

Document Service Agreement



Service Agreement Date (Month/Day/Year) _____ / _____ / _____ **NOTE:** This date must be current or prospective. This is the date services are effective with Ascensus and might not be the same as your retirement plan effective date.

Employer Name ("Client") _____

Plan Name ("Plan") _____

This Agreement is made between Ascensus, LLC ("Ascensus") and Client and sets forth the terms and conditions pursuant to which Ascensus will provide services to the retirement plan known as the Plan, which is adopted by Client.

1. **EFFECTIVE DATE AND TERM.** The term of this Agreement will begin on the Effective Date, and will continue in effect until terminated pursuant to Section 5.

2. SERVICES

2.01 General – Ascensus will provide to the Plan the services ("Services") set forth on Schedule A to this Agreement. Any additional services must be mutually agreed to in writing by the parties. Ascensus will perform the Services only for the Plan and only using data with respect to the Plan, even if there are other benefit plans related to the Plan. It is within Ascensus' sole discretion to reasonably modify Schedule A from time to time upon written notice to Client of such modifications. A detailed description of the specific responsibilities of Ascensus and Client is set forth on Schedule B to this Agreement. Ascensus and Client agree to perform the tasks for which it is responsible according to Schedule B. Any service or task not set forth on Schedule A or B is Client's responsibility. Ascensus will act only upon Client's instructions, which are provided to Ascensus either in writing or by mutually agreed upon electronic means. Ascensus will have neither access to Plan assets nor discretionary authority or control over the management of the Plan or Plan assets. Client is responsible for establishing the Plan, reviewing the Plan document, maintaining the qualified status of the Plan under the Employee Retirement Income Security Act ("ERISA") as amended, and federal tax law set forth in this Agreement.

2.02 Plan Document Services –

- (a) Ascensus will provide pre-approved plan document services to Client using an Ascensus sponsored pre-approved plan document under the IRS mass submitter program. Client acknowledges that it is responsible for choosing the specific plan document that is appropriate for Client and taking all necessary actions to adopt the plan (e.g., adopting a board resolution if necessary, providing participant notices, and ensuring all administrative responsibilities for the Plan are performed within the recommended timeframes imposed by the IRS and DOL). Client acknowledges that Ascensus has provided no advice regarding the document used by Client, nor its provisions. Client acknowledges that it intends to use an Ascensus pre-approved plan document for which Ascensus acts as sponsor as that term is defined in the applicable IRS Revenue Procedures, and acknowledges and agrees that Ascensus' responsibilities as sponsor will automatically end upon the termination of this Agreement as set forth in Section 5.
- (b) Client represents and warrants that the pre-existing plan: (i) is qualified under Internal Revenue Code Section (IRC Sec.) 401(a) and is exempt from tax under IRC Sec. 501(a), and that the plan has been amended for all legislative or regulatory changes; and (ii) has operated in compliance with all ERISA and Internal Revenue Code requirements, or Client has taken the appropriate steps necessary to correct any compliance failures. Client will provide Ascensus with accurate and reliable information as set forth in Ascensus' plan establishment materials. Ascensus will not review prior plan documents, prior administrative or recordkeeping work, or IRS and DOL filings or reporting performed by parties other than Ascensus for pre-existing plans. Ascensus will generate plan documents and perform the Services based solely on the information supplied by Client using the documents and information-gathering tools provided by or approved by Ascensus. Client acknowledges that it is responsible for reviewing the documents prepared by Ascensus prior to execution and is responsible for the accuracy and suitability of the same.
- (c) Client acknowledges that it will use the pre-approved plan documents as provided by Ascensus without modification to the pre-approved language. Any such modification will render the document an individually designed document for which Ascensus has no responsibility and is a violation of Ascensus copyright.
- (d) Client acknowledges that Ascensus is not a fiduciary. Ascensus will have no obligation to notify Client of any plan compliance failure except to its reasonable knowledge the failure of Client to timely amend its plan document for regulatory purposes. Client acknowledges and agrees that it is solely responsible for the completion and execution of the plan document and agrees that failure to timely update the plan may jeopardize the qualified status of the plan and result in adverse tax consequences.
- (e) Ascensus may rely upon the completeness and accuracy of all information provided to Ascensus by Client, and Ascensus will not be responsible for any errors, delays, or additional costs resulting from the receipt of incomplete, inaccurate, or untimely information from Client. No information with respect to the Plan known by a parent, subsidiary, or affiliate of Ascensus will be attributed to Ascensus or considered imputed knowledge of Ascensus.
- (f) Client acknowledges that it will follow the procedures set forth in the "Roles and Responsibilities" listed in Schedule B of this Agreement.

