

TERMS OF SERVICE

These Terms and Conditions (this “**Agreement**”) govern and are incorporated into each estimate, order, or other written instrument executed by the parties that describes the services to be provided (each, an “**Estimate**”). This Agreement is between **BEARHEART CONSULTING, LLC**, a Colorado limited liability company with a principal place of business at 6123 Salvia Ct, Arvada, CO 80403 (“**Consultant**”), and the Customer identified in the applicable Estimate (“**Customer**”). The **Effective Date** is the date the applicable Estimate is fully executed, unless another date is stated in that Estimate.

RECITALS

A. Consultant agrees to provide certain information technology professional and managerial services (the “**Services**”) as set forth in the Estimate.

B. Customer wishes to procure the Services from Consultant, for good and valuable consideration.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

AGREEMENT

1. Scope of Work

- a. Subject to the terms and conditions of this Agreement, Consultant agrees to provide the Services described in the Estimate.
- b. Unknown, undocumented, or miscommunicated project conditions may result in additional services and fees. Such conditions will be communicated before any additional work begins.
- c. Any change to the Services, Deliverables, assumptions, or schedule must be documented via email from an authorized Customer representative. Consultant has no obligation to proceed with a change until pricing and timeline adjustments are agreed in writing.
- d. Acceptance/Deemed Acceptance
 - i. Deliverables are deemed accepted unless Customer provides a written rejection specifying material non-conformities within ten (10) business days of delivery. Consultant will use commercially reasonable efforts to cure valid non-conformities.

2. Assumptions & Customer Dependencies

- a. Customer will provide timely access to personnel, systems, and environments. Delays or failures to provide dependencies will extend deadlines and may result in additional Fees at Consultant’s then-current rates.

3. Term / Termination

- a. During the initial term, Customer may terminate this agreement for convenience with thirty (30) days' notice. Customer is liable for an early termination fee of 50% of accepted fees on Estimate in the event of termination for convenience.
- b. After the Initial Term, either party may terminate this Agreement with ninety (90) days' prior written notice. Consultant shall be paid for all Services performed up to the effective termination date.
- c. **Automatic Renewal.** Upon expiration of the Initial Term, this Agreement will automatically renew for successive one-year renewal terms (each, a "Renewal Term") unless either party provides written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current Term. Each Renewal Term will be governed by the same terms and conditions in effect at the conclusion of the preceding Term unless the parties mutually agree in writing to modify them. Fees for any Renewal Term may be adjusted in accordance with the pricing-adjustment provisions of this Agreement, if applicable.
- d. Either party may terminate this Agreement upon written notice if the other party (the "**Defaulting Party**"):
 - i. materially breaches this Agreement and fails to cure within thirty (30) days after written notice (or if the breach is incurable);
 - ii. becomes insolvent or admits inability to pay debts;
 - iii. becomes subject to bankruptcy or insolvency proceedings not stayed within seven (7) days or dismissed within forty-five (45) days;
 - iv. is dissolved or liquidated;
 - v. makes a general assignment for the benefit of creditors;
 - vi. has a receiver, trustee, or custodian appointed over a material portion of its assets.
- e. If Customer terminates this agreement for any reason, Customer may be liable for any "ramp-down" services, documentation transfer, or knowledge transfer services at then-current rates.
- f. Consultant may terminate this Agreement on written notice if Customer fails to pay any amount when due and:
 - i. the failure continues for sixty (60) days after written notice; or
 - ii. Customer is late more than two (2) times in any twelve-month period.

4. Force Majeure

- a. During a Force Majeure Event, each party's obligations are suspended (except payment obligations accrued prior to the event). Where Customer requests resource hold/standby, Consultant may charge a mutually agreed standby fee.
- b. A "Force Majeure Event" includes events beyond a party's reasonable control (natural disasters, governmental orders, epidemic/pandemic, war, terrorism, etc.) and excludes events caused by gross negligence or misconduct.

