

IMPORTANT READ CAREFULLY: THESE TERMS OF SERVICE ARE BINDING AND ENFORCEABLE BETWEEN YOU (“CUSTOMER”) AND PROFESSIONAL DATASOLUTIONS, INC. (“PDI”) FOR ITSELF AND ITS AFFILIATES FOR THE SECURITY SERVICES AND/OR PRODUCTS DESCRIBED IN THIS AGREEMENT (THE “SERVICES”). THESE TERMS OF SERVICE (“THE “AGREEMENT”) GOVERN CUSTOMER’S ACCESS AND USE OF CERTAIN MANAGED SECURITY SERVICES AND EQUIPMENT, UNLESS CUSTOMER HAS FULLY EXECUTED A SEPARATE SERVICE AGREEMENT FOR THESE SAME SERVICES WITH PDI OR ITS AFFILIATES, IN WHICH CASE SUCH SERVICE AGREEMENT GOVERNS, OR UNLESS CUSTOMER HAS FULLY EXECUTED A LICENSE AGREEMENT WITH AN AUTHORIZED CHANNEL PARTNER OR RESELLER FOR THE PROVISION OF THESE SAME SERVICES, IN WHICH CASE THAT LICENSE AGREEMENT GOVERNS AND RELATED QUESTIONS ABOUT THE TERMS OF THE SUBSCRIPTION SHOULD BE DIRECTED TO THE AUTHORIZED CHANNEL PARTNER/RESELLER. BY EXECUTING A QUOTATION OR ORDER FORM THAT REFERENCES THIS AGREEMENT; CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CUSTOMER OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. 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.

These Terms of Service are effective as of the date listed on Customer’s Order (“Effective Date”). PDI encourages Customer to periodically review and check this Agreement for updates to stay informed about the terms that govern Customer’s use of the Services. Customer’s continued use of the Services after PDI makes any changes is deemed to be an acceptance of those changes.

1. Definitions

- 1.1. “Affiliate” means any corporation, partnership, joint venture, or other entity: (i) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (ii) if a partnership, as to which a Party or another Affiliate is a general partner; or (iii) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations. PDI and all PDI Affiliates are the “PDI Group”.
- 1.2. “Addendum(a)” means an additional document, executed by the Parties, that references this Agreement and contains terms relevant to a particular Product or Service.
- 1.3. “Change of Control” means a merger, acquisition, divestiture, sale of assets or equity, or similar transaction in which, in each of the foregoing cases, all or substantially all the assignor’s business is transferred to the assignee or successor entity.
- 1.4. “Deliverables” means any work product or other materials created by PDI in connection with its performance of Services.
- 1.5. “Documentation” means PDI-provided user manuals, help files, specification sheets, or other documentation, in whatever form, relating to a Product.
- 1.6. “Equipment” means any piece of hardware provided by PDI to Customer as part of Customer’s Order.
- 1.7. “Locations” means retail stores or sites under Customer’s control or branding rights.
- 1.8. “Order” means a document or order form which has been submitted by Customer, and accepted by PDI, specifying the equipment and/or Services to be purchased.
- 1.9. “Order Term” means the length of time that PDI will provide a Service pursuant to an Order as stated on such Order.
- 1.10. “Products” means collectively the Services, Equipment and products, agreed upon by the Parties and set forth in an Order.
- 1.11. “Service(s)” means any one or more than one of the Managed Security Services, Professional Services, Installation Services and Support Services provided by PDI to Customer pursuant to an Order.
- 1.12. “Service Commencement Date” means the earlier of (a) the date of activation of the Service, or (b) 30 days after the date the Equipment associated with such Order was shipped. Service Commencement Date for any Service for which there is no associated Equipment means the earlier of (i) the date of activation of the Service or (ii) the date on which PDI has completed all necessary steps required for delivery and/or activation of the Service. However, if by Customer’s actions or omissions, PDI is unable to complete all necessary steps required for delivery and/or activation of the Service, the Service

Commencement Date shall mean the date on which Service could have been activated or delivered absent Customer's actions or omissions.

