

# Commercial Agreement

Professional Advantage Software Solutions Inc. ("PA"), a North Dakota Corporation with its principal office at 4820 30th Avenue South, Fargo, ND 58104

## 1 PREAMBLE

- 1.1 PA is an IT solutions provider of information technology Products and Services
- 1.2 Client engages PA to procure or subscribe to one or more Products or Services.

## 2 DEFINITIONS

- 2.1 "**Agreement**" means this document, these terms and conditions along with Schedules or Appendices.
- 2.2 "**Cancellation Fee**" means the fees associated with cancelling a Subscription.
- 2.3 "**Client Data**" means all data and information (including Confidential Information) relating to Client and its operations, facilities, personnel, assets, products, sales and transactions in whatever form whether entered, stored, generated or processed as part of the Products, and includes any:
  - 2.3.1 database in which such data or information is stored;
  - 2.3.2 documentation or records related to such data or information.
- 2.4 "**Cloud Provider**" means the Online Microsoft Dynamics 365 or Microsoft Azure environment, data center facilities comprising computer servers, associated hardware, software and IT networks that are established, operated and maintained by Microsoft Corporation ("Microsoft").
- 2.5 "**Customizations**" means changes, modifications, amendments to Products.
- 2.6 "**Help Desk**" means the provision of telephone, internet-based or email assistance as specified in Appendix B.
- 2.7 "**Intellectual Property Rights**" means:
  - 2.7.1 any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right, eligible layout and any corresponding property or right under the laws of any jurisdiction throughout the world, together with any right to apply for the grant or registration of the same; and
  - 2.7.2 any rights in any jurisdiction in the world in respect of an invention, discovery, trade secret, data, algorithm or formula.
- 2.8 "**License Maintenance**" means entitlement to subsequent versions of PA Products and Third Party Products named in the Order Form, released after the Original Use Date, provided the subsequent version is currently a Supported Version (Supported Version is defined in Appendix B).
- 2.9 "**Managed Services**" means the services and tools ancillary to the Hosted Platform, paid for by Client and provided by PA to the Client and which are required to operate and maintain the Hosted Platform.
- 2.10 "**Managed Services Fees**" means the fees associated with a contracted period, during which PA provides the Client with Managed Services as defined in Appendix C.
- 2.11 "**Online Microsoft Dynamics 365**" means an online environment managed by Microsoft running Microsoft's software for which the Client has paid Subscription Fees
- 2.12 "**On-Premise**" means software that is deployed onto the IT infrastructure located on the Client's premises or a data center managed by the Client.
- 2.13 "**Order Form**" means a document defining the Pricing of Products, License Maintenance, Professional Services, Managed Services or Standard Support purchased by the Client from PA.
- 2.14 "**Perpetual**" means the version of software which Client purchases a license to use and has paid for in full.
- 2.15 "**Products**" means: PA Products, Third-Party Products or a Hosted Platform.
  - 2.15.1 "**PA Products**" means the version PA-developed software applications paid for by the Licensee and invoiced by PA or an authorized PA reseller.

- 2.15.2 **“Third-Party Products”** means technology products purchased by Client from PA but produced by a third-party vendor, or previously owned by Client wherein Client has appointed PA to become the partner of record for such third party product.
- 2.15.3 **“Hosted Platform”** means the provision by PA of a Cloud Provider environment, used to operate a deployment of PA Products and Third-Party Products, which may be accessed by the Client during Planned Service Hours for the period for which Subscription Fees have been paid to PA.
- 2.16 “Professional Services”** means the provision of consulting, and development activities, including Customizations. This may include but not limited to: project management, business analysis, training, technical configuration, code development, and IT Infrastructure engineering.
- 2.17 “Public Software Version”** means a generally available variant of the Products made available by PA to the market.
- 2.18 “Services”** means services provided by PA, including but not limited to Professional Services, Managed Services, Customisations, and Standard Support.
- 2.19 “SLAAS”** means software-license-as-a-subscription (“SLAAS”), where the Client has purchased PA Products license(s) on a rental basis. *For the sake of clarity this is not software-as-a-service.*
- 2.20 “Subscription”** means Products that are purchased on rental basis, with payments made on a regular basis.
- 2.21 “Subscription Fees”** means the set fees associated the Subscription, plus any variable fees associated with excess consumption (such as storage, bandwidth traffic, etc).
- 2.22 “Standard Support”** is help desk support defined by the inclusions and exclusions in section 8 of this Appendix B. Also referred to herein as “Support”.
- 2.23 “Support Fees”** means the fees associated with a contracted period, during which PA provides the Client with Standard Support as defined in Appendix B.

### 3 ENGAGEMENT

- 3.1** The provision of Products, License Maintenance, Professional Services, Managed Services and Support from PA are governed by this Agreement.
- 3.2** PA Products may be sold and licensed under the following models:
- 3.2.1 Perpetual (deployed either on-premise or on a Hosted Platform)
- 3.2.2 SLAAS (deployed on a Hosted Platform)
- 3.3** Products are governed by product-specific license agreements or Terms of Use or Terms of Service agreements. PA Products are governed by PA’s Software End User License Agreement (EULA).
- 3.4** Retention of Title: Risk of Products transfers to the Client at time of delivery, but PA retains title of ownership and the Client does not have a claim on any license to use any Products until all amounts due have been paid. PA reserves the right to enter Client premises to remove unpaid goods.

