

PALADIN BUSINESS CONSULTING LLC

GENERAL TERMS AND CONDITIONS



PALADIN BUSINESS CONSULTING LLC

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PALADIN BUSINESS CONSULTING LLC

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GENERAL

1. DEFINITIONS AND INTERPRETATION

In these Conditions, the Rate Schedule and every Quote, Order, Master Services Agreement, Contract, Contract Addendum, Contract Amendment, or other arrangement in connection with the supply of Goods, Services or Work Products by Paladin Business Consulting LLC the following words have the following meanings:

"After Hours" means from 17:00 - 08:00 hours Monday through Friday and All-Day Saturday and Sunday, including Paladin Holidays, whether or not those Holidays coincide with Public Holidays;

"Business Hours" means Monday to Friday from 08:00 to 17:00 excluding Paladin Holidays;

"Call-Out Fees" means charges to attend Client's physical location, typically to assess or address an issue. The fee covers travel time to and from the Client's location and time spent diagnosing issues;

"Client" means an organization/incorporation/individual/corporation/limited liability company that seeks or obtains a quote for, or who orders, Goods or Services from Company, and includes both a person whose name is on the Order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an Order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;

"Conditions" refer to requirements or stipulations in this document that affect the rights and duties of the parties involved;

"Company" means Paladin Business Consulting LLC and its heirs, successors and assigns;

"Goods" means any tangible, movable items sourced by Company or provided by Company in connection with any such items including computer hardware and software and any items provided in connection therewith;

"Order" means any approved requisition from Client to Company for Goods or Services in any form;

"Period" means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Company and the Client as the period during which some Services will be provided or Goods delivered;

"Plan" means any arrangement between Company and Client (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods

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provided by Company under an arrangement in connection with Work agreed to be done or progressed for or on behalf of Client or any other person at Client request, including as set out in a Plan Schedule;

"Plan Schedule" means the key terms applicable to Plans as set, and as may be varied by Company, from time to time in its absolute discretion without notice to Client;

"Paladin Holidays" means any day of the year which is a designated Company Holiday as published to Company employees or leased employees, and also made available to Clients upon request;

"Quote" means a communication to Client, in any form, outlining deliverable Goods or Services, and the estimated fees associated with such Goods or Services;

"Rates" means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rate Schedule, Plan, Plan Schedule, Quote, or Order entered into by Company and Client or in these Conditions, and includes any monies payable to Company on a quantum meruit basis for any Services Company has performed for Client;

"Rate Schedule" means the schedule of rates, charges and conditions for the services of Company as set by Company from time to time in its absolute discretion without notice to Client;

"Reasonable Assistance Limits" has the meaning set out in clause 17.b;

"Return/Cancellation Fee" means a fee charged pursuant to clause 12.e as set by Company from time to time;

"Service request" means a request for service including, but not limited to, additions, moves, repairs, changes and technical assistance;

"Services" means the provision of any services by Company including Work, Advice and Recommendations;

"Software" includes software manufactured and distributed by a 3rd party vendor unaffiliated with Company, and any installation, update, associated software and any services provided in connection with any of these things; and

"Work" means anything Company may do, provide, customize, produce or acquire, whether or not in connection with, or for the purposes of, Client or Client use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items.

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In these Conditions, the Rate Schedule and every Quote, Order, Plan, Contract, or other arrangement in connection with the supply of Goods or Services by Company, unless the contrary intention appears:

A word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa

Reference to **any Act of Congress, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Congress, Statute or Regulation enacted or passed in substitution therefore;

Headings and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;

A reference to currency means USA currency

A reference to time is to **Eastern Standard Time**

A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;

A recital, schedule, annexure or description of the parties forms part of these Conditions;

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;

A reference to **"includes"** means **includes without limitation**;

A reference to **"will"** imports a condition not a warranty; and

A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

2. APPLICATIONS OF THESE CONDITIONS

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Unless otherwise agreed by Company in writing, these Conditions are deemed incorporated in and are applicable to the terms of every Quote, Order, Invoice, Master Services Agreement, or other arrangement in connection with the supply of Goods, Services or Work Products by Company for Client. These being general Conditions, wherever more specific Conditions exist in any Quote, Order, Invoice, Master Services Agreement, or other arrangement, then the more specific Conditions shall prevail.

