



## 24/7 EMERGENCY SERVICE: TERMS AND CONDITIONS

The 45Drives 24/7 Emergency Service program is intended to provide our customers with access to an emergency support team for the customer's purchased solutions.

### OUR OBLIGATIONS

We are here to help ensure your success. We are offering you 24/7 access to our advisory services for your 45Drives storage solution emergencies. We will respond to emergency incidents that you experience 24/7. "Emergency incidents" are events where your data is not available, where your data is available only in part, where your data integrity is in jeopardy, or where our product is offline.

You can call us any time with the Emergency Service telephone number or contact us by the emergency email address we assign.

### REFERENCES

In this Agreement,

-“You” or “your” mean the customer for our Advisory Services identified in your purchase order.

-“We,” “our,” and “us,” mean 45Drives.

-“Your content” means materials or information that you own or license and provide to us for the purposes of our delivering advisory services.

-“Your hardware” means the hardware identified by serial number in your purchase order.

-“Advisory Services” or “Service” means “The Service” described below.

-“Our ordinary hourly rate” means our hourly rate for services as defined in your purchase order.

-All support provided under this agreement will be provided in the English language.

### THE SERVICE

When you call our 24/7 Emergency Service telephone number, you will be contacted by a 45Drives Data Storage Specialist as soon as possible and no more than three hours from the time of your call. We will begin to deliver support to you upon our Specialist's successful voice contact with you. We will apply our best efforts to address your emergency incident.

Service calls will be triaged based on the severity of the impact of the emergency incident and we will allocate our resources accordingly. Incidents which we determine are not emergency matters may be scheduled for normal daily operations.



## **WHO CAN USE THE SERVICE?**

You may not gift, sell, license, rent, timeshare, transfer, or use the Service on behalf of any party other than "the customer" identified in your purchase order, for any purpose, without the advance written consent of our authorized supervisor. If you do transfer any 45Drives hardware or service to any third party without that consent, in addition to any other remedies we have at law, we will immediately cease providing the service to you and to any third party.

## **REQUIREMENTS**

You accept the responsibilities imposed by the service terms set out in this agreement.

You must contact the 45Drives Emergency telephone support line or the 45Drives Emergency Email address assigned to you, to gain access to our advisory services.

You will keep confidential and safeguard the emergency support line phone number and the emergency email address assigned to you from outside knowledge.

During Advisory Services, the consumption of your application support hours will be at 1.5 times the actual hours performed. Upon exhaustion of your application support hours, you agreed to be billed on net thirty(30) days terms of payment up to your minimum requirements for continued access to 45Drives' Emergency Services. Those in good standing with Annual Support Plans are exempt from consumption of application support hours for emergency services.

## **YOUR OBLIGATIONS**

You must ensure you have backed-up all data, software, information or other files stored on your hard disk drives, or on any separate data storage device, before you contact the 45Drives emergency telephone support line.

Our ability to deliver advisory services to you depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. You must make all best efforts to cooperate with us and to allow us to identify and support our efforts to assist in any problem with the hardware or solution that we reasonably believe may be related to your incident.

You must make all best efforts to remedy an emergency incident yourself and to assist us in doing so.



## YOUR OBLIGATIONS CONTINUED

You are responsible for the methods of your data storage or ensuring the integrity of your data but we will work to assist you in resolving your configuration issues, including, for example, such things as number of backups, replication, and copies of data.

You must provide all information and materials in your possession or under your control, including logs, network latency, and administrative access for permissions related to the emergency, together with any other information we reasonably request, including to verify your compliance with this service agreement.

You must allow us to have remote access to your solution product including to access your device, to view your device screen, to install software to troubleshoot the incident and to change settings on your device. You must allow us to have remote access to your solution product including to access your device, to view your device screen, to install software and to change settings on your device. For configurations which are air-gapped, we will provide best effort consultation using phone and email in an effort to guide you towards an appropriate resolution.

While we maintain reasonable standards of security in delivering our service, you acknowledge, understand, and agree that no data transmission over the internet can be guaranteed to be 100% secure, and you acknowledge and agree that we do not guarantee that any personal information you submit to us will be free from unauthorized intrusion.

If we have occasion to refer you to any web sites, products, services or information that are not 45Drives web sites, products, services or information, we are not responsible in any way for their content, or for any damages or loss howsoever arising from your use of, or reliance upon them, and 45Drives is not and shall not be responsible or liable for any loss or damage of any nature or kind incurred as the result of any such use or reliance.

If you choose to provide access to your content to us, by doing so, you represent and will ensure, that you have all necessary rights and permissions to do so in accordance with all applicable laws.

If user personal data is required for our supporting efforts, you must ensure all privacy notices and necessary consents are in place for us to provide Advisory services.



## **TERMS OF BUSINESS**

You agree to purchase up to a minimum of ten (10) prepaid application support hours, or subscribe to an annual service plan for the duration of your 24/7 emergency access service. Upon exhaustion of your support application hours or expiry of your annual support plan, you agree to replenish your application support hours to a minimum of ten (10) application support hours or renew your annual support plan.

We may cancel this service immediately, or suspend service without notice, at our discretion, including if you violate any obligation you have assumed under, or by virtue of, this agreement, including, without limitation, if you fail to make a payment when due.

We will invoice you monthly for advisory services incurred for service in excess of pre-purchased support hours. All applicable taxes are extra.

## **ENTIRE AGREEMENT**

These Terms and Conditions constitute the entire agreement between you and us with respect to the advisory services provided to you and shall prevail, notwithstanding any different, conflicting, additional, or other terms. Our employees have no authority to alter or modify the terms and conditions of this agreement.

## **NO WARRANTY**

To the maximum extent permitted by law, the Advisory Services are provided "as is," and we disclaim and exclude all representations, warranties and conditions, whether express, implied or statutory, including, but not limited to representations, warranties or conditions of title, non-infringement, satisfactory condition or quality, merchantability and/or fitness for a particular purpose. With respect to any Advisory Services, software, diagnostics, or other materials, or information we provide, you bear the entire risk of the advisory services' quality and performance.

## **LIMITATION OF REMEDIES**

If the law provides any implied warranties despite the exclusions and limitations in this Service Agreement, your remedies are limited as determined by us, in the case of Advisory Services, either to re-performance of the services or to a refund of the price you paid, if any, for the Advisory Services. These alternatives are your only remedy for a breach of warranty or condition, even if the remedy fails in its essential purpose.



## **EXCLUSION OF LIABILITY FOR CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES**

Where the exclusion or limitation of liability for incidental or consequential or indirect damages is permitted by law, we will not be liable to you, or any other party for any consequential, special, direct, indirect or incidental damages, including, but not limited to loss of profits, loss of data, or loss of business, by reason of any matter related to this Service Agreement, any Advisory Services, or any other materials or information that we provide, even if we were advised of the possibility of such damages or they were foreseeable.

You will defend and indemnify us for any and all damages, liabilities, penalties, fines, costs, and expenses (including reasonable legal fees), arising out of, or in any way related to, your direct or indirect failure to meet the requirements of this Agreement or comply with applicable laws, and you will promptly provide us with proof of insurance coverage upon request. You hereby release us from all damages, liabilities, penalties, fines, costs, and expenses (including reasonable legal fees), in connection with any claim, action, audit, suit, investigation, or other proceeding related to your failure to meet such requirements, or to otherwise comply with applicable law.

## **SEVERABILITY**

If any provision of these Terms and Conditions should be held at arbitration or by a court of competent jurisdiction to be contrary to law, then such provision shall be severable with the remaining provisions remaining in full force and effect.

## **DISPUTES**

We hope we never have a dispute, but if we do, you and we agree to try for sixty (60) days to resolve informally. If we cannot, the laws of Nova Scotia, Canada apply and will govern. Any dispute by arbitration or otherwise shall take place in Nova Scotia, Canada.

## **ARBITRATION**

Both you and we shall act in good faith and utilize best efforts to negotiate a resolution of any dispute, whether pre-existing, present or future, arising under, in connection with or related to this Agreement. Any such dispute which is not resolved shall be finally settled under the Commercial Arbitration Act, S.N.S.1999, c. 5.