

Dynatrace Professional Services Terms

These Professional Services Terms (“**Terms**”) govern the provision by Dynatrace and the receipt by Customer of Professional Services purchased by Customer from Dynatrace. Except as set forth in these Terms, the provision of the Professional Services is governed by the agreement between Dynatrace and Customer together with any Order Form that incorporates it, and where there is no agreement, the Master Subscription Agreement found here: <https://www.dynatrace.com/company/trust-center/customers/> (collectively, the “**Agreement**”). In the event of any conflict between a term or condition in the Agreement and these Terms, these Terms will govern the provision of Professional Services unless explicitly superseded in the Order Form.

1. **Definitions.** Terms not otherwise defined herein have the meanings given in the Order Form and the Dynatrace Master Subscription Agreement.

“**Business Day**” is a day that is not a Saturday, Sunday, local statutory holiday or any additional holiday that Dynatrace gives its employees, either in the location where the Professional Services are provided or in the location of the Dynatrace employee performing the Professional Services (“**Consultant**”). For any engagement for managed services with a dedicated Consultant, the scheduled vacation time of the Consultant is also excluded.

“**Business Hours**” means 8 hours completed on Business Days between the hours of 08:00 and 18:00 in the time zone where the Professional Services are being performed.

“**Deliverable**” means all works of authorship, formulas, algorithms, databases, scripts, modifications, configurations, logos, symbols, designs, and other inventions (whether patentable or not) that Dynatrace authors, makes, conceives, reduces to practice, develops or otherwise creates, either alone or jointly with others, while performing Professional Services.

“**Dynatrace Materials**” means all documentation, materials, methodologies, processes, techniques, ideas, concepts, trade secrets, and know-how embodied in the Products, including Deliverables, or that Dynatrace may develop or supply in connection with the Products or Deliverables.

“**Intellectual Property Rights**” means (i) patents and patent rights, rights of priority, mask work rights, copyrights, moral rights, trade secrets, know-how and any other form of intellectual or industrial property rights; (ii) any other protected rights or assets and any licenses and permissions in connection therewith; (iii) trademarks, trade names, logos, service marks, designs and other designations of source; in each case (i), (ii) or (iii), recognized in any country or jurisdiction of the world, and whether or not registered or able to be registered and for the full period thereof, and all extensions and renewals thereof, and all applications for registration in connection with the foregoing.

“**Order Form**” means each Dynatrace order form, product schedule, renewal quote or other order document signed by the duly authorized representatives of both parties, or Dynatrace quote which by its terms is accepted by the issuance of a purchase order by Customer or its authorized representative, which identifies the Product, Support and/or Professional Services ordered by Customer. An Order Form may include an SOW.

“**Service Period**” is, unless otherwise specified in the SOW, the period from the start date to the end date of the Professional Services specified on the Order Form.

2. **Service Period.** Dynatrace is obligated to provide the Professional Services only during the applicable Service Period. At the end of the Service Period, any unused Professional Services are forfeited or, if invoiced in arrears, deemed used and payable.
3. **Scheduling.** Customer may reschedule Professional Services upon Dynatrace’s receipt of written notice from Customer. However, Customer will be responsible for all out of pocket expenses incurred by Dynatrace as a result, including non-refundable travel or hotel cancellation fees or penalties, without regard to any limitation

on liability or expense reimbursement. If Dynatrace receives Customer's written notice to reschedule less than five (5) Business Days before the scheduled start date for the Professional Services, Dynatrace reserves the right to charge a late cancellation fee equal to 50% of the session fee(s) (i.e., 50% of the number of Flexpoints required for a scheduled engagement). This is in recognition that late cancellation does not afford Dynatrace a commercially reasonable opportunity to reallocate its resources.

4. **Sub-Contractors**. Except as otherwise agreed by the parties, Dynatrace reserves the right to use sub-contractors to perform Professional Services. Dynatrace will be responsible for the performance of any such sub-contractors.
5. **Deliverables**. Dynatrace retains all Intellectual Property Rights in the Deliverables. Subject to Customer's compliance with the Agreement and these Terms, Dynatrace hereby grants Customer a limited, non-exclusive, non-transferable, license to use the Deliverables, solely for its internal business purposes with Customer's related use of the applicable Product. Notwithstanding any other provision the Agreement, (i) nothing herein will be construed to assign or transfer any Intellectual Property Rights in the Dynatrace Materials used by Dynatrace to develop the Deliverables, and to the extent such Dynatrace Materials are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables. On-going maintenance, upgrades, updates or continued support of the Deliverables shall not be provided after they are delivered in accordance with the requirements herein. Subsequent Professional Services for the Deliverables shall be available at Dynatrace's then current rates. Training sessions may not be recorded without Dynatrace's prior written consent.
6. **Warranty**. Dynatrace will use commercially reasonable efforts to perform the Professional Services and deliver the Deliverables according to the specifications, if any, set forth in the relevant Order Form and SOW. If Dynatrace fails to do so and Customer notifies Dynatrace within thirty (30) days of the date the Professional Services were performed, Dynatrace will undertake at its sole option and as Customer's exclusive remedy for breach of this warranty, to (i) re-perform the non-conforming Professional Services, or (ii) if Dynatrace determines that re-performance is not commercially reasonable, the SOW for the affected Professional Services will be cancelled and Dynatrace will refund to Customer any pre-paid fees corresponding to the affected Professional Services.