### 4 FEES, PAYMENT

- 4.1** All amounts paid pursuant to this Agreement are payable in US Dollars (USD) and are non-refundable.
- 4.2** All charges, or other amounts described by PA 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”). Client is responsible for paying all Taxes associated with Client purchases hereunder. If PA has the legal obligation to pay or collect Taxes for which Client is responsible under this clause, PA will invoice Client and Client will pay that amount unless Client provides PA with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PA is solely responsible for taxes assessable against PA based on PA income, property and employees.
- 4.3** All Perpetual software licenses fees must be paid in full prior to delivery.

- 4.4 Subscription Fees and Managed Services Fees must be paid in advance as per the schedule on the Order Form. The minimum term for any Subscription or Managed Service is 24 months.
- 4.5 All Professional Services are provided on a fee for service basis at prevailing rates and are subject to Appendix C. Time and materials Invoices are issued weekly in arrears. Fixed Price invoices are issued upon completion of the relevant milestone.
- 4.6 Support Fees and Support Packs referred to in Appendix A are payable in advance.
- 4.7 A Cancellation Fee for cancelling a Subscription is calculated as follows:
  - 4.7.1 If the Subscription, in whole or part, is cancelled in the first 12 months, 100% of all amounts which would have been payable in respect of the Subscription Fees for the period between the date cancellation takes effect and 12 months after the Subscription Commencement Date or, 3 months Fees, whichever is the greater; or
  - 4.7.2 If the Subscription, in whole or part, is cancelled after the first 12 months, the cancellation fee will be the equivalent of 3 months fees of all amounts which would have been payable in respect of the Subscription Fees; but in any event the Client agrees to pay for all invoices within 30 days following date of the invoice unless stated otherwise on the invoice
- 4.8 Perpetual and Subscription Fees must be paid prior to commencement of Professional Services.
- 4.9 Travel Charges are applicable for on-site visits to Client premises in accordance with Appendix D.
- 4.10 PA may refuse and withhold provision of Services or access to a Hosted Platform where Client account is not maintained within payment terms.
- 4.11 Any overdue amounts may be charged interest at the lesser of 2% per month and the highest rate permitted by applicable law. The Client will be liable for all collection and legal costs. Any amounts due in respect of this Agreement may not be offset against any other claims the Client may have against PA.

## 5 TERM AND TERMINATION

- 5.1 This Agreement shall continue for a period of twelve months and is automatically renewed for a further period of twelve months unless terminated in terms of this Agreement.
- 5.2 In the event of any breach of any term or provision of this Agreement by either party by providing 30 days written notice to cure such breach prior to any termination notice. In the event that such a breach is incapable of being rectified, the other party may terminate the Agreement by giving 30 days written notice.
- 5.3 Client may, at any time, terminate the Agreement for the Client's convenience and without cause, except for any applicable Cancellation Fee, by providing 90 days written notice. Upon receipt of written notice from Client of such termination for Client's convenience, PA shall cease operations as directed by Client and, except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, and enter into no further subcontracts or purchase orders. PA shall be entitled to receive payment for work executed, and costs incurred by reason of such termination.
- 5.4 Upon expiry or termination of this Agreement, Client must (within 30 days of expiry or termination) deliver to PA any Confidential Information of PA in Client's possession or, if requested by PA destroy or erase all copies of the same. Any Confidential Information of Client in PA's possession will be returned to Client or, if requested by Client, PA will destroy or erase all copies of the same.
- 5.5 Either party may terminate this Agreement immediately upon written notice to the other party if the other party becomes insolvent or is the subject of a proceeding in bankruptcy, is placed in receivership, or enters into an arrangement for the benefit of its creditors.
- 5.6 Client shall be responsible for payment of all Services rendered prior to the effective date of termination.
- 5.7 PA may terminate this Agreement immediately with written notice if any invoice is unpaid for a period greater than 30 days following its due date.

- 5.8** PA reserves the right to suspend the provision of Services if the Client engages any other party for similar Services.
- 5.9** Upon expiry or termination of a Subscription for a Hosted Platform, Client may request (within 30 working days of expiry or termination) PA deliver to Client an extraction of any Client Data. Any Professional Services associated with extraction, preparation or delivery of Client Data will be charged on a time and materials basis.

