



# **License and terms of use Pandora FMS**

Review: January 2024

## Index

<b>General contract conditions</b>	<b>3</b>
<b>1. Ownership of PandoraFMS®, its components and the application documentation</b>	<b>3</b>
<b>2. Licensing of PandoraFMS®</b>	<b>5</b>
a. License of use	5
b. Version update	6
c. License Warranty	6
d. Third Party Software	7
e. Loss of the right to use	7
<b>3. Access, handling and processing of Client-owned information</b>	<b>8</b>
a. Confidentiality	8
b. Personal data protection	9
<b>4. Technical Support Services</b>	<b>16</b>
a. Technical support and standard service level	16
b. Exclusions	18
c. Software Updates	19
<b>5. Miscellaneous</b>	<b>20</b>
a. Industrial Property	20
b. Guarantees and responsibility limitations	20
c. Integrity, modification and validity	22
d. Duration and termination of the contract	23
e. Communication and notifications between the parties	25
f. Legal nature	25
g. Applicable law and jurisdiction	26

## General contract conditions

These general conditions of PandoraFMS® (the “Conditions”) regulate the terms in which Pandora FMS gives *intuitu personae* to the Client the use of the PandoraFMS®, Pandora ITSM or Pandora RC application and of the contracted components as well as the terms in which the support services and the other applicable conditions will be provided. The license of use is fully valid regardless of the services contracted and is an essential part of the contract signed between the parties together with the order or purchase order (if any) and the commercial proposal (all of them, together, the Contract).

These Terms and Conditions are binding to the Client and all entities and persons acting on the Client’s behalf or in collaboration with the Client, whether they be employees, associates, collaborators, partners, suppliers or any other (hereinafter, the Associates). Particularly, it is understood that all references made to the Client reach and bind the Associates, to whom the Client must inform of the content of these conditions and for whose compliance and non-compliance they shall be jointly and severally liable.

By the simple installation or acceptance of the installation and by the simple use of the application, the Client declares to have read, understood and accepted all the Terms of these Conditions. It also declares that it has sufficient power of attorney to be bound by its representation.

## 1. Ownership of PandoraFMS®, its components and the application documentation

Pandora FMS®, Pandora ITSM and Pandora RC are the exclusive property of Pandora FMS SLU (“Pandora FMS”); an entity that manages and coordinates its development as a collective work and that holds all the moral, exploitation and remunerative rights over it, also exclusively. Pandora FMS hereby grants the Client a license to use the application (the executable binaries, the expressly agreed upon source codes, the related components provided with the software, the application programming interfaces and the other associated media) and grants the Client no rights of reproduction, distribution, public communication or transformation of the application beyond those strictly necessary for the use intended in the commercial offer.

The application manuals and all related material including the material used for their development (in any format) are protected by the same intellectual property rights as the application itself and the current license of use extends to them. Pandora FMS hereby grants the Client no rights of reproduction, public communication and distribution of these materials beyond those strictly necessary to learn how to use the application. Any transformation (including translation into any language) of the aid and development materials without Pandora FMS’s prior permission is also prohibited.

The Client may not reverse engineer, disassemble or decompile unless expressly authorized in writing by Pandora FMS, which it does not do in this license.

Pandora FMS’s rights do not include rights to third parties licensed under OpenSource licenses (BSD, GPL and LGPL). See below under the heading ‘third-party software’.

## 2. Licensing of PandoraFMS®

### a) License of use

By the present license and within the framework of the Revised Text of the Spanish Intellectual Property Law, Pandora FMS makes available to the Client the use of the PandoraFMS® Enterprise application in exchange for the fee stipulated in the commercial proposal. This license covers and regulates the use of the PandoraFMS® application and all the related components included in the contract.

Any doubt as to the scope of the rights license should be understood in a restrictive manner, i.e. in the sense of the least possible transfer of rights. Pandora FMS reserves the right to revoke the license when the Client fails to comply with any of the obligations arising therefrom for the Client. This license does not imply the sale of the application.