(g) Ascensus may provide Client with access to the Plan's information via email or secure electronic signature website. Client is responsible for installing the necessary hardware and software, as determined by Ascensus if needed.

3. FEES AND EXPENSES. Ascensus will receive document service fees ("Fees") set forth on Schedule C to this Agreement.

Ascensus will be entitled to charge reasonable interest on any past-due Fees. Ascensus may discontinue providing any or all of the Services if Client fails to pay all Fees when due. Fees billed are nonrefundable and will not be prorated if Client commences or terminates Services during the year. Fees may be subject to state and local taxes. Fees are to be paid for the year in which the pre-approved plan document services are established, and then prospectively on an annual, calendar-year basis in January thereafter. Ascensus reserves the right to modify the Fees and the timing of such Fees upon not less than 90 days written notice to Client. Client shall be responsible for Fees if the termination of services' effective date carries into a subsequent calendar year (60 days after written notice, as outlined in Section 5.01(a)). If Client terminates any of the Services before Ascensus completes a plan document, Ascensus reserves the right to charge a \$50 cancellation fee for work performed. If Client elects to pay the Fees from Plan assets, Client acknowledges that it is responsible for ensuring that the plan documents, and applicable laws, rules and regulations permit the payment of the Fees out of the Plan's assets. Client agrees to responsibility of all fees as outlined in this Agreement.

4. INDEMNIFICATION AND LIMITATION OF LIABILITY

(a) Client will be liable for and indemnify Ascensus, its officers, directors, shareholders, employees, parents, subsidiaries, affiliates and agents (collectively, the "Indemnitees") against, any and all expenses, costs (including defense costs and reasonable attorneys fees), liabilities, damages, claims and losses (collectively, "Damages") suffered or incurred by an Indemnitee to the extent based on or arising out of a breach of any of Client's representations, warranties, or covenants set forth in this Agreement, or Client's negligence or willful misconduct, or any claim or action with respect to the services.

(b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ASCENSUS WILL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING LOST REVENUE, LOST PROFITS AND LOST OR DAMAGED DATA, EVEN IF ASCENSUS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL ASCENSUS' AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ALL DAMAGES PERMITTED UNDER THIS AGREEMENT EXCEED THE ANNUAL SERVICE FEE PAID BY CLIENT TO ASCENSUS DURING THE 12 MONTHS BEFORE ASCENSUS RECEIVES WRITTEN NOTICE OF THE FIRST DAMAGES CLAIM. THIS LIMITATION ON ASCENSUS' LIABILITY FOR PERMITTED DAMAGES WILL NOT APPLY TO PERMITTED DAMAGES CAUSED BY ASCENSUS' FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) Upon Client's receipt of any reports or written communications from Ascensus or a third party acting on Ascensus' behalf, Client must notify Ascensus in writing of all inaccuracies and errors reflected in such reports or communications, with a complete description of the inaccuracies or errors, within 30 days after Client's receipt of such report or communication. After 30 days, the information provided in such reports and communications will be deemed correct, and Ascensus will have no responsibility for any inaccuracies or errors that may exist, including any responsibility to correct any records or to make the Plan or the affected participants whole for any investment losses or any other consequences resulting from such inaccuracies or errors.

(e) If applicable, the following terms and conditions will apply to Electronic Funds Transfer (EFT) process for payment of fees.

Client appoints and authorizes Ascensus to transmit Client's EFT instructions to one or more clearing brokers or similar parties selected by Ascensus and to take such other actions as are necessary to effect EFT transactions for the Plan. Client acknowledges and agrees that such appointment and authorization shall in no way confer upon Ascensus the status of Ascensus as plan administrator or other fiduciary for the Plan as those terms are defined in ERISA, as amended, or otherwise. Submission of data to Ascensus constitutes Client's representation and warranty that: (i) there are sufficient funds in the appropriate account to complete the EFT transaction, and (ii) the data submitted to Ascensus is accurate. Client must notify Ascensus promptly after its receipt of a communication related to EFT if the communication contains an error. Client assumes all responsibility and liability for any delays or failures to process an EFT transaction, or any incorrect processing, which may occur as a result of its submission of untimely, incorrect, or incomplete data, or as a result of the lack of sufficient funds in the account specified by Client to be used for EFT processing.