## **6 REPRESENTATION AND DISCLAIMER**

- 6.1** PA represents that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; (iii) Services will be provided in a professional and workmanlike manner; and (iv) to the best of its knowledge, Products and Services will not violate the copyright or proprietary rights of any third party, provided, however, that PA expressly disclaims any warranty relating to infringement resulting from PA's use of tools, instructions, specifications, or other materials provided by Client to PA ("Client Materials") and provided, further, that the foregoing warranty shall not apply to the extent that Client or its agents make modifications to any aspect of the results of the Services.
- 6.2** Client represents that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; (iii) it has or has obtained the right to permit PA to supply any of the Products, Services contemplated by this Agreement; and (iv) in entering into this Agreement it has relied upon its own experience, skill and judgement to evaluate the Products, Services and that it has satisfied itself as to the suitability of the Products, Services to meet its requirements.
- 6.3** Except as expressly provided herein, the Products, Services are provided as-is. PA does not warrant that Products and Services will be fit-for-purpose, accurate, complete or error-free. There are no warranties which extend beyond those expressed in this Agreement.

## **7 INDEPENDENT CONTRACTOR STATUS**

- 7.1** The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties hereto.

## **8 INDEMNIFICATION**

- 8.1** PA agrees to indemnify, hold harmless and defend Client from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by Client and for which Client provides notice to PA within thirty (30) days of such claim which relate to the violation of any third party's copyright or proprietary rights arising in the provision of Services or PA Products, except where such violation arises from PA's reliance on Client's instructions or specifications or where Client or its agents modify any aspect of the results of the Services, in which case Client shall indemnify PA.
- 8.2** In the event of any infringement or claimed infringement, Client's sole remedy shall be that PA shall in its sole discretion: (i) modify infringing materials to be non-infringing; (ii) obtain a license for Client to use the infringing materials; or (iii) subject to the limitation of liability provisions of this Agreement, provide monetary compensation to Client under this indemnity.
- 8.3** Client agrees to indemnify, hold harmless and defend PA from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by PA and for which PA provides notice to Client within thirty (30) days of such claim which relate to the violation of any third party's copyright or proprietary rights arising in connection with the provision of Professional Services where such violation arises from PA's reliance on Client's instructions or specifications or where Client or its agents modify any aspect of the results of the Services.

## **9 LIMITED LIABILITY**

- 9.1** To the full extent allowed by applicable law, the parties mutually waive all claims and rights of recovery against each other for any special, exemplary, consequential or indirect damages related to this Agreement or otherwise. Consequential and indirect damages include loss of data, use, income, anticipated profits on unperformed work or other contracts or projects, loss of business, goodwill or reputation or other consequential or indirect damages as defined by applicable law.
- 9.2** Under any State or Federal Law when implied conditions and warranties cannot be expressly excluded, PA limits its liabilities in the case of Professional Services, to the supplying of the Professional Services again, or the payment of the cost of having the Professional Services supplied again at the discretion of PA.
- 9.3** To the full extent allowed by applicable law, PA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to this Agreement from any cause or causes of action including but not limited to PA's negligence, strict liability, breach of contract or breach of warranty shall not exceed the amount of the fees paid by Client to PA under this Agreement during the previous 12 month period in which such claim arises.

## **10 INTELLECTUAL PROPERTY AND PRIVACY**

- 10.1** All rights in any intellectual property relating to the PA-Products, and Services, related documentation, or background material remain the property of PA.
- 10.2** PA retains all rights to intellectual property created in connection with its performance of Services hereunder or elsewhere.
- 10.3** Subject to this clause PA grants to the Client a non-exclusive, irrevocable, perpetual, global license to use the Intellectual Property Rights in any Services provided to the Client for its own internal purposes. For the avoidance of doubt, the Client is not entitled to exploit the intellectual property referred to in this clause.
- 10.4** All Client data stored within the Products or its related components remains the property of the Client. The Client warrants that any logo or copyright material supplied by it to PA are its own and may be used with its authorization. PA accepts no responsibility for the accuracy or protection of Client Data except to the extent imposed by privacy legislation. The Client warrants that it has complied with all such legislation and will continue to ensure it does so.

## **11 PRIVACY NOTICE**

- 11.1** PA will comply, and will ensure that all its representatives comply with privacy legislation in respect of all personal information collected, used, disclosed and otherwise handled by them under or in connection with this Agreement.
- 11.2** Subject to the privacy legislation, PA uses Client information to provide Client with information relating to PA or promotional details about Products, Services that may be of interest to Client, unless Client has previously advised PA not to be contacted for those purposes. Should Client no longer wish to receive information such as this, please notify PA using the contact details in section 11.3.
- 11.3** If Client has any questions or feedback about privacy, or wish to make a complaint about the way in which PA has handled Client personal information, contact PA as follows: (i) [privacy@profad.com](mailto:privacy@profad.com); (ii) +1 701 235 2363; (iii) The Privacy Officer, Professional Advantage Software Solutions Inc. at Suite 201, 4820 30th Avenue South, Fargo, ND 58104

## **12 CONFIDENTIALITY**

- 12.1** Each party to this Agreement (each, a "Recipient") shall protect and keep confidential all non-public information disclosed by the other party (each a "Discloser") and identified as confidential by the Discloser ("Confidential Information"), and shall not, except as may be authorized by Discloser in writing, use or

disclose any such Confidential Information for a period of three (3) years from the completion, termination or abandonment of the Agreement Upon termination or completion of this Agreement, Recipient shall return to Discloser all written materials which contain any Confidential Information. The obligations of confidentiality shall not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no obligation of confidentiality to Discloser; (iv) is independently developed by Recipient; or (v) is required to be disclosed as a matter of law.

