



Terms and Conditions applicable to Build Optimize, Drafting and Render Services

Last Updated: February 2024*

*The terms of this agreement are subject to change by Provider without prior written notice at any time, in Provider's sole discretion. The latest version of this Agreement will be posted at www.myparadigm.com/legal/terms/DigitalTools, and Customer should review prior to purchasing or using any of Provider's services. Customer's continued use of the Services after a posted change to the terms of this Agreement constitute Customer's acceptance of such changes.

Section 1 Definitions

As used in this Agreement (defined below), the following terms shall have the meanings set forth below:

- (a) "Agreement" means the Statement of Work together with these Terms and Conditions and any addenda or amendments thereto.
- (b) "Confidential Information" means any source code, object code, method, process, technique, customer list, design, skill, record, research and development project, non-public aspect of the disclosing party's business and operations, business contact, potential business affiliation, information, technical data, financial data, know-how, or information that the disclosing party is required to keep confidential in accordance with confidentiality obligations to third parties, including by example and but not limited to, that which is related to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances provided by one party, regardless of whether disclosed orally, observed visually, or not marked as confidential. Confidential Information does not include the fact that Provider and Customer have entered into a business relationship or information, technical data or know-how which (i) is in possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure; (ii) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party; (iii) is approved for release in writing by the disclosing party; (iv) information that qualifies as a Trade Secret (which shall be kept confidential as provided in Subsection 7(b) below).
- (c) "Customer" means the entity for whom Provider will provide services.
- (d) "Deliverables" means the product(s) or Service(s) delivered by Provider as set forth on the applicable Statements of Work.
- (e) "Effective Date" means the date on which Customer places an order with Provider.

- (f) "Hosting Services" means the provision of hardware, systems, software and infrastructure required to store and manage access to data.
- (g) "Related Parties" means the members, directors, officers, agents, employees, parent company, subsidiaries, successors, and assigns of Provider.
- (h) "Services" means any services, functions, and responsibilities described in this Agreement and the Statements of Work entered into pursuant to this Agreement.
- (i) "Statements of Work" means the documents referencing and incorporated into this Agreement that describes the services, features, functions, and specifications of any Deliverables or other deliverables, if any, the schedule for performance, the budget and compensation for the services, and other information necessary to define the work to be performed pursuant to this Agreement.
- (j) "Trade Secret" means any and all documents or information relating to Provider or the Customer that meet the definition of a Trade Secret under Section 134.90, Wisconsin Statutes or under the federal Defend Trade Secrets Act of 2016. Examples of Trade Secrets may include, but are not limited to, software architecture, formulas, patterns, compilations, programs, devices, methods, techniques or processes, product costs and mark-up information, and service costs and mark-up information.
- (k) "Provider" means the entity identified on the Statement of Work as providing the Service.

Section 2 Scope of Services

- (a) Provider will provide Services to Customer in accordance with the terms of this Agreement and the applicable Statements of Work. Each Statement of Work will identify the tasks to be performed by Provider, Deliverables to be provided by Provider, with reference to schedule, fees, and expenses.
- (b) The Statement(s) of Work will be governed by and subject to the terms of this Agreement. The terms and conditions of this Agreement shall apply to each such Statement of Work and each order placed with Provider under a Statement of Work unless the parties expressly agree otherwise in a particular Statement of Work.
- (c) Change of Scope. If at any time during the term of this Agreement, Customer requests that Provider provide additional services, or requests a modification or change in the Services, Provider may accept or reject such request in its sole discretion and any such change may be subject to adjustment in price and delivery schedule.

Section 3 Provision of Services

Provider agrees to perform for Customer the Services Customer orders pursuant to the Statements of Work incorporated into this Agreement. Upon acceptance of any Statement of Work and Customer order, the agreed upon scope of services, schedule, and budget set forth in a Statement of Work and related pricing information will become an addendum to this Agreement. Customer agrees that Provider shall have reasonable access to Customer's staff and resources as necessary to perform the Services.

Section 4 Fees

- (a) Services Fees. Customer agrees to pay Provider the amounts for the Services on the payment schedule set forth in the Statement of Work.
- (b) Delay in Payment. Customer shall be responsible for timely payment for all amounts due and owing as stated in the Statement of Work. Provider shall not be responsible to Customer and/or any end user for any delay or missed deadlines or the consequence of any delay or missed deadlines as a result of Customer's failure to timely pay any Invoices.
- (c) Customer shall be responsible for all sales, use, value added, or other similar taxes imposed on or arising out of the delivery of services, except taxes based on Provider's income.
- (d) In no event shall Provider be liable for accounts payable fees imposed by Customer in the course of invoicing and payment

