



Commercial Agreement

THIS AGREEMENT is made

between

Professional Advantage Limited ("PA"), a British company with its principal office at 4th Floor, Tennyson House, 159-165 Great Portland Street, London W1W 5PA, United Kingdom; Company Number 5819794;

and

("Client"), with its principal office at _____, Company Number _____

Date

1. PREAMBLE

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

2. DEFINITIONS

- 2.1 **"Agreement"** means these terms and conditions along with Appendices A to G attached hereto, any Statement of Work signed by both parties, any Change Request signed by both parties, any additional order that is prepared using the Order Form Template and signed by both parties, and any schedules that accompany such additional order and have been approved in writing by both parties.
- 2.2 **"Available"** means access to a Cloud Platform which is operational and accessible over the Internet using a computer that is not part of the Cloud Platform.
- 2.3 **"Cancellation Fee"** means the fees associated with terminating Professional Services calculated in accordance with Clause 6.4.2, Clause 6.4.3d), or Clause 6.4.4e) as applicable.
- 2.4 **"Change Request"** has the meaning given to that term in Clause 3.4 below.
- 2.5 **"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 Managed Services, and includes:
 - 2.5.1 database in which such data or information is stored; and
 - 2.5.2 documentation or records related to such data or information.
- 2.6 **"Client Materials"** means tools, instructions, specifications, or other materials provided by Client to PA.
- 2.7 **"Cloud Platform"** means the provision of the Microsoft Azure environment by PA, used to operate a deployment of Products, which may be accessed by the Client during Planned Service Hours.
- 2.8 **"Cloud Provider"** means the online Microsoft Azure environment that are established, operated and maintained by Microsoft Corporation ("Microsoft").

- 2.9 **“Confidential Information”** has the meaning given to that term in Clause **Error! Reference source not found.** below.
- 2.10 **“Customisations”** means changes, modifications, amendments to PA Products.
- 2.11 **“Down Time”** means any period of time where the Cloud Platform is not Available.
- 2.12 **“Initial Service Period”** has the meaning given to that term in Clause 7 below.
- 2.13 **“Intellectual Property Rights”** means:
- 2.13.1 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
- 2.13.2 any rights in any jurisdiction in the world in respect of an invention, discovery, trade secret, data, algorithm, or formula.
- 2.14 **“License”** means the license granted by PA to Client pursuant to Clause **Error! Reference source not found.** below, on the terms set out in this Agreement.
- 2.15 **“License Maintenance”** means, in the case of Perpetual Licenses, entitlement to subsequent versions of PA Products and Third Party Products named in the Appendix A and G, released after the Original Use Date, provided the subsequent version is currently a Supported Version.
- 2.16 **“License Maintenance Fees”** means the periodic fee required to maintain the License Maintenance entitlement.
- 2.17 **“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
- 2.18 **“Managed Services Fees”** means the fees associated with a contracted period, during which PA provides the Client with Managed Services as defined in Appendix D.
- 2.19 **“Order Form Template”** means the document attached hereto as Appendix G, to be completed and signed by the parties if Client wishes to order any additional Products or Services after the date of this Agreement.
- 2.20 **“Original Use Date”** means the date on which Client first utilizes the Products in production mode.
- 2.21 **“PA Business Hours”** means the hours between 9.00am and 5.30pm London Time, Monday to Friday, excluding public holidays.
- 2.22 **“PA Products”** means the version of software applications developed by PA.
- 2.23 **“Payment Terms”** means the requirement to pay any invoice within 14 days of receipt of such invoice, unless otherwise agreed in writing.
- 2.24 **“Perpetual License”** means the Product software license the Client purchases to use in perpetuity.
- 2.25 **“Perpetual License Fees”** means the fees associated with a Perpetual License.
- 2.26 **“Planned Service Hours”** for the Cloud Platform means 24 hours per day.
- 2.27 **“Products”** means: PA Products, Third-Party Products or a Cloud Platform. Products may be procured as a Perpetual License or as a Subscription.
- 2.28 **“Professional Services”** means the provision of consulting and development activities, including configuration work. This may include but is not limited to project management, business analysis, training, technical configuration, IT Infrastructure engineering.

