



# Professional Services Agreement (PSA)

THIS AGREEMENT GOVERNS CUSTOMER'S PURCHASE AND RECEIPT OF SURGE PROFESSIONAL SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING A STATEMENT OF WORK ("SOW") OR ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

Surge's direct competitors are prohibited from receiving the Professional Services, except with Surge's prior written consent. In addition, the Professional Services may not be received for purposes of evaluating or monitoring their quality or performance, or for any other benchmarking or competitive purposes.

This Agreement was last updated on July 1, 2023. It is effective between Customer and Surge as of the earlier of: (a) the date Customer accepts this Agreement or (b) the date Customer first accesses or otherwise makes use of the Professional Services ("Effective Date").

## 1. Definitions

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means this Professional Services Agreement and any exhibits, schedules and addenda.

**"Change Order"** means any change to an SOW or Order Form, as applicable, as described in the "Change Orders" section below. Change Orders will be deemed incorporated by reference in the applicable SOW or Order Form, as applicable in the absence of an SOW.

**"Customer"** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into SOWs or Order Forms.

**"Customer Project Manager"** is the individual named by Customer to represent them in all regards for any Professional Services provided under this Agreement. Surge's performance of Professional Services can not commence until this individual is named. If this individual is no longer able to serve as Customer Project Manager for any reason, all work performed by Surge will halt until a new individual is named and meets with Surge to review the current state of work.



# Professional Services Agreement (PSA)

**"Deliverable"** means a deliverable under an SOW or Order Form.

**"Online Services"** means any online, web-based services and associated offline components made available by Surge or any Surge Affiliates to Customer under a separate agreement.

**"Order Form"** means an ordering document specifying the Professional Services to be provided hereunder that is entered into between Customer and Surge or any Surge Affiliates, including any addenda and supplements thereto. Order Forms governed, in whole or in part, by this Agreement must have an SOW attached thereto or expressly state that the Order Form or certain Professional Services provided thereunder are governed by this Agreement. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Notwithstanding any language to the contrary in the Order Form, all Professional Services purchased under an Order Form are purchased separately from the Online Services and all references to "Order Form" herein shall not apply in any way to any Online Services, including without limitation with respect to payment obligations and termination rights

**"Professional Services"** means work performed by Surge, its Affiliates, or its or their respective permitted subcontractors under an SOW or Order Form, including the provision of any Deliverables specified in such SOW or Order Form.

**"Surge"** means the company described in the "Surge Contracting Entity" section below.

**"SOW"** means a Statement of Work describing Professional Services to be provided hereunder, that is entered into between Customer and Surge or any Surge Affiliates or which is incorporated into an Order Form that is entered into between the same parties. Any Surge Affiliate that executes an SOW with Customer will be deemed to be "Surge" as such term is used in this Agreement. SOWs or Order Forms are incorporated herein by reference.

## 2. Professional Services

### 2.1. Scope of Professional Services

Surge will provide to Customer the Professional Services specified in each SOW or Order Form (as applicable), subject to Customer's payment of all applicable fees as set forth in the "Fees" section of this Agreement.

### 2.2. Relationship to Online Services

This Agreement is limited to Professional Services and does not convey any right to use Online Services. Any use of Online Services by Customer will be governed by a separate agreement. Customer agrees that its purchase of Professional Services is not contingent on the delivery of any future Online Service functionality or features, other than Deliverables, subject to the terms of the applicable SOW or Order Form, or on any oral or written public comments by Surge regarding future Online Service functionality or features.

## 3. Customer Cooperation

### 3.1. Cooperation

Customer will cooperate reasonably and in good faith with Surge in its performance of Professional Services by, without limitation:

- (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Surge to perform its obligations under each SOW or Order Form;
- (b) timely delivery of any Customer deliverables and other obligations required to perform the Professional Services in Surge's sole judgment;
- (c) timely responding to inquiries related to the Professional Services;
- (d) assigning a Customer Project Manager for each SOW or Order Form to serve as a primary point of contact for Surge;
- (e) actively participating in any and all project meetings;
- (f) providing, in a timely manner and at no charge to Surge, access to appropriate and knowledgeable employees and agents of Customer, and continuous administrative access to Customer's Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by Surge; and
- (g) complete, accurate and timely information, data, access to technical systems and feedback as required to perform the Professional Services, in Surge's sole judgment.

### 3.2. Delays

Any delays in the performance of Professional Services or delivery of Deliverables caused by Customer may result in a required Change Order at Surge's sole discretion..

## 4. Delivery, Acceptance and Change Orders

### 4.1. Delivery of Services

Surge will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs or Order Forms.