5. TERMINATION

5.01 Events of Termination – This Agreement may be terminated

(a) by either party upon at least 60 days prior written notice to the other party (see Section 3., Fees and Expenses, for Fee considerations);

(b) by either party immediately if the other party commits a material breach of this Agreement and does not cure such breach within 30 days after receiving written notice of the breach from the nonbreaching party; or

(c) by Ascensus immediately upon notice if Client is administering or operating the Plan in a manner inconsistent with the plan documents, or if Client engages in activities which Ascensus reasonably believes to be illegal or a violation of Ascensus' intellectual property rights.

5.02 Termination of the Plan –

- (a) **Duties of the Client** – Upon termination of the Plan, Client will promptly notify Ascensus of the effective date of such termination.
- (b) **Ascensus Services** – During the term of this Agreement, if Client causes or permits the Plan to terminate, Ascensus, upon Client's written request, will provide the most current plan document termination amendment. Ascensus' receipt of an executed termination amendment will constitute Client's 60-day written notice of pre-approved plan document service termination for the Plan or Client listed on the termination amendment.

5.03 Pre-Approved Status upon Termination – If this agreement is terminated for any reason by either party, Client acknowledges that upon termination, Ascensus will cease to act as the pre-approved plan sponsor for the document(s). Any such document will be an individually designed document for which Ascensus has no responsibility. Ascensus will provide no further amendments or support the document in any way upon such termination. Client acknowledges and agrees that it is solely responsible for the plan document and agrees that failure to update the Plan may jeopardize the Plan's qualified status and result in adverse tax consequences.

6. OTHER PROVISIONS

6.01 Confidential Information – Any confidential information provided by Client to Ascensus for use in connection with Ascensus' performance of its obligations pursuant to this Agreement (the "Confidential Information") shall be deemed to be the confidential and proprietary information of such disclosing party. Ascensus will use the same degree of care in its handling of the Confidential Information as it uses with regard to its own proprietary information to prevent unauthorized or inadvertent disclosure, use or publication of the Confidential Information. Except as otherwise permitted by this Agreement, the Confidential Information will only be divulged to and used by Ascensus' employees, agents and subcontractors with a need to know, and may be disclosed as required or permitted by law, regulation, order of a court or regulatory authority. Ascensus will instruct its employees, agents or subcontractors not to divulge, use or publish any Confidential Information except in accordance with the terms of this Section 6.01.

Client acknowledges that Ascensus may release any information or documentation related to Client or the Plan as requested by Client financial advisor or broker of record. Ascensus may provide information about the Plan to other Plan representatives or designees only as designated by Client in writing. Client will promptly notify Ascensus in writing of any changes to the financial advisor's or other representative's contact information or affiliation to the Plan. Ascensus may release any information or documentation related to Client or the Plan as requested by the Plan's Trustee and Custodian, the IRS, the DOL, or any other regulatory or judicial authority as required by law.

6.02 Force Majeure – Ascensus will not be liable for, nor will Ascensus be considered in breach of this Agreement due to any failure or delay in performance of its obligations under this Agreement as a result of a cause beyond its reasonable control including, but not limited to, any act of God or public enemy, act of any military, civil, or regulatory authority, any act of terrorism, change in any law or regulation, fire, flood, tornado, earthquake, storm or other like event, disruption or outage of computers or communications, equipment failure, power or other utility failure, labor strikes, exchange action, unusual trading activity or the suspension or disruption of trading on any exchange.

6.03 Copyrighted Works – Client acknowledges that Ascensus is the sole copyright owner of all Ascensus plan documents, participant notices, all content on the Ascensus media and all other materials provided under the terms of this Agreement ("Ascensus Materials"). Ascensus grants Client a nonexclusive, nontransferable right to copy the participant notices as needed for the sole purpose of distributing to participants. Except as provided in this Section 6.03, none of the Ascensus Materials will be copied, reproduced or distributed by Client without Ascensus' prior written consent.