- 2.29 **“Public Software Version”** means a generally available variant of the Products made available by PA to the market.
- 2.30 **“Scheduled Down Time”** means a period of Down Time that is agreed between PA and Client.
- 2.31 **“Services”** means services provided by PA, including but not limited to Professional Services, Managed Services, and Support.
- 2.32 **“Statement of Work” (“SOW”)** means any document that describes any work to be performed. The document can be in a form such as a project scope agreement, statement of work, engagement letter, solution design document or development order.
- 2.33 **“Subscription”** means Products that are purchased on a rental basis, with payments made on a regular basis.
- 2.34 **“Subscription Fees”** means the fees associated with a Subscription, including fixed, variable or usage fees associated with consumption of services (such as storage, bandwidth traffic, etc).
- 2.35 **“Support”** means help desk services for Products.
- 2.36 **“Support Cases”** are distinct support calls initiated by the Client.
- 2.37 **“Support Fees”** means the fees associated with a provision of Support. The fees are as specified in 6.5.1.
- 2.38 **“Support Hours”** means the hours between 9:00am and 5:00pm AEDT, Monday to Friday, excluding UK public holidays.
- 2.39 **“Supported Version”** means a Products version for which Support are offered by PA. For PA Products PA will provide twelve months’ notice that a version will no longer be supported.
- 2.40 **“Third Party Product”** means any product other than PA Product, produced by a third-party vendor and their use is governed by product-specific license agreements.

3. Engagement

- 3.1 The provision of Products, and their use by the Client, and Services from PA are governed by this Agreement.
- 3.2 Products may be deployed either on-premise or cloud service.
- 3.3 PA shall provide Services to Client as described in any written form such as a SOW, that has been signed by the parties and unless stated to be fixed, these Services are provided on a time and materials basis. The final signed version of any SOW shall be incorporated into this Agreement by reference.
- 3.4 Client may request changes to the Services under any SOW by submitting a written request to PA (each, a “Change Request”). Upon receipt of any Change Request, if the Change Request is feasible, PA shall determine the additional time, cost and other resources that would be required in order to implement such Change Request, and then submit to Client a version of the Change Request that includes this information. No Change Request shall be binding on either party until it has been signed by both parties.
- 3.5 Professional Services may be provided either at a Client site or off-site, at PA’s discretion, except as otherwise agreed in writing by the parties.

4. Grant of License

- 4.1 Subject to the Client complying with the terms of this Agreement, PA grants to the Client a non-exclusive, worldwide License for the Term to use the Products and related documentation as may be more fully described in Appendix F to this Agreement.
- 4.2 Use Restrictions
 - 4.2.1 General. Appendix A shall set forth any special restrictions on the use of the Products by Client (hereafter, the "Use Restrictions") such as the maximum of named users.
 - 4.2.2 Copies. The Client shall not be permitted to make any copies of the Products, in any form, however, Client shall be entitled to make a copy of any data generated based on the Client inputs, whether such data is in a html or pdf form, or otherwise, into the Products.
 - 4.2.3 Sublicense. The Client shall not sublicense, rent or lease any portion of the Products.
 - 4.2.4 Export. The Client shall adhere to any export controls applicable to the Software as a Service under the U.S. Export Administration Regulations.
- 4.3 Future licenses. In the event the Client acquires new Products or additional licenses for a previously acquired Product, the new acquisitions will be licensed under the same terms and conditions herein by the Parties executing additional Appendix(s) as may be necessary for each new transaction. Each set of Appendix(s) together with the terms and conditions of this Agreement, shall constitute one combined agreement.

5. Software Updates

- 5.1 For Products in respect of which the Client has paid the relevant License Maintenance Fees and Subscription Fees, PA 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.
- 5.2 Any Services associated with installation and/or upgrading of software, including the re-application or modification of customisations are provided on a standard chargeable time and materials basis, except as set out in this Agreement or otherwise agreed in writing by the parties.

6. Fees, Payment

- 6.1 **General**
 - 6.1.1 All amounts paid pursuant to this Agreement are payable in British Pounds (GBP) and are non-refundable.
 - 6.1.2 All charges, or other amounts charged by PA under this Agreement 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's 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.

- 6.1.3 Travel charges will be charged for on-site visits to Client premises, subject to prior agreement.
- 6.1.4 PA may refuse and withhold provision of Services or access to a Cloud Platform where Client account is not maintained within Payment Terms.
- 6.1.5 Any amounts overdue by 30 days or more may be charged interest at the lesser of 2% per month and the highest rate permitted by applicable law. Client will be liable for all reasonable collection and legal costs incurred by PA in relation to amounts duly charged and invoiced by PA in accordance with this Agreement.
- 6.1.6 Any amounts due in respect of this Agreement may not be offset against any other claims Client may have against PA.

6.2 **Perpetual License Fees and License Maintenance Fees**

- 6.2.1 All Perpetual License Fees and License Maintenance Fees must be paid in advance as per the Order Form.
- 6.2.2 Cancellation or termination of any part of this contract does not entitle the Client to any refund of Perpetual License Fees.
- 6.2.3 When the Client chooses to cancel the License Maintenance, either separately or as part of terminating this Agreement as envisaged in Clause **Error! Reference source not found.**, before the software license renewal date, the cancellation is deemed to be at the next renewal date and PA is not liable to pay any refund for the unexpired period.

6.3 **Subscription Fees and Managed Services Fees**

- 6.3.1 Subscription Fees and Managed Services Fees must be paid in advance.
- 6.3.2 PA reserves the right to pass on any cost increases from Third Party Product providers or Cloud Platform providers. These increased costs are payable in accordance with the Payment Terms.
- 6.3.3 PA will invoice, on a monthly basis, any Cloud Platform usage fees associated with the consumption. These usage fees are payable within Payment Terms.
- 6.3.4 **Subscription Cancellation:** Client may cancel any Subscription upon written notice to PA. When the Client chooses to cancel any Subscription before the renewal date of such Subscription, either separately or as part of terminating this Agreement as a whole as permitted in Clause **Error! Reference source not found.**, the cancellation is deemed to be effective at the next renewal date of such Subscription 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.
- 6.3.5 **Managed Services Cancellation:** When the Client chooses to cancel the Managed Services, either separately or as part of terminating this Agreement as permitted in Clause 7, before the renewal date of the applicable Subscription, the cancellation is deemed to be effective at the next renewal date and PA is not liable for any refund for the unexpired period. All amounts due to the end of the Initial Service Period or the Subsequent Service Period remain payable. For the avoidance of doubt the cancellation of any Managed Service does not automatically terminate this Agreement.

6.4 Professional Services

- 6.4.1 All Professional Services are provided on a fee for service basis at prevailing rates, except as otherwise set out in this Agreement or set out in the applicable SOW. Time and materials invoices for Professional Services shall be issued weekly in arrears. Fixed price invoices are issued upon completion of the relevant milestone.
- 6.4.2 Where Client cancels any Subscription with PA, the provision of Services, after the effective Subscription cancellation date, will increase the rate by 10% for all Services provided on or after the effective Subscription cancellation date, whether provided on a time and materials or fixed price basis.
- 6.4.3 **Cancellation of Professional Services** - time and materials base project:
- a) All unpaid invoices are due and payable within Payment Terms.
 - b) Any services rendered to date but not yet invoiced are payable within Payment Terms.
 - 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.
 - d) For the avoidance of doubt the cancellation of Professional Services does not automatically terminate this agreement. Termination of this Agreement is as per Clause **Error! Reference source not found.**
- 6.4.4 **Cancellation of Professional Services** - fixed price project:
- a) All unpaid invoices are due and payable within Payment Terms.
 - b) All achieved milestones not yet invoiced are due and payable within Payment Terms.
 - c) Any services rendered to date but not yet invoiced are payable within Payment Terms.
 - d) 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.
 - e) For the avoidance of doubt the cancellation of Professional Services does not automatically terminate this agreement. Termination of this Agreement is as per Clause 7.
- 6.4.5 **Cancellation of Professional Services** – ad hoc service bookings. If a Client cancels a Professional Service 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
 - c) Cancellation fee will not exceed 5 days' worth of consulting.

6.5 Support

- 6.5.1 Support Fees must be paid in advance as per the Order Form.
- 6.5.2 On cancellation of Support, PA is not liable to any refund in respect of Support paid.
- 6.5.3 For the avoidance of doubt the cancellation of Support does not automatically terminate this agreement. Termination of this Agreement is as per Clause 7.

7. Term and Termination

- 7.1 The initial term of this Agreement is set out in the Appendix A (the "Initial Service Period").
- 7.2 Following the expiry of the Initial Service Period, this Agreement shall renew automatically for additional consecutive terms of twelve months each (each, a "Subsequent Service Period") unless either party notifies the other party in writing at least ninety (90) calendar days prior to expiry of the Initial Service Period or current Subsequent Service Period, as applicable, that it does not wish to renew upon expiry of the Initial Service Period or current Subsequent Service Period, as applicable, in which case this Agreement (and all Subscriptions under this Agreement) shall terminate upon the expiry of such period. For the avoidance of doubt, in the event that Client terminates this Agreement in accordance with this Clause 7.2, upon the expiry of the Initial Service Period or any Subsequent Service Period, Client shall not be liable for any Cancellation Fee in relation to the Subscriptions that terminate at the same time.
- 7.3 In the event of any material breach of any term or provision of this Agreement by either party, the non-breaching party may terminate this Agreement by written notice if the breaching party fails to cure the breach within 30 days of receiving written notice of such breach from the non-breaching party; provided, however, that if such breach is incapable of being rectified, the non-breaching party may terminate the Agreement by giving 30 days written notice to the breaching party.
- 7.4 Client may, at any time, terminate this Agreement for the Client's convenience and without liability, 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, in accordance with the applicable SOW or as otherwise agreed in writing by the parties.
- 7.5 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.
- 7.6 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.
- 7.7 Client shall be responsible for payment of all Services rendered prior to the effective date of termination.
- 7.8 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. This Clause 7.7 shall not apply in the event that any unpaid amount is subject to an ongoing dispute in good faith between the parties.
- 7.9 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.
- 7.10 Upon expiry or termination of a Subscription for a Cloud Platform, Client may request PA deliver to Client an extraction of any Client Data within 30 working days of expiry or termination. Any

Professional Services associated with extraction, preparation or delivery of Client Data will be charged on a time and materials basis unless otherwise agreed in writing or set out in the applicable SOW.

8. Warranty, Representation and Disclaimer

- 8.1 PA represents that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; and (iii) to the best of its knowledge, PA Products and Services do not and will not violate the Intellectual Property Rights of any third party, provided, however, that PA expressly disclaims any warranty relating to infringement resulting from PA's use of Client Materials and provided, further, that the foregoing warranty shall not apply to the extent that Client or any of its respective agents make modifications to any aspect of the results of the Services.
- 8.2 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 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.
- 8.3 PA warrants that any Services provided under this Agreement shall (i) be performed with due care, skill and diligence, in a timely and professional manner by qualified professional personnel, (ii) conform to the standards generally observed in the industry for similar services and (iii) in the case of Professional Services, meet the requirements set out in the applicable SOW.
- 8.4 Notwithstanding anything to the contrary hereunder, PA warrants that the PA Products do not contain any coding, time bomb or back door that would enable PA to disable the code for any reason, with the exception of a security key.
- 8.5 PA warrants that it has taken reasonable steps to test any software and/or media supplied by it or used by it in the performance of this Agreement for Computer Viruses. Based upon such testing, PA warrants and represents that, to the best of its knowledge, such software and media is free from any Computer Virus at the time it is provided to Client. "Computer Virus" is defined as a computer program attached to or a section of code hidden within the software or media that performs a function unauthorized by the software's documentation and which is designed to adversely affect the computer or software systems of any user of the Products.
- 8.6 Except as expressly provided herein, the Products and Services are provided as-is. PA does not warrant that Products or Services will be fit-for-purpose, accurate, complete or error-free. There are no warranties which extend beyond those expressed in this Agreement.

9. Indemnification

- 9.1 Except to the extent such violation arises from PA's reliance on Client's instructions or specifications or where Client or any of their respective agents modify any aspect of the results of the Services, in which case Client shall indemnify PA in accordance with Clause 9.3 below, 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 which relate to the violation of any third party's Intellectual Property Rights

- arising in the provision of Services or PA Products, provided the Client i) has given prompt written notice to PA of such claim, ii) gives PA sole control of the defence and settlement of the claim against the Client, and iii) gives PA all reasonable assistance at PA's expense.
- 9.2 In the event of any infringement or claimed infringement of a third party's Intellectual Property Rights, Client will, as soon as reasonably practicable but in no event more than thirty (30) days of receiving such claim, notify PA in writing of the claim or action for which such indemnity applies. PA will be entitled at its option to undertake the defence of any such claim or action and permit Client to participate therein at Client's own expense.
- 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 Intellectual Property 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 any of their respective agents modify any aspect of the results of the Services.
- 9.4 For the avoidance of doubt PA is not responsible for and provides no indemnity in respect of any Third Party Products.

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 in connection with the PA Products or the Services. Consequential and indirect damages include (i) loss of data, use, income, anticipated profits on unperformed work or other contracts or projects, (ii) loss of business, goodwill or reputation or (iii) other consequential or indirect damages as defined by applicable law. This Clause 10.1 shall not apply to liability of either party (i) arising under Clause 9.1 or Clause 9.3 or (ii) arising from such party's fraud, gross negligence or wilful misconduct.
- 10.2 Under any State or Federal Law when implied conditions and warranties cannot be expressly excluded, PA limits its liabilities (i) 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 and (ii) in the case of goods, to the resupply of the goods.
- 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. This Clause 10 shall not apply to liability of PA for (i) any claim by a third party relating to infringement of such third party's Intellectual Property Rights or (ii) fraud, gross negligence or wilful misconduct, (iii) death or personal injury; (iv) damage to, or loss of, tangible property; or (v) breach of the confidentiality and privacy provisions.

11. Intellectual Property and Privacy

- 11.1 All rights in any intellectual property relating to the PA Products and Services, 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 hereunder or elsewhere.
- 11.3 Where the Client has paid a Perpetual License Fee, and subject to this clause PA grants to the Client a non-exclusive, perpetual, license to use the Intellectual Property Rights in the PA Products and 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.
- 11.4 In the case of Subscriptions , 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 including but not limited to all reports, analyses, plans, summaries, recommendations, instructions or presentations prepared by PA, and the information contained therein provided that all Fees and other amounts duly invoiced by PA, are paid in accordance with this Agreement. For the avoidance of doubt, the Client is not entitled to exploit the intellectual property referred to in this clause.
- 11.5 Nothing in this Agreement shall prevent PA from utilizing any general know-how, techniques, ideas, concepts, algorithms, inventions, or other knowledge acquired or developed during the performance of this Agreement, on behalf of itself and its future clients, and PA may perform the same or similar services for others, provided that, in all cases, any Confidential Information of Client, including any proprietary or trade secret information of Client, is treated in accordance with the non-disclosure provisions of the Agreement or in terms of any separate non-disclosure agreement or similar instrument between the parties, as applicable.
- 11.6 All Client data stored within the Products or its related components remains the property of Client. 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.

12. Privacy Notice

- 12.1 PA will comply and will ensure that all its representatives comply with applicable privacy law 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 applicable privacy law, PA may use 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 instructs PA in writing that it is 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 12.2.
- 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) privacy@professionaladvantage.co.uk; (ii) The Privacy Officer, 4th Floor, Tennyson House, 159-

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 Notwithstanding anything to the contrary in this Agreement, Recipient may disclose any Confidential Information of Discloser to (i) Recipient’s affiliates, (ii) the directors, officers and employees of Recipient and its affiliates, who have a genuine need to know such Confidential Information for the purpose of Recipient performing its obligations or exercising its rights under this Agreement, and who are subject to confidentiality obligations that apply to such Confidential Information and are at least as stringent as those contained in this Agreement, and (iii) Recipient’s legal advisors and auditors.
- 13.3 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 notwithstanding anything to the contrary in Clause 19.1 below.

14. Independent Contractor Status

- 14.1 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.

15. Solicitation

- 15.1 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 unless otherwise agreed in writing. This restriction also applies for a period of 12 months from the date of resignation/termination of any employee or subcontractor. This clause does not apply in circumstances where a person responds to a bona fide public advertisement.

16. Delays

- 16.1 Neither party shall be liable for delays caused by fire, accident, labour dispute, war, insurrection, riot, act of government, act of God, epidemic or pandemic 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.

17. Amendments

- 17.1 Changes to this Agreement need to be agreed in writing by both parties. Any SOW that has been signed by both parties is part of this Agreement, and any Change Request that has been signed by both parties is part of the applicable SOW.

18. Assignment

- 18.1 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.

19. Arbitration and Governing Law

- 19.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales 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.
- 19.2 If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 [working] days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ('ADR notice') to the other party[ies] to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 19.3 If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.
- 19.4 Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice
- 19.5 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.

20. General

20.1 Audit rights

20.1.1 Upon notice of no less than 10 days, Client will provide PA access to its systems in order to ensure compliance with license terms in respect of this Agreement.

20.2 No waiver

20.2.1 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

20.3 Precedence

20.3.1 The various documents comprising this Agreement are intended to be read together. If, however, there is any conflict or ambiguity in interpretation between such documents, the documents are to be read in the following order of precedence (i.e. (a) has the highest order of precedence) to the extent required to resolve such conflict or ambiguity:

- a) These terms and conditions;
- b) any Change Request that has been signed by both parties;
- c) any SOW that has been signed by both parties;
- d) any additional order that has been signed by both parties;
- e) any appendices forming part of this Agreement, including but not limited to Appendices A, B, C, D, E, F and G attached hereto on the date first shown above.

20.4 Power to enter into this Agreement

20.4.1 Each party represents and warrants that, its representatives are properly authorised and have full power to enter into this Agreement on behalf of such party and such party has the full power to carry out its obligations thereunder.

20.4.2 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.

21. Appendices

21.1 The following appendices are included as part of this Agreement:

Appendix	Title
A	Schedule of Products, Subscriptions & Services
B	License Maintenance
C	Support
D	Managed Services
E	Professional Services
F	Supporting Reference Documentation
G	Order Form

22. Approval

Signed for CLIENT by an authorised officer:	Signed for PA by an authorised officer:
Signature:	Signature:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

Appendix A: Schedule of Products and Services

1. Description of what this Agreement covers

¹Detail PA Software

Software	Limitations (e.g. number of named users or deployment environments)
PA Azure MS Business Central	xx named users

1.1 Detail Fees

Service description			
Business Central annual subscription	Annual subscription	xx	£xx
Upbeat annual subscription	Annual subscription	xx	£xx
Azure	Annual subscription	x	£xx
Statement of Work	Once	n/a	£n/a
		TOTAL	£xx

1.2 Commencement Date for Initial Service Period

[start date to be inserted] for an Initial Service Period of xx months.

1.3 Payment schedule

Payment Item	Milestone	Amount
	Total	£xx,xxx

Appendix B: License Maintenance

1. Preamble

- 1.1 This Appendix only applies where the Client has purchased a Software Perpetual License and has paid the annual License Maintenance Fees.,

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 third-party 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 Products, and the re-application or modification of Customisations, will be based on current standard rates as amended from time to time.
- 2.3. Failure to renew and pay License Maintenance Fees (a lapse of the License Maintenance entitlement) at least 5 working days before the License Maintenance renewal date 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 plus any additional third-party vendor based fees, or 2) purchase new Perpetual Licenses at current list price.

