



Enstoa, Inc.

Panoptra Subscription Agreement

This Subscription Agreement ("Agreement") sets forth the terms and conditions under which Enstoa grants to Customer a limited license to Enstoa's Panoptra as identified in the applicable Statement of Work. By accessing or using Panoptra, Customer agrees to follow and be bound by all the terms, conditions and notices of this Agreement.

1. DEFINITIONS.

- a. **"Authorized Users"** means Customer's agents, contractors and/or employees who Customer has authorized to use the Services.
- b. **"Confidential Information"** means any non-public information that is confidential pursuant to Florida law.
- c. **"Customer Data"** means all data, text, content, information and/or other material, including any project and facility data that is extracted from Customer's systems, that Customer and its Authorized Users upload through the Services and/or provide to Enstoa to be uploaded through the Services in accordance with this Agreement.
- d. **"Enstoa Content"** means the data models, database schemas, semantic graphs, indexes, taxonomies, algorithms, formats, content, information, applications and any other expression of the relationships between data elements (in any language, format, model or structure) owned by, licensed to and/or hosted by Enstoa or its third party providers, including, without limitation, the Reports and Dashboards, as applicable, which Customer is licensed to use as part of the Services in accordance with this Agreement.
- e. **"Services"** means the data migration, management, and processing solution and related service offering provided by Enstoa under the terms and conditions of this Agreement or a separate Services Agreement that enables Customer and its Authorized Users to upload and manage data through Panoptra, including any bug fixes or other minor enhancements or improvements thereto. The Services include Panoptra.

2. SERVICES; CUSTOMER PORTAL; DISTRIBUTION OF REPORTS AND ENSTOA DASHBOARDS.

- a. **Services.** Subject to the terms and conditions of this Agreement, Enstoa agrees to provide to Customer and its Authorized Users access to the Services.
- b. **Customer Portal.** Enstoa retains sole responsibility for the design, layout, hosting, and maintenance of the Enstoa Website. From time to time, Enstoa may choose to redesign

or modify the organization, structure, specifications, arrangement, format, "look and feel," navigation, functionality, guidelines, and/or other elements of the Enstoa Website. Notwithstanding the foregoing, Enstoa will design and host the Customer Portal to incorporate design elements unique to the general "look and feel" of the Customer Data. Enstoa will provide reasonable notice to Customer of any material changes that may reasonably be expected to affect the user experience of the Customer Portal.

- c. **Service Levels.** Enstoa will use commercially reasonable efforts to ensure that the Services will be available at least 99% of the time in any given month, excluding any scheduled downtime events.

3. LICENSE GRANTS.

- a. **Licenses to Customer.** Subject to the terms and conditions of this Agreement, Enstoa hereby grants to Customer, (and to each Authorized User who accesses the Services by means of Customer's account and an authorized password), a non-exclusive, non-transferable, non-sublicensable license to: (i) access and use the Services via the Internet in accordance with any applicable end user documentation; (ii) use and display the Enstoa Content solely in connection with Customer's use of the Services as permitted herein and as otherwise provided by Florida law.
- b. **Licenses to Enstoa.** Customer hereby grants to Enstoa a non-exclusive, royalty-free, worldwide, limited license to: (i) display the Customer Data on the Customer Portal; and (ii) use, reproduce and modify the Customer Data to create the Customer Portal and provide the Services, Reports and Enstoa Dashboards to Customer and its Authorized Users. Upon the expiration or termination of this Agreement, Enstoa will cease using the Customer Data and will promptly remove the Customer Data from the Enstoa Website and its related databases. Notwithstanding the above, Enstoa can keep an anonymised copy of the Customer Data for industry research purposes.
- c. **License Restrictions.** Customer shall not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Services; (iv) use the Services for timesharing

or service bureau purposes; (v) remove any proprietary notices from the Services;; or (vi) except as otherwise expressly permitted in this Agreement or except as otherwise provided by Florida law, edit, reproduce, publish, broadcast, transmit, distribute, perform, display, sell or in any way exploit any of the Enstoa Content in any manner.

4. PASSWORDS/SECURITY/BANDWIDTH LIMITATIONS.

- a. **Passwords.** Enstoa shall issue to Customer, or shall authorize a Customer administrator to issue, a password for each Authorized User. To the extent consistent with Florida law, Customer and its Authorized Users are responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the Authorized User. Customer is entirely responsible for any and all activities that occur under the Customer's account and all charges incurred from use of the Services accessed with the Customer's passwords. Customer agrees to immediately notify Enstoa of any unauthorized use of the Customer's account (including each password of each Authorized User accessing the Services by means of Customer's account) or any other breach of security known to Customer.
- b. **Security.** Enstoa may host the Services at a reputable third party Internet service provider and hosting facility and will implement commercially reasonable security precautions to prevent unauthorized access to the Customer Data. Customer acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Services, Customer Data. Accordingly, Enstoa cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

