

PMG Case Central Terms of Use



1. Definitions

1.1 “Affiliate” means any entity that controls, is controlled by, or under common control with Customer, and “control” means owning a majority of the total ownership interests in that entity.

1.2 “Agreement” means this Master Subscription Agreement.

1.3 “Authentication Server” means a network device that provides authentication and authorization for Customer users.

1.4 “Connector” means software code produced and supported by PMG that allows bi-directional integration with another commercially available software product.

1.5 “Customer” means the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

1.6 “Customer Data” means electronic data and information submitted by or for the Customer to the Services or collected and processed by or for the Company using the Services (including electronic data and information the Services may obtain from 3rd party applications).

1.7 “Documentation” will mean the user manuals or similar documentation relating to the Services and/or use of the Software (including Customized Software) delivered by PMG to Customer in either electronic or hard copy form.

1.8 “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

1.9 “Non-PMG Providers” means applications that are provided by entities or individuals other than PMG and are clearly identified as such, and that interoperate with the Services, and may include, but is not limited to, those identified as Authentication Servers and Connectors.

1.10 “Pre-Existing Materials” means all tangible items and materials created, conceived, developed, and reduced to practice prior to or wholly independent of PMG’s performance of the Services for Customer.

1.11 “Product Schedules” will mean order forms provided by PMG in connection with the Agreement and shall contain, as applicable, (i) applicable license fees, (ii) the number of Users to be licensed to Customer, (iii) and Connectors available to the customer, (iv) storage allowance, and (v) data transfer allowance.

1.12 “Restricted Release” will mean any version of the Services marked alpha or beta or

which is otherwise designated as a Restricted Release.

1.13 “Services” means the products and services that are ordered by Customer under a Product Schedule and made available by PMG online.

1.14 “User” will mean a designated user who is authorized by the Customer to access the Software or Customized Software licensed. The number of Users granted under the Agreement shall be set forth on the Product Schedules.

2. PMG Responsibilities

2.1 PMG shall: (i) use commercially reasonable efforts to make the Services pursuant to this Agreement and the applicable Product Schedules available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which PMG shall give at least 8 hours’ notice and which PMG shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time) or (b) any unavailability caused by circumstances beyond PMG’s reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving PMG’s employees), Internet service provider failures or delays, or denial of service attacks, (ii) provide standard support for the Services to Customer at no additional charge, and (iii) provide the Services only in accordance with applicable laws and government regulations.

2.2 PMG shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. PMG shall not (a) modify Customer Data, (b) disclose Customer Data except as compelled by law, if PMG provides Customer with prompt written notice of such disclosure, if permitted by law, in order to permit Customer to see confidential treatment of such information; or as expressly permitted in writing by Customer, or (c) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer’s request in connection with customer support matters.

2.3 PMG will be responsible for the performance of PMG personnel including employees and contractors and their compliance to obligations under this Agreement.

3. Use of Services

3.1 Unless otherwise provided in the applicable Product Schedule, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

3.2 Customer shall (i) be responsible for Users’ compliance with the Agreement, (ii) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer acquired Customer Data, (iii) use commercially reasonable efforts to

prevent unauthorized access to or use of the Services, and notify PMG promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the Documentation and applicable laws and government regulations. Customer shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3.3 Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls Customers are permitted to make against PMG application programming interface, and, for Services that enable Customer to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the Product Schedule. The Services provide real-time information to enable Customer to monitor compliance with such limitations.

3.4 PMG retains the right to suspend the Services in the event of any security threat, or breach or threatened breach of the restrictions in Section 3.2. PMG will lift any suspension once the risk associated with any such suspension has been mitigated to PMG's satisfaction.

3.5 The functionality of PMG's application may be dependent on the availability of one or more Authentication Servers. In the event that these servers are managed by a Non-PMG Provider, any outage of the Services caused by an outage of the Authentication Server will not be the responsibility of PMG.

3.6 The Services may be dependent on Non-PMG Providers. To use the Services, Customer is required to obtain access to each such Non-PMG Provider's applications and ensure such access and connectivity are fit for use with Services.

3.7 Customer must give PMG at least sixty (60) days written notice before Customer upgrades or changes the version or Application Programming Interface ("API") used by Customer's target system to which connectivity is enabled through a PMG licensed Connector. Within thirty (30) days after PMG's receipt of written notice, PMG will notify Customer as to whether the functionality of the Software will be compromised due to such API Upgrade. In no event will PMG be liable for any interruption, loss of functionality, or error resulting from an API Upgrade for which we were not informed.

