



Applied Computer Solutions Inc.
3020 St Etienne Blvd.
Windsor, Ontario
N8W 5E6
Phone: (519) 944-4300

Master Service Agreement



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PLEASE READ VERY CAREFULLY THESE TERMS AND CONDITIONS BEFORE USING ACS's SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE CONTACT YOUR SALESPERSON OR ACCOUNT MANAGER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.

PLEASE NOTE THAT ACS SERVICES ARE STRICTLY RESERVED AND PROVIDED TO BUSINESSES AND ARE NOT FOR CONSUMERS. YOU REPRESENT AND WARRANT THAT YOU OR, IF APPLICABLE, THE PERSON THAT YOU ACT FOR THE PURPOSES HEREOF AS DULY AUTHORIZED REPRESENTATIVE, ARE A BUSINESS OR A MERCHANT, AND THAT YOU ARE BUYING ACS SERVICES FOR BUSINESS PURPOSES ONLY.

BY SIGNING, ORDERING AND/OR USING ACS SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT AND SERVICE LEVEL AGREEMENT (THE "**SERVICE LEVEL AGREEMENT**" OR "SLA") COLLECTIVELY (THE "**AGREEMENT**").

(For present purposes, "Person" means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, entity with juridical personality or governmental authority or body, and pronouns that refer to a Person shall have a similarly extended meaning. "Includes" and "including", when used in this Agreement, mean "including (or includes) without limitation")

THIS AGREEMENT is by and between Applied Computer Solutions Inc., headquartered at 3020 St. Etienne Blvd, Windsor, Ontario, N8W 5E6, CANADA ("ACS"), and the recipient and payor of Services hereunder as identified as part of the subscription process for ACS Services (the "Client").

This AGREEMENT is effective as of the Date defined in the signature block below by and between APPLIED COMPUTER SERVICES INC. ("Service Provider") and the Client as defined in the signature block below.

1. Scope of Agreement

- a. This Agreement serves as a Master Services Agreement and applies to purchases of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product") from Service Provider by Client.
- b. No Products or Services will be provided under this Master Services Agreement alone but will instead be delivered via and governed by Statements of Work that contain terms relating to this Agreement, and when executed by both parties will be considered incorporated in this Master Services Agreement.
- c. Multiple Statements of Work may be incorporated under this Master Services Agreement.
- d. Should there be any conflict between the terms of any Statement of Work and those of this Master Services Agreement, the terms of the Statement of Work will prevail.

2. Lawful use of the Services

The Client agrees to use all Services provided to them hereunder only for their lawful, appropriate, and



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permitted internal purposes hereunder. In no event may the Client resell the Services. In addition, the Client may not use the Services if they are a competitor of ACS (as determined by ACS in its sole discretion). In the event that the Client's use of the Services violates any law, rule or regulation or this Agreement, ACS shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

3. Term, Termination, Cancellation Policy

3.1 Term

The Agreement's "Term" is comprised of the Initial Term and any Renewal Term (each, as defined below).

- a. **Monthly Plan Agreement Term.** For monthly plans, the "Initial Term" is defined as the period from the date of the Client's initial payment or execution of this Agreement, whichever occurs earlier, until the thirtieth (30th) day thereafter. "Renewal Terms" for monthly plans, are defined as the thirty (30) day period beginning at the end of the Initial Term and each subsequent thirty (30) day period thereafter.
- b. **Prepaid Yearly Plan Agreement Term.** For prepaid yearly plans, the "Initial Term" is defined as the period from the date of the Client's initial payment or execution of this Agreement, whichever occurs earlier, through the end of the twelve (12) calendar month period thereafter. "Renewal Terms" for prepaid yearly plans are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- c. **Defined Term Plan Agreement Term.** For defined term plans, the "Initial Term" is defined as the period from the date of the Client's initial payment or execution of this Agreement, whichever occurs earlier, until such time as the Client agrees to be bound by the terms of this Agreement in accordance with ACS's registration process. "Renewal Terms" for defined term plan are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- d. **Automatic Renewal.** This Agreement shall renew automatically at the end of the Initial Term and each Renewal Term unless terminated in accordance with this Agreement either by the Client or by ACS.

