



ProcessGene Subscription Agreement

THIS PROCESSGENE SUBSCRIPTION AGREEMENT DIRECTS YOUR USE OF PROCESSGENE SERVICES ("SERVICES"). THIS AGREEMENT ALSO DIRECTS YOUR FREE TRIAL OF THE SERVICES IN CASE YOU ENGAGE IN SUCH A TRIAL. BY ACCEPTING THIS SUBSCRIPTION AGREEMENT ("AGREEMENT"), EITHER BY CLICKING ANY COMPUTER SCREEN OBJECT INDICATING YOUR ACCEPTANCE OR BY SIGNING OR 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 CORPORATION OR OTHER LEGAL ENTITY, YOU HEREBY DECLARE THAT YOU HAVE THE FULL AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT FULLY AND COMPLETELY AGREE WITH THESE TERMS AND CONDITIONS, YOU HAVE TO DECLINE THIS AGREEMENT AND MAY NOT USE ANY OF THE PROCESSGENE SERVICES. THIS AGREEMENT WAS LAST UPDATED ON JUNE 01, 2014. THIS AGREEMENT IT IS EFFECTIVE BETWEEN YOU AND PROCESSGENE AS OF THE DATE OF YOU ACCEPTING THIS AGREEMENT.

YOU MAY NOT ACCESS ANY OF THE SERVICES IF YOU ARE A COMPETITOR OF PROCESSGENE- EITHER DIRECT OR INDIRECT, WITHOUT RECEIVING A PRIOR WRITTEN AND SIGNED CONSENT FROM PROCESSGENE. IN ADDITION, YOU MAY NOT ACCESS THE SERVICES FOR PURPOSES OF MONITORING THEIR PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING, EDUCATIVE OR COMPETITIVE PURPOSE.

Table of Contents

- ProcessGene Subscription Agreement 1
- 1. Definitions..... 2
- 2. ProcessGene Purchased Services 2
- 3. Use of the Services 2
- 4. ProcessGene Services Trials..... 3
- 5. Third-Party Providers..... 3
- 6. Term and Fees 3
- 7. Proprietary Rights..... 4
- 8. Non Disclosure of Confidential Information..... 4
- 9. Warranties and Disclaimers..... 5
- 10. Mutual Indemnification 5
- 11. Limitation of Liability 5
- 12. Agreement Termination 6
- 13. Notices, Governing Law and Jurisdiction 6
- 14. General Provisions 6

1. Definitions

"**Malicious Code**": viruses, trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Order Form**": the ordering documents for purchases hereunder, including related price proposals and appendixes, that are exchanged between You and ProcessGene from time to time. Order forms shall be considered incorporated herein by reference.

"**Services**" means the Web-based applications provided by ProcessGene, that are ordered by You under an Order Form, including associated offline components but excluding Third Party Applications.

"**Purchased Services**" means Services that You purchase under an Order Form or by using the user-addition electronic form within the Services.

"**Third-Party Applications**": applications and software products interoperated with the Services.

"**Users**" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service were ordered, either by an Order Form or by using the user-addition electronic form within the Services, and who were supplied with user identifications and passwords.

"**User Guide**" means the user guide for the Services as updated from time to time, accessible via login to the Services or provided to You upon Your request. You acknowledge that You have had the opportunity to carefully review the User Guide during a free trial described in Section 4 below, or as an offline file provided to You upon Your request.

"**ProcessGene**" means ProcessGene Ltd. with offices in Israel as indicated at the ProcessGene website www.processgene.com. When this agreement mentions "Our" or "We" or "Us" it refers to ProcessGene Ltd.

"**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 of the subject entity.

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

"**Your Data**" means data submitted by You to the Services.

"**Subscription Start Date**" means the start date of a User Subscription as indicated in the ProcessGene Services

"**Co-Terminus Date**" means the day and month in which all Your purchased subsections are renewed for a period of one year. The day of the Co-Terminus Date is the first day of a month, and the month of the Co-Terminus Date is the month specified in Your first Subscription Start Date.