**12.2** Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

### **13 SOLICITATION**

**13.1** Both parties agree not to hire or attempt to hire employees or subcontractors of the other party without prior written consent, during the term of this Agreement and during the one (1) year period commencing upon completion, termination, expiry or abandonment of this Agreement. If consent is provided, then the 'hiring' party agrees to pay the other party a recruitment fee equivalent to four months of the salary package as compensation. This restriction also applies for a period of 12 months from the date of resignation/termination of any employee or subcontractor.

### **14 DELAYS**

**14.1** Neither party shall be liable for delays caused by fire, accident, labor dispute, war, insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control; but each party shall use all reasonable efforts to minimize the extent of any such delay. PA shall not be liable to Client (or Client's customers) for any delay in performance or any failure in performance hereunder caused in whole or in part by reasons beyond the control of PA and resulting from Client's failure to furnish in a timely manner information, equipment, or materials necessary to provide the Hosted Platform or perform the Services.

### **15 AMENDMENTS**

**15.1** Changes to this Agreement need to be agreed in writing by both parties.

### **16 ASSIGNMENT**

**16.1** Neither party may assign its rights or obligations hereunder (except to subsidiaries or affiliates) without prior written consent of the other party, which consent will not be unreasonably withheld. Arbitration & Governing Law

**16.2** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota without regard to the choice of law or conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**16.3** Any dispute, controversy, cause of action, or claim, of any kind or nature whatsoever, whether legal or equitable, including, but not limited to, claims sounding in contract, torts or products liability and claims based upon alleged violations of consumer protection laws, which arise out of or relate to (1) this Agreement, or the breach, termination or invalidity of this Agreement, (2) the sale, installation, modification or use of the PA Products sold, or (3) any Services rendered in connection with the sale, installation, modification or use of the PA Products shall be finally and exclusively settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association in effect on the date of this Agreement by one (1) arbitrator appointed in accordance with such Rules. The place of arbitration shall be Fargo, North Dakota. Judgment upon the award of the arbitrators may be entered in any court having jurisdiction thereof.

**16.4** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota without regard to the choice of law or conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**17 APPENDICIES**

**17.1** The following appendices are included as part of this Commercial Agreement:

Appendix	Title
A	License Maintenance
B	Standard Support
C	Managed Services – Hosted Service Environments
D	Professional Services

## Appendix A: License Maintenance Plan

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### 1 PREAMBLE

- 1.1 License Maintenance is included in the SLAAS license model.
- 1.2 Where the Client has purchased a perpetual license and the periodic License Maintenance Plan, Client is entitled to License Maintenance Services as defined in this Appendix.
- 1.3 The contents of this Appendix are published at <http://www.profad.com> under Terms and Conditions. PA will publish changes to the above web location 30 days before they go into effect, and thereafter the online content supersedes this copy.

### 2 DEFINITIONS

- 2.1 **“License Maintenance Fees”** means the periodic fee required to maintain the License Maintenance Plan entitlement. The fee is determined by a percent of the Products list price (Protected List Price) and the percentage is identified in the Order Form.
- 2.2 **“Original Use Date”** means the date on which Client first utilizes the Products in production mode.
- 2.3 **“Renewal Period”** means the term for which License Maintenance Fees must be paid. For Perpetual license sales, this period shall be no less than one year.
- 2.4 **“Protected List Price”** means the Products list price as per the original Order Form.

### 3 LICENSE MAINTENANCE

- 3.1 For Products which the Client has licensed and for which it has paid the relevant License Maintenance Fees, the vendor will from time to time, provide at no additional charge, new Public Software Version.
- 3.2 The charge for any Professional Services associated with the installation and/or upgrading of PA Products, and the re-application or modification of Customizations, will be based on current standard rates as amended from time to time.
- 3.3 Failure to renew License Maintenance Fees (a lapse of the License Maintenance entitlement) on or before the end of the term constitutes a termination of the License Maintenance entitlement. To reinstate a lapsed License Maintenance entitlement will require the Client to either 1) pay for all License Maintenance Fees not paid during the period of lapse plus a reinstatement fee calculated as 20% of all the lapsed fees, or 2) purchase new Perpetual licenses at current list price.



## Appendix B: Standard Support

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### 1 PREAMBLE

- 1.1 For a Supported Version PA offers Standard Support services for said products/versions.
- 1.2 The contents of this Appendix are published at <http://www.profad.com> under Terms and Conditions. PA will publish changes to the above web location 30 days before they go into effect, and thereafter the online content supersedes this copy.

