

Elite Terms of Service - Pre 05-22-2018

(This document is provided for archival purposes only. If you are a new customer, the terms on [WebOps SA-Enterprise](#) or [WebOps SA-EDU](#) will apply.)

This Terms of Service Agreement (this "Agreement") contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between Pantheon Systems, Inc. ("Pantheon," "we," "us," or "our") and you or the entity you represent ("you," or "Subscriber"). This Agreement takes effect when you enter into an appropriate Order Form or, if earlier, when you use any of the Service Offerings (the "Effective Date"). You represent to us that you are lawfully able to enter into contracts. If you are entering into this Agreement for an entity, you represent to us that you have legal authority to bind that entity. Please see Section 13 (Terms and Definitions) for definitions of certain capitalized terms used in this Agreement.

1. USE OF THE SERVICE OFFERINGS

1.1 Generally. Subject to the terms and conditions of this Agreement, Pantheon will provide the Service Offerings which are selected by Subscriber in the applicable Order Form, solely for Subscriber's own use, and not for the use or benefit of any third party. 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. Pantheon retains the right to create limits on use and storage in its sole discretion at any time with or without notice.

1.2 Access to Services. Pantheon will use reasonable efforts to ensure that the UI and Services are available twenty-four hours a day, seven days a week. However, there will be occasions when the UI and/or Services will be interrupted for maintenance, upgrades and repairs or due to failure of telecommunications links and equipment. Every reasonable step will be taken by Pantheon 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 Services, Subscriber Content or Third Party Content. Subscriber shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access the UI or otherwise use the Services, including, without limitation, modems, hardware, software, and long distance or local telephone service. Subscriber shall be responsible for ensuring that such equipment or ancillary services are compatible with the Service Offerings. In the event of an interruption of platform services, Pantheon engineers will respond to resolve the issues twenty-four hours a day, seven days a week, 365 days a year.

1.3 Subscriber Registration. As a condition to using Service Offerings, Subscriber will be required to register with Pantheon and select a password and Pantheon URL. Subscriber shall provide 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 (a) select or use as a Pantheon URL a name of another person with the intent to impersonate that person; or (b) use as a Pantheon URL a name subject to any rights of a person other than Subscriber 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. Pantheon will take reasonable security precautions when using the internet, telephone or other means to transport data or other communications, but expressly disclaims any and all liability for the accessing of any such data communications by unauthorized persons or entities.

1.4 Restrictions. Except as expressly authorized pursuant to this Agreement, Subscriber 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 without Pantheon's prior written permission; (e) 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) archive or retain any of the Service Offerings, or any part thereof without written permission from Pantheon; (h) 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; (i) use the Service Offerings to send unsolicited e-mails, bulk mail, spam or other materials to users of the UI or any other individual; (j) use the Service Offerings to harass, threaten, stalk or abuse any person or party, including other users of the UI; (k) use the Service Offerings to create a false identity or to impersonate another person, (l) use the Service Offerings to post any false, inaccurate or incomplete material or delete or revise any material that was not posted by you; (m) use the Service Offerings in any fraudulent, abusive, or otherwise illegal way or in violation of this Agreement; (n) post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any Pantheon user; (o) use the Service Offerings to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material including those are deemed threatening or obscene; or (p) in the use of the Service Offerings engage in any kind of illegal activity. Subscriber shall provide all notices to, and obtain any consents from, any data subject as required by any applicable law or regulation in connection with the processing of any personally identifiable information of such data subjects via the Service Offerings by Pantheon and/or Subscriber. Subscriber shall be responsible for ensuring that any processing of Subscriber Content by Pantheon or Subscriber via the Service Offerings does not violate any applicable laws or regulations. Subscriber shall not process or submit to the Service Offerings any Subscriber Content that includes any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act, unless it enters into a separate agreement with Pantheon relating to the processing of such data; (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; (iv) payment card data, including credit card or debit card numbers; or (v) "sensitive" personal data, as defined under Directive 95/46/EC of the European Parliament ("EU Directive") and any national laws adopted pursuant to the EU Directive, about residents of Switzerland or any member country of the European Union, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life or the commission or alleged commission of any crime or offense.

