Commercial Agreement

THIS AGREEMENT is made

between

Professional Advantage Software Solutions Inc. (“PA”), a North Dakota Corporation with its principal office at 3523 45th Street South, Brandt Office Park, Suite 100, Fargo, ND 58104;

and

THE CLIENT (“Client”)

Commencing on

Date of client acceptance of PA Proposal (“Commencement Date”)

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0 PREAMBLE

0.1 PA is an IT solutions provider of information technology Products and Services

0.2 Client engages PA to procure or subscribe to one or more Products or Services.

1 DEFINITIONS

1.1 “**Actual Service Hours**” means the number of hours that a Cloud Platform is Available.

1.2 "**Agreement**" means this document, these terms and conditions along with Appendices.

1.3 “**Available**” means access to a Cloud Platform is operational and accessible over the Internet using a computer that is not part of the Cloud Platform.

1.4 “**Cancellation Fee**” means the fees associated with cancelling Subscriptions or Professional Services.

1.5 “**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 documentation or records related to such data or information.

1.6 “**Cloud Provider**” means the Online Microsoft Azure environment that are established, operated and maintained by Microsoft Corporation (“Microsoft”).

1.7 “**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. Separate **Current** Case Entitlement Balances are maintained for Managed Services and Support.

1.8 "**Customizations**" means changes, modifications, amendments to PA Products.

1.9 “**Down Time**” means any period of time where the Cloud Platform is not Available.

1.10 “**Excusable Down Time**” means any Down Time due to an Excusable Failure or any Scheduled Down Time of the Cloud Platform.

1.11 “**Force Majeure Event**” means any event or circumstance beyond a party’s reasonable control, including but not limited to:

a) acts of God, fire, flood, earthquake, storm, or other natural disasters;

b) war, terrorism, riot, civil commotion, or armed conflict;

c) epidemics, pandemics, or public health emergencies declared by governmental authorities;

d) labor disputes, strikes, or lockouts (excluding those involving the affected party’s own employees);

e) failure or interruption of public or private telecommunications networks, internet services, or power supplies;

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f) cyberattacks, ransomware, distributed denial-of-service (DDoS) attacks, or data breaches not caused by the affected party's negligence or willful misconduct;

g) prolonged outages or degradation of Microsoft Azure, third-party cloud platforms, or critical software tools not attributable to the affected party;

h) supply chain disruptions, including hardware shortages, component failures, or vendor end-of-life declarations;

i) changes in applicable laws, regulations, or government mandates that materially impact performance; or

j) any other event recognized as force majeure under North Dakota law.

1.12 "**Cloud Platform**" means the provision of the Microsoft Azure environment by PA, used to operate a deployment of PA Products and Third-Party Products, which may be accessed by the Client during Planned Service Hours.

1.13 "**Intellectual Property Rights**" means:

1.13.1 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

1.13.2 any rights in any jurisdiction in the world in respect of an invention, discovery, trade secret, data, algorithm or formula.

1.14 **"License Maintenance"** means, in the case of Perpetual Licenses, 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.

1.15 **"License Maintenance Fees"** means the periodic fee required to maintain the License Maintenance Plan entitlement as detailed in Appendix A. The fee is determined by applying the percentage identified in the Order Form to the Products list price as per the original Order Form.

1.16 **"Managed Services"** means the services and tools ancillary to the Cloud Platform, provided by PA to the Client and which are required to operate and maintain the Cloud Platform or any other mutually agreed services rendered to support the Client's environment

1.17 **"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.

1.18 "**Order Form**" means a document defining the Pricing of Products, Software Subscription, License Maintenance, Professional Services, Managed Services or Support purchased by the Client from PA similar to the example in Appendix E.

1.19 **"Original Use Date"** means the date on which Client first utilizes the Products in production mode.

1.20 "**PA Business Hours**" means the hours between 7.30am and 7.00pm USA Central Standard Daylight Time ("CST"), Monday to Friday, excluding national holidays.

1.21 "**PA Products**" means the version of software applications developed by PA and governed by the associated license agreement.

1.22 **"Payment Terms"** invoices issued by PA are payable within 30 days unless otherwise agreed in writing.