The invalidity or enforceability of any one or more of the provisions of the Conditions in this Document shall not invalidate, or render unenforceable, the remaining provisions of this Document. Furthermore, no waiver of any provision of this Document shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

3. COMMITMENT TERM

- a. The minimum term for which the Client acquires the service is outlined in Company's Quote or Order to Client.
- b. After the expiration of the Committed Term, an extension of the Term will automatically commence for the same period as the original Committed Term and will continue indefinitely, unless earlier terminated by Client as specified in Clause 4.

4. TERMINATION

This Agreement may be terminated:

- a. By Client upon ninety (90) days written notice if Company:
 - i. Fails to fulfill in any material respect its obligations under its Agreement with Client and does not cure such failure within thirty (30) days of receipt of such written notice from Client;

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- ii. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice from Client; or
 - iii. Terminates or suspends its business operations, unless Client is succeeded by a permitted assignee under this Agreement.
- b. This Agreement may be terminated by Company upon ninety (90) days written notice to Client, for any reason.
- c. Should Client wish to terminate this Agreement before the end of the current commitment term, Client agrees to pay all the remaining payments through the end of current commitment term. If the current commitment term was automatically extended from the original commitment term, and Client provides proper notice under Section a. of this clause, and notice is agreed upon by Company, then Client shall be responsible for remaining payments due during the required 90-day notice period.
- d. If either party terminates this Agreement, at Client's written request, Company shall assist Client in the orderly termination of services, including timely transfer of the services to another designated provider of Client's choice. Client agrees to pay Company for rendering such assistance at Company's normal rates as outlined in Company's current Rate Schedule.

5. REPRESENTATIONS

Client acknowledges that no employee or agent of Company has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions and a Master Services Agreement between Company and Client.

6. NOTICES

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given:

- a. **By Email:** When sent by email to at least the primary email address of record;

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- b. **By Certified Mail:** When sent by certified mail, return receipt requested, postage prepaid, to the primary mailing address of record;
- c. **By Courier Service:** When delivered by a recognized courier service with tracking capabilities, to the primary physical address of record;
- d. **By Hand Delivery:** When delivered in person to the primary physical address of record.

7. GOVERNING LAW

The Conditions shall be governed by and construed in accordance with the laws of the State of North Carolina. Exclusive jurisdiction and venue shall be in the Catawba County, North Carolina Superior Courts.

8. ASSIGNMENT

Client may not assign Client rights and obligations under this Agreement without the prior written consent of Company.

9. VARIATION OF THESE TERMS AND CONDITIONS

Company may at any time vary these Terms and Conditions by publishing the varied Terms and Conditions on Company website. Client accepts that by doing this, Company has provided Client with sufficient notice of the variation. Company is under no other obligation to notify Client of any variation to these terms and conditions.

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GOODS AND SERVICES

10. QUOTES

- a. Term and effect: Quotes will only be valid for 7 days unless otherwise specified in the Quote. A Quote is merely an invitation to Client to place an Order with Company and the acceptance of a Quote by Client will not create a binding contract between Client and Company.
- b. Quote is valid for 7 days only, unless stated differently on the Quote. Expiration dates on Quotes are intended to inform Company when the Quote is still active or to be discarded. Once discarded, Client or prospective Client shall request a revised Quote or redating of previous Quote(s).
- c. Once a Quote has been confirmed by Company, then pricing in the Quote will be confirmed as the final agreed price. A Quote is confirmed as 'final' as soon as both parties agree with the final price after any changes by Client, or changes in pricing from Company or 3rd party vendors. Company reserves the right to alter product and prices in the Quote due to scope changes or changes in pricing to Company or from 3rd party vendors.
- d. Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the Quote or estimate is given. If Client later requires any changes to the Quotes, and Company agrees to the changes, these changes will be charged at Company prevailing rate.
- e. Once the Quote has been confirmed and converted to an Order, the Order will be subjected to Company's normal Terms and Condition of Sale.
- f. The general minimum turnaround time for Quote request to be actioned is usually 2 business days. Whenever a Quote conversion to Order is required more urgently, Client shall communicate that urgency in advance of submitting signed Quote.
- g. When a special price or discount offer has been applied to Quote, no additional special promotion, discount or bonus offer will be applicable.
- h. Whenever products in a Quote are subjected to any price and supply fluctuations that are outside of Company's control, Company reserves the right to update the price and product in the Quote. If a product has undergone a price drop or a price increase, the Quote will then be adjusted accordingly and subject to re-approval by Client. If a product is no longer available, the product will then be