6.04 Notices with Respect to the Plan and the Agreement –

- (a) Client agrees to provide a current, functional email address, street address or, if accepted by Ascensus as a means of communication, text message number, to receive communications, notices, reports, materials, disclosures and other information related to this Agreement and the Plan, and to promptly notify Ascensus of any changes to such email, address or number. Client consents to receiving any and all communications, notices, reports, materials, disclosures and other information related to this Agreement (including amendments or changes to this Agreement) and the Plan, including all notices that must be given in writing, at the then-current email address and/or text message number for Client in Ascensus' records and/or via a website designed by Ascensus, and Client agrees to periodically check such website for new or updated information. Ascensus may deliver such communications and other information by hardcopy, email, text message, secure electronic signature websites or other method at Ascensus' option. By agreeing to the receipt of such electronic communications and other information, Client agrees to allow emails and text message from Ascensus to pass through Client's filters. Ascensus (including the Indemnitees) will not be liable for any Damages arising from non-delivery of any such communications due to factors beyond Ascensus' control, including, but not limited to, system failures, misdirected delivery, inaccurate information, or failed delivery due to SPAM or other filters.

- (b) Any notice with respect to this Agreement (such as notice of breach or termination) sent by Client must be in writing and must be given by either certified mail, return receipt requested, or by overnight mail sent with a nationally recognized courier service, and must be addressed to Ascensus at:

Ascensus, LLC
575 Pinetown Road #577
Fort Washington, PA 19034
Attn: RPS Plan Documents

- 6.05 Record Retention** – Client acknowledges and agrees that it is expressly responsible for the retention of all records related to the Plan.
- 6.06 Amendment and Modification: Handwritten Changes** – Client may not amend or modify this Agreement except in a written agreement signed by both parties. Ascensus may amend and modify this Agreement from time to time by providing written notice to Client; provided, however, that if Client objects to any such amendment or modification, it may exercise its termination rights under this Agreement. Any handwritten changes, markings, or other alterations to this Agreement as initially provided to Client will be binding upon Ascensus only if initialed by a duly authorized officer of Ascensus.
- 6.07 Waiver** – In the event any provision of this Agreement is not enforceable in any jurisdiction, the remainder of this Agreement will not be affected thereby.
- 6.08 Applicable Law and Venue** – The validity, construction and interpretation of this Agreement will be governed by the laws of the State of New York, without regard to New York’s conflicts of laws principles. The State of New York will have exclusive jurisdiction and venue over any claim or other action pertaining to or arising out of this Agreement.
- 6.09 Time Limit for Bringing Claim or Action** – Any claim made or action brought under this Agreement must be commenced within 24 months after the act which caused the error or inaccuracy occurred. If this time limitation is prohibited by New York law, the 24 month period will be deemed amended to conform with the minimum period permitted by New York law.
- 6.10 Authority of Client** – Client warrants it is legally authorized to enter into this Agreement on behalf of the Plan.
- 6.11 Entire Agreement** – This Agreement supersedes all prior agreements and understandings, whether written, electronic or oral, between the parties with respect to the subject matter of this Agreement, and this Agreement constitutes the entire agreement between the parties with respect to its subject matter.
- 6.12 Successors and Assigns** – Client may not assign its rights or delegate its duties under this Agreement without Ascensus’ prior written consent. This Agreement will be binding upon each party’s successors and permitted assigns.
- 6.13 Third Party Providers** –
- (a) Ascensus may make available to Client certain optional services provided by various third parties that are not affiliated with Ascensus (collectively, the “Third Party Providers”). Ascensus makes no representations or warranties with respect to any Third Party Provider, and Ascensus will have no liability related to any Third Party Provider or services provided by any Third Party Provider.
- (b) **Third Party Information** – Certain of the information provided to Client or used to perform the Services: (1) may not be copied or distributed; and (2) is not warranted to be accurate, complete, or timely.
- 7. RESPONSIBLE PLAN FIDUCIARY REPRESENTATION.** Client represents and warrants that reasonably in advance of the execution of this Agreement by Client, a responsible Plan fiduciary has: (a) received fee disclosures and reviewed information with respect to the services and fees of Ascensus and its affiliates; (b) determined that the services and fees of Ascensus and its affiliates, as well as the terms and condition of this Agreement and any other agreements with Ascensus or its affiliates, are reasonable and prudent; and (c) determined that the entering into of this Agreement and any other agreements with Ascensus or its affiliates does not result in a prohibited transaction under ERISA or other violation of applicable law.
- 8. INDEPENDENT FIDUCIARY CONFIRMATION.** Client represents and warrants that Client, and/or one or more of its officers, directors, shareholders, employees, parents, subsidiaries, affiliates, agents, or Client’s financial advisor or broker of record is (x) an independent fiduciary with financial expertise (as defined in 29 CFR 2510.3-21) with respect to the Plan; (y) responsible for exercising independent judgment with respect to the transactions contemplated by this Agreement; and (z) capable of evaluating investment risk independently, both in general and with regard to particular transactions and investment strategies. Client acknowledges that Ascensus (i) does not intend to be a fiduciary under either section 3(21) of ERISA or section 4975 of the Internal Revenue Code; (ii) is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity; and (iii) does not receive any compensation for providing investment advice. Ascensus will rely on the representations and warranties in this paragraph in treating Client, and/or one or more of its officers, directors, shareholders, employees, parents, subsidiaries, affiliates, agents, or Client’s financial advisor or broker of record as an independent fiduciary with financial expertise to the Plan until such time as the Client provides Ascensus with written notice that such representations and warranties are no longer true and accurate. The terms of this Section 8 shall apply in accordance with 29 CFR 2510.3-21, as amended, and will remain in effect so long as the operative provisions of 29 CFR 2510.3-21 are not materially modified, rescinded, revoked, delayed or otherwise superseded by law or regulation.