2. ProcessGene Purchased Services

- 2.1. **User Subscriptions.** Unless otherwise specified in the Order Form, (a) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (b) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (c) the added User subscriptions shall terminate on the Co-Terminus Date. 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 use of the Services.
- 2.2. **Provision of Services.** We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are not dependant on the delivery of any future functionality or features nor dependent on any oral or written comments made by ProcessGene or any other third party regarding the current and future functionality of the Services.

3. Use of the Services

- 3.1. **Services Availability** We shall use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 6 hours notice via the Purchased Services), or (b) any unavailability caused by circumstances beyond Our control, including but not limited to, Force Major, acts of government, flood, fire, earthquakes, electrical power failures, civil unrest, acts of terror, strikes or other labor problems, or Internet failures or delays, or denial of service attacks.
- 3.2. **Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the confidentiality of Your Data. We shall not (a) disclose Your Data unless permitted in writing by You, or (b) access Your Data except to provide the Services or address service or technical problems, or in connection with customer support matters or for providing professional services and consulting.

- 3.3. Usage Limitations.** Services may be subject to other limitations, such as but not limited to: quota of disk storage space, the number of requests You are permitted to make to ProcessGene's Web servers. Upon your request, ProcessGene will provide you with information required to monitor Your compliance with such limitations.
- 3.4. Your Responsibilities.**
- 3.4.1. You shall be solely responsible for:
- 3.4.1.1. Users' compliance with this Agreement
 - 3.4.1.2. The accuracy, quality, integrity and legality of Your Data
 - 3.4.1.3. Using reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use
- 3.4.2. It is your sole responsibility to backup your Data to a location of your choice using the ProcessGene reports mechanism. Restoring deleted customer data to your software instance is at your sole responsibility.**
- 3.4.3. You shall not:
- 3.4.3.1. Make the Services available to anyone other than Users
 - 3.4.3.2. Sell, resell, rent or lease the Services
 - 3.4.3.3. Use the Services to store or transmit infringing, defamatory, or otherwise unlawful material, or to store or transmit material in violation of third-party privacy rights
 - 3.4.3.4. Use the Services to store or transmit Malicious Code
 - 3.4.3.5. Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein
 - 3.4.3.6. Attempt to gain unauthorized access to the Services or their related systems or networks

4. ProcessGene Services Trials

- 4.1. We will make our Services available to You on a trial basis, free of charge, until the earlier of (a) the 15th day after Your acceptance of this Agreement or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the ProcessGene trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA ENTERED BY YOU OR US INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST AT THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

- 4.2. It is your responsibility to carefully review the Services and the User Guide during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

5. Third-Party Providers

- 5.1. **Acquisition and usage of Third-Party Applications.** We do not warrant or support third-party products or services. Nevertheless, we may require the existence of a Third-Party Application on the User local machine.
- 5.2. **Third-Party Applications and Your Data.** If You install or enable Third-Party Applications for use with the Services, We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers.
- 5.3. **Integration of Services with Third-Party Applications.** Service features that interoperate with Third-Party Applications depend on the continuing availability of the Third-Party Applications for use with the Services. If Third-Party Applications providers cease to make the Third-Party Applications available for the Services, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.
- 5.4. **Third Party Consulting Providers.** We do not warrant or support non-ProcessGene professional services, whether or not they are designated by Us as "certified" or otherwise.

6. Term and Fees

- 6.1. **Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase subscriptions before the end of that period, this Agreement will terminate at the end of the free trial period.
- 6.2. **Subscription Term.** User subscriptions purchased by You, begin on their Subscription Start Date, and continue until the upcoming Co-Terminus Date.
- 6.2.1. **Subscription Renewal.** All User subscriptions purchased by You shall automatically renew for additional periods of one year, unless either party gives the other notice of non-renewal at least 45 days before an upcoming Co-Terminus Date.
- 6.3. **Subscription Pricing.** The per-user pricing during a renewal term shall be the same as that during the prior term unless We have given You a written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

- 6.3.1. If Your subscription price was reduced due to a volume discount, it is compulsory that You maintain the amount of subscriptions that entitled You with the volume discount. Else, upon renewal You will be charged with the then undiscounted Services price for Your subscriptions.
- 6.4. **User Subscription Fees.** You shall pay all fees specified in all Order Forms hereunder.
- 6.4.1. Fees are based on Services purchased and not actual usage.
- 6.4.2. Payment obligations are non-cancelable and fees paid are non-refundable.
- 6.4.3. The number of User subscriptions purchased cannot be decreased during the relevant subscription term.
- 6.4.4. User subscription fees are calculated per full calendar month. Fees for subscriptions added during a calendar month will be charged for that full month and the calendar months remaining until the Co-Terminus Date.
- 6.5. **Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit for all Services listed in the Order Form for all subscriptions- for the initial subscription term and any renewal subscription term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance or otherwise in accordance with the relevant ProcessGene Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information.
- 6.6. **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 2% 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 Order Forms on payment terms shorter than those specified in Section 6.5 (Invoicing and Payment).
- 6.7. **Suspension of Service. If any amount owing by You under this Agreement for Our Services, or for professional services provided by Us, is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, suspend Our Services to You without prior notice until such amounts are paid in full.**
- 6.8. **Payment Disputes.** At our sole discretion- we shall not exercise Our rights under Section 6.6 (Overdue Charges) or 6.7 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 6.9. **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. You are responsible for paying all Taxes associated with Your purchases hereunder.

7. Proprietary Rights

- 7.1. **Reservation of Rights.** We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 7.2. **Restrictions.** You shall not (a) permit any third party to access the Services except as permitted herein or in an Order Form, (b) create derivative works based on the Services, (c) copy, or mirror any part or content of the Services, (d) reverse engineer the Services, or (e) access the Services in order to build a competitive product or service, or copy any features, functions or graphics of the Services.
- 7.3. **Suggestions for changes and improvements.** We shall have a royalty-free, worldwide, transferable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, enhancement specifications, recommendations or other feedback provided by You, including Users, relating to the operation, functionality and properties of the Services.

8. Non Disclosure of Confidential Information

- 8.1. **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 in writing, that is designated as confidential or that reasonably should be understood to be confidential. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, 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 shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, or (c) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 8.2. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall use 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) not to 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 have signed non-disclosure agreement with the Receiving Party containing protections no less strict than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.
- 8.2.1. Notwithstanding the above, ProcessGene may provide a copy of this Agreement and related Order Forms to potential investors, or acquirers of ProcessGene provided that such potential investors, or acquirers shall sign a non-disclosure agreement.

- 8.3. **Publicity.** We are allowed to make public announcements and presentations disclosing that You and Your subsidiaries used the Services as a customer of ProcessGene, along with a presentation of Your logo, Your brands, testimonials and case studies. Such announcements and presentations can be either oral or in writing and can be publically presented in medias such as but not limited to the Web and marketing presentations.
- 8.4. **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.

9. Warranties and Disclaimers

- 9.1. **Our Warranties.** We warrant that (a) the Services shall perform materially in accordance with the User Guide subject to Section 5.3 (Integration of Services with Third-Party Applications). For any breach of such warranty, Your exclusive remedy shall be as provided in Section 12.1 (Termination for Cause) and Section 12.2 (Refund or Payment upon Termination) below.
- 9.2. **Mutual Warranties.** Each party (You and Us) represents and warrants that (a) it has validly entered into this Agreement and has the legal power to do so, and (b) it will not transmit to the other party any Malicious Code.
- 9.3. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10. Mutual Indemnification