The Client will be able to use the PandoraFMS® application without any limitations other than those established in the local, national and international laws applicable in each case, in the contract and in the present license. Thus, it is forbidden to use PandoraFMS® for illegal, immoral or contrary to public order purposes. Pandora FMS will be able to terminate this license when it detects that the Client is using the PandoraFMS® application for such purposes. Local regulations may impose additional restrictions on the Client. It is their sole responsibility to keep themselves informed about these limitations and to fulfill all their obligations. Under the terms of the contract, Pandora FMS will provide the Client with its support and maintenance services.

The license of use that Pandora FMS grants to the Client is non-exclusive. This means that Pandora FMS may assign its rights to third parties at its own will, i.e. without the Client being able to assert any cause.

The license of use that Pandora FMS grants to the Client is non-transferable. This implies that the Client may not transfer to third parties - by any means - the right of use that Pandora FMS transmits to it by means of this license. The transfer of the

right of use by the Client to a third party will be considered null and void in all cases, except with the prior written consent of Pandora FMS.

Within the terms and limits of the license, the Client will be able to use the PandoraFMS® application anywhere in the world, as long as he has the necessary elements to do so and for an unlimited period of time (license in perpetuity) or a limited time of use (license in subscription mode) unless the commercial proposal or the purchase order (if applicable) establishes some more restrictive condition to the respect.

The Client is solely responsible for the confidentiality of the serial number and the information provided for the use of the application. In the event that the Client suspects that the information will be disclosed or revealed to unauthorized persons, the Client shall immediately inform Pandora FMS of this fact for renewal.

## **b) Version update**

Pandora FMS will inform the Client about the release of new versions of the PandoraFMS® application so that the Client can know them and decide if they want to use them. This is not obligatory.

The license to use the new versions is included in this license as long as the Client is paying the maintenance fees and has paid the maintenance fees each year since the purchase of this license.

## **c) License Warranty**

Pandora FMS represents and warrants to the Client that no third party shall be entitled to claim any damages for the unlicensed use of the Software from the Client. In this respect, Pandora FMS shall indemnify the Client against any claims by third parties for intellectual property rights in software they claim to own.

#### **d) Third Party Software**

The software contains pieces of software (proprietary and free, free or onerous) from third parties protected by specific licenses arranged by the owners of the rights to exploit them. The acceptance of this license implies the acceptance of such licenses and the Client may use the software pieces of third parties without any limitations other than those contained in their respective licenses, in this license and in the applicable legislation in each case. For more information, please contact us.

#### **e) Loss of the right to use**

The Client shall automatically forfeit the right of use transferred to it by Pandora FMS hereunder at the time of failure to comply with any of the terms of this license. From that moment on, Pandora FMS will prevent the Client from accessing the application, which will not give the Client any right to a refund. The provisions of this clause shall be without prejudice to any other conditions agreed between the parties with regard to the termination of the contract.

## 3. Access, handling and processing of Client-owned information

### a) Confidentiality

All information disclosed by the parties to their respective counterparts and treated by the disclosing party in accordance with that qualification shall be confidential. By way of example, but not limited to, all technical project documentation and all financial, economic, strategic and tactical information of the parties shall be considered confidential.

The parties may only use confidential information for the purposes and within the limits of this agreement. Thus, the parties will prevent any publication, dissemination and unauthorized use of confidential information, preventing access to it to all persons who do not need it for the purpose of this contract (even if they are members of their own organizations).

In addition, the parties shall protect the confidential information of their counterparts by using at least Page 3 the same level of care as they use for the protection of their own confidential information of a similar nature. This level may never be less than a reasonable level of care, taking into account, inter alia, best practices in information security and the state of the art.

At the time of termination of this contract, the parties shall destroy or return (at the request of the other party) all confidential information of their counterparty in their possession, including information that may be found in backup copies of information. The confidentiality obligations regarding such information shall remain in force, even after the end of this collaboration, for a period of two (2) years from the date of return or destruction of the confidential information.