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replaced or substituted based on Client request and is subject to Client's final approval.

- i. Prices on non-stocked products are subjected to Price and stock fluctuations and can only be confirmed once the Quote is converted to an Order. While Company endeavors to honor every price Quoted, if there is a price increase that is beyond Company's control, Company reserves the right to increase the price as necessary.
- j. Estimated time of arrival (ETA) information is based on an estimate given by our vendors and cannot be held as the actual promised date.
- k. Freight charges will be added to the Order unless otherwise stated. Any included delivery charges in Quotes are non-binding estimates.
- l. Prices are based upon total quantity of items in the Quote. Changes in the quantity of any goods or services may change the price per unit, favorably or unfavorably.
- m. Unless specified, all items on Quote are covered by manufacturer's warranty covering parts and labor for hardware only on a return to depot basis.
- n. Company may vary or withdraw a Quote at any time in Company's absolute discretion and without prior notice to Client. Company may do so for any reason, including, but not limited to 1. where the Goods or Services become unavailable, 2. where the price of Goods or Services increases after the date of the Quote..

11. ORDERS

- a. Order Forms: Client may place an Order for Goods and/or Services with Company. Company will require that Client provide either a completed Order form or Company written indication that mutually signed Quote may substitute for an Order. Before Order or Quote/Order is considered binding, Client must provide full legal name along with Client's mailing address or addresses and physical address or addresses. For Quotes converted to Orders, a reference of the original Quote number.
- b. Approval of Orders: Client will need to sign the Order, or have it duly executed on Client behalf, unless the Order is sent by email or via Company's web-based ordering system, in which case the Order will be treated or deemed as if signed by or on behalf of Client by the person whose name appears as the sender of the email or submitter of the form.

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- c. Reliance on appearance of validity: Absent actual knowledge to the contrary, Company may rely upon the apparent validity of an Order. If any Order is signed or sent by email or approved through the web-based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favor of Company to be:
 - i. signed by, and duly authorized by, both the person who signed the Order and the person who sent the email; and
 - ii. duly authorized by the person on whose behalf the Order is placed or apparently placed.
- d. No effect of unaccepted/unpaid Order: An Order has no effect until it is accepted by Client in writing and until Company has received any stipulated Quote and/or Order prepayments from Client in cleared funds and any related freight, delivery and (where applicable) in-transit insurance costs in cleared funds.
- e. Refunds for inability to fulfill Order: Whenever Client has prepaid for any goods ordered, but Company is unable to fill Order due to shortage or obsolescence of goods, and backorders cannot remedy, then Company shall refund prepayment within 15 business days.
- f. Credit checks: For the purposes of ascertaining the credit standing or history of a prospective Client to whom Company is considering extending credit or payment terms, Client hereby consents to Company undertaking a credit reference check.
- g. Cancellation of Orders: Client will not cancel an Order unless Company agrees to do so in writing in Company's absolute discretion. Client acknowledges that, amongst other things, Company cannot cancel an Order once the manufacturer or supplier has dispatched the relevant Goods and that such dispatch often occurs the same day as the Order is placed. If Client requests to return an item or cancel an order, a restocking fee may apply. Company must obtain approval from the distributor that the stock is returnable before being able to issue a refund as not all products can be returned.
- h. Processes and Procedures: Company has processes and procedures that it follows when provisioning Services and Goods. Client agrees to cooperate with Company and to comply with such processes and procedures as advised to Client.

