



## Attachment A

### Professional Services

#### 1. Definitions.

(a) **"Customer IP"** means (i) all Intellectual Property and Intellectual Property Rights that are in existence and owned by Customer as of the Effective Date, and (ii) any Intellectual Property or Intellectual Property Right that is supplied or independently developed solely by Customer without the use and/or benefit of, and that does not relate to or arise out of, any of Litmos's Intellectual Property, Intellectual Property Rights, Confidential Information, or Cloud Services.

(b) **"Deliverables"** means all Intellectual Property, whether in tangible or electronic format, that is expressly identified as a deliverable in a SOW or Service Documentation and/or that is provided to Customer by Litmos in the course of providing the Professional Services to Customer, including any analyses, reports, manuals, supporting materials, test results, recommendations and drawings. Deliverables do not include any Cloud Services and/or any Litmos IP. All Deliverables will be provided in the English language unless otherwise agreed in writing by Litmos.

(c) **"FP Services"** means any Professional Services that are billed at a fixed price. FP Services may include (i) predefined, packaged Professional Services offerings that are described in Service Documentation and/or (ii) Professional Services that are not part of a predefined offering and are described in a SOW.

(d) **"Intellectual Property"** means any and all inventions (whether or not patentable), discoveries, materials, tools, software (both source and object code), works of authorship (whether or not copyrightable), know-how, technical information, data, trade secrets, work product, methods, processes, ideas, designs, schematics, and other forms of technology.

(e) **"Intellectual Property Rights"** means any and all now known or hereafter existing (i) rights associated with works of authorship, including copyrights and moral rights, (ii) trademarks, trade names, service marks, service names, and other indicia of origin, (iii) trade secret rights, (iv) patents, patent rights, and industrial property rights, (v) other similar proprietary rights in Intellectual Property of every kind and nature, and (vi) all registrations, applications, renewals, extensions, continuations, continuations-in-part, divisionals, foreign counterparts, reexaminations, and reissues of any of the foregoing, in each case in any jurisdiction throughout the world.

(f) **"Litmos IP"** means all (i) Intellectual Property resulting from any Professional Services or otherwise conceived, reduced to practice, created, or developed during performance under this Agreement and/or any SOW, (ii) derivatives, enhancements and/or modifications of any of Litmos's Cloud Services or services, (iii) Intellectual Property supplied, conceived, reduced to practice, created or developed by or on behalf of Litmos, (iv) Deliverables, and (v) all Intellectual Property Rights in or to any of the foregoing. Litmos IP does not include any Customer IP.

(g) **"Service Documentation"** means a Litmos-written document that describes a Professional Service offering and provides an overview of the key benefits, service tasks, and any Deliverables included in such Professional Service offering, and any service description documents and proposals provided by Litmos to Customer.

(h) **"SOW"** means a mutually agreed upon written statement of work between Litmos and Customer that describes Professional Services to be rendered by Litmos to Customer.

(i) **"T&M Services"** means Professional Services that are billed on a time and materials basis.

2. **Services.** Professional Services may be described in Service Documentation and/or a SOW. Professional Services include FP Services and T&M Services. Subject to Customer's compliance with all the terms of this Agreement and payment of the applicable fees, Litmos will use commercially reasonable efforts to provide the Professional Services as set forth in the applicable Order, Service Documentation, or SOW. For clarity, Litmos is not obligated to deliver any Professional Services under any Service Documentation or SOW unless Litmos has received and accepted an Order for such Professional Services. Litmos will perform the work remotely and/or from Litmos office locations. If the Professional Services are provided at Customer's facilities, Litmos shall comply with Customer's reasonable policies that apply to onsite service providers, provided that such policies are provided to and agreed to by Litmos in writing in advance. Customer acknowledges and agrees that Customer's purchase of the Cloud Services (including any Support plans) is not contingent upon the provision of any Professional Services hereunder. Litmos may subcontract its obligations under this Agreement, provided that Litmos shall remain responsible for its obligations under this Agreement.

#### 3. Delivery and Completion.

(a) Professional Services will be deemed completed by Litmos upon the sooner of (i) mutual agreement by the parties, (ii) for T&M Services, once each applicable hour or day has been delivered, or (iii) for FP Services, upon delivery of the FP Services or each applicable phase or milestone identified in the applicable Service Documentation and/or SOW. Notwithstanding the foregoing, if Litmos has partially completed a FP Service and Litmos is not able to complete the FP Service due to Customer's failure to schedule completion of the FP Services within the later of (A) thirty (30) days after Customer purchased the FP Service or (B) fifteen (15) days after the originally agreed upon completion date for the FP Service, such FP Services will be deemed delivered and completed on such later date. Litmos will use commercially reasonable efforts to schedule Professional Services as promptly as practicable; however, Litmos requires a minimum of ten (10) business days after Litmos's acceptance of an Order to prepare and plan for Professional Services to begin. Customer shall schedule all remote work in one (1) day minimum blocks of time for T&M Services. If Customer purchases five (5) or more days of T&M Services in an Order, Customer shall schedule such T&M Services in minimum increments of five (5) consecutive days unless otherwise approved in advance by Litmos. If Professional Services will be performed onsite at a location designated by Customer, such onsite visits must include fixed or budgeted travel and expenses as part of the Order, and Customer shall schedule each day of onsite Professional Services in consecutive days, and in minimum increments of five (5) consecutive days if five (5) or more days are purchased, unless otherwise approved in advance by Litmos. Unless otherwise expressly provided in the applicable Service Documentation or a SOW, as used with respect to Professional Services, a **"day"** is defined as eight (8) hours during the regular business hours 7:00 AM to 7:00 PM local time, Monday through Friday, of a single day (excluding local holidays). Customer is not permitted to cancel or reschedule any Professional Services without

Litmos's prior consent except as otherwise expressly set forth in this Agreement. Without limiting the foregoing, T&M Services that are not completed within six (6) months after the Order date will be deemed completed unless otherwise agreed by Litmos in writing. Regardless of how such Professional Services are billed, if requested by Litmos, Customer shall confirm the completion of all Professional Services to Litmos in writing within two (2) business days after any such completion. If Customer fails to provide written notice to Litmos of Litmos's failure to complete any Professional Services within five (5) business days after such Professional Services are deemed completed in accordance with this Section, Customer waives any right to claim that Litmos did not complete the Professional Services.

(b) If Customer requests to reschedule the delivery of any Professional Services, Litmos may accept or reject the rescheduling or cancellation request in its discretion, provided that if such request is received within ten (10) business days prior to a confirmed delivery date, Litmos may invoice Customer in full for any such cancelled or rescheduled Professional Services. If scheduled Professional Services are canceled or rescheduled by the Customer within ten (10) business days of the scheduled work, Customer will forfeit each day beyond the start date of the scheduled Professional Services included within the ten (10) day cancellation or reschedule window.

4. **Price and Payment.** Customer shall pay Litmos for the Professional Services in accordance with the rates set forth in the accepted Order and/or SOW, as applicable. Notwithstanding the foregoing, to the extent that any T&M Services outside the definition of a "day" are delivered, then Customer shall pay for such T&M Services at a rate of time and a half (1.5X), unless otherwise approved in advance by Litmos. Litmos shall invoice Customer for Professional Services in advance upon execution of the Order or SOW, as applicable, unless otherwise expressly stated therein. Customer shall not cancel any Orders for Professional Services, provided however that Litmos may cancel an Order for Professional Services in whole or in part at any time. Travel and other expenses that are incurred in connection with the Professional Services upon submission of an invoice detailing actual expenses, will be reimbursed by Customer. Litmos is not obligated to provide any receipts for any expenses that are less than or equal to fifty U.S. dollars (\$50). Any travel and hotel arrangements that are not included in a fixed fee are to be made by Litmos, and may be approved by Customer if such approval is requested by Customer prior to the arrangements being booked, provided that such approval is not unreasonably withheld or delayed. Orders or SOWs received without travel and expenses line items will be delivered remotely unless otherwise approved by Litmos in writing. All fees applicable to Professional Services are nonrefundable.

5. **Customer Responsibilities.** Customer will perform all obligations and satisfy all requirements identified as a Customer obligation or requirement in any Order, Service Documentation, or SOW. Without limiting the foregoing, Customer shall (a) make available in a timely manner all technical data, facilities, programs, files, documentation, test data, sample output, or other information and resources reasonably required by Litmos, (b) provide a designated Project Manager for the duration of the Professional Services work and (c) provide services and access to equipment and all supporting infrastructure, including network connectivity and power supply requirements, if applicable, that Litmos may reasonably require for the performance of the Professional Services. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. If Customer fails to perform any Customer obligations or satisfy any Customer requirements, Litmos is not obligated to perform any Professional Services that are affected by such failure.

6. **License and Proprietary Rights.**

(a) **Ownership.** As between the parties, Customer owns all right, title and interest in and to the Customer IP and Litmos owns all right, title and interest in and to the Litmos IP. To the extent, if any, that ownership of any of the Litmos IP does not automatically vest in Litmos, Customer hereby irrevocably and unconditionally (i) transfers and assigns to Litmos all right, title and interest in and to the Litmos IP without further consideration and (ii) waives all moral rights in or to all Litmos IP. During and after the term of this Agreement, Customer shall execute all documents and provide all information and assistance as requested by Litmos in order to effectuate the foregoing provision. Litmos has the exclusive right to apply for or register any Intellectual Property Rights with respect to any Litmos IP. Litmos makes no assignment of any sort under this Agreement.

(b) **Licenses.**

(i) To the extent reasonably required to perform the Professional Services, Customer hereby grants to Litmos a nonexclusive, royalty-free license, with the right to grant sublicenses, to use, make, modify, reproduce, prepare derivative works of, display, transmit, perform and otherwise exploit the Customer IP and all Intellectual Property Rights therein, in each case solely for the purposes of performing Professional Services for Customer and solely for Customer's benefit.

(ii) For any Deliverables provided to Customer in connection with the Professional Services or any SOW, Litmos hereby grants to Customer a nonexclusive, nontransferable, royalty-free, nonsublicensable license to (A) use such Deliverables for Customer's internal business use, and (B) exercise any other rights (if any) expressly granted under any Service Documentation or SOW with respect to such Deliverables. Except as expressly permitted in an applicable SOW or other written agreement between Litmos and Customer, Customer shall not, and shall not allow any third party to, (1) provide any Deliverable to any third party or use any Deliverable for the benefit of any third party, (2) modify, create derivative works of, reverse engineer, or copy any portion of the Deliverables, (3) incorporate or embody any Deliverables in any other Intellectual Property, or (4) without Litmos's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Deliverable. Unless expressly agreed in a SOW or otherwise in a written agreement signed by Litmos, Litmos is not obligated to provide support or maintenance services for any Deliverable. Litmos does not grant Customer any rights not expressly set forth herein or in an applicable SOW.

(c) **Nonexclusive Relationship.** Nothing in this Agreement will be construed as to preclude Litmos from developing, using, marketing or otherwise exploiting products, services, software or other Intellectual Property that may be competitive with any Deliverables prepared for Customer hereunder, irrespective of whether such Intellectual Property is similar or related to the Deliverables developed under this Agreement, provided that Litmos does not use or reference any Customer IP in such activities.

7. **Effect of Termination.** Upon termination or expiration of any Order for Professional Services or any SOW for any reason, (i) if Customer purchased directly from Litmos, Customer shall pay Litmos all amounts due or accrued under such Order or SOW as of the date of such termination or expiration, and (ii) Customer shall return to Litmos all Confidential Information and other materials of Litmos relating to

such Order or SOW. Termination or expiration of any Order for Professional Services or SOW will not affect any other Order for Professional Services or SOW then in effect.