Software Subscription Agreement

Agreement Title: SaaS Contract for

Date:
Effective Date: Agreement Signature Date
Client:
Contact:
Email:
Phone:
Accounting Contact: [name, email, phone]
IT Contact: [name, email, phone]

PMWeb Contact:
PMWeb Inc.
1 Pope Street
Wakefield, MA 01880 USA
Email: (617) 207-7080
Fax: (978) 246-0248
Reseller Partner: (if applicable)

AGREEMENT TERMS & CONDITIONS

1. AGREEMENT AND TERMS

1.1 This Software Subscription Agreement (the "Agreement") between PMWeb, Inc. ("PMWeb") and ("Client") is made effective as of the last signature date on this contract with a term of twelve (12) months (the "Term"). PMWeb grants to Client and Client accepts solely for its own internal business purposes, a non-exclusive, non-transferable non-sub-licensable license to use the software product(s) subject to the payment of the Licensee fees described in Appendix A to this Agreement (the Software and Related Documentation) in object code form for the Term of this Agreement and each renewal term, if any. Additional technical support and subscription update coverage may be obtained by Client for the Software in accordance with Section 3 of this Agreement. The Software is provided AS IS and no returns or refunds will be issued beyond fifteen (15) days after installation of the license. PMWeb licenses are specific to a single URL selected by you. You may not change the URL and transfer the licenses to a new URL except at the annual renewal date.

1.2 Renewal Terms. Upon the expiration of the Term or any Renewal Term, this Agreement will be renewed for additional terms equal to the Term (each a "Renewal Term") unless Client notifies PMWeb in writing not less than ninety (90) days prior to the end of the Term or any Renewal Term that it has elected to terminate this Agreement. PMWeb may change or increase the prices it charges Client for any Service for any Renewal Term provided that PMWeb has given Client written notice of the change (the "Increase Notice") at least ninety (90) days before the end of the Term or any Renewal Term. All pricing shall be in accordance with the Pricing Schedule – BAFO 5/22/2019 submitted by PMWeb to Client and which is incorporated by reference herein. In the event that PMWeb issues an Increase Notice, then Client shall have the right to terminate this Agreement as of the end of the then current Term or renewed Term upon sixty (60) days written notice to PMWeb; provided, however, that such notice must be provided by Client, if at all, within thirty (30) days of the Increase Notice.3 Payment Terms. Prior to the Commencement Date, PMWeb will invoice Client for the amount due for the setup fee and license/base fee for the right to use the Software as provided in Section 2 above and Appendices A - C for the upcoming Term or Renewal Term (the "Invoiced Amount"). Approximately ninety (90) days before the end of the Term or any Renewal Term, PMWeb will invoice Client the Invoiced Amount for the next term of each licensed image. Client shall pay the Invoiced Amount and any other amounts billed hereunder pursuant to the terms of the invoice and within not less than thirty (30) days from Client’s receipt of the invoice and approval of acceptable products, materials and/or services and approval of correct invoice. All payments are non-refundable. Client is responsible for all fees associated with the collection by PMWeb of amounts due from Client, including court fees, reasonable attorney’s fees and disbursements.

1.4 Taxes. PMWeb may invoice and Client shall pay within thirty (30) days of receipt of the invoice and approval of acceptable products, materials and/or services and approval of correct invoice, taxes, fees or assessments and other charges imposed on or required to be collected by PMWeb by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder.

2. REPRESENTATIONS AND WARRANTIES

2.1 General. PMWeb represents and warrants that it has the legal right to enter into this Agreement and perform its obligations hereunder.

2.2 Service Level Warranty. In the event that Client experiences any of the service performance issues defined in Section 2.2.4 below as a result of any failure by PMWeb to perform services required of it under this Agreement, PMWeb will, upon Client request in accordance with paragraph 2.2.4 below, credit Client’s account as described below. The Service Level Warranty shall not apply to performance issues: (i) caused by factors outside of PMWeb’s reasonable control; or (ii) that result from any actions or inactions of Client or any third parties’ applications or equipment.

2.2.1 Definitions.

2.2.1.1 Business hours: 8 AM – 5 PM EST, Monday – Friday, except for national United States holidays

2.2.1.2 Non-business hours: Hours outside of business hours

2.2.1.3 Internal Network: All technology hardware and software behind and including PMWeb firewall, but not Internet connectivity and technology between Client terminals and PMWeb firewall

2.2.1.4 Uptime: The time during which PMWeb Internal Network is functioning and available for Client

2.2.2 PMWeb guarantees to Client (i) 99.8% uptime during business hours and (ii) 99% uptime during non-business hours on PMWeb Internal Network. Uptime excludes maintenance.

2.2.3 To the extent reasonably practicable, PMWeb will notify Client at least: (i) 48 hours prior to any routine maintenance not critical to system stability and security; and (ii) two hours prior to any maintenance with potential next day impact on uptime. Routine maintenance work will be performed during non-business hours.

