

# Morgan Scientific, Inc. Professional Services Agreement

Effective Date: March 15, 2022. This update supersedes the previous versions of the document. To verify you have the latest version of this document, visit <https://www.morgansci.com/legal/professional-services-agreement/>.

## 1. Professional Services Overview, Fees, and Payment

- 1.1. Professional Services; SOWs. You ("Customer") engage Morgan Scientific, Inc. (MSI) to provide consulting, training, and/or other professional services (the "Professional Services") set out in a Statement of Work ("SOW"), or other documented order, which shall contain, at a minimum, a reasonably detailed description of the Professional Services to be performed. For the purposes of this Agreement, standard packaged offerings with professional services components, including, but not limited to, training, onsite services, software services, project management, project documentation, integration services, software customizations, consulting, or similar shall also constitute SOWs and will be governed by the terms hereunder.
- 1.2. Fees; Order Forms. The fees payable in respect of such Professional Services may be set out either in the SOW and/or an Order Form, hereafter sometimes collectively referred to as an Order Form. An Order Form means a signed Quote, Customer purchase order, or similar ordering document that (i) incorporates the SOW ordered by You and any associated fees, and (ii) has been agreed upon by manual or electronic signatures, or agreed through other electronic means or, generally, submitted by You with clear intent, and accepted by MSI. In the event the individual is entering into this Agreement on behalf of a corporate or other public or private entity, such individual certifies that he/she is an authorized representative of the Customer. Each Order Form shall be subject to the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and an Order Form, the relevant provisions of the Order Form shall prevail.
- 1.3. Payments, generally. The terms of payment are governed by MSI's General Terms and Conditions of Business found <https://www.morgansci.com/legal/general-terms-conditions/> or, if applicable, other duly executed contracts or agreements the Parties that may supplement or prevail over the General Terms and Conditions of Business and thereby bind the Parties to the certain payment terms and conditions therein.

## 2. Performance of Professional Services: General

- 2.1. Place of services. Unless otherwise specified on an Order Form, all Professional Services shall be performed at MSI premises. For Professional Services performed at Customer's premises, Customer shall (i) provide MSI personnel with reasonable office space and necessary access to hardware and other systems, and (ii) comply in all material respects with applicable laws relating to the treatment of MSI personnel who are on Customer's premises.

- 2.2. Professional Services must be utilized within twelve (12) months from the date of the Order Form and, if not so utilized, MSI will have no obligation to provide such Professional Services and Customer will not be entitled to a refund of any amounts relating to such Professional Services.

### **3. Performance of Professional Services: Onsite**

- 3.1. Any and all Professional Services that may be provided by MSI on your premises ("onsite"), whether based on a SOW, Order Form, or standard package offerings, shall be governed by the terms and conditions set forth in this Section 3.
- 3.2. Time onsite. The amount of time that MSI will be onsite at Your location to complete services, is subject to MSI's discretion. Times set forth the Order Form shall be considered estimates and not legally binding, so long as all professional services are completed consistent with Order Form, in a professional and workmanlike manner. If You require that MSI be onsite for more time than advised by MSI, then MSI will invoice, and You agree to pay, for MSI's time and expenses for the additional time onsite.
- 3.3. Travel Time and Expenses. The Order Form shall govern the fees for travel time and expenses, method of calculation, daily rate, or any other relevant details reasonably required by the Customer to sufficiently estimate, and agree upon, the estimated total travel fees for onsite Professional Services to be provided.
- 3.4. Postponing and Rescheduling. Unless otherwise agreed by both Parties in writing, if You postpone or reschedule onsite services fewer than ten (10) business days prior to onsite services, You shall pay MSI fees equal the prevailing rate for one (1) day of the MSI average daily rate for its Professional Services. MSI, at its sole discretion, may waive, completely or partially, said fees if the Customer reschedules the services.

### **4. Professional Services: Implementation Practices**

- 4.1. Implementation Practices. MSI uses, develops, and refines processes, procedures, best practices, computer software code, general knowledge, skills, experience, ideas, know-how, and implementation techniques (collectively, "Implementation Practices") by providing implementation and configuration services to many customers. You benefit from those Implementation Practices and agree that MSI owns and is free to use the Implementation Practices in its sole discretion, including Implementation Practices developed or refined in the course of providing Professional Services to You, so long as the Implementation Practices do not include the use of or reference to Your Confidential Information (as defined below). MSI grants You a non-exclusive, non-transferable, royalty-free, perpetual, and limited license to use the Implementation Practices within Your organization, for the purpose for which the Professional Services were provided. In the event that the Professional Services involve MSI software products licensed to You under a separate license agreement, only the terms set out in such separate license agreement shall apply in respect to each such MSI software product. For the avoidance of doubt, all materials provided by You to MSI in connection with the Professional Services shall remain Your property.