5. OWNERSHIP.

- a. **Customer Data.** As between Enstoa and Customer, Customer shall own and retain all right, title and interest in and to the Customer Data. Enstoa may access Customer's account and access the Customer Data from time to time as Enstoa deems necessary for purposes of providing the Services set forth herein, and for support, administration and invoicing related to Customer's use of the Services. Except as permitted in this Agreement, Enstoa will not edit, delete or disclose the contents of Customer Data unless authorized by the Customer or unless Enstoa is required to do so by law or in the good faith belief that such action is necessary to:
(1) conform with applicable laws or comply with legal process served on Enstoa; (2) protect and defend the rights or property of Enstoa; or (3) enforce this

Agreement. Enstoa may provide anonymised statistical information in aggregate form to third parties, but such information will not include identifiable information of Customer or personally identifying information for Customer's Authorized Users. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data, and Enstoa assumes no responsibility for the deletion, correction, destruction, loss, infringement or failure of the Services to store any Customer Data.

- b. **Enstoa Content.** As between Enstoa and Customer, Enstoa and its licensors, as applicable, shall own and retain all right, title and interest in and to the Enstoa Content. Enstoa does not warrant the accuracy, timeliness, availability or adequacy of any Enstoa Content. Enstoa has no liability for any errors or omissions in the Enstoa Content, whether provided by Enstoa or its licensors.
 - c. **Services.** Customer acknowledges that the Services (excluding any Customer Data), and all intellectual proprietary rights therein, are proprietary to Enstoa. Enstoa retains exclusive ownership of the same throughout the world, including all related copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights thereto. Except as expressly stated herein, this Agreement does not transfer any right, title or interest in the Services to Customer.
6. **FEES AND TAXES.** Customer will pay Enstoa a quarterly subscription Fee. For any renewal terms, Enstoa shall invoice Customer for the applicable subscription Fee approximately thirty (30) days in advance of the commencement of the upcoming renewal term. During any renewal term of this Agreement, Customer shall pay quarterly subscription Fees to Enstoa. If invoiced by Enstoa, payments for such invoices are due within forty-five (45) days from the date of Customer's receipt of Enstoa's proper invoice. All Fees are quoted in the United States currency. Except as otherwise provided in this Agreement, Fees are non-refundable. In addition to such Fees, except to the extent Customer is exempt, Customer shall pay all applicable sales, use and other taxes or duties (excluding taxes based on Enstoa's income).

7. CONFIDENTIALITY.

- a. **Obligations.** Each of the parties agrees to maintain in confidence the Confidential Information of the other party. The Receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder or except as otherwise provided by Florida law, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect

the Confidential Information and the parties' respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Confidential Information of the other party to those employees or agents who require access in order to perform hereunder, and, except as otherwise provided by Florida law, neither party shall make Confidential Information available to any other person or entity without the prior written consent of the other party.

b. **Exclusions.**

A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement or waiver of confidentiality for any other purpose.

c. **Destruction or Return of Confidential Information.** Upon expiration or termination of this Agreement for any reason, each party shall promptly return to the other party, or, except as otherwise provided by Florida law, destroy, as the parties agree in writing, all copies of the other party's Confidential Information. Except as otherwise provided by Florida law, all copies, notes or other derivative material relating to the Confidential Information shall be promptly retrieved or destroyed, as agreed, and no such material shall be retained or used by the Receiving Party in any form or for any reason.

8. **TERM & TERMINATION.**

- a. **Term.** The initial term of this Agreement shall be for a period of one (1) year, commencing on the date of delivery by Enstoa, unless terminated earlier as provided herein ("Initial Term"). Following the Initial Term, this Agreement shall automatically renew and remain in effect and binding upon the parties for successive and additional one (1) year periods unless and until terminated by either party in accordance with the provisions contained hereunder. The Initial Term and the renewal period, if any, are collectively referred to herein as the "Term."
- b. **Termination.** Each party shall have the right to terminate this Agreement upon written notice to the other party if the other party is in material breach of this Agreement, and the breaching party fails to remedy such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party.
- c. **Termination for Convenience.** The provisions of Section 8(b) notwithstanding, either party may terminate this Agreement at any time for convenience following the expiration of the Initial Term of this

Agreement by giving not less than sixty (60) days prior written notice to the other party. In the event of any such termination by Customer pursuant to this Section 8(c) which is not for cause, Customer shall pay to Enstoa any Fees incurred through the date of termination and expenses due under this Agreement and/or any other agreement or statement of work then in effect.

- d. **Effect of Termination.** Customer shall continue to pay to Enstoa any undisputed Fees which have accrued and are otherwise outstanding hereunder as of the effective date of termination.

