

# Terms of Service

*Last Updated May 22, 2018*

The Terms of Service Agreement (this "Agreement") contains the terms and conditions that govern your access to and use of this Web Site and our Service Offerings (as defined below) and is an agreement between Pantheon Systems, Inc. ("Pantheon," "we," "us," or "our") and you. This Agreement takes effect when you click an "I Accept" button or check box presented with these terms or, if earlier, when you use any of the Service Offerings (the "Effective Date"). You represent to us that you (a) have read, understand, and agree to be bound by this Agreement; (b) are lawfully able to enter into contracts (e.g., you are not a minor). If you are using the Service Offerings on behalf of an entity, you are agreeing to this Agreement for that entity and representing to Pantheon that you have the authority to bind that entity to this Agreement (in which case "you" and "Subscriber" will refer to that entity, and, together with other users of the Web Site, "Subscribers"), unless that entity has a separate contract in effect with us, in which event the terms of that contract will govern use by the entity. If you do not agree to be bound by this agreement, you may not access or use this Web Site or the Service Offerings.

Your use of, and participation in, certain services offered by Pantheon may be subject to additional terms ("Supplemental Terms"), and such Supplemental Terms will either be listed in the Agreement or will be presented to you for your acceptance when you sign up to use the supplemental service. If the Agreement is inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such service. This Agreement and any applicable Supplement Terms are referred to herein as the "Agreement."

This agreement limits the remedies that may be available to you in the event of a dispute.

Please note that this Agreement is subject to change by Pantheon in its sole discretion at any time. When changes are made, Pantheon will make a new copy of this Agreement available at its Web Site. We will also update the "Last Updated" date at the top of this Agreement. If we make any material changes, and you have created an account with us, we will also either send an e-mail to you at the last e-mail address you provided pursuant to this Agreement or post the updated Agreement on the UI (defined below). Any changes to the Agreement will be effective immediately for new users of the Web Site and/or Service Offerings and will be effective thirty (30) days after posting notice of such changes on the Web Site for existing Subscribers, provided that any material changes shall be effective for Subscribers who have an account with us upon the earlier of thirty (30) days after posting notice of such changes on the Web Site or thirty (30) days after dispatch of an e-mail notice of such changes to such Subscribers. Pantheon may require you to provide consent to the updated Agreement in a specified manner before use of the Web Site or the Service Offerings is permitted. If you do not agree to any change(s) after receiving notice of such change(s), you shall stop using the Web Site and the Service Offerings. Otherwise, your continued use of the Web Site and/or the Service Offerings constitutes your acceptance of such change(s).

Capitalized terms used in this Agreement shall have the meaning set forth in Section 17 or as otherwise defined within

the Agreement.

## 1. USE OF THE SERVICE OFFERINGS

**1.1 Service Offerings.** Pantheon provides (a) free hosting, tools and support and paid hosting, tools, and support for operators of sites (“Subscribers”) and (b) gives certain entities the right to resell hosting. This Agreement sets forth the terms pursuant to which Subscribers may access and use Pantheon’s Service Offerings.

Subject to the terms and conditions of this Agreement, Pantheon will provide the Service Offerings that you select, solely for your own use, and not for the use or benefit of any third party (other than as provided under Section 2 (Resale of Subscription Plans). Service Offerings shall include, but not be limited to, any Services Pantheon performs for Subscriber, as well as the offering of any Subscriber Content on the UI.

**1.2 Access to Service Offerings.** Pantheon will use reasonable efforts to ensure that the Subscription Plans and Software Tools are available twenty-four hours a day, seven days a week. However, there will be occasions when the Subscription Plans, Software Tools, and/or the Web Site will be interrupted for maintenance, upgrades and repairs or due to failure of telecommunications links and equipment. Pantheon will take reasonable steps to minimize such disruption where it is within Pantheon’s reasonable control. You agree that Pantheon will not be liable in any event to you or any other party for any suspension, modification, discontinuance or lack of availability of the UI, the Service Offerings, Subscriber Content or Third Party Content. You are responsible for obtaining, maintaining and ensuring compatibility of any equipment or ancillary services needed to connect to, access the UI or otherwise use the Service Offerings, including without limitation, hardware, software, routers, wireless, networking devices, firewalls, modems, broadband service, and long distance or local telephone service. Pantheon may change, suspend or discontinue the Service Offerings at any time, including the availability of any feature, database, or UI. Pantheon may also impose limits on certain features and services or restrict your access to parts or all of the Service Offerings without notice or liability. Pantheon retains the right to create limits on use and storage in its sole discretion at any time with or without notice.

**1.3 Subscribers Registration.** Subscriber will be required to register with Pantheon and select a password and Pantheon URL by providing Pantheon with accurate, complete, and updated registration information, including Subscriber’s e-mail address. Failure to do so shall constitute a material breach of this Agreement. Subscriber may not use as a Pantheon URL a name that is subject to any third-party rights without appropriate authorization. Pantheon reserves the right to refuse registration of, or cancel, a Pantheon URL in its discretion. Subscriber is solely responsible for any use of or action taken under Subscriber’s password and accepts full responsibility for all activity conducted through Subscriber’s account and hereby releases Pantheon from any and all liability concerning such activity. Subscriber shall notify Pantheon immediately of any actual or suspected loss, theft, or unauthorized use of Subscriber’s account or password.