### 2 DEFINITIONS

- 2.1 **“Standard Support”** is help desk support defined by the inclusions and exclusions in section 8 of this Appendix B.
- 2.2 **“Support Hours”** means the hours between 7.30am and 7.00pm USA Central Time (“CST”), Monday to Friday, excluding national holidays :New Year’s Day, Good Friday, Memorial Day, Independence Day, Labour Day, Thanksgiving Day, Christmas Day.
- 2.3 **“Supported Version”** means a PA Products version for which Standard Support services are offered.
  - 2.3.1 PA will provide Standard Support services for any Public Software Version of a PA Product for 18 months beginning with the public release date of said version. An example of such a version would be 18.1.
  - 2.3.2 PA will provide Standard Support services for any Public Software Version of a Third-Party Product for as long as the Third-Party Product vendor has agreed to support the said version.
- 2.4 **“Service Pack”** mean versions made available for providing defect repairs to the Client. A Service Pack release does not constitute the initiation of a new 18-month support period. Service Packs can be identified as follows: in “release” 18.1.3, the Supported Version is 18.1 and the Service Pack is 3.
- 2.5 **“Compatible Dynamics Versions”** means the current versions of Dynamics products for which PA will maintain PA Products compatibility for. The compatibility matrix is published at <http://www.profad.com>.
- 2.6 **“Support Cases”** are distinct cases initiated by the Client. Each case must have a unique reported problem or question and cases cannot be “overloaded” with multiple reported problems or questions. Each submitted case for work is performed is decremented from the Client’s outstanding case entitlement.
- 2.7 **“Support Packs”** means Support Cases purchased by the Clients. They must be purchased in advance of submitting cases. The purchase of a Support Pack increases the outstanding case entitlement for the Client. Outstanding case entitlements can be found by contacting the Help Desk.

### 3 SUPPORT ENTITLEMENT

- 3.1 Current **Case Entitlement Balance** is the amount of unused Support Cases available to the client. The Client must have one or more unused Support Cases to submit a case to PA.
- 3.2 Client receives an allocation Support Cases through the License Maintenance Plan. The amount of cases that Client receives varies depending upon License Maintenance Plan value and is determined by PA. Additional Support Cases may be added through the purchase of Support Packs.
- 3.3 Each case submitted to PA decreases the Case Entitlement Balance by one case, unless PA opens a software defect associated with the case.

### 4 HELP DESK OPERATIONS

- 4.1 The Help Desk operates during Support Hours.
- 4.2 Provided Client has current a positive Case Entitlements Balance, Client can contact the Help desk for assistance regarding the Products they have licensed.

- 4.3** The Help Desk can be contacted via:  
Portal: <https://portal.profad.com/>  
Phone: 1-887-987-1209
- 4.4** Cases submitted in any other manner than the above may not result in the creation of a formal Support Case and PA cannot guarantee a response in these cases.
- 4.5** Client may contact the Help Desk 24 hours per day, however call responses will be provided during Support Hours.
- 4.6** Client may engage PA Support outside of normal working hours on a pre-planned, billable basis.
- 4.7** All issues are given a case number. All cases will be managed to conclusion and cases will be closed following notification from the Client, or after two attempts to contact the Client have been made by PA.
- 4.8** In instances where the case relates to a Third-Party Product, and is unable to be resolved by PA, and is escalated to the relevant third-party vendor for which PA is the Client's partner of record with the third-party vendor, PA is subject to the third-party party escalation and response times of that organization, details of the response times of third party vendors will be provided to the Client.
- 4.9** In instances where the case indicates that a problem is originating in a Third-Party Product not represented by or sold to Client by PA (i.e. operating system, database, networking, etc.), PA Support will engage with the third party as needed, however the Client must take lead in creating, maintaining, and coordinating a support case with said third-party.
- 4.10** The Client can nominate two representatives who are entitled to contact the Help Desk on behalf of the Client. These representatives are required to be trained by PA in the use of the Products.

## 5 CASE MANAGEMENT

- 5.1** When submitting a Support Case, the Client declares their assessment of priority based upon the table below. PA reserves the right to reassign a priority level based upon facts as they surface. PA will use the severity level to prioritize all outstanding cases. All cases, irrespective of severity level will follow the same resolution pathway. PA's priority taxonomy with response-time targets are:

Priority	Descriptions and Examples	Target Response Time
Payroll / System Down:	Processing Payroll Batches and the steps directly leading up to them, system completely down for all users. Excludes issues relating to individual payroll checks or individual features.	1 hour
Very High	Inability to processing invoices. Entire feature(s) inaccessible for all users.	3 hours
High	Key feature not working for some users.	5 hours
Normal	All other non-excludable requests.	One business day

- 5.2** The above targets represent PA's goal in serving our Clients, but do not impact the terms of any agreement should PA not meet these targets. Client is provided escalation information in the signature line of each case-related e-mail, which can be utilized if any concerns arise with any aspect of PA's Help Desk services.

## 6 DEFECT REPAIRS

- 6.1** PA may or may not provide a defect repair based upon a variety of decision factors.
- 6.2** Defect repairs will be made to the latest Service Pack of a Supported Version. In the sample above, if a Client is on Version 18.1 but the current active point release is 18.1.2, then a new defect repair will be released via 18.1.3 and the Client will be required to accept said defect repair in 18.1.3.