1.5 Privacy. The parties agree to comply with Pantheon's privacy policy ("Privacy Policy") set forth at <https://pantheon.io/privacy>, as modified from time to time. Each party shall use its best efforts to cause its agents and employees to be informed of and to agree to be bound by data privacy laws, rules, regulations, codes, policies or procedures applicable to its business in its performance hereunder.

2. PROPRIETARY RIGHTS

2.1 Intellectual Property Rights. As between you and us, we or our licensors own and reserve all right, title, and interest in and to the Service Offerings, in whole and in part and all derivative works thereof.

2.2 Service Offerings License. Subject to the terms and conditions of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the term of this Agreement: (i) access and use the Services solely in accordance with this Agreement; and (ii) use the UI solely in connection with your permitted use of the Services. 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.

2.3 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. Downloading, copying, or storing any UI for other than personal, noncommercial use is expressly prohibited without prior written permission from Pantheon, or from the copyright holder identified in such UI's copyright notice. In the event you download Software from the UI, the Software, including any files, images incorporated in or generated by the Software, and the data accompanying the software is licensed to you by Pantheon or third party licensors for your personal, noncommercial use, and no title to the Software shall be transferred to you.

2.4 Proprietary Rights of Subscriber Content. Subscriber shall own all Subscriber Content that Subscriber contributes to the UI, but 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 Services. On termination of Subscriber's membership to the UI and use of the Services, Pantheon shall make all

reasonable efforts to promptly remove from the UI and ancillary systems, such as back-up servers, and cease use of the Subscriber Content; however, Subscriber recognizes and agrees that caching of or references to 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 any law or right of any third party, (e) contains a virus, trojan horse, worm, time bomb or other 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.

3. SUBSCRIBER RESPONSIBILITIES

3.1 Security and Backup. You are solely responsible for the development, content, operation, maintenance, and use of Subscriber Content. 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 Services 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 agents and subcontractors performing work on your behalf; provided that you are liable for any violation of this Agreement by such agents and subcontractors.

3.2 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.

3.3 End User Support. You are responsible for providing customer service (if any) to End Users. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide support or services.

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

4. WARRANTY DISCLAIMER

4.1 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 states do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to Subscriber. 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 content posted by subscribers; (3) unauthorized disclosure of images, information or data that results from the upload, download or storage of content posted by subscribers; (4) the temporary or permanent inability to access or retrieve any Subscriber Content from the UI, including, without limitation, harm caused by viruses, worms, trojan horses, or any similar contamination or destructive program.

4.2 Third Party Websites. Users of the UI may gain access from the UI to third party sites on the internet through hypertext or other computer links on the UI. Third party sites are not within the supervision or control of Pantheon. 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. Pantheon disclaims: (a) all responsibility and liability for content on third party websites and (b) any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against Pantheon with respect to such sites and Third Party Content.

5. INDEMNIFICATION

5.1 By You. You will defend, indemnify, and hold us harmless, including our employees, officers, directors, representatives, our licensors, 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 concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your account and use by your employees, agents and subcontractors); (b) breach of this Agreement or violation of applicable law by you or any End User; (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. If we are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our 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. We will promptly notify you of any claim referenced above, but our failure to promptly notify you will only affect your obligations under this Section 5.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

5.2 By Pantheon. Subject to the terms of this Agreement, Pantheon shall defend you against any third party claim ("Claim") : (a) arising from the gross negligence of Pantheon; or (b) that the Service Offerings infringe such third party's U.S. patent or copyright, and indemnify you from the resulting costs and damages awarded against you to the third party making such Claim, by a court of competent jurisdiction or agreed to in settlement; provided that you (i) notify Pantheon promptly in writing of such Claim, (ii) grant Pantheon sole control over the defense and settlement thereof, and (iii) reasonably cooperate in response to a Pantheon request for assistance. Pantheon will have the exclusive right to defend any such Claim and make settlements thereof at its own discretion, and you may not settle or compromise such Claim, except with prior written consent of Pantheon. Should any Service Offerings become, or in Pantheon's opinion be likely to become, the subject of a Claim described in Section 5.2(b) ("Infringement Claim"), Pantheon shall, at its option and expense: (x) procure for you the right to make continued use thereof, (y) replace or modify such so that it becomes non-infringing, or (z) cease providing the Service Offerings upon notice to Subscriber and the corresponding licenses are thereby terminated and Pantheon shall refund the prepaid but unused fees paid for the infringing Service Offerings. Pantheon shall have no liability if the alleged infringement is based on (1) combination with non-Pantheon products or services, (2) use for a purpose or in a manner for which the Service Offerings were not designed, (3) use of any older version of the Service Offerings when use of a newer Pantheon revision would have avoided the infringement, (4) any modification of the Service Offering, (5) any intellectual property right owned or licensed by you, excluding the Service Offerings, or (6) third party open source software. THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND PANTHEON'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