- 1.13. "Service Description" means the then-current detailed description, including specifications, service levels, and additional terms and conditions, of the Services as located at <https://www.pdisoftware.com/security-agreements-and-terms/>.
 - 1.14. "Taxes" mean(s) any and all applicable federal, state and local taxes, including without limitation, all use, sales, value-added, excise, utility, franchise, commercial, gross receipts, license, privilege or other similar taxes, levies, surcharges, duties and fees, universal service fund contributions and similar exactions with respect to the supply of the products and Services to Customer. Taxes and Fees do not include any tax or fees on the income of PDI.
 - 1.15. "Third-Party Products" means third-party software, third-party hardware, or other products (e.g., cloud hosting instances, data analysis tools, or open-source software components) that PDI provides to Customer (including, without limitation, equipment), or that is otherwise identified in the Documentation as being required to use properly such PDI Product.
2. **Provision of Services.** This Agreement sets forth the terms and conditions on which PDI makes available to Customer, for itself and its Locations, the Products and Services as identified in Customer's Order(s) as previously submitted and on file or as subsequently ordered by Customer and approved by PDI. This Agreement shall govern all current Orders and supersede any prior contract or agreement between the Parties.
 3. **Order Duration and Other Terms.**
 - 3.1. All Products and Services will be expressly identified in an Order, statement of work, or other ordering document that is signed by the Customer and a member of the PDI Group (defined below). Each Order is subject to the terms of, and is deemed incorporated into, this Agreement and is effective beginning on the date set forth thereon (the "Order Effective Date"). Orders may contain additional terms and conditions applicable to the Product or Service purchased thereunder. Each Order will specify the initial term for the Products and Services ordered thereunder ("Initial Term") and, if such Order provides for automatic renewal, then, unless either Party provides the other with notice of non-renewal, upon the date of expiration of the then-current term, such Order will automatically renew for successive terms (each, a "Renewal Term") equal in length to the duration of the Initial Term specified in such Order or such other length of Renewal Term period as stated on the Order (the Initial Term and each Renewal Term, if any, collectively, the "Order Term" of such Order). Notice of non-renewal of an Order must be provided by a Party at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as applicable (or such other period as expressly specified on the applicable Order). Renewal of any Order may be conditioned on and subject to Customer's agreement to changes to this Agreement, including the terms and conditions of this Security Services Agreement and applicable Addenda.
 - 3.2. **Order of Precedence.** Any conflict between the terms and conditions of this Security Services Agreement, an Addendum or an Order will be resolved according to the following order of precedence: (1) the Order; (2) Addendum; and (3) Security Services Agreement. For clarity, all terms, conditions, and policies incorporated by reference (including, without limitation, via a URL) in any of the foregoing will be a part of that document for purposes of the order of precedence. Customer hereby represents and warrants that it has received and reviewed all incorporated terms, conditions and policies and that execution of this Agreement or an Order constitutes its agreement to be bound by the incorporated terms.
 - 3.3. **Documentation.** To the extent that a Product is accompanied by any Documentation, subject to the terms and conditions of this Agreement (including all Orders and Addenda) PDI hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license under PDI's rights in the Documentation to use such Documentation solely to enable Customer to exercise its rights under the applicable license to or grant of access and usage rights for such Product.
 - 3.4. **Additional Orders.** For as long as the Agreement is in effect, Customer may request the provision of additional service(s) or new Location(s) for Services by providing to PDI and PDI accepting, additional Order forms. All Orders and additional Locations shall be governed by the terms and conditions of this Agreement and all similar rights and obligations apply; except that each additional Location shall have an Order Term commencing on the first day of the month after the date of installation for that Location and continuing thereafter for thirty-six (36) months, or as otherwise set forth in the applicable Order, or otherwise shall be subject to the early termination fee as outlined in Section 5.2.4 below. After the expiration of the initial term, such Location shall automatically renew for additional twelve (12) month terms unless otherwise terminated as set forth herein.
 4. **Customer Responsibilities.**
 - 4.1. Customer may only use the Products as explicitly set forth in this Agreement. Customer is solely responsible for determining whether the Products are sufficient for its purposes, including but not limited to, whether the Products satisfy Customer's legal and/or regulatory requirements.
 - 4.2. Customer, on behalf of itself and its Customer Locations, shall ensure (i) physical, logical and environmental security and control with respect to the any on-site equipment across which the Services traverse for purposes of the Payment Card