THE WARRANTIES GIVEN IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. **Pricing, Invoicing and Payments**. Dynatrace will provide the Professional Services subject to payment by Customer of all applicable fees.
 - a. **Pricing and Invoicing**. Customer will pay Dynatrace for the Professional Services in the amount or at the rates specified in the applicable Order Form, or if no rate or amount is specified, at Dynatrace's then-current rates and in accordance with the invoicing and payment terms set forth in the Agreement. Charges for expense reimbursement will be invoiced monthly in arrears. Unless otherwise agreed, amounts set forth on any invoice issued hereunder are due within thirty (30) days of the date of the invoice. Dynatrace does not require a timesheet to be signed by Customer prior to invoicing. However, Dynatrace will provide an unsigned timesheet to support the invoice on request.
 - b. **Incidental Expenses**. Customer will reimburse Dynatrace for all reasonable out-of-pocket expenses, including travel, meals and accommodation expenses, incurred by Consultants for travel to or onsite work performed on any engagement. Dynatrace will supply Customer with reasonable supporting documentation on request. The foregoing will not apply if the Order Form includes a specific line item setting forth the value or points for expenses incurred while providing the Professional Services.
 - c. **Payment with Flexpoints**. If Customer uses pre-purchased Flexpoints as the means of payment, the required number of Flexpoints will be deducted from Customer's balance on delivery of the Professional Services. Flexpoints must be redeemed in the minimum increments specified in the SOW. A 50% uplift in Flexpoints applies to all Professional Services scheduled outside Business Hours. Unused Flexpoints expire at the end of the Service Period. Estimates in a SOW of the number

of Flexpoints required for a Professional Services engagement represents a good faith estimate for Customer's budgeting and Dynatrace's resource scheduling purposes.

- d. **Overdue Charges.** Except with respect to amounts disputed in good faith, Dynatrace may impose a late payment charge not to exceed the maximum rate allowed by law. If Customer fails to pay any fee due hereunder, without limitation of any of its other rights or remedies, Dynatrace may suspend performance until Dynatrace receives all past due amounts from Customer. In the event of a good faith dispute for payment on any invoice, Customer will, within fifteen (15) days of receipt of the invoice, notify Dynatrace in writing of the dispute and the parties will use commercially reasonable efforts to resolve such dispute. Undisputed amounts remain payable as provided herein and in the applicable Order Form.
 - e. **Taxes.** Customer is responsible for payment of all applicable taxes including for example, value-added, sales, use or withholding taxes, if any, levied on the Professional Services provided.
8. **Customer Responsibilities; Delay.** Customer's technical, application, and business personnel are required to participate in the project to ensure successful completion. Customer will identify a single point of contact for the Dynatrace Consultant(s). Customer will identify the subject matter experts and other appropriate personnel to be involved in the performance of an SOW.

The parties acknowledge and agree that any fixed price project is dependent upon Customer's compliance with the obligations as specified in the Agreement. Failure by Customer to provide Dynatrace with the contemplated equipment, data, resources, access, personnel or the like reasonably requested by Dynatrace ("Customer Delay") may prevent or postpone Dynatrace's performance hereunder. In all such circumstances, Dynatrace's obligations will, to the extent so hindered by the Customer Delay, be permissibly delayed or excused. If Customer requires extension of the Service Period as the result of a Customer Delay, such extension shall be subject to additional fees and expenses.

