

## **DIEBOLD NIXDORF PROFESSIONAL SERVICES TERMS**

Form PST Rev. 07/2017  
Page 1 of 5

Diebold Nixdorf, Incorporated ("Diebold Nixdorf") hereby offers to provide to Customer the professional services ("Services") as described in an applicable Professional Services Statement of Work ("PSSOW") signed by Diebold Nixdorf and the Customer, in accordance with the terms and conditions set forth herein.

### **1. Terms Applicable**

All offers, acceptances, acknowledgments and purchases of the Services shall be governed exclusively by the terms and conditions set forth herein. Acceptance by Customer of any offer by Diebold Nixdorf to provide Services is limited to the terms and conditions herein, and any terms or conditions proposed by Customer which differ from, are inconsistent with, or which are in addition to those stated herein, are objected to by Diebold Nixdorf. No additional or inconsistent terms proposed by Customer shall become part of any contract to purchase the Services. Diebold Nixdorf's acceptance of any offer to provide Services which may be presented by Customer is expressly conditional on Customer's assent to all of the terms and conditions set forth herein, including those terms herein which may differ from, be inconsistent with, or be in addition to the terms of Customer's offer to purchase. Customer's authorized representative may confirm Customer's agreement to purchase on the terms and conditions herein by signing the PSSOW. However Customer's request to purchase or order in any form, payment for or receipt of Services shall in all circumstances constitute Customer's assent to the terms and conditions herein.

### **2. Performance**

Diebold Nixdorf shall provide to Customer the Services as expressly described in the PSSOW and shall perform such Services in a professional and workmanlike manner. Diebold Nixdorf shall provide the resources to carry out the Services except as otherwise indicated in the PSSOW. All materials, equipment, software and other items which may be provided by Diebold Nixdorf in the course of performing the Services shall remain the property of Diebold Nixdorf.

### **3. Period of Performance**

Diebold Nixdorf shall commence the performance of Services in accordance with the PSSOW or unless otherwise agreed in a written document signed by the authorized representatives of Diebold Nixdorf and Customer. All dates and time periods indicated by Diebold Nixdorf in connection with performance of the Services are approximate and Diebold Nixdorf shall not be liable for any delays including any delays resulting from factors beyond its control.

### **4. Compensation and Payment**

- a. Customer shall pay the Services Fees set forth in the PSSOW. For any Services outside the express scope of the PSSOW, Customer shall pay to Diebold Nixdorf additional amounts calculated at Diebold Nixdorf's then prevailing hourly rate plus any out-of-pocket expenses. Unless otherwise expressly provided in the PSSOW, the Services Fee excludes travel and living expenses of Diebold Nixdorf personnel rendering the Services, and Customer shall reimburse Diebold Nixdorf therefor upon receipt of Diebold Nixdorf's invoice.
- b. Unless otherwise expressly provided in the PSSOW, Diebold Nixdorf shall submit invoices to Customer for the Services with payment terms of 50% due thirty (30) days from the date the PSSOW is signed and 50% upon completion of Services. Invoices not paid within thirty (30) days of receipt shall bear interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less.
- c. Customer agrees to make available to Diebold Nixdorf such Customer facilities and resources as are reasonably required for Diebold Nixdorf to carry out the Services described in the PSSOW. Such facilities and resources include without limitation, working space and facilities, access to Customer's computer hardware and software (including all documentation related thereto), all necessary data, and all other things Diebold Nixdorf personnel may reasonably request to perform the Services described in the PSSOW. Any time spent by Diebold Nixdorf personnel waiting for access to

Customer's facilities, equipment, services, data or material shall be paid for by Customer at Diebold Nixdorf's then prevailing rates, and such amounts shall be in addition to the Services Fee.

- d. The Services Fee includes only Services rendered during normal working hours which are between the hours of 8 a.m. and 5 p.m. Monday through Friday except for legal holidays in the area where the Services are performed. If Customer requests Services to be performed outside of normal working hours, and Diebold Nixdorf performs the Services during such times, Customer shall pay Diebold Nixdorf's then prevailing overtime rates for such Services and such amount shall be in addition to the Services Fee.

## **5. Relationship of Parties**

- a. Diebold Nixdorf shall provide professional personnel who are qualified to perform the Services described in the PSSOW. Such personnel shall not be deemed under any circumstances to be the employees of Customer. Any person assigned by Diebold Nixdorf to render Services pursuant to this Agreement shall be the employee or contractor of Diebold Nixdorf, and Diebold Nixdorf shall have the sole right to hire, supervise and discharge such person.
- b. Diebold Nixdorf shall timely pay all wages due its employees and Diebold Nixdorf accepts exclusive responsibility for the withholding of federal and state income taxes, Social Security, unemployment taxes and other withholding taxes that may be required with regard to amounts paid by Diebold Nixdorf to its employees.
- c. This Agreement shall not be deemed to create any relationship of employment, partnership or joint venture. Diebold Nixdorf and Customer shall be considered independent contracting parties for any and all purposes.
- d. Customer agrees not to hire or solicit the employment of any Diebold Nixdorf personnel with whom Customer has contact in the performance of Services pursuant to this Agreement. This obligation shall apply during the period that Services are being performed and shall continue for a period of one (1) year after the completion of the Services described in the PSSOW.

