

Commercial Agreement

Terms and Conditions

1 Preamble

- 1.1 PA is a provider of information technology Products, Services and Support.
- 1.2 Client engages PA to procure one or more Products, Services or Support from PA.

2 Definitions

- 2.1 "Agreement" means this document, these terms and conditions along with Appendix.
- 2.2 "Products" means third party vendor software applications, PA-developed software applications ("PA Products") and hardware.
- 2.3 "Customizations" means changes, modifications, amendments to Products.
- 2.4 "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, IT Infrastructure engineering.
- 2.5 "Support" means Maintenance and/or Help Desk.
- 2.6 "Maintenance" means software updates, fixes and enhancements including any services that may be provided as part of a PA Enhancement Program..
- 2.7 "Help Desk" means the provision of telephone, internet or email assistance.

3 Engagement

- 3.1 The provision of Products, Services and Support from PA are governed by this Agreement.
- 3.2 Certain Products are governed by product-specific license agreements. All PA Products are governed by PA's Software End User License Agreement (EULA), which is incorporated into this Agreement by reference. In case of conflicts between the Agreement and the EULA, the EULA shall govern.
- 3.3 PA will provide Services to Client as described in written form such as an 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.
- 3.4 Services may be provided either at a Client site or off-site.
- 3.5 Retention of Title: Risk of Products transfers to the client at time of delivery, but PA retains title of ownership until all amounts due have been paid and 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 nonrefundable.
- 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 Services are provided on a fee for service basis at prevailing rates. Refer to Appendix A.
- 4.4 Services are invoiced weekly on a time and materials basis for the work performed.
- 4.5 All software and hardware will be invoiced and must be paid in full prior to delivery.
- 4.6 Support and Maintenance fees are payable annually in advance.
- 4.7 The Client agrees to pay for all invoices within 30 days following date of the invoice unless stated otherwise on the invoice.
- 4.8 A travel fee is applicable for on-site visits to Client premises.
- 4.9 PA may refuse provision of Support and Services where Client account is not maintained within payment terms.
- 4.10 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 In the event of any breach of any term or provision of the Agreement by either party, which is incapable of being rectified, the other party may terminate the Agreement by giving 30 days' prior written notice and opportunity to cure said breach.
- 5.2 Client may, at any time, terminate the Agreement for the Client's convenience and without cause 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, along with reasonable overhead and profit on the work not executed.

- 5.3 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.
- 5.4 Client shall be responsible for payment of all Services rendered prior to the date of termination. PA may terminate the Agreement immediately with written notice if any invoice is unpaid for a period greater than 30 days following its due date.
- 5.5 PA reserves the right to suspend the provision of Services and Support if the Client engages any other party for similar Services or Support.

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, Services and Support 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 where 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 or Support 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 Support and that it has satisfied itself as to the suitability of the Products, Services and Support to meet its requirements.
- 6.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PRODUCTS, SERVICES AND SUPPORT 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 Software Updates

- 7.1 For Products which the Client has licensed and has paid the relevant Maintenance fees, the vendor will from time to time, supply at no additional charge, new software versions and upgrades as they are made available. The Client is also entitled to receive, software updates, patches and fixes at no additional charge.
- 7.2 The charge for any Services associated with installation and/or upgrading of software, including the re-application or modification of Customizations will be based on current standard rates as may be amended from time to time..

8 Independent Contractor Status

- 8.1 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.

9 Indemnification

- 9.1 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.
- 9.2 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.
- 9.3 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 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.

10 Limited Liability

- 10.1 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.
- 10.2 Under any State or Federal Law when implied conditions and warranties cannot be expressly excluded, PA limits its liabilities in the case of Services, to the supplying of the Services again, or the payment of the cost of having the Services supplied again at the discretion of PA.
- 10.3 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.

11 Intellectual Property and Privacy

- 11.1 All rights in any intellectual property relating to the PA-Products, Services, Support, Customizations, related documentation, or background material remain the property of PA.
- 11.2 PA retains all rights to intellectual property created in connection with its performance of Services, Support and Customizations hereunder or elsewhere.
- 11.3 PA grants, subject to this clause, to the Client a non-exclusive, irrevocable, perpetual, global license to use the intellectual property rights in any Customizations and result of 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.
- 11.4 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 the Client's 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.

12 Privacy Notice

- 12.1 PA will comply, and will ensure that all of 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.
- 12.2 Subject to the privacy legislation, PA uses Client information to provide Client with information relating to PA or promotional details about products and 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 12.3.
- 12.3 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) profad@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.

13 Confidentiality

- 13.1 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.

- 13.2 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.

14 Solicitation

- 14.1 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 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.

15 Delays

- 15.1 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 perform the Services.

16 Amendments

- 16.1 Changes to this Agreement need to be agreed in writing by both parties.

17 Assignment

- 17.1 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.

18 Arbitration & Governing Law

- 18.1 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.
- 18.2 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 Software sold, or (3) any services rendered in connection with the sale, installation, modification or use of the Software 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.

19 Acceptance

- 19.1 In witness whereof, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date set forth below.

Appendix

Appendix (A) Standard Service fees

A.1 Fees

PA reserves the right to amend rates from time-to-time.

Minimum Charges

Minimum charge of 2 days for on-site work
Minimum of 1 hour for remote services work

A.2 Weekend, Public Holiday or out of hours

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 Time and applies for work that is booked to commence during this time.

A.3 Cancellation

If a client cancels a services booking the following cancellation fees will apply:

- a) Less than 5 business days' notice, 50% cancellation fee
 - b) Less than 2 business days' notice, 100% cancellation fee
- Cancellation fee will not exceed 5 days' worth of consulting.

A.4 Travel charges

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.