

## Terms of Service

### Pencil 9

Effective Date: 01-June-2021

#### Overview

These Terms of Service ("Terms") cover every user's and organization's (collectively, "Customer") use and access to the products ("Software") provided by Pencil 9, LLC ("Pencil 9"). If you use Pencil 9's Software as the employee or affiliate of an organization, you are accepting these Terms on behalf of that organization; you represent that you have authority to bind the organization.

These Terms are valid from the Effective Date outlined herein and are valid until further notice. These Terms should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Terms will remain in effect.

Pencil 9 is responsible for facilitating regular reviews of these Terms. These Terms may be amended as required, provided mutual agreement is obtained from the Customer and communicated to all affected parties. Pencil 9 will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

**Review Period:** Annually

**Next Review Date:** 01-December-2022

#### Section 1: Grant of License

**1.1 Software Subscription.** If Customer purchases a Software Subscription, Pencil 9 will grant the Customer access to its Software. Pencil 9 shall make all software, installs, and updates available via digital download; Customer may retain backup copies when applicable. However, the license does not grant Customer the right to sublicense or to use the object code of the Software.

**1.2 Trial License.** If Pencil 9 provides Customer with Software under a Trial Subscription License, then Pencil 9 grants Customer a non-exclusive, limited, royalty-free, nontransferable license. Trial Subscription License is not for production use. The Trial Subscription License automatically terminates on the end date of the pre-determined evaluation period. Pencil 9 reserves the right to immediately revoke the Trial Subscription License upon Notice to Customer.

#### Section 2: Restrictions

**2.1 Reverse Engineering.** Customer may not decompile, "reverse-engineer", disassemble, or otherwise attempt to derive the source code for any of Pencil 9's Software.

#### Section 3: Ownership and Rights Reserved

**3.1 Software Licensed, not Sold.** The Software is licensed, not sold. These Terms do not grant the Customer any rights, title, or interest in or to Software, documentation, trademarks, service

marks, or trade secrets. All rights, title, and interest in and to the Software, documentation, and corresponding intellectual property shall remain the property of Pencil 9.

**3.2 Ownership.** Pencil 9 reserves all rights not expressly granted in this Terms of Service. All title, rights, and interest in and to content, which may be accessed through the Software, is the property of the respective owner and may be protected by applicable laws and treaties, including intellectual property laws. These Terms do not grant Customer any rights to such content, including the use of the same.

**3.3 Open Source Software.** The Software contains third party software using open-source licenses that may supersede these Terms to the extent required by that open-source license. All open-source software is provided "AS IS" without any warranty. Pencil 9 currently uses, but is not limited to the following open-source software resources.

- (a) JSON.Net
- (b) RestSharp
- (c) MahApps

**3.4 Customer Ideas.** Pencil 9 shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to implement in the Software any idea, feature requests, recommendation or other feedback provided provided by the Customer or any third party, including affiliates, relating to the operation, features, design, or functionality of the Software.

**3.5 Access to the Software.** To use the Software, Customer must provide Devices and operating systems necessary to utilize the Software. Customer is responsible for ensuring that its Device and software do not disturb or interfere with the operation of the Software. If any update requires changes in Customer's Device or software, the Customer must implement these changes at their own expense. Every update shall be subject to these Terms.

**3.6 Software Delivery.** Pencil 9 will deliver the initial access to the subscription through an email that will allow the use of the Software. The Software will be considered accepted by Customer upon delivery of email.

#### **Section 4: Confidentiality**

**4.1 Confidential Information.** Both Pencil 9 and Customer shall keep confidential, and not disclose to any third party any Confidential Information which may be provided in connection with these Terms.

**4.2 Compelled Disclosure.** Both Pencil 9 and Customer may disclose Confidential Information pursuant to applicable court order or other legal process if they are compelled by law to do so. The disclosing party must provide the other party with Notice before such mandatory disclosure to the extent legally permitted.

## **Section 5: Payments and Billing**

**5.1 Software Subscription Fees.** Customer shall pay all charges specified within every invoice. All charges are quoted and payable in United States dollars unless designated otherwise on the invoice. All payment obligations are non-cancelable, except as provided in Section 5.5.

**5.2 Invoicing and Payment.** Customer is responsible for providing complete and correct billing information. Invoices are due net 30 days unless stated otherwise in the invoice. Any terms and conditions on any purchase order are not a part of these Terms, nor are they binding on Pencil 9.

**5.3 Overdue Payments and Software Suspension.** Customer shall pay a late fee at 3% per annum for any overdue balance. Pencil 9, may, in its sole discretion, suspend the Customer's access to the Software for any Overdue Invoice without limiting its other rights and remedies. Pencil 9 shall unsuspend Customer's access to Software upon full payment of Overdue Invoice.

