

## **FluentPro Software as a Service Subscription Agreement**

This Software as a Service Subscription Agreement ("Agreement"), is made by and between FluentPro Software Corporation ("We" or "FluentPro"), and you and your organization ("You").

WHEREAS We are the owner of Services, Software Products, and platform available from FluentPro operated domains, including fluentpro.com, epmpulse.com, fluenthub.com, ppm.express, as well as any page, subsite and/or subdomain ("Site") that We market directly and indirectly to end users;

WHEREAS You wish to utilize Our Service and We wish to provide You with the Service pursuant to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereby agree as follows:

By accepting this Agreement, either by physically or digitally signing a Purchase Order / Sales Order that references this Agreement, You agree to the terms of this Agreement.

If You are entering this Agreement on behalf of a company or another legal entity, You represent that You have the authority to bind such entity and its Affiliates to these terms and conditions, in which case the terms "You" or "Your" shall refer to such entity and its Affiliates.

The following terms and conditions shall govern use of the Service and/or Software Products by Your Users and that with respect to the Services, this Agreement shall supersede any Terms of Services or an online agreement that has been, or may be, agreed to by Your Users in connection with their use of the Service and/or Software Products.

If You registered for a free evaluation of Our Services and/or Software Products, this Agreement also governs that Free Evaluation.

This Agreement is effective between You and Us as of the date of Your execution of a Purchase Order referencing this Agreement.

### **1. DEFINITIONS**

- 1.1. "Account" means the account opened within the Service under Your subscribed name.
- 1.2. "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.3. "Free Evaluation" shall mean Your use of the Services and/or Software Products for a limited Evaluation period of up to 30 days at no cost to You.
- 1.4. "Malicious Code" means viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.5. "Purchase Order" or "Sales Order" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Purchase Orders and Sales Orders shall become effective when agreed to by

both You and Us or when submitted using the standard form through Our Site. All Purchase Orders shall be deemed incorporated herein by reference.

- 1.6. "Our Basic Support" means the support services We provide You at no extra charge which includes using Our commercially reasonable efforts to promptly address and resolve Application Errors.
- 1.7. "Service or Services" means the online, Web-based applications and platform that We provide via the Site and associated offline components that include Help Desk, updates, patches and bug fixes, but excluding Third Party Applications.
- 1.8. "Software Product" means the desktop application, or software application and platform that We provide via the Site, installed on your servers and / or computers, including associated offline components, but excluding Third Party Applications.
- 1.9. "Application Errors" means any interruption in the availability of the Service caused by factors under Our direct control, excluding reasonable periods of regular maintenance.
- 1.10. "Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, that interoperate with the Services, and are identified as third-party applications.
- 1.11. "Users" means individuals who are authorized by You to use the Services and/or Software Products, for whom subscriptions to a Service and/or Software Products have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.
- 1.12. "We," "Us" or "Our" means FluentPro directly or through any of its Affiliates.
- 1.13. "You" or "Your" means the company or other legal entity for which You are accepting this Agreement and Affiliates of that company or entity.
- 1.14. "Your Data" means all electronic data or information submitted by You to the Services, including all text, photographs, caricatures, illustrations, designs, charts, graphs, icons, articles, audio clips, video clips, and other materials posted, emailed, transmitted, created, or otherwise utilized by You or Your Users while interacting with the Service.

## 2. FREE EVALUATION

2.1. If You register on our Site for a free evaluation, We will make all or part of the Services and/or Software Products available to You on an evaluation basis free of charge until the earlier of (a) the end of the free evaluation period for which you registered or are registering to use the applicable Service or Software Product or (b) the start date of any Purchase Order for a paid subscription to the Services or Software Product. Additional terms and conditions may appear on the registration web pages within the Site. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

2.2. ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE EVALUATION PERIOD MAY BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE EVALUATION, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE FREE EVALUATION PERIOD. YOU ARE NOT ABLE TO TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE EVALUATION PERIOD TO A SERVICE; YOUR DATA AT THE END OF THE EVALUATION PERIOD MAY BE DELETED AND MAY BE PERMANENTLY LOST. NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE EVALUATION PERIOD, THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

### 3. SERVICES

3.1. Provision of Services and/or Software Products. We shall make the Services and/or Software Products available to You non-exclusively pursuant to this Agreement and the relevant Purchase Order / Sales Order during a subscription term, by opening an Account with Us and purchasing User subscriptions as provided in Section 3.2 below. Except as may be otherwise agreed in writing, You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features. You can utilize the Services and Software Products as long as You abide by the terms of this Agreement and as long as Your Account is not terminated by either party hereto. We hereby grant to You and to your Affiliates, the non-exclusive, non-transferable, fully-paid right to electronically access and use the Site, Services and/or Software Products in accordance with the terms of this Agreement.

