

## THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

This agreement and the policies referred to herein contain the terms and conditions that apply to your access and use of the services offered by Pendragon Software Corporation (“Company”) through its Internet Web site located at <http://www.pendragonforms.com> (also referred to herein as Company’s web site) and Company’s mobile applications. Such Services, Company’s web site and mobile applications together are hereinafter collectively referred to as the “Services.”

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY ORDERING SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. This Agreement was last updated on January 1, 2016. It is effective between You and Us as of the date of You accepting this Agreement.

### **1. DEFINITIONS**

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Master Subscription Agreement.

“Beta Services” means Our services that are not generally available to customers.

“Content,” “User Generated Content” and “UGC” means all content, music, audio, video, audio-visual, text, graphics, artwork, images, photographs, animations, data, information, software, designs, and other materials and information You put into the Services.

“Documentation” means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via [www.pendragonforms.com](http://www.pendragonforms.com) or login to the applicable Service.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses.

"Non-Pendragon Applications" means any software code or scripts developed by or for You by someone other than Company that interoperates with a Services.

"Order Form" means a document used to purchase Services under this Agreement, including any addenda and supplements thereto if the Services are not purchased directly through the web site or application.

"Purchased Services" means Services that You or Your Affiliate purchase, as distinguished from those provided pursuant to a free trial.

"Services" means the products and services that are ordered by You and made available online by Us, including associated offline components, as described in the Documentation.

"Services" exclude UGC and Non-Pendragon Applications.

"User" means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us," "Our" or "Company" means the Pendragon Software Corporation. "You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. "Your Data" means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services, excluding Content and Non-Pendragon Applications.

## 2. FREE TRIAL

2.1 If You register for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

2.2 ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM PROFESSIONAL EDITION TO STANDARD EDITION); THEREFORE, IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA MAY BE PERMANENTLY LOST.

NOTWITHSTANDING SECTION 8 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

Please review the User Guide during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

### **3. OUR RESPONSIBILITIES**

3.1 Description of the Services. Company provides users with access to a collection of software tools and resources, including various communications tools, forums, search services, personalized content and user-generated content including but not limited to user’s uploaded data which may be accessed through any medium or device now known or hereafter developed (the “Service”). You acknowledge and agree that the Services may include certain communications from Company, such as service announcements and administrative messages and, that these communications are considered part of your membership and you will not be able to opt out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the current Services, shall be subject to the Agreement. You are responsible for obtaining access to the Services, and that access may involve third-party fees (such as Internet service provider or airtime charges). You are responsible for those fees, including those fees associated with the display or delivery of advertisements. In addition, you must provide and are responsible for all equipment necessary to access the Service.

3.2 Maintenance of Purchased Services. Company reserves the right to conduct support and maintenance on the Services at any time but shall endeavor to perform scheduled maintenance between 5:00 p.m. Friday and 9:00 a.m. Central Standard Time). Company shall have no liability for and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-Pendragon Application, or denial of service attack.

3.3 Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

3.4 Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.5 Beta Services. From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not “Services” under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may

discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

#### **4. USE OF SERVICES AND CONTENT**

4.1 Subscriptions. Unless otherwise provided in a separate written agreement, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 License & Access. Provided that you are in compliance with this Agreement, Company grants You a limited, revocable, royalty-free, non-assignable, non-sublicensable license to access and make personal use of the Services and not to download (other than page caching) or modify the Services, except as permitted herein. This license does not include any resale or commercial use of the Services; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools. The Services enable scripting of software code to perform calculations, control validation of data, control navigation, synchronize data into third-party databases and compatibility with some third party devices (“Scripting”).

4.3 Usage Limits. Use of the Services is subject to usage limits, including, for example, the number of licensed users permitted, the volume and frequency of data processed. Unless otherwise specified, a license is for a set number of Users, and the Services may not be accessed by more than that number of Users, (b) a User’s password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will be charged additional fees for excess usage and Company reserves the right to adjust the parameters of your access and use of the Services if necessary to protect the integrity and continued operation of the Services.

