permitted by law, whichever is less. We may also suspend the performance of the Professional Services for so long as any payment remains due and unpaid.



## 6. Intellectual Property

- a. You acknowledge and agree that except for any of your Confidential Information or materials, title to all portions of the Professional Services, Deliverables, Pre-Existing materials, and all Intellectual Property rights therein, including all derivative works and any enhancements, improvements or extensions conceived or developed during the Professional Services, are and remain owned by and vested in us or our licensors.
- b. Subject to our receipt of full and final payment for the Professional Services, we grant to you a non-exclusive, non-transferable, irrevocable (unless we terminate the Agreement for your uncured material breach), non-distributable/resaleable, non-sublicensable license for you and your Affiliates to use any Deliverables and Pre-Existing Materials provided to you by us under the applicable SOW for the your and your Affiliates' internal business purposes.
- c. You acknowledge that we provide similar Professional Services to other third parties and we shall continue to be free to perform similar services for its other customers using our general knowledge, skills, tools, routines, algorithms, programs and experience.

## 7. Confidentiality

- a. Each party shall: (i) keep the other party's Confidential Information confidential; (ii) not use the other party's Confidential Information except for the purposes of this Agreement and as provided for herein without the prior written consent of the other party; and (iii) not divulge the other party's Confidential Information to any third party, excluding to an Affiliate, except for the purposes of this Agreement and shall procure that each such third party is aware of and complies with these obligations as to confidentiality.
- b. The provisions of Section 7(a) shall not apply to any Confidential Information that the Receiving Party can show: (i) is in the public domain other than as a result of a breach of this Agreement or any other obligations of confidentiality; (ii) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto; (iii) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or (iv) was developed independently of and without reference to any confidential information disclosed by the disclosing party.

## 8. Limitation of Liability

- a. SUBJECT TO SECTION 8(C) BELOW, EXCEPT AS PROHIBITED BY APPLICABLE LAW, OUR MAXIMUM LIABILITY RELATING TO THE PROFESSIONAL SERVICES (REGARDLESS OF FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE) SHALL BE LIMITED TO ONE HUNDRED AND TWENTY FIVE PERCENT (125%) OF THE CHARGES PAID OR PAYABLE TO US FOR THE PORTION OF THE PROFESSIONAL SERVICES OR DELIVERABLES GIVING RISE TO LIABILITY.
- b. SUBJECT TO SECTION 8(C) BELOW, EXCEPT AS PROHIBITED BY APPLICABLE LAW, IN EACH CASE WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY LOSS OR DAMAGE WHICH DOES NOT ARISE AS A DIRECT AND NATURAL CONSEQUENCE OF THE DEFAULT IN QUESTION, INCLUDING BUT NOT LIMITED TO ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL

DAMAGES, NOR, IN EACH OF THE FOLLOWING CASE, WHETHER DIRECT OR INDIRECT, LOSS OF PROFIT, LOSS OF REVENUE OR BUSINESS, LOSS OF ANTICIPATED COST SAVINGS, LOSS OF GOODWILL, LOSS OF USE OR DESTRUCTION OF DATA.

- c. Nothing in the Agreement shall limit or exclude either party's liability for death or personal injury resulting from that party's negligence, for fraud or fraudulent misrepresentation, or for any other liability the exclusion or limitation of which is not permitted by applicable law.

## 9. Non-Solicitation

For the duration of an applicable Statement of Work and for a period of one year after the Professional Services are completed, you agree not to employ or solicit the employment of any of our personnel who performed any part of the Professional Services. You agree to pay us an amount equal to the annual compensation for the one-year period immediately preceding the hiring or solicitation of any of our personnel in breach of this paragraph.

## 10. Personal Data

- a. Each party shall comply with all applicable requirements of the Data Protection Law.
- b. To provide the Professional Services to you, we may need to receive limited Personal Data to enable it to communicate with you ("**Account Management Information**"). You acknowledge that, other than Account Management Information, we do not want to receive, access, view or otherwise process any Personal Data in the course of providing the Professional Services, and you agree not to directly or indirectly disclose any such Personal Data to us unless we agree to receive it in accordance with Section 10(c) below. If we are reviewing or evaluating any databases or datasets or other information in the course of providing Professional Services, you shall comply with data minimization principles in deciding whether to provide Personal Data to us, and to the fullest extent possible, you shall provide, whether directly or indirectly, information that is anonymized, redacted, or otherwise altered,, or "dummy data", whereby it is not feasible for us to reasonably re-identify any actual individuals from such data ("**Cleansed Information**").
- c. If it is not possible for you to provide Cleansed Information, you shall notify us and only provide Personal Data once we, at our sole discretion, agree in writing in a specific SOW or Change Order, to receive it. In the event that we become aware that you have provided Personal Data to us without our written agreement, we shall be entitled to delete it and cease providing the Professional Services in question until Cleansed Information is provided.

## 11. General Information

- a. This Agreement shall commence as of the SOW Effective Date. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of this Agreement, and such breach is incapable of cure, or the defaulting party does not cure such breach within 30 days after receipt of written notice of such breach. This Agreement shall remain in full force and effect until the termination or expiration of the Statement of Work.
- b. Nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the parties.
- c. Neither party may assign this Agreement, nor any of its rights, duties or obligations under this Agreement, without the prior written consent of the other party, except that either party may



assign this Agreement to an Affiliate or a successor entity in the event of a merger or acquisition.

- d. We may subcontract some or all of the Professional Services provided that we remain responsible to you for any acts or omissions of such subcontractor.
- e. Neither party shall be liable to the other for any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay arises due to an event of force majeure (provided always that the party so affected promptly notifies the other, in writing, of the cause and anticipated duration of the failure or delay).
- f. The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- g. Any notice or written communication given under or in relation to this Agreement shall be given: (i) in writing and shall be delivered by hand (which shall be deemed to have been given at the time of delivery) or sent by special delivery post (which shall be deemed to have been given on the second day after posting) to the other party at its address set out in the Statement of Work or to such other address as it has previously notified to the sending party in writing or by email; or (ii) by email (which shall be deemed to have been given the next business day after being sent, provided, however, that receipt of such email is requested and received and provided that an “automated email response,” including any form of “out-of-office” or similar response, shall not be deemed receipt). Any email notice or written communication to us shall be addressed to [legal@carbyne.com](mailto:legal@carbyne.com) (or to such other address previously notified by us).
- h. This Agreement shall be governed by and construed and interpreted in accordance with laws of the State of New York without giving effect to principles of conflict or choice of law thereof, and the parties hereby accept the exclusive jurisdiction of the courts located in New York, New York.
- i. No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorized representatives of the parties.
- j. This Agreement sets forth the complete agreement between the parties and supersedes all previous discussions and communications relating to the subject matter of this Agreement. Both parties acknowledge and agree that the terms and conditions of this Agreement supersede any additional, different, inconsistent or pre-printed terms appearing on the face or reverse side of, or otherwise accompanying, any invoice, sales order, acknowledgement, purchase order or confirmation issued by you or us.