3.2. User Subscriptions. Unless otherwise specified in the applicable Purchase Order, (i) The Services and /or Software Products are purchased as User subscriptions and may be accessed by no more than the specified number of Users or as an Enterprise subscriptions with unlimited users as explicitly stated in the applicable Purchase Order. Additional User subscriptions may be added at any time by executing additional Purchase Orders. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services and/or Software Products.

### 4. USE OF THE SERVICES

4.1. Our Responsibilities. We shall: (i) provide to You Our Basic Support for the Services and/or Software Products at no additional charge, and/or premium support if purchased separately, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week except for: (a) planned downtime (of which We shall give You a prior notice via the Site). We shall use commercially reasonable effort to ensure that such downtime interference to the Services will be as minimal as possible, or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or

Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

- 4.2. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be and remain solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) be responsible for maintaining the security of the User names and passwords of Your Users using the Service and notify Us promptly of any other breach of security known or suspected by You, (v) use the Services only in accordance with applicable laws and government regulations, and (vi) be responsible for all activity under Your Account, including the activity of other Users who have been added to Your Account by You or by another User of the Account. You 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 tortious material, or to store or transmit material in violation of third-party privacy rights (including any materials which are illegal, obscene, indecent, defamatory, incites racial or ethnic hatred, violates the rights of others, harms or threatens the safety of Users or others or may otherwise constitute a breach of any applicable law), (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, or (g) not copy, duplicate, reverse engineer, decompile, disassemble, record, alter, merge, adapt, translate, create any derivative works or otherwise reproduce any part of the Software Product or Services, nor attempt to do any of the foregoing, without the prior written consent of Us.
- 4.3. Protection of Your Data. Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards commonly used in our industry for protection of the security, confidentiality and integrity of Your Data while it is on Our servers or otherwise within Our control. We shall not (a) modify Your Data unless otherwise required in order to provide the Services, (b) disclose Your Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. You recognize and agree, however that transmitting, prospering and hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing the Software Product and using the Services, You assume such risks. FluentPro offers no representation, warranty, or guarantee that Your Data will not be exposed or disclosed through errors or the actions of third parties.
- 4.4. Deletion of Your Data. If You become aware that any portion of Your Data or User activity violates this Agreement, You shall take all necessary action to prevent such activity and remove such Data from the Services and /or Stop using Software Products. To the extent We become aware that Your Data, in Our reasonable discretion, is in violation of this Agreement or any applicable law, We may immediately block access to the Services and/or Software Products, suspend or terminate Your use of the Services and / or Software Products, delete or remove such Data from the Services, or take any other action We deem appropriate.

We reserve the right to terminate or suspend Your use of the Services and / or Software Products if the continued provision of Services would violate law or otherwise harm Us or our Services. We also reserve the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing. We will endeavor to provide notice to You prior to suspension or termination of Your use of the Services and / or Software Products, but may immediately suspend or terminate them in instances where Your continued use of the Services would have a material adverse effect on Us.

- 4.5. **Non Material Modifications.** Without limiting any other terms herein contained, We reserve the right in Our sole discretion to add, change, discontinue or otherwise modify non material elements and features to the Services and /or Software Products at any time. We will post notifications regarding such changes on Our Site.
- 4.6. **Additions to the Services.** The Services may offer the ability for you to submit new specific customization and/or materials to the Services, accessible and viewable by You including any customization to the Service during the subscription term ("New Feature"). You agree to provide accurate and complete information in connection with Your submission of any New Feature or materials on the Services. You hereby grant Us a worldwide, royalty-free, nonexclusive license to use such New Features as part of the Services, and in relation to the Service, without any compensation or obligation to You. We reserve the right to not post or publish any New Feature and/or materials, and to remove or edit any New Feature and/or material, at any time in our sole discretion without any notice or liability.
- 4.7. You shall not assign rights hereunder without Our prior written consent. Notwithstanding the foregoing, you may transfer usage of Services and/or Software without the consent but with notification of FluentPro (i) to a wholly owned subsidiary, provided that by doing so you shall be deemed to have agreed to indemnify FluentPro for any loss that it suffers as a result of the transfer, or (ii) to such entity that acquires all or substantially all of the business and assets of you. Any purported assignment without the required consent shall be null and void. As a condition of obtaining consent you may have to pay a transfer fee.
- 4.8. **Data Accuracy.** FluentPro shall have no responsibility or liability for the accuracy of data uploaded to the Software Product by You, including without limitation Your Data.
- 4.9. **Excluded Data.** You represent and warrant that Your Data does not and will not include, and You have not and shall not upload or transmit to the Software Product any data that is subject to heightened security requirements as a result of Your internal policies or practices or by law or regulation (examples include but are not limited to the Health Insurance Portability and Accountability Act (HIPAA), the Gramm–Leach–Bliley Act (GLBA), Family Educational Rights and Privacy Act (FERPA), etc. (the "Excluded Data Laws") (such data collectively, "Excluded Data"). YOU RECOGNIZE AND AGREE THAT: (a) FLUENTPRO HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) SOFTWARE PRODUCT IS NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.