9. **INDEMNIFICATION.**

- a. **By Enstoa.** Enstoa shall indemnify, defend, or at its option settle, any third party claim or suit against Customer based on a claim that the Services infringes any United States patent, copyright, trademark or trade secret, and Enstoa shall pay any final judgment entered against Customer in any such proceeding or agreed to in settlement; provided
 - (a) Enstoa is promptly notified in writing of such claim or suit, (b) Enstoa or its designee has sole control of such defense and/or settlement, and (c) Customer gives all information and assistance reasonably requested by Enstoa or such designee. To the extent that use of the Services is enjoined, Enstoa may at its option either (i) procure for Customer the right to use the Services, (ii) replace the Services with other suitable products, or (iii) refund the prepaid portion of the Fee(s) paid by Customer for the Services or the affected part thereof. Enstoa shall have no liability under this Section 8 or otherwise to the extent a claim or suit is based upon (a) use of the Services in combination with software or hardware not provided by Enstoa if infringement would have been avoided in the absence of such combination, (b) modifications to, or combinations with, the Services not made by Enstoa, if infringement would have been avoided by the absence of such modifications or combinations, or (c) use of any version other than a current release of the Services, if infringement would have been avoided by use of a current release.
 - (b) Enstoa shall defend, indemnify and hold harmless Customer and Customer's officers, employees and agents from and against any and all claims, liabilities, losses, expenses (including attorneys' fees), fines, penalties, taxes or damages (collectively, "Claims") arising out of bodily injury, death or physical damage to real or tangible personal property to the extent caused by or resulting from the negligence, recklessness, or willful misconduct of Enstoa or of any of Enstoa's officers,

employees, agents, or subcontractors while engaged in the performance of Enstoa's obligations hereunder.

This Section 8 states Enstoa's entire liability and customer's sole and exclusive remedy for infringement and misappropriation claims based on the services.

10. **LIMITATION OF LIABILITY.**

- a. **Disclaimer of Consequential Damages.** IN NO EVENT SHALL ENSTOA OR ITS SUPPLIERS BE LIABLE (A) FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR (B) TO THIRD PARTIES CLAIMING THROUGH CUSTOMER; EVEN IF ENSTOA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. **Limitation on Direct Damages.** IN NO EVENT SHALL ENSTOA'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER IN THE PREVIOUS TWELVE (12) MONTHS FOR THE SERVICES THAT DIRECTLY GAVE RISE TO THE DAMAGES CLAIMED, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.

11. **GENERAL.** All notices to a party shall be in writing and sent to the addresses specified in the applicable Statement of Work and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Neither this Agreement nor any Services license may be assigned or transferred by either party, by merger, operation of law or otherwise, without the other party's prior written consent. This Agreement may be amended or superseded only by a written instrument signed by authorized representatives of both parties. This Agreement shall be governed by the laws of the State of Florida, excluding its conflict of laws rules. Venue for any lawsuit by either party against the other party, or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the courts in Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida, Fort Lauderdale Division. Any provision of this Agreement held to be unenforceable by a court of competent jurisdiction shall not affect the enforceability of any other provisions of this Agreement. Neither party shall be in default if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, third party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, or acts of terrorism. Enstoa may not use

Customer's name as part of a general list of customers and may not refer to Customer as a user of the Services in its general advertising and marketing materials.

12. Notwithstanding anything to the contrary contained in this Agreement, Enstoa shall:
 - a) Keep and maintain public records that ordinarily and necessarily would be required by the Customer in order to perform the service.
 - (b) Provide the public with access to public records on the same terms and conditions that the Customer would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - (d) Meet all requirements for retaining public records and transfer, at no cost, to the Customer, all public records in possession of Enstoa upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Customer in a format that is compatible with the information technology systems of the Customer.
13. **SCRUTINIZED COMPANIES.** Subject to Odebrecht Construction, Inc., v. Prasad, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), Enstoa certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. Customer may terminate this Contract at the Customer's option if Enstoa is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.
14. **INSURANCE. Insurance.** Enstoa shall maintain throughout the term of this Agreement (i) commercial general liability insurance, written on an occurrence basis, on a combined single limit of \$1,000,000 per occurrence for bodily injury or property damage/\$2,000,000 annual aggregate, which insurance shall include broad form property damage and contractual liability endorsements; (ii) professional liability (errors and omissions) insurance in an amount not less than \$2,000,000 per claim and (iii) statutory workers' compensation insurance with Employers' Liability limits of \$500,000 per occurrence. Enstoa shall provide certificate(s) of insurance evidencing the required overages to Customer. The certificates shall name Customer as an additional insured with respect to the commercial general liability coverage.

15. PUBLIC RECORDS

Notwithstanding anything to the contrary contained in this Agreement, Enstoa shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Customer in order to perform the service.
- (2) Provide the public with access to public records on the same terms and conditions that the Customer would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the Customer, all public records in possession of Enstoa upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Customer in a format that is compatible with the information technology systems of the Customer.



CITY OF FORT LAUDERDALE:

John P. "Jack" Seiler, Mayor

Lee R. Feldman, City Manager

ATTEST:

Jonda K. Joseph, City Clerk

Approved as to form:

City Attorney

Enstoa, Inc.

By: _____

Print Name:
President

ATTEST:

Print Name:
Secretary

WITNESSES:

Print Name:

Print Name:

(Corporate Seal)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ as president for Enstoa, Inc., a Delaware corporation authorized to transact business in the State of Florida.

(SEAL)

(Signature of Notary Public)

State of _____

(Print, Type, or Stamp Commissioned
Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

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