3.2 Termination for Convenience and Cancellation Policy

- a. Monthly Plan. The Client may terminate the Agreement for convenience at any time on thirty (30) days advance written notice. The termination effective date will be fifteen (15) days after receipt of the written notice. If the Client terminates for convenience a monthly plan prior to the end of the then current Term, ACS shall not be required to refund the Client fees already paid and the Client will be charged the entire month in which the effective termination date occurs.
- b. Prepaid Yearly Term. For all Services with a prepaid yearly term contract or block of hours may terminate the Agreement for convenience with thirty (30) days advanced written notice before the end of the Term. However, if the written notice is received after this required thirty (30) days



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but before the end of the Term, such notice shall be effective to terminate the Agreement, however the Client will be charged a late fee of \$150.00.

Notwithstanding any other provision in this Agreement, should the Client terminate its Prepaid Yearly Term account for convenience prior to the end of the Term, ACS will not reimburse any prepaid fees and/or if your account has automatically renewed and we did not receive your written notice on time, the Client will be charged for all the months remained unpaid.

- c. Defined Term Plan. The Client may terminate the Agreement for convenience at any time on ninety (90) days advance written notice. The termination effective date will be ninety (90) days after receipt of the written notice. If the Client terminates for convenience such plan prior to the end of the then current Term, ACS shall not be required to refund the Client fees already paid and the Client will be charged the entire ensuing ninety (90) day period before which the effective termination date occurs.

3.3 Termination for Cause

- a. By the Client. To terminate the Client's account for ACS material breach of the terms or conditions of this Agreement, the Client shall provide to their salesperson or account manager in writing, via email or via certified mail the details of ACS's material breach and allow ACS thirty (30) days to cure any such violation prior to termination of this Agreement. The Client may only terminate this Agreement if ACS fails to cure the alleged material breach within such thirty (30) day delay.
- b. By ACS. ACS may terminate any or all Services immediately and without prior notice (termination for cause) for any of the following reasons: any material breach of this agreement, which includes any failure to make payment or any non-material breach of this Agreement which remains uncured for a period of thirty (30) days after breach notification; and failure to provide and keep current all administrative contact and billing information. In the event of termination for cause, ACS shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to ACS as per this Agreement.

3.4 Termination by ACS without Cause

ACS may terminate this Agreement without cause by providing written or electronic mail Notice of termination to the Client's administrative email contact address not less than sixty (60) calendar days prior to the effective termination date.

- a. **Monthly Plan**. For monthly plans, if the effective termination date occurs prior to the end of the then current Term, ACS shall refund or not charge the Client monthly fees for the month in which Services terminate.
- b. **Prepaid Yearly Term**. If ACS terminates a prepaid yearly term Agreement for convenience prior to the end of the then current Term without cause, a refund equal to the prepaid service fees attributable to the remaining month(s) PLUS the fee for the month in which the contract is terminated LESS any unpaid fees shall be issued within thirty (30) calendar days of account termination via the payment method of the client on record at time of termination. This refund shall be the Client's sole and exclusive remedy and ACS's entire aggregate liability for ACS's early termination of the Agreement without cause.



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- c. **Defined Term Plan.** If ACS terminates a defined term plan Agreement for convenience prior to the end of the then current Term, ACS shall refund or not charge the Client the fees attributable to the remaining unused months of the current Term.