1.23 "**Perpetual License**" means the software license the Client purchases to use in perpetuity.

1.24 "**Planned Service Hours**" for the Cloud Platform means 24 hours per day.

1.25 "**Products**" means: PA Products, Third-Party Products or a Cloud Platform.

1.26 **"Professional Services"** means the provision of project management, consulting, training, configuration, Customizations and development activities.

1.27 **"Public Software Version"** means a generally available variant of the Products made available by PA to the market and which has not been notified by PA as no longer being supported.

1.28 "**Scheduled Down Time**" means a period of Down Time that is agreed between PA and Client.

1.29 **"Service Pack"** means versions made available for providing defect repairs to the Client. Identification of Service Packs are described in Appendix B.

1.30 "**Services**" means services provided by PA, including but not limited to Professional Services, Managed Services, Subscriptions and Support.

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1.31 "**Service Levels**" means the service levels set out in Appendix C.

1.32 **"SLAAS"** means software-license-as-a-subscription ("SLAAS"), where the Client has subscribed to the PA Products license(s). *For the sake of clarity this is not software-as-a-service*.

1.33 " **Support**" is the provision of help desk support.

1.34 **"Subscription"** means Products that are purchased on rental basis, with payments made on a regular basis.

1.35 "**Subscription Fees**" means the fees associated the Subscription, plus any variable or usage fees associated with consumption of services (such as storage, bandwidth traffic, etc).

1.36 **"Support Cases"** are distinct support calls initiated by the Client.

1.37 "**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, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

1.38 **"Support Packs"** means an allocation of Support Cases purchased by the Client.

1.39 **"Supported Version"** means a PA Products version for which Support is offered by PA. PA will provide twelve months' notice that a version will no longer be supported.

1.40 **"Third-Party Products"** means software products purchased by Client produced by a third-party vendor and their use is governed by product-specific license agreements and are subject to acceptable use policies as determined by such third-party vendor.

2 FEES, PAYMENT

2.1 All amounts paid pursuant to this Agreement are payable in US Dollars (USD) and are non-refundable.

2.2 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.

2.3 The parties agree that PA may increase the rates for Professional Services no more than twice in any 12 month period (generally implemented in January and July of each year), such increase to be no greater than the greater of:

(a) 3%; and

(b) the rate of CPI for the period immediately preceding the date on which such increase in rates takes effect.

In this section, "CPI" means the Consumer Price Index (all items) issued by U.S. Bureau of Labour Statistics or such replacement index.

2.4 All Perpetual License Fees and all Maintenance Plan Fees must be paid in full prior to delivery.

2.4.1 Cancellation or termination of any part of this contract does not entitle the Client to any refund of Perpetual License Fees.

2.4.2 When the Client chooses to cancel the Maintenance Plan Fee, either separately or as part of terminating this Agreement as envisaged in Clause 4, before the Software license renewal date, the cancellation is deemed to be at the next renewal date and PA is not liable for any refund for the unexpired period.

2.5 Subscription Fees and Managed Services Fees must be paid in advance as per the schedule on the Order Form or the relevant invoice.

2.5.1 PA reserves the right to pass on any cost increases from Third Party Product providers or Cloud Platform providers. These increased costs are payable within Payment Terms.

2.5.2 PA will invoice any variable or usage fees associated with the consumption over the initial allowance allowed to the Client. These variable and usage fees are payable within Payment Terms.

2.5.3 **Subscription Cancellation:** The Client acknowledges and agrees that each Subscription is purchased for a fixed, non-cancellable commitment period as specified in the applicable Project

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Scope Agreement, Order Form or Statement of Work ("Commitment Term"). Fees for the Commitment Term are payable in advance (unless otherwise agreed in writing) and are non-refundable, except where required by law. The Client may cancel a Subscription at any time by providing written notice to PA; however, such cancellation shall not relieve the Client of its obligation to pay all Fees due and payable for the entire Commitment Term. Cancellation shall take effect only at the end of the Commitment Term or, where applicable, at the next renewal date, and PA shall have no obligation to refund any portion of Fees already paid. For the avoidance of doubt, the cancellation of a Subscription does not automatically terminate this Agreement..

