PARADIGM®

Paradigm Home Configure Services
Software as a Service Terms and Conditions

Last Updated: June 2023

Section 1 - Definitions

As used in this Agreement, including Appendices, the following terms shall have the meanings set forth below:

a. "Agreement" means the Statement of Work together with these Software as a Service terms and conditions and its Appendices and any addenda or amendments thereto.

b. "Content" means the visual and audio information, documents, data, information, graphics, three-dimensional or other models, software, products, processes, and services owned or generated by Paradigm and made available to Customer and its Users by Paradigm in the course of using the Service.

c. "Customer" means the entity identified in the Statement of Work as the Customer.

d. "Data Center" means a particular location where the Equipment is located.

e. "Effective Date" means the date, as shown in the Statement of Work , on which this Agreement and Subscription(s) become effective.

f. "Equipment" includes devices or components located within the Data Center(s) used to host the Service.

g. "Force Majeure" means utility or transmission failures, communications failures, third-party software failures, electronic failures, mechanical failures, power failures, strikes or employee insurrections, disorder, or other labor disturbances, third-party supplier failures, trade wars, acts of God, acts of war or terror, floods, sabotage, fire, earth quakes, volcanic eruptions, natural or other disasters, explosion, embargo, government requirement, civil or military authority, government regulation, government shut-down, government inaction, acts or omissions of carriers, or other similar causes beyond the reasonable control of a party or its contractors, agents, or suppliers.

h. "Hosting Environment" means the Equipment, hardware, software, and facilities within Paradigm's or Paradigm's contracted Data Centers, including any colocation facilities utilized by Paradigm, and any contracted ISP services to which Paradigm's facilities are connected and collectively utilized by Paradigm to provide dedicated and co-location services.

i. "Login Credentials" means the specific information needed to authenticate a User to allow access to the Service. Login Credentials may include a user identification and password pairing but may also include personal questions only a user can answer, biometric identification, or other methods for authenticating a User.

j. "Paradigm" and "Provider" means WTS Paradigm, LLC, a Wisconsin limited liability company.

k.   "Paradigm Technology" means all of Paradigm's proprietary technology (including software, code, programming, hardware, products, processes, algorithms, user interfaces, know- how, techniques, designs, and other tangible or intangible technical material or information) made accessible to Customer and its Users by Paradigm in providing the Service.

l.   "Privacy and Security Policy" means the terms and conditions for privacy and security located online at http://myparadigm.com/saasprivacypolicy which are incorporated herein by reference. During the Term, the terms of the Privacy and Security Policy may not become less favorable to Customer than the version in effect on the Effective Date without the written consent of Customer.

m.   "SaaS" means software as a service.

n.   "Service" means the specific edition of Paradigm's online software identified in the Statement of Work, to which Customer and its Users are being granted access under this Agreement, including the Paradigm Technology and Content.

o.   "Service Level Agreement" means any terms and conditions of the level of service found at http://myparadigm.com/legal/SLA, which is incorporated herein, to be provided by Paradigm as part of the Service.

p.   "Software as a Service Subscription Agreement" means this Agreement, including all appendices, under which Customer has contracted with Paradigm for SaaS services.

q.   "Subscription" means the right to access the Service during the term of this Agreement.

r.   "Subscription Fees" means the fees for access to the Service as set forth in the Statement of Work.

s.   "User(s)" means an individual who is authorized to use the Service and who have been supplied Login Credentials by Paradigm, as well as the company or other legal entity for which the individual is accepting this Agreement. "Users" do not include customers of Customer or other persons who do not have Login Credentials and who only have public access to the Service.

t.   "User Data" means any data, information, or material in any form, including data, information, or material in electronic form residing in the Service environment, that is provided or submitted by Customer or its Users to the Service or Paradigm in the course of using the Service or Paradigm's provision of services to Customer, including, but not limited to, Customer's blueprints, plans, and drawings.

