

# **Enterprise WebOps Services Agreement**

This WebOps Services Agreement ("**Agreement**") governs any access to or use of the Services between Pantheon Systems, Inc. ("**Pantheon**," "**we**," "**us**," or "**our**") and you the individual or entity ("**Subscriber**" or "**you**"), each a "**Party**" and together the "**Parties**." This Agreement takes effect on the earlier of: the last date a party signs this Agreement, when you click an "Accept" button or by your use of any of the Services (the "**Effective Date**"). When used in this Agreement, the terms defined in Section 14 below and throughout the Agreement when initially capitalized shall have the meanings ascribed to them.

Subscriber hereby represents that it has read, understood, and agrees to be bound to this Agreement and to conduct electronic business transactions with digital acceptance processes and electronic signatures.

Pantheon may modify this Agreement with written notice to Subscriber at the e-mail address Subscriber maintains with Pantheon. Changes to this Agreement shall be effective immediately and any material changes shall be effective the earlier of thirty (30) days after such notice or the minimum notice period required under applicable law with respect to those material changes requiring additional notice. If you do not agree to any change(s) to this Agreement, you may not access or use the Services and must contact Pantheon directly at [legal@pantheon.io](mailto:legal@pantheon.io).

## **1. USE OF SERVICES**

1.1 Services. Pantheon provides a centralized website operations platform designed to increase productivity across collaborative teams building and supporting a website or a portfolio of websites ("WebOps"). Any Services Pantheon performs for Subscriber are subject to the terms and conditions of this Agreement. Pantheon shall provide the Services that you select in the Order Form, solely for your own use and the use of your affiliates (as may be specified in the Order Form) and not for the use or benefit of any third party except under Supplemental Terms (defined below) to this Agreement. Any authorized resale of the Services are subject to the Reseller Terms of Service set out at <https://legal.pantheon.io>.

1.2 Access to Services. Subject to this Agreement, Pantheon shall make the Software Tools available twenty-four hours a day, seven days a week, provided that Pantheon shall not be responsible for any failure in the Software Tools caused by (a) your systems, configuration, third party products, or services procured by you and any unauthorized access thereof (b) network, telecommunications or other service or equipment, (c) your gross negligence or willful misconduct or the gross negligence or willful misconduct of third parties engaged by you, (d) any Force Majeure Event, and (e) reasonable measures necessary to provide Subscriber with a high performing WebOps platform to meet our obligations under this Agreement and provide upgrades to our subscribers for the Software Tools and Services. Pantheon shall minimize such disruption where it is within Pantheon's reasonable control but may otherwise modify or suspend the Services at any time. Updates to the Services shall be as set out in the Documentation and corresponding release notes. Certain Pantheon features or Services may be deprecated or limited for access or use in subsequent releases. Pantheon retains the right to limit use and storage to those levels purchased by Subscriber at any time. Subscriber shall develop, operate, configure and maintain their Subscriber Content and shall ensure that any service calls are compatible with the then-current APIs for the applicable Services.

1.3 **Subscribers Registration.** Subscriber shall maintain accurate, complete, and updated registration information with Pantheon, including Subscriber's email address as a material condition of this Agreement. Subscriber may not use the Services with a URL name that is subject to any Pantheon or third-party right without appropriate authorization. Pantheon reserves the right to refuse registration of, or cancel, a Pantheon URL that does not comply with the AUP or the terms and conditions of this Agreement in its discretion. Subscriber shall maintain adequate controls to secure access credentials to the Services and 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 under this Agreement, neither you or any End User may, or permit any other to: (a) sell, rent, lease, license, sublicense, or assign the Services, or any part thereof to others without express permission under a separate signed written agreement; (b) access or use the Services in a manner intended to avoid incurring fees or exceeding usage limits or quotas; (c) transfer the Services or Documentation, in whole or in part, or any copy thereof to any third party; (d) reverse engineer, modify, decompile, disassemble, or otherwise access source code from the Software Tools or Services, or any part thereof; (e) copy, modify or prepare derivative works of the Services, or any part thereof; (f) violate any aspect of Pantheon's AUP; or (g) use the Services to process or store any Restricted Data.

1.5 **Subscriber's Content.** Subscriber shall be responsible for the accuracy, integrity, content, and compliance of all Subscriber Content, including but not limited to Subscriber's appropriate legal rights to use all Subscriber Content. Subscriber shall configure the Services to meet Subscriber's requirements for archiving, storage, backup, and other configuration of such Subscriber Content used with the Services (including the UI). Pantheon shall provide Subscriber any configuration options for scheduling server backups, restoring data, access to log files or other application, and server options available to Pantheon related to Subscriber's use of Services. Pantheon shall not retain any Subscriber Confidential Information following termination of Services except as may be required under applicable law.