Industry Data Security Standards ("PCI DSS") or any other applicable industry standard, as may be amended from time to time and (ii) compliance with all applicable federal and state laws. PDI specifically disclaims any liability whatsoever with respect to any breach of security caused by, related to, or arising out of Customer's failure to comply with the PCI DSS, or to maintain proper physical, logical or environmental security with respect to the on-site equipment.

- 4.3. Customer shall ensure that all Customer-owned equipment that connects to the Products will perform according to published technical specifications for such equipment and PDI's interface specifications. Customer shall be responsible for the use and compatibility of equipment or software not provided by PDI. This Agreement does not include the provision, maintenance, or repair by PDI of Customer-owned equipment or software, including, but not limited to, terminals, computer and other Customer third party equipment. PDI is not responsible and disclaims any liability for deployment of any Service(s) on any equipment or hardware not owned or controlled by Customer.

5. Term and Termination.

- 5.1. Term. This Agreement shall be effective as of the Effective Date. This Agreement shall automatically expire if there are no Orders in effect for a period of one hundred eighty (180) days, unless terminated earlier in accordance with this Section 5.2 (the "Term").

5.2. Termination.

5.2.1. Termination for Material Breach; Suspension. Either Party may terminate this Agreement or one or more Orders upon written notice if the other Party does not cure its material breach of this Agreement or the applicable Order(s) or non-payment of any amount due hereunder within thirty (30) days of receiving written notice of the material breach from the non-breaching Party. If Customer fails to timely pay any fees when due PDI may, without limitation to any of its other rights or remedies, suspend access to the Products or performance of the Services under all Orders until it receives all amounts due.

5.2.2. Termination for Bankruptcy or Insolvency. Either Party may terminate this Agreement and all Orders if the other Party ceases to do business in the ordinary course or is insolvent (i.e., unable to pay its debts in the ordinary course as they come due), or is declared bankrupt, or is the subject of any liquidation or insolvency proceeding which is not dismissed within one hundred twenty (120) days or makes any assignment for the benefit of creditors.

5.2.3. Termination for Regulatory Changes. PDI may terminate this Agreement or one or more Orders immediately upon written notice to Customer upon any change to or enactment of any law, rule or regulation, or published change in the interpretation thereof by any regulatory authority, that would have a material adverse effect upon PDI's ability to perform its obligations under this Agreement, provided that the Parties, after good faith discussions, cannot find a mutually agreeable solution within a reasonable amount of time.

5.2.4. Termination by Customer. As specified in Customer's Order, Products are provided for a specified Order Term on noncancelable basis for the duration of the Order Term. Customer understands and acknowledges that in the event Customer terminates this Agreement or an Order for any reason other than PDI's breach, Customer agrees to pay PDI the following sums: (i) amounts owned for Products and for Services performed through the date of termination, (ii) any disconnection, early cancellation, termination or other charges paid by PDI to third parties for carrier services and/or equipment which arise as a result of such cancellation or termination, (iii) an early termination fee equal to the amount that would be due through the end of the then current Order Term (plus any unpaid amount for the purchase of equipment if stated separately), except that for PaySafe services and Equipment, Customer shall pay an amount equal to 75% of the total monthly fees for all remaining Order Terms and a deinstallation fee equal to the amount paid by Customer for installation of the Equipment. This early termination fee shall apply to each Location and for all PaySafe Services provided hereunder. However, upon notification to and approval by PDI, Customer shall not owe an early termination fee for PaySafe Services and Equipment if Customer successfully relocates the Equipment to another Location and utilizes the Services at that Location. Such relocation must be effective within 90 days in order for PDI to waive the early termination fee. Customer acknowledges that PDI's actual damages arising from Customer's early termination of Service Orders are difficult or impossible to ascertain and that any early termination fees are a reasonable estimate of PDI's damages and shall constitute liquidated damages and not penalties.