12. PRICING AND RATES

- a. Rates exclude Tax: All rates and amounts charged or quoted for Goods and/or Services by Company are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Company).

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- b. Rates exclude Tax: All rates and amounts charged or quoted for Goods and/or Services by Company are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Company).
- c. Rates Schedule: Client must pay for Goods, Services and Work Products at the Rates set out in any applicable Quote, Order, Invoice or Master Services Agreement based upon the applicable Rate Schedule in effect during the period such Goods, Services and Work Products were delivered.
- d. Vary Rates: Company reserves the right vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for Client, for specific periods in any Plan evidenced by a Quote, Order, Invoice or Master Services Agreement), in its absolute discretion and without notice to Client.
- e. Call-out fees: Client acknowledges that call-out fees may be charged in addition to the Rates at Company's absolute discretion and that the amount of the call-out fee will depend upon where and when the Services are provided.
- f. Return/Cancellation Fee: Where Company arranges a return or refund on behalf of Client, or where an Order is cancelled by Client after acceptance by Company, Company may charge Client a Return/Cancellation fee to cover the administration costs to Company in processing the return or refund, or in processing the Order, the cancellation and any refund. Company may deduct the Return/Cancellation fee from out of any moneys otherwise due to be refunded to Client by Company.
- g. Expenses: Unless waived, or more specifically identified in a Quote, Order or Master Services Agreement, Client must pay any out-of-pocket expenses incurred by Company in providing the Services to Client in addition to the Rates, charges and call-out fees, upon written demand and invoice. Such expenses may include travel costs, mileage at then-current IRS per mile rate, flights, auto rental, fuel, insurance, taxi fares, accommodations and related meal allowance, tolls and car parking expenses. Where appropriate, Company will obtain prior written authorization from Client before such expenses are incurred.
- h. Separate charges for Goods and Services: Company may in its absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- i. Calculation of increments: Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, Company will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time. For example, where the rate schedule quotes hourly rates, and Company incurs 20 minutes of work, Client would be invoiced a full hour.

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Partial increments incurred in one workday will be aggregated whenever rounding to whole increments, e.g., 3 sessions of 20 minutes each during a working day would be aggregated and billed as 1 hour.

- j. Change in underlying costs: Without prejudice to any other rights of Company under these Conditions, where there is any increase in the underlying costs incurred by Company in connection with the supply of Goods or Services to Client, Company may, in its absolute discretion, vary any of Company Rates. Any such varying of rates by Company shall require at least 30-days advance written notice to Client.
- k. Pre-Paid Blocks of Service: Where Client wishes to purchase Pre-Paid Blocks of Service during a defined period, payment must be made in advance for the Pre-Paid Blocks of Service at the rate applicable pursuant to the Rates Schedule for all Services. If any rate discounts are agreed-upon, then those discounts shall be outlined in a Quote, Order or Master Services Agreement, and:
 - i. Shall be calculated in accordance with the applicable minimum time periods and **increments** set out in the Rates Schedule; and
 - ii. Shall only be provided by Company during the **Specified Period**. Where Services are provided for a Specified Period:
 - 1. the Services remaining unused for that Period cannot be rolled over into any subsequent period; and
 - 2. Company is not liable to refund, reimburse, pay damages or otherwise compensate or indemnify Client in respect of those unused Services.

13. SERVICES AND PLANS

- a. Service and Plan Variations: Currently, Company offers the Services and Plans referred to in the Rates Schedule and any Plan Schedule. Company may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to Client, from time to time in Company's absolute discretion.
- b. Copies on Request: Company will provide Client with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

14. CONTRACTING

- a. Company may subcontract any or all the Services to be performed but shall retain prime responsibility for the Services under these Terms.

