



# Master Terms & Services Agreement

This Master Terms & Services Agreement (hereinafter referred to as "Agreement"), executed on

\_\_\_\_\_, is made between \_\_\_\_\_ (hereinafter referred to as "Client"), with its registered office located at \_\_\_\_\_

\_\_\_\_\_ and PDS LLC (hereinafter referred to as "PDS"), a Tennessee limited liability company, having its principal office at 1924 Morningside Drive, Morristown, TN 37814. The parties desire that this Agreement outline the terms and conditions between them relating to the services and products provided by PDS to Client. The parties agree as follows.

**1. PARTIES BOUND.** This Agreement shall be binding on and inure to the benefit of the parties hereto and each of their respective successors and assigns. If Client or its company merges, consolidates, divests, restructures, reorganizes, dissolves, or otherwise sells or transfers some or all of its assets or stock, this agreement remains enforceable against Client or Client's successor or assign in accordance with its terms and conditions. However, PDS in such event may elect to terminate this Agreement, for any reason, on thirty (30) days' notice.

**2. TERM OF AGREEMENT.** This Agreement is effective on the date signed and shall remain in force for the term stated in the corresponding agreement.

**3. GOVERNING LAW.** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Tennessee.

**4. REFERENCE TO AGREEMENT.** Use of the words "herein," "hereof," "hereto," and the like in this Agreement shall be construed as references to this Agreement as a whole and not to any particular article, section, or provision of this Agreement, unless otherwise stated.

## 5. DEFINITIONS.

**a. Confidential Information** – Any of PDS' information that Client may access or be exposed to, including trade secrets, defined below, that is not public knowledge and is made available only through contact with PDS. This may include but is not limited to standard operating procedures, business methods, technical know-how, technical information, design blueprints, specialized tools, strategies including marketing strategies, product specifications, test results, costs and pricing, training information and materials, software, vendors, and examples of confidential information.

**b. Timely Manner** – Within seven (7) business days of the service performance date.

**c. Trade Secret** – Intellectual property that has economic value precisely because this information isn't public knowledge. Trade secrets can include everything from formulas, recipes, and processes to practices, designs, and instruments.

## 6. REPRESENTATIONS.

**a.** PDS hereby represents to Client that:

**i.** PDS is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Tennessee, with full power and authority to execute and deliver this Agreement and perform its obligations hereunder.

**ii.** The execution, delivery and performance of this Agreement are duly authorized by all necessary PDS limited liability company representatives and this Agreement constitutes a valid and binding obligation for PDS, enforceable against PDS in accordance with its terms and conditions, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect affecting enforcement of creditors' rights.

**iii.** The consent of no other entity or person is required for PDS to fully perform its obligations herein.

**iv.** There is no pending, or to PDS' actual knowledge, threatened litigation against PDS which may affect the legality, validity, or enforceability of this Agreement, any of the services contemplated herein, or PDS' ability to fully perform its stated obligations or services.



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**b.** Client hereby represents the following to PDS:

- i. The designated client representative entering this Agreement is fully authorized with all necessary power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- ii. Client's execution, delivery, and performance of this Agreement have been duly authorized by any necessary action on Client's part, and this Agreement constitutes a valid and binding obligation for Client, enforceable against Client in accordance with its terms and conditions, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or other similar laws now or hereafter in effect affecting enforcement of creditors' rights.
- iii. The consent of no other entity or person is required for Client to fully perform its obligations herein.
- iv. There is no pending, or to Client's actual knowledge, threatened litigation against Client which may affect the legality, validity, or enforceability of this Agreement, any of the services contemplated herein, or Client's ability to fully perform its obligations.

