



SECOND ORDER EFFECTS, INC.
TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (“**Terms**”) are between Second Order Effects, Inc. with offices at 711 Hawaii Street, El Segundo, CA 90245 (“**SOE**”), and the entity indicated on any quotation that references or attaches these Terms (“**Client**”). Unless otherwise agreed in writing by SOE, the quotation and these Terms together with any attachments thereto provided by SOE, set forth the terms on which SOE is offering to provide the services and deliver the deliverables described on the quotation and are an integral part of any contract between SOE and Client. By signing the quotation or issuing a purchase order or other instrument for the Services or Deliverables set forth in the quotation, Client agrees to these Terms to the exclusion of all other terms not expressly agreed to in writing by an authorized representative of SOE. The most recent quotation will supersede all prior versions.

Client’s submission of a purchase order or other instrument for or regarding the procurement of Services from SOE, whether or not in response to an SOE quotation, is deemed an acceptance of and agreement to these Terms to the exclusion of any other terms or conditions contained in and/or referenced by such purchase order or other instrument, which are hereby deemed to be material alterations, and notice of objection to which is hereby given, notwithstanding anything to the contrary contained within such purchase order or other instrument or elsewhere. Any acceptance by SOE of any offer of Client as provided in any Client purchase order or other instrument is expressly conditioned upon Client’s assent to and acceptance of these Terms to the exclusion of any terms or conditions in Client’s purchase order or other instrument that are in any way inconsistent with the terms of this Agreement.

- 1. SERVICES AND DELIVERABLES.** SOE will use commercially reasonable efforts to provide the Services described in the applicable quotation (“**Services**”). The Services may include Deliverables that SOE will submit to Client. “**Deliverables**” means any items or work product SOE submits to Client in performance of the Services. SOE will from time to time, keep Client advised as to SOE’s progress in performing the Services described in the applicable quotation.
- 2. FEES.** Client will pay to SOE the fees set forth in the applicable quotation. For any non-fixed fees, including price estimates or variable fees based on time and materials, SOE may include a maximum amount for the cost of the Services which SOE will not exceed without the prior written approval of Client. Upon reasonable request by Client, SOE will provide Client with documentation to verify the time and fees charged to Client.
- 3. PAYMENT TERMS.** SOE will present to Client invoices for Services rendered as set forth in the quotation. Client must pay all undisputed invoices within Net 15 days from the date of invoice receipt.
- 4. TERM AND TERMINATION.**
 - 4.1 Termination for Convenience.** Notwithstanding anything to the contrary herein, either party will have the right to terminate any quotation with or without cause, effective upon sixty (60) days written notice to the other party.
 - 4.2 Termination for Breach.** Either party (the “**Terminating Party**”) may terminate any quotation in the event of a material breach of these Terms or any quotation by the other party (the “**Breaching Party**”) if the Breaching Party does not cure such breach to the satisfaction of the Terminating Party within thirty (30) days of the Breaching Party’s receipt of written notice of the breach. Termination will occur upon the Terminating Party’s further written notice if the breach is not cured.
 - 4.3 Survival.** Upon such termination, all rights and duties of Client and SOE toward each other will cease except that Client will pay, within thirty (30) days after invoice receipt, all amounts owing to SOE for Services performed by SOE prior to the termination date and related expenses, including non-cancellable costs, if any, submitted in accordance with the applicable quotation. The provisions contained in Section 4 and 5 through 14 survive the expiration or termination of these Terms.
- 5. CONFIDENTIALITY.** “Confidential Information” means any and all confidential information, data or know-how, whether technical or non-technical, processes, or other proprietary information, disclosed by one party (“**Discloser**”) to the other party (“**Recipient**”) in connection with the Services, that is marked “confidential” or which by its nature Recipient should reasonably know is confidential. Confidential Information does not include information that: (a) was known to Recipient prior to disclosure without