3.5 Following Termination

TERMINATION OF THE CLIENT'S ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO ACS AS PER THIS AGREEMENT. THE CLIENT'S DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED 30 DAYS FROM THE DATE OF TERMINATION (OR AS OTHERWISE SET FORTH IN THE SLA) UNLESS THE CLIENT'S HAVE BY SUCH DATE PAID ALL AMOUNTS AND DAMAGES OWED TO ACS, INCLUDING SERVICES WHERE WE STORE, PROCESS CLIENT CONTENT, DATABASES, AND EMAIL. IT SHALL BE THE CLIENT'S SOLE AND EXCLUSIVE RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM THEIR ACCOUNT PRIOR TO TERMINATION.

4. Fees, Billing, Taxes, Charges

4.1 Fees

The fees set forth in the order form created at the outset of the Client's account shall be effective for the Initial Term and each Renewal Term of this Agreement, provided that ACS shall have the right to increase these fees at any time upon thirty (30) days written notice to the Client. In the event that the Client's do not agree with such fee increase, the Client shall have the right to terminate this Agreement upon written notice, provided that such notice of termination must be received within thirty (30) days of date of notice of the fee increase.

4.2 Billing and Payment Arrangements

ACS will bill the Client on a monthly basis for all recurring fees. One-time fees, including late payment fees, invoice processing fees, and returned check fees may occur at any time. All plan or feature changes may be billed within a seven (7) day period. No refunds or adjustment shall be issued for one-time fees. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current monthly term shall be issued. INVOICES/PAYMENTS ARE IRREVOCABLY DEEMED FINAL AND ACCEPTED BY THE CLIENT THIRTY (30) DAYS FROM THE LATER OF WHEN (I) THE CLIENT'S INVOICE IS ISSUED AND (II) THE CLIENT'S MAKE PAYMENT THEREOF.

4.3 Payment Methods

- a. For payment by check, ACS shall provide an electronic invoice to the Client each month in advance. Payment by check must be received within thirty (30) days after the issuing of the invoice.
- b. Should the Client's check not be honored by the financial institution, a returned check fee in the amount of the lesser of fifty dollars (\$50.00) or the maximum amount allowed by law, will be assessed.
- c. In the event the Client fails to make timely payment for any reason by the thirtieth (30th) calendar day following issuance of the invoice, the Client's access to services will be immediately suspended; however, any existing data will not be affected. After forty-five (45) days of non-



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payment from when the date payment is due, ACS shall have the right, without limitation, to immediately terminate this Agreement.

- d. In the event that ACS does not receive payment by the thirtieth (30th) calendar day following issuance of the invoice, ACS shall have the right to assess a late payment fee, equal to the greater of the amount of (1) interest calculated at the lesser of 18% per annum or the maximum rate permitted by law, or (2) twenty-five dollars (\$25.00).
- e. In the event of a late or dishonored check, the Client may be required to pay via Electronic Funds Transfer, Cashier's Check or money order.

4.4 Taxes

It is understood that HST shall be added to each invoice for Services, Products or materials rendered under this Agreement. The Client shall pay any such taxes unless a valid exemption certificate is furnished to ACS for the state of use.

5. Modification of Master Service Agreement

ACS may update, amend, modify or supplement the terms and conditions of this Agreement from time to time and will use reasonable efforts to notify the Client of this. The Client is responsible for regularly contacting ACS for the most current version of this Agreement. If at any time the Client does not agree with any amendment, modification or supplement to the terms and conditions of this Agreement, the Client may terminate this Agreement for convenience as per Section 3.2.

6. Limited Warranty, Limitation of Damages, Indemnification

6.1 ACS PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. THE CLIENT EXPRESSLY AGREES THAT ANY AND ALL USE OF SERVICES ARE AT THEIR RISK AND PERIL. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-MASTER SERVICE AGREEMENT INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.

6.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING CONTRARY IN THIS AGREEMENT, THE CLIENT AGREES THAT ACS'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES,



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LIABILITIES COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS FEES ("CLAIMS") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, 50% OF ALL FEES ACTUALLY PAID TO ACS BY THE CLIENT UNDER THIS AGREEMENT.