## 2. SUPPORT AND SERVICES.

2.1 **Support Services.** Pantheon may provide certain support services to you as described in the Documentation and the Order Form ("Support"). Pantheon may change the description and features of such Support programs at any time with notice to you as set out above. Pantheon endeavors to provide Support in accordance with the target response times, which are not binding commitments by Pantheon.

2.2 **Professional Services.** Pantheon shall provide professional services as specified in the Order Form and in accordance with the timeline, requirements, and inclusive of any deliverables ("Professional Services"). The Parties may change items set out in the Order Form only as agreed upon in writing under a subsequent or amended Order Form entered between the Parties. Subscriber shall provide reasonable and timely assistance to Pantheon for Professional Services.

## 3. CONFIDENTIALITY.

3.1 **Obligations of the Parties.** For purposes of any Confidential Information shared by Disclosing Party, Receiving Party shall not disclose Confidential Information to any third party; provided that it may, however, disclose Confidential Information to its employees, contractors, advisors and agents solely for purposes of meeting Receiving Party's obligations under this

Agreement under similarly restrictive terms as set forth herein. If the Receiving Party is required to disclose Confidential Information pursuant to any applicable statute, regulation, or order of a court of competent jurisdiction, Receiving Party shall reasonably notify Disclosing Party. Each Party shall maintain physical, technical and organizational safeguards designed to protect the confidentiality and integrity of, and to prevent unauthorized access to or use of, Confidential Information provided by the other Party.

3.2 Exclusions to Confidentiality. Notwithstanding the foregoing, Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been lawfully known to the Receiving Party when provided by Disclosing Party; (iii) is lawfully received from a third party; or (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to the Confidential Information. Confidential Information excludes PI, which requires unique protection and is more specifically addressed in Section 4 below.

#### 4. DATA PROCESSING STANDARDS OF ANY PI.

4.1 Nature of Data Processing Activity. Pantheon hosts Subscriber Content as part of the Services. If Subscriber Content includes any PI shared with Pantheon, the Parties each agree to comply with all applicable federal, state and international laws, rules, regulations, and directives regarding the collection, use, disclosure, and/or processing of personal information pursuant to the Agreement, including but not limited to the following: (a) for the EEA and Switzerland, prior to May 25, 2018, the EU Data Protection Directive, and after May 25, 2018, Regulation EU 2016/769 or "GDPR," (b) for the United Kingdom, data protection laws applicable in the United Kingdom, including the Data Protection Act of 2018 and the EU General Data Protection Regulation (Regulation 2016/679, and (b) for the U.S. the California Consumer Privacy Act (CCPA) and other similar state or federal laws (collectively, (a), (b) and (c) are referred to as "Data Protection Laws"). To the extent applicable, each Party understands and shall comply with their respective obligations thereunder to protect any PI in accordance with such Data Protection Laws in accordance with this Section 4. Pantheon shall not retain, use or disclose any PI for purposes other than the Services and under no circumstance shall sell such information to a third party within the meaning of CCPA or applicable Data Protection Laws. Pantheon maintains and annually updates a documented data breach action and response plan. If Pantheon discovers or is notified of a breach of security which likely resulted in lost access to or the unauthorized access, acquisition, modification, disclosure, use or loss of any PI (collectively, a "Data Breach"), Pantheon will, without undue delay of becoming aware of the Data Breach notify Subscriber of the Data Breach and take such other commercially reasonable actions and actions required by applicable Data Protection Laws to respond to the Data Breach.

4.2 Obligations of the Parties. Both Parties, where Subscriber shall be the data controller and where Pantheon shall be data processor (GDPR) or service provider (CCPA), or the conceptual equivalent of those terms, as those terms are defined under Data Protection Laws, shall ensure they each have in place appropriate technical and organizational security measures to protect any PI disclosed under this Agreement. Pantheon shall maintain data processing standards in accordance with Pantheon's privacy policy accessible at <https://www.pantheon.io/privacy> and as maintained and updated by Pantheon periodically in accordance with Pantheon's compliance program and all applicable Data Protection Laws. Pantheon shall adhere to such Privacy Policy and process any PI received hereunder solely to perform the Services and for no other purpose.