4. Fees and Payment Terms

4.1 Customer will pay (or cause a mutually agreed upon third party to pay) PMG the fees specified in Product Schedules used in connection with the Agreement. Except as otherwise specified herein or in a Product Schedule, (i) fees are based on services purchased and not actual usage, and (ii) payment obligations are noncancelable and fees paid are non-refundable. Services subscriptions added in the middle of a subscription term will be

charged pro-rata for that period and the periods remaining in the subscription term.

4.2 All fees will be due and payable within the terms specified on the Product Schedules or in the Agreement. Customer is responsible for all (i) taxes concerning the Software and/or Services, excluding taxes based on PMG income, and (ii) associated shipping costs. Overdue payments will bear interest at the lesser of twelve percent (12%) per annum or the maximum rate allowed under applicable law.

4.3 If any amount owing by Customer under this or any other agreement for Services is sixty (60) or more days overdue, PMG may, without limiting our other rights and remedies, accelerate unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend services until such amounts are paid in full. PMG will provide at least twenty (20) days' prior notice that Customer account is overdue, in accordance with the notice provisions of the Agreement, before suspending services.

4.4 PMG will not impose interest under Section 4.2 above or exercise our rights under 4.3 (Suspension of Service and Acceleration) above if the Customer is disputing the applicable charges reasonably and in good faith cooperating diligently to resolve the dispute.

4.5 PMG's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). The Customer is responsible for paying all Taxes associated with purchases hereunder. If PMG has the legal obligation to pay or collect Taxes for which the Customer is responsible under this Section 4.5, PMG will invoice the Customer and the Customer will pay that amount unless PMG is provided with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, PMG is solely responsible for taxes assessable against PMG income, property, and employees.

5. Term and Termination

5.1 The Agreement commences on the date of the execution of an applicable Product Schedule and continues until its expiration or termination. All Services subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one-year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless PMG have given written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior subscription term.

5.2 A party may terminate the Agreement for cause: (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the

expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

5.3 Upon any termination for cause by Customer, PMG shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by PMG, Customer shall pay any unpaid fees covering the remainder of the term of all Product Schedules after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to PMG for the period prior to the effective date of termination.

5.4 Upon request by Customer made within thirty (30) days after the effective date of termination of a Services subscription, PMG will make available to Customer for download a file of Customer Data in a database back up file (.bak) format. After such thirty (30) day period, PMG shall have no obligation to maintain or provide any of Customer Data and shall thereafter, unless legally prohibited, delete all of Customer Data in PMG systems or otherwise in PMG possession or under PMG control.

5.5 Sections 4 (Fees and Payment Terms), 8 (Infringement Indemnity), 10 (Warranties and Disclaimers), 11 (Limitation of Liability), 12 (Confidentiality), 14.3 (Governing Law and Jurisdiction), 16 (Attorney's Fees), 17 (Dispute Resolution), and 18 (General Provisions) shall survive any termination or expiration of the Agreement.

6. Insurance

PMG shall, at its own cost and expense, acquire and maintain during the Term, with carriers having an AM Best Rating of A-VII or better, sufficient insurance to adequately protect the respective interests of the parties, including PMG's indemnity obligations. Specifically, PMG will carry the following minimum types and amounts of insurance on an occurrence basis:

- (a) Commercial General Liability in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate;
- (b) Workers' Compensation Insurance and Employees' Liability Insurance in the amount of One Million Dollars (\$1,000,000) each employee by accident;
- (c) Commercial Automobile Insurance in the amount of One Million Dollars (\$1,000,000) each accident;
- (d) Technology/Professional Errors and Omissions Liability Insurance in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate; and
- (e) Umbrella liability in excess of Subsections (a) and (c) above of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate.

7. Proprietary Rights and Licenses

7.1 Subject to the limited rights expressly granted hereunder, PMG and Customer reserve all of each parties' respective rights, title and interest in and to the Services, including all of each parties' related intellectual property rights. No rights are granted to the Customer hereunder other than the right to receive and use Services as expressly set forth herein.

7.2 Customer grants PMG a worldwide, limited-term license to host, copy, transmit and display Customer Data as necessary for PMG to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, PMG acquires no right, title, or interest from Customer under this Agreement in or to Customer Data or any Non-PMG Applications.

7.3 Customer grants PMG a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided in relation to the operation of the Services.

7.4 It is PMG's intent to leverage Pre-Existing Materials, specifically, questions sets, forms, workflow definitions and reports to leverage best practices and maximize speed to value for the customer. PMG will retain ownership of both Pre-Existing Materials as well as any enhancements that occur.

