

# Master Services Agreement

*(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.)*

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The Agreement consists of the Master Services Agreement, the Privacy Policy set forth at <https://pantheon.io/privacy> (“Privacy Policy”) (and related Cookie Policy <https://pantheon.io/pantheon-cookies>), the Service Level Agreement (“SLA”) set forth at <https://pantheon.io/sla>, the trademark standards of use set forth at <https://pantheon.io/pantheon-trademark-standards-use> and the Order Form (defined below). The 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,” your, or “Subscriber”), Pantheon and Subscriber together may be referred to as the “parties”. This Agreement takes effect when you enter into an appropriate Order Form or when you use any of the Service Offerings (the earlier of such date being the “Effective Date”).

Section 17 (Terms and Definitions) states the definitions of certain capitalized terms used in this Agreement. This Agreement will be in effect for the Term.

## 1. USE OF THE SERVICE OFFERINGS

**1.1 General.** Pantheon will provide the Service Offerings that are selected by Subscriber in the applicable Order Form, solely for Subscriber’s own use (except as set forth in Section 2.2), and not for the use or benefit of any third party.

**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 or Software Tools 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. Subscriber shall be 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. In the event of an interruption of paid Subscription Plans, Pantheon engineers will respond to resolve the issues twenty-four hours a day, seven days a week, 365 days a year. Pantheon may change, suspend or discontinue the Software Tools, Support and Professional Services at any time, including the availability of any feature, database, or UI. Other than as agreed in the Order Form, Pantheon retains the right to create limits on the use of Service Offerings in its sole discretion at any time with or without notice.

**1.3 Subscriber 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), 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 Subscriber receives 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.

**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.

**1.6 Privacy.** The parties agree to comply with Pantheon's privacy policy ("**Privacy Policy**") (and related "Cookie Policy"), as modified from time to time.

## **2. RESALE OF THE 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 9 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/support>. Your selection of Support to be performed and associated fees will be set forth in an Order Form agreed upon by the parties. 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 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. PROFESSIONAL SERVICES**

#### **4.1 Scope of Professional Services:**

Pantheon's description of available professional services ("Professional Services") is made available at [www.pantheon.io/docs/professional-services](http://www.pantheon.io/docs/professional-services). Your selection of Professional Services to be performed will be set forth in an Order Form agreed upon by the parties. The Order Form and website will describe the nature of the Professional Services, associated fees, and any terms relating to the selected Professional Services additional to this Agreement.

#### **4.2 Your Responsibilities:**

You acknowledge that Pantheon's ability to perform the Professional Services depends upon your fulfillment of the following obligations and project assumptions. You shall:

1. provide overall management and business ownership with respect to the Professional Services;
2. manage relationships with any third parties involved in receipt of the Professional Services;
3. promptly provide to Pantheon any applicable documentation of existing requirements, designs, and constraints, as required to provide Pantheon with the information needed to support the provision of Professional Services;
4. provide office space, phones, facilities, network connectivity, and computer systems for onsite Pantheon personnel on an as-needed basis;
5. provide timely access to key stakeholders, subject matter experts, and project team members for approvals, decisions, or other actions in connection with the performance of Pantheon's obligations under the applicable Order Form;
6. obtain any Pantheon subscriptions, consents, and/or third-party licenses or permissions required to support the Professional Services;
7. pre-install all required software and hardware prior to the commencement of any Professional Services; and
8. if applicable, you will make all web site content and application data available in electronic form and on the schedule required by Pantheon to complete the Professional Services in a timely fashion.

**4.3 Change Management.** Revisions to the scope of the Professional Services described in an Order Form shall be handled through a change order agreed upon in writing by the parties. Pantheon will have no obligation to begin work on any change order that has not been approved and executed by both parties.

**4.4 Performance.** Any tasks identified in an Order Form are intended to describe a resource plan only and the scope of work that may be provided by Pantheon. Pantheon will provide only those services as directed and requested by you and only as time allows. Pantheon will use good faith efforts to complete the Professional Services described in each Order Form and does not guarantee that such Professional Services will be completed within the number of hours or days set forth in such Order Form or otherwise agreed upon by the parties pursuant to a change order. Any delay in Pantheon's performance that is caused by you or a third party not under Pantheon's control will result in an extension of the applicable estimated timeframe, with a commensurate extension of the time and fees required.

**4.5 Rescheduling.** You may, without penalty, reschedule the Professional Services with a minimum of two (2) weeks advance written notice to Pantheon. Once the Pantheon team has been scheduled with you, should you provide Pantheon with less than two (2) weeks advance notice of Customer's request to reschedule the Professional Services, you will be charged rescheduling fee equal to 50% of the Fees set forth in the Order Form (the "Rescheduling Fee") plus, if applicable, any travel and other out-of-pocket expenses already incurred by Pantheon. Pantheon may waive the Rescheduling Fee if Pantheon is able to redeploy the Pantheon team to another engagement during the originally scheduled Professional Services period.

## **5. DATA PROCESSING UNDER GENERAL DATA PROTECTION REGULATION.**

This Section 5 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:

**5.1 Definitions applicable to this Section 5.** 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.

**5.2 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.

**5.3 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.

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

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

**5.6 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).

**5.7 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.

**5.8 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.

**5.9 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.

**5.10 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 11.

**5.11 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.

## **6. PROPRIETARY RIGHTS**

**6.1 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.

**6.2 License.** Subject to the terms and conditions of this Agreement, Pantheon grants you a limited, revocable, non-exclusive, non-sublicensable, non-transferable 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.