9. **Non-Solicitation.** During the Service Period and for twelve (12) months thereafter, Customer agrees to the extent permitted by law that it will not, directly or indirectly, solicit for employment or employ any Dynatrace employee who is identified by Customer as a result of or in connection with the Professional Services; provided, however, that (i) non-directed internet or public advertisements and search firm engagements shall not be considered solicitations hereunder, and (ii) the restrictions of this Section shall not apply with respect to Dynatrace employees that initiate contact with Customer.
10. **Change Control.** Either party may request a modification to any material provision of the SOW on written request. Any requested variances from the terms within the SOW, including but not limited to additional Deliverables, timing changes or changes to scope, must be specified in a change request form mutually agreed and executed by authorized parties of both Customer and Dynatrace. On receipt of a requested change, Dynatrace will estimate the financial and schedule impacts, if any, and the parties will review these estimates to determine whether the requested changes are mutually acceptable. The terms reflected in an executed change request form will supersede any conflicting provisions in the SOW.
11. **Personnel.** Dynatrace will determine the Consultants assigned to perform the Professional Services. Customer may request in writing, with specific legal reasons stated, the replacement of Dynatrace Consultants that Customer reasonably believes are not adequately performing the Professional Services.
12. **Incorporated Terms.** If these Terms apply to an Order Form not governed by the Master Subscription Agreement, the following provisions of the Master Subscription Agreement are incorporated by reference herein as applicable to the delivery of the Professional Services and Deliverables: Section 10.2 (Restrictions), Section 11 (Ownership), Section 14 (Customer Indemnity), Section 15 (Indemnification Procedures), Section 16 (Confidentiality), Section 17 (Limitation of Liability), and Section 23 (Assignment).
13. **Miscellaneous.** Unless otherwise expressly agreed in writing by the parties:
- a. The Professional Services will be performed by Dynatrace based on the Customer environment as it exists as of the execution of the SOW.
 - b. The Professional Services will be performed during Business Hours.

- c. Certain aspects of the Professional Services may require restarting application components in the monitored environment. Customer is responsible for ensuring that the restart complies with its change control process and maintenance policies.
- d. Customer will ensure that all required hardware and software is on-site and available to the Consultant(s) at the start of the Professional Service engagement. Customer will enable system and physical security access as needed for Dynatrace to perform the Professional Services. Resources required but not accessible to Consultant(s) may impact duration of the engagement and Deliverables. Adequate workspace and/or training facilities shall be provided by Customer for the Consultant(s) as required.
- e. The SOW and the Deliverables constitute Confidential Information of Dynatrace, subject to the Confidentiality provisions of the Agreement.

14. Country-Specific Terms. For Professional Services performed in the countries noted below, the following additional or amended terms will apply:

a. United States and Canada:

Non-Solicitation is amended to add the following:

If Customer wishes to hire any Dynatrace employee prior to the completion of the non-solicitation period, and if Dynatrace agrees in writing before Customer communicates with such employee, then Customer shall pay to Dynatrace as liquidated damages, not as a penalty, an amount equal to the solicited employee's current monthly salary multiplied by the number of months that said solicited employee has been employed by Dynatrace, but in no case more than \$150,000 (local currency). Customer agrees that said liquidated damages formula reasonably represents Dynatrace's actual monetary damages arising from the loss of its investment in the recruiting, training and educating of the solicited employee and his or her replacement. Nothing herein shall preclude Dynatrace from enforcing any other legal or equitable remedies it may have upon Customer's breach of the SOW, including injunctive relief. Such other remedies may be enforced in addition to Dynatrace's right to liquidated damage under this paragraph.

Incidental Expenses is amended to add the following:

In the event Customer retains on-site Velocity Consultant Services for 6 months or more, Customer is responsible for reimbursement of up to two (2) weeks of incidental expenses incurred by the Velocity Services Consultant at the start of engagement, not to exceed \$6,000 (local currency), while the Velocity Services Consultant is provisioning long term housing. All other relocation, travel and expenses for Velocity Consultant Services are included in fees paid as long as the Velocity Services Consultant is required to be on-site at the Customer's primary location where the Velocity Services Consultant is required to perform the Professional Services ("Primary Location"). If Customer wishes to have a Velocity Services Consultant travel outside the Primary Location, Customer is responsible for Incidental Expenses in accordance with Section 7(b).

b. Netherlands, Belgium, and Luxembourg, Denmark, Norway and Sweden:

Scheduling is amended to add the following:

All resource requests are subject to up to a two (2) to four (4) week lead time.

If Consultants are required to perform Professional Services out of Business Hours, work will be subject to overtime rates. Overtime payment rates are an additional 50% per hour between 18:00 - 21:00 and 100% between 21:00 and 08:00, public holidays and weekends. If any work is to be conducted out of hours not already reflected in the scope of the Professional Services depicted in the SOW, a Change Request and purchase order may be required. Any overtime will be pre-approved by the Customer in writing. If any standby (on call) time is required, this

will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

c. **Germany, Austria and Switzerland:**

Scheduling is replaced in its entirety as follows:

Work scheduled outside of Business Hours requires a separate agreement and the following surcharges will apply:

- Business Days from 18:00 to 22:00: 25%
- Business Days from 06:00 to 08:00 25%
- Business Days from 22:00 to 06:00: 50%
- Saturday 50%
- Sundays and holidays: 100%

In the event a scheduled date is cancelled by the Customer:

- with a deadline of less than one (1) Business Day, 100% of the agreed daily rate per person per day must be paid.
- with a deadline of less than two (2) Business Days, 50% of the agreed daily rate per person per day must be paid.
- with a period of notice of at least three (3) Business Days before the agreed beginning, 25% of the agreed daily rate per person per day shall be paid.