4.10. Personally Identifiable Information. Other than with respect to Excluded Data, FluentPro will not cause or permit any Personally Identifiable Information (“PII”) (as defined below) derived from Your Data to which it may have access in connection with this Agreement to be collected or processed in any manner or for any purpose other than the performance of the Services in compliance with this Agreement and the applicable state and federal laws of the United States of America. FluentPro will use commercially reasonable efforts to keep such PII private and confidential and will not use or disclose such PII to third parties other than as permitted by this Agreement. For purposes of this Section 4.10 hereof, PII means any information that FluentPro collects, receives or obtains, from or on Your behalf that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address and social security number.

## 5. FEES AND PAYMENT FOR SERVICES

- 5.1. **User Fees.** You shall pay all fees (“Fees”) specified in all Purchase Orders / Sales Order hereunder. Except as otherwise specified herein or in a Purchase Order / Sales Order, (a) fees are quoted and payable in United States dollars (b) fees are based on Services and /or Software Products purchased and not actual usage, (c) payment obligations are non-cancelable and fees paid are non-refundable, and (d) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Purchase Order / Sales Order. User subscription fees are based on such periods as shall be specified in the Purchase Order / Sales Order, (e) We may change the Fees upon notice to You according to Section 12.2 below.
- 5.2. **Invoicing and Payment.** You will provide Us with valid and updated credit card information. If You provide credit card information to Us, You authorize Us to charge such credit for all Services listed in the Purchase Order / Sales Order for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, in accordance with the billing frequency stated in the applicable Purchase Order / Sales Order. If the Purchase Order / Sales Order specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Purchase Order. Unless otherwise stated in the Purchase Order, invoiced charges are due 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Service and notifying Us of any changes to such information. The payment of the periodic fee will grant You access to the Services and /or Software Products for the applicable period only.
- 5.3. **Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Purchase Orders / Sales Order on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment) above.

- 5.4. Suspension of Service. If any amount owed by You under this or any other Agreement for Our Services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such Agreements so that all such obligations become immediately due and payable, and suspend your access to the Services and / or Software Products until such amounts are paid in full. We will give you at least 7 days' prior notice that Your account is overdue, in accordance with Section 13.1 (Timing of Giving Notice), before suspending your access to the Services and / or Software.
- 5.5. Payment Disputes. We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.5 (Suspension of Service and Acceleration) with respect to those charges that are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 5.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable on Our income, property and employees.

## 6. PROPRIETARY RIGHTS

- 6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all ownership rights, title and interest in and to the Services and / or the Software Products and the Site and all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. This Agreement is an agreement for services and does not grant You any intellectual property license or rights in or to the Software Products or any of their components. You understand and agree that the Software Products and their components are protected by copyright and other laws.
- 6.2. Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein or in a Purchase Order, (ii) create derivate works based on the Services,
- (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes during the subscription term and for the exclusive use of Your Users, (iv) reverse engineer the Services, or (v) access the Services and / or Software Products in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

- 6.3. Ownership of Your Data. As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.
- 6.4. Intellectual Property. You acknowledge that the Services and / or Software Products and all intellectual property rights pertaining to the Services and / or Software Products are the property of FluentPro and that the structure, organization and code of the Software are valuable trade secrets of FluentPro. Users must not export the Software into a country that does not have copyright laws that will protect FluentPro's proprietary rights. You agree to use reasonable effort to prevent and protect the Software from unauthorized use, reproduction, distribution, or publication. You shall not remove or obscure any FluentPro copyright or trade-mark notices.
- 6.5. Third Party Data. All title and intellectual property rights in and to any data of any third party which may be linked to or viewed in connection with the Service is the property of the respective data owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant You any right to use such data except as allowed by such third party.
- 6.6. Suggestions. We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## 7. CONFIDENTIALITY AND PRIVACY POLICY

- 7.1. This Agreement is subject to Our Privacy Policy, which can be found at <https://www.fluentpro.com/about-us/legal-documents/privacy-statement/>, and constitutes an integral part of this Agreement. The Privacy Policy applies only to the Software Products and the Services and does not apply to any third party website or service linked to the Site or recommended or referred to through the Site or by FluentPro's staff.
- 7.2. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or written, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services and Software Products; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Purchase Orders and Sales Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.