Section 5 Term and Termination

- (a) Term of Agreement. The Agreement will commence on the Effective Date and shall remain in effect as provided in the Statement of Work until terminated pursuant to this Agreement.
- (b) Termination. Upon termination of this Agreement, all Statements of Work shall remain in effect unless also terminated. The parties may terminate this Agreement as follows:
 - (i) *Termination by Either.* Either party may terminate this Agreement or any particular Statement of Work for (A) a material failure by the other party to comply with the terms of this Agreement or Statement of Work, respectively without cure; (B) immediately in the event the other party seeks the protection of any bankruptcy court, becomes insolvent, or makes an assignment for the benefit of creditors, or (C) in the event a Force Majeure suffered by one party causes any delay in or interference with the performance of such party under this Agreement, and such delay or interference continues for more than thirty (30) days, with such termination effective upon written notice of termination to the non-performing party.
 - (ii) *Termination by Customer.* Customer may terminate this Agreement and any particular Statement of Work at any time and for any reason by providing thirty (30) days' written notice to Provider and upon payment to Provider of all amounts due through the date of termination pursuant to this Agreement provided that any such termination will not affect any particular Statement of Work then in effect that has not also been terminated.
- (c) Obligations on Termination.
 - (i) Upon termination of this Agreement, the parties shall have no further obligations pursuant to the terms of this Agreement except that obligations pursuant to Sections 4, 6, 7, 8, 9, 10 and 12 shall survive termination.
 - (ii) Upon termination of this Agreement, Customer shall be responsible for fees and expenses related to the Services completed in accordance with the Agreement prior to the effective date of

the termination. Customer will pay such undisputed invoice within ten (10) days of termination and will have no further payment obligation with regard to the terminated Agreement or Statement of Work.

Section 6 Ownership of Deliverables

Unless otherwise stated on a Statement of Work, Provider and Customer agree that any customer-specific Deliverables that are not developed as standard code that will become part of the Licensed Software, the Service, or any of the Paradigm's product or service offerings, and any and all related copyrights, trademarks, service marks, patents, Trade Secrets, Confidential Information, and any other proprietary rights are the property of Customer as "works for hire." Notwithstanding the foregoing, Customer acknowledges and agrees that all proprietary rights in intellectual property used to deliver the Service under this Agreement is protected under applicable intellectual property and other laws. Any Provider software used in the delivery of the Service, including any improvements, is and will remain property of Provider.

For any Deliverables produced under this agreement, Customer grants to Provider an exclusive (except as to Customer), worldwide, royalty-free, perpetual, irrevocable, and fully paid-up license to create, develop, use, and distribute works that are based upon or derived from the Deliverables, including works that are similar in function, structure, sequence, or organization, so long as such works do not contain Customer's Confidential Information. Customer additionally grants to Provider and its affiliated companies, an exclusive (except as to Customer), worldwide, royalty-free, perpetual, irrevocable, and fully paid-up license to use the Deliverables for any advertising or marketing purpose.

Customer acknowledges and agrees that Provider shall have no obligation to support or maintain any Deliverables except to the extent Customer compensates Provider for any such support or maintenance at Provider's then current rates.

Section 7 Non-Disclosure

- (a) Confidential Information. Provider and Customer agree not to use the Confidential Information or Trade Secrets disclosed to it by the other party for its own use or for any purpose except for the performance of this Agreement or to carry out discussions concerning the undertaking of any current or future business relationship between the parties. Neither will disclose the Confidential Information of the other to third parties or to the first party's employees or agents without the written consent of the other party, except to those employees or agents who are required to have the information in order to carry out the performance of this Agreement or the contemplated business. Each agrees that it will take all reasonable steps, including all steps that it would take to protect its own Confidential Information, to protect the secrecy of and avoid disclosure or use of Confidential Information of the other in order to prevent it from falling into the possession of unauthorized persons. Each agrees to immediately notify the other in writing of any misuse or misappropriation of such Confidential Information.
- (b) Trade Secrets. Provider and Customer agree that except as required by the scope of the Agreement or expressly agreed upon in writing by the parties, neither will use, directly or indirectly disclose, or publish any of the other's Trade Secrets. Both parties acknowledge that any unpermitted use or disclosure of the other's Trade Secret will cause the Trade Secret holder irreparable damage for which remedies other than

injunctive relief will be inadequate and that the Trade Secret holder shall be entitled to injunctive relief or other equitable relief enjoining such use or disclosure, without the posting of a bond or other security, in addition to any other remedies available by law or under this Agreement. The term of this covenant not to disclose Trade Secrets is unlimited and survives the termination of this Agreement.