**1.4 Restrictions.** Except as expressly authorized pursuant to this Agreement, including Section 2 (Resale of Subscription Plans), Subscribers and each End User may not and may not permit others to: (a) sell, rent, lease, license, sublicense, or assign the Service Offerings, or any part thereof to others without Pantheon’s prior written permission; (b) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas; (c) transfer the Service Offering, in whole or in part, or any copy thereof to another party, unless you receive written permission from an authorized agent of Pantheon; (d) reverse engineer, decompile, disassemble, or otherwise derive the source code from the Software Tools or Service Offerings, or any part thereof, without Pantheon’s prior written permission; (e) copy, modify

or prepare derivative works of the Service Offerings, or any part thereof; (f) provide or permit access to the Service Offerings or any part thereof except for the sole use of End User; (g) copy, distribute or otherwise use the Service Offerings or any part thereof in any manner which competes with or substitutes for Pantheon's distribution of the Service Offerings; (h) use the Service Offerings to send unsolicited e-mails, bulk mail, spam or other materials to users of the UI or any other individual; (i) use the Service Offerings in any libelous, defamatory, abusive, threatening, harassing, hateful, offensive, or manner that otherwise violates this Agreement, any law, or right of any third party, (j) use the Service Offerings in High Risk Activities or Other Prohibited Activities; (k) attempt to breach Pantheon's security or authentication measures, whether by passive or intrusive techniques; (l) perform or publish any performance or benchmark tests or analyses relating to the Service Offerings, or the use thereof; or (m) cover or obscure any page or part of the Service Offerings via HTML, CSS, scripting, or any other means.

Except as expressly set forth herein, no express or implied license or right of any kind is granted to Subscriber regarding the Service Offerings, or any part thereof. All licenses and other rights, if any, granted to you in this Agreement are conditional on your continued compliance with this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the term of this Agreement, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against Pantheon or Pantheon's customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings you or any other authorized users have used on your behalf. Subscriber shall abide by all copyright notices, information, and restrictions contained in any UI accessed through the Service Offerings. The parties acknowledge that any actual or threatened breach of this Section 1.4 (Restrictions) will constitute immediate, irreparable harm to Pantheon for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Section 1.4, Pantheon will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**1.5 Compliance.** Subscriber shall comply with the laws of all countries where it operates. Subscriber is solely responsible for the subject matter and nature of the Subscriber Content. Subscriber shall be responsible for ensuring that its use of the Service Offerings, and that any processing of Subscriber Content by Pantheon or Subscriber via the Service Offerings, do not violate any applicable laws or regulations. Subscriber shall provide all notices to, and obtain and maintain any consents from, any individual data subject as required by any applicable law or regulation in connection with the processing of any personally identifiable information and/or personal data of such individual data subjects via the Service Offerings by Pantheon and/or Subscriber. Subscriber shall not process or submit to the Service Offerings any Subscriber Content that includes any personally identifiable information and/or personal data of any individual data subject consisting of: (i) "personal health information," as defined under the United States' Health Insurance Portability and Accountability Act; (ii) government-issued identification numbers, including Social Security numbers, driver's license numbers and other state-issued identification numbers; (iii) financial account information, including bank account numbers, and primary account numbers; (iv) payment card data, including credit card or debit card numbers; or (v) "sensitive personal data" or "special categories of personal data," consisting of racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation.

Pantheon reserves the right to remove any Subscriber Content from the UI, suspend or terminate Subscriber's right to use the Service Offerings at any time, or pursue any other remedy or relief available to Pantheon under equity or law, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Subscriber Content or if Pantheon is concerned that Subscriber may have breached the immediately preceding sentence), or for no reason at all.

## **1.6 Privacy.**

The parties agree to comply with Pantheon's privacy policy ("**Privacy Policy**") set forth at <https://www.pantheon.io/privacy>, as modified from time to time.

## **2. RESALE OF SUBSCRIPTION PLANS**

**2.1 Agencies.** Certain Subscribers may either only build websites for third parties or build websites for third parties in addition to their own websites. Such Subscribers are defined as "Agencies" hereunder. Only entities that are direct signatories to this Agreement with Pantheon may be Agencies. Agencies that purchase Subscription Plans for the websites they develop may resell the Subscription Plans provided by Pantheon to their third party customers (each, a "Client"). From time to time, Pantheon may opt to exclude certain offerings from those that may be resold.

**2.2 Resale.** Agencies may resell Subscription Plans to the Clients that will be operating their own websites, provided that and for so long as (a) Subscriber pays Pantheon its then current fee for each such Subscription Plan and any renewal thereof; (b) Agency obtains the Client's agreement to be bound by the obligations imposed on Subscribers pursuant to this Agreement (the "Pass Through Terms"), such Clients then also become Subscribers under this Agreement, and (c) Pantheon is made a third party beneficiary of the Pass Through Terms. Pricing, billing, support, and all other terms and conditions are solely between you and your Client, and your agreement with your Client will include language that specifically exempts third parties, including Pantheon, from any liability (the "Agency Reseller Agreement"). You shall promptly notify Pantheon of any violations of this Agreement or the Agency Reseller Agreement by any Clients.

**2.3 Your Failure to Pay for Clients.** Pantheon reserves the right to terminate the Subscription Plans, or any renewal thereof, provided by Pantheon to you or that you resold to a Client, in the event that you fail to pay the applicable fees for such Subscription Plan within ten (10) days after such payment becomes due hereunder.

**2.4 Client Violations.** You are responsible for your Clients' use of Subscriber Content and the Subscription Plan. You will ensure that all Clients comply with the Pass Through Terms and that the terms of your Agency Reseller Agreement with each Client are consistent with this Agreement. If you become aware of any violation of the Pass Through Terms by a Client, you will immediately terminate such Client's access to the Subscription Plan.

**2.5 No Warranties.** You may not make any representations or warranties regarding the functionality or performance of the Service Offerings that exceed the terms set forth in this Agreement, and you agree to indemnify and hold Pantheon harmless pursuant to the terms of Section 8 for any claims or lawsuits resulting from such action.