5.2.5. Termination by PDI. In addition to the termination rights set forth above, PDI may terminate a Service, in whole or in part, without penalty, if PDI's agreement to use any third-party software or service upon which the Service relies expires or is terminated; provided, however, that prior to any such termination, PDI shall use commercially reasonable efforts to either (i) extend the applicable expiration or termination date so that its provision of the Service hereunder is not interrupted; (ii) procure a third-party software or service similar to the expired or terminated software or service in order to continue to deliver the Service without interruption and without reduction in quality or increase in cost to Customer; or (iii) develop another workaround that allows Customer to continue to receive the Service without interruption and without reduction in quality or increase in cost. In the event that PDI terminates a

Service pursuant to this Section, then PDI shall provide Customer thirty (30) days advance written notice of such termination. In such event, Customer will pay PDI for the performed through the date of such termination.

- 5.3. Survival. Notwithstanding anything to the contrary herein, Sections **Error! Reference source not found.** (Definitions), 4 (Customer Responsibilities), 5.3 (Survival), 8 (Fees and Payment), 9 (Confidentiality), 10 (Ownership), 11 (Warranties and Disclaimer), 12 (Indemnification), **Error! Reference source not found.** (Limitations of Liability), and **Error! Reference source not found.** (General) and any terms that by their sense and context are intended to survive the performance thereof by the Parties or termination of this Agreement shall survive the completion of performance and termination of this Agreement, including, without limitation, the making of any and all payments and early termination fees due hereunder. Additionally, Customer agrees that the obligation to return Equipment and to pay any applicable early termination fee survives any termination or expiration of this Agreement.
6. Specifications, Substitutions and Service Goals. PDI reserves the exclusive right to determine its Service area, and the rights to maintain, reconfigure, or discontinue any Service upon immediate written notice to Customer for any uninstalled Service and upon thirty (30) days written notice for any installed Service. In addition, whenever Equipment is identified in an Order, Addendum, Service Description or Documentation by reference to manufactures' tradename or model number, or the like, it is so identified for the purpose of establishing a standard, and PDI reserves the right at all times to substitute similar equipment where interchangeability does not materially affect function. Further, PDI reserves the right in its discretion to modify the technical specifications of the Service, as set forth in the Service Description or Documentation, provided that such modifications do not affect the quality or cost of the Service.
7. Repair and Replacement of Defective Equipment. PDI will, throughout the Product Term, repair or replace defective Equipment, so long as such repair or replacement was not required as a result of Customer's failure to (a) comply with any reasonable operating instructions provided; and/or (b) comply with reasonable instructions given to Customer by a PDI Technician engaged in troubleshooting any malfunction; and/or (c) provide customary environmental protections including, but not limited to, protection from power surges, leaks, spills, droppage and intentional misuse or tampering. In the event of any of (a) – (c) above, Customer will be charged for repair or replacement of the Equipment.
8. Invoicing, Fees and Payment Terms.
- 8.1. Invoicing. Certain Products and Services are billed on a one-time, upfront invoice, for the entire Order Term while others are billed on monthly or annual invoices, in advance, throughout the Order Term. Charges for equipment and installation (if any) may be invoiced at the time of shipment of such equipment or performance of installation (if any), together with any Taxes due thereupon. Invoices will include any applicable fees for any partial period in arrears, together with charges for the current period, in advance.
- 8.2. Fees and Payment Terms. Customer acknowledges that the pricing received is based, in part, on volume commitments and the length of the Initial Term of the Services. Customer will pay PDI the fees and any other amounts invoiced under this Agreement as specified in the applicable Order, including, where applicable, any early termination fees. Unless otherwise specified in such Order, Customer will pay all amounts due within fifteen (15) days of the date of the applicable invoice. Any undisputed amount not paid within fifteen (15) days of the date of the applicable invoice will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by PDI to collect any undisputed amount that is not paid when due. Amounts due from Customer under this Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason. All payments are non-cancelable and non-refundable. Unless otherwise specified in such Order, all amounts under this Agreement and any Order are stated and shall be paid in United States dollars.
- 8.3. Fee Increases. PDI reserves the right to change the prices for the Services during the Term of this Agreement as necessary to account for any increase in equipment provisioning or facility costs resulting from a change in Customer's Services' requirements when requested in writing by Customer. PDI may also increase all fees for Products and Services once annually, to take effect on the first day of the next Contract Year (as hereinafter defined). Each annual increase for a Product or Service will not exceed an amount equal to the greater of 3% or the amount by which the Consumer Price Index for All Urban Consumers for the US City Average for all items, as reported by the US Department of Labor's Bureau of Labor Statistics, has increased since the Order Effective Date or the date of the last such fee increase for that Product or Service, whichever is more recent. "Contract Year" means a 1-year period that begins on the Order Effective Date or any anniversary thereof.
- 8.4. Shipping. Customer is responsible for all shipping costs associated with Equipment shipment; such costs to be invoiced at standard available rates.
- 8.5. Tariff Charges. Customer acknowledges that tariffed local access charges (including, but not limited to, call set-up charges) which are imposed by third party carriers and which may be passed through to Customer, as set forth herein, are beyond the control of PDI and may be changed by such third-party carriers at any time during any Term of this Agreement. To the

