



## Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT (“**AGREEMENT**”) GOVERNS YOUR FREE TRIAL OF THE SERVICES.

IF YOU PURCHASE OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THOSE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on March 23, 2011. It is effective between You and Us as of the date of You accepting this Agreement.

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### 1. DEFINITIONS

“**Affiliate**” means any entity which directly or indirectly control, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Cases**” means separate and distinct problems, questions or issues, each potentially requiring one or more telephone, email or other exchanges of information to resolve.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Order Form**” means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

“**Purchased Services**” means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

“**Services**” means the online, Web-based applications and platform provided by Us via <http://www.sharevault.net> and/or other designated websites, that are ordered by You as part of a free trial or under an Order Form, including associated

offline components but excluding Third Party Applications.

**“Third-Party Applications”** means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.

**“Users”** means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.

**“We,” “Us” or “Our”** means Pandesa Corporation doing business as ShareVault, a Delaware corporation having its principal place of business 16615 Lark Ave, Suite 105, Los Gatos, CA 95032.

**“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” or “Customer Data”** means all electronic data or information submitted by You to the Purchased Services.

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## 2. FREE TRIAL

We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered or are registering to use the applicable Service or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM SHAREVAULT TO SHAREVAULT EXPRESS OR FROM SHAREVAULT EXPRESS TO SHAREVAULT EVER READY); THEREFORE, IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST.**

NOTWITHSTANDING SECTION 8 (WARRANTIES & DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

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## 3. PURCHASED SERVICES

**3.1. Provision of Purchased 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 neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**3.2. User Subscriptions.** User subscriptions are for named Users and cannot be shared or used by more than one User but may be reassigned from time to time at the sole discretion of Customer to new Users replacing former Users who no longer require ongoing use of the Purchased Services.

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## 4. USE OF THE SERVICES

**4.1. Our Responsibilities.** We shall: (i) not use, edit or disclose to any party other than You Your Data; (ii) maintain the security and integrity of the Purchased Services and Your Data; (iii) provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately; (iv) 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 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the

weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays involving hardware or software not within Our possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability results notwithstanding the exercise by Us of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

**4.2. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with all applicable local, state, federal and foreign laws in using the Service. You shall use the Services solely for its internal business purposes as contemplated by this Agreement and shall not (a) make the Services available to anyone other than Users, (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially distribute the Services, (c) use the Services to store or transmit infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

**4.3. Privacy Statement.** Our privacy statement is set forth on the internet at <http://www.sharevault.com/privacy.htm> and incorporated herein by this reference.

**4.4. Press Releases.** We may not issue press releases relating to this Agreement except with Customer's prior written consent.

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## 5. FEES AND PAYMENT FOR PURCHASED SERVICES

**5.1. User Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted in United States dollars, (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form.

**5.2. Invoicing and Payment.** Fees for the Purchased Services will be invoiced in advance and otherwise in accordance with the terms set forth in the relevant Order Form. Unless otherwise stated in the Order Form, charges are due net 15 days from the invoice date. Unless otherwise stated in the Order Form, all payments made under this Agreement shall be in United States dollars.

**5.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**5.4 Suspension of Service.** If Your account is 30 days or more overdue, in addition to any of its other rights or remedies, We reserve the right to suspend the Service provided to You, without liability to You, until such amounts are paid in full.

**5.5 Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

**5.6 Taxes.** Unless otherwise stated, Our fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). You are responsible for paying all Taxes, excluding only taxes based on Our income. If We have the legal obligation to pay or collect Taxes for which You are responsible under this section, the appropriate amount shall be invoiced to and paid by You unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

**5.7 Billing and Contact Information.** You shall maintain complete and accurate billing and contact information on the Service at all times.

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## 6. PROPRIETARY RIGHTS

**6.1. Reservation of Rights.** You acknowledge that in providing the Service, We utilize (i) the Pandesa, ShareSpace, ShareVault, ShareVault Express, ShareVault Portfolios and ShareVault Marketplace names, the Pandesa, ShareSpace, ShareVault and ShareVault Express, ShareVault Portfolios and ShareVault Marketplace logos, the pandesa.com, pandesa.net, sharespace.net, sharevault.net and sharevault.com domain names, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**ShareVault Technology**") and that the ShareVault Technology is covered by intellectual property rights owned or licensed by ShareVault (collectively, "**ShareVault IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in or to the ShareVault Technology or ShareVault IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

**6.2. License Grant.** We grant You and Your Users a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the Service in accordance with the terms of this Agreement.