Section 8 Non-Solicitation of Employees

During the Term and for two (2) years after termination of this Agreement, Customer agrees not to, directly or indirectly, discuss the terms of prospective employment with, solicit for hire, or hire (directly as employees or indirectly as contractors, sub-contractors, consultants, or in any other capacity) any person who is, who becomes during the term of this Agreement, or who has been in the past twelve (12) months an employee of Provider and had more than incidental contact with Customer on the Provider's behalf to perform services that are the same or substantially similar to services the person performed for Customer on the Provider's behalf during the two (2) year period prior to the employee leaving the employ of Provider. Notwithstanding the foregoing, nothing shall prevent Customer from employing an employee of Provider who (1) responds to a general employment advertisement when such solicitation is not specifically directed at that individual, or (2) is directed to Customer by employment search firms where such employment search firms are not directed by the hiring party or its affiliates to initiate discussions with respect to the prospective employment of that individual.

Section 9 Warranties

Provider represents and warrants as follows:

- (a) Provider represents and warrants to Customer that the material, analysis, data, programs, and services to be delivered or rendered hereunder will be of the kind and quality designated and will be performed by qualified personnel.
- (b) Provider represents and warrants that all right, title, and interest, including patent, copyright, trade secret, and trademark rights in any work product related to Provider's Services rendered to Customer under this Agreement and any ideas, concepts, projects, promotional plans, or proposals presented to and performed for Customer will be wholly original with Provider. This representation and warranty does not apply to any designs, materials, requirements, or specifications provided by Customer or a third party for inclusion in Services and/or Deliverables. In the event Customer notifies Provider of any claim of infringement, Provider shall procure for Customer the right to use, possess, and operate the Deliverables and other products of the Services as originally intended and described herein. In the event Provider is unable to procure such right for Customer, then Provider may, in its discretion, in the following order of preference (i) furnish Customer, upon its approval, with non-infringing replacement deliverables if commercially reasonable for Provider to perform; (ii) modify the Deliverable so as to be non-infringing if commercially reasonable for Provider to perform; (iii) obtain a license for Customer to use the infringing Deliverable if commercially reasonable for Provider to perform; or (iv) terminate this Agreement in whole or in part upon written notice to Customer. This Subsection (b) states the entire liability of Provider and the sole and exclusive remedy for Customer with respect to any third-party claim of infringement or misappropriation of intellectual property rights.
- (c) Provider represents and warrants that it will not include any Viruses in the Deliverables. "Virus" means an extraneous piece of computer code knowingly and maliciously inserted by Provider for the purpose of causing undisclosed disruption or other harm to the operation of a computer program.

- (d) Each party represents and warrants that it is under no obligation or disability, created by law or otherwise, which would in any manner or to any extent prevent or restrict it from entering into and freely performing this Agreement, and each hereby accepts the obligations hereunder.
- (e) Provider does not guarantee that Deliverables, including any plans, reports, 3D visualizations, video images, BIM or BIM Coordination Services or Hosting Services provided will be error-free. Customer acknowledges and agrees that Provider shall have no liability for inaccurate, nonconforming, faulty or defective outputs, deliverables, including with regard to inaccurate plan sets, drawings, visualizations, models, Hosting Services or BIM Coordination Services. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO REQUEST THAT PROVIDER RE-PERFORM SUCH OUTPUTS OR DELIVERABLES AT NO ADDITIONAL COST TO CUSTOMER.
- (f) Plan sets and video images provided under **Provider's Render Services** are **not** for construction purposes.
- (g) **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, PROVIDER AND RELATED PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIM ALL WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PROVIDER OR AN AUTHORIZED REPRESENTATIVE OF PROVIDER SHALL CREATE A WARRANTY.**

Customer represents and warrants as follows:

- (h) Customer represents and warrants that the plans and other materials it provides to Provider or any data provided to Provider under this Agreement ("Plans and Data"), and Provider's receipt and use of the Plans and Data, or performance of any work Customer has requested under this Agreement, 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 the use of Plans and Data does not otherwise violate any law.

Section 10 Indemnification and Limitation of Liability

- (a) As limited below, each party agrees that to the fullest extent permitted by law, that it shall indemnify, defend, and hold harmless, the other party, its officers, directors, and employees from and against all claims, suits, damages, losses, and expenses (including without limitation attorneys' fees, back wages, liquidated damages, penalties or interest) asserted by any third parties to the extent caused by, in whole or in part, any error, omission, or negligent act of that party or its breach of this Agreement, or that of any of that party's agents, servants, employees, consultants, or suppliers, in the performance of this Agreement or services or furnishing of materials, equipment, or other tangible items under this Agreement. CUSTOMER FURTHER AGREES IT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS PROVIDER FROM AND AGAINST ALL CLAIMS, SUITS, DAMAGES, LOSSES AND EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM ANY THIRD-PARTY CLAIMS OF INFRINGEMENT, MISAPPROPRIATION OR OTHER SIMILAR CLAIM ARISING FROM PROVIDER'S RECEIPT OR USE OF THE PLANS AND DATA. This indemnity shall survive the termination of this Agreement.