extent that any such change results in a price increase that PDI elects to pass through to Customer during the Term, PDI will furnish to Customer, at Customer's request, such materials as are reasonably necessary to document such increase.

- 8.6. **Taxes.** Other than net income taxes imposed on PDI, Customer will bear all taxes, duties, and other governmental charges (collectively, "Taxes") resulting from this Agreement. Customer will pay any additional Taxes as are necessary to ensure that the net amounts received by PDI after all such Taxes are paid are equal to the amounts to which PDI would have been entitled in accordance with this Agreement if such additional Taxes did not exist.
9. **Third-Party Products and Third-Party Terms.** Each Third-Party Product provided as part of or with the Services or that is purchased or licensed from PDI will be subject to the separate terms and conditions provided with such Third-Party Product. Customer will abide by and comply with all third-party terms and, unless expressly authorized by this Agreement or such terms, will not use Third-Party Products independently of the Services with which they were provided. Without limiting the foregoing, if PDI enables Customer to access a hosted environment offered by a third-party cloud or platform service provider, then Customer must agree to the applicable service provider's terms and conditions prior to accessing such hosted environment, and Customer will comply at all times with such terms and conditions. Notwithstanding anything to the contrary in this Agreement, the PDI Group makes no warranties and offers no indemnities with respect to any Third-Party Products, irrespective of whether such Third-Party Products are included in, or provided with, a PDI Product or Service. Customer shall defend, indemnify and hold harmless PDI and each member of the PDI Group from all liabilities, costs, expenses, damages and losses suffered or incurred arising out of or in connection with any claim that the Customer has not complied with any Third-Party terms.
10. **Confidentiality.**
- 10.1. **Definition.** As used herein, "Confidential Information" means all information disclosed by or otherwise obtained from a Party ("Disclosing Party") to or by the other Party ("Receiving Party"), whether orally, visually, or in writing, that is designated as "confidential" or "proprietary" or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Confidential Information of a Disclosing Party includes business and marketing plans, technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, PDI's Confidential Information includes, but is not limited to, all Products, Services, Documentation, technical information, and information concerning Product-related database structure information and schema. Without limiting the foregoing, Customer's Confidential Information includes Customer Data. Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party on a non-confidential basis without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information.
- 10.2. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use or disclose any Confidential Information of the Disclosing Party other than in the exercise of its rights and performance of its obligations under this Agreement; and (c) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents and the employees, contractors and agents of its Affiliates who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations with the Receiving Party that are at least as protective of the Disclosing Party's Confidential Information as those herein. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
11. **Ownership**
- 11.1. **Reports.** If Customer uses a PDI Product or Service to generate any reports, the information contained in such reports will be deemed to be Customer Data and shall be owned by Customer.
- 11.2. **PDI Ownership.** PDI and its licensors have and retain all right, title and interest in the Services, any modifications to, enhancements or derivative works of any of the foregoing, and all intellectual property rights in any of the foregoing. Customer shall not attempt in any way to alter, re-engineer, reverse engineer, tamper with, or otherwise misuse such Services. As between the Parties, PDI owns all right, title, and interest, including all intellectual property rights, in and to all Products, Services, Documentation, Deliverables, any modifications to, enhancements or derivative works of any of the foregoing, and any improvements to any of the foregoing made by PDI or that result from use, processing, or generation of Customer Data (other than the Customer Data itself and subject to Section 8.4) (together, the "PDI IPR"). Customer's only rights in respect of the PDI IPR are as set out in the applicable Services Description and/or Order.
- 11.3. **Feedback.** If Customer provides any feedback to the PDI Group concerning the functionality and performance of a Product, any Documentation, or the Services (including identifying potential errors and improvements), Customer hereby assigns to PDI all right, title, and interest in and to the feedback, and PDI is free to use the feedback without payment or restriction.

11.4. Residual Knowledge. During the course of providing Products and Services to Customer, PDI may develop or come in contact with ideas, research findings, coding conventions or improvements. Unless otherwise specified in writing in advance or protected by patent or copyright, PDI shall not be held liable for any future use of such ideas, conventions, or improvements. Customer will apprise PDI in advance of any proprietary rights associated with materials made available to PDI by Customer or parties acting under the direction of Customer, including but not limited to employees, agent, sub-contractors, or vendors.

12. Warranties and Disclaimer

12.1. Warranties. Each Party represents and warrants to the other that: (i) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; and (ii) no authorization or approval from any third party is required in connection with such Party's execution, delivery, or performance of this Agreement. Customer represents and warrants that Customer has (i) all rights and approvals necessary to grant the PDI Group the licenses set forth in this Agreement and to enable the PDI Group to exercise its rights under the same without violation or infringement of the rights of any third party, including approvals required from individuals with respect to whom information will be collected through the Products and Services and used as permitted by the foregoing license and (ii) no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement or any Order or that would preclude Customer from complying with the provisions hereof and further warrants that it will not enter into such conflicting agreement during the Term. Customer represents and warrants that it has been provided copies of and reviewed all terms, conditions and policies referenced herein, whether by URL or otherwise.

12.2. Disclaimer

12.2.1. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN SECTION 11.1 OR IN AN ADDENDUM, THE PDI GROUP MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS ALL SUCH OTHER WARRANTIES (INCLUDING, WITHOUT LIMITATION, ALL STATUTORY WARRANTIES AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, AND NON-INFRINGEMENT).

12.2.2. THE PDI GROUP DOES NOT WARRANT THAT THE PDI PRODUCTS, DOCUMENTATION, OR SERVICES OR ANY DATA OR OTHER INFORMATION OR CONTENT STORED IN, OR IN CONNECTION WITH, ANY PRODUCT OR SERVICE OR PROVIDED BY OR THROUGH THE OPERATION OF ANY PRODUCT OR SERVICE ARE OR WILL MEET CUSTOMER'S NEEDS OR WILL BE ERROR-FREE OR THAT OPERATION OF THE PRODUCTS OR PROVISION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED.

12.2.3. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PDI, ITS AGENTS, OR EMPLOYEES SHALL CREATE ANY OTHER WARRANTY OR EXTEND OR EXPAND THE SCOPE OF THIS WARRANTY. CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

12.2.4. TO THE EXTENT THAT CUSTOMER OFFERS PUBLIC INTERNET ACCESS AND INTERNET SERVICE ("PUBLIC INTERNET ACCESS"), CUSTOMER ACKNOWLEDGES AND AGREES THAT SUCH PUBLIC INTERNET ACCESS IS ON AN "AS IS" BASIS AND CUSTOMER'S PROVISION THEREOF IS AT CUSTOMER'S OWN RISK. PDI DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OR CONDITIONS RELATED TO CUSTOMER'S PUBLIC INTERNET ACCESS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. PDI DOES NOT WARRANT THAT PUBLIC INTERNET ACCESS WILL PERFORM AT A PARTICULAR SPEED OR WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE. NEITHER PDI NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE FOR ANY DAMAGES, LOSSES, CLAIMS, EXPENSES, OR COSTS THAT CUSTOMER OR ITS CUSTOMERS INCURS AS A RESULT OF, OR IN ANY WAY RELATED TO, CUSTOMER'S PROVISION OF PUBLIC INTERNET ACCESS.

13. Indemnification

13.1. Indemnification by PDI

13.1.1. Subject to paragraph (12.1.2) below, PDI will at its expense defend Customer from any claim, proceeding or suit, brought by a third-party (each, a "Claim") against Customer alleging that the PDI Products and Services as provided by PDI infringes such third party's patents, copyrights, or trademarks and will indemnify and hold Customer harmless from and against all Losses (as hereinafter defined) in connection with such Claim.

13.1.2. PDI has no obligations under this Section 12 with respect to any Claim to the extent based upon any of the following (each, an "Excluded Claim"): (i) use of a PDI Product or Service in combination with any product or service not provided by PDI; (ii) a Customization or other Deliverable, based on designs, requirements, or specifications required or provided by Customer; (iii) use of any PDI Product or Service in violation of this Agreement or

Documentation or other unauthorized use or use for any purpose for which it was not intended; (iv) continued use after being notified by PDI to cease using the PDI Product or Service after being provided with a modification that would remove the infringement; or (v) any modification not made by PDI.

13.1.3. If PDI becomes aware of or anticipates a Claim, then in addition to PDI's obligations under paragraph (i) above, PDI may at its option elect to (i) modify the applicable PDI Product or Service so that it becomes non-infringing, or substitute a functionally-equivalent product or service; (ii) obtain a license to the third-party intellectual property rights giving rise to the Claim; or (iii) terminate the affected Order(s) on written notice to Customer and refund to Customer any pre-paid but unused fees under such Order(s) (which, in the case of license fees for perpetual licenses, will be calculated on 3-year straight-line basis).

13.1.4. This Section 12 states PDI's sole liability and Customer's exclusive remedy for the actual or alleged infringement of any third-party intellectual property right by a PDI Product or Service.

13.1.5. "Losses" means (i) damages awarded against the indemnified Party in final resolution of a Claim by a court of competent jurisdiction or in settlement; and (ii) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by an indemnified Party in connection with the defense of such Claim (other than attorneys' fees and costs incurred without an indemnitor Party's consent after the indemnitor Party has assumed the defense of the Claim).

13.2. Indemnification by Customer. Customer will at its expense defend the PDI Group from any Claim against the PDI Group that arises from or is based upon Customer's use of a Product, collection or provision of Customer Data, or breach of any of the terms and conditions of this Agreement or that is an Excluded Claim and will indemnify and hold the PDI Group harmless from and against all Losses in connection with such Claim.

13.3. Indemnity Conditions and Procedures. As a precondition to the indemnifying Party's obligations under this Section 12 with respect to each Claim, the indemnified Party shall (a) give the indemnifying Party prompt written notice of the Claim; (b) grant the indemnifying Party full and complete control over the defense and settlement of the Claim; (c) provide assistance in connection with the defense and settlement of the Claim as the indemnifying Party may reasonably request; and (d) comply with any settlement or court order made in connection with the Claim. The indemnified Party will not defend or settle any Claim subject to indemnification under this Section 12 without the indemnifying Party's prior written consent. The indemnified Party will have the right to participate in the defense of each Claim at its own expense and with counsel of its own choosing, but the indemnifying Party will have sole control over the defense and settlement of the Claim.