Section 2 - System Access and Restrictions

a.   Subject to the provisions of this Agreement, Paradigm grants to Customer and its Users, and Customer hereby accepts, a limited, nonexclusive, nontransferable, worldwide right to use the Service, solely for Customer's and its Users' own business purposes.

b.   Customer and its Users shall not: (i) allow third parties to access or use the Service, Content, or Paradigm Technology, except as specifically authorized by this Agreement; (ii) provide Login Credentials or other log-in information to any third party, except as specifically authorized by this Agreement or Paradigm; (iii) allow User Login Credentials and passwords to be shared or used by more than one individual User; or (iv) share non-

public features or content with any third party.

c.   Customer and its Users may use the Service only for Customer's and Users' own business purposes and shall not: (i) copy, modify, publish, sell, export, distribute, transfer or perform, or prepare derivative works of, reverse engineer, decompile or otherwise attempt to extract the source code or source data from the Service or Content; (ii) attempt to disable, circumvent, or breach any security mechanisms used by the Service or otherwise attempt to gain unauthorized access to any portion or feature of the Service; (iii) use the Service in any way that knowingly infringes or violates any intellectual property rights or publicity/privacy rights; (iv) use the Service in violation of applicable laws; (v) intentionally send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (vi) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (vii) use or make the Service available on a service bureau or time sharing basis; or (viii) remove, replace, alter, or obscure any Paradigm service marks or trademarks, any user agreement, warranty or disclaimer notices from the Service, system views, or user interfaces on which the Service is viewed or accessed or any related materials without Paradigm's express written consent; or (ix) permit any User or other third party to do any of the foregoing.

d.   No Software License. Customer acknowledges that Paradigm has no delivery obligation and will not ship or otherwise provide copies of any software programs, whether in a physical or downloadable format, to Customer or any of its Users as part of the Service. Customer agrees that it does not acquire under this Agreement any license to any software programs.

e.   Interruption of Service. Except as provided in the Service Level Agreement, Paradigm and its Related Parties will not be liable for any temporary delay, outages, or interruptions of the Service.

f.   User Internet Access. Customer and its Users voluntarily engage in the activity of Internet use and bear the risks associated with that activity.

Section 3 - Users' Responsibilities

a.   Customer and its Users shall use and maintain reasonable security precautions in light of Customer's and its Users' use of the Service including without limitation, by protecting Login Credentials, passwords, and other login information.

b.   Customer shall permit Paradigm to monitor Customer's and its Users' use of the Service. Any such monitoring shall not unreasonably interfere with Customer's or its Users' use of the Service.

Section 4 - The Service and System Environment

a.   System Revisions. Paradigm may revise features and functions of the Service or the Service Level Agreement at any time by removing non- material features and functions or by adding such features and functions or by increasing service levels.

b.   Prohibited Data. Customer and its Users are prohibited from transferring, uploading, transmitting, and/or storing to the Service any User Data, or any other information, data, blueprints, plans, or drawings that Customer does not have permission and authority to transfer, upload, transmit, or store to the Service or otherwise make available to Paradigm.

c.   Data Storage. Paradigm make no guarantees about retaining any data stored on

Paradigm's or its subcontractors' systems or servers following expiration or termination of this Agreement.

Section 5 - Intellectual Property (Service and User Data)

a. Customer acknowledges and agrees that the Service, Content, Paradigm Technology and this Agreement contain proprietary and confidential information that is protected by applicable intellectual property and other laws.

b. Paradigm shall not own any right, title or interest in or to User Data; provided, however, that Customer hereby irrevocably grants all such rights and permissions in or relating to User Data:(a) to Paradigm and its subcontractors as are necessary or useful to perform the Service for Customer and its Users; and (b) to Paradigm as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder. The rights and permissions in or relating to User Data granted under this section shall survive expiration or termination of this Agreement.

c. Customer and its Users may not remove the copyright, trademark, or other proprietary notices (if any) from the Service or any onscreen display when the Service is accessed.