Appendix C: Managed Services

1. Support entitlement

- 1.1 PA will provide Support for any Public Software Version of a PA Product for 18 months beginning with the public release date of said version.
- 1.2 PA will provide Support 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. Client support operations

- 2.1 The client support operates during Support Hours.
- 2.2 The client support team can be contacted via:
Portal: <http://www.professionaladvantage.co.uk/services-support/>
Email: support_uk@professionaladvantage.co.uk
Telephone: +44 (0) 207 268 9802
- 2.3 Only Support Cases reported as per 2.2 above will result in the creation of a formal Support Case. PA cannot guarantee a response where a Support Case is reported in any other manner.
- 2.4 Client may contact the client support team 24 hours per day as described in Clause 2.2, however call responses will be provided during Support Hours.
- 2.5 Client may engage PA outside of Support Hours on a pre-planned, billable basis.
- 2.6 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.
- 2.7 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 escalation and response times of that organization, details of the response times of third party vendors will be provided to the Client.
- 2.8 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.
- 2.9 The Client can nominate up to two representatives who are entitled to contact the client support team on behalf of the Client. These representatives are required to be trained by PA in the use of the Products.

3. Support 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 resolution pathway. PA’s priority taxonomy with response-time targets are:

Priority	Severity Description	Example	Target Response Time
1	Critical	Your entire system is inoperable and your organisation is critically impacted	1 hour
2	High	You cannot use the system, or a function of the system is not working correctly and is affecting your processing. No workaround is available. Your business is severely impacted.	3 hours
3	Medium	A function is not working correctly but is not mission critical. Often a workaround will exist although the issue does need to be resolved. Your business is not seriously affected.	5 hours
4	Low	A question or request for information regarding existing systems, new product or functionality.	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 client support services.

4. Defect Repairs

- 4.1 At PA's discretion, PA may provide a software defect repair to the client based upon a variety of decision factors.
- 4.2 Defect repairs will be made in the latest service pack of a Supported Version. To illustrate the intention, if a Client is on Version 18.1 but the current active point release is 18.1.2, then a new defect repair will be released via 18.1.3 and the Client will be required to accept said defect repair in 18.1.3.
- 4.3 Notwithstanding the availability of defect repairs in this clause 3.3, the charge for any Services associated with Products upgrade or configuration, including the installation and/or upgrading of software, and the re-application or modification of Customisations, will be charged on a time and materials basis.

5. Inclusions and Exclusions

- 5.1 The following Support Case types are INCLUDED in the Support described in this Appendix ("Support"):
 - 5.1.1 "Break Fix Support".
 - a) Emergency support inquiries for system-down or critical problem diagnosis and resolution;
 - b) Correcting errors or other problems in the Products in an appropriate time, or issuing instructions to Client's designated contacts as to how to resolve the problem in order to resume operation of the Products to operate in a manner reasonably satisfactory to Client until the problem can be fully corrected by PA.
 - 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 Customisations developed by PA.
 - 5.2.2 Problems arising from Client performed installations or upgrades where PA did not sign-off on the installation or upgrade.
 - a) PA will not provide Support for Products implemented or upgraded without the assistance of PA
 - b) PA Professional Services may be engaged by Client to participate in any resulting clean-up activities arising.
 - 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.

Appendix D: 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 Neither Client, nor those that access the Cloud Platform through Client, may use the Cloud Platform:
 - 3.1.1 In breach of any Cloud Provider Agreements published at <https://azure.microsoft.com/en-au/support/legal/>
 - 3.1.2 in a way prohibited by law, regulation, governmental order or decree;
 - 3.1.3 to violate the rights of others;
 - 3.1.4 to try to gain unauthorized access to or disrupt any service, device, data, account or network;
 - 3.1.5 to spam or distribute malware;
 - 3.1.6 in a way that could harm the Cloud Platform or impair anyone else's use of it; or
 - 3.1.7 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.
- 3.2 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 Manage software applications that monitor server, database, and Products 24 hours per day, 7

days per week.