4.3. Consents and End User Requests. Subscriber shall maintain adequate legal consent(s) for any PI used by Subscriber with the Services under this Agreement. Subscriber shall promptly notify Pantheon, and Pantheon shall promptly respond to Subscriber regarding, any data access, transfer, deletion or other similar requests under Data Protection Laws.

4.4 International Transfers. For the transfer of Personal Data from the EEA and Switzerland to the U.S and any onward transfers and solely for purposes of the Services, the applicable standard contractual clauses from (i) the Commission Implementing Decision on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council (2021/914/EU), dated June 4, 2021, as amended or replaced from time to time, or (ii) for transfers of Personal Data from the United Kingdom to the U.S. for Transfer of Personal Data to Processors Established in Third Countries, dated February 5, 2010, as amended or replaced from time to time (subparts (i) or (ii), as applicable of the "Standard Clauses") shall apply and are hereby incorporated by reference into this Agreement). For purposes of the Standard Clauses, (a) Subscriber shall act as the data exporter and Pantheon shall act as the data importer and service provider; (b) any subprocessors (as defined under GDPR) shall be subject to Clause 11 (Sub-processing) of the Standard Clauses; (c) all Annexes and Appendices, as applicable, of the Standard Clauses shall be promptly completed by the Parties and incorporated by reference to this Agreement. If the Standard Clauses are amended or replaced from time to time, then the foregoing Standard Clauses and Annexes and Appendices shall be deemed updated as appropriate. To the extent that there is a conflict between this Agreement and the Standard Clauses, the Standard Clauses shall prevail. If the Standard Clauses or other applicable transfer mechanisms become invalid, they shall be replaced with other valid instruments prescribed by applicable Data Protection Laws.

4.5 Subcontracting. Pantheon maintains a current list of subprocessors for purposes of Data Protection Laws under its Privacy Policy as set out above. Subject to the rights reserved for a data exporter and the obligations of the data importer under applicable Data Protection Laws, including prior notice to Subscriber of any intended changes to the list of subprocessors, Pantheon shall maintain as current and Subscriber consents to Pantheon's use of such subprocessors solely for purposes of the Services. Pantheon shall maintain adequate data protection agreements with such subprocessors and remain liable for any breach of this Section 4 caused by a Pantheon subprocessor.

## 5. INTELLECTUAL PROPRIETARY RIGHTS.

5.1 Intellectual Property Rights Ownership. As between the Parties, Pantheon retains ownership in and reserves all right, title, and interest in and to any and all Proprietary Rights in and to the Documentation, Subscription Plans, the Support and Professional Services excluding Subscriber Confidential Information, the UI, and Software Tools, in whole and in part, and all derivative works thereof ("**Pantheon IP**"). Except for Pantheon IP, as between the Parties, Subscriber retains ownership in and reserves all right, title, and interest in and to any and all Proprietary Rights in and to Subscriber Content and any works created by Subscriber or End User that do not include any Pantheon IP. Except as expressly set forth in Section 5.2 below, no express or implied license or right of any kind is granted to Subscriber regarding any Pantheon IP, the Services, or any part thereof, including without limitation any right to obtain possession of any source code, data or other technical material relating to the Services. All rights not expressly granted to Subscriber are hereby reserved by Pantheon.

5.2 License. Subject to this Agreement, Pantheon grants to Subscriber during the Term a limited, revocable, non-exclusive, non-sublicensable, non-transferable license, in object code form only, as applicable, to: (i) access and use the

Documentation, Subscription Plans, and Software Tools and (ii) use the UI solely in connection with the Services. Further, Pantheon grants Subscriber a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license, to copy, modify, distribute, and create derivative works of any Professional Services exclusive of Pantheon IP. The Services may contain open source software components which are licensed under the terms of the applicable open source software licenses and not this Agreement. All licenses and other rights, if any, granted to you in this Agreement are conditional on your continued compliance with this Agreement, and shall immediately and automatically terminate if you do not comply with any term or condition of this Agreement.

5.3 Cooperation. During and after the term, you shall not assert, nor shall you authorize, assist, or encourage any third party to assert, against Pantheon any intellectual property infringement claim regarding any Services you or any other authorized users have used on your behalf under this Agreement. Subscriber shall abide by all copyright notices, information, and restrictions contained in any UI accessed through the Services.