### **5. Professional Services: EMR Interfacing and Custom Solutions**

- 5.1. EMR Interfaces. "EMR Interface" means software code, scripts or other configurations that allow communication or data sharing between MSI's software and Your electronic medical record system(s). The scope, timelines, milestones, and any deliverables may be defined by the SOW or Order Form, however, if left unspecified, the Parties shall defer to MSI's standard package offerings.
- 5.2. Custom Solutions. Custom Solutions means any code, scripts, reports, builds, protocols, or any solutions not generally available in a standard SKU or standard package offering.
- 5.3. Additional payment terms for EMR Interfaces and Custom Solutions. MSI shall endeavor to make all commercially reasonable efforts to deliver EMR Interface services or Custom Solutions as per the SOW or Order Form. MSI is not obligated to provide any Custom Solutions outside the scope detailed in the SOW or Order form. If, by no fault or control of MSI, and after MSI having completed greater than fifty percent (50%), but less than one hundred percent (100%) of the project, the Customer delays the completion or final acceptance of services for a period greater than six (6) months from the SOW, MSI shall reserve the right to invoice the remainder of the fees for the services, less any deposit or advance payment(s) already made by Customer for the same. In this case, Customer shall remain entitled to the remainder of MSI's services per the SOW or Order Form, wherein MSI shall deliver on the balance of its obligations for a period of six (6) additional months, for a total of twelve (12) total months from the SOW or Order Form, after which time Section 2.2 shall apply.

## 6. Confidentiality

- 6.1. As used in this Agreement, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 6.2. The Receiving Party agrees that it will (i) use Confidential Information for the sole purpose of exercising its rights and performing its obligations under this Agreement, (ii) divulge Confidential Information only to those of its employees, directors, independent consultants or agents who have a need to know such Confidential Information and who are bound by professional duty or in writing (in advance) to confidentiality and non-use obligations at least as protective of such information as this Agreement, and (iii) not disclose any Confidential Information to any third party. The Receiving Party shall notify and cooperate with the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of

- the Disclosing Party. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Notwithstanding the foregoing, Customer acknowledges and agrees that MSI will, as part of its provision of the Professional Services to Customer, collect, store, and use information obtained from Customer, including, but not limited to, information about Customer's users and customers ("Information") for the purposes of (i) providing the Professional Services to Customer and (ii) analyzing and improving MSI's Professional Services. Customer represents and warrants that Customer has all rights and permissions necessary to grant MSI access to such Information.
- 6.3. Upon termination of this Agreement for any or no reason, the Receiving Party shall (i) immediately cease all use of the Disclosing Party's Confidential Information and (ii) upon request from the Disclosing Party, either return or destroy all Confidential Information of the Disclosing Party.
- 6.4. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 7. Proprietary Rights

- 7.1. Customer shall solely own all right, title and interest in and to its Confidential Information. MSI shall solely own all worldwide right, title and interest in and to its Confidential Information and the Deliverables.
- 7.2. Customer will, subject to compliance with the terms of this Agreement, have a perpetual, worldwide, non-transferable, non-sublicensable, non-exclusive license to use, for its internal business purposes only, any Deliverables created as part of the Professional Services.
- 7.3. Notwithstanding any other provision of this Agreement: (i) nothing shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques, and expertise used by or on behalf of MSI to develop the Deliverables, or any improvements, modifications or derivative works of any of the foregoing ("Tools"), and (ii) the term "Deliverables" shall not include the Tools. To the extent necessary to use the Deliverables, Tools that are delivered with or as part of the Deliverables, are licensed, not assigned, to Customer, on a non-exclusive, non-transferable, non-sublicensable basis solely to the extent necessary for Customer to utilize its rights in such Deliverables, and not in standalone form. As used in this Agreement, "Deliverables" shall mean any configurations, reports, and/or written documentation generated for Customer in connection with the performance of the Professional Services.

## 8. Warranty and Disclaimer

- 8.1. MSI warrants that the Professional Services shall be performed in a professional and workmanlike manner. In the event of a breach of the foregoing warranty, MSI shall

at its sole option and expense, either: (i) re-perform the applicable Professional Services in a manner that is compliant with such warranty, or (ii) in the event MSI is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable SOWs and upon such termination, MSI shall promptly refund Customer all fees paid for the non-compliant Professional Services. The rights and remedies granted Customer under this Section 8.1 state MSI's entire liability, and Customer's exclusive remedy, with respect to any breach of the warranty set forth in this Section 8.1.