6. LIMITATIONS OF LIABILITY. WE WILL NOT IN ANY EVENT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT WILL WE BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OF THIS AGREEMENT, OR (II) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE LAW, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES 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 WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM. IN NO EVENT WILL OUR LICENSORS HAVE ANY LIABILITY UNDER THIS AGREEMENT. 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.

7. 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 Service Offerings 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 Services. All Subscriber Content is Subscriber's property and is for Subscriber's exclusive use subject to the license to Pantheon in Section 2.4. 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 SUBSCRIBER CONTENT AFTER ACCOUNT TERMINATION. ALL SUBSCRIBER CONTENT IS DELETED (A) FROM THE SERVERS 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.

8. FEES AND PAYMENTS. All fees are stated in U.S. dollars. Subscriber shall pay all applicable fees, as described in an applicable Order Form, and any related taxes or additional charges. All fees are non-refundable unless expressly stated otherwise in this Agreement. 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 Services. All payments are made without the right of setoff or chargeback. Subscriber will pay interest, at a rate equal to one percent (1%) per month on any undisputed amount that remains unpaid thirty (30) days after the date of the invoice. If Subscriber fails to pay fees in accordance with this Section, Pantheon may suspend fulfilling its obligations under this Agreement until such payment is received by Pantheon. 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.

9. TERMINATION.

9.1 Right to Terminate. Each party may terminate this Agreement in the event that the other party breaches this Agreement and does not cure such breach within thirty (30) days of written notice. Upon termination of Subscriber's account, Subscriber's right to use the Service Offerings, access the UI, and any Subscriber Content or Third Party Content will immediately cease.

9.2 Obligations of Subscriber after Termination. Sections 1.4, 2.1, 3.2, 4, 5, 6, 8, 9.2, 10, 11, 12 and 13 shall survive termination of this Agreement.

10. 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 10 by its

employees and agents. 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.

11. COPYRIGHT POLICY

11.1 DMCA. Pantheon has adopted the following policy toward copyright infringement with respect to the Service Offerings in accordance with the Digital Millennium Copyright Act, a copy of which is located at <http://www.loc.gov/copyright/legislation/dmca.pdf>. The address of Pantheon's designated agent for copyright takedown notices ("Designated Agent") is listed below.

11.2 Reporting Copyright Infringements. If you believe that content residing or accessible on the Service Offerings infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent at the address below: (a) identification of the work or material being infringed; (b) identification of the material that is claimed to be infringing, including its location, with sufficient detail so that Pantheon is capable of finding and verifying its existence; (c) contact information about the notifying party (the "Notifying Party"), including name, address, telephone number and e-mail address; (d) a statement that the Notifying Party has a good faith belief that the material is not authorized by the copyright owner, its agent or law; (e) a statement made under penalty of perjury that the information provided in the notice is accurate and that the Notifying Party is authorized to make the complaint on behalf of the copyright owner; and (f) the Notifying Party's physical or electronic signature. After the Designated Agent receives notification of an alleged infringement that meets all of the requirements above, Pantheon shall disable access to or remove material that it has a reasonable, good faith belief is copyrighted material that has been illegally copied and distributed by any subscriber to the Service Offerings. Pantheon will then immediately notify the subscriber responsible for the allegedly infringing material (the "Offending Subscriber") that it has removed or disabled access to the material. Pantheon reserves the right, at its discretion, to immediately terminate the account of any subscriber who is the subject of repeated takedown notices.