2.2.4 If Client notifies PMWeb Client Support immediately upon failure to access the Services and PMWeb determines in its reasonable commercial judgment that the Services are unavailable due to an outage caused solely by PMWeb, the following will apply: If PMWeb determines that the Services were unavailable for two or more (but fewer than four) consecutive hours during a calendar month then, upon Client’s request, PMWeb will credit Client’s account for that month in an amount equal to the prorated charges for one day’s service. If PMWeb determines that the Services were unavailable for four (4) or more consecutive hours during any calendar month, then, upon Client’s request, PMWeb will credit the Client for the month in an amount equal to the pro-rated charges for one week’s service. Services shall be deemed to be unavailable if the PMWeb System is not responding to HTTP requests issued by PMWeb monitoring software. Scheduled maintenance shall not be deemed to be Services’ unavailability. This Section shall not apply if unavailability is caused by unavailability outside of the PMWeb Network or events of force majeure.

2.2.5 PMWeb will maintain daily backups of all live data on behalf of the Client. Data that is in a static state or external data will be considered “stale” and will be backed up monthly. Should “stale” data become live, it will be backed up daily until such time as it reverts to a “stale” state.

2.2.6 The Service Level Warranty set forth in this section 2.2 shall only apply to the Services provided by PMWeb and, does not apply to any services other than Services included as a part of the fee stated herein.
and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. PMWeb does not warrant that the Services will be uninterrupted, error-free, or completely secure.

2.4 Disclaimer of Liability for Actions Caused by and/or Under the Control of Third Parties. PMWeb does not and cannot control the flow of data or to from the PMWeb network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by Third Parties. At times, actions or inactions of such Third Parties can impair or disrupt Client connections to the Internet. Although PMWeb will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, PMWeb cannot guarantee that such events will not occur. Accordingly, PMWeb disclaims any and all liability resulting from or related to such events. This disclaimer also applies to acts of Client or those under its control blocking or slowing service.

3. SUPPORT AND MAINTENANCE

3.1 Designated Contacts. Client will designate individuals who will serve as Designated Contacts. The Designated Contacts will be the only Client representatives authorized to contact the Client Support Center and submit Incidents. Designated Contacts must have completed PMWeb Training and the Client must have a valid software license. Client may designate up to three Designated Contacts.

3.2 Software updates/upgrade. Clients under a valid and paid in full Subscription will receive software updates and upgrades for covered software during the term of the Subscription. Software updates are defined as those minor revisions that are designated as “dot” releases (e.g. version 5.1 updated to version 5.2). Software Upgrades are defined as major revision releases (e.g. version 5.2 to version 6.0), new products are not included. Client must maintain annual support and maintenance on all software and modules in order to maintain access to the software and modules unless Client elects to eliminate annual support and maintenance at any point after the first term. Client will not be able to selectively choose which modules they wish to maintain annual support and maintenance. If Client elects to discontinue support and any module while still maintaining support on any other modules or licenses, then PMWeb shall remove client’s access to such module until Client elects to maintain the support and maintenance or elects to eliminate support and maintenance on all licenses and modules

3.3 Software Defects. In the case where PMWeb determines that an Incident is the result of a software defect, the Incident will be presented by the analyst to PMWeb’s Development Group for potential revision in a future release or patch. In the event that the Incident is the result of a software defect in OEM code provided to PMWeb by another vendor, PMWeb will document the problem and enter an Incident with the OEM vendor for potential revision in a future release or patch.

3.4 Support Escalation. In the event that an Incident increases in its impact to the Client or that allocated resources are inadequate to provide a solution to Client, PMWeb shall escalate Incidents to an appropriate level of its organization. Purposes of escalation shall be to obtain additional expertise or resources, and/or re-evaluate priority/impact.

3.5 Error investigation. Upon receipt of notification from Client of an apparent error or problem with the software licensed from PMWeb, PMWeb will use commercially reasonable efforts to promptly investigate the issue and to advise the Client as soon as reasonably possible that either an error does not exist, or confirm that one does exist and what, if any, work-around exists. When errors are confirmed, PMWeb will use commercially reasonable efforts to correct such errors and provide Client with an updated version for the licensed software as soon as it is practical in PMWeb’s sole discretion.

4. CONFIDENTIALITY

4.1 General. Each party acknowledges that, in the course of the performance of this Agreement, it may have access to confidential information of the other party ("Confidential Information").

4.2 Respect of Confidential Information. Each party agrees to maintain the confidentiality of the Confidential Information, to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement.

5. INTELLECTUAL PROPERTY OWNERSHIP. The Software and related Documentation is owned by PMWeb and/or its licensors and is protected by United States and foreign patent, copyright laws and trade secret laws. Client acknowledges and agrees that except for the limited right to use the Software and Related Documentation as granted in Section 1 above, PMWeb and its licensors have and shall retain the entire right, title and interest in and to all intellectual property rights arising from or relating to the Software and Related Documentation whether or not merged into other materials. Client shall not use the trademarks, service marks, logos, brand source distinctions and trade names of PMWeb without PMWeb’s prior written consent. No license is granted hereunder covering U.S. or foreign patents, copyrights or trade secrets, if any, of PMWeb or its licensors, except as expressly granted and limited herein.