7.5 In those situations where PMG uses Pre-Existing Materials, PMG agrees and does hereby grant to Customer, a perpetual, irrevocable, royalty-free, nonexclusive, worldwide license, with the right of sublicense, to use, reproduce, display, transmit, market, sell, modify, enhance and create derivative works of any of PMG's Pre-Existing Materials as part of any Services.

7.6 PMG shall have the right to (and to retain third parties to) collect and analyze anonymized data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies. We will be free (during and after the term hereof) to (i) use such anonymized information and data to enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and PMG's other offerings, and (ii) use third party service providers, contractors and subcontractors ("Our Providers") to assist in providing, supporting and improving the Service. PMG may share all such anonymized information and data with PMG Providers, who may store and use it solely to provide, support and improve the Service. We shall be responsible for the compliance of PMG Providers with the Confidentiality and other provisions of this Agreement and will limit disclosure of such information and data solely in aggregate or other de-identified form for the limited purpose of enhancing the Services.

8. Infringement Indemnity

8.1 PMG will defend and indemnify Customer for all costs (including reasonable attorney's fees) arising from a claim that the Software within the scope of the Agreement infringes any U.S. copyright or U.S. patent, provided that (i) Customer notifies PMG in

writing within 30 days of the claim, (ii) PMG has sole control of the defense and all related settlement negotiations, and (iii) Customer provides PMG with such assistance, information, and authority as PMG may reasonably request to assist PMG to perform the above.

8.2 In the event the Services are held or believed by PMG to infringe, or Customer's use of the Services is enjoined, PMG will have the option, at its expense, to (i) modify the Services to be non-infringing, provided the functionality remains substantially the same, (ii) obtain for Customer a license to continue using the Service, (iii) substitute the Service with another Service reasonably suitable to Customer, or (iv) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing Services and refund the fees paid for the Services, prorated over a five-year term from the effective date of the applicable Schedule. This Section states PMG's entire liability for infringement.

9. Default

9.1 An event of default will be deemed to have occurred if either party fails to perform any material obligation under the Agreement and such failure remains uncured for more than thirty (30) days after such party's receipt of written notice thereof.

9.2 If an event of default occurs, the non-defaulting party, in addition to any other rights available to it under law or equity, may terminate the Agreement and all licenses granted hereunder by written notice to the defaulting party. Remedies will be cumulative, and there will be no obligation to exercise any particular remedy.

10. Warranties and Disclaimers

10.1 PMG warrants that (i) the Services shall perform materially in accordance with the Documentation, (ii), the functionality of the Services will not be materially decreased during a subscription term, and (iii) PMG will not transmit Malicious Code to Customer, provided it is not a breach of this subpart (iii) if Customer or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code.

10.2 PMG specifically does not warrant that the Services will meet Customer's requirements, that the Services will operate in the combinations that Customer may select for use, that the operation of the Services will be uninterrupted or error-free, or that all Services errors will be corrected.

10.3 PMG represents and warrants that PMG is either the author of the products and/or Services to be provided under this Agreement or has obtained and holds all rights necessary to carry out this Agreement. PMG further represents and warrants that the Services to be provided under this Agreement do not and will not infringe any copyright, patent, trademark, trade secret or other intellectual property right of any third party.

10.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY

SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11. Limitation of Liability

PMG'S WITH THE EXCEPTION OF PMG'S INDEMNITY OBLIGATIONS UNDER SECTION 8, PMG'S LIABILITY FOR DAMAGES UNDER THE AGREEMENT WILL IN NO EVENT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO PMG FOR THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVEN RISE TO THE LIABILITY. PMG WILL IN NO EVENT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, HOWEVER ARISING, OR FOR ANY SIMILAR CLAIM AGAINST CUSTOMER BY ANY OTHER PARTY ARISING OUT OF THIS AGREEMENT. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY RISK THAT IS SET FORTH IN THIS SECTION.

12. Confidentiality

12.1 The parties acknowledge that by virtue of their licensing, support services or consulting relationship, each party may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information will be limited to the Documentation, Pre-Existing Materials, Developments, all information clearly marked by either party as confidential, and all information, that even though not so marked, would be understood to be confidential by a reasonable person under the circumstances. The parties agree, both during the term of the Agreement and after termination, to hold each other's Confidential Information in confidence until the obligations with respect to Confidential Information have been terminated pursuant to Section 12.2. The parties agree (a) not to make each other's Confidential Information available in any form to any third party (other than those of its employees or consultants who are bound by written nondisclosure obligations) and who need to know such Confidential Information to perform their work functions in regard to the Agreement, and (b) not to use each other's Confidential Information for any purpose other than as contemplated by the Agreement. Each party agrees to treat the Confidential Information of the other party in the same way it treats its own confidential information, but in no event using less than a reasonable standard of care, and each party agrees to take commercially reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Section.