- (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 PROVIDER BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOSS OF DATA, LOST TIME, LOST SAVINGS OR OTHER BENEFITS, LOST CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, DAMAGE TO EQUIPMENT, CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, OR FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE AGGREGATE LIABILITY OF PROVIDER FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO PROVIDER UNDER THE SPECIFIC PORTION OF THE SCOPE OF WORK UNDER WHICH THE CLAIM AROSE, AND PROVIDER'S LIABILITY FOR DIRECT DAMAGES AND INDEMNIFICATIONS SHALL NOT EXCEED THE AMOUNTS OF SERVICES FEES PAID BY CUSTOMER TO PROVIDER IN THE PRECEDING TWELVE (12) MONTHS. NO ACTION, REGARDLESS OF FORM, ARISING UNDER THIS AGREEMENT, MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.**

Section 11 Non-Exclusivity

Customer recognizes that Provider's employees performing the Services under this Agreement may perform similar services for others, and this Agreement shall not prevent Provider from providing services or developing materials that are similar to those developed or provided hereunder, provided, however, that Provider shall not use or infringe upon any Confidential Information of Customer, or any of Customer's other proprietary and intellectual property rights in the performance of such services for others.

Section 12 Miscellaneous

- (a) Governing Law, Venue and Jurisdiction.
- i. 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 or any alternative dispute resolution including mediation and arbitration shall be Dane County, Wisconsin. All alternative dispute resolution shall be conducted in person in Dane County, Wisconsin.
- (b) Waiver of Right to Jury Trial. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

- (c) Force Majeure. 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 utility or transmission failures, power failures, strikes or other labor disturbances, acts of God, acts of war or terror, floods, sabotage, fire, natural or other disasters, explosion, embargo, government requirement, civil or military authority, government regulation, acts or omissions of carriers, or other similar causes beyond the reasonable control of such party or its contractors, agents, or suppliers.
- (d) Entire Agreement. This Agreement with all its addenda contain the entire understanding of the parties with respect to the subject matter hereof, and supersedes any prior agreement, understanding and communication between the parties, whether written or oral, with respect to such subject matter. This Agreement can be amended only in writing signed by the parties. In the event of conflicts, the document with the most recent date shall control over documents with earlier dates and this Agreement shall control over the Statement of Work.
- (a) Transfer and Assignment. Except as otherwise provided in this Agreement, Customer may not assign or transfer this Agreement without Provider's express written consent, which shall not be unreasonably withheld, conditioned, or delayed. Any attempt to do so without such consent will be null and void. Upon written notice to the Customer, Provider may assign or transfer this Agreement and its rights and obligations hereunder, including but not limited to any connection with (i) a merger, combination, consolidation, or similar business combination involving Provider, (ii) a sale of all or substantially all of Provider's assets, or (iii) a sale of a majority of Provider's outstanding voting securities; provided, however, if a party assigns this Agreement to a competitor of the other party, the non-assigning party shall have the right to terminate this Agreement immediately upon written notice. For the purposes of this Agreement, a "competitor of the other party" means any person, firm, business, or other organization or entity that designs, develops, produces, offers for sale or sells products or services that are in competition with the products or services of the non-assigning party, or its affiliates, as designed, developed, produced, offered for sale or sold by the non-assigning party, or an affiliate, at the time of the assignment. The foregoing notwithstanding, in no event shall Customer be allowed to assign this Agreement if it is not current in its payments owed to Provider and any permitted assignment remains subject to the right of Provider to seek a change in the Subscription Fees for any change in size, composition, or organization of Customer. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective representatives, successors, and permitted assigns.
- (e) Severability; No Waiver. In the event that any term or condition of this Agreement is determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the parties hereto. Lack of enforcement of any term or condition in this Agreement shall not be construed as a waiver of any rights conferred by such term or condition.
- (f) Relationship. No joint venture, partnership, employment, or agency relationship exists between Customer and Provider as a result of this Agreement. Each party shall have sole responsibility for payment to its

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employees and its subcontractors, including all tax payments and report obligations and shall indemnify the other party for all such expenses and obligations.

- (g) Survival Clause. All duties and responsibilities of any party, which, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract Term or cancellation of this Agreement. In addition, the expiration or earlier termination of this Agreement shall not relieve either party of obligations incurred prior to the termination date.

- (h) Alternative Dispute Resolution. In the event of a dispute, claim, question, or disagreement between the parties arising from, in connection with, or relating to this Agreement, both parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, each party shall make available an officer(s) or representative(s) (who have authority to bind their respective party) to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the dispute cannot be settled through such negotiation within thirty (30) days, then, upon notice of either party to the other party, the parties shall try, in good faith, to settle the dispute by mediation before resorting to litigation. Mediation will take place in- person in Dane County, Wisconsin.