

# End User License Agreement

This is an Agreement ("Agreement") between the End User of Sendtral Software (hereinafter "You" or "Your"), the company, employee, contractor, organization, or any other person or entity from which Your access is derived ("Licensee"), the Reseller of the Sendtral Software ("Reseller"), and Protoduction Systems, LLC ("Protoduction Systems" or "Developer") with a principal place of business at 3000 Farnam Street, Suite 6 East, Omaha, Nebraska 68131.

## Recitals

Developer provides a software application known as Sendtral ("Software"), and the parties have agreed that Reseller will provide maintenance and support services related to such Software to You and the Licensee. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those in any Attachments, which are incorporated into this Agreement, by this reference, the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as follows:

## Parts of this Agreement

This Agreement consists of the following terms and conditions (hereinafter the "General Terms") and terms and conditions, if any, specific to use of individual Services (hereinafter the "Service Specific Terms"). The General Terms and Service Specific Terms are collectively referred to as the "Terms". In the event of a conflict between the General Terms and Service Specific Terms, the Service Specific Terms shall prevail.

## Acceptance of the Terms

By clicking on / checking on "I Agree" You accept this agreement and hereby accept the Terms of this agreement.

## Description of Service

Any software created or transferred pursuant to the Agreement is licensed, not sold, and You, the End User, receive no title to or ownership of any copy or of the Software itself. Furthermore, You receive no rights to the Software other than those specifically granted in this Agreement. Without limiting the generality of the foregoing, You shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sub-license the Software; (b) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to

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exploit the Software; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software's source code.

The Service will refer to one instance, a single copy of running software, for Your use. The number of users is not limited by Protoduction Systems and is determined by the Licensee. Users are defined by the number of individual users setup in the Service by the designated administrator of Your organization. You may use the Software for business use or for internal business purpose in the organization that You represent. You can create and edit content with Your account and if You choose to do so, You can publish and share such content.

You agree not to rent, lease, sublicense, time-share, or otherwise distribute the Licensed Software or Documentation, or to host applications to provide service bureau, time-sharing, or other computer services to third parties. You agree not to reverse-engineer, decompile, disassemble, modify, create derivative works of, or copy the Licensed Software and Licensee's in-house technical support team may run tools against the Licensed Software to determine the database structure for purposes of troubleshooting problems and creating work-arounds.

You agree to take appropriate actions to protect the Licensed Software and all parts thereof from unauthorized copying, modification, or disclosure by its agents, employees, or customers and outsourcing vendor. Any attempt by You to assign or otherwise transfer its rights or obligations under this Agreement (including all attachments hereto) without the consent of Developer will be null, void, and of no effect. Protoduction Systems presents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with Your business under normal use and circumstances as mutually agreed.

## **Subscription to Beta Service**

Protoduction Systems may offer certain Services as closed or open beta services ("Beta Service" or "Beta Services") for the purpose of testing and evaluation. You agree that we have the sole authority and discretion to determine the period of time for testing and evaluation of Beta Services. Developer will be the sole judge of the success of such testing and the decision, if any, to offer the Beta Services as commercial services. You will be under no obligation to acquire a subscription to use any paid Service as a result of Your subscription to any Beta Service. Developer reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any of the Beta Services with or without notice to You. You

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agree that Protoduction Systems will not be liable to You or to any third party for any harm related to, arising out of, or caused by the modification, suspension or discontinuance of any of the Beta Services for any reason.

## **Intellectual Property**

Through use of the service and beta service You agree to provide feedback and contribution to the improvement of the service. Any feedback and contributions You may contribute will become the Intellectual Property of Developer. All Intellectual Property is owned and rights maintained by Protoduction Systems. "Intellectual Property" means any and all intellectual property and tangible embodiments thereof, including, without limitation, inventions, discoveries, designs, specifications, developments, methods, modifications, improvements, processes, know-how, show-how, techniques, algorithms, databases, computer software and code (including software and firmware listings, assemblers, applets, compilers, source code, object code, net lists, design tools, user interfaces, application programming interfaces, protocols, formats, documentation, annotations, comments, data, data structures, databases, data collections, system build software and instructions), mask works, formulae, techniques, supplier and customer lists, trade secrets, graphics or images, text, audio or visual works, materials that document design or design processes, or that document research or testing, schematics, diagrams, product specifications and other works of authorship. "Intellectual Property Rights" means, collectively, all rights in, to and under patents, trade secret rights, copyrights, trademarks, service marks, trade dress and similar rights of any type under the laws of any governmental authority, including without limitation, all applications and registrations relating to the foregoing.

## **Modification of Terms of Service**

Protoduction Systems may modify this agreement upon notice to You at any time through a service announcement or by Publishing the new Terms and notifying You of such through an "Announcement". You may terminate Your use of the Services by clicking on / checking on "I Do Not Agree" when presented with the Terms through an "Announcement". In the event of such termination, prepaid fees will not be prorated and may be forfeited. Your continued use of the Service after the effective date of any change to the Terms will be deemed to be Your agreement to the modified Terms.