5.4 Retention of Rights in Downloaded Materials. Subject to this Agreement and any license restrictions included in such download, Subscriber may download or copy the UI, and other items designated for download, on the UI in connection with the Services and provided that Subscriber maintains all copyright and other notices contained in such UI. Such downloads and use thereof are provided solely in conjunction with your use of the Services, and any intellectual property therein is licensed to you by Pantheon or third-party licensors solely for your noncommercial use, and no title to the Software Tools or the UI shall be transferred to you.

5.5 Proprietary Rights of Subscriber Content. Subscriber shall own all Subscriber Content that Subscriber contributes to the UI. For purposes of Pantheon providing its Services, Subscriber hereby grants Pantheon during the Term a non-exclusive, worldwide, fully paid, royalty-free, non-transferable right and license to use, copy, cache, publish, display, distribute, modify, create derivative works and store such Subscriber Content solely to the extent necessary to provide the Services.

5.6 Feedback. If Subscriber identifies problems or changes or provides ideas, suggestions, or tangible materials to Pantheon about the Services ("Feedback") Pantheon may use that information without obligation to Subscriber (including without limitation obligations of confidentiality), and Subscriber hereby irrevocably grants to Pantheon a fully paid, royalty-free, perpetual, worldwide, non-exclusive and fully sub-licensable right and license to use, reproduce, perform, display, distribute, adapt, modify, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights.

5.7 Aggregate Data. Pantheon may create, generate, and use Aggregate Data for any lawful purpose.

5.8. Software Evaluation. When applicable, you may be provided Evaluation Materials, which may be a "trial", "pre-release", "beta" or other limited-functionality or limited-access versions of the Service and/or its parts. Your use of and participation in the Evaluation Materials is subject to additional Software Evaluation Licensing Terms found in <https://pantheon.io/legal>.

## 6. WARRANTY AND DISCLAIMER.

6.1 Mutual Warranties. Each party represents and warrants to the other party that it: (a) has the legal power to enter into and perform under this Agreement; (b) applies targeted measures to protect against the Services and UI containing any disabling devices, viruses, trojan horses, trap doors, back doors, easter eggs, time bombs, cancelbots, or other computer programming routines that damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; and (c) its performance under this Agreement shall not violate any law applicable to its respective performance hereunder.

6.2 Pantheon Warranties. Pantheon warrants any professional services or Support by Pantheon shall be provided in a professional and timely manner. Pantheon further warrants the Services shall operate in accordance with the Documentation and any defective Services, as Subscriber specifies in writing to Pantheon within thirty (30) days of the Effective Date, shall be corrected by Pantheon at no cost to Subscriber to operate in accordance with the Documentation as Subscriber's sole and exclusive remedy for such defect in warranty.

6.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, THE SERVICES, AND ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES ARE PROVIDED "AS IS." PANTHEON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PANTHEON MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND THAT THE SERVICES, SHALL MEET SUBSCRIBER'S, END USERS' OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, DATA OR OTHER SERVICES, OR BE COMPLETE, FREE OF HARMFUL CODE, TIMELY, UNINTERRUPTED OR ERROR-FREE. ANY THIRD PARTY CONTENT, DATA, PRODUCTS OR SERVICES OR ANY OPEN SOURCE SOFTWARE OR CODE THAT MAY BE ACCESSED BY SUBSCRIBER AVAILABLE THROUGH THE SERVICES ARE MADE AVAILABLE "AS IS" AND SHALL BE SUBJECT TO THE APPLICABLE LICENSE AGREEMENTS BETWEEN SUBSCRIBER AND SUCH THIRD PARTY AND ARE NOT SUBJECT TO THIS AGREEMENT. PANTHEON DOES NOT ENDORSE OR MAKE ANY OTHER REPRESENTATIONS OR PROMISES REGARDING SUCH THIRD PARTY MATERIALS.

## 7. INDEMNIFICATION.

7.1 Pantheon shall defend, indemnify, and hold you harmless, including your employees, officers, directors, 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 infringement of third party US or European registered intellectual property rights by Pantheon. Subscriber shall defend, indemnify, and hold Pantheon 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: (a) Subscriber or any End Users' use of the Services (including any activities under your account and use by your employees, agents, subcontractors, or customers); (b) violation of Pantheon's AUP; (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 Subscriber and any End User, employee, agent, contractor, or other third party.

