

Pega Predictive Diagnostics Cloud Evaluation And Service Agreement

Important: This Pega Predictive Diagnostic Cloud Evaluation and Service Agreement (the "PPDC Agreement") is a legal agreement between the company agreeing to these terms ("Company") and Pegasystems Inc ("Pegasystems"). This PPDC Agreement governs use and access of the Pega Predictive Diagnostic Cloud Service. These terms and conditions should be carefully read prior to agreeing to them. By clicking the button that follows this Agreement, you, on behalf of your Company, acknowledge that you have read this Agreement, have the authority to agree to these terms on behalf of your Company and agree that your Company is bound by these terms. If you do not have the authority to agree to these terms on behalf of your Company, you must not sign up for the service. If you do not accept these terms on behalf of your Company, your Company will not be eligible to receive the Pega Predictive Diagnostic Cloud Service.

Pega Predictive Diagnostics Cloud Order Form

Please provide the following information and click the "I accept" check box at the end of the Terms and Conditions section of this document, then email this completed form to your Account Executive to complete your order. Your use of the Pega Predictive Diagnostic Cloud Service will be governed by this agreement.

Company Name: _____

Name, Title and Email of Person Acknowledging Agreement to Terms:

Name: _____

Title: _____

Email Address: _____

Number of Systems Being Licensed (please see the Terms and Conditions that follow for a definition of a System): _____

Name and Contact Information for person to whom invoices should be sent:

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Following the Initial Trial Term, the Pega Predictive Diagnostic Service will be \$600 per System per month. Payment terms will be as described in the Terms and Conditions that follow.



Pega Predictive Diagnostics Cloud Terms And Conditions

1. Definitions:

- “Confidential Information” means all non-public information provided by or on behalf of a party to the other party related to the disclosing party’s business, including but not limited to Pegasystems’ Software and Documentation. For the avoidance of doubt, Confidential Information also includes any information that is protected as confidential by applicable law, statute or regulation, including the Health Insurance Portability and Accountability Act and the Gramm-Leach Bliley Act.
- “Documentation” consists of user manuals for the Service, which are made available on the Pega Discovery Network (Pega PDN) and via on-line help provided in the service itself.
- A “System” is one Pegasystems production, test and/or development environment that has a common rulebase.

2. Description of the Service:

- During the Term specified below, Pegasystems will make its Pega Predictive Diagnostic Cloud service (the “Service”) available to allow Company to analyze the performance of certain of its Pegasystems applications that have been licensed under separate agreements. The Service may be used for the number of Systems specified on the order form that you completed as part of registering for the Service (the “Order Form”). Subject to commercially reasonable availability, if you exceed the number of Systems for which you are licensed, then Pegasystems will invoice you for the additional Systems per the pricing set forth in the Order Form.

3. Term and Termination:

- The initial term of this PPDC Agreement will be 3 months, beginning on the date that Company acknowledges its agreement to these terms (the “Initial Trial Term”). The Initial Trial Term (and any renewal terms) will automatically renew for additional 12 month terms (each, a “Renewal Term”) unless either party provides written notice of termination at least 60 days prior to the expiration of the then-current term. The Initial Trial Term and any Renewal Terms are together referred to as the “Term.”
- Upon termination of this PPDC Agreement, the payment obligation for all fees for the full applicable term will be paid to Pegasystems at the time of termination. If the PPDC Agreement is terminated or expires, all rights to receive the Service will terminate and Company will immediately cease all use of the Service.
- Sections 8, 9, and 12- 15 and any payment obligations of Company will survive the termination of this PPDC Agreement.

4. Service Fees and Payment Schedule:

- The Service will be provided at no charge during the Initial Trial Term. For any Renewal Terms, Company will pay Pegasystems the rate specified on the Order Form. This rate will be adjusted annually for any increase in the U.S. Consumer Price Index (All Urban Consumers).



- Fees will be invoiced annually in advance and will be payable thirty days from the date of the invoice, and will be subject to a late charge of the lesser of 1.5% per month or the greatest amount permitted by law if unpaid for 30 days or more from the invoice date. Once due, all fees are nonrefundable and non-cancelable.

5. Company Responsibilities. Company will:

- Company is responsible for: (i) maintaining the confidentiality of passwords and user accounts; (ii) managing access to user accounts; and (iii) ensuring that users use of the Service complies with this PPDC Agreement.
- Use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Pegasystems promptly of any such unauthorized access or use.
- Use the Service only in accordance with its Documentation, the [Acceptable Use policy](#) (the "AUP") and applicable laws and government regulations.
- Not sell, resell, rent, outsource, timeshare or otherwise lease the Service.
- Indemnify Pegasystems from, and defend Pegasystems against, any failure by Company to: (i) comply with the Acceptable Use policy; or (ii) appropriately protect confidential or proprietary information related to Company's use of the Service.

6. Suspension of Service:

- Company acknowledges that (i) Company's access to and use of the Service may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Pegasystems' reasonable control, and (ii) Pegasystems may suspend access to any portion or all of the Service due to a Service Suspension.
- Pegasystems will have no liability for any damage, liabilities, or other losses that Company may incur as a result of any suspension of access to the Service pursuant to the paragraph above. Pegasystems will use reasonable efforts to provide Company email notice of any Service Suspension and updates regarding resumption of the Service following any such suspension.

