

## DATAFORENSICS pLog ANNUAL SERVICE LICENSE AGREEMENT

**IMPORTANT—READ CAREFULLY:** This license agreement (Agreement) is a legal agreement between you (either an individual or a single entity) and Dataforensics, LLC ("Dataforensics") for the software that accompanies this Agreement, which includes associated media and Dataforensics pLog Internet-based services ("Software"). The terms of a printed paper Agreement, which may accompany the Software, supersede the terms of any on-screen Agreement. This Agreement is valid and grants the end-user rights ONLY if the Software is genuine and if all license fees are paid and current. By installing, copying, downloading, accessing or otherwise using the Software, you agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you may not use or copy the Software, and you should promptly contact Dataforensics for instructions on return of the unused product(s) for a refund in accordance with Dataforensics' return policies.

**1. Customer Order.** The "Customer Order" is a separate document stipulating the number of end user licenses, the annual fee charged for each end user license, the delivery date for delivery of the pLog application to the Customer/Licensee. The Customer Order is incorporated into this License by reference. The Customer Order supersedes this License in the event of any conflicts between the Customer Order and this License.

**2. Deliverables.** Subject to the license granted in Section 4 of this Agreement, Dataforensics shall deliver the pLog software, all in its most current version, to Licensee for use on the specified number of tablets by End Users as stipulated in the Customer Order. An End User is defined as an individual person who may use the pLog Software on a Tablet PC to record, edit, and report site investigation/environmental sampling related data or utilize other features within the web-based pLog system. The following deliverables will be provided as part of the End User License.

- (a) pLog Data Collection software
- (b) pLog Cloud Application/Web Services
- (c) pLog Cloud Connect
- (d) pLog help systems and user documentation.
- (e) Updates to the software and underlying data for the term of the license agreement.
- (f) Standard systems support (excludes on-site support, software development, customizations, modifications or other enhancements).
- (g) Access to Dataforensics customer support Monday through Friday from 8:00 a.m. to 5:30 p.m. Eastern Time via telephone or email.

**3. Service Agreement Fees.** Licensee agrees to pay Dataforensics an annual service agreement fee as shown in the "Customer Order" for use of the pLog Cloud Application/Services under this Agreement. Dataforensics will invoice Licensee on an annual basis. This fee includes all deliverables described in Section 2.

(a) *Customizations; Support.* In the event Licensee requests customizations and/or modifications, Dataforensics will determine its ability to make such modifications and/or customizations and provide an estimate based on Dataforensics' standard hourly billing rates at the time of the request plus any additional out-of-pocket costs. Dataforensics also provides on-site software development and/or technical support for a standard hourly fee of plus reasonable travel expense reimbursement.

**4. Ownership and Use of Software.** All information provided by Dataforensics under this Agreement, including but not limited to, any proprietary information, intellectual property, any content, code, user documentation, systems, methodologies, forms, algorithms, systems, scripts, logic processes, methods of delivery and distribution or gathering and managing data, and any related information, whether written, oral, or electronic (the "Software") shall remain the sole and exclusive property of Dataforensics, both before and after its receipt by Licensee. Licensee acknowledges that the Software was compiled, prepared, revised, selected, coordinated and arranged by Dataforensics applying unique, original and proprietary methods and standards of judgment developed and applied through the expenditure of substantial time, effort, and money, and constitutes valuable property and trade secrets of Dataforensics. Licensee agrees to protect the copyrights and all other proprietary rights of Dataforensics in the Software both during and after the term of this Agreement by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use and unauthorized disclosure of the Software as Licensee uses to protect its own confidential and/or proprietary information of like importance.