## **b) Personal data protection**

### **1. Information**

The personal data of the signatory on behalf of the Client as well as of the other workers and collaborators of the Client will be treated by Pandora FMS in accordance with the regulations governing the protection of personal data in order to manage the services contracted and to bring the present contractual relationship to a successful conclusion and - unless you object - to keep you informed about our activity, to send you information about the products and services we market and about our special offers for Clients and former Clients by the means of contact that you are providing us with or that you may provide us with in the future. In addition, we will also use them to send you our monthly newsletters and any other information that may be of interest to you, even after the current business relationship has ended and until you withdraw your consent or object. Your data will be provided to third party collaborators when necessary for the development, compliance and control of this legal relationship and for the study and generation of new business and commercial relationships, as well as in the cases legally authorized or required or consented to by those affected. All of them have the right to exercise their rights of access, rectification, cancellation, suppression, limitation of processing, portability and opposition under the terms of the General Data Protection Regulations. To do so, please contact the Pandora FMS Data Protection Officer either by writing to Pandora FMS, S.L.U, Calle Casas de Miravete 24A 3-3, ES28031 Madrid, Spain or by e-mail to [dpo@pandorafms.com](mailto:dpo@pandorafms.com). The Client undertakes to transmit this complete information to all of its employees and collaborators with whom Pandora FMS must maintain contact for the correct execution of its services.

### **2. Duties of secrecy, custody and confidentiality**

Pandora FMS and the Client undertake to keep the utmost confidentiality with regard to the personal data to which they have access in compliance with this contract and to safeguard them in accordance with the requirements of the data protection legal system, applying levels of care proportional to the nature of the data and the circumstances surrounding their processing.

### **3. Conditions applicable in the event that Pandora FMS does NOT require access to personal data for which the Customer is responsible (prohibition of access to data on behalf of processing and duty of secrecy)**

When, in order to be able to provide the services and carry out the work covered by this Agreement, Pandora FMS does not need access to personal data for which the Client is responsible for storing and processing the data, the following conditions shall apply.

The personnel hired by Pandora FMS assigned to the Client - either permanently or punctually - for the execution of the contracted services and works, will be forbidden access to personal data of a personal nature, the responsibility of the Client. If, in the course of the execution of the services and works, said personnel have access to personal data that is the responsibility of the Client by chance, they shall be subject to the duty of secrecy required by law. Pandora FMS states and guarantees that it has included the above prohibition and its duty of secrecy in the contracts with the aforementioned workers.

In the event that Pandora FMS does require access to personal data for which the Client is responsible, the conditions set out in the following section shall apply.

### **4. Conditions applicable in the event that Pandora FMS does require access to personal data for which the Client is responsible (conditions for access to data for processing purposes)**

Where, in order to provide the services covered by this Agreement, Pandora FMS requires access to personal data for the storage and processing of which the Client is responsible, the following conditions shall apply, which shall be understood in accordance with article 28 of the General Data Protection Regulations (hereinafter referred to as GDPR). Any legal provisions - other than mandatory law - that conflict with the content of this clause shall not apply to access to data.

**a) Processing activities to be performed**

Responsible	Affected	Types of data	Treatment	Goal
Client	Employees Providers Others	Email addresses IP Addresses User Names Passwords URL	Storage in support tickets for support requests and troubleshooting.  Introduction into systems for testing.	To provide the support service and, in general, to fulfil the purpose of the contract.

**b) Pandora FMS’s Obligations**

Access to data shall at all times take place in full compliance with the requirements of the data protection law. In this sense, by way of illustration:

**a)** Pandora FMS will only process the personal data to which it has access under this contract in accordance with the instructions of the Client, limiting its actions to those necessary for the execution of the work and the provision of the services contracted.

**b)** Pandora FMS will inform the Client if it considers any of the instructions received to be contrary to the legal provisions in force regarding data protection.

**c)** Pandora FMS will store the data to which it has access under its control and will safeguard it by applying a level of care in accordance with usage and custom, applying the due diligence of a good parent and implementing the controls and security measures that the risk analysis recommends to implement.

**d)** Pandora FMS will not use the personal data to which it has access under this contract for its own purposes or for purposes other than those set out in this contract.