2.5.4 **Managed Services Cancellation:** When the Client chooses to cancel the Managed Service, either separately or as part of terminating this Agreement as envisaged in Paragraph 4, before the renewal date of the Subscription, the cancellation is deemed to be at the next renewal date and PA is not liable for any refund for the unexpired period. For the avoidance of doubt the cancellation of a Subscription does not automatically terminate this agreement. Termination of this Agreement is as per Clause 3.

2.6 All Professional Services are provided on a fee for service basis at prevailing rates and are subject to Appendix D. Time and materials Invoices are issued weekly in arrears. Fixed Price invoices are issued upon completion of the relevant milestone.

2.6.1 **Cancellation of Professional Services -** time and materials base project:

a) All unpaid invoices are due and immediately payable.

b) Any services rendered to date but not yet invoiced are immediately due and payable.

c) Any withheld amounts or retentions pertaining to work done are immediately due and payable. Any amounts not yet invoiced are, on presentation of an invoice, deemed to be properly invoiced.

2.6.2 **Cancellation of Professional Services -** fixed price project:

a) All unpaid invoices are due and immediately payable.

b) All achieved milestones not yet invoiced are due and immediately payable.

c) Any services rendered to date but not yet invoiced are immediately due and payable.

d) Any withheld amounts or retentions pertaining to work done but not invoiced are immediately due and payable

2.7 Support Packs are payable in advance. Travel Charges will be charged for on-site visits to Client premises in accordance with Appendix D.

2.8 On cancellation or termination of Support PA is not liable to refund any unused Support Packs.

2.9 PA may refuse and withhold provision of Services or access to a Cloud Platform where Client account is not maintained within payment terms.

2.10 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.

3 TERM AND TERMINATION

3.1 The term of Agreement is for a period of thirty-six months.

3.2 This Agreement is automatically renewed at the expiry of each term for a further minimum term of twelve months unless terminated in terms of this Agreement.

3.3 In the event of any breach of any term or provision of this Agreement by either party a party shall provide 30 days written notice to cure such breach prior to any termination notice. In the event that such a breach is not rectified or incapable of being rectified, the other party may terminate the Agreement by giving 30 days written notice.

3.4 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.

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3.5 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.

3.6 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.

3.7 Client shall be responsible for payment of all Services rendered prior to the effective date of termination or cancellation.

3.8 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.

3.9 PA reserves the right to suspend the provision of Services if the Client engages any other party for similar Services provided by PA in terms of this Agreement.

3.10 Upon expiry or termination of a Subscription for a Cloud 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.

3.11 **Force majeure** neither party shall be liable for any failure or delay in performing its obligations under this agreement (except for payment obligations) to the extent such failure or delay is caused by a force majeure event as defined in clause 1.11. Time for performance shall be extended by a period equivalent to the delay caused by the event. If a force majeure event continues for more than thirty (30) consecutive days, either party may terminate the affected services upon written notice without liability, provided that all fees for services rendered prior to termination remain due and payable

4 REPRESENTATION AND DISCLAIMER

4.1 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, PA 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.

4.2 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.

4.3 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.

5 INDEPENDENT CONTRACTOR STATUS

5.1 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.

6 INDEMNIFICATION

6.1 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

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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.

6.2 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.

6.3 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.

6.4 For the avoidance of doubt PA is not responsible for and provides no indemnity in respect of any Third Party Products.

7 LIMITED LIABILITY

7.1 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.

7.2 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.

7.3 **Aggregate Liability Cap**: To the fullest extent permitted by applicable law, PA's total aggregate liability to the Client for any and all claims, losses, expenses, or damages arising out of or in any way related to this Agreement, whether in contract, tort (including negligence), strict liability, or otherwise, shall not exceed the total amount of fees paid by the Client to PA under this Agreement in the twelve (12) months immediately preceding the event giving rise to such liability.