- 6.3** Notwithstanding the availability of defect repairs in clause 6.1, the charge for any Professional Services associated with Products upgrade or configuration, including the installation and/or upgrading of software, and the re-application or modification of Customizations, will be based on current standard rates.
- 6.4** Current Case Entitlement is required to submit a Support Case, however any case for which a defect is acknowledged and recorded in PA's defect database will not result in the decrement of Client's Case Entitlement.

## **7 MICROSOFT DYNAMICS GP YEAR-END UPDATES**

- 7.1** PA will ensure compatibility between Supported Versions and Supported Dynamics GP Versions.
- 7.1.1 Client is encouraged to plan for these critical year-end Dynamics GP updates and be on versions which align to the above compatibility plan

## **8 INCLUSIONS AND EXCLUSIONS**

- 8.1** The following Support Case types are INCLUDED by Standard Support services described in this Appendix:
- 8.1.1 "Break Fix Support".
- a) Emergency support inquiries for system-down or critical problem diagnosis and resolution;
  - b) Correcting Errors or other problems in the Products in an appropriate time, or issuing instructions to Client's designated contacts as to how to resolve the problem in order to resume operation of the Products to operate in a manner reasonably satisfactory to Client until the problem can be fully corrected by PA.
- 8.1.2 "How-To Support" questions regarding user or administration application functionality and usability. Examples include: where to find features, minor task instruction, and functionality clarification.
- 8.2** The following list of activities, which is not exhaustive, are EXCLUDED from the scope of Standard Support:
- 8.2.1 Cases submitted by personnel not trained by PA in the use of the Product (see 4.10 of this Appendix).
- 8.2.2 Support for Customizations developed by PA.
- 8.2.3 Problems arising from Client-performed installations or upgrades where PA did not sign-off on the installation or upgrade.
- a) PA will not provide Standard Support for Products implemented or upgraded without the assistance of PA
  - b) PA Professional Services may be engaged by Client to participate in any resulting cleanup activities arising from 8.2.3 of this Appendix.
- 8.2.4 Problems arising from data imports or data conversions.
- 8.2.5 Consultative activities:
- a) Creation of reports and dashboards, or non-performance of reports and dashboards created or altered by Client.
  - b) Complex usage questions addressed during training in the implementation phase
  - c) Training (user or administrator)
  - d) System setup, configuration, or re-configuration
  - e) Solution installation
  - f) Report writing
  - g) Software development
- 8.2.6 In-House IT responsibilities such as:
- a) SQL Server database management
  - b) Windows Server, Windows Client setup and administration
  - c) Security policy setup and administration

- d) Networking and connectivity issues
- e) Data repair
- f) Data quality management
- g) Data or system reconciliation
- h) Cleaning devices of malware and viruses
- i) Resolution of issues caused by incompatible or unstable software not provided by or represented by PA
- j) Troubleshooting computer devices at the Client's locations, i.e. machines (computers, printers, devices) which do not form part of the Product.

## Appendix C: Managed Services [Hosted Service environments]

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### 1 PREAMBLE

- 1.1 Client will access the Hosted Platform using an Internet connection, browser, and remote desktop services technologies.
- 1.2 PA will maintain availability to the Hosted Platform in accordance with Service Levels.
- 1.3 Client appoints PA as its exclusive supplier of Managed Services to the Hosted Platform during the contracted period as defined in the Order Form.
- 1.4 The contents of this Appendix are published at <http://www.profad.com> under Terms and Conditions. PA will publish changes to the above web location 30 days before they go into effect, and thereafter the online content supersedes this copy.

### 2 DEFINITIONS

- 2.1 **"Actual Service Hours"** means the number of hours that a Hosted Platform is Available.
- 2.2 **"Available"** means access to a Hosted Platform is operational and accessible over the Internet using a computer that is not part of the Hosted Platform.
- 2.3 **"PA Business Hours"** means the hours between 7.30am and 7.00pm USA Central Standard Time ("CST"), Monday to Friday, excluding national holidays.
- 2.4 **"Down Time"** means any period of time where the Hosted Platform is not Available.
- 2.5 **"Excusable Down Time"** means any Down Time due to an Excusable Failure or any Scheduled Down Time.
- 2.6 **"Excusable Failure"** means any failure due to a Force Majeure Event.
- 2.7 **"Force Majeure Event"** means any event or circumstance reasonably beyond the control of a party.
- 2.8 **"Planned Service Hours"** for the Hosted Platform means 24 hours per day.
- 2.9 **"Scheduled Down Time"** means a period of Down Time that is agreed between PA and Client.
- 2.10 **"Service Availability"** means the ratio of Actual Service Hours, adjusted for Excusable Down Time, to Planned Service Hours over a rolling three-month period, calculated as follows:  
$$\text{Service Availability \%} = \frac{(\text{Actual Service Hours} + \text{Excusable Down Time}) * 100}{\text{Planned Service Hours}}$$
- 2.11 **"Service Levels"** means the service levels set out clause 6 of this Appendix.
- 2.12 **"Working Hour"** means an hour during Planned Service Hours.