7.2 Process. Each party shall promptly notify the indemnifying party of any claim under this Section 7 (a "Claim"), but a failure to do so shall not prejudice indemnified party's rights hereunder. Indemnifying party shall choose legal counsel to defend the Claim, provided that these decisions are reasonable and promptly communicated to indemnified party. Indemnified party must comply with reasonable requests for assistance and cooperation in the defense of any Claim. Indemnifying party shall not settle a Claim without indemnified party's consent, although such consent may not be unreasonably withheld or delayed. Indemnifying party must promptly pay defense expenses incurred hereunder.

#### 8. LIMITATIONS OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES OR ITS AFFILIATES (FOR PURPOSES OF THIS SECTION ONLY "PANTHEON"), BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS. THIS LIMITATION APPLIES EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND THE MAXIMUM AGGREGATE AMOUNT WHICH MAY BE AWARDED TO AND COLLECTED BY THE OTHER PARTY WITH RESPECT TO CLAIMS UNDER THIS AGREEMENT SHALL NOT EXCEED TWELVE (12) MONTHS OF FEES FOR SERVICES UNDER THE APPLICABLE ORDER FORM FROM WHICH THE FIRST CLAIM AROSE.

#### 9. FEES AND PAYMENTS.

9.1 Fees. Any applicable fees for use of the Services shall be in U.S. dollars before applicable taxes or statutory withholdings required by law. All fees are non-refundable unless expressly stated in the Order Form or this Agreement. Subscriber represents that it is a lawful account holder authorized to make any payments hereunder to Pantheon. All payments are made without the right of set-off or chargeback. The Parties agree that, at the time this Agreement is entered, it would be extremely difficult or impracticable to ascertain Pantheon's damages resulting from lost business opportunities or otherwise should any monetary amount not be paid in full when due. The Parties reasonably estimate that, in addition to all other remedies available to Pantheon, fair compensation for any amount past due shall bear interest at the rate of 1.5% per month, unless such amount exceeds the interest rate permitted under applicable law, in which case the interest rate shall be the highest rate permitted under such law. Such interest shall accrue from its due date until paid. Subscriber shall pay any taxes arising out of this Agreement expressly excluding taxes on Pantheon's net income and all employer reporting and payment obligations with respect to Pantheon's personnel. Subscriber shall promptly provide any documentation for withholdings under law affecting any amounts payable to Pantheon hereunder. 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.

9.2 Failure to Pay. If Subscriber fails to pay amounts owed to Pantheon in accordance with this Agreement, Pantheon may suspend without notice or liability any performance under this Agreement until such payment is received by Pantheon. If Subscriber fails to pay any such amount following five (5) days' notice, Pantheon may terminate all or a portion of the Services without further notice or any liability. Pantheon may further engage the services of a collection agent to recover non-payment.

9.3 Modification of Fees. Pantheon may change its prices at any time. Any pricing set out in the Order Form shall apply for the quantities and items as specified therein for your current Subscription Plan.

## 10. TERMINATION.

10.1 Term. The term of this Agreement commences on the Effective Date and shall apply for the duration of Subscriber's use of the Services unless terminated earlier in accordance with this Agreement (the "**Term**"). The term of any Subscription Plan shall commence as set out in the Order Form and shall apply for the duration of Subscriber's Subscription Plan unless terminated earlier in accordance with this Agreement.

10.2 Right to Terminate. Pantheon may immediately terminate the Services at any time for any violation of Section 1.4 (Use of Services – Restrictions), Section 4 (Data Processing Standards of any PI), or Section 5 (Intellectual Property Rights). Without limiting the foregoing, if either party fails to perform any material provision of this Agreement, and the non-breaching party gives written notice to the breaching party that if the default is not cured within ten (10) business days (the "**Cure Period**"), the Agreement shall be terminated, and the default is not cured to the reasonable satisfaction of the non-breaching party during such period, then the Agreement shall automatically terminate at the end of the Cure Period.

10.3 Effects of Termination. Upon termination of any Subscription Plan or Services under this Agreement, your right to use the Services, including access to the UI, and any Subscriber Content or Third Party Content shall immediately cease. Sections 1.4 (Restrictions), 3 (Confidentiality), 5 (Intellectual Property Rights), 6 (Warranty and Disclaimer), 8 (Limitation of Liability), 9 (Fees and Payments), 10.3 (Effects of Termination), 11.2 (DMCA), 12 (Miscellaneous), 13 (Applicable Laws and Disputes) shall survive termination of this Agreement. Pantheon shall not retain any Subscriber Confidential Information following termination of Services except as may be required for compliance with applicable law.

