

# Professional Services Terms & Conditions

These Professional Services Terms & Conditions ("PS Terms") are entered into by and between of Branch Metrics, Inc., a Delaware corporation ("Branch," "Branch Metrics," "we," or "us") and the entity or person purchasing certain Professional Services made available by Branch ("Customer" or "you" or "your"). By entering into a statement of work for Professional Services ("SOW") with Branch referencing these PS Terms and/or an Order Form referencing an SOW that incorporates these PS Terms (the "Agreement"), you agree to be legally bound by and warrant that you are authorized to agree to these PS Terms on behalf of you and/or your company. IF YOU DO NOT AGREE TO THESE PS TERMS, DO NOT USE BRANCH'S PROFESSIONAL SERVICES. Branch may update these PS Terms from time to time. The updated version of these Term will be available at <https://legal.branch.io/#professional-services> (or its successor URL) and effective and binding as of the date indicated at the top of these PS Terms.

## I. Definitions

1. **"Affiliate"** means any entity which 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.
2. **"Branch Materials"** means any documentation, technical configuration, workflow templates, starter code, software components, content, materials, methodologies, or other intellectual property that is developed, conceived, or acquired by Branch or its Affiliates (a) prior to the Effective Date or (b) outside of the scope of the Agreement.

3. **"Branch PS"** means Branch's Professional Services organization including Branch's and its Affiliates' employees and subcontractors, and employees of subcontractors that assist in providing the Professional Services.
  4. **"Change Order"** means any change to an SOW or Order Form, as applicable. Change Orders will be deemed incorporated by reference in the applicable SOW or Order Form, as applicable in the absence of an SOW.
  5. **"Customer Materials"** means Customer-owned or licensed materials, including but not limited to content libraries, logos, trademarks, information, facilities, software, hosted platforms, APIs, personnel, systems and infrastructure, that are provided to Branch in connection with the Professional Services.
  6. **"Deliverables"** means all works of authorship, inventions, know-how, ideas, materials, information, designs, and files made or conceived or reduced to practice, in whole or in part by Branch or on Branch's behalf in connection with the Professional Services, and all intellectual property rights relating thereto.
  7. **"Effective Date"** means the date set forth in the SOW on which the SOW takes effect.
  8. **"Order Form"** means an ordering document that is entered into between Customer and Branch, including any addenda and supplements thereto that identifies the applicable Professional Services being purchased, the mutually agreed upon rate(s) for such Professional Services and any other applicable terms related to the Professional Services.
  9. **"Professional Services"** means the professional services provided to Customer, as described in the applicable SOW, including, without limitation, the development and delivery of any Deliverables related thereto, in accordance with the applicable Professional Services (as set forth in the applicable SOW). Professional Services excludes Services (as defined below).
  10. **"Services"** means Branch's software-as-a-service offerings.
  11. **"Services Agreement"** means the separate agreement governing Customer's use of Branch's software-as-a-service offerings.
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## II. Scope of Services

The SOW sets forth the Professional Services to be provided by Branch to Customer. Any item or activity not expressly included within the scope of a SOW is deemed outside the scope and may require a Change Order or separate SOW, which may be subject to additional fees. Professional Services referenced in a SOW are in support of Branch's Services, as defined by the applicable Order Form and/or Services Agreement between Branch and Customer, except as may otherwise be specified in the SOW. Branch's provision of, or any changes to, Branch's Services are outside the scope of the SOW.

## III. Term and Termination

1. The term and any applicable timelines for the delivery of Professional Services is set forth in the SOW or Order Form, as applicable. In the event the timeline needs to be extended, the Parties shall enter into a mutually agreeable Change Order that outlines extended term and any additional fees, as applicable.
2. Either party may terminate this SOW if the other party is in material breach of Agreement and fails to cure that breach within thirty (30) days after receipt of written notice. Any termination of the applicable Services Agreement will also terminate this SOW.

## IV. Restrictions on Use

Customer must comply with all applicable laws when using the Professional Services. Except as expressly permitted under these PS Terms, Customer will not, and will not permit anyone else to: (a) film or record Branch's delivery of Professional Services or Branch Materials, (b) use the Professional Services for the purposes of evaluating or monitoring their quality or performance, or for any other benchmarking or competitive purposes; (c) remove or alter proprietary notices from the Professional Services or Branch Materials; or (d) use, sell, copy, modify, create derivative works based on, publicly perform, publicly display, or distribute the Professional Services or Branch Materials except as necessary to facilitate Customer's use of Branch's Professional Services and/or the Services.