**6.3 Restrictions.** You shall not (i) modify, copy or create derivative works based on the Service or ShareVault Technology; (ii) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Your own intranets or otherwise for its own internal business purposes; or (iii) disassemble, reverse engineer, or decompile the Service or ShareVault Technology, or access it in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service.

**6.4. Your Data.** As between Us and You, all Your Data is owned exclusively by You. Your Data shall be considered Confidential Information subject to the terms of this Agreement. We may access Your User accounts, including Your Data, solely to respond to service or technical problems or at Your request.

**6.5. Suggestions.** We shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Your or Your Users relating to the operation of the Service.

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## 7. CONFIDENTIALITY.

**7.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), Your Data, the Service, the ShareVault Technology, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Your Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**7.2. Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

**7.3. Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

**7.4. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**7.5. Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7 (Confidentiality), the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

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## 8. WARRANTIES AND DISCLAIMERS.

**8.1. Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. We represent and warrant that (i) We will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) We own or otherwise have sufficient rights to the Service and the ShareVault Technology to grant the rights and licenses granted herein; and (iii) the Service and ShareVault Technology do not infringe any intellectual property rights of any third party.

**8.2. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WE HEREBY SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

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## 9. MUTUAL INDEMNIFICATION.

**9.1. Indemnification by ShareVault.** Subject to this Agreement, We shall defend, indemnify and hold You harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against You by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that You (a) promptly give written notice of the Claim to Us; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle or defend any Claim unless it unconditionally releases You of all liability); and (c) provide to Us, at Our cost, all reasonable assistance.

**9.2. Indemnification by Customer.** Subject to this Agreement, You shall defend, indemnify and hold Us harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party alleging that the Your Data infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that We (a) promptly give written notice of the Claim to You; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle or defend any Claim unless it unconditionally releases Us of all liability); and (c) provide to Us, at Your cost, all reasonable assistance.

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## 10. LIMITATION OF LIABILITY.

**10.1. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$250,000 OR THE AMOUNTS PAID BY AND DUE FROM CUSTOMER HEREUNDER.

**10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**10.3. Limitation of Action.** Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

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## 11. TERM AND TERMINATION.

**11.1. Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

**11.2. Term of User Subscriptions.** User subscriptions commence on the start date specified in the relevant Order Form and continue for the subscription term specified therein.

**11.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by You, We shall refund You any prepaid fees for the remainder of the subscription term after the date of termination.

**11.4. Outstanding Fees.** Termination shall not relieve You of the obligation to pay any fees accrued or payable to Us prior to the effective date of termination.

**11.5. Return of Customer Data.** After 30 days of the effective termination of this Agreement under Sections 11.1 or 11.2 above, We shall have no obligation to maintain or provide any Your Data and shall thereafter, unless legally prohibited, delete all Your Data in its systems or otherwise in its possession or under its control.

**11.6. Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 5, 6 (excluding 6.2), 7, 8, 9, 10, 11 and 12.

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## 12. GENERAL PROVISIONS.

**12.1. Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**12.2. No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

**12.3. Notices.** All notices under this Agreement shall be in writing and shall be delivered to the addresses notified by the parties to each other by a means evidenced by a delivery receipt, by facsimile or by email. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) 48 hours after sending by confirmed facsimile; or (iv) 48 hours after sending by email.

**12.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**12.6 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, 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. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.7. Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflicts of laws provisions.

**12.8. Venue.** The state and federal courts located in Santa Clara County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**12.9. Export Control Laws.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

**12.10. Entire Agreement.** This Agreement, including all exhibits and addenda hereto, along with all Order Forms executed hereunder, constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. In the event of any conflict between the provisions in this Master Subscription Agreement and any exhibit or addendum hereto, or Order Form executed hereunder, the terms of such exhibit, addendum or Order Form shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

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