## 11. COMPLIANCE WITH CERTAIN LAWS.

11.1 Compliance with Laws. Each Party shall comply with all applicable anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010. Each Party shall promptly report any known or suspected conflicts of interest that may arise between the parties. Subscriber shall ensure Subscriber Content and any use thereof with the Services complies at all times with applicable laws.

11.2 Digital Millennium Copyright Act (DMCA). Pantheon respects intellectual property rights. We hereby expressly reserve the right, in our sole and absolute discretion, to terminate accounts or access rights if we have reason to believe that intellectual property rights have been violated under the process set out in our AUP for compliance with DMCA.

11.3 Export Controls Laws. Subscriber acknowledges that the Services are subject to export control laws and regulations of the United States ("U.S.") and shall abide by those laws and regulations. Under U.S. export control laws and regulations, unless authorized by the U.S. government, the Services may not be downloaded or otherwise exported, re-exported, or transferred to sanctioned countries, to parties listed on a U.S. government restricted party list, or for prohibited end uses.

Subscriber represents, warrants and covenants that neither Subscriber nor Subscriber's personnel: (a) are located in, or a resident or a national of, a sanctioned country; (b) are on any of the U.S. government lists of restricted parties; and (c) will, unless otherwise authorized under U.S. export control regulations, use the software in any prohibited end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications. Subscriber understands that the requirements and restrictions of U.S. law as applicable to Subscriber may change over time, and that, to determine the precise controls applicable to the software, it is necessary to refer to the U.S. Export Administration Regulations and the U.S. Department of Treasury, Office of Foreign Assets Control sanction regulations.

## 12 MISCELLANEOUS.

12.1 Complete Agreement. This Agreement, along with any Order Form(s) incorporating this Agreement by reference, any Supplemental Terms as set out herein and the AUP, constitute the entire agreement regarding the subject matter herein between Subscriber and Pantheon and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter hereof. Purchase orders shall be for the sole purpose of defining quantities, prices, and describing the Services 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. Subscriber's access to and use of certain other products or services by Pantheon may be subject to additional terms ("Supplemental Terms"), and such Supplemental Terms shall apply as set out herein, be referenced in the Order Form or be presented for acceptance when such services are added by Subscriber. If this Agreement is inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such services.

12.2 No Waiver of Rights. No provision of this Agreement, unless such provision otherwise provides, shall be waived by any act, omission or knowledge of either Party or its agents or employees, except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of such Party. 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.

12.3 Force Majeure. Pantheon shall 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.

12.4 Assignment and Transferability of Agreement. This Agreement is not assignable, transferable or sub-licensable by Subscriber, any adjudicator, or any third party, except with Pantheon's express prior written consent. Pantheon may assign this Agreement in whole or in part at any time without Subscriber's consent to a parent, affiliate, or subsidiary or to a successor provided that the terms of this Agreement shall be binding upon and inure to the benefit of such assignee party by Pantheon.

12.5 Relationship of Parties. The relationship between Pantheon and Subscriber are that of independent contractors, each as

separate legal entities. Neither is an agent, representative, partner, or in a joint venture with the other Party under contract or by law. Except as set out in the Agreement, neither party may represent to any third party that it has any authority to act on behalf of the other Party.

12.6 Notice. The Parties accept email notices as effective under this Agreement. Any notice shall be in writing and shall be deemed effective when sent to the last known address provided unless notice was given to the other Party otherwise. Notices to Pantheon shall be provided by email to [legal@pantheon.io](mailto:legal@pantheon.io) or by hard copy to Customer Support, Pantheon Systems, Inc., 717 California Street, 3rd Floor, San Francisco, CA 94108. Notices to you shall be sent to the email address maintained by Subscriber with Pantheon.

12.7 Injunctive Relief. You acknowledge that monetary damages would not be an adequate remedy for your breach of certain provisions of this Agreement, including, but not limited to, Section 1, Section 3, Section 5, and other provisions pertaining to the protection of any intellectual property or Proprietary Rights of Pantheon. Accordingly, if you breach or threaten to breach any of your obligations relating thereto, other than payment when due, Pantheon shall be entitled, without showing or proving any actual damage sustained, to a stipulated temporary restraining order, and shall thereafter be entitled to apply for a preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of your obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting Pantheon from pursuing or obtaining any other remedies as otherwise available to it for such actual or threatened breach, including recovery of damages through litigation. If any legal action is brought to enforce this Agreement, Pantheon shall be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.8 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

12.9 Publicity. The pricing and any applicable discounts made available hereunder are conditioned on Subscriber's consent to use its name and other indicia in Pantheon's customer list and promotional and marketing materials and activities.