15. DELIVERY, TITLE AND RISK

- a. Delivery liability: Company will use all reasonable endeavors to dispatch Goods by the due date, but do not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Company, including, for example, due to failures in supply to Company or delays caused by third parties, such as delivery companies or manufacturers.
- b. Availability to accept delivery: Client must be available to accept the Goods at Client nominated delivery address during Business Hours unless otherwise arranged.
- c. Passing of Risk: Delivery is deemed to take place when the Goods are delivered to Client nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to Client. Nothing in this clause c will affect title to the Goods.
- d. Obligation to insure: Client will ensure that Goods are adequately insured from the time of delivery under clause c.
- e. Retention of Title: Until Company shall retain title to Goods until it receives full payment in cleared funds for any moneys due to Company by Client on any account or for any reason:
 - i. title to, and property in, Goods supplied to Client remain vested in Company and do not pass to Client;
 - ii. Client must hold those Goods as fiduciary bailee and agent for Company and must not sell them;
 - iii. Client must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
 - iv. Where Client sells the goods in breach of these Conditions, Client is required to hold the proceeds of any sale of those Goods on trust for Company in a separate account (however any failure to do so will not affect

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Client obligation to deal with the proceeds as trustee and remit them to Company);

- v. Company may, without prior notice, enter into any premises where Company suspects those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Company) and for this purpose, Client hereby irrevocably authorizes and directs Company (and Company employees and agents) to enter into such premises as its duly authorized agent. Except for instances of Company's gross negligence or willful misconduct, Client hereby holds harmless Company from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal;
- vi. Client irrevocably appoints Company as its attorney to do anything Company considers necessary in order to enter such premises and repossess the Goods as contemplated by this clause e.

16. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- a. General Returns Policy: Notwithstanding anything in these Conditions, Client acknowledges that Company supplies Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. Client will accept Goods subject always to these Conditions and the terms of such Conditions and will hold Company harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- b. Customized Goods not returnable: Where Goods have some element of customization for Client, where such Goods are supplied pursuant to an Order that, in the opinion of Company, are special or unusual, where the Goods are obtained from overseas, where the Goods are obtained from a supplier who is no longer trading, or where the Goods are otherwise not readily returnable by Company to the manufacturer or supplier or any related services may not be cancelled, Client may not return the Goods to Company or cancel the related services without specific approval from Company.

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- c. Duty to inspect: Client will inspect all Goods immediately upon their delivery. Within 7 days of such delivery Client may give written notice to Company of any matter or thing, by reason of which Client might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, Client will accept the Goods without any such return, refund or claim.
- d. Return Condition: Where Client is entitled to return Goods under these Conditions, Client must return the Goods in their original condition and unopened, provided always that where, upon opening the packaging it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned subject to Manufacturer's warranty.
- e. Return costs: Client will pay all costs and expenses incurred by Company in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.
- f. Consequences of use, installation, customization or sale: Client will indemnify and hold Company harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customized or re-sold by Client (without prejudice to the recourse of such a Client to the manufacturer of the Goods).

17. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- a. Service limitations given the science of computing: Client acknowledges that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. Client acknowledges that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem Client is having. While Company will make what Company considers (in Company's absolute discretion) to be all reasonable endeavors to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist Client, Client will hold Company harmless in the provision of our Services to Client except for those claims, damages or losses resulting from Company's negligence or willful misconduct.

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- b. Reasonable Assistance Limits: Company is only obliged to provide what Company considers, in Company's absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customization of new software or hardware for Client or any other Work) under any Master Services Agreement and Client will pay for additional work at the Rates unless otherwise agreed. Without limiting the discretion of Company to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period not exceeding any period that Company has allowed or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allowed or estimated is given by Company to Client.
- c. Recommendations, suitability, functionality and fitness for purpose: The parties acknowledge that:
 - i. Company may recommend that Client purchase Goods provided by third parties from time to time;
 - ii. Recommendations may be made in situations where Client has made known to Company the purpose for which the Goods will be used, or some function sought to be fulfilled;
 - iii. Client acknowledges that Company has no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.
 - 1. the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or
 - 2. the behavior of third-party supplier, e.g. in relation to support;
 - iv. Client agrees to make available to Company, for Company use in performing the Services required by this Agreement, such items of hardware and software as Client and Company may agree are reasonably necessary for such purpose. Client acknowledges that the Company makes no representation, warranty or assurance that the Client's hardware and/or software will be compatible with the Company's hardware, software and systems or the services.
 - v. Client acknowledges that the Services provided by Company may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;