7.4 **Exclusions from Liability**: In no event shall PA be liable for:

7.4.1 Any indirect, incidental, special, consequential, or punitive damages, including but not limited to loss of profits, revenue, data, or use, incurred by the Client or any third party, whether in an action in contract or tort, even if PA has been advised of the possibility of such damages, and

7.4.2 Any damages arising from or related to the Client's failure to perform its responsibilities under this Agreement.

7.5 **Specific Liability Caps**: Notwithstanding the foregoing, PA's liability for:

7.5.1 Breach of Confidentiality: Shall not exceed two (2) times the total amount of fees paid by the Client to PA under this Agreement in the twelve (12) months immediately preceding the event giving rise to such liability.

7.5.2 Data Protection Violations: Shall not exceed three (3) times the total amount of fees paid by the Client to PA under this Agreement in the twelve (12) months immediately preceding the event giving rise to such liability.

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7.5.3 **Exceptions to Limitation**: The limitations and exclusions of liability set forth in this Clause 7.3 shall not apply to:

a) Liability arising from SELLER's gross negligence or willful misconduct.

b) Liability for death or personal injury caused by SELLER's negligence.

c) Liability for fraud or fraudulent misrepresentation.

7.5.4 **Mitigation of Damages**: The Client agrees to take all reasonable steps to mitigate any loss or damage that may occur and to cooperate with SELLER in any efforts to mitigate such loss or damage.

8 INTELLECTUAL PROPERTY AND PRIVACY

8.1 All rights in any intellectual property relating to the PA-Products, and Services, related documentation, or background material remain the property of PA.

8.2 PA retains all rights to intellectual property created in connection with its performance of Services hereunder or elsewhere.

8.3 Where the Client has paid a Perpetual License Fee, and 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.

8.4 In the case of SLAAS, PA grants a license to use the Intellectual Property Rights in the PA Products and any Services provided to the Client for its own internal purposes whilst all Fees are paid in terms of this Agreement. For the avoidance of doubt, the Client is not entitled to exploit the intellectual property referred to in this clause.

8.5 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.

9 PRIVACY NOTICE

9.1 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.

9.2 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 9.3.

9.3 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@professionaladvantage.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

10 CONFIDENTIALITY

10.1 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

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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.

10.2 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.

11 SOLICITATION

11.1 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.

12 DELAYS

12.1 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 Cloud Platform or perform the Services.

13 AMENDMENTS

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

14 ASSIGNMENT

14.1 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. All legal and other costs associated with such an assignment will be borne by the party requesting the assignment.

15 ARBITRATION & GOVERNING LAW

15.1 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 parties consent to the exclusive jurisdiction of the North Dakota State District Courts for resolution of any disputes arising under or relating to this Agreement. The parties waive any objection based on venue or forum non conveniens with respect to any action instituted in the North Dakota State District Courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

15.2 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) installation, modification or use of the PA Products, 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.

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15.3 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 GENERAL

16.1 Audit rights

16.1.1 Upon notice of no less than 10 days, Client will provide PA access its systems in order to ensure compliance with license terms in respect of Perpetual Licenses

16.2 No waiver

16.2.1 No term of this Agreement shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same. The waiver by a Party of a breach or default by the other Party in any of the provision of the Agreement or any SOW shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that is has or may have hereunder, operate as a waiver of any breach or default by the other Party

16.3 Precedence

16.3.1 If there is any conflict or ambiguity in interpretation, the documents identified in this Agreement are to be read in the following order of precedence (i.e. (a) has the highest order of precedence):

a) the clauses of this Agreement;
b) the Appendices;
c) approved change requests;
d) proposal;
e) project scope agreement;
f) the solution design document;
g) statement of work;

16.4 Power to enter into the contract

16.4.1 Each party represents and warrants that, its representatives are properly authorized and have full power to enter into this Agreement on behalf of the Client and for the Client to carry out its obligations under it

16.5 This Agreement specifically supersedes the terms and conditions of any ‘shrink wrap” or “click wrap” agreement forms such as those which may accompany the Licensor’s Product or which may be displayed upon usage of the Product except that this does not apply and excludes any Microsoft “shrink wrap” or “click wrap” agreements.