12.10 Remedies. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

### 13. APPLICABLE LAWS AND DISPUTES.

13.1 Applicable Law. The Parties agree on the laws of the State of California, without regard to principles of conflict of laws, shall exclusively govern this Agreement except as otherwise stated. The Parties expressly agree to the jurisdiction of state and federal courts located in San Francisco, California in any legal action, suit or proceeding hereunder except as otherwise stated.

13.2 Legal Disputes. The Parties shall cooperate to settle matters amicably under this Agreement. Except for matters of injunctive relief under Section 12.7 where such requirement shall not be a prerequisite, any claim, controversy or dispute between the Parties under this Agreement including the validity, construction or enforcement, breach, tort or quasi-claim, the Parties agree the matter shall be referred to an independent mediator agreed upon by the Parties. Where the Parties cannot agree on a mediator within ten (10) business days, either Party may file a claim and both Parties submit to the jurisdiction and requirements of the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court meeting the requirements of Section 13.1 as each Party's sole and exclusive remedy hereunder. The Parties agree to participate in good faith in any mediation or arbitration begun under this section. Any mediation or arbitral award shall be binding upon the Parties, and shall be final and non-appealable except for (a) matters of Confidentiality or Intellectual Property Rights, which may be appealed in all cases following a decision from arbitration proceedings, or (b) otherwise solely on the grounds provided under the applicable Alternative Dispute Resolution and Arbitration Laws, Rules and Procedures.

#### 14. OTHER DEFINITIONS.

"Aggregate Data" shall mean de-identified and anonymized sets of data derived from the data of multiple Subscriber (including Subscriber Data) for the purpose of expressing that information in summary form. Aggregate Data may be derived from Confidential Information, but will not include Personal Information relating to Subscriber, Subscriber's customers, or other information that could reasonably identify or relate to a natural person. Aggregate data will also not include information that may directly identify Subscriber."

"AUP" shall mean the Pantheon Acceptable Use Policy as set out at <https://legal.pantheon.io>.

"API" means an application program interface.

"Confidential Information" means any and all non-public information or other information, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential, disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party," ) which may include without limitation: (a) patent and patent applications, (b) trade secrets and product roadmap or discussions regarding features and enhancements and (c) proprietary and confidential information, ideas, media, drawings, works of authorship, inventions, know-how, processes, algorithms, software programs and software source documents related to the current, future, and proposed products and services of Pantheon or its business partners including their technology, business plans and promotions (d) information concerning research, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.

"Documentation" means the user guides and operations manuals provided with the Services at <https://pantheon.io/docs/>.

“End User” means any third party that directly or indirectly: (a) accesses, modifies or uses your Subscriber Content; or (b) otherwise modifies, accesses or uses the Services under your Subscription Plan.

“Order Form” is the list of products or services with any applicable pricing, quantities, and terms of your Subscription Plan provided by Pantheon to you incorporating by reference the terms of this Agreement, whether online, on paper, or in digital format. For avoidance of doubt, any sandbox, beta or otherwise unpaid access to the Services shall be subject to this Agreement.

“Personal Information” (or “PI”) is information, in any form, that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

“Proprietary Rights” means any and all of the following: (a) all rights using all technologies, electronic or otherwise and whether now known or hereafter created, associated with works of authorship throughout the universe, including but not limited to patents, designs, copyrights, moral rights, mask works, algorithms and other industrial property rights; (b) trademark and trade name rights and similar rights and all business goodwill associated therewith; (c) trade secret rights; (d) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated and whether now known or hereafter created, including, but not limited to, logos, “rental” rights, rights of publicity, and rights to remuneration), whether arising by operation of law, contract, license, treaty or otherwise; and (e) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including without limitation any rights in any of the foregoing).

“Restricted Data” shall mean (i) protected health information under the Health Insurance Portability and Accountability Act and medical information governed by provincial, state or other healthcare privacy laws; (ii) government-issued identification numbers, including Social Security numbers, driver’s license numbers and other state-issued identification numbers; (iii) information regulated under the Gramm-Leach Bliley Act; (iv) payment card data, including credit card or debit card numbers regulated by the Payment Card Industry Data Security Standards (“**PCI DSS**”); (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; (vi) biometric data regulated by biometric privacy laws; or (vii) other data requiring a standard of protection more stringent or specific than reasonable technical, physical, and procedural safeguards against disclosure.