## **6. Warranty and Limitation of Liability**

- a. Diebold Nixdorf warrants that the Services shall be performed in a workmanlike manner and in accordance with normal commercial standards. Diebold Nixdorf's liability under this Agreement for any alleged deficiency in the performance of any Services shall be limited exclusively to the re-performance of such Services as is necessary to remedy any such deficiency. If the performance of any Services includes the delivery of any goods to Customer, such goods shall be warranted to be free of defects in materials or workmanship for a period of thirty (30) days from the date of delivery. Diebold Nixdorf's sole and exclusive liability with regard to any goods shall be limited to either repair or replacement at Diebold Nixdorf's option, of any goods not conforming to the stated warranty.
- b. THIS SECTION 6 STATES THE SOLE AND EXCLUSIVE WARRANTIES MADE BY DIEBOLD NIXDORF, AS WELL AS DIEBOLD NIXDORF'S EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES ASSOCIATED WITH ANY SERVICES OR GOODS SUPPLIED BY DIEBOLD NIXDORF. ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARE EXCLUDED AND DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE.
- c. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (i) DIEBOLD NIXDORF DOES NOT REPRESENT OR WARRANT THAT THE RESULTS OF THE SERVICES, NOR ANY GOODS, SOFTWARE OR OTHER ITEMS SUPPLIED BY DIEBOLD NIXDORF, SHALL OPERATE CONTINUOUSLY, WITHOUT INTERRUPTION OR BE ERROR FREE; (ii) DIEBOLD NIXDORF IS NOT AN INSURER; (iii) THAT PAYMENTS ARE BASED SOLELY ON THE VALUE OF THE SERVICES AND ARE UNRELATED TO THE VALUE OF CUSTOMER'S PROPERTY OR THE PROPERTY OF OTHERS FOR WHICH CUSTOMER MAY HAVE RESPONSIBILITY WHICH MIGHT BE

AFFECTED BY THE SERVICES; AND (iv) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT, PROPOSAL OR OTHER DOCUMENTS, IN NO EVENT SHALL DIEBOLD NIXDORF OR ITS SUPPLIERS, AGENTS, CONTRACTORS OR REPRESENTATIVES BE LIABLE FOR LOSSES, DAMAGES OR EXPENSES ASSOCIATED WITH ANY THEFT, LOSS, TRANSFER OR MISDISPENSING OF FUNDS OR PROPERTY, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER FORM OF ACTION, EVEN IF DIEBOLD NIXDORF HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. Some jurisdictions do not allow for the exclusion or limitation of incidental or indirect damages in certain situations so the foregoing may not fully apply.

- d. A MATERIAL CONSIDERATION FOR DIEBOLD NIXDORF ENTERING INTO THIS AGREEMENT, IS CUSTOMER'S AGREEMENT THAT, NOTWITHSTANDING THE FOREGOING LIMITATIONS, IF DIEBOLD NIXDORF HAS ANY LIABILITY WHATSOEVER, SUCH LIABILITY SHALL NOT EXCEED THE SERVICES FEE PAID BY CUSTOMER TO DIEBOLD NIXDORF, OR FIFTY THOUSAND U.S. DOLLARS (\$50,000), WHICHEVER IS GREATER. SUCH MAXIMUM LIABILITY OF DIEBOLD NIXDORF SHALL APPLY TO DIEBOLD NIXDORF'S, ITS CONTRACTORS' OR AGENTS' PERFORMANCE OR NONPERFORMANCE OF DIEBOLD NIXDORF'S OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF: (i) CAUSE OR ORIGIN OF THE DAMAGES, (ii) WHETHER DIRECT OR INDIRECT DAMAGE, (iii) WHETHER TO PERSONS OR PROPERTY, AND (iv) WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER FORM OF ACTION. THE PRECEDING LIMITATION SHALL NOT APPLY TO CLAIMS FOR BODILY INJURY TO THIRD PARTIES FOR WHICH DIEBOLD NIXDORF HAS BEEN DETERMINED TO BE LEGALLY LIABLE. THE SERVICES FEE CHARGED FOR SERVICES, GOODS OR OTHER ITEMS REFLECTS THE FOREGOING ALLOCATION OF RISK

## **7. Termination**

- a. Either party may terminate this Agreement if the other party has committed a material breach of this Agreement and has not remedied such breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Diebold Nixdorf may also terminate this Agreement or the PSSOW if Customer delays Diebold Nixdorf's performance of any portion of the Services described in the PSSOW for a period more than three (3) months. Any such termination shall not waive the non-breaching party's right to seek any other remedy provided by this Agreement.
- b. Following termination of this Agreement, Diebold Nixdorf shall promptly invoice Customer for all charges for Services rendered and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice.
- c. The provisions of Sections 1, 4, 5d, 6, 7b, 7c, 8, 9, 10, 11, 12, 13 and 14 shall survive the expiration or termination of this Agreement.