16.6 **Machine Learning Models Disclaimer** The Products may allow integration with, or utilization of, machine learning models, statistical algorithms, or other analytical tools developed, selected, or adopted by Client (“Models”). Client acknowledges and agrees that (i) all Models are created, obtained, or deployed at Client’s sole discretion and risk, (ii) Client remains solely responsible for the selection, accuracy, training, validation, operation, and results of any Models, and (iii) PA does not develop, endorse, warrant, or represent that any Model, whether recommended, referenced, or used in connection with the Products, is accurate, reliable, compliant, or fit for any particular purpose. To the maximum extent permitted by law, PA disclaims any and all liability arising from or related to Client’s use of any Models within or in connection with the Products

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17 APPENDICIES

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

Appendix	Title
A	License Maintenance Plan
B	Support
C	Managed Services
D	Professional Services
E	Order Form

18 APPROVAL

The Client is deemed to have accepted these terms and conditions upon acceptance of any proposal or Statement of Work prepared by PA.

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Appendix A: License Maintenance Plan

1 PREAMBLE

1.1 This Appendix only applies where the Client has purchased a software Perpetual License and the annual License Maintenance Plan,

2 LICENSE MAINTENANCE

2.1 For Products which the Client has purchased a software Perpetual License the client must have paid the relevant License Maintenance Fees for the current period, the vendor or PA will from time to time, provide at no additional charge, a new Public Software Version.

2.2 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.

2.3 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.

3 SUPPORT

3.1 Provided the relevant License Maintenance Fees have been paid, the Client is entitled to Support services as described in Appendix B.

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Appendix B: Support

1 SUPPORT ENTITLEMENT

1.1 Client receives an annual allocation of Support Cases as determined in the Order Form.

1.2 Additional Support Packs may be purchased.

1.3 Each Support Case submitted to PA decreases the Current Case Entitlement Balance for Support by one Support Case, unless PA opens a software defect associated with the case. Any Support 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.

1.4 PA will provide Support services for any Public Software Version of a PA Product and further, provided all License Maintenance Fees have been paid by the Client for the then current year.

1.5 PA will provide 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 HELP DESK OPERATIONS

2.1 The help desk operates during Support Hours.

2.2 Provided Client has a current positive Case Entitlement Balance, Client can contact the help desk for assistance regarding the Products they have licensed.

2.3 The help desk can be contacted in the first instance via:

Portal: https://portal.profad.com/.

In circumstances when the portal may be unavailable, only then should the help desk be contacted per Email support@professionaladvantage.com

2.4 Only Support Cases reported in the above manner will result in the creation of a formal Support Case. PA cannot guarantee a response where Support Case are reported in any other manner.

2.5 Client may contact the help desk 24 hours per day as described in this clause, however call responses will be provided during Support Hours.

2.6 Client may engage PA outside of normal working hours on a pre-planned, billable basis.

2.7 All issues are given a Support Case number. All Support Cases will be managed to conclusion and Support Cases will be closed following notification from the Client, or after two attempts to contact the Client have been made by PA.

2.8 In instances where the Support 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.

2.9 In instances where the Support 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 will engage with the third party as needed, however the Client (not PA) is responsible and must take lead in creating, maintaining, and coordinating a Support Case with said third-party.

2.10 The Client can nominate up to 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.

3 CASE MANAGEMENT

3.1 Each Support Case must have a unique reported problem or question and Support 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.

3.2 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. PA will use the severity level to prioritize all outstanding Support Cases. All Support Cases, irrespective of severity level will follow the same

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resolution pathway. PA's priority taxonomy with response-time targets are:

Priority	Description	Example	Target Response Time
1	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
2	Impact Very High	Inability to processing invoices. Entire feature(s) inaccessible for all users.	3 hours
3	Impact High	Key feature not working for some users.	5 hours
4	Impact Low	All other non-excludable requests.	One business day

3.3 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 Support Case e-mail, which can be utilized if any concerns arise with any aspect of PA's help desk services.

4 DEFECT REPAIR POLICY

At PA's discretion, PA may provide a software defect repair in respect of PA Products to the client based upon a variety of decision factors.

4.1 PA will address selected software defects during the Defect Repair Period.

4.1.1 If a client identifies a software defect during the Defect Repair Period that has not been resolved in a later released Public Software Version, PA may repair it in a Service Pack for the affected version in consultation with the client E.g. A defect identified in v21.1.4 would be repaired as a Service Pack in v21.1.5 and will also be repaired in the next Public Software Version under development. e.g. v24.1.0 .