9. SIGNATURES

Name of Employer _____
Name of Employer ("Client") _____

Client

Ascensus, LLC

By _____
Client Signature

By  _____
Ascensus Signature

Name _____

Name Steve Christenson

Title _____

Title Executive Vice President

Date _____

NOTE: Any forms or agreements returned with electronic signatures (outside of the forms completed and signed through the Ascensus website) will be rejected.

Schedule A – Document Services

1. Ascensus' current pre-approved plan document and applicable IRS opinion letter.
2. Completion of plan document based upon Client's specifications/elections.
3. Summary Plan Description (SPD).
4. Legislative/Regulatory required amendments including full document restatements, when applicable, are included in the Annual Service Fee. Such amendments may be accompanied by either an updated SPD or a Summary of Material Modifications (SMM) at Ascensus' discretion.
5. Optional amendments, excluding legislative/regulatory amendments, will be provided for an additional charge at the then current Optional Amendment Fee. Client is allowed two rounds of changes per amendment event at no charge. Requests for a third or more set of document changes to drafts of the amendment will be provided for an additional charge at the then current Optional Amendment Fee. Fees will be due to Ascensus upon completion and delivery of the amendment to the Client. Amendments may be accompanied by either an updated SPD or an SMM at Ascensus' discretion.
6. Plan Termination amendment template for Client completion (upon request).
7. Additional services may be provided on a fee for service basis (upon request).

Schedule B – Roles and Responsibilities

TASKS	Client	Ascensus
Ascensus' pre-approved defined contribution plan, an Adoption Agreement, Trust or Custodial Agreement (as applicable), and a Summary Plan Description (SPD) prepared in accordance with Client's direction and elections.		✓
Provide clear plan design directions in the format requested by Ascensus.	✓	
Set forth all benefits, rights, and features of the pre-existing plan <i>(if applicable)</i> .	✓	
Ensure all optional forms of benefit and protected benefits are addressed in the plan document, where appropriate, and tracked as necessary.	✓	
Timely execute all documents in accordance with IRS and DOL rules and requirements.	✓	
Obtain necessary legal and tax advice on any legal and tax ramifications affecting its Plan.	✓	
Timely distribute SPDs and/or Summary of Material Modifications (SMMs) to all eligible employees.	✓	
Provide all Legislative/Regulatory required plan document amendments to Client.		✓
File IRS Form 5500, IRS Form 1099-R, compliance testing, or other qualified retirement plan recordkeeping.	✓	
Notify Ascensus of email, address, financial advisor, and account number changes.	✓	
Notify Ascensus of termination of these document services or plan termination at least 60 days before the end of the current calendar year to avoid subsequent annual service fees.	✓	
Provide plan termination amendment upon Client's written request.		✓
Provide Beneficiary Forms to all eligible employees.	✓	

Schedule C – Fees

- 1. Enrollment Fee** \$225 to be paid as a one-time fee in the year the pre-approved plan document services are established (*fee is not prorated*).
- 2. Annual Service Fee** \$225 to be paid prospectively on an annual, calendar-year basis in January, beginning the calendar-year after pre-approved plan document services are established (*fee is not prorated*).
- 3. Optional Amendment Fee** \$35 per amendment to be paid upon Ascensus receiving the request as a one-time fee as outlined in Schedule A of this Agreement.