any obligation of keeping it confidential; (b) is or becomes generally available to the public without Recipient violating these Terms; (c) is received independently from a third party without such third party violating any confidentiality obligation to Discloser; or (d) is independently developed by Recipient without reference to or reliance upon Discloser's Confidential Information. Confidential Information may be disclosed by the Recipient only to the extent required to be disclosed by law, government agency, securities exchange, or court order, provided that the Recipient provides Discloser, with prompt prior written notice of any such disclosure (unless such notice is prohibited by such law) so that Discloser may seek a protective order at its own expense. Recipient will use reasonable efforts to cooperate in connection with Discloser's efforts to obtain any such order or other remedy. Recipient will disclose only that portion of the Confidential Information that it is legally required to disclose, based on advice of counsel. The parties agree that, during the performance of the Services set forth in the applicable quotation and for three (3) years thereafter, the Recipient must: (i) use the Confidential Information of Discloser only for the purpose contemplated herein; and (ii) hold in confidence and not disclose to any third party any Confidential Information of Discloser. Confidential Information remains the sole and exclusive property of Discloser. Upon the written request by Discloser, Recipient must: (y) return or destroy the Confidential Information and all copies (except copies required for backup, disaster recovery, or business continuity, and in such case the obligations hereunder survive until such copies are destroyed, subject to Section 2) to a disclosing party within fifteen (15) business days of receipt of request; and (z) confirm in writing that a receiving party has complied with these obligations. SOE's employees and contractors ("**Representatives**") who have received or have been exposed to Confidential Information may further develop their general knowledge, skills, and experience (including general ideas, concepts, know-how, and techniques), which may be based in whole or in part on Residual Information, where "**Residual Information**" means general technical, non-public knowledge, experience, know-how or information in a non-tangible form that is retained in the unaided memories of such Representatives, to whom Confidential Information is disclosed in furtherance of Services performed pursuant to a quotation, where such Representatives are not consciously aware that the information forms part of the Confidential Information. A Representative's memory will be considered to be unaided if they have not intentionally memorized Confidential Information for the purpose of retaining and subsequently using or disclosing it. The parties each acknowledge and agree that this Residual Information exception is intended only to alleviate the possibility of inadvertent breach by a party of the obligations of this Section 5.

6. OWNERSHIP.

- 6.1 Deliverables.** SOE has intellectual property and proprietary rights, including copyrights, in its software, including code library, algorithms, designs, discoveries, original works of authorship, improvements, inventions, trade secrets, and concepts, that may be developed or used in furtherance of the Services and are not created, conceived, or discovered with use of, or reference to, any Confidential Information of Client (collectively, the "**SOE Modules**"). In the course of performing Services, SOE will utilize the SOE Modules to create Deliverables, as set forth in the applicable quotation. Subject to Client's transmittal of the final fees set forth in the applicable quotation, Client owns all right, title and interest in and to the Deliverables, which are derivative works of the SOE Modules. For purposes of clarity, only the intellectual property and proprietary rights to the Deliverables, and not any copyrights or other intellectual property or proprietary rights in the SOE Modules, transfer to Client.
- 6.2 Inventions.** While the parties do not contemplate that any inventions, techniques, or other technology, whether or not patentable, or any associated intellectual property, will be generated, developed or discovered by or on behalf of SOE in the course of performing the Services hereunder ("**Inventions**"), in the unlikely event that Inventions arise, the parties agree that all Inventions except for SOE Improvements (defined below) are owned by Client, and SOE hereby assigns all of its right, title and interest in and to such Inventions to Client. SOE agrees to execute such documents and perform such other acts as Client may reasonably request to obtain, perfect and enforce such rights to the Inventions and the assignment thereof. "**SOE Improvements**" are any Inventions that are directed to the SOE Modules that do not require the use of any Client Confidential Information. To the extent that SOE owns or controls (presently or in the future) any patent rights, copyright rights, mask work rights, trade secret rights, or any other intellectual property or proprietary rights that may block or interfere with, or may otherwise be required for, the exercise by Client of the rights assigned to Client under these Terms, including SOE Improvements (collectively, "**Related Rights**"), SOE hereby grants or will cause to be granted to Client a non-exclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license (with the right to sublicense) to make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based upon, distribute, sublicense, display, perform and transmit any products, software, hardware, methods or materials of any kind that are covered by such Related Rights, to the



extent necessary to enable Client to exercise all of the rights assigned to Client under these Terms.

- 7. INDEPENDENT CONTRACTOR.** It is the express intention of the parties that SOE perform the Services as an independent contractor to Client. Nothing in these Terms may in any way be construed to constitute SOE as an agent, employee or representative of Client. Without limiting the generality of the foregoing, SOE is not authorized to bind Client to any liability or obligation or to represent that SOE has any such authority.
- 8. INSURANCE.** SOE, at its own expense, will secure and maintain in full force and effect during the performance of any Services set forth in the applicable quotation the following insurance coverage: (A) a commercial general liability insurance policy with coverage of not less than \$1,000,000 per occurrence, with an aggregate limit of not less than \$2,000,000; (B) workers' compensation insurance in the benefit amounts required by applicable law, with a limit of liability not less than \$1,000,000 per accident; (C) professional liability, errors and omissions insurance with limits not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$2,000,000; and (D) if software is provided, privacy/network security (cyber) liability coverage with limits of not less than \$1,000,000 per occurrence/annual aggregate, providing protection against liability for introduction, implantation, or spread of malicious software code.

9. LIMITED WARRANTIES; DISCLAIMERS.

9.1 Limited Warranties. SOE warrants that: (i) it has the authority to enter into these Terms, (ii) Services are and will be performed in a thorough and professional manner, consistent with high professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform Services, in substantial compliance with applicable laws and regulations; (iii) if software is provided, it will use commercial industry standard methods designed to ensure the Deliverables provided to Client do not intentionally include any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data.

9.2 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1 (LIMITED WARRANTY), CONFIDENTIAL INFORMATION, SERVICES AND DELIVERABLES ARE PROVIDED "AS IS". DELIVERABLES ARE PROTOTYPES FOR INTERNAL RESEARCH AND DEVELOPMENT PURPOSES ONLY AND ARE NOT INTENDED FOR USE IN ANY PRODUCTION ENVIRONMENT. SOE MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

10. INDEMNIFICATION. Client must indemnify, defend and hold SOE harmless from any claim or action, including without limitation claims of infringement, arising out of: (a) Client's manufacture, sale, or use of any of the Deliverables or any product or service based in whole or in part on Client's reliance on the Services or any portion thereof provided to Client by SOE, or any derivative thereof; (b) SOE's use or reliance on Client's specifications or instructions for the performance of the Services; (c) alterations to any of the Deliverables made by Client or a third party; (d) Client's manufacture, sale, or use of any products or components thereof, using Deliverables or on which tests or studies were conducted using any of the Deliverables; and (e) any loss, damage or injury (including death) allegedly caused by Client's use of the Deliverables.

11. LIMITATIONS OF LIABILITY.

11.1 Consequential Damages Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

11.2 Liability Cap. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THE SERVICES OR ANY DELIVERABLES IN CONNECTION WITH PERFORMANCE UNDER A QUOTATION, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT



LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID BY CUSTOMER OR ITS AFFILIATES HEREUNDER IN THE 6 MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

- 12. EXPORT RESTRICTIONS.** Client acknowledges that the Deliverables may be subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Deliverables from the United States and their export or import from other countries. Client must comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export or import of any Deliverables. Client will not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export any Deliverables, or (ii) export, distribute or supply any Deliverables to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Client must, if requested by SOE, provide information on the end user and end use of any Deliverable exported by the Client or to be exported by the Client. Client will cooperate fully with SOE in any official or unofficial audit or inspection related to applicable export or import control law or regulation, and must indemnify and hold SOE harmless from, or in connection with, any violation of this Section 12 by Client or its employees, consultants, or agents.
- 13. NONSOLICITATION.** Each party agrees it will not solicit, directly or indirectly, the employment of an employee or contractor of the other party while Services are being rendered pursuant to an applicable quotation and for the first 6 months after the completion of any such Services, unless as otherwise agreed to by the parties in writing. Notwithstanding the foregoing, neither party is prevented from hiring any of the other party’s employees or contractors if such person is hired in response to a public advertisement or general solicitation for employment disseminated by the other party.
- 14. GOVERNING LAW.** The rights and obligations of the parties hereunder are governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles. All disputes arising out of these Terms will be subject to the exclusive jurisdiction and venue of the state courts located in Los Angeles County, California or the federal courts located in the Southern District of California, and each party hereby consents to the personal jurisdiction thereof.
- 15. MISCELLANEOUS.** This Agreement contains the final agreement of the parties relative to the subject matter hereof. This Agreement may not be modified, except by a written instrument signed by both parties. If any provision of these Terms is declared invalid, illegal or unenforceable, such provision is severed and all remaining provisions continue in full force and effect. The parties’ rights and obligations under these Terms will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns. Neither party may assign or delegate its obligations under these Terms either in whole or in part without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned or delayed. If a party fails to enforce a provision of these Terms, it is not precluded from enforcing the same provision at another time. Any notice or communication required or permitted hereunder must be in writing, and sent to the address specified in the quotation, or at such other address a party may specify in writing, and is deemed received when: (a) personally delivered, on the day of delivery; or (b) sent by a commercial delivery service such as Federal Express or United Parcel Service with shipment tracking, on the day delivery is confirmed by the tracking service; or (c) sent by e-mail, on the day the email is confirmed received by the receiving party.

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