- 10.1. **Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding 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 (a "**Claim Against You**"), and shall indemnify You for direct damages finally awarded against You, 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 releases You of liability); and (c) provide to Us all reasonable assistance, at Our expense.
- 10.1.1. 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 (a) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (b) obtain a license for Your continued use of the Services in accordance with this Agreement, or (c) terminate Your User subscriptions for such Services upon 45 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 shall defend Us against any claim, demand, suit, or proceeding made or brought against Us by a third party alleging that Your Data, or your use of the Services in breach of this agreement infringes or misappropriates the intellectual property rights of a third party or violate applicable law (a "**Claim Against Us**"), and shall indemnify Us for direct damages finally awarded against Us, provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement releases Us of liability); and (c) provide to You all reasonable assistance, at Your expense.
- 10.3. **Exclusive Remedy.** This Section 10 (Mutual 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. **Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF \$150,000 OR THE AMOUNT PAID BY YOU FOR SERVICES HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SERVICES HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (TERM AND FEES).
- 11.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. Agreement Termination

- 12.1. **Termination for Cause.** A party may terminate this Agreement for cause: (a) upon 45 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) 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.
- 12.2. **Refund or Payment upon Termination for Cause.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 12.3. **Termination for Convenience.** We reserve the right to terminate this agreement upon 45 days prior written notice to You.
- 12.4. **Refund or Payment upon Termination for Convenience.** Upon any termination for Convenience by Us, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. In no event shall any termination for Convenience relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 12.5. **Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of the Purchased Services, We will make available to You for download a file containing Your Data. The file will include all the data fields that can be queried by the Services report generator, along with attachments of uploaded documents. Process diagrams will be provided as images within the file. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and may thereafter delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 12.6. **Surviving Provisions.** Section 6 (Term and Fees), 7 (Proprietary Rights), 8 (Non Disclosure of Confidential Information), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.2 (Refund or Payment upon Termination for Cause), 12.2 (Refund or Payment upon Termination for Convenience), 12.5 (Return of Your Data), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

13. Notices, Governing Law and Jurisdiction

- 13.1. **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: (a) personal delivery, (b) the second business day after registered postal mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).
 - 13.1.1. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. It is within Your sole responsibility to notify us if the contact details of the billing contact were changed.
 - 13.1.2. All other notices to You shall be addressed to the Services administrator designated by You. It is within Your sole responsibility to notify us if the contact details of the Services administrator were changed.
- 13.2. **ProcessGene contact information.** All notices from You should be addressed to ProcessGene Ltd., Topaz Building, Carmel-Gate Center, POB 6607, Haifa 31066, Israel, Fax: +972 (4) 837 5532, attn. Director.
- 13.3. **Agreement to Governing Law and Jurisdiction.** This Agreement shall be exclusively governed by and construed under the laws of the State of Israel. The courts of the city of Haifa will have exclusive jurisdiction over any disputes arising hereunder.
- 13.4. **General** if any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be modified and construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s) to the fullest extent permitted by law, with all other provisions remaining in full force and effect. The failure or delay of ProcessGene in exercising any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by ProcessGene in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and ProcessGene and supersedes all other negotiations, discussions or agreements, whether written or oral.

14. General Provisions

- 14.1. **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.
- 14.2. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 14.3. **Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.5 (Invoicing and Payment)
- 14.4. **Assignment.** Neither party may assign any of its rights or obligations hereunder 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 Order Forms), 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 not involving a direct competitor of the other party. A party's sole remedy for any supposed 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. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 14.5. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective during a subscription term as presented in section 6.2 (Subscription Term) 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 Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 14.6. **Updates and Changes.** We reserve the right to make changes to the ProcessGene Subscription Agreement from time to time at Our sole discretion. By renewing Your subscription to the Services, You accept the Agreement version that is presented at Our Website 60 days prior to an upcoming Co-Terminus Date.