**2.6 Access to Usernames and Passwords.** You agree that you will not disclose user names or passwords to unauthorized users.

**2.7 Audit.** You will maintain accurate records relating to resales of the Subscription Plans during the Term of this Agreement and for three (3) years after the expiration or termination of this Agreement. Pantheon, or persons designated by Pantheon, will, at any time during such period, be entitled to audit such records during normal business hours and on reasonable prior notice, in order to verify Subscribers' compliance with the terms of this Section 2.

**2.8 Marks.** Pantheon hereby grants to you a limited, non-transferable, royalty-free license to use its trademarks and logos

("Marks") solely in connection with the fulfillment of your resale rights under this Agreement, and at all times subject to Pantheon's specifications as set forth at <https://pantheon.io/pantheon-trademark-standards-use> and the terms and conditions of this Agreement. You acknowledge and agree that Pantheon holds all right, title and ownership in and to the Pantheon Marks and the goodwill pertaining thereto.

### 3. SUPPORT

#### 3.1 Support Description:

Pantheon's description of available support services ("Support") is made available at <https://pantheon.io/docs/getting-support>. Your selection of Support to be performed and associated fees will be set forth on the Web Site. Pantheon will make reasonable efforts to provide the Support described in the applicable then-current support description posted on Pantheon's support web site (each, a "Support Description"). Pantheon may change a Support Description at any time by posting a new Support Description on its support web site. This Agreement only covers Support described in the Support Description. No other support will be provided under this Agreement.

**3.2 Technical Assistance.** Pantheon will make reasonable efforts to provide customer with the technical assistance described in the applicable Support Description; support does not include on-site assistance. Response targets identified in a Support Description for response times are only targets and are not binding on Pantheon.

### 4. DATA PROCESSING UNDER GENERAL DATA PROTECTION REGULATION.

This Section 4 Data Processing Under General Data Protection Regulation will apply only with respect to obligations of the parties under the Applicable Data Protection Law (as defined below). In the course of performing its obligations to Subscriber pursuant to this Agreement, including providing Service Offerings, Pantheon will provide content hosting services for the duration of this Agreement, and may process personal data which is protected under Applicable Data Protection Law (as defined below), on behalf of Subscriber. Subscriber is responsible for the nature of any personal data contained in the Subscriber Content, and for obtaining consent from data subjects. The parties agree to comply with the following provisions with respect to any such personal data, each acting reasonably and in good faith:

**4.1 Definitions applicable to this Section 4.** The terms "**controller**", "**processor**", "**data subject**", "**personal data**", "**processing**" (and "**process**") and "**special categories of personal data**" shall have the meanings given in Applicable Data Protection Law.

**4.2 Relationship of the parties.** Subject to the provisions of this Agreement, including Section 1.4 (Restrictions), Subscriber (the controller) appoints Pantheon as a processor to process the personal data contained in the Subscriber Content and personal data otherwise provided to Pantheon pursuant to the Agreement for the purposes described in this Agreement (or as otherwise agreed in writing by the parties) (the "Permitted Purpose"). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law. If Pantheon becomes aware that processing for the Permitted Purpose infringes Applicable Data Protection Law, it shall promptly inform Subscriber. For the avoidance of doubt, Subscriber's instructions for the processing of personal data shall comply with Applicable Data Protection Laws and Regulations. Subscriber shall have sole responsibility for the accuracy, quality, and legality of personal data, and the means by which Subscriber acquired personal data.

**4.3 International Transfers.** Pantheon shall not transfer the personal data outside of the European Economic Area ("EEA") unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the personal data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient in the United States of America that maintains a valid and up-to-date EU-US Privacy Shield certification, to a recipient that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.

**4.4 Confidentiality of processing.** Pantheon shall ensure that any person it authorizes to process the personal data (an "Authorized Person") shall protect the Data in accordance with Pantheon's confidentiality obligations under this Agreement.

**4.5 Security.** Pantheon shall implement technical and organizational measures to protect the personal data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorized disclosure of, or access to the personal data (a "Security Incident").

**4.6 Subcontracting.** Subscriber consents to Pantheon engaging third party subprocessors to process the personal data for the Permitted Purpose provided that: (i) Pantheon maintains an up-to-date list of its subprocessors and will make that list available to Subscriber upon request or by posting such list to Pantheon's website; (ii) Pantheon imposes data protection terms on any subprocessor it appoints that require it to protect the personal data to the standard required by Applicable Data Protection Law; and (iii) Pantheon remains liable for any breach of this clause that is caused by an act, error or omission of its subprocessor. Subscriber may object to Pantheon's appointment or replacement of a subprocessor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Pantheon will either not appoint or replace the subprocessor or, if this is not possible, Subscriber may suspend or terminate Agreement (without prejudice to any fees incurred by Subscriber prior to suspension or termination).

**4.7 Cooperation and data subjects' rights.** Pantheon shall provide reasonable and timely assistance to Subscriber (at Subscriber's expense) to enable Subscriber to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, inquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the personal data. In the event that any such request, correspondence, inquiry or complaint is made directly to Pantheon, Pantheon shall promptly inform Subscriber providing full details of the same.

**4.8 Data Protection Impact Assessment.** Pantheon shall provide reasonable cooperation to Subscriber (at Subscriber's expense) in connection with any data protection impact assessment that Subscriber may be required under Applicable Data Protection Law.

**4.9 Security Incidents.** If it becomes aware of a confirmed Security Incident, Pantheon shall inform Subscriber without undue delay and shall provide reasonable information and cooperation to Subscriber so that Subscriber can fulfill any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Pantheon shall further take such any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and shall keep Subscriber informed of all material developments in connection with the Security Incident.