**7. MANAGEMENT.** Client agrees to:

- a. Make all management decisions and perform any management functions.
- b. Designate an administrator(s) to oversee the services performed by PDS and communicate the name and contact details of such administrator(s) to PDS.
- c. Evaluate the sufficiency and acceptability of services performed by PDS and communicate concerns, if any, with PDS management directly, in a timely manner.
- d. Be responsible for establishing, maintaining, and monitoring internal controls surrounding any areas addressed by PDS. Should any breach of security or damage to equipment occur due to Client's lack of management over internal controls of areas addressed by PDS, Client agrees to hold PDS harmless for any harm occurring from such breach or damage.

**8. MINIMUM STANDARDS.** Client agrees to maintain the minimum standards required to deliver services, which may include requirements for operating systems, applications and their versions, patches, updates, equipment, and hardware states, among others. Failure to maintain the minimum standards creates an unnecessary security risk for Client and PDS. Clients that are out of compliance with these standards will incur additional fees. PDS reserves the right to cancel this Agreement with thirty (30) days' notice if Client fails to maintain the minimum standards. Client agrees to hold PDS harmless for any loss of data, property, equipment, profits, or breach of this Agreement resulting from Client's failure to maintain the minimum standards. The minimum requirements for this Agreement are as follows.

**a. Hardware Requirements.**

- i. **Servers.** Client must replace each server within six (6) years after the manufacture date. Client must also maintain server warranties. If Client does not renew the server warranty and it expires, PDS is relieved of this Agreement and its corresponding support expectations of such systems.
- ii. **Workstations.** Client must replace workstations within five (5) years after the manufacture date.
- iii. **Operating Systems.** This agreement only covers vendor supported operating systems. While unsupported vendor operating systems may be backed up, PDS is not liable for operating system failure or any other issues within the backup process or with any other PDS services arising from an unsupported operating system. This includes but is not limited to missing or corrupted data and upload/download errors.
- iv. **Network.** Client shall only utilize equipment approved by PDS, unless PDS otherwise agrees. Client shall maintain all network equipment warranties and licenses. Client shall also regularly replace network equipment every five (5) years. Service failures and interruptions can occur when equipment is not regularly replaced or when no longer supported by its manufacturer. PDS is not responsible for any equipment, or the failure of any services on equipment that Client fails to regularly replace or that is no longer supported by its manufacturer. Further, Client must always maintain a minimum network speed of 1000 Mbps.



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**v. Bandwidth.** Client must have a minimum upload bandwidth of 20 Mbps to ensure timely off-site data synchronization, among other services. PDS recommends a minimum upload speed of 50 Mbps to ensure proper and adequate cloud uploads. PDS is not responsible for upload or other service failures due to inadequate internet service or internal network equipment.

**b. Insurance Requirements.** Cyber-security insurance is highly recommended. Client is solely responsible for finding, securing, and paying for any cyber-security insurance policy. PDS does not provide cyber-security insurance. If Client fails to carry cyber-security insurance, PDS is not liable, and Client agrees to hold PDS harmless for any cyber-security breach, and resulting harm, including but not limited to any business interruption, loss of equipment, systems, or data, costs associated with recovering compromised data or repairing damaged systems, program failures, loss of profits, business, and reputation, litigation expenses, fines, cyber extortion, forensic investigations, or any harm, whatsoever, arising from a cyber security breach.

**c. Multifactor Authentication (MFA).** Client shall implement MFA to all Microsoft 365 products and other systems and solutions, where available and deemed necessary by PDS. PDS recommends utilizing its advanced MFA services for best protection across all compatible services and applications.