12.2 Notwithstanding any provision contained in the Agreement, neither party will be required to maintain in confidence any of the following information:

- (a) Information that, at the time of disclosure to the receiving party, is in the public domain;
- (b) Information that, after disclosure, becomes part of the public domain by

publication or otherwise, except by breach of the Agreement;

(c) Information which was in the receiving party's possession without obligation of confidentiality (as reflected in its written records) at the time of disclosure by the disclosing party, and which was not acquired, directly or indirectly, from the disclosing party;

(d) Information that the receiving party can demonstrate, by written documents, resulted from its own research and development independent of disclosure from the disclosing party;

(e) Information which the receiving party receives on a non-confidential basis from third parties that the receiving party had no reason to believe were under any confidentiality or fiduciary obligation to the disclosing party; or

(f) Information that a party is advised by its counsel must be produced in compliance with applicable law or a court order, provided that the other party is given reasonable notice of such law or order, if permitted by law, and an opportunity to attempt to preclude or limit such production.

12.3 The parties agree that the unauthorized disclosure of Confidential Information in violation of this Section would cause irreparable harm to the disclosing party and that an award of monetary damages to the disclosing party would not be an adequate remedy. As such, the disclosing party shall be entitled to seek an injunction, without the necessity of posting a bond, restraining the receiving party and the receiving party's employees and agents, as applicable, from the actual or threatened disclosure, in whole or in part, or any unauthorized use of any Confidential Information. Notwithstanding anything to the contrary, nothing in this section shall be construed as prohibiting the disclosing party from pursuing any other legal or equitable remedies available to it, including, without limitation, the recovery of damages.

13. Limitation on Restricted Release Software

As an accommodation to the Customer, PMG may supply the Customer with trial versions of Restricted Release of the Services, which may be labeled "Alpha" or "Beta." THESE RELEASES ARE NOT SUITABLE FOR COMMERCIAL USE. PMG DOES NOT WARRANT IN ANY MANNER SUCH RESTRICTED RELEASES; SUCH RESTRICTED RELEASES ARE DISTRIBUTED "AS IS" AND MAY CONTAIN ERRORS OR BUGS.

14. General, Notices, Governing Law

14.1 The Customer is contracting with PMG.net, Inc., a Georgia Corporation. Notices under this Agreement should be sent to PMG.net, Inc., 121 Perimeter Center West, Suite 200, Atlanta, Georgia 30342; Attn: Legal Department. Notices to Customer should be sent to the address indicated on the applicable Product Schedule.

14.2 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).

14.3 Each party agrees to the governing law of the State of Georgia without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of federal and state courts sitting in Atlanta, Georgia.

15. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), following written notice to but without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, PMG will refund to Customer any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

16. Attorney's Fees

In the event that any legal action, including arbitration, is required in order to enforce or interpret any of the provisions of the Agreement, the prevailing party in such action will recover all reasonable costs and expenses, including attorney's fees, incurred in connection therewith.

17. Dispute Resolution

Except for any dispute related to the disclosure or misuse of either party's Confidential Information, the parties agree to negotiate in good faith in an effort to resolve any dispute, controversy, or claim arising out of or relating to the Agreement or the breach, termination or validity of the Agreement (collectively, a "Dispute"). If a Dispute cannot be resolved by negotiation, the parties agree to mediate the Dispute in good faith with a neutral, third-party mediator before filing any litigation. If the need for mediation arises, the parties to the Dispute shall choose a mutually acceptable mediator and shall share the cost of mediation equally. Any mediation related to the Agreement will be governed by and construed in accordance with the terms of the Governing Law and Jurisdiction provisions above.

18. General Provisions

18.1 The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

18.2 Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of PMG employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify PMG.

18.3 This Agreement is the entire agreement between Customer and PMG regarding use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. PMG may modify this Agreement by updating the Agreement as it appears on the PMG website. Additionally, the parties may modify or amend this Agreement in a written instrument signed by both parties. Changes or amendments to Customer's Order Form(s) may be accomplished only in a written instrument signed by both parties. The parties agree that any term or condition stated in Customer's purchase order or in any other of Customer's order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, and (2) this Agreement.

18.4 The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

18.5 There are no third-party beneficiaries under this Agreement.

18.6 No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

18.7 If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void or, preferably, 'blue-penciled' and scaled back until it is no longer contrary to law, and the remaining provisions of this Agreement will remain in effect.