**4.10 Deletion or return of Data.** Upon termination or expiration of the Agreement, Pantheon shall destroy all personal data in its possession or control according to the provisions for Subscriber Content set forth in Section 10.

**4.11 Audit.** Subscriber acknowledges that Pantheon is regularly audited against standards by independent third party auditors. Upon request, Pantheon shall supply a summary copy of its audit report(s) to Subscriber, which shall be subject to the confidentiality provisions of Agreement.

## **5. PROPRIETARY RIGHTS;**

**5.1 Intellectual Property Rights.** As between you and us, Pantheon or our licensors own and reserve all right, title, and interest in and to the Subscription Plans and Software Tools, in whole and in part, and all derivative works thereof. The UI is protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions, and other copyright laws. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Subscriber regarding the Service Offerings, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Service Offerings. All rights not expressly granted to Subscriber are reserved to Pantheon.

**5.2 License.** Subject to the terms and conditions of this Agreement, Pantheon grants you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the Term: (i) access and use the Subscription Plans and Software Tools solely in accordance with this Agreement; and (ii) use the UI solely in connection with your permitted use of the Service Offerings. The Service Offerings may contain open source software components which are licensed under the terms of the applicable open source software licenses and not this Agreement.

**5.3 Retention of Rights in Downloaded UI.** Subscriber may download or copy the UI, and other items displayed on the UI for download, for personal use only, provided that Subscriber maintains all copyright and other notices contained in such UI. In the event you download Software Tools from the UI, the Software Tools and the UI, including any files, images incorporated in or generated by the Software Tools and the UI, and the data accompanying the Software Tools and the UI is licensed to you by Pantheon or third-party licensors for your personal, noncommercial use, and no title to the Software Tools or the UI shall be transferred to you.

**5.4 Proprietary Rights of Subscriber Content.** Subscriber shall own all Subscriber Content that Subscriber contributes to the UI, but Subscriber hereby grants and agrees to grant Pantheon and its personnel a non-exclusive, worldwide, royalty-free, non-transferable right and license to use, copy, cache, publish, display, distribute, modify, create derivative works and store such Subscriber Content solely in order to provide the Service Offerings. On termination of Subscriber's use of the UI and the Service Offerings, Pantheon shall make all reasonable efforts to promptly remove and cease use of the Subscriber Content; however, Subscriber recognizes and agrees that caching of the Subscriber Content may not be immediately removed. Subscriber warrants and represents that Subscriber has the right to grant Pantheon the rights set forth above and that it will not contribute any Subscriber Content that (a) infringes, violates or otherwise interferes with any copyright or trademark of another party, (b) reveals any trade secret, unless Subscriber owns the trade secret or has the owner's permission to post it, (c) infringes any intellectual property right of another or the privacy or publicity rights of another, (d) is libelous, defamatory, abusive, threatening, harassing, hateful, offensive or otherwise violates this Agreement, any law, or right of any third party, (e) contains any computer programming routine or engine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information, or (f) remains posted after Subscriber has been notified that such Subscriber Content violates any of sections (a) to (e) of this

sentence.

**5.5 Feedback.** If Subscriber provides ideas, suggestions, and/or documents to Pantheon about the Service Offerings (“Feedback”) Pantheon may use that information without obligation to Subscriber (including without limitation obligations of confidentiality), and Subscriber hereby irrevocably grants to Pantheon a fully paid, royalty-free, perpetual, worldwide, non-exclusive and fully sub-licensable right and license to use, reproduce, perform, display, distribute, adapt, modify, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights.

## **6. SUBSCRIBER RESPONSIBILITIES**

**6.1 Security and Backup.** You are solely responsible for the development, content, operation, maintenance, and use of Subscriber Content. For example, you are solely responsible for: (a) the technical operation of Subscriber Content, including ensuring that calls you make to any Service Offering are compatible with then-current APIs for that Service Offering; (b) compliance of Subscriber Content with this Agreement, other policies, and the law; (c) any claims relating to Subscriber Content; and (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Subscriber Content violates such person’s rights, including notices pursuant to the Digital Millennium Copyright Act. You are responsible for properly configuring and using the Service Offerings and taking your own steps to maintain appropriate security, protection and backup of Subscriber Content, which may include the use of encryption technology to protect Subscriber Content from unauthorized access and routine archiving Subscriber Content. Log-in credentials and private keys generated by the Service Offerings are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your personnel performing work on your behalf; provided that you are liable for any violation of this Agreement by such personnel.

**6.2 End User Violations.** You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Subscriber Content or use of the Service Offerings. You are responsible for End Users’ use of Subscriber Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User’s access to Subscriber Content and the Service Offerings.

**6.3 End User Support.** You are responsible for providing customer service (if any) to End Users (other than End Users authorized by us and Subscriber to receive paid support from us) or any Client. Pantheon does not provide any support or services to End Users or Clients unless Pantheon has a separate agreement with you or an End User or Client obligating Pantheon to provide support or services.

**6.4 Restriction on Use of Service Offerings and/or UI.** Subscriber is responsible for all of its activity in connection with the Service Offerings and accessing the UI. Any fraudulent, abusive, or otherwise illegal activity or any use of the Service Offerings or UI in violation of this Agreement shall be a material breach of this Agreement.

## **7. WARRANTY DISCLAIMER**

**7.1 Disclaimer of Warranties.** Pantheon makes no representations concerning any content contained in or accessed through the Service Offerings, and Pantheon will not be responsible or liable for the accuracy, copyright compliance,



legality or decency of material contained in or accessed through the Service Offerings. THE SERVICE OFFERINGS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. Pantheon makes no representations or warranties of any kind with respect to the Service Offerings, including any representation or warranty that the use of them will (a) be timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) meet your requirements or expectations, (c) be free from errors or that defects will be corrected, or (d) be free of viruses or other harmful components. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to Subscriber.

**7.2 Disclaimer of Liability.** To the fullest extent allowed by law, Pantheon disclaims any liability or responsibility for the accuracy, reliability, availability, completeness, legality or operability of the Service Offerings provided under this Agreement. By using the Service Offerings you acknowledge that Pantheon is not responsible or liable for any harm resulting from: (1) use of the UI; (2) downloading information contained on the UI including but not limited to downloads of Third Party Content; (3) unauthorized disclosure of images, information or data that results from the upload, download or storage of Third Party Content; (4) the temporary or permanent inability to access or retrieve any Subscriber Content from the UI, (5) harm caused by viruses, worms, Trojan horses, or any similar contamination or destructive program, or (6) any and all liability for the accessing or theft of any data or data communications by unauthorized persons or entities.

**7.3 Third Party Websites.** Unless explicitly otherwise provided, Pantheon does not make any representation or warranty whatsoever about any third-party site that is linked to the UI, or endorse the products or services offered on such site.

**7.4 Relationship with Subscriber.** Pantheon has no special relationship with or fiduciary duty to you. You acknowledge and agree that Pantheon has no control over, and no duty to take any action regarding: which users gains access to the UI; what effects the UI may have on you; how you may interpret or use the UI; or what actions you may take as a result of having been exposed to the UI. Any portion of the Subscriber Content of the UI that is provided by you is your responsibility and any portion of the Subscriber Content provided by any third party is the responsibility of the third party who posted such Subscriber Content. Pantheon does not monitor the Subscriber Content of the UI and takes no responsibility for such Subscriber Content. You release Pantheon from all liability for Subscriber Content or Third Party Content which you access through the UI.

## **8. INDEMNIFICATION**

**8.1 General.** You will defend, indemnify, and hold us harmless, including our employees, officers, directors, representatives, our licensors and service providers, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim (a "Claim") concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your account and use by your employees, agents, subcontractors, customers and Clients); (b) breach of this Agreement or violation of applicable law by you, any End User, your employees, agents, subcontractors, customers or Clients; (c) Subscriber Content or the combination of Subscriber Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by your Subscriber Content or by the use, development, design, production, advertising or marketing of Subscriber Content; or (d) a dispute between you and any End User, employee, agent, contractor, customer or Client. If you resell the Subscription Plans pursuant to Section 2 (Resale of Subscription Plans), the grounds for indemnification above also

include any Claim brought by your Clients arising out of your resale of the Subscription Plans. If Pantheon is obligated to respond to a third-party subpoena or other compulsory legal order or process described above, you will also reimburse Pantheon for reasonable attorneys' fees, as well as Pantheon's employees' and contractors' time and materials spent responding to the third-party subpoena or other compulsory legal order or process at our then-current hourly rates.

**8.2 Process.** We will promptly notify you of any claim subject to Section 8.1, but our failure to promptly notify you will only affect your obligations under this Section 8 to the extent that our failure prejudices your ability to defend the claim. We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

## **9. LIMITATIONS OF LIABILITY.**

WE AND OUR LICENSORS WILL NOT IN ANY EVENT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR YOUR LOSS OF PROFITS, GOODWILL, USE, OR DATA, EVEN IF WE OR OUR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICE OFFERINGS, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE LAW, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE OFFERINGS FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR SUBSCRIBER CONTENT OR OTHER DATA. IN ANY CASE, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT (INCLUDING ANY LIABILITY INCURRED BY OUR LICENSORS) WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE OFFERING THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **10. SUBSCRIBER CONTENT.**

Although Pantheon will make reasonable efforts to store and preserve the material residing on the UI, Pantheon is not responsible or liable in any way for the failure to store, preserve or access Subscriber Content or other materials you transmit or archive on the UI. Although the Subscription Plans or Software Tools may offer mechanisms for the creation of back-ups of the Subscriber Content, you are solely responsible for creating copies of any data, material, or information transmitted, posted, or uploaded to the Subscription Plans or Software Tools. All Subscriber Content is Subscriber's property and is for Subscriber's exclusive use subject to the license to Pantheon in Section 5.4. In the event of data corruption, hardware failure or other data loss, Pantheon will make reasonable efforts to restore lost or corrupted data

from server backups. Web server raw log files are not included in the backups and cannot be recovered during server restoration. Pantheon shall not be responsible for lost data or site content. Subscriber shall maintain a local copy of all data uploaded or stored on Pantheon servers. PANTHEON SHALL NOT RESTORE SUBSCRIBER CONTENT UPON SUBSCRIBER'S REQUEST. PANTHEON SHALL NOT RETAIN ANY OF SUBSCRIBER'S CONTENT AFTER ACCOUNT TERMINATION. ALL SUBSCRIBER CONTENT IS DELETED (A) FROM THE PLATFORM AT THE TIME THE ACCOUNT IS TERMINATED AND (B) FROM BACK-UPS DURING SCHEDULED BACK UP ROTATION. PANTHEON SHALL NOT RESTORE, "BURN" TO CD, OR SEND OUT ANY SUBSCRIBER CONTENT PERTAINING TO TERMINATED ACCOUNTS. UNDER NO CIRCUMSTANCE SHALL PANTHEON BE LIABLE FOR ANY LOSS OF SUBSCRIBER CONTENT. The requirement to delete Subscriber Content on account termination shall not apply to the extent that Pantheon is required by applicable law to retain some or all of the Subscriber Content, or to Subscriber Content it has archived on back-up systems, in which event Pantheon shall securely isolate and protect from any further processing except to the extent required by such law.

## **11. FEES AND PAYMENTS.**

**11.1 Fees.** Some of the Service Offerings require payment of fees. All fees are stated in U.S. dollars. Subscriber shall pay all applicable fees, as described on the Web Site in connection with such Service Offerings selected by Subscriber, and any related taxes or additional charges. All fees are non-refundable unless expressly stated otherwise on the Web Site. **No credits or refunds of any kind will be given.** Subscriber represents to Pantheon that Subscriber is the authorized account holder or an authorized user of the chosen method of payment used to pay for the paid aspects of the Service Offerings. Pantheon may modify and/or eliminate such fee-based Service Offerings at its discretion. Subscriber understands and agrees that the payment for virtual goods grants Subscriber a limited license to use the virtual goods as specified on the UI. All payments are made without the right of setoff or chargeback. Subscriber will pay interest, at a rate equal to one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever is lower, on any undisputed amount that remains unpaid after it is due. Subscriber will pay directly any taxes arising out of this Agreement or Pantheon's performance under this Agreement, including applicable local, state, federal and international sales taxes, value added taxes, withholding taxes, and any other taxes or duties of any kind, but excluding taxes on Pantheon's net income and all employer reporting and payment obligations with respect to Pantheon's personnel. If any applicable law requires Subscriber to withhold amounts from any payments to Pantheon under this Agreement, (a) Subscriber will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Pantheon with tax receipts evidencing the payments of such amounts and (b) the sum payable by Subscriber upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Pantheon receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Pantheon would have received and retained absent the required deduction or withholding. Pantheon reserves the right to contract with a third party for the purpose of processing payments. Such third party may impose additional terms and conditions governing payment processing.

**11.2 Failure to Pay.** If Subscriber fails to pay fees in accordance with this Agreement, Pantheon may suspend fulfilling its obligations under this Agreement until such payment is received by Pantheon, including, without limitation, terminate the Service Offerings provided by Pantheon pursuant to any Subscription Plan, decrease Service Offerings or features accessible by Subscriber or any Client, restrict access to Subscriber or Client sites, suspend operation of any Subscriber sites or Subscriber's or Clients' access to all or part of the Service Offerings, all without notice or liability.

**11.3 Modification of Fees.** Pantheon may change its prices at any time but will provide you reasonable notice of any such

changes by posting the new prices on the UI with or without notice, or by emailing you notice. If you do not wish to pay the new prices, you may cancel the services prior to the change going into effect.

## **12. TERMINATION.**

**12.1 Term.** The term of this Agreement commences on the date when you accept this Agreement (as described in the preamble above) and remains in full force and effect while you use the UI and the Service Offerings, unless terminated earlier in accordance with this Agreement or any other agreement you may have with Pantheon (the "Term"). The term of any Subscription Plan or Service Offering shall commence on the date when the Subscription Plan or Service Offering commences and remains in full force and effect for the term of the Subscription Plan or Service Offering, unless terminated earlier in accordance with this Agreement.

**12.2 Right to Terminate.** Pantheon may terminate the Service Offerings at any time by notifying Subscriber by any means. Subscriber may terminate a Service Offerings at any time; however, no refunds or credits for any partial period will be issued unless required by law. Pantheon may also terminate or suspend any and all Service Offerings and access to the UI immediately, including any Subscription Plan, at its sole discretion and without prior notice or liability, if you breach any of the terms or conditions of this Agreement. Upon termination of your account or any Subscription Plan or Service Offering, your right to use the Service Offerings, access the UI, and any Subscriber Content or Third Party Content will immediately cease.

**12.3 Obligations after Termination.** Sections 1.4 (Restrictions), 2.4 (Client Violations), 2.7 (Audit), 5.1 (Intellectual Property Rights), 5.5 (Feedback), 6.2 (End User Violations), 7 (Warranty Disclaimer), 8 (Indemnification), 9 (Limitations of Liability), 11 (Fees and Payments), 12.3 (Obligations after Termination), 13 (Confidentiality), 14 (DMCA), 15 (Miscellaneous), 16 (Legal Disputes) and 17 (Terms and Definitions) shall survive termination of this Agreement. Termination of your access to and use of the UI and the Service Offerings, or any Subscription Plan, shall not relieve you of any obligations arising or accruing prior to such termination or limit any liability which you otherwise may have to Pantheon, including without limitation any indemnification obligations contained herein.

## **13. CONFIDENTIALITY.**

Each party expressly recognizes that the Confidential Information of the other party is being disclosed under conditions of confidentiality. Each party shall not disclose Confidential Information to any third party; provided that it may, however, disclose Confidential Information to its employees and agents who need to know Confidential Information in order to assure its compliance with the other terms and conditions of this Agreement. Each party shall liable for all violations of this Section 13 by its personnel. In the event that a party is required to disclose Confidential Information pursuant to any applicable statute, regulation or order of a court of competent jurisdiction, that party may do so provided that it uses commercially reasonable efforts to notify the other party of the required disclosure. Each party will maintain physical, electronic and procedural safeguards reasonably designed to protect the confidentiality and integrity of, and to prevent unauthorized access to or use of, Confidential Information provided by the other party.

## **14. DMCA.**

Pantheon responds to notices of copyright infringement and may, in its discretion, terminate accounts of offenders according to the process set out in the U.S. Digital Millennium Copyright Act (DMCA). If you believe that content residing or accessible on the Service Offerings infringes a copyright, please send a notice of copyright infringement in accordance with the DMCA. The address of Pantheon's designated agent for copyright takedown notices is: Compliance Department, Pantheon Systems, Inc., 717 California Street, Third Floor, San Francisco, CA 94108. You can also contact us at [legal@pantheon.io](mailto:legal@pantheon.io).

## **15. MISCELLANEOUS**

**15.1 Complete Agreement.** This Agreement (including the Privacy Policy, as modified from time to time, and any other legal notices we have published on the Web Site) constitutes the entire agreement between you and Pantheon with respect to the subject matter hereof. This Agreement replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter hereof. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Service Offerings to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected.

**15.2 Export Control and Commercial Software.** Subscriber acknowledges that the Service Offerings are subject to export restrictions by the U.S. government and import restrictions by certain foreign governments. Subscriber may not export or re-export the Service Offerings except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Service Offerings and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Service Offerings and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

**15.3 Enforceability of Agreement.** Subscriber certifies to Pantheon that if Subscriber is an individual (i.e., not a corporate entity), Subscriber is at least 13 years of age. No one under the age of 13 may provide any personal information to Pantheon (including, for example, a name, address, telephone number or e-mail address). Subscriber also certifies that it is legally permitted to use the Service Offerings and access the UI, and takes full responsibility for the selection and use of the Service Offerings and access of the UI. This Agreement is void where prohibited by law, and the right to access the Service Offerings is revoked in such jurisdictions. Pantheon makes no claim that the UI may be lawfully viewed or that Service Offerings may be downloaded outside of the United States. Access to the Service Offerings may not be legal by certain persons or in certain countries. If you access the UI from outside the United States, you do so at your own risk and you are responsible for compliance with the laws of your jurisdiction.

**15.4 No Waiver of Rights.** No provision of this Agreement, unless such provision otherwise provides, will be waived by any act, omission or knowledge of Pantheon or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of Pantheon. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

**15.5 Force Majeure.** Pantheon will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, mechanical, telecommunications, or other utility failures or degradation,

earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**15.6 Severability of Provisions.** If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

**15.7 Assignment and Transferability of Agreement.** This Agreement is not assignable, transferable or sub-licensable by Subscriber except with Pantheon's prior written consent. Pantheon may assign this Agreement in whole or in part at any time without Subscriber's consent.

**15.10 Scope of Agreement.** Subscriber's relationship to Pantheon is that of an independent contractor, and neither party is an agent or partner of the other. You will not have, and will not represent to any third party that you have, any authority to act on behalf of Pantheon and further indemnifies and holds Pantheon harmless for any claims or lawsuits resulting from such action.

**15.11 Notice and Contact Information.** Any notice to Pantheon that is required or permitted by this Agreement shall be in writing and shall be deemed effective upon receipt, when sent by confirmed e-mail to support@pantheon.io or when delivered in person by nationally recognized overnight courier or mailed by first class, registered or certified mail, postage prepaid, to Pantheon Systems, Inc., 717 California Street, Third Floor, San Francisco, CA, 94108. Except as otherwise set forth herein, any notice to you shall be in writing and shall be deemed effective when sent by e-mail to the last e-mail address you provided pursuant to this Agreement.

## **16. Legal Disputes.**

**16.1 PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND PANTHEON HAVE AGAINST EACH OTHER ARE RESOLVED.**

**You and Pantheon agree that any claim or dispute at law or equity that has arisen, or may arise, between you and Pantheon (including any claim or dispute between you and a third-party agent of Pantheon) that relates in any way to or arises out of this or previous versions of this Agreement, your use of or access to the Service Offerings, the actions of Pantheon or its agents, or any products, services or support sold, offered, or purchased from Pantheon will be resolved in accordance with the provisions set forth in this Legal Disputes section.**

### **16.2. Applicable Law.**

You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and Pantheon, except as otherwise stated in this Agreement.

### **16.3. Agreement to Arbitrate**

**You and Pantheon each agree that any and all disputes or claims that have arisen, or may arise, between you and Pantheon (including any disputes or claims between you and a third-party agent of Pantheon) that relate in any way to or arise out of this or previous versions of the Agreement, your use of or access to the Service Offerings, the actions of Pantheon or its agents, or any products, services, or support sold, offered, or purchased from Pantheon shall be**

resolved exclusively through final and binding arbitration, rather than in court. Alternatively, you may assert your claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

#### **Prohibition of Class and Representative Actions and Non-Individualized Relief**

**YOU AND PANTHEON AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. UNLESS BOTH YOU AND PANTHEON AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS, OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.** If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court, subject to your and Pantheon's right to appeal the court's decision. All other claims will be arbitrated.

#### **16.3.2 Arbitration Procedures**

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual. An arbitrator should apply the terms of the Agreement as a court would. All issues are for the arbitrator to decide, except that issues relating to arbitrability, the scope or enforceability of this Agreement to Arbitrate, or the interpretation of Section 16.3.1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), shall be for a court of competent jurisdiction to decide.

The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by this Agreement to Arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org).

A party who intends to seek arbitration must first send to the other, by certified mail, a completed form Notice of Dispute ("Notice"). You may request a Notice by contacting Pantheon. The request for the Notice and the completed Notice to Pantheon should be sent to Pantheon at the address set forth in Section 15.11, Attn: Legal Department, Re: Notice of Dispute. Pantheon will send any Notice to you to the physical address we have on file associated with your Pantheon account; it is your responsibility to keep your physical address up to date. All information called for in the Notice must be provided, including a description of the nature and basis of the claims the party is asserting and the relief sought.

If you and Pantheon are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or Pantheon may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's site at [www.adr.org](http://www.adr.org). In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. You may send a copy to Pantheon at the address set out in Section 15.11 attention Pantheon Legal Department. In the event Pantheon initiates an arbitration

against you, it will send a copy of the completed form to the physical address we have on file associated with your Pantheon account. Any settlement offer made by you or Pantheon shall not be disclosed to the arbitrator.