**d. Security and Service Solutions.** Client agrees to maintain the minimum solutions provided in this Agreement.

**9. SERVICES.** The services provided throughout the term of and covered by this Agreement shall be those deemed necessary by PDS to implement projects, tasks, or processes requested by Client and as accepted by PDS, in writing. Provided, that Client may make oral requests for support and is responsible for payment of such support, according to the payment terms set forth herein, even if no written request for services was made. Actual performance of services by PDS and delivery of software or equipment contemplated by this Agreement shall commence on execution of this Agreement unless parties mutually agreed otherwise in writing. Client understands and acknowledges that all given dates for performance of services are estimates and based on PDS' prompt receipt of all necessary information and assistance from Client. **PDS SHALL NOT BE RESPONSIBLE FOR FAILURE TO PROVIDE SERVICES IF CLIENT'S NETWORK RESOURCES INTERFERE WITH THE SERVICES, CLIENT MAKES ANY NETWORK, HARDWARE, OR OTHER SYSTEM CHANGES NOT COMMUNICATED TO PDS, CLIENT'S INTERNET CONNECTIVITY IS LOST FOR ANY REASON, OR CLIENT ACTS CONTRARY TO OR FAILS TO ACT IN ACCORDANCE WITH PDS' OR OTHER IT RECCOMENDATIONS.** In the event that estimated dates for performance are not actual dates of performance, Client agrees to hold PDS harmless, especially if due to Client delay.

**10. RATES.** Rates for services provided by PDS shall be the hourly rates as stated in the relevant quote or agreement. Services shall be billed in quarter-hour increments. Rates are subject to change. Products and subscriptions provided under these services shall be invoiced for the quantity and rate as stated in the relevant quote or agreement. Changes in quantity are governed by the relevant quote or agreement, except where other or secondary agreements are required, or if stated otherwise. Rates for services, products, and subscriptions are subject to change. PDS is not required to provide notice before implementing rate changes.

**11. EXPENSES.** Client shall reimburse PDS for documented expenses, reasonably incurred by PDS in the rendition of services under this Agreement. Such expenses may include airfare, lodging costs, mileage, meal per diems, Microsoft incident support, etc. Reimbursement will be due within ten (10) business days after Client's receipt of each invoice, unless otherwise mutually agreed in writing.



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**12. FEES AND PAYMENT.** Services and products provided to Client by PDS hereunder will be invoiced, at PDS' option, either on delivery, or at regular intervals. The interval shall be no more frequent than weekly. If Client is invoiced annually, full payment for any additional services is expected at the time of purchase. Some products and services require a 100% deposit. Payment of any deposit is due on execution of this Agreement unless parties mutually agreed otherwise in writing. Payment is due on receipt of the invoice, unless otherwise mutually agreed in writing. Payment shall be made in USD, by check, credit card, or ACH. Past due balances may accrue finance charges at the rate stated in the relevant quote or agreement and will be reflected on Client's monthly statement. PDS reserves the right to delay or suspend provision of products or services to past due clients. Client purchase orders are accepted for purposes of this Section and binding only when evidenced by a writing from PDS clearly accepting such purchase order.

**a. Service and Product Pricing** is subject to pricing increases during the term of the agreement.

**b. Pre-paid Services and Products** are not protected against price increases. Customers may be invoiced for any additional cost increases.

**13. INDEPENDENT CONTRACTOR.** The relationship between the parties is that of an independent contractor for all purposes, and the parties acknowledge and agree that neither shall be involved in the management or operations of the other. Neither shall have the power or authority to control the activities of the other. Nothing contained herein shall be construed as evidencing a partnership or any other fiduciary relationship between the parties. Because of PDS' status as independent contractor, no federal, state, or local income, unemployment, FICA, or payroll tax of any kind will be withheld or paid by Client on PDS' behalf. PDS shall be responsible for obtaining any applicable workers' compensation insurance on behalf of its own employees.

**14. TAXES.** Sales tax is charged as required by law. Client shall be solely responsible for any applicable taxes or similar charges arising out of this Agreement, including all applicable Federal, State, or local sales taxes, customs, duties, use taxes, value-added taxes, excise charges, brokerage fees, or permits associated with the provision of products and services to Client. If Client is tax exempt, it is Client's responsibility to provide adequate documentation. Without adequate documentation, Client will be billed sales tax. PDS will refund sales tax for up to sixty (60) days. If documentation is not presented before sixty (60) days, Client will be billed sales tax. If Client fails to pay any tax, Client agrees to pay all reasonably incurred costs of collection, including attorney's fees, pre and post judgment, at an interest at the rate of 1.5% per month or the maximum rate permitted by applicable law if less, and all other additional costs of collection whatsoever.