4.4 Your Responsibilities. You will (a) be responsible for Users’ compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, and (d) use Services and Content only in accordance with the Documentation and applicable laws and government regulations.

4.5 Usage Restrictions. You will not (a) make any Services available to, or use any Services for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent, or lease any Services, or include any Services in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Services or third-party data contained therein, (f) attempt to gain unauthorized access to any Services or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any

part of any Services, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (j) access any Services in order to build a competitive product or service, or (k) reverse engineer, decompile, de-obfuscate or disassemble any Services or Server.

## **5. FEES AND PAYMENT FOR PURCHASED SERVICES**

5.1 Fees. You will pay all fees for subscriptions for Services set forth on the applicable Order Form. Except as otherwise specified herein, (i) fees are based on Services purchased and not actual usage, unless overage fees are incurred, (ii) payment obligations are non-cancelable (except as set forth in an Order Form) and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

5.2 Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. All terms for price, duration, cancellation/termination and payment are set forth in the applicable Order Form. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services for the initial subscription term and any renewal subscription term(s) as set forth in Section 11. Such charges shall be made in advance, either monthly or in accordance with any different billing frequency agreed to in writing, in advance. Fees are due in advance for each subscription month and shall be charged automatically on each monthly renewal date, unless this Agreement is terminated in accordance with its terms. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3 Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, (b) We may condition future subscription renewals on payment terms shorter than those specified, in addition to payment of all fees and costs associated with collecting any amount due, and (c) We reserve the right to suspend Services until any unpaid amount is paid in full.

5.4 Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend providing the Services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You. We will not charge late fees or suspend Services if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.5 Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For

clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## **6. PROPRIETARY RIGHTS AND LICENSES**

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all right, title and interest in and to the Services, including all related copyrights, patents, trademarks, trade secrets, rights of attribution or similar industrial property or proprietary rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2 License by You to Host Your Data and Applications. You grant Us and Our Affiliates a worldwide, limited license to store, copy, transmit and display Your Data, and Scripting program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data.

6.3 License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free, assignable and sublicensable license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

6.4 Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **7. CONFIDENTIALITY**

7.1 Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services. Confidential Information of each party includes the terms and conditions of this Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section.

7.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. REPRESENTATIONS, WARRANTIES, REMEDIES, DISCLAIMERS**

8.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 Our Warranties. We warrant that this Agreement and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data.

8.3 Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. USE OF THE SERVICE IS AT YOUR OWN AND SOLE RISK. OUR SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

WE DO NOT WARRANT THAT: (A) OUR SERVICE WILL MEET YOUR REQUIREMENTS; (B) OUR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C)

ANY INFORMATION THAT YOU MAY OBTAIN ON OUR SERVICE WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH OUR SERVICE WILL MEET YOUR EXPECTATIONS; OR (E) ANY ERRORS IN ANY DATA OR SOFTWARE WILL BE CORRECTED. WE ARE NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY TELEPHONE NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS, PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF COMMUNICATION ON ACCOUNT OF TECHNICAL PROBLEMS, OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE OR COMBINATION THEREOF, INCLUDING INJURY OR DAMAGE TO USERS OR TO ANY OTHER PERSON'S COMPUTER RELATED TO OR RESULTING FROM PARTICIPATING OR DOWNLOADING MATERIALS IN CONNECTION WITH THE WEB OR IN CONNECTION WITH THE SERVICE. UNDER NO CIRCUMSTANCES WILL WE OR ANY OF OUR AFFILIATES, ADVERTISERS, PROMOTERS, OR DISTRIBUTION PARTNERS BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, INCLUDING PERSONAL INJURY OR DEATH, RESULTING FROM ANYONE'S USE OF THE SERVICE. NO DATA, INFORMATION OR ADVICE OBTAINED BY YOU IN ORAL OR WRITTEN FORM FROM US OR THROUGH OR FROM OUR SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

## **9. MUTUAL INDEMNIFICATION**

9.1 Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a the Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Scripting created or used by You or Your breach of this Agreement.