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## **Organization Accounts and Administrators**

Licensee may specify one or more administrators. The administrators will have the right to configure the Services based on Licensee's requirements and manage end users in Licensee's organization account. You are responsible for i) ensuring confidentiality of Your organization account password, ii) appointing competent individuals as administrators for managing Your organization account, and iii) ensuring that all activities that occur in connection with Your organization account comply with this Agreement. You understand that Protoduction Systems is not responsible for account administration and internal management of the Services for You. Protoduction Systems provides end user support and assistance with operation of services as mutually agreed upon.

You are responsible for taking necessary steps for ensuring that Your organization does not lose control of the administrator accounts. In the absence of any specified administrator account recovery process, Reseller is responsible for the providing support services to the Licensee to unlock an account or provide access to an administrator account.

Protoduction Systems may provide control of an administrator account to an individual providing proof satisfactory to Protoduction Systems demonstrating authorization to act on behalf of the Licensee. You agree not to hold Protoduction Systems liable for the consequences of any action taken by Protoduction Systems in good faith in this regard.

## **Personal Information, Protected Information, and Privacy**

You are responsible for maintaining confidentiality of Your usernames, passwords, data, photographs, documents and all other sensitive information uploaded and associated with Your account. You are responsible for all activities, documentation, and communication that occur in and out of Your user account. You are responsible for following all legal and regulatory requirements, restrictions, and protections of local, county/state, national and foreign laws and/or treaties in connection with Your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data such as, but not limited to, protected identifiable information (PII), payment card industry (PCI), data security standards (DSS), protected health information (PHI), and privacy of student education information. Protoduction Systems is not responsible for any loss or damage to You or to any third party incurred as a result of any authorized or unauthorized access and/or use of Your user account, or otherwise.

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## Confidentiality

You agree to treat the Software as a trade secret and proprietary know-how belonging to Protoduction Systems that is being made available to You in confidence. You agree to treat the Software with at least the same care as You treat Your own confidential or proprietary information.

## License Term

The license terms regarding Your use of the software will be Master Services Agreement signed by the company, employer, contractor, organization, or any other person or entity from whom Your access is derived.

## Restrictions on Use

In addition to all other terms and conditions of this Agreement, You shall not: (i) transfer the Services or otherwise make it available to any third party; (ii) provide any service based on the Services without prior written permission; (iii) use the third party links to sites without agreeing to their website terms & conditions; (iv) post links to third party sites or use their logo, company name, etc. without their prior written permission; (v) publish any personal or confidential information belonging to any person or entity without obtaining consent from such person or entity; (vi) use the Services in any manner that could damage, disable, overburden, impair or harm any server, network, computer system, resource of Protoduction Systems; (vii) violate any applicable local, state, national or international law; and (viii) create a false identity to mislead any person as to the identity or origin of any communication.

The use of the software is limited to the continental United States ("US"). Any users of the software must be physically present in the US and contracting with or sub-contracting to any non-US service provider is strictly prohibited. You agree that Protoduction Systems will limit any access to the service to IP addresses which originate in the US and the access of this service by a foreign IP address, even if through a US based proxy, will result in the immediate termination of this agreement.

## Spamming and Illegal Activities

You agree to be solely responsible for the contents of Your transmissions through the Services. You agree not to use the Services for illegal purposes or for the transmission of material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or is otherwise objectionable, offends religious

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sentiments, promotes racism, contains viruses or malicious code, or that infringes or may infringe intellectual property or other rights of another.

## **Data Ownership**

We respect Your right to ownership of content created or stored by You. Your company, employer, contractor, organization, or any other person or entity from whom Your access is derived owns the content created or stored by You. Unless specifically permitted by You, Your use of the Services does not grant Protoduction Systems the license to use, reproduce, adapt, modify, publish or distribute the content created by You or stored in Your user account for Protoduction Systems commercial, marketing or any similar purpose. But You grant Protoduction Systems permission to access, copy, distribute, store, transmit, reformat, publicly display and publicly perform the content of Your user account solely as required for the purpose of providing the Services to You.

Notwithstanding the foregoing, Protoduction Systems reserves the right to access Your data as required by applicable law or by proper legal or governmental authority. Protoduction Systems shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure at Your expense.

LICENSEE IS THE DATA OWNER AND IS RESPONSIBLE TO MAINTAIN REGULAR DATA BACKUPS OR REDUNDANT DATA ARCHIVES. PROTODUCTION HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA. PROTODUCTION HAS NO OBLIGATION TO MAINTAIN YOUR DATA AFTER THE EXPIRATION OF YOUR SUBSCRIPTION. IF YOU WISH TO MAINTAIN A COPY OF YOUR DATA AFTER YOUR SUBSCRIPTION HAS ENDED THE DATA WILL NEED TO BE BACKED-UP OR DOWNLOADED BY YOU PRIOR TO THE END OF YOUR SUBSCRIPTION.