If any standby (on call) time is required, this will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

d. **Italy:**

Scheduling is amended to add the following:

All resource requests are subject to up to a two (2) to four (4) week lead time.

If Consultants are required to perform Professional Services out of Business Hours, work will be subject to overtime rates. Overtime payment rates are an additional 50% per hour between 18:00 - 21:00 and 100% between 21:00 and 08:00, public holidays and weekends. If any work is to be conducted out of hours not already reflected in the scope of the Professional Services depicted in the SOW, a Change Request and purchase order may be required. Any overtime will be pre-approved by the Customer in writing. If any standby (on call) time is required, this will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

e. **Spain:**

Overdue Charges is replaced in its entirety as follows:

Delay in payment by the Customer will result in a surcharge of interest in favor of Dynatrace, without the need for notice or requirement, at the rate set by Law 3/2004, of December 29, which establishes measures relating to late payment in commercial operations.

Said interest shall be accrued daily from the due date until the date paid, at which time it shall be settled, all without prejudice to the right of Dynatrace to request the termination of the SOW.

Scheduling is amended to add the following:

If any standby (on call) time is required, this will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

f. **France:**

Services. The final sentence of clause 2(a) is replaced with:

If the Professional Services fee has been paid in advance by the Customer and the provision of any of these Professional Services has not been scheduled within six months following the payment of such fee, the prepaid and unused fee will be lost for the Customer, who will not be able to obtain a refund, without any other obligation for Dynatrace SARL.

Overdue Charges is replaced in its entirety as follows:

Any late payment will result, without a reminder being necessary, the payment of a fixed compensation of recovery costs of 40 €. This indemnity is due in addition to the late payment penalties due by the Customer and calculated at the rate of 3 times the legal interest rate and applied from the due date of payment until full payment of the invoice.

Any invoice not disputed by the Customer within fifteen (15) days from the date of receipt will be deemed accepted by the Customer.

Scheduling is amended to add the following:

If any standby (on call) time is required, this will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

g. **United Kingdom:**

Business Hours is replaced in its entirety as follows:

“**Business Hours**” means 7.5 hours completed on Business Days between the hours of 08:00 and 18:00 in the time zone where the Professional Services are being performed.

Scheduling is amended to add the following:

All resource requests are subject to up to a two (2) to four (4) week lead time.

If Consultants are required to perform Professional Services out of Business Hours, work will be subject to overtime rates. Overtime payment rates are an additional 50% per hour between 18:00 - 21:00 and 100% between 21:00 and 08:00, public holidays and weekends. If any work is to be conducted out of hours not already reflected in the scope of the Services depicted in the SOW, a Change Request and purchase order may be required. Any overtime will be pre-approved by the Customer in writing. If any standby (on call) time is required, this will be charged at 1 point per 4-hour session. If a call out happens, hours worked will be charged at rates above in hourly units.

h. **Australia and New Zealand:**

Business Hours is replaced in its entirety as follows:

“**Business Hours**” means 7.5 hours completed on Business Days between the hours of 08:00 and 18:00 in the time zone where the Professional Services are being performed.

Scheduling is amended to add the following:

If Consultants are required to perform Professional Services out of Business Hours, work will be subject to overtime rates. Overtime payment rates are an additional 50% per hour between 18:00 - 21:00 and 100% between 21:00 and 08:00, public holidays and weekends. If any work is to be conducted out of hours not already reflected in the scope of the Professional Services depicted in the SOW, a Change Request and purchase order may be required. Any overtime will be pre-approved by the Customer in writing. If any standby (on call) time is required, this will be charged at the appropriate rate as above in minimum ½ day increments. If a call out happens, hours worked will be charged at rates above in hourly units.

i. **South East Asia, India, China, Japan, and Korea:**

Scheduling is amended to add the following:

If Consultants are required to perform Professional Services out of Business Hours, work will be subject to overtime rates. Overtime payment rates are an additional 50% per hour between 18:00 - 21:00 and 100% between 21:00 and 08:00, public holidays and weekends. If any work is to be conducted out of hours not already reflected in the scope of the Professional Services depicted in the SOW, a Change Request and purchase order may be required. Any overtime will be pre-approved by the Customer in writing. If any standby (on call) time is required, this will be charged at the appropriate rate as above in minimum ½ day increments. If a call out happens, hours worked will be charged at rates above in hourly units.