7.3. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall protect the Disclosing Party's Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

7.4. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.5. No Implied Rights. Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby by either party.

## 8. MARKETING; PUBLICATION

8.1. Customer List. References or other non-press related communications by one party such as social media, newsletters, websites, presentations, blogs and other methods that may be relevant from time to time, in which the name and/or logo of the other party appears, shall not require the prior written consent of such other party.

8.2. Press Release. If requested and approved by your organization, You will assist Us to publish certain press releases or other communications. Joint press releases or other communications shall be mutually approved in advance by You and Us. Upon the execution of Purchase Order / Sales Order, We shall have the right to prepare and issue a mutually approved press release announcing this Agreement. A senior member of Your team will provide a quote for the press release within 14 days of the execution and delivery of this Services and/or Software Product. Nothing contained herein shall waive or alter the parties' rights and/or obligations with respect to Confidential Information.

## 9. WARRANTIES AND DISCLAIMERS

9.1. Our Warranties. We warrant that (i) to the best of Our knowledge, the Services, the Software Products and the Site do not, and during the term of any Purchase Order /

Sales Order, will not, infringe, violate or misappropriate any third party's intellectual property (including copyrights, patents, trademarks, and trade secrets), privacy, moral, or other personal or proprietary rights and (ii) the Services shall perform materially in accordance with the features and functionalities, as set forth herein or on the Site, and (iii) We will not transmit Malicious Code. For any breach of either such warranty, Your exclusive remedy for a breach of Our Warranties shall be as provided in Section 10.1 (Indemnification by Us), Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

9.2. Mutual Warranties. Each party represents and warrants that it has the legal power to enter into and perform this Agreement according to its terms.

9.3. Disclaimer. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (A) FLUENTPRO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE PRODUCTS WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (B) FLUENTPRO DOES NOT REPRESENT OR WARRANT THAT THE SITE OR THE SOFTWARE PRODUCTS ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT YOUR DATA WILL REMAIN PRIVATE OR SECURE.

EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR NEEDS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR BE FREE FROM SOFTWARE ERRORS, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED.

## 10. INDEMNIFICATION

10.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding ("Claim") made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability and You may not make any admissions or settlements without Our prior written consent); (c) provide to Us all reasonable assistance, at Our expense; and (d) provided that such infringement or misappropriation of any third party's intellectual property rights is not resulting from: (i) Your or Your Users misuse of the Services or the Site; (ii) Your use of the Services together with a Third Party Application or integration; or (iii) from non-compliance by You or Your

Users of the terms and conditions contained herein. In the event of a Claim against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under Section 9.1 (Our Warranties) above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

- 10.2. Indemnification by You. You will defend, indemnify, and hold FluentPro and each of the FluentPro Associates (as defined below) harmless against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to Your alleged or actual use of, misuse of, or failure to use the Software Products, including without limitation: (a) claims by Users or by Your employees, as well as by Your own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Your Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Site or the Software Products through the Account, including without limitation by Your Data, provided however that You shall have no liability or obligation with respect to any losses to the extent that such losses arise out of or result from any unauthorized access to or use, disclosure or other processing of Your Data, including Personal Identifiable Information, by or on behalf of FluentPro, or through or enabled by FluentPro's systems or networks, whether authorized by FluentPro, due to a security breach or otherwise; and (d) claims that use of the Site or the Software Products through the Account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to FluentPro's negligence. The "FluentPro Associates" are FluentPro's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns. You will also indemnify, hold us harmless and defend or settle, at Your own expense, any third party action brought against Us or the FluentPro Associates based upon the claim that any modifications to the Services and /or Software or combination of the Services and / or Software with other third party products infringes or violates any third party right; provided, however, that (i) FluentPro shall notify you promptly in writing of any such claim; (ii) We shall not enter into any settlement without your prior written consent; (iii) you shall have control of any such action and settlement negotiations; and (iv) We shall provide You with information and assistance to settle or defend such claim. You agree to pay all damages and costs finally awarded against Us attributable to such claim.
- 10.3. Exclusive Remedy. This Section 10 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 11. LIMITATION OF LIABILITY