**e)** Beyond the transfer of data to the public administration necessary to comply with legal obligations, Pandora FMS will not disclose to third parties, even for the

purposes of its retention, any personal data to which it may have access under this agreement.

**f)** Pandora FMS will prevent access to the personal data to which it has access under this contract to any person who does not need them for the provision of services or the execution of the work.

**g)** Pandora FMS will train its employees in the terms necessary to ensure that they are aware of the legal data protection regime, the obligations they have to comply with in the execution of this contract, the procedures for managing incidents and security breaches and the procedures for responding to the exercise of any of their rights by the affected parties.

**h)** Pandora FMS will prohibit its employees in employment contracts from having access to personal data that is the responsibility of clients who do not need it for the performance of their tasks.

**i)** Pandora FMS stores data from support tickets on OVH servers in France and Canada and has outsourced the email management services of Google, Inc. Pandora FMS will not process data from personal data to which it has access under this agreement outside the territory of the European Economic Area except with the express prior written consent of the Client.

**j)** Pandora FMS outsources training and administrative services to independent professionals. Beyond the aforementioned subcontracts, Pandora FMS may not subcontract, in whole or in part, the execution of the works or the provision of the services entrusted to it by the Client, except with the express prior written authorisation of the Client. Pandora FMS may request such authorisation, taking into account that any sub-processor must declare and contractually guarantee compliance with the data protection legal regime. The Client shall give approval in good time. Pandora FMS shall be, if at fault in choosing or supervising and unless expressly and in writing agreed otherwise, subsidiary liable to the Client and to those affected by the defective performance or non-fulfilment of the obligations arising for the sub-contractor from this contract, the sub-contract and the applicable law. Thus, by way of illustration, the subcontractor (who will also have the

status of data processor on behalf of the Client) is obliged to fulfil all the obligations set out in this contract for Pandora FMS and all the instructions given to him by the Client through Pandora FMS or directly.

**k)** Pandora FMS shall keep a record of the data processing activities (RoPA) carried out on behalf of the Client. This register will contain the information required by current legislation at all times. By way of illustration, this register may contain: (a) the identification of the controller and the processor, the identification of the representatives of each of them and the contact details of all of them; (b) the identification of each type of data processed; (c) the identification of the data subjects; (d) each and every processing activity to which each type of data is subject for each and every purpose for which each processing activity is carried out; (e) the recipients of the data if any other than the Client; (f) the controls and measures implemented to guarantee the integrity, confidentiality, availability and resilience of the data processed, together with the reference to the risk analysis previously carried out for the decision on the catalogue of controls and measures to be implemented; and (g) the periodic control and audit processes to verify the adequacy of the controls and measures implemented. In addition, the register shall contain all other legally required information in accordance with the circumstances.

**l)** Pandora FMS will appoint a Data Protection Officer (DPO) and communicate his identity to the Client. If it is not because I am not required to appoint a DPO. The DPO shall provide the Client with the information, means and collaboration necessary for the fulfilment of the obligations relating to the processing of data ordered by the Client from Pandora FMS.

**m)** Where appropriate, Pandora FMS will provide the Client with the information, support and cooperation necessary for the performance of data protection impact assessments and for the performance of consultations with the Data Protection Authority. The cost of this cooperation may be invoiced to the Client.

**n)** Once the contractual service provided in this contract has been fulfilled, Pandora FMS shall return to the Client all documents and computer media received from him/her containing personal data without keeping any copy of the same. In the event that such a return proves impossible, he shall provide the Client with a full

copy of the information. In any event, Pandora FMS will subsequently destroy the copies in its possession in such a way that they are illegible to third parties.

### **c) Security obligations**

Pandora FMS will implement an information security management system (ISMS), implementing the best practices for information security management and applying to all data processing carried out under this contract the controls and security measures aimed at guaranteeing the security of the personal data to which the Client has access under this contract.

In addition, Pandora FMS states and warrants that it will carry out the necessary periodic checks and security audits to verify that the controls and security measures in place are effective for the treatment of the risks for which they have been implemented in each case.