7. Security:

- Pegasystems agrees that it will adhere to commercially reasonable security protocols. However, Company acknowledges that it is responsible for security, protection and backup of its content, data and Systems. In addition, Company will use reasonable security precautions in connection with its use of the Service, and Company will comply with the AUP and all laws and regulations applicable to the use of the Service. Company should protect its authentication keys and security credentials. Actions taken using Company's credentials will be deemed to be actions taken by Company and will be the responsibility of Company.



8. Confidentiality:

- Each party agrees that any Confidential Information it receives from the other is the exclusive proprietary property of the disclosing party or its licensors and may include trade secrets and other highly confidential information.
- Each party agrees to receive and hold any Confidential Information supplied by the other party in confidence and agrees:
 - not to disclose or publish any such Confidential Information to third parties;
 - not to use any such Confidential Information except for those purposes specifically authorized by the disclosing party; and
 - to restrict access to such Confidential Information to those of its officers, directors, agents and employees who have a need to know, have been advised of the confidential nature of the Confidential Information, and who are under obligations of confidentiality to the receiving party.
- The above confidentiality provisions will not apply to information that:
 - is in the public domain at the time of its disclosure;
 - is disclosed to a third party who is under no obligation to maintain the confidentiality of the information with the prior written consent of the disclosing party;
 - becomes known to the receiving party from a source other than the disclosing party, provided such source is legally entitled to have and disclose the information;
 - is independently developed by a receiving party without use of the Confidential Information of the disclosing party, as demonstrated by written records of such receiving party; or
 - is required to be disclosed by a court or regulatory authority or because of laws, rules or regulations.

9. Proprietary Rights:

- Pegasystems retains all right, title and interest to the Service and any derivatives, modifications and enhancements, including all intellectual property rights. No rights are granted to Company other than as expressly set forth in this PPDC Agreement.

10. Changes in the Terms of Use:

- The Service is subject to limitations determined by Pegasystems' third party providers, including Amazon Web Services ("AWS"). In the event AWS or any other third party provider amends its terms of service applicable to Company's use of the Service, Pegasystems may amend any and all corresponding and applicable terms in this PPDC Agreement.
- Pegasystems may also amend these terms of service to comply with changes in applicable law and as deemed necessary by Pegasystems to ensure the security and performance of the Service.
- Amendments will be effective 10 days after being provided to the Company, either by email or by posting on the Pegasystems website, provided that if Company objects to any modification to this Schedule, Company will have the right, as its sole and exclusive remedy, to terminate this Schedule by providing Pegasystems with written notice within such 10 day period and to stop using the Service at the end of such 10 day period.



11. Delivery and Acceptance:

- Pegasystems will create and email to Company a User ID and Password which will allow Company to access and use the Service. The Service will be accepted upon delivery ("Acceptance"). This acceptance is not dependent on any remaining services, conditions or contingencies, and there are no other written or verbal agreements with respect to acceptance. For the duration of the Service, the Company shall not be entitled to take possession of any Pegasystems software used as part of the Service.

12. Warranties and Disclaimers:

- Pegasystems warrants that for a period of 90 days from the initial provision of the Service that the Service will operate substantially in accordance with its Documentation.
- EXCEPT FOR THOSE WARRANTIES EXPRESSLY CONTAINED IN THE AGREEMENT, PEGASYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

13. Intellectual Property Indemnification:

- Pegasystems will indemnify Company from, and defend Company against, any third party claim that the Service infringes upon a United States, Australian, Canadian or European Union trademark, copyright, trade secret or patent ("IPR"). In the event that the Service is found to be infringing or if Pegasystems deems it advisable as a result of a claim or threatened claim, Pegasystems will, in its reasonable discretion:
 - procure for Company the right to continue using the Service;
 - replace or modify the Service so that it becomes non-infringing; or
 - in the event that Pegasystems cannot reasonably do either of the foregoing in its discretion, terminate this PPDC Agreement and cease providing the Service and refund to Company any pre-paid fees for months in which the Service has not been provided.

These remedies will be Company's sole remedy for any IPR infringement claims.

- Pegasystems will not indemnify Company when the alleged infringement results from (i) content or software provided by Company; or (ii) use of the Software in violation of any of the terms of this Agreement.
- In asserting any claim for indemnification under this PPDC Agreement, the relevant party must provide prompt written notice describing the claim, and cooperate fully with the indemnifying party. The indemnifying party will be entitled to control any proceedings or litigation for which it is indemnifying the other party, except that the indemnifying party will not, without the other party's prior written consent (not to be unreasonably withheld), enter into any settlement that would require the other party to take any action, or refrain from taking any action, other than permitting the indemnifying party to pay money damages on its behalf.



14. Limitation of Liability:

- In no event will Pegasystems be liable for any direct, consequential, special, indirect, or punitive damages of any nature. In no event will Pegasystems be liable to Company in the aggregate for any amounts in excess of the amounts paid by Company to Pegasystems under this PPDC Agreement.

15. Miscellaneous:

- No failure of either party to exercise any power or right granted hereunder, to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties with regard to the terms and performance hereof shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of the Agreement.
- This PPDC Agreement shall be governed by the laws of the Commonwealth of Massachusetts, excluding its conflict of laws provisions.
- This PPDC Agreement constitutes the entire understanding of the parties hereto with respect to the Service. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between the parties regarding the subject matter hereof, whether written or oral, are superseded by this PPDC Agreement.

I accept this Service Agreement:

