

Standard Terms & Conditions

The following Standard Terms and Conditions shall govern and be fully incorporated into any and all Statements of Work to which they are referenced, by and between Vendor and Rosetta Stone, and shall supersede any and all conflicting terms.

- 1) **DEFINITIONS.** As used in these Standard Terms and Conditions:
 - a) "Agreement" means the SOW together with these Standard Terms and Conditions;
 - b) "SOW" means any Statement of Work, Purchase Order, Insertion Order, proposal, quotation, or amendment, that is executed by an authorized officer of Rosetta Stone;
 - c) "*Deliverable*" means any material, machinery, equipment, fixture, article, creative, items, service, or other work provided for in the SOW;
 - d) "*Vendor*" means the person, firm or corporation that is a party to SOW; and
 - e) "*Rosetta Stone*" means Rosetta Stone Ltd. or any of its affiliates which is the party to the SOW.
- 2) **SERVICES AND DELIVERABLES.** Vendor shall perform the services and provide the deliverables (individually and collectively, the "**Deliverables**") according to the specifications and schedule in the SOW. All Deliverables are subject to review and acceptance by Rosetta Stone; defective or non-conforming Deliverables shall be made conforming by Vendor at Vendor's expense. Vendor shall promptly notify Rosetta Stone in writing of anything that may adversely affect or delay Vendor's completion of the Deliverables.
- 3) **INTELLECTUAL PROPERTY.** Rosetta Stone shall exclusively own all right, title and interest in any work product ("Work Product") produced for Rosetta Stone pursuant to any SOW, and such Work Product shall be considered "works made for hire" for Rosetta Stone as the author thereof (as defined in the Copyright Act). Rosetta Stone will have the right to use, and authorize third parties to use, the Work Product in any and all matter and media now known or hereafter devised throughout the universe in perpetuity without any obligation to Vendor of any kind. To the extent that title to any such Work Product (or any portion thereof) may not, by operation of law, vest in Rosetta Stone or is not considered to be "works made for hire", Vendor hereby irrevocably transfers, sells, grants, conveys, assigns and relinquishes exclusively to Rosetta Stone, and free of any claim(s) of Vendor or any other person or entity, all right, title and interest in and to the Work Product, and Vendor waives any and all moral rights in any such Work Product.
- 4) **FEES AND PAYMENTS.** Vendor will charge, and Rosetta Stone will pay, the undisputed fees and other amounts specified in the SOW. Rosetta Stone will reimburse, subject to receipt of all supporting documentation, only for reasonable, verifiable and previously approved travel, accommodation, and ancillary expense, at cost, per company policy. Unless otherwise specified in the SOW, all undisputed fees and all other amounts payable by Rosetta Stone shall be due and payable within forty-five (45) days of receipt by Rosetta Stone of invoice. In the event of a good faith dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein.
- 5) **CONFIDENTIALITY.** Each party shall hold the Confidential Information of the other in confidence and protect the same with at least the same degree of care, but no less than reasonable care, with which it protects its own most sensitive confidential information. Each party shall use the Confidential Information of the other solely in connection with the exercise of its rights and the performance of its obligations under the SOW, and shall restrict disclosure of and access to the Confidential Information of the other to such party's personnel, agents and contractors that require access to such Confidential Information in connection with the SOW. Each party shall require its personnel, agents and contractors to comply with the obligations of confidentiality set forth herein and shall be liable for any failure to so comply. Upon completion or termination of an SOW, Vendor will immediately return or destroy all copies of Rosetta Stone Confidential Information in Vendor's possession, and if so requested, an officer of Vendor shall verify, in writing, Vendor's compliance with this Section. "Confidential Information" means any proprietary information or trade secrets disclosed by one party to the other in connection with an SOW that is not generally known to the public and is clearly identified as confidential or, by its nature, should be reasonably considered as confidential.
- 6) **LIMITED WARRANTIES.** Subject to the terms of this Agreement, Vendor represents and warrants that the Deliverables shall (a) conform materially to their corresponding specifications for a period of one-hundred eighty (180) days from date of delivery; (b) be of high industry standard quality and be performed in a timely and professional manner; (c) be free from faulty design, workmanship and material; (d) comply materially with the specifications and requirements set forth in the SOW; (e) not infringe any patent, copyright, mask work, trademark, trade secret, or other intellectual property or proprietary right of any third party; and (f) be performed in accordance with all applicable laws.
- 7) **INDEMNIFICATION.** To the maximum extent permitted by applicable law, Vendor agrees to indemnify, defend and hold Rosetta Stone harmless from and against any loss, claim, judgment, liability, damage, action or cause of action (including reasonable legal fees and court costs) arising out of or in connection with (a) a third party claim that Rosetta Stone's use of any Deliverable infringes or misappropriates the patent, copyright, trademark or other intellectual property rights of a third party, or (b) any breach by Vendor of any warranty or representation; or (c) the negligence or willful misconduct of Vendor, or its officers, employees and/or agents; or (d) claims by any of Vendor's employees for compensation of any kind, including for injuries or damages under the workmen's compensation or similar acts.
- 8) **INSURANCE.** Vendor shall obtain and maintain, at its own expense, during the term of this Agreement insurance coverage at the limits set forth below (or currency equivalent thereof): (a) Workers Compensation insurance providing the statutory limits and not

less than \$1 million of Employers Liability coverage; (b) General Liability coverage in an amount not less than \$1 million per occurrence; and (c) such other coverage as reasonably requested by Rosetta Stone at such limits as standard in Vendor's industry. Vendor shall provide Rosetta Stone with certificates of insurance evidencing such coverage and naming Rosetta Stone as an additional insured if and as so requested, and shall notify Rosetta Stone at least thirty (30) days prior to any change, termination or expiration of such coverage. The amounts of insurance coverage required under this section do not limit Vendor's liability hereunder.

- 9) **LIMITATION ON SPECIFIED DAMAGES.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES AND/OR LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 10) **TERM AND TERMINATION.** The term shall be as set forth in each SOW, unless earlier terminated in as set forth herein. Either party may terminate this Agreement upon written notice (a) if the other party becomes insolvent or ceases paying debts, becomes subject to any proceedings under any bankruptcy or insolvency law, or suffers any similar action in consequence of debt, or (b) if the other party materially breaches this Agreement and fails to correct the material breach within thirty (30) days following written notice specifying the material breach and demanding its cure; provided, however, that Rosetta Stone may terminate this Agreement immediately upon notice if Vendor materially breaches a provision of Section 5. Rosetta Stone may terminate any SOW for its convenience by (a) providing thirty (30) days written notice to Vendor, and (b) paying Vendor the approved expenses actually incurred by Vendor during the period beginning on the SOW effective date and ending on the date of receipt of notice of termination. Sections 3, 5, 6, 7, 8, 9, 11 and 17 hereof shall survive termination or expiration of this Agreement.
- 11) **GOVERNING LAW.** If Rosetta Stone Ltd. is the party to the SOW, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to its principles or rules of conflicts of laws. If an affiliate of Rosetta Stone Ltd. is the party to the SOW, this Agreement shall be governed by and construed in accordance with the laws of the country in which such affiliate is domiciled. Vendor submits to the non-exclusive jurisdiction of the courts located in the place of domicile of the Rosetta Stone entity which is the party to the SOW.
- 12) **NOTICES.** All notices shall be in writing addressed as set forth on the SOW or as otherwise specified by a party in writing, and shall be deemed validly given or served (a) upon personal delivery, (b) one day after being sent by facsimile with telephone confirmation of receipt, (c) confirmed email delivery to the legal department and/or officer of the other party, or (d) one day after being sent by a recognized express courier service that maintains records of receipt.
- 13) **INDEPENDENT CONTRACTORS.** The status of the parties under this Agreement shall be that of independent contractors. Neither party shall be authorized to waive any right or create any obligation or make any representation of any kind in the name of, or on behalf of, the other, or to make any statement that it has the authority to do so. Vendor shall be responsible for all salary or other benefits of any kind and nature to, and shall make all appropriate tax, social security, Medicare, unemployment tax and other withholding deductions and payments for, its employees and consultants. Except as expressly set forth herein, nothing in this Agreement shall be construed as giving any person or entity, other than the parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 14) **NO PUBLICITY.** Vendor shall not advertise, or publish any news releases, or publicly announce the fact that Vendor has contracted to perform work or provide services to Rosetta Stone without obtaining the prior written permission of Rosetta Stone in each instance.
- 15) **ASSIGNMENT & WAIVER.** This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. Vendor may not assign or otherwise transfer this Agreement without the prior written consent of Rosetta Stone and any attempt to so assign or transfer this Agreement without such consent shall be void and of no effect. Failure to insist upon strict compliance with any of the terms of this Agreement shall not be deemed a waiver of that or any other term of this Agreement, and any waiver of any right or power hereunder at any one or more times shall not be deemed a waiver of that right or power at any other time.
- 16) **FORCE MAJEURE.** Neither party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's control, including acts of God, civil commotion, terrorism, and governmental demands or requirements.
- 17) **ENTIRE AGREEMENT.** Upon acceptance by Rosetta Stone of an SOW, all prior negotiations and communications between the parties, verbal or written, are suspended by and merged in the SOW. This Agreement and any of its provisions may be changed, modified, waived, or amended only by a written instrument signed by an authorized officer of each party. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communications and prior writings with respect thereto. If any provision of this Agreement is ruled by a court of competent jurisdiction to be invalid, then that provision is, to the extent of such ruling, deemed omitted from the applicable SOW without affecting the remaining provisions which will continue to be valid and enforceable.