- 4.3 Notify the Client of appropriate issues arising from the use of the Cloud Platform.
- 4.4 Manage anti-virus technology to monitor unauthorized access to the Cloud Platform.
- 4.5 Maintain a 'least privilege' approach to infrastructure access.
- 4.6 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.
- 4.7 Carry out maintenance, updates and enhancements to the Cloud Platform during planned Scheduled Down Time.
- 4.8 Assist in establishing connectivity to the Cloud Platform from the Client's IT network.
- 4.9 Manage user administration within the Cloud Platform.
- 4.10 Restore data from backups upon demand from the most recent successful backup. Data restoration requests are billable on a time and materials basis.

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.

Appendix E: Schedule of Products & Subscriptions

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.
Standard Service fees
- 1.3 PA reserves the right to amend rates from time-to-time.
- 1.4 Payment Terms – 14 days net from date of invoice.
- 1.5 Minimum Charges
- 1.6 Minimum charge of 2 days for on-site work.,
- 1.7 Minimum charge of 1 hour for remote services work.
- 1.8 Billed in minimum 30-minute increments after minimum charge.
- 1.9 Weekend, Public Holiday or out of hours.
- 1.10 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 outside PA Business Hours.

2. Travel charges

- 2.1 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.
 - 2.2 **Flights** - PA's flight policy is to book fixed fares to a client location but the most cost effective flexible flight back out of the nearest airport to the consultant's home. Non-refundable flights will not be booked due to the risk of a project over-run, unless at the express wish of the business partner. In doing so, any costs to rebook a flight that was missed due to the consultant being kept on site will be charged back to the business partner. Client will be charged cancellation fees for flights if cancelled within 5 days of a consultancy visit.
 - 2.3 **Hotels** – A minimum of a 3* hotel will be booked within the UK/Ireland. Europe and ex-Europe a minimum of a 4* will be booked. Client will be given the option by Professional Advantage to book flights and accommodation themselves. If the client requests PA to perform this service, then the above policies will apply and the expenses billed on to client at cost.
- Meals** (Subsistence) – Where an overnight stay is required, dinner will be charged back to the business partner at cost to a maximum of £30. Any alcohol purchased will be at the consultant's own cost and not claimed for. Lunch will be charged back to the business partner at cost to a maximum of £10 for site visits outside of the M25. Employees who wish to upgrade a reservation may do so by using their own bonus miles and at their own expense.

Appendix F: Supporting Reference Documentation

1.1 Documents Reference and Supporting this Agreement

- 1.1 For example, Statement of Work details.

Appendix G: Order Form Template

Prepared By:

Preparation Date: dd/mm/yyyy

Prepared For	Billing Contact Information
Company Name	Account No
Email	Contact
Tel	Contact Email
Address	Contact Phone
City	Address
State	City
Postal Code	State
Country	Postal Code
Offer Expires	Country

Service Commencement Date	
Initial Service Period	3 Year
Subsequent Service Period	1 Year
Automatic Annual Renewal	Yes
Cancellation Notice	90 days
Data Centre Region	XXX

Pricing Summary

Item	Description	Limitation	Term	Qty	Price
1.					£
2.					£
3.					£
4.					£
5.					£
	TOTAL				£

Invoicing and Payment

PA will invoice Client prior to the Service Commencement Date for the first 12 months under the Agreement (£).

PA will invoice Customer, prior to the start of each 12 month period, for all fees under the Agreement for that year, any additional Product or Services that were deployed during the preceding period.

Customer must arrange an electronic transfer of funds directly to PA's nominated bank account:

Receiving Bank: NatWest
Receiver: Professional Advantage Ltd.
BSB: XXXXX
Account #: XXXXX

Acceptance:

Customer Details
Date
Title
Name
Signature

Professional Advantage Pty Ltd
Date
Title
Name
Signature