“Services” means the Subscription Plan, Software Tools, Professional Services or Support offered to Subscriber (and, if Subscriber is entering this Agreement solely for the development of websites for third parties, i.e., an “Agency,” Subscription Plans offered to such Agency’s customers subject to certain Supplemental Terms as set out in the Order Form). Services do not include Third Party Content or Subscriber Content.

“Software Tools” means the platform provided by Pantheon under this Agreement for the development, maintenance, and oversight of one or more websites (including, without limitation, development environment, workflow integration tools, dashboard, site access controls and search), the Documentation, the UI, and any other web product or service provided by Pantheon under this Agreement. Software Tools do not include Third Party Content or Subscriber Content.

“Subscriber Content” means content that Subscriber or any End User (a) accesses or uses on the Services, (b) causes to interface with the Services, or (c) uploads to the Services 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, object code, source code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, and Subscriber added API(s), dashboard(s), administration tools, and graphical interface(s).

“Subscription Plan” means paid or unpaid access to any website hosting plan provided by Pantheon as set out in an Order Form.

“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, “Third Party Content” means, without limitation, third party software, source code, object code, audio, video, animations, text, graphics, logos, tools, photographs, images, illustrations, 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 Services. UI does not include Third Party Content or Subscriber Content.

## 15. ADDITIONAL TERMS.

15.1 Pantheon Insurance Coverage. Pantheon shall at its own expense, at all times during the term of this Agreement and after termination, as specified below, maintain in effect the following types and limits of insurance and with insurers with an A.M. Best rating of A-VII or better.

- a. Workers’ Compensation insurance with statutory limits and Employer’s Liability insurance with limits of one million dollars (\$1,000,000) each accident, per employee for disease, and per disease.
- b. Commercial General Liability insurance covering all operations by, or on behalf of, Pantheon, providing insurance for bodily injury, property damage, personal and advertising injury, as those terms are defined by Commercial General Liability insurance policies, with limits of not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) general aggregate, and including Subscriber and Subscriber Indemnified Parties as additional insureds, but only to the extent of the terms and conditions of the applicable insurance policy. Such coverage shall include Subscriber as an additional insured and apply to such additional insured and

on primary and non-contributory basis, but each such extension of coverage shall only apply to the extent of liabilities falling within the terms and conditions of the applicable insurance policy.

- c. Business Automobile Liability Insurance, including, bodily injury, passenger liability (where applicable) and third party property damages for all hired (or rented) and non-owned vehicles, with limits of one million dollars (\$1,000,000) each accident combined single limit.
- d. Cyber Liability and Technology Errors and Omissions insurance, covering negligent acts errors and omissions in the performance of services with limits of five million dollars (\$5,000,000) per claim or series of related claims and in the aggregate. The insurance will also include coverage for loss caused by Pantheon's failure to prevent unauthorized access to, or use of, systems or networks containing private or confidential information of Subscriber; to prevent the transmission of a computer virus; and to provide authorized users access to the Subscriber's website, applications, or communications network. Additionally, the insurance will provide reimbursement towards notification costs for a security breach as required under data breach notification law. Such coverage shall be extended either by an extended reporting period or by subsequent renewals of coverage to cover a period of three years after termination of the Agreement.
- e. Excess Liability insurance providing additional limits of Employer's Liability insurance, Commercial General Liability insurance, and Business Automobile Liability insurance on a follow form basis, with limits of five million dollars (\$5,000,000) per occurrence and in the aggregate.

Pantheon's Workers Compensation, Employers Liability and Commercial General Liability insurance will contain a waiver of subrogation against Subscriber, subject to the terms and conditions of the applicable insurance policy. Pantheon shall furnish certificates of insurance evidencing renewal or replacement coverage to Subscriber within a reasonable time of placement of any such policies. Pantheon's insurance carriers will provide notice of cancellation in accordance with the policy provisions.

15.2 Transition Assistance. Within ten (10) days of any termination or expiration of this Agreement or any Order Form, Pantheon shall use reasonable efforts to promptly wind up the Services and cancel any Subscriber-specific expenses. If requested in a timely manner, Pantheon shall make available to Subscriber (at agreed-upon hourly rates or a price consistent with the cost of the Services under this Agreement) reasonable transition assistance to any successor to the Services.

**This Agreement is duly entered through the authorized representatives below as of the Effective Date.**

<b>Pantheon</b>	<b>Subscriber</b>
By:	By:

Name:	Name:
Title:	Title:
Date:	Date: