

On Premises Software License Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SOFTWARE.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER 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. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SOFTWARE.

You may not access the Software if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Software for any benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date of You accepting this Agreement.

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1. DEFINITIONS

"Affiliate" means any entity that 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.

"Agreement" means this On Premises Software License Agreement.

"Designated Server" shall mean the Server specified in an Order Form with respect to a particular Software license. Such Server may be that of a third-party under nondisclosure obligations that will host the Software for the benefit of You.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via proposalsoftware.com, pmapsportal.proposalsoftware.com, or delivered with the Software.

"Order Form" means an ordering document specifying the Software to be provided hereunder and the number of Authorized Users who may access the Software that is entered into between You and Us, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Server" means a physical server or a virtual server from which a single instance of the Software is accessed and used either for production purposes (**"Production Server"**) or for non-production purposes, such as testing, training and other non-operational business transactions (**"Non-Production Server"**).

"Software" means any version or edition of Our proprietary proposal and sales document software known as the Proposal Management And Productivity System (PMAPS™), provided solely in the form of compiled code, including associated technical documentation, and all Updates thereof furnished to You as part of Support Services.

"Support Services" means those Software support and update services described in the Documentation and provided for the periods specified in one or more applicable Order Forms. Support Services does not include configuration, setup, testing, validation, troubleshooting, or any other services for any server, network, operating system, or any other hardware or software provided by You or any third party.

"Updates" means all published revisions and corrections to the printed documentation and corrections and new

releases of the Software, which are generally only made available to Our supported customers. Updates shall not include any options or future products which We sell separately.

"Authorized User" or **"Authorized Users"** means one or more individuals authorized by You to use the Software, for whom You have secured access rights on an Order Form, and to whom You have supplied a user name and password. Authorized Users may include, for example, Your employees, consultants, contractors and agents, and third parties with whom You transact business.

"We," "Us," "Our," or **"PSI"** means Proposal Software, Inc., a Delaware C-corporation with principal offices located at 1140 US Highway 287 Suite 400-102 Broomfield, CO 80020.

"You" or **"Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. LICENSE

2.1. Subject to Your payment of the applicable fees and to Your compliance with other terms and conditions of this Agreement, We grant You a non-transferable, non-assignable, non-sublicensable, worldwide license to copy the Software for the purpose of installing and using it on a computer and solely for internal purposes, in accordance with the Software's Documentation and solely during the periods, on the maximum number of Designated Servers, and for the maximum number of Authorized Users specified in one or more applicable Order Forms.

2.2. In the event that Your actual number of Servers of a particular Software license exceeds the licensed number of Designated Servers on such license, You shall promptly provide Us with written notice and pay Us the fees required to license such additional Server(s) in accordance with the commercial terms set out in the Order Form. In the event that Your actual number of users exceeds the maximum number of Authorized Users, You shall promptly provide Us with written notice and pay Us the fees required to secure access rights for such unauthorized users in accordance with the commercial terms set out in the Order Form.

2.3. You shall implement reasonable controls to ensure that You do not exceed the maximum number of licensed Servers of the Software or the maximum number of Authorized Users. We reserve the right to audit Your use of the Software during normal business hours and with reasonable notice and to include means within the Software to periodically verify Your Server licenses and Authorized User counts and limit Your use of the Software to the licensed number of Servers and to the maximum number of Authorized Users.

2.4. We shall provide to You an initial copy of the Software, including the associated technical documentation, for use by You in accordance with this Agreement. Subject to Sections 2.1-2.3 above, You are authorized to make one Non-Production Server copy of the Software for each Designated Server as You require for the purpose of exercising Your rights under this Agreement.

2.5. You are authorized to use the Software on a single substitute or backup Server on a temporary basis without charge any time a Designated Server is inoperative due to a malfunction beyond the control of You. You may transfer the Software on a permanent basis to a single replacement Server without charge. You acknowledge that We must activate all copies of the Software, including those on substitute, backup, and replacement Servers.

3. LICENSE EXCLUSIONS

3.1. Except as expressly authorized herein, You shall not:

1. use or deploy the Software on any Server in excess of the number of Designated Servers specified in the applicable Order Form;
2. distribute, sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Software to any third party, or permit any person or entity to have access to the Software by means of a time sharing, remote computing services, networking, batch processing, service bureau or time sharing arrangement;
3. export the Software in violation of U.S. Department of Commerce export administration regulations.

3.2. No license, right or interest in any PSI trademark, trade name or service mark is granted hereunder.

4. FEES AND PAYMENT FOR SOFTWARE

4.1. Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) payment obligations are non-cancelable and fees paid are non-refundable, and (ii) quantities purchased cannot be decreased during the relevant order term.

4.2. Invoicing and Payment. If You are required to issue a purchase order to Us for any reason, You will deliver it to Us with the completed Order Form. Your failure to do so will neither invalidate Your Order Form nor impact the due date of Your invoiced charges. We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and

notifying Us of any changes to such information.

4.3. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those 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, and/or (b) We may reduce the order term by a duration whose value is equal to the accrued late interest, and/or (c) We may condition future renewals and Order Forms on payment terms shorter than those specified in Section 4.2 (Invoicing and Payment).

4.4. Suspension of Software Access and Acceleration. If any amount owing by You to Us under this or any other agreement 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 deactivate the Software and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 11.1 (Manner of Giving Notice), before suspending services to You.

4.5. Payment Disputes. We will not exercise Our rights under Section 4.3 (Overdue Charges) or 4.4 (Suspension of Software Access and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

4.6. Taxes. Our 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**"). 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 Section 4.6, We will invoice You and You will pay that amount 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 against Us based on Our income, property and employees.

4.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

5. TITLE AND PROTECTION

5.1. We retain title to all portions of the Software, the Documentation, Our proprietary information, and Our Confidential Information (as defined in Section 10 below) and any copies and derivatives thereof. You shall affix, to each full or partial copy of the Software made by You, all copyright and proprietary information notices as were affixed to the original. The obligations set forth in this Section shall survive termination of this Agreement.

5.2. If the Software is acquired by or on behalf of a unit or agency of the U.S. Government (the "**Government**"), the Government agrees that such product is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect thereto are limited by the terms of this Agreement, pursuant to applicable FAR and/or DFARS and successor regulations.

6. INDEMNIFICATION

6.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the reproduction of the Software in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "**Claim Against You**"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to the Software, We may in Our discretion and at no cost to You (i) modify the Software so that it no longer infringes or misappropriates, without breaching Our warranties under Section 8.2 (Our Warranties), (ii) obtain a license for Your continued use of the Software in accordance with this Agreement, or (iii) accept return of the Software, terminate this Agreement, and refund You an amount equal to the license fees paid to Us multiplied by the percentage of the term of the license for the Software that You did not enjoy due to the early termination by Us. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Your breach of this Agreement.

6.2. Exclusive Remedy. This Section 6 states Our sole liability to You for any type of claim described in this Section 6.

7. TERM AND TERMINATION

7.1. Term of Agreement. This Agreement commences on the date You first accept it and continues until all orders hereunder have expired or have been terminated.

7.2. Term of Order Forms. The term of each order shall be as specified in the applicable Order Form. Subscriptions are non-cancelable and monthly unit prices are guaranteed during the Term. Except as otherwise

specified in an Order Form, orders will automatically renew for additional periods equal to one year at then-current pricing, terms, and discounts (if applicable), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant order term.

7.3. Termination. We may terminate this Agreement if (i) You fail to perform any of Your obligations under the Sections entitled "License Exclusions" or "Title and Protection", or (ii) You fail to pay amounts due pursuant to the fees and payment terms in the Section entitled "Fees and Payment for Software" of this Agreement within seven (7) days of the relevant due date. Additionally, either party may terminate this Agreement for cause (i) upon 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.

7.4. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 7.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 7.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

7.5. Surviving Provisions. Any provision which imposes an obligation after termination or expiration of this Agreement shall survive any termination or expiration of this Agreement. Such provisions include, but shall not be limited to, Sections 4, 6, 7.4, 7.5, 8, 9, 10, 11 and 12 of this Agreement.

8. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

8.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2. Our Warranties. We warrant that for a single period of ninety (90) days commencing upon Our electronic delivery of the Software to You that the Software, as delivered, will in all material respects perform the functions described in the specifications contained in the Documentation. In the event that the Software does not, in all material respects, perform the functions therein described, We will undertake to correct any reported error in accordance with the Support Services documentation, which shall be Our entire liability and Your exclusive remedy for breach of this warranty. We do not warrant that the Software will meet Your requirements, that the Software will operate in the combinations which You may select for use, that the operation of the Software will be uninterrupted or error-free, or that all error conditions will be corrected. EXCEPT AS PROVIDED IN THIS SECTION ALL SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS".

8.3. Disclaimers. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8 ARE THE ONLY WARRANTIES MADE BY US WITH RESPECT TO THE SOFTWARE PROVIDED BY US. WE MAKE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND, SPECIFICALLY, MAKE NO WARRANTY OF TITLE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. OUR EXPRESS WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF, OUR RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE SOFTWARE.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. OUR LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT (a) OUR OBLIGATIONS UNDER SECTION 6 (INDEMNIFICATION), OR (b) YOUR PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES AND PAYMENT FOR SOFTWARE).

9.2. Exclusion of Consequential and Related Damages. EXCEPT AS PROVIDED FOR IN SECTION 6 (INDEMNIFICATION), UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR: LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS OF CONTRACTS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR CONSEQUENTIAL OR INDIRECT LOSS OR SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING, FOR THE AVOIDANCE OF DOUBT, WHERE SUCH LOSS OR DAMAGE IS ALSO OF A CATEGORY OF LOSS OR DAMAGE ALREADY LISTED), WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF YOU, US OR ANY THIRD PARTY ARISING OUT OF ANY BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY CONDITIONS OR OTHER TERM, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OTHER LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10. CONFIDENTIALITY

10.1. Definition of Confidential Information. "Confidential Information" means all information disclosed

by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, 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. Our Confidential Information expressly includes the Software. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), 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 does 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.

10.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 10.2.

10.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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 that Confidential Information.

11. NOTICES, GOVERNING LAW AND JURISDICTION

11.1. 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, (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 per Section 7.7 or written notification to Us of a Claim Against You per Section 6.1). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Software system administrator designated by You.

11.2. Agreement to Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the state of Colorado without regard to conflict of laws provisions. The state court in Broomfield County, Colorado shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. Each party expressly consents to the personal jurisdiction of the courts of Colorado and waives any defense on venue, including the defense of *forum non conveniens*. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

11.3. No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other PSI company. Subject to any permitted Assignment under Section 12.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

12. GENERAL PROVISIONS

12.1. Export Compliance. The Software, other technology We make available, and derivatives thereof 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 Authorized Users to access or use any Software or in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

12.2. 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 Legal Department at legal@proposalsoftware.com.

12.3. Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of the Software 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 will be effective unless in writing and signed by the party against

whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your 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, (2) this Agreement, and (3) the Documentation.

12.4. 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), 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, We will refund to You 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.

12.5. 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.

12.6. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

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

12.8. Severability. 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, and the remaining provisions of this Agreement will remain in effect.

The end.