

Professional Services Agreement

SILVERBACKMDM "SILVERBACK" AGREES TO PERFORM CERTAIN SERVICES (COLLECTIVELY KNOWN AS THE "SILVERBACK DEPLOYMENT SERVICES" OR "THE SERVICES") FOR YOU ("CUSTOMER") IN CONNECTION WITH THE SILVERBACKMDM PLATFORM ONLY IF (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND SUCH CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF SUCH CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN. THE TERMS AND CONDITIONS OF ANY SERVICES ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CUSTOMER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

1. Overview.

The work to be performed by Silverback consulting engineers for Customer shall be as detailed in the Silverback Deployment Service specification document. The goal of the Silverback Deployment Services is to provide training and assistance to Customer with the deployment of Customer's implementation of the Silverback solution ("the Solution").

2. Communications.

During the course of the project, on-going, regular communication will be established through mutually agreed conference calls, email, and when onsite work is performed in person, meetings.

3. Facilities; Backups.

Customer will provide any required equipment and facilities for all activities occurring at a Customer's site (e.g., Silverback training and onsite work). Customer shall also provide a working environment comparable with that used by the Customer's own development team, as reasonably necessary for Silverback to perform the services. Customer shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Services.

4. Payment Terms.

Orders are not binding upon Silverback until accepted by Silverback. As payment for the Silverback Deployment Services, Customer shall pay the amounts stated in the Silverback order form, in addition to travel costs and expenses, which shall require Customer's written approval. Payment shall be in U.S. Dollars or such other currency specified in the Silverback order form. Payment terms shall be net thirty (30) days from invoice date. Customer will provide Silverback's assigned Program Manager with email confirmation of receipt and acceptance of the services following the completion of the project. All services shall be deemed to be delivered, and on no account shall Silverback be obligated under to deliver further services beyond sixty (60) days after the date specified on the Services order form.

5. Intellectual Property.

These terms and conditions cover only the services component of the Silverback Deployment Services project. Silverback will exclusively be performing services and providing training relevant to the Solution and not be doing any custom software development for Customer pursuant to these terms and conditions. Customer therefore acknowledges and agrees that no new intellectual property is being created or delivered to Customer in the course of Silverback's delivery of the Services and Customer is hereby granted no ownership or license to use any Silverback intellectual property. Customer's use of any Silverback software shall be governed by the terms of an applicable license agreement between the parties.

6. Warranties; Support.

Silverback warrants that the Services shall be performed in a good and professional manner, and where applicable, in accordance with engineering practices generally accepted in the United States of America. Customer must notify Silverback within one week of the occurrence of any breach of warranty. In the event of a breach by Silverback of the foregoing warranty, Customer's sole and exclusive remedy for that breach is the re-performance of the relevant Services by Silverback at Silverback's expense. SILVERBACK HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, DESIGN OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR WARRANTIES CONCERNING THE NON INFRINGEMENT OF THIRD PARTY RIGHTS. NO WARRANTY IS PROVIDED AND NO LIABILITY IS ASSUMED BY SILVERBACK REGARDING DATA PROTECTION OR SECURE PROCESSING OR STORAGE OF ANY CUSTOMER DATA.

7. Liability Limitation.

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Assignment.

This agreement for services may not be assigned without the prior written consent of Silverback; provided, however, that Customer and Silverback shall be permitted to assign, without the consent of any other party, all, but not less than all, of its rights, duties and obligations under this agreement in connection with the sale of its entire or substantially its entire business, whether by merger, consolidation, sale of stock or equity interest, sale of all or substantially all assets or otherwise.

9. Relationship of the Parties.

Each of the parties shall at all times during the term of this Agreement act as, and shall represent itself to be, an independent contractor, and not an agent or employee of the other. Nothing stated in this Agreement will be construed as creating the relationships of joint venturers, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent.

10. Miscellaneous.

For Customers domiciled in Australia, these terms and conditions shall be governed and construed in accordance with the laws of the State of New South Wales in the Commonwealth of Australia, without regard to conflicts of law principles. For Customers domiciled outside of Australia, these terms and conditions shall be governed and construed in accordance with the laws of the state of Delaware in the United States of America. There are no intended third party beneficiaries hereto, and no terms or conditions are enforceable by any person who is not a party to this agreement. No third party is authorized to modify this agreement or to make any warranties, representations or promises which are different from those set forth in this agreement without express written permission from Silverback. If any of the above provisions are held to be in violation of applicable law, void, or unenforceable in any court of competent and appropriate jurisdiction, then such provisions are herewith waived to the extent necessary for this Agreement to be otherwise enforceable in such jurisdiction.

11. Entire Agreement.

Together with the Silverback order form, these terms and conditions constitute the complete and exclusive agreement between the parties concerning the Silverback Deployment Services and supersede all prior or contemporaneous agreements or understandings.