

# PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT GOVERNS YOUR PURCHASE AND RECEIPT OF OUR PROFESSIONAL SERVICES.

## **Table of Contents**

1. [Definitions](#)
2. [Professional Services](#)
3. [Cooperation](#)
4. [Delivery, Acceptance and Change Orders](#)
5. [Fees, Invoicing and Taxes](#)
6. [Proprietary Rights and Licenses](#)
7. [Confidentiality](#)
8. [Representations, Warranties, Exclusive Remedies and Disclaimers](#)
9. [Indemnification](#)
10. [Limitation of Liability](#)
11. [Term and Termination](#)
12. [Insurance](#)
13. [Notices, Governing Law and Jurisdiction](#)
14. [General Provisions](#)

## **1. DEFINITIONS**

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means this Professional Services Agreement and any exhibits, schedules and addenda.

“**Change Order**” means any change to an SOW as applicable, as described in the “Change Orders” section below. Change Orders will be deemed incorporated by reference in the applicable SOW.

“**Deliverable**” means a deliverable under an SOW.

“**Professional Services**” means work performed by Us, Our Affiliates, or Our or their respective permitted subcontractors under an SOW including Our provision of any Deliverables specified in such SOW.

“**Software**” means any software of other intellectual property of Ours, whether available online or offline, which may be made available to You under one or more separate agreements.

“**SOW**” means a statement of work describing Professional Services to be provided hereunder, that is entered into between You and Us or any of Our Affiliates. An Affiliate of Ours that executes an SOW with You will be deemed to be “Us” as such term is used in this Agreement. SOWs will be deemed incorporated herein by reference.

“**We,**” “**Us**” or “**Our**” means Odaseva.com, Inc.

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement together with Affiliates of that company or entity which have signed SOWs for Professional Services.

## **2. PROFESSIONAL SERVICES**

**2.1. Scope of Professional Services.** We will provide to You the Professional Services specified in each SOW, subject to Your payment of all applicable fees as set forth in the “Fees” section of this Agreement.

**2.2. Relationship to Software.** This Agreement is limited to Professional Services and does not convey any right to use Software. Any use of Software by You will be governed by a separate agreement. You agree that Your purchase of Professional Services is not contingent on the delivery of any future Software functionality or features, other than Deliverables, subject to the terms of the applicable SOW or on any oral or written public comments by Us regarding future Software functionality or features.

## **3. COOPERATION**

**3.1. Cooperation.** You will cooperate reasonably and in good faith with Us in Our performance of Professional Services by, without limitation:

- (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Us to perform Our obligations under each SOW;
- (b) timely delivering any materials and other obligations required under each SOW;
- (c) timely responding to Our inquiries related to the Professional Services;
- (d) assigning an internal project manager for each SOW to serve as a primary point of contact for Us;
- (e) actively participating in scheduled project meetings;
- (f) providing, in a timely manner and at no charge to Us, office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, access to Your appropriate and knowledgeable employees and agents, and continuous administrative access to Your Online Service account, and coordination of onsite, online and telephonic meetings all as reasonably required by Us; and
- (g) complete, accurate and timely information, data and feedback all as reasonably required.

**3.2. Delays.** Any delays in the performance of Professional Services or delivery of Deliverables caused by You may result in additional applicable charges for resource time.

## **4. DELIVERY, ACCEPTANCE AND CHANGE ORDERS**

**4.1. Delivery of Services.** We will provide the Professional Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs. All Professional Services are provided on a time and materials basis, subject only to Our warranty in Section 8.2 below.

**4.2. Change Orders.** Changes to a SOW will require a written Change Order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.

## **5. FEES, INVOICING AND TAXES**

**5.1. Fees.** You will pay Us for the Professional Services at the rates specified in the applicable SOW or if no rate is specified in the SOW Our standard rates in effect at the time the SOW is executed. Professional Services are provided on either a time-and-materials or fixed fee basis, as provided in an SOW. Any amount set forth in a time-and-materials SOW is solely a good-faith estimate for Your budgeting and Our resource-scheduling purposes and is not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, We will continue to provide Professional Services under the same rates and terms. We will periodically update You on the status of the Professional Services and the fees accrued under SOWs.

- 5.2. Incidental Expenses.** You will reimburse Us for reasonable travel and out-of-pocket expenses incurred in connection with Professional Services. If an estimate of incidental expenses is provided in the applicable SOW, We will not exceed such estimate without Your written consent.
- 5.3. Invoicing and Payment.** Charges for time-and-materials engagements will be invoiced monthly in arrears unless otherwise expressly stated in the applicable SOW. Charges for fixed fee engagements will be invoiced in advance in the manner as provided in the SOW as applicable, unless otherwise expressly stated therein. Invoiced amounts will be due and payable net 30 days from the invoice date. You are responsible for providing Us with Your complete and accurate billing and contact information and notifying Us of any changes to such information.
- 5.4. Overdue Charges.** Subject to the “Payment Disputes” section, if any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future purchases of Professional Services on payment terms shorter than those specified in Section 5.3 (Invoicing and Payment).
- 5.5. Suspension of Professional Services.** Subject to the “Payment Disputes” section, if any amount owing by You under this or any other agreement for our Professional Services is 30 days or more overdue, We may, without limiting Our other rights and remedies, suspend Our performance of Professional Services until such amounts are paid in full.
- 5.6. Payment Disputes.** We will not exercise Our rights under the “Overdue Charges” or “Suspension of Professional Services” sections above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 5.7. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this section, We will invoice You and You will pay that amount, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## **6. PROPRIETARY RIGHTS AND LICENSES**

- 6.1. Your Intellectual Property.** You do not grant to Us any rights in or to Your intellectual property except such licenses as may be required for Us to perform Our obligations hereunder.
- 6.2. Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information.
- 6.3. License for Contract Property.** Upon Your payment of fees due under an applicable SOW We grant You a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for Your internal business purposes associated with Your use of anything developed by Us for You, including Deliverables, under this Agreement (“**Contract Property**”). Each party hereto each retains all right, title and interest in its respective intellectual property and We retain all ownership rights in the Contract Property.