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- vi. Accordingly, Client will hold Company harmless in respect of:
 - 1. decisions as to whether to follow recommendations by Company;
 - 2. decisions as to whether to purchase or customize Goods or obtain Services or Work Products for that or any other purpose; and
 - 3. any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Client's own independent advice or second opinion from a suitably qualified person;
- vii. Where Company provides Services with a view to achieving Client purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), Client must pay for those Services on time without any set-off or counter-claim, whether or not Company is able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that Company has acted in good faith and has made what Company considers, in Company's absolute discretion, to have made all reasonable endeavors to achieve those outcomes.
- d. **Testing Procedures:** Client will follow the instructions of Company with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, Company will, subject to these Conditions, allocate such resources that Company considers reasonable in the circumstances towards resolution.

18. FORCE MAJEURE

- a. Neither Company nor Client shall be liable for any delay or failure to perform any obligation under this Term (except for the obligation to pay fees) if such delay or failure is due to unforeseen events beyond the reasonable control of the affected party. These events include, but are not limited to, strikes, blockades, wars, terrorism, riots, natural disasters, pandemics, and government license refusals. The affected party must demonstrate that such events prevent or delay the fulfillment of its obligations and that it cannot prevent or mitigate the force majeure at a reasonable cost.

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- b. Furthermore, the Company shall not be responsible for any downtime, lost files, equipment failures, acts of nature, or any damage resulting from activities beyond its control, such as wars, riots, natural disasters, terrorism, vandalism, and other similar events.
- c. Company will not be liable for any breach of contract due to any matter or thing beyond Company control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

19. PRODUCT SPECIFICATIONS

- a. **Alterations to Specifications:** Company makes every effort to supply the Goods in accordance with the Order however Company may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- b. **Substitute Goods:** If Company cannot supply the Goods ordered by Client, Company may supply alternate Goods of equal or superior quality provided however that Client will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

20. WARRANTIES

- a. **Reliance on Manufacturer's Warranty:** Client will rely on the warranties provided by the manufacturer of Goods supplied by Company (where applicable) and will deal directly with such manufacturer rather than Company for all claims covered by such warranties.
- b. **No claim for manufacturer's default:** Client holds Company harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to Client by Company, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to Client arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

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21. LIABILITY

- a. **Exclusion:** Except as specifically set out herein and so far, as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- b. **Limited liability for program or data loss:** Client agrees that Company's liability for any claim or expense related to program or data loss from Goods or Services provided is limited in accordance with 21(e) below. Client acknowledges their responsibility for regularly backing up their programs and data.
- c. **Limit on consequential damage:** Neither party shall be liable to the other for any indirect or consequential losses, including loss of turnover, profits, business, goodwill, or liability to third parties.
- d. **General limit on liability:** Company shall indemnify and hold harmless Client for Company's gross negligence or willful misconduct. Except as otherwise expressly stated in these terms and conditions, Company is not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Company) which is suffered or incurred by Client in connection with:
 - i. Goods or Services provided to Client or any Work;
 - ii. these Terms and Conditions and Master Services Agreement between Company and Client;
 - iii. Client use of Company website (including the use of a credit card or other debit device) or any linked website;
 - iv. The non-availability of Goods or Company Services for any reason;
 - v. Any act or omission of Company or the provision of inaccurate, incomplete or incorrect information by Client, or
 - vi. For any other reason whatsoever.

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- e. **Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause e does not apply to that liability and Company liability for any breach of that condition or warranty is limited to Company doing any one or more of the following (at its election):
 - i. replacing the Goods or supplying equivalent Goods, Services or Work;
 - ii. repairing the Goods or the Work;
 - iii. paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
 - iv. paying the cost of having the Goods or the Work repaired.
- f. **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- g. **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

22. ERRORS AND OMISSIONS

- a. Company makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, Company may rescind the affected contract by written notice to Client, notwithstanding that Company has already accepted Client Order and/or received payment from Client. Company liability in that event will be limited to the immediate return of any money Client has paid in respect of the Order.

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COMPANY RESPONSIBILITIES

23.PRIVACY STATEMENTS AND CLIENT RIGHTS

- a. The Company collects and uses Client personal information to fulfill Quotes, Orders, and provide Goods or Services ("Authorized Purposes").
- b. Client must provide personal information for Authorized Purposes.
- c. The Company may share Client personal information with others to fulfill Quotes, Orders, and provide Goods or Services, verify information, or confirm Client requirements. This includes potential suppliers or service providers.
- d. The Company will not disclose Client personal information without consent unless required by law.
- e. Client personal information is held at the Company's Principal Place of Business. Clients can contact the Company to verify or correct their information.
- f. Clients must provide accurate information. Incorrect information may result in additional expenses.

24.COMPANY WEBSITE

- a. Company makes no representations or warranties in relation to information available on Company website, including without limitation:
 - i. that the information on Company website is complete or correct;
 - ii. that Company website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that Company endorses any internet site linked to Company website or any third-party products or services referred to on Company website.

25.INSURANCE COVERAGE

Company shall maintain adequate general liability insurance providing coverage against liability for bodily injury, death, and property damage that may arise out of or be based upon any act or omission of Company or any of its employees, agents or subcontractors under this Agreement.

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Upon written request, Company shall provide certificates from their insurers indicating the amount of insurance coverage, the nature of such coverage, and the expiration date of each applicable policy. Company shall not name Client as an additional insured on any applicable policy at any time during this Agreement, or as a condition of acceptance of this Agreement. Specifically, Company or Company's affiliates whenever Company uses leased employees, shall maintain the following coverage:

- a. Commercial general liability insurance limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate;
- b. Commercial automobile liability insurance, including hired and non-owned autos, with a combined single limit of not less than \$1,000,000;
- c. Worker's compensation insurance limits that meet or exceed the applicable statutory requirement;
- d. Cyber liability insurance with an aggregate limit of not less than \$1,000,000 and including coverage for privacy notification cost and providing protection against liability for: (1) privacy breaches, including but not limited to liability arising from the loss or disclosure of confidential information; (2) system breach; (3) denial or loss of service; (4) introduction, implantation, or spread of malicious software code; and (5) unauthorized access to or use of computer systems.

CLIENT RESPONSIBILITIES

26. LODGING OF SERVICE REQUESTS

- a. For Company to provide Client with the agreed Service, Client agrees to follow Company process for lodging of Service Requests as outlined in Appendix A.

27. ACCESS TO SYSTEMS, SITES AND PEOPLE

- a. To provide Client with the agreed Service, Client agrees to give Company access to various items of Client's, including but not limited to, equipment, people and sites as and when required.

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- b. Client agrees to allow Company to install software on Client Equipment that allows Company technicians to access Client systems at any time. This software allows Company to view system statuses, send monitoring information, see users' desktops and control Client PC's. This may require that devices are left on overnight or weekends.

28. THIRD PARTY AUTHORIZATIONS

- a. At times Company may need to contact Client third party providers on Client's behalf, such as Client internet provider. Some of these providers may require Client authorization for Company to deal on Client's behalf. It is Client's responsibility to ensure that Company can deal freely with these providers.