### 4.2. Acceptance

Upon completion of each Deliverable under an SOW or Order Form, Surge will demonstrate its functionality to Customer. Customer is responsible for reviewing and testing all Deliverables in accordance with such SOW or Order Form pursuant to any acceptance criteria or test plans mutually agreed upon in writing by the parties for such Deliverable. Customer may provide Surge with written notification of acceptance for each Deliverable; however, any Deliverable will be deemed as accepted if Customer within five calendar days unless a written notice of deficiencies is received by Surge. If Customer, in its reasonable and good faith judgment, determines that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SOW or as mutually agreed upon in writing by the parties for such Deliverable, Customer must so notify Surge in writing within 5 calendar days after Surge's submission of the Deliverable, specifying the deficiencies in detail. Surge will use commercially reasonable efforts to

## Professional Services Agreement (PSA)

correct such deficiencies and resubmit the Deliverable to Customer as soon as practicable. Customer will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Surge in writing within 5 calendar days after resubmission of the Deliverable. If a Deliverable fails to meet the functional requirements specified in the applicable SOW or Order Form after its second resubmission to Customer, Customer may either, as its sole and exclusive remedy: (i) again reject the Deliverable and return it to Surge for further correction and resubmission in accordance with the process described above or (ii) terminate the relevant SOW or Order Form immediately upon written notice and payment of all outstanding amounts due as of the date of notice. If the parties determine that a Deliverable's functional requirements specified in a SOW or Order Form require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.

### 4.3. No Effect on Warranty Remedies

Acceptance of Professional Services, including a Deliverable, will not affect Customer's rights or remedies under the "Warranty" section below.

### 4.4. Change Orders

Changes to a SOW or Order Form will require a written Change Order signed by the Customer prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.

## 5. Fees, Invoices and Taxes

### 5.1. Fees

Professional Services are provided on either a time-and-materials, fixed fee or retainer basis, as provided in an SOW or Order Form. Customer will pay Surge for the Professional Services at the rates specified in the applicable SOW or Order Form. If no rate is specified in the SOW or Order Form, Surge's standard time-and-material rates in effect at the time the SOW or Order Form is executed shall prevail. Any amount set forth in a time-and-materials SOW is solely a good-faith estimate for Customer's budgeting and Surge's resource scheduling purposes, and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Surge will continue to provide Professional Services under the same rates and terms for no more than four weeks, providing time for a Change Order to be approved. Surge will provide written updates to Customer on the status of the Professional Services and the fees accrued under SOWs or Order Forms monthly.

### 5.2. Incidental Expenses

Customer will reimburse Surge at rates provided in the applicable SOW or Order Form for any incidental expenses or otherwise authorized via email by Customer Project Manager..

## 5.3. Invoicing and Payment

Charges for time-and-materials engagements will be invoiced monthly in arrears unless otherwise expressly stated in the applicable SOW or Order Form. Charges for fixed fee or retainer engagements will be invoiced on the schedule and in the manner as provided in the SOW or Order Form. Invoiced amounts will be due and payable in the manner provided in the SOW or Order Form. Customer is responsible for providing Surge with its complete and accurate billing and contact information and notifying Surge of any changes to such information.

## 5.4. Overdue Charges

Subject to the "Payment Disputes" section, if any invoiced amount is not received by Surge by the due date, then without limiting Surge's rights or remedies, (a) those charges may accrue late interest at the maximum rate permitted by law and/or (b) Surge may condition future purchases of Professional Services on payment terms shorter than those specified in the "Invoicing and Payment" section.

## 5.5. Suspension of Professional Services

If any amount owing by Customer under this or any other agreement for Surge's Professional Services is 10 days or more overdue, Surge may, without limiting its other rights and remedies, suspend its performance of Professional Services until such amounts are paid in full.

## 5.6. Payment Disputes

Surge will not exercise its rights under the "Overdue Charges" section above if Customer is disputing the applicable charges reasonably and in good faith and cooperating diligently to resolve the dispute.

## 5.7. Taxes

Surge's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Surge has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Surge will invoice Customer and Customer will pay that amount, unless Customer provides Surge with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Surge is solely responsible for taxes assessable against it based on its income, property and employees.

# 6. Proprietary Rights and Licenses

## 6.1. Customer Intellectual Property

Customer does not grant to Surge any rights in or to Customer's intellectual property except such licenses as may be required for Surge to perform its obligations hereunder.

## 6.2. Confidential Information

As between the parties, each party retains all ownership rights in and to its Confidential Information.

## 6.3. License for Contract Property

Upon Customer's payment of fees due under an applicable SOW or Order Form, Surge grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for its internal business purposes associated with its use of Surge's online and offline services anything developed by Surge for Customer, including Deliverables, under this Agreement ("Contract Property"). Surge and Customer each retains all right, title and interest in its respective intellectual property and Surge retains all ownership rights in the Contract Property.

# 7. Confidentiality

## 7.1. Definition of Confidential Information

"Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement and all SOWs or Order Forms (including pricing), as well as business and marketing plans, strategies, data, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

## 7.2. Protection of Confidential Information

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any SOW or Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

## 7.3. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 8. Representations, Warranties, Exclusive Remedies and Disclaimers

### 8.1. Representations

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

### 8.2. Warranty

Surge warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards as set forth in writing by Salesforce for its Consulting Partners on the Effective Date of this Agreement.