## V. Intellectual Property

- 1. Customer Materials.** Customer retains all right, title, and interest in and to all Confidential Information of Customer and Customer Materials. In its performance of Professional Services, Branch may require access to certain Customer Materials. Customer grants Branch a worldwide, non-exclusive right to use, copy, distribute, create derivative works based on, display, and modify Customer Materials as reasonably necessary for Branch PS to provide Professional Services to Customer. Customer represents and warrants that it has all rights and consents necessary to provide the foregoing license to Branch and that it will use best efforts to timely provide Customer Materials to Branch upon Branch's request.
- 2. Deliverables and Branch Materials.** Branch owns and reserves all right, title, and interest in and to all Confidential Information of Branch, the Professional Services, Branch Materials, and Deliverables, and all intellectual property used by or on behalf of Branch in providing the Professional Services, including without limitation, all processes, know-how, code, data, reports and related materials (and modifications or derivatives thereof). If Branch uses the Deliverables for any purpose outside of the scope of the Agreement, such Deliverables will not contain any Confidential Information of Customer or Customer Materials. Subject to Customer's payment of fees for the Professional Services pursuant to the terms of the applicable SOW and / or Order Form, Branch grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, right and license to use (i) the Branch Materials solely as necessary to use the Deliverables, and (ii) the Deliverables solely as necessary for Customer's internal business purposes to use the Services during the term of the applicable Services Agreement. Nothing contained in these PS Terms limits Branch's right to develop, use, market, or sell services or products that are similar to the Deliverables and/or Professional Services provided to Customer pursuant to a SOW, or to use such Deliverables and/or Professional Services (excluding Customer Materials and Confidential Information of Customer) to perform similar services for any other purposes, including without limitation in connection with other projects and customers.

## VI. Completion

Unless otherwise expressly stated in the applicable SOW, all Professional Services will be deemed completed upon delivery of all of the Deliverables set forth in an applicable SOW ("Notice of Completion"). Unless otherwise expressly stated in the applicable SOW, if, in your reasonable discretion, the Deliverables fail to materially conform to the agreed upon specifications set forth in the SOW, you must inform Branch of such non-conformance in writing within five (5) business days of the Notice of Completion and Branch will make reasonable efforts to correct and redeliver the Deliverables promptly, at which point the Professional Services will be deemed completed.

## VII. Fees & Taxes

- Fees.** Customer will pay Branch fees for the Professional Services at the rates specified in the applicable SOW or Order Form within thirty (30) days of receipt of invoice or as otherwise agreed to by the parties in the applicable SOW or Order Form. Customer is responsible for all undisputed fees, even if such fees are due and payable after termination of the Professional Services, or any portion thereof. Fees are non-cancellable and failure to use the Professional Services does not constitute a basis for refusing to pay any fees. Except as expressly provided in an applicable SOW or Order Form, you will not receive any refund or prorated refund for amounts previously paid or amounts owed for the term of the SOW or Order Form.
- Overdue Charges.** If any invoiced amount is not received by Branch by the due date set forth in the applicable invoice, then without limiting Branch's rights or remedies, those charges may accrue late interest at the rate of 2.5% of the outstanding balance per month.
- Suspension or Cancellation of Service; Payment Acceleration.** Without derogating from any other remedies available to Branch under these PS Terms or by applicable law, if you owe any undisputed fees thirty (30) days or more past due in connection with any Services provided by Branch under any applicable Order Form, then, without affecting any of your payment obligations under the applicable Order Form, SOW, and/or Services Agreement, Branch is entitled to take further action including but not limited to accelerating your unpaid fee obligations under such agreement so that all such obligations become immediately due and payable, and suspending

and/or canceling your access to the Professional Services and Services until such amounts are paid in full. Branch reserves the right to send your account to a collections agency for nonpayment (which may, in turn, report the uncollected debt to credit bureaus) and to use your contact information for debt collection purposes if the applicable agreement is terminated for non-payment as set forth herein following a 10-day cure period.