4.1.2 If a client identifies a defect after the Defect Repair Period expires, they must:

a) upgrade to a later released Public Software Version if the defect has been repaired; OR

b) wait for PA to repair the defect in a future Public Software Version and plan the upgrade to the new Public Software Version.

4.1.3 The Defect Repair Period for 1Staff is "current year plus the prior two years", for example;

a) If the current Public Software Version = v23.2

b) Defect repairs will be considered for v21.1 through v23.1

c) Versions prior to v21.1 will not be repaired.

4.2 Notwithstanding the availability of defect repairs in clause 0, the charge for any Professional Services associated with implementation of a Service Pack or configuration, including the installation and/or upgrading of software to a Public Software Version, and the re-application or modification of Customizations, will be based on current Professional Services rates.

4.3 A positive Current Case Entitlement Balance is required to submit a Support Case, however any Support Case for which a defect is acknowledged and recorded in PA's defect database will not result in the decrease in the Client's Current Case Entitlement Balance.

5 INCLUSIONS AND EXCLUSIONS

5.1 The following Support Case types are INCLUDED in the Support Services described in this Appendix:

5.1.1 "Break Fix Support".

a) Emergency support inquiries for system-down or critical problem diagnosis and resolution;

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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.

5.1.2 "How-To Support" questions regarding user or administration application functionality and usability. Examples include: where to find features, minor task instruction, and functionality clarification.

5.2 The following list of activities, which is not exhaustive, are EXCLUDED from the scope of Support:

5.2.1 Support for Customizations developed by PA.

5.2.2 Problems arising from Client-performed installations or upgrades where PA was not engaged to perform the installation or upgrade.

a) PA will not provide Support for Products not implemented or upgraded by PA

b) PA will not provide Support for Products where the Client or any other third party has modified any code or any stored procedures or other data tables or structure bypass the PA approved data integration methods to insert data into database tables without the prior written consent from PA.

5.2.3 Problems arising from data imports or data conversions.

5.2.4 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

5.2.5 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.

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Appendix C: Managed Services

1 PREAMBLE

1.1 Client will access the Cloud Platform using an Internet connection, browser, and remote desktop services technologies.

1.2 PA will maintain availability to the Cloud Platform in accordance with Service Levels published by the Cloud Provider at https://azure.microsoft.com/en-au/support/legal/sla/.

1.3 PA will provide services to manage the Cloud Platform. (and / or on premise hardware infrastructure).

1.4 The Client will not engage any other party to provide Services to client.

1.5 Client shall not self-implement any changes to Cloud Platform.

2 CLOUD PROVIDER TERMS

2.1 The Cloud Platform is subject to the Cloud Providers terms and conditions which are published and updated at https://azure.microsoft.com/en-au/support/legal/.

3 ACCEPTABLE USAGE POLICY

3.1

3.2 Neither Client, nor those that access the Cloud Platform through Client, may use the Cloud Platform:

- **3.2.1** In breach of any Cloud Provider Agreements published at https://azure.microsoft.com/en-au/support/legal/
- **3.2.2** in a way prohibited by law, regulation, governmental order or decree;
- **3.2.3** to violate the rights of others;
- **3.2.4** to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- **3.2.5** to spam or distribute malware;
- **3.2.6** in a way that could harm the Cloud Platform or impair anyone else's use of it; or
- **3.2.7** in any application or situation where failure of the Cloud Platform could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

3.3 Violation of the terms in this section may result in suspension of the Cloud Platform. PA will suspend the Cloud Platform only to the extent reasonably necessary and after providing reasonable notice in the circumstances. Unless PA reasonably believes an immediate suspension is required, PA will provide reasonable notice before suspending the Cloud Platform.