6.3 ACS AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER ACS HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

6.4 The Client's agree that their recourses and remedies and ACS's (and its SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) liability hereunder may be further limited by the Service Level Agreement.

6.5 The Client is fully responsible for the content of the information and data passing through their network and/or the networks of ACS's AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS and for all activities that the Client's conduct with the assistance of the Services.

6.6 Indemnification

The Client shall indemnify, defend and hold harmless ACS (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to any breach of this Agreement or fault by the Client, or in relation to any activities conducted by the Client through the Services, or otherwise in relation to the Client's products or services.

7. Hardware, Equipment, and Software

Unless supplied by ACS, the Client is responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to use ACS's Services. ACS makes no representations, warranties, or assurances that the Client's equipment will be compatible, or if once compatible, remain compatible with ACS services.

8. Miscellaneous

8.1 Governance, Jurisdiction, etc

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada without regard to its conflicts of laws or its principles. The courts of the province of Ontario or the MASTER SERVICE AGREEMENT federal courts of Canada situated therein, as applicable, shall have sole and



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exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter. The parties irrevocably agree, consent and submit themselves to the subject matter and personal jurisdiction of the courts of the Province of Ontario and of the federal courts of Canada situated therein for such purposes. This choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation, infringement or misappropriation of intellectual property rights or confidentiality obligations in any jurisdiction.

8.2 Severability

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

8.3 Waiver

No waiver by ACS of any breach by the Client of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this Agreement shall be effective unless it is in writing and signed by an ACS signing authority and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the Website. The Client may request a copy of the revised Agreement by emailing their Account Manager or aschelpdesk@acs.on.ca. THE CLIENT'S CONTINUED USE OF THEIR SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY THE CLIENT OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

8.4 Assignment

Neither party may assign or transfer this Agreement or any rights or obligations hereunder, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld; provided that ACS may assign or transfer this Agreement, or any rights or obligations hereunder, in whole or in part: (i) to an affiliate of ACS, (ii) in connection with a merger, amalgamation or sale of all or a substantial part of the business of ACS, or (iii) for financing, securitization or other similar purposes, which assignments and/or transfers shall operate novation and discharge ACS hereunder. A change of control of the Client shall be deemed to be an assignment and transfer hereunder and shall be governed by the requirements of this provision.

8.5 Excused Performance

Except for monetary obligations, this Agreement and the Client's obligations hereunder shall not be affected or impaired because ACS is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of circumstances beyond ACS's control (including any and all labour disputes, strikes and lockouts, third parties, Acts of God, War, Pandemic and failures of the Internet) and ACS's obligations under this Agreement shall be suspended and excused by any such events or circumstances.



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8.6 Survival

Sections 6, 7 and this Section 8 of this Agreement shall survive termination.

8.7 Independent Contractor

The relationship of the parties established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any agency or employment relationship between the parties or any of their employees. Neither the Client nor ACS shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

8.8 Non-Solicitation

During the term of this agreement and for a period of 12 months after the termination of this agreement, neither the Client nor ACS shall indirectly; or through any other party, solicit for employment any employees of the other party.

8.9 Confidentiality

ACS and its agents will not use or disclose Client information, except as necessary to or consistent with providing Services, and will protect against unauthorized use.

9.0 Entire Agreement

This Agreement constitutes the entire agreement for provision of the Services to the Client and supersedes all other prior agreements and understandings, both written and oral, between the Client and ACS with respect to the Services. The Client understands and agrees that ACS and the Client intend to include, as the sole third-party beneficiaries of this Agreement, ACS's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Master Services Agreement to be signed by their duly authorized representatives as of the date set forth below.

Accepted by:

APPLIED COMPUTER SOLUTIONS INC.

CLIENT

Name: _____

Company Name: _____

Title: _____

By: _____

I have authority to bind the corporation.

Title: _____

I have authority to bind the corporation.

Signature: _____

Date: _____

Signature: _____

Date: _____



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