**5.4 Taxes.** Pencil 9 will collect sales tax, where applicable.

**5.5 Billing Inquiries.** Pencil 9 wants you to be 100% satisfied with our Services. If you are less than satisfied or believe there has been an error in billing, please contact Pencil 9.

## **Section 6: Service Level Agreement**

**6.1 Purpose, Goal, and Objectives.** The purpose of this Section is to ensure that the proper elements and commitments are in place to provide consistent service support and delivery to the Customer by Pencil 9. The goal of this Section is to obtain mutual agreement for service provision between Pencil 9 and the Customer. The objectives of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the Customer
- Match perceptions of expected service provision with actual service support & delivery.

**6.2 Service Scope.** The following Services are covered by this Section:

- Manned telephone support
- Monitored email support
- Remote assistance using Remote Desktop and a Virtual Private Network where available
- Planned or Emergency Onsite assistance (extra costs apply)
- Cloud services
  - Harmony databases are hosted on Amazon web services and covered by their Service Level Agreement which can be found here:  
<https://aws.amazon.com/legal/service-level-agreements/>

**6.3 Customer and Pencil 9 Requirements.** Customer responsibilities and/or requirements in support of this Section include:

- Payment for all support costs at the agreed interval.

- Reasonable availability of customer representative(s) when resolving a service related incident or request.

Pencil 9 responsibilities and/or requirements in support of this Section include:

- Meeting response times associated with service related incidents.
- Appropriate notification to Customer for all scheduled maintenance.

Service Assumptions related to in-scope services and/or components include:

- Changes to services will be communicated and documented to all stakeholders.

**6.4 Service Availability.** Coverage parameters specific to the Services covered in this Section are as follows:

- Email support ([support@pencil9.com](mailto:support@pencil9.com)): Monitored 9:00 A.M. to 5:00 P.M. Monday – Friday across UK and US Central time zones.
  - Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day
- Telephone support : 9:00 A.M. to 5:00 P.M. Monday – Friday across US Central time zones.
  - Calls received out of office hours will be forwarded to a mobile phone and best efforts will be made to answer / action the call, however there will be a backup answer phone service

**6.5 Service Requests.** In support of services outlined in this Section, Pencil 9 will respond to service related incidents and/or requests submitted by the Customer within the following time frames:

- 0-8 hours (during business hours) for issues classified as High priority.
- Within 48 hours for issues classified as Medium priority.
- Within 5 working days for issues classified as Low priority.

Remote assistance will be provided in-line with the above timescales dependent on the priority of the support request.

## **Section 7: Limitation of Liability and Indemnification**

**7.1 Limitation of Liability.** In no event will Pencil 9 be held liable to Customer or any third party for any special, incidental, indirect, punitive or exemplary or consequential damages, or damages for loss of business, loss of profits, business interruption, or loss of business information arising out of the use or inability to use the Software or for any claim by any other party even if Pencil 9 has been advised of the possibility of such damages. Pencil 9's entire liability with respect to its obligations under these Terms or otherwise with respect to the Software shall not exceed the amount paid by the Customer to Pencil 9.

**7.2 Indemnification.** Customer and Pencil 9 agree to indemnify, defend, and hold harmless the other party, its officers, directors, employees, agents, and third parties, for any losses, costs, liabilities, and expenses (including reasonable attorney's fees) relating to or arising out of Customer's inability to use the Software, the other party's violation of these Terms or the rights of a third party, or the other party's violation of any applicable laws, rules, or regulations. The indemnified party reserves the right, at its own cost, to assume the exclusive defense and

control of any matter otherwise subject to indemnification by the other party, in which event the other party will fully cooperate in asserting any available defenses.

### **Section 8: Termination**

**8.1 Termination.** These Terms are effective until terminated by either party. Either party may terminate these Terms at any time by providing Notice to the other party.

**8.2 Customer's Obligation Upon Termination.** Upon termination, Customer shall destroy all copies of Software and give notice to Pencil 9 certifying that all copies have been destroyed.

**8.3 Pencil 9 Termination.** Pencil 9 may terminate these Terms for any reason, including but not limited to Customer's breach of these Terms.

**8.4 Payment After Termination.** Termination of these Terms for any reason shall not affect any payment obligations due under these Terms.

**8.5 Surviving Provisions.** All provisions relating to confidentiality, proprietary rights, non-disclosure, and limitation of liability shall survive any termination of these Terms.

### **Section 9: General**

**9.1 Governing Law.** These Terms will be construed and enforced in accordance with, and governed by, the State of Colorado laws without giving effect to principles of conflicts of law. Customer and Pencil 9 unconditionally waive all rights to a trial by jury for any dispute arising in connection with these Terms.

**9.2 Customer Identification.** Customer permits Pencil 9 to use Customer's logo(s) for the purpose of customer identification in sales presentations and/or marketing materials. However, Customer may revoke this permission by giving Notice to Pencil 9.