### 3 ACCEPTABLE USAGE POLICY

- 3.1 Neither Client, nor those that access the Hosted Platform through Client, may use the Hosted Platform:
  - 3.1.1 in a way prohibited by law, regulation, governmental order or decree;
  - 3.1.2 to violate the rights of others;
  - 3.1.3 to try to gain unauthorized access to or disrupt any service, device, data, account or network;
  - 3.1.4 to spam or distribute malware;
  - 3.1.5 in a way that could harm the Hosted Platform or impair anyone else's use of it; or
  - 3.1.6 in any application or situation where failure of the Hosted Platform could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
- 3.2 Violation of the terms in this section may result in suspension of the Hosted Platform. PA will suspend the Hosted Platform only to the extent reasonably necessary. Unless PA reasonably believes an immediate suspension is required, PA will provide reasonable notice before suspending the Hosted Platform.

## **4 MANAGED SERVICE INCLUSIONS**

- 4.1** Provision of access to the Hosted Platform during Planned Service Hours.
  - 4.1.1** PA will be the sole holder of elevated (administrator) access credentials for all server and database components.
- 4.2** Deploy and manage software applications that monitor server, database, and PA Products 24 hours per day, 7 days per week.
- 4.3** Notify the Client of appropriate issues arising from the use of the Hosted Platform.
- 4.4** Install and manage anti-virus technology to monitor unauthorized access to the Hosted Platform.
- 4.5** Implement and maintain a 'least privilege' approach to infrastructure access.
- 4.6** Schedule backups of the database information that is stored within the Hosted Platform. This Agreement does not include backups on individual Personal Computers or Client Data held outside the Hosted Platform.
- 4.7** Restore data from backups upon demand from the most recent successful backup. There will be no recovery of Client Data captured after the time of the most recent successful backup.
- 4.8** Carry out maintenance, updates and enhancements to the Hosted Platform during planned Scheduled Down Time.
- 4.9** Assist in establishing connectivity to the Hosted Platform from the Client's IT network.
- 4.10** Carry out emergency remedial work as required, which may occur outside of Scheduled Down Time.
- 4.11** Provision of a "Help Desk" for Client to log cases as per Appendix B.

## **5 CLIENT RESPONSIBILITIES**

- 5.1** Nominate an IT administrator for ongoing co-ordination with the PA Managed Services team.
- 5.2** Setup, configure, and maintain Client-side connectivity compatible with PA's Cloud Provider.
- 5.3** Notify PA of unusual business events which may affect the operation of the Hosted Platform at least 15 days prior to their upcoming occurrence. This includes but is not limited to the planned installation of additional technology which may interact with the Hosted Platform, significant changes to Products (upgrades, reconfigurations, etc.), and expectations of notable increases in load on the Hosted Platform.
- 5.4** Ensure that use of the Hosted Platform is for appropriate business use only. Refer Acceptable Usage policy.
- 5.5** Not configure or adapt the Products in the manner that causes performance degradation to the Cloud Provider environment.
- 5.6** Client must notify PA of all elevated credentials to the Hosted Platform obtained by Client.
- 5.7** Client must utilize PA's Managed Service for all Hosted Platform change management. Client shall not self-implement any changes to Hosted Platform.
- 5.8** Client must promptly notify PA if Client is unable to access the Hosted Platform.

## **6 SERVICES LEVELS**

- 6.1** Service Availability
  - 6.1.1** The Hosted Platform will be available during Planned Service Hours less any Excusable Down Time, provided Client has paid the applicable Subscription Fees.
  - 6.1.2** Access may be available during Excusable Down Time, but such access is not part of the conditions defined in this Agreement.
  - 6.1.3** Client will be given prior notice for Scheduled Down Time.
  - 6.1.4** In the event an emergency shutdown is required, PA will attempt to contact the Client beforehand, but failure to make contact will not preclude PA from continuing with an emergency procedure.

- 6.1.5 Notification from PA could be in the form of a telephone call, voice message, or e-mail.
- 6.1.6 PA will notify Client as soon as practical if the Hosted Platform is unavailable.
- 6.1.7 The Hosted Platform will be deemed unavailable when PA’s records show that it is not possible for Client to access a Product or view content.
- 6.1.8 Unless notified by PA to contrary, the Hosted Platform ceases to be unavailable once the Client can gain access to the Hosted Platform.
- 6.1.9 The Hosted Platform will not be considered Down Time and Client will not be entitled to claim a Hosted Platform rebate in accordance with this clause, if PA determines that the delay or unavailability of the Hosted Platform was caused by:
  - an Excusable Failure;
  - Scheduled maintenance to the extent it does not exceed the maximum period (if any) that PA allows for scheduled maintenance of the Hosted Platform; or
  - Hosted Platform suspension in accordance with the Agreement.
- 6.1.10 The Hosted Platform availability target for each 3-month quarter is set out in Table 1 below.