Section 6 - Warranties and Disclaimers

a. Paradigm represents and warrants that Paradigm has title to the Service or otherwise has the right to grant to Customer access to and use of the Service as set forth in this Agreement. Subsections 10(c) and (d) of these Terms and Conditions shall control with respect to the limitation of Paradigm's liability for any claim under this Subsection 9(b).

b. **EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PARADIGM DOES NOT GUARANTEE THAT THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT PARADIGM WILL CORRECT ALL SERVICE ERRORS. CUSTOMER ACKNOWLEDGES AND AGREES THAT PARADIGM SHALL HAVE NO LIABILITY FOR INACCURATE, NONCONFORMING, FAULTY, OR DEFECTIVE OUTPUTS OR DELIVERABLES, INCLUDING, WITH REGARD TO INACCURATE, NONCONFORMING, FAULTY, OR DEFECTIVE QUANTITY TAKE-OFFS, VISUALIZATIONS, OR THREE-DIMENSIONAL MODELS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO REQUEST THAT PARADIGM RE-PERFORM SUCH OUTPUTS OR DELIVERABLES AT NO ADDITIONAL COST TO CUSTOMER. CUSTOMER FURTHER ACKNOWLEDGES THAT PARADIGM DOES NOT CONTROL THE TRANSFER OF DATA OVER THIRD-PARTY COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH THIRD-PARTY COMMUNICATIONS FACILITIES. PARADIGM AND ITS RELATED PARTIES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS NOT CAUSED BY PARADIGM.**

c. **EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY PARADIGM TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PARADIGM OR AN AUTHORIZED REPRESENTATIVE OF PARADIGM SHALL CREATE A WARRANTY.**

d. Customer represents and warrants that the User Data, and Paradigm's use of the User Data, does not infringe upon or misappropriate any third- party intellectual property rights, including, but not limited to, any patent, copyright, trademark, or trade secret right, and such User Data does not

otherwise violate any law. Further, Customer represents and warrants that it and its Users have all permissions and authority to transfer, upload, transmit, or store to the Service or otherwise make available to Paradigm the User Data and allow Paradigm's use of the User Data under this Agreement.

e. **THE PARTIES INTEND THAT THE LIMITATIONS, LIMITED REMEDIES, AND DISCLAIMERS CONTAINED IN THIS SECTION SHALL BE VALID AND ENFORCED EVEN IF THEY FAIL OF THEIR ESSENTIAL PURPOSE.**

Section 7 - Indemnification and Limitation of Liability

a. <u>By Customer</u>. Customer agrees that to the fullest extent permitted by law, it shall indemnify, defend, and hold harmless Paradigm and its Related Parties from and against all claims, suits, damages, losses, and expenses (including without limitation attorneys' fees, liquidated damages, penalties or interest) arising directly or indirectly out of any (a) claims arising out of Customer's improper use of the Service; (b) Customer's connection to or the inability to use or connect to the Service; (c) third-party claim of infringement, misappropriation, or other similar claim arising out of or resulting from Paradigm's receipt, copying, modification, or other use of the User Data or any other information, data, blueprints, plans, or drawings provided to Paradigm by Customer; (d) claim arising out of or related to a breach of the warranty provided by Customer to Paradigm under Subsection 8(d) of these Terms and Conditions; or (e) material breach of this Agreement by Customer or any of its Users.

b. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHAT CAUSE OF ACTION OR CLAIM FOR RELIEF IS ASSERTED, IN NO EVENT SHALL PARADIGM BE LIABLE FOR ANY (I) DIRECT DAMAGES IN EXCESS OF THE ACTUAL SERVICE FEE PAID BY CUSTOMER IN THE YEAR IMMEDIATELY PRIOR TO A CLAIM; (II) ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES, FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SERVICE; (III) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY PARADIGM TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND PARADIGM'S REASONABLE CONTROL; OR (IV) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING MORE THAN ONE (1) YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.**

c. **THE PARTIES INTEND THAT THE LIMITATIONS, LIMITED REMEDIES, AND DISCLAIMERS CONTAINED IN THIS SECTION SHALL BE VALID AND ENFORCED EVEN IF THEY FAIL OF THEIR ESSENTIAL PURPOSE.**

Section 8 - Miscellaneous

a. <u>Governing Law, Venue and Jurisdiction.</u> This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to conflict of law principles. Venue and jurisdiction for any federal or state court litigation shall be Dane County, Wisconsin.

b. <u>Force Majeure</u>. Except for monetary obligations hereunder, neither party shall be liable for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by a Force Majeure event. The delayed party must notify the other party promptly upon the occurrence of any such event and inform the other party of its plans to resume performance.

c. <u>Entire Agreement.</u> This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and supersede any prior agreement, understanding, and

communication between the parties, whether written or oral, with respect to such subject matter.