

Coraid Professional Services General Terms & Conditions

1. Definitions.

- a) **“Consulting Services”** means those services provided by Coraid to Customer as described in the attached [Jumpstart Program] ordered by the Customer (“Services”).
- b) **“Customer Materials”** means any and all materials or Technology that Customer provides to Coraid that are required for Coraid to provide the services hereunder.
- c) **“Intellectual Property Rights”** means (by whatever name or term known or designated) copyrights, trade secrets, trademarks, patents, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals and extensions of such rights.
- d) **“Technology”** means algorithms, approaches, code, concepts, data, designs, developments, documentation, discoveries, expressions, inventions, know how, methodologies, multi-media files, object codes, processes, programs, skills, software, techniques, technology, text, tools, and web pages.

2. Intellectual Property.

- a) **Proprietary Rights.** All Intellectual Property provided by Coraid are and remain Coraid property (“Coraid Proprietary Works”). All written reports, analyses and other working papers delivered by Coraid to Customer in the performance of Coraid’s obligations to perform the Services (“Document Work Product”), subject to and exclusive of any Intellectual Property Rights embodied therein, belong to Customer. Nothing herein shall preclude Coraid from developing, using or marketing services or materials that are similar or related to Services provided hereunder.
- b) **Customer Furnished Materials.** Any tangible Customer Materials furnished for use by Coraid remain Customer property.
- c) **Coraid Customer License.** Customer hereby grants to Coraid a non-exclusive, worldwide, personal, royalty-free, non-transferable license under Customer’s Intellectual Property Rights in the Customer Materials necessary for Coraid to provide the Services hereunder.

3. Confidentiality.

- a) The term “Confidential Information” means information or materials provided by one party to the other which are in tangible form and labeled “confidential” or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. The following information shall be considered Confidential Information whether or not marked or identified as such: for Coraid, its product roadmaps, source code, formulae, processes, methodologies, release dates, feature sets, and strategic business plans, and for Customer, its architecture, customer data, and strategic business plans.

- b) The receiving party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except: (a) to exercise its rights and perform its obligations related to Services provided under this Agreement;

or (b) in connection with the parties’ ongoing business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a “need to know” such Confidential Information. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care except for source code which shall at all times be kept in the

strictest confidence. Without limiting the foregoing, the restrictions on disclosure and use set forth herein shall not restrict or limit the right of the receiving party to (a) independently design, develop, acquire, market, service or otherwise deal in, directly or indirectly, products or services competitive with those of the disclosing party; or (b) assign personnel for any purpose. The receiving party shall protect Confidential Information in the manner provided herein for three (3) years after receipt thereof, unless such obligation ceases earlier pursuant to Section 3(c) below.

c) Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of Confidential Information of the disclosing party; or (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party.

d) Notwithstanding anything to the contrary herein, neither party shall disclose the terms and conditions related to the Services provided hereunder to any third party, without the prior written consent of the other party. Notwithstanding the foregoing each party may disclose the terms and conditions of related to the Services provided hereunder without the prior written consent of the other party: (a) as required by any court, administrative agency, or other governmental body, but only if the receiving party provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure; (b) as otherwise required by law; (c) to legal counsel of the parties; (d) in confidence, to accountants, banks, and financing sources and their advisors; (e) in connection with the enforcement of the Services provided hereunder; or (f) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

e) Notwithstanding the obligations of this Section 3, either party will be free to use for any purpose the general know-how, skills and experience, as retained in the unaided memories of the persons who have had access to the Confidential Information, resulting from access to or work with such Confidential Information, provided that such party (i) has not intentionally memorized any such information for the purpose of misappropriation and (ii) shall maintain the confidentiality of the Confidential Information as provided herein.

4. Warranty and Limitation of Liability.

a) **Coraid Warranty.** Coraid warrants that the Consulting Services to be performed hereunder will be done in a workmanlike manner and shall conform to standards of the industry.

b) **Customer Warranty.** Customer hereby represents and warrants that it either owns or has the rights to all Customer Materials it provides to Coraid necessary to grant the rights and licenses granted by Customer to Coraid hereunder. Customer further warrants that it has the ability to meet its payment obligations related to the Services provided hereunder.

c) **Disclaimer of Additional Warranties.** THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE CONSULTING SERVICES, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND CORAID DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND

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NONINFRINGEMENT. CORAID WILL NOT BE LIABLE FOR ANY THIRD-PARTY SERVICES OR PRODUCTS IDENTIFIED OR REFERRED TO CUSTOMER BY CORAID.

d) CORAID SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF, RELATED TO SERVICES PROVIDED HEREUNDER. CORAID'S TOTAL LIABILITY RELATED TO SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE FEES PAID FOR SUCH SERVICES .

5. **Fees and Payment.** The fees for the Services provided shall be specified on the applicable order for Services. The Services are non-cancellable once ordered by the Customer.

6. Miscellaneous.

a) **No Assignment.** Services provided hereunder and any rights or obligations of Customer under it may not be assigned, subcontracted or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Coraid, which consent will not be unreasonably withheld.

b) **Independent Contractors.** The relationship of Coraid and Customer shall be that of independent contractors. Nothing contained herein shall constitute either party the agent of the other party, or otherwise grant either party the authority to bind the other party to any obligation, or constitute the parties as partners or joint venturers and neither party shall hold itself out as being an agent having such authority. Customer shall make no representations or warranties on behalf of Coraid with respect to the Consulting Services.

c) **No Warranties.** No employee, agent, representative or affiliate of Coraid has authority to bind Coraid to any oral representations or warranty concerning the Services provided hereunder. Any written representation or warranty not expressly contained in the Terms and Conditions for the Services provided hereunder will not be enforceable.

d) **Governing Law.** The Terms and Conditions for the Services provided and any terms contained in the applicable order documents for such Services will be governed by the laws of the State of California and the United States of America, without regard to conflict of law principles. The parties consent to the exclusive jurisdiction of the state and federal courts of Santa Clara County, California.

e) **Equitable Relief.** Each party acknowledges and agrees that in the event of a breach of Section 2 or Section 3, the non-breaching party shall be entitled to seek immediate injunctive relief in addition to whatever remedies it might have at law or under these General Terms & Conditions.

f) **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all the Services hereunder if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, natural disaster, fire and explosions, or any other events reasonably beyond the control of either party, but the inability to meet financial obligations is expressly excluded.

g) **Export Control.** The Consulting Services provided to Customer

hereunder are of United States origin and are provided subject to the U.S. Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, Customer agrees that (1) it is not, and is not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of, Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) it is not, and is not acting on behalf of, any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (3) it will not use the Consulting Services, , and will not permit the Consulting Services, to be used for, any purposes prohibited by law, including, without limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

h) **Severability.** If any provision in these Terms and Conditions is found to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent possible so as to effect the intent of the parties, and the remaining provisions of these Terms and Conditions will remain in full force and effect.

i) **Entire Agreement.** These Terms and Conditions and the applicable order documents for the Services constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations, understandings and agreements, either oral or written. Any amendment must occur in a written document signed by both parties.