

End User License Agreement (2013-11-22—for GSA Schedule)

This End User License Agreement (“**Agreement**”) is between the business or legal entity on behalf of which the Software is being installed and used (“**You**” or “**Your**”) and Penango, Inc. (“**Penango**”), pursuant to a corresponding order from a GSA Schedule.

YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS OF THIS AGREEMENT OR DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS, INSTALL, OR USE THE SOFTWARE.

1. DEFINITIONS

1.1 “**Documentation**” means the user manual, the release notes, and the published product descriptions that Penango makes generally available to users of the Software.

1.2 “**Software**” means the Penango software for which You are granted a license under this Agreement, in object code form only, and any updates provided to You by Penango or any of its distributors or subdistributors. Software includes any additional features of the Software that You subscribe to.

1.3 “**Subscription Period**” means the subscription period, including trial periods, for which You are granted the right to use the Software, with such period commencing on the date on which the Software is activated for Your unique e-mail account. For free versions of the Software, the Subscription Period means the period commencing on the date on which the Software is activated for Your unique e-mail account through the date that this Agreement is terminated.

2. SOFTWARE LICENSES

2.1 Limited License to Use Software. Subject to Your compliance with the terms and conditions of this Agreement, Penango hereby grants to You a personal, limited, non-exclusive, non-sublicensable, nontransferable license, during the Subscription Period, to (a) use, install and operate the Software for Your personal use or internal business use solely for the e-mail account(s) for which You subscribed to the Software; and (b) access and use the Documentation in support of Your authorized use of the Software.

2.2 Limited License to Inspect Software. Subject to Your compliance with the terms and conditions of this Agreement, Penango hereby grants to You a personal, limited, non-exclusive, non-sublicensable, non-transferable license, during the Subscription Period, to copy, view and inspect the portions of the Software which are provided by Penango to You in JavaScript language source code format (“**Source Code**”) for the sole purpose of making Your own assessment of the security features and potential vulnerabilities of the Software that may be assessed from the inspection of the Source Code, subject to the following limitations: (a) You may examine the Source Code, both outside of an execution environment (*i.e.*, other than as part of the Software as it is operated in execution mode), and inside of an execution environment using the standard interfaces and features of a JavaScript-only debugger, and (b) You may not modify the Software’s behavior, including at runtime, except to pause and continue execution of the Software by hand. If You discover a “bug” or problem in the Software, including any deficiencies, weaknesses, or unknown vulnerabilities (“**Problems**”), You should report the Problem (including any suggested code fixes You have prepared or any other information You have that would be helpful to Penango) to support@penango.com. You agree that You will not disclose any information about any Problem in the Software prior to reporting it to Penango and waiting at least thirty (30) days after Penango sends its e-mail acknowledgement to You; otherwise, You will be responsible and liable for any damages, claims, losses or other liability arising from any such disclosure by You, and agree to indemnify, defend and hold Penango harmless from any such damages, claims, losses or other liability.

2.3 Restrictions. You agree that Your license to use the Software is expressly conditioned on Your strict compliance with the restrictions in this Section 2.3. You will not copy or use the Software (including the Documentation) or Source Code except as expressly permitted by this Agreement. You will not, and will not permit any third party to, decompile, disassemble or otherwise reverse engineer the Software or any portion thereof (except to the extent expressly permitted by the applicable law of Your jurisdiction, notwithstanding a contractual obligation to the contrary, and then only after You have notified Penango in writing of Your intended activities). You will not, and will not permit any third party to, extract or attempt to extract any source code, algorithms, methods, ideas, techniques, workflows or hierarchies, from or embodied in, the Software or any portion thereof, except for examining the Source Code pursuant to the license granted to You in Section 2.2. You will not distribute, sublicense, rent, lease or provide access to the Source Code to any third party. For each subscription to the Software, You will not attempt to use the Software for any e-mail account(s) other than the unique e-mail account(s) for which the Software is originally subscribed for, without Penango’s prior written authorization.

2.4 Ownership. Penango will retain all right, title and interest in and to the patent, copyright, Penango EULA

trademark, trade secret and any other intellectual property rights in the Software and Documentation, and any derivative works thereof, subject only to the limited licenses set forth in this Agreement. You do not acquire any other rights, express or implied, in the Software other than those rights expressly granted under this Agreement.

2.5 Support. During the Subscription Period, You will have the right to access and use the Documentation and forums discussing the Software provided by Penango. Penango may elect to provide support, maintenance, upgrades, modifications or new releases under this Agreement, the nature and amount of which may be determined by Penango in its sole discretion.

2.6 Government Rights. The Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed. Customer will not export the Products in violation of the export laws of the United States or of any other country.

3. WARRANTIES; LIMITATIONS ON LIABILITY

3.1 Limited Warranties; Disclaimer. Penango warrants that the Software will materially conform to the Documentation during the Subscription Period for the Software. EXCEPT FOR THE FOREGOING WARRANTY, PENANGO MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE SOFTWARE OR DOCUMENTATION. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, PENANGO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. YOU AGREE THAT YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK. Penango does not warrant that the Software will be uninterrupted or error-free. You acknowledge that Penango relies on the certification services of third party certification authorities, which may be chosen by You and/or Penango, and that Penango makes no warranties relating in any way to the security certificates or other security services provided by such third parties.