**Table 1: Service Availability Targets**

Availability measurement	Availability Target
Service Availability	99.9%

**6.2 Hosted Platform Rebates**

- 6.2.1 The Hosted Platform rebate entitlement for the Hosted Platform being unavailable is calculated in accordance with Table 2
- 6.2.2 A Hosted Platform rebate is not redeemable for cash, and in any month is capped at the relevant specified percentage of the monthly Subscription Fees. The Client must claim any Hosted Platform rebate in writing within 10 Business Days from the date on which it becomes possible to calculate the amount of the Hosted Platform rebate.
- 6.2.3 Once a claim is made in accordance with this clause, PA will calculate the Hosted Platform rebate (if applicable) for the Hosted Platform and credit to Client’s account the amount equal to the Hosted Platform rebate.

**Table 2 - Hosted Platform Rebates for unavailability to the Hosted Platform**

Unavailability Calculated based on a 3 month period	Rebate (as a % of the past 3 months Subscription Fees)
0-1%	0%
1%-2%	3%
2%-3%	8%
3% or more	15%

**6.3 “Service Levels” for the Hosted Platform**

Monitoring Logs	Logs reviewed daily	Proactive Response on Critical Alerts	PA Business Hours
Fault Resolution Actions	Unplanned Shutdown	1 working hour notice	PA Business Hours

Backup & Restore Services	Data Backup Service	Based upon Client's data retention policy.	After 6pm CST
	Restore to commence	Within 8 working hours of request	PA Business Hours
System Maintenance	Scheduled Down Time	Minimum 3 Days' notice given to Client	
		No more than 8hrs per month planned if necessary	After 6pm CST
	No more than one planned downtime per working week	After 6pm CST	
	Virus checking	Regular scanning and virus definition updates	After 6pm CST
User Administration	Add, Change, Delete users	4 working hours	PA Business Hours
	Password reset	2 working hours	PA Business Hours
Platform Availability	Uptime	99.9%	24 hours per day – calculated over a three month period.

## 7 EXCUSABLE FAILURE

**7.1** PA will not be responsible for any failure ("Excusable Failure") to meet the Service Levels to the extent such failure is caused by:

- 7.1.1 any failure caused by Client;
- 7.1.2 any failure attributable to telecommunications carrier services;
- 7.1.3 any catastrophic failure attributable to the Cloud Provider;
  - includes any disruption that would have been avoided had the Client's elected to purchase high-availability options (i.e. geo-redundancy, hot-swap fail-over servers and software, etc.) and did not do so;
- 7.1.4 unauthorized changes made to the operating environment used to deliver the Hosted Platform (for example, installation of applications that are not tested and approved for production use); or
- 7.1.5 circumstances that constitute a Force Majeure Event.

## 8 ESCALATION OF COMMUNICATION

In the event that a problem remains unresolved for an extended period, PA will notify senior levels of PA and Client management as follows:

Level	Client	PA
1	Administrator	Help Desk
2	Administrator	Account Manager
3	Management	Account Manager
4	Management	Management



## Appendix D: Professional Services

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### 1 STATEMENTS OF WORK

- 1.1 All Professional Services are contracted through a Project Scope Agreement ("PSA").
- 1.2 In the event of a conflict between the terms and conditions between this Commercial Agreement and a PSA, the Commercial Agreement terms and conditions supersede the PSA.
- 1.3 PA will provide Professional Services to Client as described in written form such as a Project Scope Agreement ("PSA"), statement of work ("SOW"), engagement letter, project scope agreement, implementation planning study, solution design document, development order, change requests or statements of work which will form exhibits to this Agreement (collectively, the "Exhibits") and unless stated to be fixed, these are provided on a time and materials basis. The Exhibits are incorporated into this Agreement by reference.
- 1.4 Professional Services may be provided either at a Client site or off-site.

### 2 STANDARD SERVICE FEES

- 2.1 PA reserves the right to amend rates from time-to-time.
- 2.2 Minimum Charges
  - 2.2.1 Minimum charge of 2 days for on-site work
  - 2.2.2 Minimum charge of 1 hour for remote services work,
  - 2.2.3 Billed in minimum 30minute increments after minimum charge.
- 2.3 Weekend, Public Holiday or out of hours.
  - 2.3.1 Professional Services performed on a weekend, public holiday or out of hours will be charged at double rates. Out of hours is deemed to be between the hours of 5pm to 8am Central Standard Time and applies for work that is worked during this time.

### 3 CANCELLATION

- 3.1 If a Client cancels a service booking the following cancellation fees will apply:
  - 3.1.1 Less than 5 business days' notice, 50% cancellation fee
  - 3.1.2 Less than 2 business days' notice, 100% cancellation fee
  - 3.1.3 Cancellation fee will not exceed 5 days' worth of consulting.

### 4 TRAVEL CHARGES

- 4.1 PA will pass on expenses at cost plus charge the time taken to travel to and from the Client's premises. Travelling time will be charged at 50% of the standard rate. Maximum of 8 hours travel time each way.