6. COPY AND OTHER RESTRICTIONS. Client shall not copy the Software except to make one copy of the Software exclusively for inactive backup or archival purposes to be returned to PMWeb upon conclusion of the Term or last Renewed Term or earlier in case of Termination under Section 7 below. Client may not copy the Related Documentation for its own internal business purposes. Client shall not modify, reverse engineer, de-compile or disassemble the Software, or create derivative works based upon the Software. Client shall not use the Software and Related Documentation in a timesharing arrangement nor encumber, rent, lease, transmit, distribute or transfer the Software to any third party for any purpose without PMWeb’s prior written consent. Transfer of Software or Related Documentation outside the country in which it was originally delivered to Client is not permitted without PMWeb’s prior written consent and is subject to your compliance with all applicable export restrictions. Client shall not remove any product identification, copyright notices or other notices or proprietary restrictions from the Software or Related Documentation or disable, circumvent or misuse any security or access features. Upon reasonable notice to Client, PMWeb shall have the right to inspect Client’s use of the Software and audit your relevant records to verify compliance with the terms of this Agreement. The Software and Documentation contains valuable trade secrets and proprietary know-how that belongs to PMWeb and its licensors and it is made available to client in strict confidence. ANY use or disclosure of the Software or its algorithms, protocols or interfaces other than in strict accordance with this agreement is prohibited and may be actionable as a violation of PMWeb’s or its licensors’ proprietary rights.

7. EXTERNAL CUSTOMIZATIONS AND REPORTING. PMWeb is not responsible to support any external customizations via scripts, functions, triggers, validated report generator or related reports that are created utilizing any reporting service (such as SQL) other than PMWeb Reporting. Additionally, PMWeb is not responsible to support any modifications to the software created through back end development including, but not limited to, changing stored procedures, functions and ASP pages. PMWeb disclaims all liability and responsibility for such external customizations and reports and has no liability to fix issues with external customizations and reports. PMWeb may assist in fixing external issues on a time and materials basis, but such assistance is not covered by the annual support and maintenance.

8. LIMITATIONS OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL DAMAGES.

8.1 Damages. PMWeb disclaims warranties of merchantability or fitness for particular purposes. PMWeb’s policy of limited inspection and right of return or credit, if any, are spelled out in separate writings and do not exist except as set forth in any such writing specifically applicable to this Agreement PMWeb’s liability, if any, shall not exceed the insurance limits set forth in the RFP. PMWeb shall not be responsible to you, or any person claiming through you, for any type of incidental, punitive, indirect or consequential damages, including but not limited to, lost revenue, lost profits, business interruption, replacement goods, loss of technology, rights or services, loss of data or interruption or loss of use of services or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort, strict liability or otherwise. PMWeb shall not be liable for any other damages and of avoidance of doubt, also confirms that it disclaims any warranty of merchantability or fitness for a purpose to the full extent allowable under governing law.
8.3 Consequential Damages. Neither party shall be liable for consequential damages to the other except as expressly provided in this Agreement.

9. MISCELLANEOUS PROVISIONS

9.1 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet.

9.2 Non-Solicitation. Client shall not itself or through any other person or company solicit for employment, any employee of PMWeb or any of its affiliates and/or partners, management group or portfolio group at any time during the Term (or subsequent Renewal Term) or for two (2) years after expiration of the last Renewal Term. Violation of this clause can result in termination of the Client’s license and right to use the Software.

9.3 Governing Law. This agreement constitutes the complete agreement between the parties with respect to the software and is governed by the laws of the State of Arizona, without giving effect to principles governing conflicts of law. It shall not be governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly excluded.

9.4 Termination. This Agreement may be terminated with ninety (90) days written notice of termination by either party. No refunds will be issued upon contract termination.

ACKNOWLEDGEMENT
Authorized representatives of the Client have read the foregoing and all documents incorporated therein and agree and accept such terms effective as of the date first above written.

Client:

APPROVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ______ day of ________, 20____.

______________________________
Mark W. Mitchell, Mayor

ATTEST:

______________________________
Carla R. Reece, City Clerk

APPROVED AS TO FORM:

______________________________
Judith R. Baumann, City Attorney

Ramona Zapien, Ramona.Zapien@tempe.gov, 480-350-8357
Client Accounting Contact: (name, email, phone)

Reggie Bates, Reginald.Bates@tempe.gov, 480-350-8247
Client IT Contact: (name, email, phone)

PMWeb, Inc.

______________________________
Michael P. Vernon

______________________________
General Counsel

______________________________
06/17/2019

Date

PMWeb SaaS-EULA Combined v18.4