11.3 Filing Copyright Counterclaim. A subscriber who believes it is the wrongful subject of a copyright takedown notice may file a counter notification with Pantheon, by providing the following items in writing to the Designated Agent at the address below: (a) the specific URLs of material that Pantheon has removed or to which Pantheon has disabled access; (b) the subscriber's name, address, telephone number, and email address; (c) a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which its address is located, and that the subscriber will accept service of process from the Notifying Party; (d) the following statement: "I swear, under penalty of perjury, that I have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled"; and (e) the subscriber's signature. Upon receipt of a counterclaim, Pantheon will forward it to the Notifying Party. The Notifying Party will then have 10 days to notify Pantheon that he or she has filed legal action relating to the allegedly infringing material. If Pantheon does not receive any such notification within 10 days, Pantheon may restore the material to the Service Offerings.

11.4 Designated Agent. Pantheon's designated agent for service of process is: Compliance Department, Pantheon Systems, Inc., 717 California Street, 3rd Floor, San Francisco, CA 94108.

12. MISCELLANEOUS

12.1 Complete Agreement. This Agreement (including the Privacy Policy 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. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. 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.

12.2 Export Control. 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.

Subscriber shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any Service Offerings or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Subscriber agrees to the foregoing and warrants that it and its End Users are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Service Offerings are further restricted from being used for: (y) terrorist activity, or (z) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. 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.

12.3 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 or on Pantheon (including, for example, a name, address, telephone number or email address). Subscriber also certifies that it is legally permitted to use the Services and access the UI, and takes full responsibility for the selection and use of the Services and access of the UI. This Agreement is void where prohibited by law, and the right to access the UI is revoked in such jurisdictions. Pantheon makes no claim that the UI may be lawfully viewed or that UI may be downloaded outside of the United States. Access to the UI 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.

12.4 No Waiver of Rights. 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.

12.5 Force Majeure. We 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.

12.6 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.

12.7 Assignment and Transferability of Agreement. This Agreement is not assignable, transferable or sublicensable 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.

12.8 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to the conflict of laws provisions thereof. Each party agrees that any claim or cause of action arising under or relating to this Agreement will be brought in a court of competent jurisdiction located in the state of Delaware and each party irrevocably consents to such personal jurisdiction and waives all objections thereto.

12.9 Scope of Agreement. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Subscriber does not have any authority of any kind to bind Pantheon in any respect whatsoever.

12.10 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.com 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 St., Third Floor, San Francisco, CA 94108. Any notice to you that is required or permitted by this Agreement shall be in writing and be deemed effective upon receipt, when sent by confirmed e-mail to the e-mail address in your account with Pantheon, or

given on an applicable Order Form, or when delivered in person by nationally recognized overnight courier or mailed by first class, registered or certified mail, postage prepaid, to you at the address in your account with Pantheon or in the applicable Order Form.

13. TERMS AND DEFINITIONS

“API” means an application program interface.

“Confidential Information” means all nonpublic information disclosed by us, 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 we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us. 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 Services.

“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. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Subscriber Content under their own account, rather than your account.

“Materials” means all materials displayed or performed on the UI, including, but not limited to text, graphics, logos, tools, photographs, images, illustrations, software or source code, audio and video, and animations, including without limitation the Pantheon programming code (other than Subscriber Content).

“Order Form” means an order form entered into by Subscriber and Pantheon that incorporates this Agreement.

“Service” means each of the web services made available by us, including those web services described on the UI.

“Service Offerings” means the Services (including associated APIs), the Materials, the Documentation, the Software, the Marks, the UI, and any other product or service provided by us under this Agreement. Service Offerings do not include Third Party Content or Subscriber Content.

“Software” means the software used to provide the Services.

“Subscriber Content” means content you or any End User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account. For the purposes of this definition, content means, without limitation, software or source code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, Subscriber programming code and API, dashboard, administration tools, and graphical interface.

“Term” means the agreed upon length of the Agreement between you and Pantheon.

“Third Party Content” means content made available to you by any third party on the UI or in conjunction with the Services. For the purposes of this definition, content means, without limitation, software or source code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, Third Party programming code and API, dashboard, administration tools, and graphical interface.

“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, illustrations, the Pantheon programming code and API, dashboard, administration tools, and graphical interface.

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