11.1. For any breach of this Agreement, Your exclusive remedy and Our entire liability is, at our option, either the correction of the application errors in the Services and/or Software Products, re-performance of the Services (if the breach arises out of Our Services), or recovery by you of a part of the amount paid hereunder that reasonably relates to the breach, subject to the limitations set out below. We are not liable for any indirect, incidental, special, consequential, related or exemplary damages, including but not limited to, damages for loss of revenues, profits, goodwill, use, data, failure to realize expected savings, or other intangible losses (even if we have been advised of the possibility of such damages), resulting from your use of the Services and/or Software Products. Notwithstanding anything to the contrary contained herein, to the extent permitted by applicable law, Our liability to you in connection with any cause of action, costs or damages relating to this Agreement shall not exceed the total fees paid in the 12-month period preceding the event giving rise to the claim.

## 12. TERM AND TERMINATION

12.1. Term of Agreement. This Agreement commences on the day you open the Account and register for the Services / and or Software Product and continues until all User subscriptions granted in one or more Purchase Orders in accordance with this Agreement have expired or been terminated. If You elect to use the Services and /or Software Product for a free evaluation period and do not purchase a subscription before the end of that period, the Agreement will terminate at the end of the free evaluation period.

12.2. Term of Purchased User Subscriptions. User subscriptions purchased by You commence on the start date specified in the applicable Purchase Order and continue for the subscription term specified therein. Except as otherwise specified in the applicable Purchase Order, all User subscriptions shall be renewed by a new Purchase Order for additional periods equal to the expiring subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase in the form of email notification/renewal quote/sales order at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and after that.

You may cancel a free evaluation of Our Services and Software Products anytime during the free evaluation period and incur no charge. For all User Subscriptions you may cancel during the first 30 days (calculated from the start date specified in the applicable Purchase Order) and receive a full refund. If the cancellation occurs after 30 days from the subscription start date, you won't be eligible for a refund and no refund will be issued. If you cancel your subscription and not eligible for a refund, you will retain access to the User Subscription until it expires.

12.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach (including, without limitation, Your failure to pay the fees when due) if such breach remains uncured at the expiration of such period, (ii) if the other party ceases operation without a successor; or (iii) 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.

- 12.4. Effect of Termination. Termination of this Agreement will result in the immediate deactivation or deletion of Your Account or Your and Your Users access to the Account. Upon termination, all Your access to the Service and / or Software Products will be disabled and all of Your Data will be stored in the Site's database for a period of 90 days following the termination of Your Account (the "Storage Period"). Upon the end of the Storage Period all Your Data will be permanently deleted from the Site's servers. Once deleted, this information cannot be recovered. After such 90-day period, We shall have no obligation to maintain or provide any of Your Data and may thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 12.5. Surviving Provisions. Section 5 (Fees and Payment for Services), 6 (Proprietary Rights), 7 (Confidentiality), 9.3 (Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 12.4 (Effect of Termination), and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

### 13. GENERAL PROVISIONS

- 13.1. Timing 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, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the contact person designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You. Notices to us shall be to one of the addresses detailed in the "contact us" section on our web site.
- 13.2. Waiver of Jury Evaluation. EACH PARTY HEREBY WAIVES A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR RESPECTIVE SUCCESSORS, UNDER OR CONNECTED TO THIS AGREEMENT, THE SERVICES OR THE SOFTWARE PRODUCTS.
- 13.3. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction countries.
- 13.4. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.5. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 13.6. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

- 13.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 13.8. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Purchase Orders), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 13.9. Governing Law and Venue – This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Washington, excluding that body of Washington law concerning conflicts of law. The parties further submit to the exclusive jurisdiction of the state and federal courts located in the City of Seattle, the State of Washington, for any litigation arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this agreement.
- 13.10. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our 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 You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our team at [INFO@FLUENTPRO.COM](mailto:INFO@FLUENTPRO.COM).

This Agreement, including all exhibits and addendum hereto and all Purchase Orders / Sales Orders, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Purchase Order, the terms of such exhibit, addendum or Purchase Order / Sales Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your Purchase Order / Sales Order or other order documentation (excluding Purchase Orders / Sales Order) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

QUESTIONS ABOUT THIS AGREEMENT SHOULD BE SENT TO [SUPPORT@FLUENTPRO.COM](mailto:SUPPORT@FLUENTPRO.COM)