### 8.3. Disclaimer

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9. Indemnification

### 9.1. Indemnification by Surge

Surge will defend Customer against any claim, demand, suit or proceeding ("Claim") made or brought against Customer by a third party arising out of death, personal injury or damage to tangible property to the extent caused by Surge personnel in their performance of the Professional Services, and will indemnify Customer for any damages, attorneys fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved in writing by Surge of, any such Claim, all of the foregoing to the extent caused by Surge personnel, provided that Customer: (a) promptly gives Surge written notice of the Claim; (b) gives Surge sole control of the defense and settlement of the Claim (except that Surge may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) gives Surge all reasonable assistance, at Surge's cost. The above defense and indemnification



# Professional Services Agreement (PSA)

obligations do not apply to the extent a Claim arises from Customer's breach of this Agreement or applicable SOWs or Order Forms.

## 9.2. Mutual Indemnity

Each party (the "Provider") will defend the other party (the "Recipient") against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder ("Material") infringes or misappropriates such third party's intellectual property rights, and will indemnify the Recipient from any damages, attorneys fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a settlement approved in writing by Provider of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider's cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient's use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it is no longer claimed to infringe or misappropriate, (B) obtain a license for the Recipient's continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SOW or Order Form upon 10 days' written notice given within 30 days after the Provider's exercise of such option, subject to the "Payment Upon Termination" section below.

## 9.3. Exclusive Remedy

This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

# 10. Limitation of Liability

## 10.1. Limitation of Liability

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE STATEMENT OF WORK OR ORDER FORM OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION.

## 10.2. Exclusion of Consequential and Related Damages

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL



COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 11. Term and Termination

### 11.1. Term

This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section.

### 11.2. Termination for Convenience

Either party may terminate this Agreement at any time for convenience upon 10 days' written notice to the other. To the extent there are SOWs or Order Forms in effect when a party terminates this Agreement, such SOWs or Order Forms shall continue to be governed by this Agreement as if it had not been terminated. Customer may terminate an individual SOW or Order Form for convenience to the extent set forth in such SOW or Order Form.

### 11.3. Termination for Cause

A party may terminate this Agreement and/or any SOW or Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

### 11.4. Payment Upon Termination

Upon any termination of an SOW or Order Form, Customer will pay, in accordance with the "Invoicing and Payment" section of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that Surge terminates an SOW or Order Form for cause, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in an SOW or Order Form.

### 11.5. Surviving Provisions

The sections titled "License for Contract Property," "Confidentiality," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Fees, Invoicing and Taxes," "Indemnification," "Limitation of Liability," "Term and Termination" and "General" will survive any termination or expiration of this Agreement.

## 12. Insurance

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker's compensation insurance as required by applicable law.

## 13. General

### 13.1. Compliance with Laws

Customer will comply with all laws and governmental rules and regulations that apply to Customer in its performance of its obligations and exercise of its rights, under this Agreement.

### 13.2. Export Compliance

The Professional Services, including Deliverables Surge makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will access or use any Deliverables or Confidential Information provided to it hereunder in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or governmental regulation.

### 13.3. Anti-Corruption

Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

### 13.4. Entire Agreement and Order of Precedence

This Agreement is the entire agreement between Customer and Surge regarding the provision and receipt of Professional Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or in any other Customer order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable SOW or Order Form, (2) any exhibit, schedule or addendum to this Agreement and (3) the body of this Agreement.

### 13.5. Relationship of the Parties

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

### 13.6. Subcontractors

Surge may, in its reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. Surge will be responsible for the performance of Professional Services by its personnel (including



## Professional Services Agreement (PSA)

employees and contractors) and their compliance with Surge's obligations under this Agreement, except as otherwise specified herein.

### 13.7. Waiver

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

### 13.8. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

### 13.9. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), provided however, either party may assign this Agreement in its entirety (including all SOWs or Order Forms, as applicable), without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### 13.10. Surge Contracting Entity

You are contracting with Surge Solutions, LLC, a Michigan Limited Liability company. Notices submitted to Surge should be addressed to: Surge Solutions, LLC, 113 Cherry St PMB 28856, Seattle, Washington 98104-2205, United States, attn: Surge General Counsel.

### 13.11. Manner of Giving Notice

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of breach, demand, termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services point of contact designated by You.

### 13.12. Agreement to Governing Law and Jurisdiction

Each party agrees to the application of the laws of the State of Michigan to any dispute arising out of this Agreement without regard to choice or conflicts of law rules. Each party also agrees that the State and Federal Courts located in Detroit, Michigan shall have exclusive jurisdiction over any dispute arising out of this Agreement.

### 13.13. Attorneys' Fees

If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for this purpose, in addition to any other relief to which such party may be entitled.