## **7. CONFIDENTIALITY**

- 7.1. Definition of Confidential Information.** “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) 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 of each party includes the terms and conditions of this Agreement and all SOWs (including pricing), as well as business and marketing plans, strategies, data, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does 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) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any SOW to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

**7.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**8.1. Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**8.2. Warranty.** We warrant that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of the above warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable Professional Services. If We are unable to re-perform the Professional Services as warranted, You will be entitled to recover the Professional Services fees paid to Us for the deficient Professional Services. You must make any claim under the foregoing warranty to Us in writing within 90 days of performance of such Professional Services in order to receive warranty remedies.

**8.3. Disclaimer. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

## **9. INDEMNIFICATION**

**9.1. Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding (“**Claim**”) made or brought against You by a third party arising out of death, personal injury or damage to tangible property to the extent caused by Our personnel in their performance of the Professional Services, and will indemnify You for any damages, attorney’s fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved in writing by Us of, any such Claim, all of the foregoing to the extent caused by Our personnel, provided that You: (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (except that We may not settle any Claim unless it unconditionally releases You of all liability); and (c) give Us all reasonable assistance, at Our cost. The above defense and indemnification obligations do not apply to the extent a Claim arises from Your breach of this Agreement or applicable SOWs.

**9.2. Mutual Indemnity.** Each party (the “**Provider**”) will defend the other party (the “**Recipient**”) against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder (“**Material**”) infringes or misappropriates such third party’s intellectual property rights, and will indemnify the Recipient from any damages, attorney’s fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a settlement approved in writing by Provider of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider’s cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient’s use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it is no longer claimed to infringe or misappropriate, (B) obtain a license for the Recipient’s continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SOW upon 10 days’ written notice given within 30 days after the Provider’s exercise of such option, subject to the “Payment Upon Termination” section below.

**9.3. Exclusive Remedy.** This “Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of Claim described in this section.

## **10. LIMITATION OF LIABILITY**

**10.1. Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE STATEMENT OF WORK OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES’ PAYMENT OBLIGATIONS UNDER THE “FEES, INVOICING AND TAXES” SECTION ABOVE.

**10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER

AN ACTION IS IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **11. TERM AND TERMINATION**

- 11.1. Term.** This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with this section.
- 11.2. Termination for Convenience.** Either party may terminate this Agreement at any time for convenience upon 10 days' written notice to the other. To the extent there are SOWs in effect when a party terminates this Agreement, such SOWs shall continue to be governed by this Agreement as if it had not been terminated. You may terminate an individual SOW for convenience to the extent set forth in such SOW.
- 11.3. Termination for Cause.** A party may terminate this Agreement and/or any SOW for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.4. Payment Upon Termination.** Upon any termination of an SOW, You will pay, in accordance with the Invoicing and Payment section of this Agreement, any unpaid fees and expenses incurred on or before the termination date. In the event that You terminate an SOW for cause and You have pre-paid any fees for Professional Services not yet received, We will refund such pre-paid fees.
- 11.5. Surviving Provisions.** The sections titled "License for Contract Property," "Confidentiality," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Fees, Invoicing and Taxes," "Indemnification," "Limitation of Liability," "Term and Termination" and "General Provisions" will survive any termination or expiration of this Agreement.

## **12. INSURANCE**

Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker's compensation insurance as required by applicable law.

## **13. NOTICES, GOVERNING LAW AND JURISDICTION.**

- 13.1. Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant system administrator designated by You.
- 13.2. Agreement to Governing Law and Jurisdiction.** Each party agrees that the applicable governing law, without regard to choice or conflicts of law rules, and the exclusive jurisdiction of the applicable courts will be as follows:
- If you are domiciled in a country that is part of the European community. French law will be applicable and the Tribunal of Commerce of Paris will have exclusive jurisdiction.
- If you are domiciled in any other country, any dispute, controversy or claim arising out of or in connection with this Agreement shall be resolved in accordance with the laws of, and by a court of competent

jurisdiction located in, the jurisdiction of the Party against whom enforcement is sought, and each Party irrevocably waives any objection thereto, based on *forum non conveniens* or otherwise. With respect to Us, such jurisdiction shall be deemed San Francisco, California. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT.

#### **14. GENERAL PROVISIONS**

- 14.1. Compliance with Laws.** You will comply with all laws and governmental rules and regulations that apply to You in Your performance of Your obligations and exercise of Your rights, under this Agreement.
- 14.2. Export Compliance.** The Professional Services, including Deliverables We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will access or use any Deliverables or Confidential Information provided to it hereunder in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan and Syria) or in violation of any U.S. export law or governmental regulation.
- 14.3. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 14.4. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Our provision and Your receipt of Professional Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or in any other of Your order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable SOW, (2) any exhibit, schedule or addendum to this Agreement and (3) the body of this Agreement.
- 14.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 14.6. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 14.7. Subcontractors.** We may, in Our reasonable discretion, use subcontractors inside or outside the United States to perform any of our obligations hereunder. We will be responsible for the performance of Professional Services by our personnel (including employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.
- 14.8. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 14.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**14.10. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), provided however, either party may assign this Agreement in its entirety (including all SOWs, as applicable), without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.