

Application Service Provider (ASP) Agreement for PenSoft TimeOnline

This Application Service Provider Agreement for PenSoft TimeOnline (“Agreement”), is made and entered as of the ____ day of _____, 2008 (“Effective Date”), by and between Peninsula Software of Virginia, Inc., a Virginia corporation with principal offices located at 151 Enterprise Drive, Newport News, VA 23603 (PenSoft), and _____, with principal offices located at _____ (“Customer”).

WHEREAS, PenSoft is a provider of services that permits users to access a web-based software application known as PenSoft TimeOnline (“Product”); and

WHEREAS, Customer desires to engage PenSoft to perform certain services, and to provide Customer with direct access to the PenSoft TimeOnline Product Web site (“Product Site”); and

WHEREAS, PenSoft, or its hosting partner, desires to provide certain services to Customer and to host the Product Site subject to the terms, conditions and restrictions set forth herein:

NOW, THEREFORE, in consideration of the promises hereof, and the mutual obligations herein made and undertaken, the parties hereto agree as follows:

1. SERVICES.

1.1 PenSoft agrees to perform and to provide to Customer, the services set forth herein (“Services”).

2. CUSTOMER RIGHT OF USE.

2.1 PenSoft grants to Customer and Customer agrees to accept non-transferable and non-exclusive right to access and to use the Product Site and the Product Offering as defined below, for its internal use, in accordance with the terms of this Agreement.

3. PROPRIETARY RIGHTS.

3.1 **Ownership.** Customer acknowledges and agrees that this Agreement grants Customer no title or right of ownership in or to the Product Site or Product software application or any component thereof, or to any associated materials or intellectual property, or in or to any enhancements, modifications or improvements (collectively referred to hereinafter as the “Product Offering”). Customer shall not, at any time, take or cause any action, which would be inconsistent with or tend to impair the rights of PenSoft or its licensors in the Product Offering.

3.2 Ownership of material data for the Product Site shall remain with the Customer. Such data includes Customer’s corporate data, including registration data (reference Addendum B), supplied and input by or on behalf of Customer (“Customer Data”). PenSoft agrees not to use any Customer Data for any purpose other than to perform the Services and fulfill its obligations under this Agreement. PenSoft further agrees not to make Customer Data available to any third party (except hosting partner) without Customer’s prior written consent.

4. MAINTENANCE AND SUPPORT.

4.1 Provided that Customer is current in its payment of fees under this Agreement, PenSoft shall provide to Customer its standard technical support and maintenance, at no additional charge. Standard support and maintenance shall include the following:

(a) PenSoft support personnel shall be available to provide telephone support and assistance via email directly to Customer during PenSoft's normal business hours (9:00am to 6:00pm M-Th and 9:00am to 5:00pm Fri Eastern Time);

(b) delivery of enhancements, updates and upgrades to the Product Offering that PenSoft makes generally and commercially available to other customers without levying an incremental fee (collectively "Improvements");and

(c) standard error correction and maintenance modifications.

4.2 Notwithstanding the above, if PenSoft makes, as a reasonable business determination that the technical support requested by Customer pursuant to this section will entail detailed, specialized maintenance or support services different in kind or amount from those provided to other similar customers of the Product Offering (including, but not limited to, assistance to enable the interfacing or operation with a non-supported, unusual or proprietary system), PenSoft shall notify Customer that the requested support is considered an additional service which shall be subject to additional fees, to be negotiated.

4.3 PenSoft, or its hosting partner, shall also have responsibilities to:

(A) provide all necessary hardware and communications facilities in connection with delivery of Services;

(B) use reasonable commercial efforts to monitor and maintain the host servers and to ensure continuous connectivity, availability and operation of the Product Site on the World Wide Web;

(C) provide training, at costs listed in Addendum A, to designated staff of Customer to enable Customer to use the Product Site;

4.4 Security. PenSoft, or its hosting partner, shall offer access to the Product Site using the Internet, by hosting its application. PenSoft, or its hosting partner, shall operate and maintain the Product server ("Server") in good working order with access restricted to qualified employees or contractors of PenSoft and persons designated by Customer. PenSoft, or its hosting partner, shall employ its best commercial efforts to ensure the security, confidentiality and integrity of all Customer Data and other proprietary information transmitted through or stored on the Server, including, without limitation; (i) maintenance of independent archival and backup copies of the Product Site and all Customer Data; and (ii) protection from any network attack and other malicious, harmful or disabling data, work, code or program.

4.5 Backup. PenSoft, or its hosting partner, shall maintain backup information on all customer data in the application.

4.6 Assistance From Customer. Customer agrees to make available appropriate personnel to advise PenSoft in the performance of obligations under this Agreement and to provide PenSoft any Customer Data required for successful operation of the Product Site.

4.7 Customer and PenSoft agree that responsibility for trouble-free operation of the Product Site is dependent on a combination of reliability; proper hardware configuration, including backup hardware configurations, backup power sources and backup communication

facilities; a virus-free environment; system backup procedures; and Customer's adherence to PenSoft's recommended practices.

4.8 Notwithstanding the above, Customer understands and acknowledges that from time to time, the Product Site may be inaccessible or inoperable for various reasons, including equipment malfunctions, upgrades or modifications, or causes beyond the control of PenSoft which are not reasonably foreseeable by PenSoft including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). PenSoft shall use its best commercial efforts to minimize any disruption, inaccessibility and/or inoperability of the Product Site and in the case of any scheduled Downtime, if applicable, PenSoft shall provide twenty-four (24) hour advance notice to Customer or such other shorter period of time, as PenSoft shall reasonably determine.

5. TERM AND TERMINATION.

5.1 Term. This Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein, shall continue monthly ("Term"). The Agreement may be cancelled for any reason at any time by PenSoft or the Customer by providing thirty (30) days written notice to the other party.

5.2 Termination. In addition to such other rights and remedies as may be available in law or in equity, should either party commit a material breach of its obligations hereunder, or should any of the representations of either party in this Agreement prove to be untrue in any material respect, the other party may, at its option, terminate this Agreement with thirty (30) days' written notice of desire to terminate, which notice shall identify and describe the basis for such termination. If, prior to expiration of such period, the defaulting party cures such default, termination shall not take place.

5.2.1 Either party may, at its option, by written notice, terminate this Agreement if the other party has materially breached any provision of this Agreement and such breach remains uncured for a period of thirty (30) days following receipt of notice.

5.2.2 Termination of this Agreement shall not relieve either party of the obligations incurred hereunder pursuant to Section 3 and Sections 7 through 12 hereof, which Sections shall survive such termination.

5.2.3 Upon termination of this Agreement for any reason, Customer shall immediately cease all use of the Product Offering and return or purge any and all components thereof, including returning or destroying or causing to be destroyed any and all copies of any documentation, notes and other materials comprising or regarding the Product Offering.

6. COPYRIGHTS AND TRADEMARKS.

6.1 PenSoft shall have and retain sole ownership of any and all PenSoft trademarks, including the goodwill pertaining thereto. Customer shall not remove or alter any of PenSoft proprietary or copyright notices, trademarks or logos.

7. PenSoft TimeOnline FEES.

7.1 PenSoft TimeOnline fees shall be as set forth in Addendum A, and the monthly payment for any amounts under this Agreement shall be automatically charged to a credit card

(reference Addendum C) between the fifth and tenth days of the month for charges incurred during the previous month. The fees are subject to change from time to time in PenSoft's sole and absolute discretion.

7.2 This agreement shall be considered materially breached in the event funds are not available when payments are initiated as described in paragraph 7.1 above.

8. CONFIDENTIALITY.

8.1 Customer acknowledges that the Product Offering is unique and valuable and has been developed or otherwise acquired by PenSoft at great expense, and that any unauthorized disclosure or use of the Product Offering or any component thereof, would cause PenSoft irreparable injury and loss, for which damages would be an inadequate remedy.

8.1.1 PenSoft and Customer shall advise all their employees, agents or contractors that they are bound by the confidentiality terms of this Agreement. Further, each party agrees that during the performance of this Agreement it may receive information relating to the other party that is not generally known or that is of a proprietary nature ("Confidential Information"). Each party agrees not to use or disclose any Confidential Information except for the purpose of meeting its obligations under this Agreement, and will not use Confidential Information for any other purpose whatsoever. Confidential Information shall not include any information that is (a) generally known or available to the public; (b) already known at the time of receiving the Confidential Information through no wrongful act of the other party; or (c) furnished by a third party with the right to do so. In the event that either party is required to disclose Confidential Information relating to the other party to a court or government agency, it shall, prior to disclosure, and as soon as practicable, notify the other party and allow it an adequate opportunity to object to the disclosure order or take other action to preserve the confidentiality of the information.

8.1.2 Customer shall not decompile, reverse engineer, translate, or generate source code with respect to the Product Offering or any component thereof.

9. LIMITED WARRANTIES.

9.1 Each party represents and warrants that it has the right, power and authority to enter into this Agreement and to perform all of its obligations hereunder.

9.2 PenSoft represents and warrants that Services performed under this Agreement will be performed using generally accepted industry standards and will substantially conform to the specifications, provided, however, that PenSoft shall not be liable for violation of any applicable law, rule or regulation or any third party associated with customer content provided to PenSoft by Customer.

9.3 To the knowledge of PenSoft the Product Offering and any component thereof does not violate any applicable law, rule or regulation or any third party, including any patent, trademark, trade name, copyright, trade secret or other intellectual property right. PenSoft shall defend Customer against any claim that the use of the Product Offering or any component thereof by Customer as permitted under this Agreement constitutes a patent or copyright infringement, but only to the extent that the action relates solely to the Product Offering, not materially altered or modified by or on behalf of Customer, and is not based on use of the Product Offering on other than the system for which the Product Offering was designated, provided that: (a) Customer give PenSoft written notice within ten (10) days of notice of any such claim; (b) PenSoft controls the defense of any action and has the right to settle; and (c)

Customer fully cooperates with PenSoft in the defense of such claim. In the event that the use of the Product Offering is enjoined by a court of competent jurisdiction, because of a holding of patent or copyright infringement, PenSoft at its sole option, shall: (a) procure for Customer the right to continue using the Product Offering; or (b) modify the Product Offering to make it non-infringing, while still performing substantially the same functions set forth in the Specifications.

9.4 THE WARRANTIES MADE IN THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY PENSOFT WITH RESPECT TO SERVICES AND SOFTWARE PROVIDED HEREUNDER AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

9.5 PenSoft shall not be responsible for any delay in the delivery of Services, including implementation, support or maintenance, which is due to Customer's failure to provide assistance as provided under this Agreement.

10. INDEMNITY

10.1 Customer and PenSoft agree to indemnify and hold harmless each other from and against any losses, damages, liabilities and expenses resulting from any claims made by any third party which arises from or is in any way connected with the performance by PenSoft of its obligations hereunder (except gross negligence), or Customer's use of all or any component of the Product Offering.

11. LIMITATION OF LIABILITY.

11.1 PENSOFT'S TOTAL ACCUMULATED LIABILITY TO THE CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS, DAMAGES, COSTS OR EXPENSES WHETHER IN STRICT LIABILITY, NEGLIGENCE, CONTRACT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE LIMITED TO FEES ACTUALLY PAID BY CUSTOMER HEREUNDER.

11.2 NEITHER PENSOFT NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, CONSEQUENTIAL, INCIDENTAL AND/OR CONTINGENT DAMAGES WHATSOEVER, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. MISCELLANEOUS.

12.1 Entire Agreement. This Agreement, together with all exhibits hereto, which are incorporated herein by reference, comprise the entire agreement between the parties relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement.

12.2 Independent Contractors. The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be construed to constitute a partnership between or joint venture of the parties, nor shall either party be deemed the agent of

the other party or have the right to bind the other party in any way without the prior written consent of such party, except as specifically provided in this Agreement.

12.3 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party that has given such waiver or excused such breach.

12.4 Governing Law. ANY LEGAL CLAIMS BROUGHT BY CUSTOMER AGAINST PENSOFT SHALL BE BROUGHT IN VIRGINIA COURTS AND ANY LEGAL CLAIMS BROUGHT BY PENSOFT AGAINST CUSTOMER SHALL BE BROUGHT IN VIRGINIA COURTS AND SHALL BE GOVERNED BY VIRGINIA LAW, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

12.4.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to litigation, except that the parties agree that intellectual property rights are not to be the subject of any mediation.

12.5 Force Majeure. In the event that either party hereto shall be delayed or hindered or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials or services, failure of power, riots, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, such party shall immediately provide notice to the other party of such delay, and performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

12.6 Notices. All notices, requests, demands, directions, and other communications given to or made upon any party hereto under the provisions of this Agreement shall be in writing (including facsimile communication), shall be deemed given when received, and shall be delivered or sent as follows:

If to Customer:	If to Peninsula Software of Virginia, Inc.:
Attention:	PenSoft
Fax:	151 Enterprise Drive
Phone:	Newport News, VA 23603
	Attention: Contract Administration
	Fax: 757/873-1733
	Phone: 757/873-2976

Either party may at any time designate another address for the receipt of notice by notifying the other party in accordance with this Section 12.6.

12.7 Severability. If any provision of this Agreement is held invalid or unenforceable by any court or agency of competent jurisdiction, the parties shall mutually agree on an alternate, legally valid and enforceable provision. The remainder of this Agreement shall nevertheless continue in full force and effect to the extent that continued operation under this Agreement without the invalid or unenforceable provision is consistent with the intent of the parties as expressed in this Agreement.

12.8 Taxes. Customer shall pay any federal, state, county or local sales, property, investment, use and/or other applicable taxes arising out of Customer's acquisition of the

services of PenSoft under this Agreement, except any taxes on PenSoft's income, whenever imposed. Upon request of PenSoft, Customer shall obtain and provide to PenSoft any certificate of exemption or similar document required to exempt Customer from any such tax liability. In the event that (i) any taxes are paid by PenSoft on behalf of Customer, (ii) PenSoft has received payment therefore from Customer, and (iii) it is thereafter determined that Customer may be entitled to a refund of any such taxes, or a portion thereof, then PenSoft shall file the appropriate documents to receive such refund at Customer's request, and PenSoft shall pay such refund to Customer upon receipt of such refund.

12.9 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

AGREED TO BY THE PARTIES AS OF THE DATE OF THE LAST SIGNATORY BELOW.

Peninsula Software of Virginia, Inc.

Customer: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Addendum A

PenSoft TimeOnline Fees - The following represents the fee structure for PenSoft TimeOnline products and services.

ONE-TIME TRAINING

Mandatory One-Time Web based Training. Course taken must include the application functions the Customer will use in PenSoft TimeOnline.

Basic Training-General configuration, payroll policies, pay types, pay adjustments, security groups, employee defaults and import or add employees.

\$199.00 (Maximum 2 hours)

Intermediate Training-Includes everything in basic training, plus departments, jobs, assignment of employees to departments and jobs, setup employee in default departments and jobs, configuration of employee profiles and creation and generation of schedules.

\$399.00 (Maximum 4 hours)

Advance Training-Includes everything in intermediate training, plus shift differentials, benefits accruals, and IP Access templates.

\$599.00 (Maximum 6 hours)

Available in (2) 3 hour sessions

MONTHLY FEES

\$2.00 per employee

I. **Specifications:** PenSoft TimeOnline site is comprised of the PenSoft TimeOnline application and services. The functionality includes:

1. Employee Record Keeping
2. Employee Self-Service
3. Clock In & Out
4. Time and Payment Rules
5. Rounding Rules
6. Overtime Rules
7. Shift Differential
8. Job Tracking
9. Reporting
10. Messaging

II. **Implementation:** Setup and testing of the site can occur within 2 weeks of receipt of the signed contract, completed questionnaire and initial payment of the one-time training fee.

Addendum B

The following information is required to set up your PenSoft TimeOnline account:

Customer Name _____

Customer's Client Alias _____

(Note: Requires min. of 3 characters, max. 12 characters without spaces. No special characters such as: !@#\$%^&*()_~+- . Example: ACMEC for Acme Company, Inc.)
Please keep in mind that this is the alias that you will use each time you log in to your account.

Customer's Contact _____

Customer's Contact Email Address _____

(Note: This is for the primary contact.)

Customer's Initials _____

Addendum C

PenSoft TimeOnline Funds Transfer (EFT) Authorization Agreement

Customer hereby agrees to pay PenSoft via an EFT from the Customer's bank account, all amounts due including: monthly service charges, applicable taxes, and other applicable charges. PenSoft will notify the customer in advance the amount of the automatic debit from the Customer's bank account scheduled between the tenth and fifteenth day of the month for the charges incurred during the previous month. In the event PenSoft cannot debit the account, PenSoft reserves the right to suspend or terminate the Customer's right to use PenSoft Web Services.

For purposes of identification and billing, the Customer agrees to provide PenSoft with accurate, complete, and updated information including legal name, address, telephone number(s) and applicable payment data (e.g. routing and account numbers). Failure to comply with this provision may, at PenSoft's option, result in suspension or termination of the Customer's right to use PenSoft Web Services.

Name:

Company Name:

Billing Address:

Email Address:

Bank Name:

Routing Number:

Account Number:

Authorized Signature:

This authorization is to remain in full force and effect until PenSoft has received written notice as required pursuant to section 5 of this agreement.