## **8. Confidentiality**

Diebold Nixdorf and Customer each agree to maintain the other party's Confidential Information in confidence and not to use such Confidential Information for any purpose unrelated to the Services, without the disclosing party's advance written consent. For purposes of this Agreement "Confidential Information" is defined as those materials, documents, data, technical information, specifications, business information, customer information or other information that the disclosing party maintains as trade secrets and which are disclosed to a receiving party in a tangible form conspicuously marked as "secret", "confidential" or with words having similar meaning. "Confidential Information" shall not include:

- a. any information that becomes publicly available without a breach of this Agreement;
- b. any information that was known by a receiving party prior to receiving the information from a disclosing party;

- c. any information a receiving party legally receives from a third party not having an obligation of confidentiality to the disclosing party; or
- d. any information that is required to be disclosed by legal process, provided that the receiving party provides the disclosing party with actual notice sufficiently in advance of making such disclosure so that the disclosing party may seek a protective order.

**9. Taxes**

The Services Fee and other fees for Services are exclusive of sales, excise, value added or other taxes which may be imposed by any taxing authority. If any such taxes must be paid by Diebold Nixdorf, or if Diebold Nixdorf is liable for the collection of such tax (other than taxes based solely on Diebold Nixdorf's income) the amount thereof shall be in addition to the amount at which Diebold Nixdorf offers to provide the Services pursuant to this Agreement. Customer agrees to pay all such taxes or to reimburse Diebold Nixdorf therefor within ten (10) days of receipt of invoice. If Customer claims exemption from any such taxes, Customer shall provide a certificate evidencing such exemption and shall defend and hold Diebold Nixdorf harmless from and against any claim that Diebold Nixdorf must pay or collect such taxes, and Customer shall pay any interest, penalties and legal and other costs of defending any such claim.

**10. Derivative Works**

Software developed or modified by Diebold Nixdorf for Customer in the course of performing the Services shall be considered derivative works of the software that Diebold Nixdorf has licensed to Customer and such software shall be governed by the terms of Customer's applicable license agreement with Diebold Nixdorf. Diebold Nixdorf shall retain all intellectual property rights in the software or other deliverables produced in the course of providing the Services. If Diebold Nixdorf develops or modifies such software in accordance with Customer's specifications, or includes any software developed by an entity other than Diebold Nixdorf, Diebold Nixdorf makes no warranties concerning such software, and disclaims any warranty that such software can be used without infringing the rights of third parties, and Customer agrees to defend, indemnify and hold Diebold Nixdorf harmless from any patent infringement claim related to such software.

**11. Waiver/Severability**

Failure of either party hereto to insist upon strict conformance with any of the terms or conditions of this Agreement shall not be deemed a waiver of a party's right to require strict conformance therewith at any subsequent time, or compliance with any other provision hereof, nor shall any such failure be deemed a course of dealing resulting in a modification of the express terms of this Agreement. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties agree that any arbitrator or court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the parties as set forth herein to the fullest extent permitted by law.

**12. Resolution of Disputes/Arbitration/Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, without regard to any conflicts of laws provisions thereof. All disputes regarding this Agreement or the Services, including but not limited to any alleged failure to perform the whole or any part of this Agreement, any allegations of deficiencies in the Services, and any allegations of fraud inducing a party to enter into this Agreement, shall be resolved through an arbitration proceeding conducted by a single arbitrator appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof. Any arbitration pursuant to this provision shall be conducted by an arbitrator having expertise in the field of computer software, in Stark County, Ohio or such other location as both parties and the arbitrator may mutually agree. Notwithstanding the foregoing, Diebold Nixdorf may resort to a court of competent jurisdiction for purposes of obtaining a provisional remedy only, including but not limited to an

injunction for breach of this Agreement. However resort to a court proceeding shall not operate as a waiver of each party's obligation to resolve all other disputes through arbitration in the manner specified in this Section 12.

**13. Notices**

Any notice pursuant to this Agreement shall be given in writing by overnight courier, certified mail or other form of delivery which provides evidence of a party's receipt thereof. Any notices shall be effective upon receipt.

**14. Entire Agreement/Modifications**

This Agreement states the entire agreement between the parties and supersedes all prior proposals, communications, negotiations or agreements concerning the subject matter hereof, whether oral or written. No alteration or modification of any of the provisions of this Agreement shall be binding unless reduced to writing and signed by the duly authorized representatives of both Customer and Diebold Nixdorf.