- 4. Taxes.** Branch's fees do not include any local, state, or federal sales, use, excise, personal property, VAT, or other similar taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, any withholding tax, and any such taxes, to the extent legally applicable, which shall be borne and paid by Customer) (collectively, "Taxes"). If Branch has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Branch will invoice Customer and Customer will pay that amount unless you provide Branch with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Customer is responsible for payment of all Taxes resulting from any fees payable hereunder, other than any taxes based on Branch's net income, property, and employees.

## VIII. Confidentiality

- 1. Definition.** Each party to these PS Terms (a "Receiving Party") may have access to, or become acquainted with, certain non-public confidential information of the other party (a "Disclosing Party") including without limitation all information clearly identified as confidential at the time of disclosure ("Confidential Information"). Customer and Branch further agree that, subject to the rights and licenses granted herein, each party's Confidential Information shall include, without limitation, all non-public information regarding the Disclosing party, including without limitation any customer, customer prospect, the terms of the Agreement, conditions and pricing, marketing, technical, business and/or strategic plans or information provided by the Disclosing Party to the Receiving party in the performance of the Services under the Agreement.
- 2. Use and Disclosure.** Each party agrees as follows: (a) to use the Confidential Information of the Disclosing Party only for the purposes permitted by these PS Terms and the SOW (the "Purpose"); (b) to take all reasonable steps to ensure that the Disclosing Party's Confidential Information is not

disclosed or distributed by the Receiving Party's employees or agents to another party in violation of the Agreement, but in no event will the Receiving party use less effort to protect the Confidential Information of the Disclosing Party than it uses to protect its own Confidential Information of like importance; (c) to restrict access to the Confidential Information disclosed by the Disclosing Party to such of the Receiving Party's employees, agents and third parties, if any, who have a legitimate need to have access for the Purpose and who have agreed in writing or are otherwise bound to treat such information in accordance with the Agreement; and (d) to return or destroy all Confidential Information of the Disclosing Party's written request, after termination of the Agreement.

3. **Exclusions.** The Receiving Party will not be obligated under this confidentiality section with respect to information that: (a) is or has become readily publicly available through no act or omission of the Receiving Party or its employees or agents; (b) is received from a third party lawfully in possession of such information and the Receiving Party has no knowledge of any disclosure restrictions on such third party to disclose such information; (c) is disclosed to a third party by the Disclosing Party without restriction on disclosure; (d) was rightfully in the possession of the Receiving Party without restriction prior to its disclosure by the Disclosing Party; or (e) was independently developed by employees or consultants of the Receiving Party without reliance on, or reference to, such Confidential Information.
4. **Permitted Disclosures.** Notwithstanding the foregoing, Confidential Information may be disclosed as required by any court or governmental agency, provided that before disclosing such information the Receiving Party must provide the Disclosing Party with sufficient advance notice of the court or agency's request for the information to enable the Receiving Party to exercise any rights it may have to challenge or limit the court or agency's authority to receive such Confidential Information, to the extent permitted by applicable law.

## IX. Limitation of Liability

1. **INDIRECT DAMAGES DISCLAIMER.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING

BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, GOODWILL, USE, DATA THAT IS INCOMPLETE, MISSING, OR INCORRECT, OR OTHER INTANGIBLE LOSSES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM THIS AGREEMENT.

2. **DIRECT LIABILITY.** UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF A PARTY RESULTING FROM THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, OR OTHERWISE, EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER OR ITS AFFILIATES UNDER THE APPLICABLE ORDER FORM OR SOW FOR THE PROFESSIONAL SERVICES OUT OF WHICH THE LIABILITY AROSE.

## **X. Warranty & Disclaimer**

Branch warrants that it will provide the Professional Services in a professional and workmanlike manner. Customer's sole and exclusive remedy for Branch's breach of this Section X will be the re-performance of the non-conforming portions of the Professional Services, in accordance with Section IX above. If Branch is unable to re-perform, Customer will be entitled to recover the fees paid to Branch attributable to the non-conforming portions of the Professional Services. EXCEPT AS SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL SERVICES AND DELIVERABLES ARE PROVIDED "AS-IS" AND BRANCH DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATORY OR OTHERWISE REGARDING THE PROFESSIONAL SERVICES AND DELIVERABLES, AND CUSTOMER RELIES ON THE PROFESSIONAL SERVICES AND DELIVERABLES AT ITS OWN RISK.

## **XI. Non-Solicitation**

During the term of the applicable SOW or Order Form and for a period of one (1) year thereafter, Customer shall not interfere with Branch's relationship with, or endeavor to entice away from Branch, any person who, on the date of the termination of or expiration of the Agreement, was an employee of Branch.

## XII. Performance & Responsibilities

- 1. Branch Performance.** The Branch PS team that will perform the Professional Services as set forth in the SOW or Order Form. Branch retains the exclusive right to select the Branch PS personnel that will provide the Professional Services and to make changes as required in Branch's discretion. As between Customer and Branch, Branch is responsible for (i) the performance of the Professional Services by Branch PS personnel under in accordance with the Agreement and (ii) all matters related to Branch PS's employment, including, without limitation, compensation, benefits, and any statutory obligations. Branch reserves the right to reject any request for work outside the scope of the SOW. Branch PS and Customer will use commercially reasonable efforts to attend all scheduled meetings and meet all agreed-to deadlines. The timeliness of communications and other activities by Customer will directly affect Branch's ability to meet agreed-to schedule deadlines. Additionally, delays resulting from Customer-owned (or licensed) software or hardware issues may result in additional fees. Professional Services will be performed during Branch's normal business hours (9 AM to 6 PM local time, Monday – Friday, excluding nationally recognized holidays). Issues raised outside of normal business hours may be sent to [support@branch.io](mailto:support@branch.io).
- 2. Customer Responsibilities.** Customer is responsible for any engagement and management of third-party vendors that Customer uses in conjunction with Branch, including any applications and/or services with which Branch's Services may be connected through integrations. Customer acknowledges that use of third-party technology and/or services not already licensed or purchased by Customer may require additional licenses and fee(s) that must be obtained separately by the Customer from the specific third-party provider of such applications and/or services. Customer will cooperate reasonably and in good faith with Branch PS in their provision of the Professional Services including, without limitation: (a) providing Branch PS sufficient resources, knowledgeable employees or staff of Customer; (b) timely access to accurate and complete Customer Materials; (c) timely, accurate, and complete responses to inquiries or requests for feedback or information from Branch PS; (d) appointing a Customer representative for each Professional Services project to serve as a primary point of contact for Branch PS and to make authorized decisions on behalf of Customer; (e) actively participating in scheduled project

meetings with Branch PS, and (f) abiding by Customer obligations specified in the applicable SOW. If Customer's failure to comply with this Section XII(b) prevents Branch from providing the Professional Services by the end of the term of the SOW, as determined by Branch in its sole discretion, Branch's obligation to provide the Professional Services will be excused, Branch will not be responsible for any delays resulting therefrom, and the SOW and all Professional Services provided thereunder, shall terminate unless the Parties mutually agree in writing to extend the term of the SOW by way of a Change Order. If any delay in the provision of Professional Services is caused by Customer and results in additional fees, Customer will pay such additional fees.

## XIII. Miscellaneous

- 1. Governing Law & Venue.** The Agreement and all matters arising out of or relating to the Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflict of law provisions. The parties expressly disclaim and exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding arising out of or relating to the Agreement shall be brought exclusively in the state or federal courts located in the Northern District of California.
- 2. Assignment.** The Agreement is not assignable, transferable or sublicensable by either party, except with other party's prior written consent (not to be unreasonably withheld or delayed), unless a party is assigning this Agreement to (a) a successor to all or part of its assets or business or (b) an Affiliate. Any attempted assignment or transfer by either party in violation of this Section XIII(b) will be void. Subject to the foregoing, this Agreement will be binding on the parties and their respective successors and permitted assigns.
- 3. Relationship between the Parties.** The parties are independent contractors. No agency, partnership, joint venture, fiduciary or employment relationship is created as a result of the Agreement, and Customer does not have any authority of any kind to bind Branch in any respect whatsoever.
- 4. Notices.** Except as otherwise specified in the SOW, all notices of termination ("Legal Notices") will be provided via email and will be effective upon receipt by e-mail as set forth below. If to Branch, all Legal Notices shall be provided to [legal@branch.io](mailto:legal@branch.io). Billing-related notices to Customer will be

provided via email and addressed to the relevant billing contact designated by Customer on the applicable Order Form. All Legal Notices and other notices to Customer will be provided via email and addressed to the relevant Services account administrator designated by Customer.