- 8.2. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1, MSI MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. MSI SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS SUPPLIERS, ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **9. Limitations of Liability**

- 9.1. IN NO EVENT SHALL MSI'S (AND ITS PARTNERS' OR SUPPLIERS') TOTAL AND AGGREGATE LIABILITY IN CONNECTION WITH ANY PROFESSIONAL SERVICES OR ANY SOW EXCEED THE TOTAL VALUE OF AMOUNTS PAID BY CUSTOMER TO MSI IN RESPECT OF PROFESSIONAL SERVICES PROVIDED BY MSI PURSUANT TO THE RELEVANT SOW DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 9.2. IN NO EVENT SHALL MSI (OR ITS PARTNERS' OR SUPPLIERS') HAVE ANY LIABILITY IN CONNECTION WITH THE PRODUCTS, SERVICES OR THIS AGREEMENT TO THE CUSTOMER FOR ANY LOST PROFITS OR REVENUES, LOSS OF DATA, GOODWILL OR USE, INTERRUPTION OF THE SERVICES, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 9.3. CUSTOMER ACKNOWLEDGES AND AGREES THAT MSI HAS OFFERED THE PRODUCTS AND SERVICES, AND SET THEIR PRICES IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN END USER AND MSI. MSI WOULD NOT BE ABLE TO PROVIDE THE SERVICES ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

## **10. Term and Termination.**

- 10.1. This Agreement shall commence on the Effective Date and shall remain in effect until the date on which the relevant SOW is completed or the end of the subscription term, as applicable.

- 10.2. Either party may terminate this Agreement or any SOW immediately upon written notice (i) if the other party fails to perform its material obligations under this Agreement or any SOW and such failure is not corrected within thirty (30) days of written notice of the breach from the non-breaching party; or (ii) in the event the other party breaches any of its obligations of confidentiality as set forth in Section 6. In addition, MSI may terminate this Agreement or any SOW in the event Customer is more than thirty (30) days past due in its payments to MSI.
- 10.3. In addition to any payment obligations due by either party to the other party pursuant to this Agreement or any SOW, the following sections shall survive termination of this Agreement for any or no reason: Sections 1.2, 1.3, 3.4, 5.3, 6, 7, 8.2, 9, 10.3, and 11.

## **11. Miscellaneous Provisions.**

- 11.1. The parties are independent contractors under this Agreement and nothing in this Agreement authorizes a party to act as an agent of the other or bind the other to any transaction or agreement.
- 11.2. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement in whole or in part by operation of law or otherwise, without the other party's prior written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void. Notwithstanding the foregoing, however, either party may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which such party is the acquired entity (whether by merger, reorganization, acquisition, or sale of stock) or to the purchaser of all or substantially all of such party's assets.
- 11.3. Throughout the term of this Agreement, MSI will maintain the following minimum amounts of insurance: (i) workers' compensation at statutory minimums and employers liability with \$1,000,000 each accident, (ii) commercial general liability with a minimum of \$1,000,000 per occurrence and \$2,000,000 general aggregate; (iii) automobile liability for all hired and non-owned automobiles with \$1,000,000 combined single limit; and (iv) errors and omissions (E&O) coverage at \$2,000,000 aggregate, and umbrella liability coverage at \$1,000,000 aggregate. A certificate of insurance evidencing the above will be presented to Customer upon Customer's written request.
- 11.4. All notices, requests, demands and other communications pursuant to this Agreement shall be in writing and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); (iii) two (2) days after it is sent if by overnight delivery by a major commercial delivery service or (iv) e-mail with suitable electronic receipt or proof of transmission to the Customer point of contact (e.g., the "c/o" or "Attn" line) on the SOW or Order Form. Either party may by like notice specify or change an address to which notices and communications shall from then on be sent.
- 11.5. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a party's payment obligations) if the delay or failure is due to events which are beyond the reasonable control of the

- parties, including, but not limited to strikes, pandemics, epidemics, public health emergencies, blockade, government-imposed travel restrictions and quarantines, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, communications failure, and internet and power outages or disruptions.
- 11.6. Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, any MSI employee involved, directly or indirectly, in the performance of any Professional Services for a period commencing on the date of the relevant SOW and ending six (6) months after the expiration of the SOW. Customer shall not be prevented from hiring any employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such MSI employees.
  - 11.7. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.
  - 11.8. This Agreement will be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. The parties consent to the exclusive jurisdiction and venue of the state and federal courts located in Essex County, Massachusetts for resolution of any disputes arising out or relating to this Agreement.
  - 11.9. In the event any provision of this Agreement shall be determined to be invalid or unenforceable under law, all other provisions of this Agreement shall continue in full force and effect. This Agreement, together with any SOW, contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written between the parties with respect to said subject matter. Any additional or inconsistent terms on any purchase order shall be null and void. This Agreement and any SOW may be modified or waived only in a written instrument signed by both parties. A waiver of any breach under this Agreement shall not constitute a waiver of any other breach or future breaches.