**5. License.** Subject to the terms and conditions of this Agreement, Dataforensics hereby grants Licensee a limited, nonexclusive, nontransferable, revocable license to use the pLog Software. For nodelocked (per device) licenses, Licensee may install the software and activate the software on the number of devices as specified in the Customer Order (1 license per device). For concurrent use licenses, Licensee may install the software on an unlimited number of devices, but Licensee can activate the software on the number of devices as specified in the Customer Order at the same time. Concurrent use licenses may be activated and deactivated by Licensee on their devices when the internet is accessible. The pLog Software may be used solely for Licensee's internal business purposes as described in this Agreement. The pLog Software may not be used to create a service or software that directly or indirectly competes with the Dataforensics software in any manner, or to develop, enhance or modify an existing service or software that directly or indirectly competes with Dataforensics Software. Licensee will not distribute or sell the Software to, or allow the Software to be used by, any other person or entity (including, but not limited to, any subsidiary or affiliate), whether by sublicense, assignment of this Agreement, operation of law or otherwise, except as provided in this Agreement or the Customer Order or consented to in writing by Dataforensics in advance. Dataforensics will provide Licensee with online access to the website along with installation packages to be delivered via electronic access, as more fully described in this Agreement, on or prior to the date stipulated in the Agreement. **THE SOFTWARE MAY NOT BE MODIFIED, REVERSE ENGINEERED, COPIED OR REPRODUCED BY OR ON BEHALF OF LICENSEE, NOR MAY SOFTWARE DELIVERED IN A PRINTED FORMAT BE CONVERTED BY OR ON BEHALF OF LICENSEE INTO AN ELECTRONIC FORMAT OR VICE VERSA, WITHOUT THE EXPRESS WRITTEN PERMISSION OF Dataforensics.**

**6. Rights to Customer Data.** All information and data produced by customer through use of the Dataforensics Software shall be owned by the Licensee; provided, that Dataforensics retains the right to use the non-personally identifiable raw geotechnical and geoenvironmental data collected hereunder for general statistical purposes. Dataforensics shall not disclose any personally identifiable information to third parties. For the purposes of this Agreement, "non-personally identifiable information" means data which has been aggregated to remove personal identifiers or that by itself does not identify a specific person, place or thing.

### **7. Term and Termination.**

(a) The term of this Agreement shall be one (1) year commencing on the Effective Date of this Agreement or the date Software is first delivered, whichever is earlier. Subject to Section 8, this Agreement will be automatically renewed for successive terms of like duration unless either party gives written notice of non-renewal to the other party or provides notice in accordance with items b, c or d below.

(b) Either party may terminate this Agreement upon at least 30 days prior written notice to the other party if the other party has materially breached this Agreement and fails to cure such breach within such 30 day period. The notice shall fully describe the breach.

- (c) Licensee may terminate this Agreement upon 30 days written notice.
- (d) Licensor may terminate this Agreement if Licensee has not utilized the system within a 12 month period.

**8. Effect of Termination.** Upon termination of this Agreement for any reason, Licensee's license and right to use the Software will immediately cease, and Licensee will make no further use of the Software.

**9. Fees.** Subject to Section 8, Licensee shall pay Dataforensics the amounts set forth in the annual invoice. Applicable sales and use taxes will be added. Licensee will pay a service charge of 1-1/2% per month (18% per annum) on amounts not paid within 30 days of billing. Licenses that have lapsed maintenance will be suspended from maintenance services and access to the pLog Cloud will be disabled. Upon reinstatement of maintenance a fee for each license of \$250 in addition to lapsed maintenance fees will be applied.

**10. Fee Change.** Upon or any time after the first year of this Agreement, Dataforensics may change usage fees upon 14 days written notice to Licensee. Licensee may terminate this Agreement upon written notice to Dataforensics within 30 days of the date of notice of such fee change; unless Licensee does so, Licensee agrees to pay in accordance with the new fee schedule. Dataforensics reserves the right to increase annual usage fees in the event Licensee materially increases the number of users including without limitation any increase resulting from a merger or other acquisition, including without limitation acquisition of another entity, division, book of business or policies.