**15. FORCE MAJEURE.** Neither party shall be liable for any failure or delay in performance of its obligations under this Agreement to the extent that such failure or delay is due to circumstances beyond its reasonable control. This includes, without limitation, acts of God, acts of a public enemy, pandemics, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, terrorism, blockades, embargoes, storms, power failure, vendor services failures, telecommunications and/or internet interruptions, the failure or closure of a financial institution, computer malfunctions, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third-parties or governmental bodies from whom approvals, authorizations, licenses, franchises or permits must be obtained, inability to obtain labor, materials, equipment, transportation, illness of PDS' staff, or any other failure, interruption, or error not directly caused, or reasonably anticipated, by PDS (collectively referred to herein as "Force Majeure"). Each party shall use reasonable efforts to minimize the duration and consequences of any failure or delay in performance resulting from a Force Majeure event. In the event of a Force Majeure, PDS is not required to have technicians work during periods or at places where their safety or health could be in jeopardy, and in any event will not require technicians to go onsite. If Client's work is substantially changed due to a Force Majeure event, PDS will evaluate the need for change to Client's IT services. Recognizing that there are ongoing expenses for PDS to maintain backups, remote monitoring, vendor support software/licensing, and availability of technicians to service ongoing needs, PDS will review Client's need for fee changes as well, if any.



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**16. DISCLAIMER OF WARRANTY.** PDS makes, and Client receives no warranties. **PDS HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES WHETHER STAUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CONTINUOUS USE, DESIGN, COMPLIANCE WITH APPLICABLE LAW, PERFORMANCE, OR ERROR-FREE OPERATION** with respect to any products, including any hardware or software provided by PDS to Client, or any services rendered to or for Client, pursuant to this Agreement or otherwise.

**17. LIMITATION OF LIABILITY.** **PDS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNATIVE DAMAGES OR LOST PROFITS, LOST SAVINGS, VALUE, OR SALES,** arising from lost or corrupted data or software, loss of system(s) or network(s), use or recovery of any such data, system(s), or network(s), any failure of any product provided or sold by PDS, or loss of business opportunity, goodwill, or reputation, whatsoever, whether in an action for contract, negligence, or other tortious action, arising from or related to this Agreement, even if PDS has been advised and made aware of its possibility. Notwithstanding anything to the contrary set forth in this Agreement, PDS' total liability to Client for all claims arising from this Agreement shall not exceed the total amount Client paid to PDS under this agreement in the previous ninety (90) days. These limitations and exclusions apply to the maximum extent permitted by law, even if the remedy does not fully compensate Client, fails of its essential purpose, or PDS knew or should have known of the possibility of the damages. If applicable law prohibits any limitation on liability herein, parties agree that such limitation shall be automatically modified, but only to the extent required to make the limitation complaint with applicable law.

**18. THIRD-PARTY VENDORS.** PDS' provision or transfer of any computer software to Client in connection with this Agreement shall be on a non-exclusive license basis and in accordance with the provisions of the third-party vendor's license agreement, not with PDS. If any defects in third-party vendor software provided to PDS exist which delay or in any way affect PDS' ability to provide services pursuant hereto, or otherwise causes any detrimental consequence, **CLIENT ACKNOWLEDGES AND AGREES THAT ANY REMEDY IT MAY HAVE SHALL BE SOLEY AGAINST THE THIRD-PARTY SOFTWARE VENDOR AND NOT PDS.** PDS will reasonably assist Client in resolving manufacturer defects and any services rendered in providing such assistance are billable pursuant to the terms hereof.