9.2 Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Services in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.



9.3 Exclusive Remedy. This Section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## **10. LIMITATION OF LIABILITY**

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE ONE (1) MONTH PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, COSTS OF SUBSTITUTE SERVICES OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. YOU HEREBY AGREE TO RELEASE COMPANY ITS LICENSORS, ITS AFFILIATES AND THIRD-PARTY SERVICE PROVIDERS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF THE SERVICES.

## **11. TERM AND TERMINATION**

11.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated. Each subscription is for a one (1) month period and subscriptions will automatically renew for additional equal periods, unless either party gives the other notice of non-renewal at least 15 days before the end of the relevant subscription term. The per unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 15 days before the end of that term, in which case the pricing increase will be effective upon renewal and thereafter. Any such pricing increase will not exceed 25% of the pricing for the applicable Purchased Services in the immediately prior subscription term, unless the pricing in the prior term was designated as promotional or one-time.

11.2 Termination A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.3 Refund or Payment upon Termination. If you terminated this Agreement for Our material uncured breach, We will refund You any prepaid fees covering the remainder of the term after the effective date of termination. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

11.4 Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will assist with downloading Your Data at our customary hourly rates. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

11.5 Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

## **12. GOVERNING LAW AND VENUE**

12.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to choice or conflicts of law rules. You agree that any action at law or in equity arising out of or relating to this Agreement shall be litigated only in the state or federal courts located in the State of Illinois and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. The parties hereby irrevocably consent to service of process in connection with any controversy by the mailing thereof by registered mail or certified mail, postage prepaid to the respective parties at their respective addresses set forth in or designated pursuant to this Agreement.

12.2 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You. We can be contacted at: Pendragon Software Corporation, 118 S Clinton St. Chicago, IL 60661 or call 847-816-9660.

## **13. GENERAL PROVISIONS**

13.1 No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other Pendragon company. Subject to any permitted Assignment under Section

14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

13.2 Redistribution. You may freely distribute any .PFF files (Form designs) created with the Software without penalty. You are granted a non-exclusive, royalty free license to distribute applications based on sample code that we provide in documentation, web sites, or as part of support provided that you agree (i) to indemnify, hold harmless, and defend Company from any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of your software product, (ii) to not permit further redistribution of the sample code by your end user, and (iii) to not use Company's name, logo or trademarks to market such software application product.

13.3 Export Compliance. The Software supplied hereunder is subject to all pertinent import and export laws of the United States, including specifically the U.S. Export Administration Regulations ("EAR") and the laws of the country in which Licensee obtained them. Licensee agrees that it will be solely responsible for compliance with all such laws. In particular, Licensee agrees that it will not export, re-export, or transfer, directly or indirectly, to any person, firm or country on the Denied Persons List, Entity List, Debarred Parties or Specially Designated Nationals lists or to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria or any other country or entity designated by the U.S. Government as prohibited by U.S. law, or nationals thereof, and that it is not located in such a country or on such a list. Licensee agrees to be bound by any future modifications of the foregoing list of restricted destinations by amendments to the EAR or other U.S. government regulations. These requirements shall survive the term or termination of the Agreement.

13.4 Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legalcompliance@pendragonforms.com](mailto:legalcompliance@pendragonforms.com).

13.5 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that, to the extent of a conflict between a price, duration, cancellation/termination and/or payment term stated in the Order Form, and any term or condition stated in this Agreement, the term in the Order Form supersedes the conflicting term(s).

13.6 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the

term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.7 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.8 Third-Party Beneficiaries. There are no other third-party beneficiaries under this Agreement.

13.9 Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

13.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.