5. Payment for Services

- a. Customer shall pay Consultant in accordance with the Fees in the Estimate (“Fees”). Consultant will issue itemized monthly invoices for hourly Services and expenses. Invoices are due upon receipt.
- b. 50% non-refundable deposits are required for all hardware orders and any project with an estimate of \$2500 or more. Consultant may agree to waive deposits at its sole discretion.
- c. Customer is responsible for all applicable taxes except those based on Consultant’s income or property.
- d. Late payments bear interest at 10% per month or the maximum permitted by law. Consultant may suspend Services if Customer fails to pay undisputed amounts within thirty (30) days after written notice.
- e. Customer must notify Consultant of any disputed amounts within ten (10) days with reasonable detail. All undisputed amounts are due when stated.
- f. Customer will reimburse reasonable costs of collection, including third-party collection fees, for past-due amounts.

6. Rates

- a. Either party may terminate this Agreement upon written notice if the other party (the “Defaulting Party”):
- b. Consultant may adjust pricing:
 - i. to reflect increased operational costs due to legal requirements (changes >5% permit Customer to terminate);
 - ii. annually, by up to 5%.

7. Travel/Reimbursable Expenses

- a. Customer shall reimburse reasonable, customary out-of-pocket expenses within thirty (30) days of invoice.

8. Independent Contractor

- a. Consultant is an independent contractor and no partnership, joint venture, agency, or employment relationship is created.

9. Confidential Information

- a. From time to time during the Term of this Agreement, either party (as the “Disclosing Party”) may disclose or make available to the other party (as the “Receiving Party”) non-public, proprietary, and confidential information of the Disclosing Party that, if disclosed in writing or other tangible form, is clearly labeled as “confidential,” or, if disclosed orally, is identified as confidential when disclosed (“Confidential Information”); provided, however, that Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of the Receiving Party’s breach of

this Section 8; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in the Receiving Party's possession prior to the Disclosing Party's disclosure hereunder; or (iv) was or is independently developed by the Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as it uses to protect its own confidential information, but in no event less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirement to afford the Disclosing Party the opportunity to seek, at its sole cost and expense, a protective order or other remedy. For purposes of this Section 8 only, the Receiving Party's Group shall mean the Receiving Party's affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisers.

10. Intellectual Property

- a. Ownership of Work Product.
 - i. Work Product is Customer's property upon full payment. Consultant assigns all rights therein.
- b. Pre-Existing Materials.
 - i. Consultant retains ownership of all methodologies, know-how, processes, software, templates, tools, and other materials developed or owned by Consultant prior to or independently of this Agreement.
 - ii. Nothing restricts Consultant from using generalized know-how, ideas, methods, skills, and de-identified configurations developed while performing the Services, provided no Customer Confidential Information is disclosed.
- c. Customer Materials.

- i. All materials, information, data, and intellectual property provided by Customer to Consultant (“Customer Materials”) shall remain the sole property of Customer. Consultant is granted a limited, non-exclusive license to use Customer Materials solely for the purpose of performing the Services.
 - d. Moral Rights Waiver.
 - i. Consultant waives any moral rights or similar rights in the Work Product.
 - e. Further Assurances.
 - i. Consultant will execute documents needed to effect ownership transfers.
 - f. Portfolio Use.
 - i. Consultant may reference the engagement and display non-confidential portions of the Work Product in Consultant’s portfolio or marketing materials.
 - g. Third Party Materials.
 - i. Consultant must obtain Customer’s prior written consent before incorporating third-party IP, except for properly licensed commercial materials.

11. Indemnification

- a. Either party agrees to indemnify, defend, and hold each other and its Affiliates harmless from and against any and all liabilities, claims, judgments, losses, orders, awards, damages, expenses, reasonable costs, fines, penalties, costs of defense, and reasonable attorneys’ fees (collectively, “**Liabilities**”) to the extent they arise directly or indirectly from or in connection with:
 - i. the failure of either party or any of its officers, employees (including its employees on assignment), agents, independent contractors, subcontractors, and/or representatives to comply with applicable laws, regulations, or orders;
 - ii. any negligent act or omission or intentional misconduct on the part of either party;
 - iii. breach of any obligation contained in this Agreement; and
 - iv. any direct claim for workers’ compensation benefits for job-related bodily injury or death asserted against either party by either party’s employees or subcontractors, or their personal representatives.
- b. Customer agrees to indemnify and hold Consultant and its officers, directors, affiliates, subsidiaries, agents, and employees harmless from any loss or damage arising out of a third-party claim or action against such parties for

injuries or damage to person or property caused by the negligent acts or omissions of Customer's personnel while Consultant's personnel are performing work for Customer.

- c. Each party (the "**Indemnified Party**") shall promptly notify the other party (the "**Indemnifying Party**") in writing of any claim subject to indemnification ("**Indemnification Claim**") and shall reasonably cooperate in the defense at no out-of-pocket cost to the Indemnified Party. If the Indemnifying Party acknowledges its obligations in writing within five (5) business days after receiving notice, it shall have sole authority to control the defense and settlement. If it fails to do so, the Indemnified Party may conduct the defense and the Indemnifying Party shall pay reasonable fees and expenses within thirty (30) days of invoice.

12. Insurance

- a. Professional Liability / Errors & Omissions Insurance: Consultant shall maintain Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, covering negligent acts, errors, and omissions arising out of Consultant's performance of Technology Services or IT Consulting Services. Coverage shall be written on a claims-made and reported basis and shall include:
 - b. Coverage for Wrongful Acts committed on or after the Consultant's policy Retroactive Date of February 1, 2023
 - c. Coverage applicable to software development, network security design, IT project management, system installation, and other "Technology Services" as defined in the Consultant's policy endorsements.
 - d. Coverage for software copyright infringement and other IP infringement claims, subject to the policy's infringement sublimits.
- e. Deductible
 - i. Consultant shall be solely responsible for payment of any policy deductible.
- f. Additional Insured
 - i. Upon Client's request Consultant shall add Client as an Additional Insured with respect to claims arising from Consultant's performance of professional services. Coverage shall apply only to Consultant's acts, as permitted under the policy's Blanket Additional Insured Endorsement.
- g. Certificates of Insurance
 - i. Consultant shall provide Client with certificates of insurance evidencing the required coverage upon request and shall notify Client if

coverage is canceled or materially changed, as permitted by applicable law.

- h. Primary & Non-Contributory
 - i. Consultant's insurance shall be primary as respects Consultant's performance of services. Nothing in this clause shall require Consultant's insurer to waive terms of any applicable "Other Insurance," anti-stacking, or deductible provisions.

13. Default And Remedy

- a. If Consultant materially defaults in any of its obligations, Customer shall be entitled to the following remedies in addition to all others at law or in equity:
 - i. Customer may terminate this Agreement pursuant to Section 2 without obligation to pay for Services not delivered in accordance with the Estimate.
- b. If either party breaches Section 7 (Confidential Information), the non-defaulting party shall be entitled to immediate injunctive relief without posting a bond. Such orders may require the defaulting party to take or refrain from certain actions.
- c. If Customer defaults in payment, Consultant may terminate the Agreement (unless cured under Section 2) and recover payment for all Services rendered up to termination, plus interest at the lesser of 20% per annum or the maximum rate allowed by law.

14. Taxes

- a. Fees and charges in the Estimate are exclusive of any sales, use, value-added, or goods/services taxes. Applicable taxes shall appear as a separate line item, and Customer shall be liable for such payment. Customer shall not be responsible for taxes based on Consultant's net income, receipts, or taxes arising from Consultant doing business in a jurisdiction.

15. Representations And Warranties

- a. Consultant represents it shall comply with all applicable laws and shall perform Services professionally using qualified personnel.
- b. Disclaimer. Except as expressly stated, Consultant disclaims all other warranties, including implied warranties of merchantability and fitness for a particular purpose. Consultant makes no warranties regarding deliverables developed by Customer or third parties.
- c. Consultant shall not be liable for data integrity issues, interruptions, or incidents caused by malware or third-party acts unless directly caused by Customer's mistaken, negligent or willful acts.

- d. Services are provided on a time-and-materials basis and do not guarantee attainment of Customer's business objectives, KPIs, or project ROI.
- e. **Third-Party Services Disclaimer.** Consultant may recommend or resell third-party products or cloud services. Consultant is not responsible for third-party outages, defects, EULAs, pricing changes, or data handling by third parties. Customer's sole remedies lie with the applicable third party.
- f. **Security Responsibilities.**
 - i. Unless expressly included in the Estimate, Consultant has no obligation to provide backups, business continuity, disaster recovery, high availability, or 24x7 monitoring. Customer retains responsibility for data classification, retention, and legal holds.
 - ii. No security service can guarantee prevention of all threats. Except for Consultant's willful misconduct or gross negligence, Consultant is not liable for security incidents, data loss, or unauthorized access.
- g. Consultant represents that the Services and related intellectual property do not, to its knowledge, infringe third-party rights. Customer represents that it has the right to provide data to Consultant and will comply with all laws. Both parties represent they have authority to enter this Agreement and grant required rights.
- h. Customer represents and warrants that (i) it has the right, including consent where required, to lawfully transfer to Bearheart Consulting all data and any other data or information related to Customer's access or use of the Services or deliverables; (ii) its use of the Services and deliverables does and at all times will comply with applicable law; (iii) it is responsible and liable for all activities that occur in user accounts; and (iv) it shall not misuse any Services or deliverables by sending spam or otherwise duplicative or unsolicited messages or store infringing, obscene, threatening, or otherwise unlawful material or material that is harmful to children or violates third party privacy rights.
- i. Consultant represents and warrants that (i) it has the right to perform the Services and provide the Deliverables to Customer; (ii) its performance of the Services and provision of the Deliverables does and at all times will comply with applicable law; (iii) it is responsible and liable for all activities of its employees and contractors providing the Services and Deliverables; and (iv) to grant the license to the Deliverables described in Section 8 of this Agreement.
- j. Each party represents and warrants to the other that it is authorized to enter into this Agreement and to grant the rights to the other party that are the subject of this Agreement and perform its duties hereunder, and that it has procured all rights, releases and permissions necessary to perform its responsibilities under this Agreement, and that its entry into this Agreement will not violate, nor

subject the other party to liability under, any third party agreements to which it is a party.

16. Total Liability

- a. Neither party shall be liable for lost data, lost profits, or incidental, consequential, punitive, special, or other indirect damages.
- b. Aggregate liability of either party shall not exceed the total amounts paid or payable to Consultant in the twelve (12) months preceding the event giving rise to the claim or \$2000, whichever is greater.

17. Publicity

- a. Both parties agree not to use the name or logos of the other or its affiliates in marketing, publications, or public disclosures without prior written consent.

18. Subcontractors and Staffing

- a. **Non-Solicitation.** During and for one (1) year following termination, Customer may not hire or attempt to hire any employee or contractor of Consultant without prior written consent.
 - i. Customer is liable for 40% of previous twelve (12) month's of employee or contractor's compensation as remedy for breach of non-solicitation clause.

19. Nondiscrimination

- a. Consultant agrees to comply with all applicable laws related to equal opportunity, nondiscrimination, and minority business enterprise participation. Such laws are incorporated into this Agreement as though fully set forth herein.

20. Non-Subordination

- a. Each party agrees it will not make or offer payments or benefits to any employee or fiduciary of a third party for the purpose of influencing conduct relating to this Agreement

21. General Provisions

- a. **Headings.** Headings are for convenience and do not affect interpretation.
- b. **Waiver.** Failure to enforce any provision shall not constitute a waiver of future rights.
- c. **Severability.** Invalid provisions shall not affect remaining terms.
- d. **Assignment.** Neither party may assign without written consent, except that Customer may assign to an affiliate or to a purchaser of substantially all assets upon written notice.
- e. **Modification.** No modification is effective unless in writing and signed by both parties.
- f. **Survival.** Provisions intended to survive termination shall survive.
- g. **Governing Law.** This Agreement is governed by the laws of the State of Colorado.

- h. Complete Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements.
- i. Electronic Notice Clause (Email as Written Notice). Notices delivered by email constitute valid written notice on the date sent, unless an automated failure message is received. Parties must maintain a functional email address.
- j. Attorneys' Fees. The prevailing party in litigation or arbitration shall be entitled to reasonable attorneys' fees and costs.

22. Execution

The parties execute these Terms of Service by their duly authorized representatives on the dates indicated on the Estimate.

Revision: February 2026