## **User Generated Content**

You may transmit or publish content created by You using any of the Services or otherwise. However, You shall be solely responsible for such content and the consequences of its transmission or publication. You are responsible for ensuring that You do not accidentally make any private content publicly available. Any content that You may receive from other users of the Services, is provided to You AS IS for Your information and personal use only and You agree

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not to use, copy, reproduce, distribute, transmit, broadcast, display, sell, license or otherwise exploit such content for any purpose, without the express written consent of the person who owns the rights to such content.

## **Trademark**

The Sendtral logo, the names of individual Services, and their logos are trademarks of Protoduction Systems, LLC. You agree not to display or use, in any manner, the Sendtral trademarks, without Protoduction System's prior permission.

## **Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. PROTODUCTION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROTODUCTION SYSTEMS MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, TABLET, WIRELESS DEVICE, OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM PROTODUCTION SYSTEMS, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

**YOU ACKNOWLEDGE AND AGREE THAT ANY CLINICAL USE OF THE SERVICES BY YOU HEREUNDER (WHETHER SEPARATELY OR INCLUDED WITHIN THE SERVICES) IS AN INFORMATION MANAGEMENT AND DIAGNOSTIC TOOL ONLY AND THAT ITS USE CONTEMPLATES AND REQUIRES THE INVOLVEMENT OF TRAINED INDIVIDUALS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT PROTODUCTION HAS NOT REPRESENTED ITS SERVICES AS HAVING THE ABILITY TO DIAGNOSE DISEASE, PRESCRIBE TREATMENT, OR PERFORM ANY OTHER TASKS THAT CONSTITUTES THE PRACTICE OF MEDICINE OR MENTAL HEALTH COUNSELING. THE PARTIES AGREE THAT, AS BETWEEN YOU AND PROTODUCTION, YOU ARE RESPONSIBLE FOR THE**

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ACCURACY AND QUALITY OF THE DATA AS INPUT INTO THE SERVICES. YOU ACKNOWLEDGE THAT PROTODUCTION: (A) HAS NO CONTROL OF OR RESPONSIBILITY FOR YOUR USE OF THE SERVICES AS A CLINICAL CONTENT OR DIAGNOSTIC TOOL, AND (B) HAS NO KNOWLEDGE OF THE SPECIFIC OR UNIQUE CIRCUMSTANCES UNDER WHICH THE CLINICAL CONTENT PROVIDED MAY BE USED BY THE YOU. THE PARTIES AGREE THAT PROTODUCTION DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, OR MENTAL HEALTH COUNSELING, AND THAT YOUR USE OF THE SERVICES DOES NOT ABSOLVE YOU OF YOUR OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS OR MENTAL HEALTH COUNSELING OR ASSESSMENTS TO INDIVIDUALS. YOU ACKNOWLEDGE THAT THE PROFESSIONAL DUTY TO THE INDIVIDUAL IN PROVIDING HEALTHCARE OR MENTAL HEALTH SERVICES LIES SOLELY WITH THE HEALTHCARE PROFESSIONAL PROVIDING THE SERVICES. PROTODUCTION MAKES NO WARRANTY AS TO THE NATURE OR QUALITY OF THE CONTENT OF RESULTS, MESSAGES OR INFORMATION SENT BY YOU, OR ANY THIRD PARTY USERS OF THE SERVICES.

## **Limitation of Liability**

YOU AGREE THAT PROTODUCTION SYSTEMS SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF PROTODUCTION SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL PROTODUCTION SYSTEMS'S ENTIRE LIABILITY TO YOU IN RESPECT OF ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU TOWARDS SUCH SERVICE.

ANY LIABILITY OF PROTODUCTION SYSTEMS, LLC, TO ANY END USER SHALL NOT EXCEED THE AMOUNT ACTUALLY RECEIVED BY THAT PARTY UNDER THE APPLICABLE END USER AGREEMENT RELATING TO THAT END USER.



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## **Indemnification**

You agree to indemnify and hold harmless Protoduction Systems, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that You have used the Services in violation of another party's rights, in violation of any law, in violation of any provisions of the Terms, or any other claim related to Your use of the Services, except where such use is authorized by Protoduction Systems.

## **Suspension and Termination**

Protoduction Systems may suspend Your user account or temporarily disable access to whole or part of any Service in the event of any suspected illegal activity, extended periods of inactivity or requests by law enforcement or other government agencies. Objections to suspension or disabling of user accounts should be made to Protoduction Systems within thirty (30) days of being notified about the suspension. Protoduction Systems may terminate a suspended or disabled user account after thirty (30) days. We will also terminate Your user account on Your request.

In addition, we reserve the right to terminate Your user account and deny the Services upon reasonable belief that You have violated the Terms and to terminate Your access to any Beta Service in case of unexpected technical issues or discontinuation of the Beta Service. You have the right to terminate Your user account if Protoduction Systems breaches its obligations under these Terms and in such event. Termination of user account will include denial of access to all Services and deletion of all data and information associated with Your user account.

## **Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. You represent and warrant that You have not falsely identified Yourself nor provided any false information to gain access to the Service and that Your billing information is correct. This Agreement will be signed by Protoduction Systems, LLC, Officer, on behalf of Protoduction Systems, LLC.

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