**19. DISPUTE RESOLUTATION AND BINDING ARBITRATION.** In the event of any dispute between PDS and Client arising hereunder, other than a breach of confidentiality, or the unauthorized use of intellectual property, the parties agree that the dispute will be submitted to Rule 31 mediation within thirty (30) days of either party giving notice to the other that the dispute requires mediation. If mediation does not resolve the dispute, it will be submitted to binding arbitration with an arbitration service associated with and qualified by the American Arbitration Association. Both parties waive any right to litigate any dispute arising under this agreement other than a breach of the terms of confidentiality or regarding PDS' intellectual property rights. Client agrees to pay all arbitration fees and attorney fees incurred by PDS.

**20. TERMINATION.** Client may terminate the Agreement up to sixty (60) days after origination date. If terminated within 60 days, the Client is responsible for payment of services up to the actual termination of the services by PDS. If Client terminates the agreement after sixty (60) days, the Client agrees to pay the remaining balance of the Agreement. On termination, all outstanding balances and charges for hardware or software (including work-in-process) ordered for or delivered to Client shall be due and all charges for services rendered to Client shall be due and payable. PDS may terminate this Agreement for any reason within thirty (30) days' notice.

**a. Services Added to Existing Agreement.** Services or additions added to an existing agreement are controlled under the terms of the agreement.

**b. Termination Services Offboarding.** PDS will assist Client, in a good faith effort, in the orderly termination of services, including timely transfer of the services to another designated provider. ***This***





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**service will be at an additional cost.** Client hereby agrees to pay PDS the actual costs of rendering such assistance, due on invoice. This includes removing or transferring services, providing documentation, and other requests made by Client, their designee, or the new IT service organization.

**c. Returning Equipment.** All equipment belonging to PDS must be forfeited to PDS on the termination date. Equipment not returned will incur a per day rental fee, determined by the equipment not returned.

**21. SURVIVAL.** All provisions of this Agreement shall survive and continue on termination, cancellation, or expiration of this Agreement.

**22. NOTICES.** All notices, requests, and demands required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received when sent by United States Mail, postage prepaid or by nationally recognized overnight carrier, addressed to the party set forth above. Either party may alter the address to which communications or copies are sent by giving notice. Notice of address change shall be effective only on receipt of such address change in conformity with the provisions of this Section for giving notice, i.e., notice of address change shall be effective only on receipt.

**23. CONFIDENTIALITY.** Each party recognizes that throughout performance of this Agreement, they may obtain confidential information from the other. The party obtaining such information shall always, both during the term of this Agreement and thereafter, keep all such confidential information in strictest confidence and trust. Confidential information does not include any information that is accessible from sources other than the providing party, like through the public domain or that becomes public information at any time in the future, as long as access through the alternate source is not of the accessing party's own making. If either party violates the terms of this Section, the other party shall be entitled to obtain injunctive relief to enforce this provision, it being agreed that damages alone will not constitute adequate remedy.

**a. Return of Confidential Information.** Each party agrees to return to the other any written, printed, or other materials embodying such confidential information given to or acquired by such party in connection with this Agreement.

**b. Confidentiality Exceptions.** The provisions of this Section shall not prevent any party obtaining confidential information from disclosing the same in connection with any legal process, including by subpoena. Further, PDS may have to share confidential information, including but not limited to, any collected passwords or documents with third-parties to fully perform under the terms of this Agreement. By signing this Agreement, Client authorizes PDS to take such action and waives the right to obtain permission or notification of the same.

**c. Sharing Client Information.** Client may be required to sign a disclosure authorization that provide PDS the authority to share client information with third parties.

**24. RIGHTS IN WORK PRODUCT.** PDS agrees that all work product it produces within the scope of its engagement shall be considered "works made for hire" under Federal Copyright Law. PDS hereby assigns, sells, transfers, grants, and conveys all right, title, and interest in such work product to Client. During this Agreement, PDS may further develop its knowledge, skills, and experience. Nothing in this Agreement is intended to limit PDS' use of any knowledge, skills, experience, ideas, concepts, know-how, or techniques developed prior to or during this Agreement in the development, manufacturing, or marketing of products and services for itself or other clients. PDS hereby acknowledges and agrees that any proprietary property of Client provided by Client to PDS in conjunction with the services to be performed under this Agreement shall remain Client's property.