**11. Disclaimer of Warranties; Limitation of Liability; Force Majeure.**

(a) Dataforensics shall use good faith efforts to prepare the Software, **BUT DATAFORENSICS MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR CONTENT OF THE SOFTWARE, NOR DOES DATAFORENSICS WARRANT ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The Software shall be obtained from sources considered by Dataforensics to be reliable, but the accuracy and completeness of the Software are not guaranteed. Dataforensics shall not be liable to Licensee or any third party for lost profits, loss of business, consequential, special, indirect, incidental or exemplary damages or other losses, damages, or expenses of any kind. In the event of errors or omissions in the Software, Dataforensics' only liability shall be to correct such errors when notified of their existence. Additionally, no claim shall be honored in the absence of a signed Agreement and full payment of the current invoice. In making corrections, Dataforensics shall not be required to pay in excess of the invoiced fee for the specific delivery containing errors or malfunctions. Licensee will indemnify and defend Dataforensics against any third-party claim, including without limitation any discovery requests, arising out of or related to an insurance policy issued, or other transaction, business practice or policy, by Licensee in connection with Licensee's use of the Software provided under this Agreement. Dataforensics shall not be responsible for any failure or delay in performance under this Agreement due to causes beyond its reasonable control, including without limitation, acts of God, fire, natural disaster, civil disturbances, mechanical or computer failure, legal restrictions, terrorist activity, strike, war, or any other similar catastrophe. In such cases, performance by Dataforensics of this Agreement shall be suspended without liability for the period of delay reasonably attributable to such causes, including recovery time.

**12. Infringement Claims.** Dataforensics agrees to indemnify, defend, settle, or pay any third party claim or action against you for infringement of any valid United States patent or copyright arising from your use of the pLog Software or in accordance with the terms of this Agreement, excluding claims resulting from your use of the pLog Software in a manner that breaches this Agreement, your unauthorized modification of the pLog Software, or your use of the pLog Software in combination with third party software or hardware. If the pLog Software or any part of either is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Dataforensics shall, at its own expense and as your sole remedy therefore, either: (i) procure for you the right to continue to use the pLog Software; or (ii) modify the pLog Software to make it non-infringing; or (iii) replace the Service with a functionally equivalent non-infringing program at no additional charge; or (iv) if none of the foregoing alternatives is reasonably available to Dataforensics, terminate this Agreement and refund to you any prepaid but unearned fees paid to Dataforensics in advance prior to the effective date of the termination.

**13. Notices.** All notices hereunder shall be in writing. Notice delivered personally will be deemed given when served on a general partner or officer of a party. Notice given by certified mail at the respective addresses listed in this Agreement will be deemed given on the third day after mailing. Notice given by delivery of a recognized overnight courier service providing receipt of delivery (e.g., FedEx, UPS, DHL) shall be deemed given one day after mailing. Notice given in any other manner will be deemed given when actually received. A party may change its address by notice given to the other party in the above manner.

**14. Assignment.** Licensee may not assign this Agreement or delegate its obligations hereunder without the prior written consent of Dataforensics, such consent not to be unreasonably withheld, provided, however, Dataforensics may prohibit assignment of this Agreement to any competitor of Dataforensics.

**15. Entire Agreement.** This is the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, purchase orders, representations, understandings and negotiations, written or oral, between the parties with respect to the subject matter hereof. This Agreement may only be amended in writing signed by both parties. If any provision of this Agreement is declared unlawful, such provision shall be severed from the Agreement and the Agreement shall otherwise remain in full force and effect. The failure of either party to enforce any right available hereunder shall not be deemed a waiver thereof. Paragraph headings are for convenience only and are not a part of this Agreement.

**16. Governing Law.** This contract is governed by the internal laws of the State of Georgia and not the law of conflicts. Litigation between the parties arising out of or related to this Agreement shall be brought only in federal or state court in the County of Gwinnett, Georgia, and the parties waive all challenges to venue and submit themselves to the personal jurisdiction of such courts. The prevailing party in any litigation to enforce this Agreement shall be entitled to recover its costs and reasonable attorneys' fees.