

DESIGN SERVICES AGREEMENT

PLEASE READ THIS DESIGN SERVICES AGREEMENT VERY CAREFULLY. THE TERMS AND CONDITIONS OF THE DESIGN SERVICES ARE LIMITED TO THOSE CONTAINED HEREIN. BY USING THE SERVICES OFFERED BY SANDIRECT YOU AGREE TO BE BOUND BY THESE TERMS.

1. Services.

Pursuant to this Agreement, SANDirect will provide certain information, education or options to you the customer ("Customer") concerning the potential design, implementation, best practices, emerging technology and/or components/infrastructure of a data warehousing solution. All decisions made by Customer relating to the implementation of SANDirect's advice and recommendations are the sole responsibility of the Customer.

2. Fees

Customer must pay a one-time, up-front fee of \$350.00 for up to a maximum of two (2) hours of over-the-phone design consulting time. SANDirect reserves the right to charge an additional \$200.00 per hour (prorated for any portion of an hour in 15 minute increments) for any time over the initial two (2) hours, and reserves the right to cease providing services beyond the initial two (2) hour consultation maximum. Fees paid for design services may, in SANDirect's sole discretion, be credited towards the purchase of other products or services by Customer from SANDirect.

3. Warranties.

SANDirect will perform services hereunder with reasonable skill and care. All warranties provided herein are personal to, and intended solely for the benefit of, client and do not extend to any third party. SANDIRECT MAKES NO OTHER WARRANTIES AND THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

4. Limitation of Liability.

NEITHER SANDIRECT NOR ITS AFFILIATES WILL BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE SERVICES PROVIDED BY SANDIRECT OR ITS AFFILIATES, NEITHER SANDIRECT NOR ITS AFFILIATES WILL BE LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES IN EXCESS OF THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE SERVICES. ANY ACTION BY CUSTOMER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

5. Cooperation.

SANDirect's performance depends upon Customer's cooperation in connection with the Services, including providing SANDirect with appropriate and accurate data and information, and appropriately knowledgeable Customer personnel. SANDirect will not be liable for performing the Services, to the extent that the failure or delay is caused by Customer's inability to provide such information and personnel. SANDirect may rely upon the accuracy and completeness of data, material, and other information furnished by Customer, without any independent investigation or verification.

6. Governing Law; Dispute Resolution.

THESE TERMS AND CONDITIONS OF SALE AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT IN MECKLENBURG COUNTY, NORTH CAROLINA AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN MECKLENBURG COUNTY, NORTH CAROLINA AND SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING.

7. Confidentiality.

Any information disclosed by one party ("Disclosing Party") to the other party ("Recipient") in connection with this Agreement will be protected and held in confidence by the Recipient. Confidential Information will be used only for the purposes of this Agreement and related internal administrative purposes. Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. A Recipient may disclose Confidential Information to the extent required by law, but that disclosure does not relieve Recipient of its confidentiality obligations with respect to any other party.

8. Miscellaneous

- a) Assignment. Neither party may assign, transfer or delegate any of the rights or obligations under this Agreement without the written consent of the other party, except that SANDirect may (i) assign and/or subcontract all or a portion of this Agreement to an affiliate or subsidiary without consent of Customer or (ii) assign its rights and obligations hereunder to any successor in interest to all or substantially all of the assets and business of SANDirect, without the consent or approval of Customer.
- b) E-mail Correspondence. SANDirect and Customer may correspond, convey information and documentation, and transfer Services and Deliverables via Internet e-mail unless Customer expressly requests otherwise. Neither party has control over the performance, reliability, availability, or security of Internet e-mail; and therefore neither party shall be liable for any loss, damage, expense, harm, or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond that party's reasonable control.
- c) Entire Agreement. This Agreement is the entire agreement between SANDirect and Customer with respect to the Design Services and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing, with respect to such services. This Agreement may be modified only by means of a duly executed written amendment. Neither the terms of any purchase order, invoice, or other instrument documenting a payment or transaction that is issued by either party in connection this Agreement, nor any other act, document, usage, custom, or course of dealing will modify the terms of this Agreement.
- d) Independent Contractor. SANDirect is performing the Services as an independent contractor and nothing in this Agreement will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between Customer and SANDirect. Neither SANDirect nor Customer will be or become liable or bound by any representation, act, or omission of the other.
- e) No Waiver of Breach. No waiver of any breach of this Agreement will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- f) Customer Reference. SANDirect may identify Customer as a client.
- g) Severability. In the event that any term or provision of this Agreement is unenforceable, then the remainder of this Agreement will not be affected, impaired, or invalidated, and the other terms and provisions of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- h) Survival. Provisions regarding payment, termination, ownership, warranties, limitations of liability, governing law, arbitration, confidentiality, Personal Data, non-solicitation of employees, severability, and waivers will survive the expiration or termination of this engagement.