**25. EMPLOYEES.** Client agrees, acknowledges, and understands that PDS staff and employees have been provided with highly technical training and that PDS would suffer significant harm if Client or any of Client's affiliates were to employ any such staff member or employee during the term of this Agreement, or the two (2) years immediately thereafter. In recognition of such specialized harm, Client specifically agrees not to hire any PDS employee during the pendency, performance, or two-year (2) period after termination, expiration, or cancellation, of this Agreement.

**26. ASSIGNMENT.** Client may not assign or transfer any of its rights and obligations hereunder without the prior written consent of PDS. Client shall not subcontract, assign, subrogate, or transfer any interest,



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obligation, or right under this Agreement without prior written consent from PDS, and any such attempt shall be null and void. Client shall retain liability to this Agreement unless PDS agrees to transfer and assuming party agrees to accept responsibility for Client's Agreement, in its entirety, in writing.

**27. TRANSFER of AGREEMENT.** The Agreement between PDS and Client may be transferred and assigned by PDS to any person, firm, or corporation purchasing or leasing and intending to continue the operation of the business or services provided by PDS which is being served under such Agreement.

**28. AMENDMENT.** This Agreement may only be amended or modified by writing signed by the parties hereto.

**29. SEVERABILITY.** The provisions of this Agreement are independent of and separable from each other. No provision shall be affected, rendered invalid, or unenforceable for any reason because any other provision(s) may be invalid or unenforceable in whole or part.

**30. WAIVER.** No failure or delay on the part of either party to exercise any right, remedy, or power of privilege under this Agreement shall operate as a waiver thereof. Nor shall any single or partial exercise of any right, remedy, power, or privilege preclude other or further exercises of the same right, or of any other right, remedy, power, or privilege. Any waiver by a party of a provision in this Agreement must be made in writing, signed by the waiving party.

**31. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties and supersedes all other representations, agreements, and understandings, both oral and written, between the parties with respect to the subject matter hereof.

**32. COUNTERPARTS; FACSIMILE SIGNATURES.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed a completed document. Any signature page delivered by facsimile shall be valid and binding on the parties to the same extent as an original signature page. Any party who delivers a signature page by facsimile hereby agrees to later deliver an original counterpart to any party requesting the same.

**33. REVISIONS.** PDS may revise these terms at any time. PDS is not required to notify Client of any changes but will make a general copy of this Master Terms & Services Agreement, and any subsequent revisions, available for review at: <http://pdsconsulting.com/terms/pdsterms.pdf>.

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By signing this Agreement, PDS and Client hereto agree to all terms and conditions contained herein and represent that each party is authorized to make such decisions for their respective organizations. The parties acknowledge that this is a legally binding Agreement, that they have each accepted this Agreement of their own free will, and that their signature is not the result of coercion or duress. The parties further acknowledge that prior to signing this Agreement, each party has sought and received, or had the opportunity to seek and receive independent legal advice.

\_\_\_\_\_  
PDS Representative Name (Print)

\_\_\_\_\_  
Client Representative Name (Print)

\_\_\_\_\_  
PDS Representative Signature

\_\_\_\_\_  
Client Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

By signing below, Client agrees that they have been notified of the importance, benefits, and risks of cyber-security insurance. Client understands that PDS highly recommends that Client obtain cyber-security insurance. Client further understands that by failing to obtain cyber-security insurance, Client waives any associated liability and Client alone is fully responsible in the event of a cyber-security breach.

\_\_\_\_\_  
Client Representative Name (Print)

\_\_\_\_\_  
Client Representative Signature

\_\_\_\_\_  
Date