**6.3 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.

**6.4 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.

**6.5 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 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.

## **7. SUBSCRIBER RESPONSIBILITIES**

**7.1 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 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. Pantheon will use industry standard systems and procedures when using the internet, telephone or other means to store or transport data or other communications, but expressly disclaims any and all liability for the accessing or theft of any data or data communications by unauthorized persons or entities.

**7.2 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.

**7.3 End User or Client 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 such support or services.

**7.4 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.

## **8. WARRANTY DISCLAIMER**

**8.1 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.

**8.2 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.

## **9. INDEMNIFICATION**

**9.1 By You.** 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. Pantheon will promptly notify you of any claim referenced above, but Pantheon's failure to promptly notify you will only affect your obligations under this 9.1 to the extent that Pantheon's 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. Pantheon may also assume control of the defense and settlement of the claim at any time.

**9.2 By Pantheon.** Subject to the terms of this Agreement, Pantheon shall defend you against any Claim 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, 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 CLAIMS.

**10. LIMITATIONS OF LIABILITY.** PANTHEON WILL NOT 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 PANTHEON 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 SERVICE OFFERINGS, 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 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. PANTHEON'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY PANTHEON UNDER THIS AGREEMENT FOR THE SERVICE OFFERING THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM. IN NO EVENT WILL PANTHEON'S 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.

**11. 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 6.4. 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.

## **12. FEES AND PAYMENTS.**

**12.1 Fees.** 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. Except pursuant to the SLA (pursuant to which only credits may be provided), no credits or refunds of any kind will be given. All payments are made without the right of setoff or chargeback. Subscriber will pay interest, at a rate equal to one percent (1.5%) per month, or the maximum rate permitted by law, whichever is lower, on any undisputed amount that remains unpaid thirty (30) days after the date of the invoice. Subscriber will pay directly any taxes arising out of this Agreement or Pantheon's performance under this Agreement, excluding taxes on Pantheon's net income and all employer reporting and payment obligations with respect to Pantheon's personnel. 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.

**12.2 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, 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.

### **13. TERMINATION.**

**13.1 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.

**13.2 Obligations after Termination.** Sections 1.4 (Restrictions), 2.4 (Client Violations), 2.7 (Audit), 6.1 (Intellectual Property Rights), 6.5 (Feedback), 7.2 (End User Violations), 8 (Warranty Disclaimer), 9 (Indemnification), 10 (Limitations of Liability), 12 (Fees and Payments), 13.2 (Obligations after Termination), 14 (Confidentiality), 15 (DMCA), 16 (Miscellaneous) and 17 (Terms and Definitions) shall survive termination of this Agreement.

**14. 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 be liable for all violations of this Section 14 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.

**15. 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).

### **16. MISCELLANEOUS**

**16.1 Complete Agreement.** This Agreement (consisting of the Terms of Service, Privacy Policy (and Cookie Policy), Service Level Agreement, trademark standards of use set forth at <https://pantheon.io/pantheon-trademark-standards-use> and the Order

Form) constitutes the entire agreement between you and Pantheon with respect to the subject matter hereof. In the event of a conflict between any of these documents, the order of precedence will be: the Terms of Service, Privacy Policy (and Cookie Policy), Service Level Agreement, trademark standards of use, and the Order Form. This Agreement replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter hereof. For the avoidance of doubt, this Agreement replaces any confidentiality or non disclosure agreement previously signed by the parties. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. Order Forms signed by the parties will be for the purpose of defining Term, quantities, prices and describing the Service Offerings to be provided under this Agreement.

**16.2 Export Control and Commercial Software.** Subscriber acknowledges that the Subscription Plans and Software Tools 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 Subscription Plans and Software Tools 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 Subscription Plans and Software Tools 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 Subscription Plans and Software Tools and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

**16.3 Enforceability of Agreement.** This Agreement is void where prohibited by law, and the right to access the UI is revoked in such jurisdictions.

**16.4 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.

**16.5 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.

**16.6 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.

**16.7 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.

**16.8 Governing Law and Jurisdiction.** Unless otherwise elected by Pantheon in a particular instance, you hereby expressly agree that this Agreement will be governed by the laws of the State of California without regard to principles of conflicts of law and

you agree to submit to the federal and state courts of the State of California for the purpose of resolving any dispute relating to this Agreement.

**16.9 Attorneys' Fees.** In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**16.10 Scope of Agreement.** No agency, partnership, joint venture, or employment is created as a result of this Agreement.

**16.11 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 [legal@pantheon.io](mailto:legal@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. 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.

## 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 5.4.

**"Claim"** has the meaning set forth in Section 9.1.

**"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 5.3.

**“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 6.5.

**“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.

**“Marks”** has the meaning set forth in Section 2.8.

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

**“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 5.2.

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

**“Professional Services”** has the meaning set forth in Section 4.1.

**“Rescheduling Fee”** has the meaning set forth in Section 4.5.

**“Security Incident”** has the meaning set forth in Section 5.5.

**“Service Level Agreement”** or **“SLA”** has the meaning set forth in the first paragraph of this Agreement.

**“Service Offerings”** means the Subscription Plan, Software Tools, Support, or Professional Services 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 or unpaid subscription-based website hosting plan.

**“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 Order Form, and any renewals.

**“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.