3.2 Exclusive Remedies. You must report to Penango [at support@penango.com](mailto:support@penango.com) or through other contact mechanisms that Penango may make available from time to time any breach of the warranties contained in Section 3.1 during the warranty period. Your sole and exclusive remedies, and Penango's entire liability, for such a reported breach will be for Penango to make commercially reasonable efforts to correct or provide a reasonable workaround for Software errors that caused the breach of warranty.

3.3 Limitations. Penango will have no obligations under Section 3.2 if the breach of warranty is caused by Your use of any release of the Software other than the most recent release made available by Penango or its distributors to You; any unauthorized use, abuse, misuse, alteration, neglect or accidental damage of the Software; the unauthorized repair, modification, or installation of the Software; or the use or attempted use of software or hardware not covered in the Documentation in combination with the Software.

3.4 Limitations on Liability. IN NO EVENT SHALL PENANGO BE LIABLE TO YOU OR ANY OTHER THIRD PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY YOU OR ANY THIRD PARTY, EVEN IF PENANGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, PENANGO'S AGGREGATE LIABILITY TO YOU FOR CLAIMS ARISING FROM THE SOFTWARE OR THIS AGREEMENT, WHETHER FOR BREACH, INFRINGEMENT, IN TORT, INDEMNIFICATION OR

OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL PAYMENTS ACTUALLY RECEIVED BY PENANGO FOR YOUR SUBSCRIPTION IN THE TWELVE (12) MONTH PERIOD PRECEDING YOUR INITIAL NOTICE TO PENANGO OF ANY CLAIM OR POTENTIAL CLAIM HEREUNDER. The parties acknowledge that the limitations of liability in this Section 3.4 and in the other provisions of this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which Penango would not have entered into this Agreement. Penango's and its distributors' pricing reflects this allocation of risk and the limitation of liability specified herein. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Penango's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

4. UPDATES AND MODIFICATIONS TO THIS AGREEMENT

From time to time, Penango may provide updates, error corrections and new releases of the Software which may include improvements, enhancements, and other modifications (“**Updates**”). Updates may be accompanied by modifications to this Agreement, with regards to modifications, no term of this Agreement may be modified except by a writing signed by authorized representatives of both parties.. The Software is designed, but is not guaranteed, to make reasonable efforts (in the form of a dialog, balloon tip, or other user interface element) to provide You with notice and an opportunity to accept or reject Updates, but the Software may be restricted or prohibited from providing you with such notice and opportunity due to the limitations and restrictions of the operating system, web browser, and other software (collectively, the “**Platform**”) installed on Your device or computer from which you access the Software. To the extent permitted by Your Platform, You may change the mechanism by which You are notified about any Updates. On some Platforms, Updates may automatically be downloaded and installed, without allowing the Software to first require any action or consent by You. In any event, You understand and agree that Your use of any Update constitutes acceptance of the modified version of the Agreement accompanying such Update. You may view the latest version of this Agreement by visiting <http://www.penango.com/eula>.

5. TERMINATION

This Agreement is effective until terminated. For paid subscriptions to the Software, this Agreement will automatically terminate upon the expiration of the Subscription Period. For trial or free subscriptions to the Software, Penango may terminate this Agreement at any time, with or without notice to You. Licensee's termination rights shall be governed by FAR 52.212-4(l) and (m). Licensor's termination rights shall be governed by the FAR 52.212-4(d). For all subscriptions to the Software, You may terminate this Agreement at any time, provided that if You terminate this Agreement prior to the end of the Subscription Period for paid subscriptions, You will not be entitled to receive any refund. Upon any termination of this Agreement, You will cease all use of the Software, Documentation, Source Code and related materials and Penango has the right to deactivate Your subscription and Your use of the Software, Documentation and Source Code. Upon the termination of this Agreement, Sections 2.4, 5 and 6 will survive.

6. GENERAL TERMS

6.1 Governing Law, Jurisdiction, and Venue. This Agreement and all disputes regarding the Agreement shall be governed by applicable federal law. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded

6.2 Severability and Waiver. If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

6.3 English Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

6.4 No Assignment. You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Penango. Any purported assignment, transfer or delegation by You will be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

6.5 Export Administration. You will comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations (collectively “**Export**

Laws”) and all relevant laws and regulations imposed by any other governmental entity relating to the use or import of the Software within the jurisdiction in which You use the Software (“**Import Laws**”). Without limiting the generality of the foregoing, You will not, and You will require Your representatives not to, export, direct or transfer the Software, or any direct product thereof, to any destination, person or entity restricted or prohibited by Export Laws or Import Laws.

6.6 Government Users. If You are an agency or instrumentality of the United States Government, the Software and Documentation are “commercial computer software” and “commercial computer software documentation”, and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction and disclosure of the Software and Documentation are governed by the terms of this Agreement.

6.7 Waiver; Modification; Severability. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by You and a duly authorized representative of Penango. No waiver by either party at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. If any term, provision, covenant or condition of this Agreement is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6.8 Entire Agreement. This Agreement constitutes the entire agreement between You and Penango and, other than any standard policies of Penango applicable to the use of the Software, supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement; however should the terms conflict with the terms of the GSA Schedule contract or resulting order, the GSA Schedule contract or resulting order shall take precedence. You understand and agree that Penango has the right, from time to time, to modify this Agreement in connection with Updates to the Software that are provided by Penango.