The arbitration hearing shall be held in the county in which you reside or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or Pantheon may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and Pantheon subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or Pantheon may attend by telephone, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **16.3.3 Costs of Arbitration**

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate.

### **16.3.4 Severability**

With the exception of any of the provisions in Section 16.3.1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply.

Future Amendments to the Agreement to Arbitrate

Notwithstanding any provision in the Agreement to the contrary, you and we agree that if we make any amendment to this Agreement to Arbitrate (other than an amendment to any notice address or site link provided herein) in the future, that amendment shall not apply to any claim that was filed in a legal proceeding against Pantheon prior to the effective date of the amendment. The amendment shall apply to all other disputes or claims governed by the Agreement to Arbitrate that have arisen or may arise between you and Pantheon.

### **16.4. Judicial Forum for Legal Disputes**

Unless you and we agree otherwise, in the event that the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute, as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and Pantheon must be resolved exclusively by a state or federal court located in San Francisco, California. You and Pantheon agree to submit to the personal jurisdiction of the courts located within San Francisco, California for the purpose of litigating all such claims or disputes.

## **17. TERMS AND DEFINITIONS**

**"Agencies"** has the meaning set forth in Section 2.1 (Agencies).

**"Agency Reseller Agreement"** has the meaning set forth in Section 2.2 (Resale).



**"API"** means an application program interface.

**"Applicable Data Protection Law"** shall mean (i) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC); and (ii) on or after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679).

**"Authorized Person"** has the meaning set forth in Section 4.4.

**"Claim"** has the meaning set forth in Section 8.1.

**"Client"** has the meaning set forth in Section 2.1 (Agencies).

**"Confidential Information"** means all nonpublic information disclosed by Pantheon, our business partners or our or their respective employees, contractors or agents, or disclosed by you, that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes: (a) nonpublic information relating to our or our business partners' technology, customers, business plans, promotional and marketing activities, finances, business metrics (e.g., growth rates), business methodologies, our intellectual property, pricing, product roadmaps and other business affairs; (b) third-party information that Pantheon is obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and Pantheon. Notwithstanding the foregoing, Confidential Information does not include Subscriber Content or any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the receiving party at the time of its receipt from the disclosing party; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the receiving party without reference to the Confidential Information.

**"Documentation"** means the user guides and operations manuals provided with the Service Offerings.

**"EEA"** has the meaning set forth in Section 4.3.

**"Effective Date"** has the meaning set forth in the first paragraph of this Agreement.

**"End User"** means any individual or entity that directly or indirectly through another user: (a) accesses or uses your Subscriber Content; or (b) otherwise accesses or uses the Service Offerings under your account.

**"Feedback"** has the meaning set forth in Section 5.5.

**"High Risk Activities"** means uses such as the operation of nuclear facilities, air traffic control, or life support systems, or other uses where the use or failure of the Service Offerings could lead to death, personal injury, or environmental damage.

**"Other Prohibited Activities"** means storing or processing any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State, or using the Service Offerings to operate or enable any telecommunications service or allow Customer End Users to place calls or to receive calls from any public switched

telephone network.

**"Pass Through Terms"** has the meaning set forth in Section 2.2 (Resale).

**"Permitted Purpose"** has the meaning set forth in Section 4.2.

**"Privacy Policy"** has the meaning set forth in the first paragraph of this Agreement.

**"Security Incident"** has the meaning set forth in Section 4.5.

**"Service Offerings"** means the Subscription Plan, Software Tools, or Support offered to Subscriber (and, if Subscriber is an Agency, Subscription Plans offered to such Agency's customers). Service Offerings do not include Third Party Content or Subscriber Content.

**"Software Tools"** means the software tools that allow for development, maintenance, and oversight of one or multiple websites on a subscription basis (including, without limitation, development environment, workflow integration tools, dashboard, site access controls and search), the Documentation, the Marks, the UI, and any other web product or web service provided by Pantheon under this Agreement. Software Tools do not include Third Party Content or Subscriber Content.

**"Subscriber"** has the meaning set forth in the first paragraph of this Agreement, and in Section 2.2 (Resale).

**"Subscriber Content"** means content that Subscriber or any End User (a) runs on the Service Offerings, (b) causes to interface with the Service Offerings, or (c) uploads to the Service Offerings under its account or otherwise transfers, processes, uses or stores in connection with such account. For the purposes of this definition, **"Subscriber Content"** means, without limitation, software or source code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, Subscriber programming code and API(s), dashboard(s), administration tools, and graphical interface(s).

**"Subscription Plan"** means a paid subscription-based website hosting plan.

**"Supplemental Terms"** has the meaning set forth in paragraph 2 of this Agreement.

**"Support"** has the meaning set forth in Section 3.1.

**"Support Description"** has the meaning set forth in Section 3.1.

**"Term"** means the agreed upon length of the Agreement between you and Pantheon as set forth in the applicable documentation.

**"Third Party Content"** means content made available to you by any third party on the UI or in conjunction with the Service Offerings. For the purposes of this definition, **"Third Party Content"** means, without limitation, software or source code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, Third Party programming code

and API(s), dashboard(s), administration tools, and graphical interface(s).

**“UI” or “User Interface”** means all Pantheon-created content, including but not limited to software or source code, audio, video, animations, text, graphics, logos, tools, photographs, images, animations, illustrations, the Pantheon programming code and APIs, dashboard(s), administration tools, and graphical interface(s), all as created and/or used by or on behalf of Pantheon in connection with provision of the Service Offerings. UI does not include Third Party Content or Subscriber Content.

**“Web Site”** means <https://www.pantheon.io> and any successor website of Pantheon.