4 MANAGED SERVICE

The following services are included in Managed Service provided by PA:

4.1 PA will be the sole holder of elevated (administrator) access credentials for all server and database components.

4.2 Support Packs:

- **4.2.1** Client receives an allocation of Support Cases as determined by the Order Form.
- **4.2.2** Additional Support Packs may be purchased.
- **4.2.3** Each Support Case submitted to PA decreases the Current Case Entitlement Balance for Managed Services by one Support Case, unless PA opens a software defect associated with the Support Case. Any Support 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

4.3 Manage software applications that monitor server, database, and PA Products 24 hours per day, 7 days per week. Responses or resolutions are actioned or conducted during Support Hours only. Escalations and resolutions requested after hours will have overtime rates applied where consulting resources are available.

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4.4 Notify the Client of appropriate issues arising from the use of the Cloud Platform.
4.5 Manage anti-virus technology to monitor unauthorized access to the Cloud Platform.
4.6 Maintain a 'least privilege' approach to infrastructure access.
4.7 Schedule backups of the database information that is stored within the Cloud Platform as agreed with the client. This Agreement does not include backups of Client Data held outside the Cloud Platform.
4.8 Restore data from backups upon demand from the most recent successful backup.
4.9 Carry out maintenance, updates and enhancements to the Cloud Platform during planned Scheduled Down Time.
4.10 Assist in establishing connectivity to the Cloud Platform from the Client's IT network.
4.11 Manage user administration within the Cloud Platform.

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 Cloud 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 Cloud Platform, significant changes to Products (upgrades, reconfigurations, etc.), and expectations of notable increases in load on the Cloud Platform.
5.4 Not configure or adapt the Products in the manner that causes performance degradation to the Cloud Provider environment.
5.5 Client must notify PA of all elevated credentials to the Cloud Platform obtained by Client.
5.6 Client must promptly notify PA if Client is unable to access the Cloud Platform.

6 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

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Appendix D: Professional Services

1 STATEMENT OF WORK

1.1 In the event of a conflict between the terms and conditions of this Agreement and a SOW, this Agreement will supersede the SOW.

1.2 PA will provide Professional Services to Client as described in written form such as a project scope agreement, statement of work, engagement letter, implementation planning study, solution design document, development order, or change requests which will form exhibits to this Agreement (collectively, "SOW").

1.3 Unless stated to be fixed price all Professional Services are provided on a time and materials basis.

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 Payment Terms – 30 days net from date of invoice.

2.3 Minimum Charges

- **2.3.1** Minimum charge of 2 days for on-site work
- **2.3.2** Minimum charge of 1 hour for remote services work,
- **2.3.3** Billed in minimum 30minute increments after minimum charge.

2.4 Weekend, Public Holiday or out of hours.

- **2.4.1** 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 BOOKING CANCELLATION

3.1 If a Client cancels a Professional Services 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 Client approved 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.

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Appendix E: Order Form - example

professional advantage

Professional Advantage Software Solutions Inc, 4820 30th Avenue South, Suite 201, Fargo, North Dakota 58104 | Tel: +1 701 235 2363 | Email: 1Staff@profad.com

ORDER FORM

<Insert Customer Details>

This Order Form once completed becomes an Appendix to the Commercial Agreement between the parties

Software	Each US$	Price
Total Software		$ -
Total Software Including SupportPlus / Support Packs		$ -
Consulting Services Estimate**		$ -
Total Consulting Services Estimate		$ -
Cloud Platform infrastructure and Managed Services		$ -
Total Cloud Platform infrastructure and Managed Services		$ -
Cloud Platform usage items		$ -
Total Cloud Platform usage items		$ -
Total Exclusive Sales Tax		$ -

* SupportPlus only required for Perpetual Licences and is based on list price for minimum 12 months
** Consulting Services on time & materials basis

Terms and Conditions:
Refer to the Commercial Agreement signed by the parties, or,
If there is no signed Commercial Agreement, please refer to our standard Commercial Agreement here
This Order Form may be signed within days 30 days from the "Estimate Date"

Anniversary Date: 13/08/2019
Estimate date: 23/09/2019

Commercial Agreement Order Form - PA USA - 2019

Document Approval

By signing below, I approve the commencement of software and services purchase as per the details above.
I warrant that I am an authorised representative of the company to provide such approval.

PO number (required):
Company:
Signature:
Print Name:
Title:
Date:

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