Since the signing of this agreement, Pandora FMS undertakes to notify the Client of security breaches under the terms of the GDPR as soon as possible and in any event within a maximum of thirty-six (36) hours after it becomes aware of their occurrence. At a minimum, this information shall include:

- a)** A description of the nature of the breach of personal data security, including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned.
- b)** The name and contact details of the Data Protection Officer or other point of contact from which further information can be obtained.
- c)** Description of the possible consequences of the breach of personal data security.
- d)** Description of the measures taken or proposed to remedy the breach of security of personal data, including, if appropriate, the measures taken to mitigate possible negative effects.

If it is not possible to provide all this information in the first communication, Pandora FMS will provide it gradually as soon as possible. The information will be

sent by e-mail to the person with whom the contract for the service covered by this contract has been arranged.

Furthermore, the Client may ask Pandora FMS for any information it deems necessary in order to ensure that it complies with the obligations arising from the principle of data security for it as a data processor. The Client may not request Pandora FMS to implement additional security measures unless there is good cause for doing so and, where appropriate, co-finance their implementation. Among others, the Client may request Pandora FMS to anonymize or encrypt personal data of its responsibility and proprietary information.

**d) Obligations in the event of the exercise of rights of access, rectification, cancellation, limitation of processing, deletion, portability and opposition**

In the event that the owners of the personal data exercise their rights of access, rectification, limitation of processing, deletion, portability and opposition granted to them by the legal system of data protection before Pandora FMS, the latter must, in any event, communicate the request to the Client within a maximum period of seventy-two (72) hours, so that the latter may attend to it -as appropriate within the periods established by law.

**5. Responsibility of the parties**

In the event that Pandora FMS fails to fulfil any of its obligations as data processor, Pandora FMS shall be held legally liable. In the event that Pandora FMS fails to comply with any of the obligations arising from this clause and the regulations in force, Pandora FMS shall be liable for the infringements it incurs personally.

## 4. Technical Support Services

The access to the technical support services will be through the following URL: <https://support.pandorafms.com/>, being this the only official channel of Client service. The Client will have a username and password for personal and non-transferable use.

These Terms and Conditions of technical support only apply if the Client has contracted these services expressly through a purchase order or commercial proposal. The following terms of service level (SLA) apply to technical support service.

### **a) Technical support and standard service level**

Pandora FMS will provide the Client with the following technical support services provided that it has contracted them through the purchase order or economic proposal that forms part of this contract and is up to date with the payment of the corresponding annual fees:

- a)** The technical support will allow the customer to open queries about the use, administration and configuration of PandoraFMS® in any of its components (Pandora FMS, Pandora ITSM, Pandora RC or Pandora MaaS).
- b)** Only issues communicated through the official channel are guaranteed.
- c)** Incidents will be handled during standard business hours from the Madrid/UTC+2 time zone to the Los Angeles/UTC-7 time zone, from 09.00 to 18.00 Monday through Friday. National holidays will be notified on the support website annually.
- d)** The maximum response time from the opening of an incident or ticket will be four (4) hours, always counting the time in effective working hours. After four hours, the resolution period will begin.



**e)** The behavior of the software that is faulty or contrary to its functional description (detailed in the documentation) is considered a 'problem'. An issue associated with a bug can be classified as follows:

**i.** Critical issue: Total loss of service.

**ii.** Serious problem: Loss of functionality.

**iii.** Minor problem: Incidence without loss of service or full functionality.

**f)** The maximum time for solving problems -starting from the opening of the resolution process- will be, discounting the non-working days, as a general rule, the following ones:

**a.** Critical problem: Five (5) days.

**b.** Serious problem: Forty (40) days.

**c.** Minor problem: Ninety (90) days.

**g)** If the issues are not resolved within the time allowed for resolution, the Client shall be entitled to receive two (2) percent of the amount of the fees paid in the last year as compensation for each week of delay. The accumulated indemnities may never exceed one hundred percent of the fees paid in the last annuity. These indemnities replace any others that may be applicable. The Client shall not be entitled to any further compensation.

**h)** Errors will always be solved in new versions. The solution to the issue does not need to be provided through a patch for the specific version of the client.

**i)** In addition to new releases, only security patches and/or fixes for serious/critical issues will be released for the latest stable release (LTS).

**j)** Support will be provided, in any case, in Spanish and English and using the online support website.

**k)** In order to provide the technical support service and to be able to satisfactorily resolve any incidents and resolve any doubts regarding use, the Client authorizes Pandora FMS to access the personal data in accordance with the terms of clause III.b of these conditions.

**l)** Support for bugs in the tool will be provided on two product versions: the latest stable version (LTS) and the latest regular version (RRR). In case a patch is required (for critical problems in all cases, for other kinds of issues under Pandora FMS criteria), it will be applied on the latest stable version (LTS) if they are not already included in the latest regular version (RRR), where they must be upgraded to that version.

**The Client may request from Pandora FMS extensions and improvements to the standard support services and service level. You can even hire a 24/7 support service.** To this end, the Client shall address a request to his commercial contact who shall analyze the specific needs of the Client and shall draw up the corresponding proposal for support and premium service level that shall be expressly accepted by the Client for its entry into force. Where applicable, the conditions agreed upon Page 9 shall be in accordance with these conditions and shall prevail over them.

## **b) Exclusions**

The following services are expressly excluded from support services and must therefore be contracted separately:

**a)** Installation, configuration or deployment of the software in the client's facilities, either in person or remotely. Said updates are part of an additional service that must be specifically hired (technical consultancy).

**b)** Software upgrades, reconfiguration, optimization or remote connections to customer systems to solve issues by means of direct interaction with the support technician assigned to the case.

- c) Elaboration of software modifications or new functionalities, which must be specifically contracted (tailored integration development).
- d) Maintenance/repair for damage caused by incorrect handling of the software, or by unauthorized personnel, or by changes in the computer system without Pandora FMS's advice. Recovery services must be specifically hired (technical consultancy).
- e) Correction of anomalies attributable exclusively to the computer system and therefore not having any causal relationship with the program installed in it (hardware failures, security vulnerabilities of the base operating system, etc.).
- f) Creation of backups, maintenance of backups or recovery of data from the backup. Said measures are part of an additional service that must be specifically hired (operation services).
- g) Import of data from other applications.
- h) Extension of official documentation, or preparation of additional documentation requested by the client.
- i) Support on plugin or script modifications by the customer.

### **c) Software Updates**

The uninterrupted annual payment for technical support services since the purchase of the license gives the Client the right to access the new versions and security patches of the application. Failure to pay a single annuity will result in the Client's need to purchase the applicable licenses for the new versions.

## 5. Miscellaneous

### a) Industrial Property

Ártica®, PandoraFMS®, Pandora ITSM®, Pandora RC®, IntegriaIMS®, eHorus®, OpGuadian® and others are trade names and registered trademarks of Pandora FMS or Pandora FMS Group companies worldwide. Neither Pandora FMS nor any of the companies in the Pandora FMS group hereby grant the Client any license to any such distinctive signs beyond the use necessary for the performance of this agreement.

This license may be extended expressly and in writing according to the collaboration that may arise between the parties. To this end, the Client must request from Pandora FMS the corresponding license to use or exploit the distinctive signs that it wishes to use in writing and proceed to their registration in the corresponding Industrial Property Registry, paying the applicable fees and assuming the cost of all the applicable fees.

Pandora FMS shall maintain all rights to inventions, industrial designs, topographies of semiconductor products and other creations that may be protected by industrial property rights without prejudice to the licenses that must be granted to the Client for the development of this relationship.

### b) Guarantees and responsibility limitations

The Client is solely responsible for the information provided to Pandora FMS both during the contracting process and thereafter (for example, by completing its registration). All information must be truthful, licit and true to reality and must not infringe or violate the rights of third parties.

The application is delivered as is, that is, the Client accepts the application in its current condition and without guarantee of suitability for the purpose intended by the Client. Only the Client knows the purpose for which he acquires the

PandoraFMS® license, so Pandora FMS will not be responsible for its suitability for the purpose sought by the Client. In order to know the functionalities and capabilities of the application prior to the acquisition of a license, Pandora FMS provides the Client with information regarding its characteristics and operation, as well as the possibility of obtaining a fully functional free trial license with a term of up to sixty (60) days, as expressly agreed between the parties. After that time, the application will be blocked and you must obtain a full license to use it.

The passwords that the Client establishes or is assigned to him to access the services are personal and non-transferable. The Client is solely responsible for guarding and keeping them secret and for the consequences of their loss or misplacement and Pandora FMS is completely exempt from any liability that may arise from the misuse of passwords by unauthorized third parties. If at any time you doubt the confidentiality of any of your passwords, change it immediately.

THE SOFTWARE IS NOT INTENDED FOR USE IN ENVIRONMENTS WHERE THE FAILURE OF THE SOFTWARE COULD RESULT IN LOSS OF HUMAN LIFE OR ENVIRONMENTAL OR PERSONAL INJURY AND Pandora FMS SHALL NOT BE LIABLE IN ANY EVENT FOR SUCH LOSS, DAMAGE OR INJURY.

If you make any illegal, unauthorized, negligent or irresponsible use of the information, content, services or products we offer you, the Client shall be solely liable for any damages he or she may cause to himself or herself or to third parties as a result. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF DATA, BUSINESS INTERRUPTION OR OTHER DIRECT OR INDIRECT DAMAGES ARISING OUT OF THE USE OF THE SOFTWARE. THE Client UNCONDITIONALLY WAIVES ANY RIGHTS HE MAY HAVE AGAINST Pandora FMS AS A RESULT OF THE DETECTION OF A DEFECT IN THE SOFTWARE, WITH THE EXCEPTION OF ANY UNWAIVABLE RIGHTS HE MAY HAVE.

## **c) Integrity, modification and validity**

### **1. Integrity**

The present relationship is governed by the purchase order (if applicable), the commercial proposal and the present general conditions (as a whole, the Contract). The content of the commercial proposal (in which some of the terms of these conditions may have been specified) will prevail over the content of the other elements of the contract. All the terms of this relationship are set out in the texts mentioned in this paragraph. The content of the same excludes any representations, terms, conditions and guarantees previously agreed to orally or in writing.

### **2. Modifications, loopholes and contract ampliations**

In the event that during the life of the contract any of the parties detects any gaps in it or wishes to expand its content, it will contact the other party within five (5) working days for negotiation, signature and addendum to this document as an annex.

Failure to reach agreement on the gap detected shall not affect the validity of the signature and shall not in any case entail the termination of the contract. For the appropriate purposes, the rest of the channels provided for in the same will have to be followed.

Given that the present collaboration contract is signed between the parties at an embryonic stage of the collaboration, the content of the present contract will be extended with each of the agreements reached by the parties in the development of the same.

To this end, the parties may sign contracts with specific objects or attach to this contract the conditions they agree upon. The content of such contracts or annexes may modify, specify, extend or reduce the Terms and Conditions of this cooperation contract, provided that the parties so agree in writing.

### 3. Partial invalidity and contract validity

In the event that any provision of this contract is or becomes ineffective, unenforceable or invalid, the remainder of the contract and the rights and obligations arising therefrom shall continue to be valid.

In such a case, the parties undertake to replace the ineffective, unworkable or invalid provision with an effective, workable and valid provision that reflects the spirit and purpose of the provision to be replaced.

### 4. Exemption

The timely waiver of any of the obligations contained in this contract by either party shall not be construed as a waiver of such obligation from the body of the contract or as an approval of consequential breaches of such obligation.

## d) Duration and termination of the contract

### 1. Duration

This contract shall enter into force on the date of its signature (the date appearing under the heading or, as the case may be, on the purchase order) and shall be valid for twelve (12) months from the date of its signature.

The contract will be automatically extended for successive periods of one (1) year, unless written and reliable notice is given against either party. The notification must be made at least three (3) months prior to the date of termination and must be addressed to the person indicated as the secondary coordinator of the other party. **Otherwise, the communication shall be deemed not to have been made.** The annual renewal fee shall be understood as a renewal request and must always be paid prior to the end of each renewal period in order for the license discounts to apply. The delay in payment shall result in the loss of the right to the discounts.

In the case of a license by subscription or under “as a service” model (MaaS / SaaS), the validity of said contract will be verified every month, or in accordance

with the period established in the sales offer (monthly, every three months or every six months).

## **2. Early termination**

Once the first twelve (12) month period of validity referred to in the previous section has passed, either party may terminate this contractual relationship sixty (60) days in advance. Such notification must be made in the same terms as specified in the preceding paragraph.

## **3. License to use in perpetuity**

In the case of a "Perpetual" type license, regardless of the stipulations above, the conditions of the Contract will remain in effect for the entire life of the license, as long as they are strictly necessary to make effective the rights and obligations of the parties derived from the perpetual condition of the use license. This right of use includes only the right to use the version that the client has in his possession at Page 13 that time, not the right to access updates, new versions or support of any kind, if a contract is not in force at that time.

## **4. License to use as subscription**

Unlike the "Perpetual" type license of the previous point, the subscription license has the duration stipulated in point 1, both for the use of the software and for the scope of support and derivative services.

## **5. Subscription-based usage license**

Subscription-based usage license. Unlike the "Perpetual" license mentioned earlier, the subscription license has the duration stipulated in point 1, both for the use of the software and for the scope of support services and derivatives.

## **6. Termination**

Both parties are entitled to terminate this contract if the respective counterparty fails to fulfil all or part of its legal obligations or any of the obligations arising from this contract. The Client will lose the right to use the license granted to him by Pandora FMS under these Terms and Conditions if he does not respect any of the



terms set forth herein. This will not give the Client any right to a refund. The provisions of this clause shall be without prejudice to the conditions already agreed between the parties with regard to the termination of the contract.

### **e) Communication and notifications between the parties**

For the purposes of this contract, all communications made between the parties by ordinary mail, fax, e-mail, courier and any other means that both parties use and that allows for a written record of the content of the communications shall be deemed valid.

To ensure reliable and smooth communication, the parties will use the contact details contained in the business proposal. All of them will be valid and effective for any notification.

The contract coordinators are also designated in the commercial proposal. Their functions are limited to the supervision of operational, marketing, commercial and technical aspects of the implementation of this contract and its follow-up.

All communications will be made, in the first instance, between the main coordinators of each party and, if communication cannot be established, with the secondary coordinators, thus following a scalability procedure.

The parties must communicate the change of any of the contact details at the time it occurs in order not to hinder business relations. If failure to comply with this obligation results in the loss of any commercial Page 14 opportunity, the person who has not communicated the change in data shall be solely responsible.

### **f) Legal nature**

This agreement is of a commercial nature and contains a license to use a software and the regulation of support services. This contract does not imply the establishment of a joint venture or the creation or existence of any kind of

dependency relationship between the parties. Each party shall be solely responsible for fulfilling its respective obligations. In this way, the parties mutually guarantee each other that they will fulfill all their legal obligations. Specifically, they expressly declare that they comply with them in labor matters (including those arising from the legal regime for the prevention of labor risks) and tax matters and that they are up to date with their payments with the Treasury and Social Security. They also declare that they have fulfilled all their obligations under commercial law and under the law relating to the exercise of their respective activities.

### **g) Applicable law and jurisdiction**

Spanish legislation shall apply to this license. In case of doubt as to the interpretation and execution of this license, the parties shall endeavor to reach a consensual and amicable solution. Thus, any dispute, controversy, difference or claim arising out of or relating to this contract or any amendment thereto, including, without limitation, its formation, validity, enforceability, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The mediation will take place in Madrid. The language to be used in the mediation shall be English. If no agreement is reached or in the event of non-acceptance of mediation, the parties, freely and expressly waiving any jurisdiction that may correspond to them, shall voluntarily submit to the judges and courts of the city of Madrid.

The fact that the Client presses the ACCEPT/INStall/NEXT button implies that he/she freely knows, understands and accepts all the terms contained in these conditions. If you have any questions regarding its content, please contact us through the means available and agreed upon for this purpose.

**Thank you very much! Enjoy PandoraFMS®.**