29. PAYMENT, LATE PAYMENT AND DEFAULT

- a. **Payment due date:** Absent differing terms specified in quotes, orders or invoices, all payments are to be paid by Client to Company within 30 days of approval of a quote/proposal for one-time fees or within 30 days of the date of the respective Invoice for recurring monthly fees. All late payments shall be subject to a late payment fee of 1-½% per month which shall be immediately due and payable by Client to Company.
- b. **Expenses:** Company will be reimbursed for any Expenses incurred in connection with the Services and/or Work Product, whether direct or indirect, based upon the terms of Company's accepted Client quote(s). Such Expenses shall be invoiced monthly with terms noted on the invoice.
- c. **Failure to Make Payment:** In the event Client fails to make any of the payments in accordance with the payment terms set forth herein, Company shall have the right, but is not obligated, to: (1) terminate its relationship with Client, (2) immediately stop and withhold all Services, (3) remove any Services or Work Product from Client-owned equipment and/or resources, and (4) pursue any and all applicable legal action, including the recovery of any costs and attorneys' fees associated therewith.

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- d. **Application of funds:** All payments of the Sum Due made by Client to Company will be applied as follows:
 - i. first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Company in relation to any dishonored cheque fees, collection costs or any other action taken by Company for the recovery of any amounts owing by Client to Company;
 - ii. secondly, in or towards payment of any interest due or payable hereunder, and
 - iii. thirdly, in or towards payment of Client debts to Company in order from the longest standing due to the most recently incurred.
- e. **Security:** Company may require Client to provide security over Client property (including the Goods or any other property of Client) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Company to Client.
- f. **Payment arrangements:** Whenever a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, Company may, in Company's absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to Client.
- g. **Other remedies:** Company may exercise any of Our rights and remedies including taking legal action against Client for the recovery of any moneys due to Company, notwithstanding it may have exercised other rights under these Conditions.

30. NON-SOLICITATION

- a. If during this Agreement or within twelve months after termination, the Client directly or indirectly hires any Company Employee who has provided services to the Client, or the Company directly or indirectly hires any Employee of the Client, they must pay 100% of the Employee's last salary as liquidated damages to the other party. The foregoing does not apply to attorneys or other independent contractors working for the opposing party.

31. SOFTWARE

- a. Client is responsible for all software licenses, including storage and reproduction if needed. This applies to all software installed by Company.
- b. Client indemnifies Company against any claims, allegations, losses, damages, or expenses not directly or indirectly related to the Company's performance or non-

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performance of services, specifically in relation to:

- i. unauthorized software use by Client;
 - ii. breaches of software licenses provided by Client for installation;
 - iii. software installation at Client's where authorization is absent; and
 - iv. defects or malfunctions in third-party supplied software or services.
- c. Copyright for custom software remains with Ours unless otherwise agreed upon in a separate software agreement.

32. COPYRIGHT AND CONFIDENTIALITY

- a. **Warranty and breach:** Client warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided

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by Client to Company belongs to Client. In the event of any breach of this warranty, Client will pay all sums due to Company as if such warranty had not been breached (and regardless of any non-performance of any obligation by Company on account of or in connection with the breach of such warranty). Client indemnifies and holds Company harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by Client.

- b. **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by Company during the supply of Services by Company to Client will be the exclusive property of Company unless otherwise agreed in writing by Company and Client.
- c. **Confidential Information:** Company acknowledges that while providing Services to Client, Company may learn from Client certain non-public personal and otherwise confidential information relating to Client, including Client's customers, employees or stakeholders. Company shall regard all information Company receives which in any way relates or pertains to Client, including Client's customers, employees or stakeholders, as confidential.
- d. Client also acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by Company or which comes to Company's attention during the course of business and provided under these Terms and Conditions constitute valuable assets of, and confidential and/or proprietary information to Company.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

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APPENDIX A

SERVICE REQUEST LODGEMENT PROCESS

When Client contacts Company to lodge a service request only the methods below must be used:

Phone: 828-322-2074

Email: helpdesk@paladinbc.net

Web Portal: <https://paladinbc.ITClientPortal.com/>

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue.

If the issue is being lodged by either phone or external email Client must include Client's name, company and return contact details.

Service requests must not be lodged directly with technicians, as this detracts them from resolving the current issue.

SERVICE REQUESTS OUTSIDE OF COMPANY BUSINESS HOURS

Service Requests that must be addressed outside of business hours must be lodged by phone (charges apply for after-hours work). If not, the Service Request will be viewed on Company next Business Day.