14. Limitation of Liability.

14.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE PDI GROUP WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR LOST PROFITS OR LOSS OF BUSINESS NOR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF THE PDI GROUP IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL THE PDI GROUP BE LIABLE FOR ANY LOSS OR CORRUPTION OF DATA OR OTHER INFORMATION OR CONTENT STORED IN, OR IN CONNECTION WITH, A PRODUCT OR SERVICE NOR FOR ANY DAMAGES ARISING FROM ANY ERROR IN ANY DATA OR OTHER INFORMATION OR CONTENT PROVIDED BY OR THROUGH THE OPERATION OF ANY PRODUCT OR SERVICE. CUSTOMER IS RESPONSIBLE FOR ALL FINES AND FEES ASSESSED BY ANY CARD SCHEME WITHOUT LIMITATION IN CONNECTION WITH VIOLATION OF PCI DSS COMPLIANCE.

14.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL THE PDI GROUP'S TOTAL LIABILITY OF ALL KINDS FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THE ORDER WITH RESPECT TO WHICH THE LIABILITY AROSE DURING THE 6 MONTHS IMMEDIATELY PRECEDING THE APPLICABLE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION AND SUCH AMOUNT BEING INTENDED AS A CUMULATIVE AGGREGATE CAP AND NOT PER INCIDENT).

14.3. Failure of Essential Purpose. THE LIMITATIONS IN THIS SECTION 13 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

15. General.

15.1. Relationship of Parties. The Parties are independent contractors. Under no circumstances will the employees of one Party be deemed the employees of the other Party. This Agreement does not grant authority for either Party to act for the other in an agency or other capacity, or to make commitments of any kind for the account of or on the behalf of the other Party.

- 15.2. Use of Brand Name. PDI may use the name, brand, or logo of Customer (or Customer's parent company) solely for the purpose of identifying Customer as a customer of PDI in a 'customer' section of PDI's website, brochures, or other promotional materials, or as part of a list of PDI's customers in a press release or other public relations materials. Any other press releases or marketing materials using the trademarks or logos of Customer will require Customer's approval in writing prior to public dissemination. Customer may not use PDI's name, brand, or logo for any purpose without PDI's prior written consent.
- 15.3. Assignment. Neither Party may assign its right, duties, or obligations under this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld or delayed, except that PDI may assign this Agreement without such consent to an Affiliate or to any successor to the business or assets of PDI to which this Agreement relates in its sole discretion, including, without limitation, by Change of Control or operation of law. A Change of Control shall be deemed to cause an assignment of this Agreement.
- 15.4. Compliance with Laws. Each Party will comply with all applicable laws, rules, and regulations to which such Party is subject in connection with such Party's activities under this Agreement.
- 15.5. Export Restrictions and Unlawful Activity. The Products, including technical data, are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. If Customer obtains from PDI any equipment, software, or technical data or specifications of U.S. origin, or any direct product thereof, Customer (i) acknowledges that it is Customer's responsibility to obtain any required licenses to export and re-export Products and (ii) agrees to cooperate fully with any audit related to these laws.
- 15.6. Subcontractors. PDI may utilize subcontractors, PDI Affiliates, or third parties, to perform its duties under this Agreement so long as PDI remains responsible for all of its obligations under this Agreement. Customer may not subcontract any of its obligations or duties without first obtaining PDI's written consent. In addition, Customer accepts complete responsibility for the acts or omissions of its agents, consultants, subcontractors, and all others it engages, or contracts with to perform or assist in its obligations or use of the Products or Services under this Agreement.
- 15.7. Non-solicitation. The employees and consultants of the Parties are valuable assets and are difficult to replace. Accordingly, the Parties agree that, during the Term, and for a period of one year after the termination or expiration of this Agreement, it will not solicit for employment or engagement (whether as an employee, independent contractor, or consultant) any employee or consultant of the other Party. The Parties are not restricted from posting, or hiring any personnel that respond to, public job advertisements or similar general solicitations. The Parties agree that if they employ any person previously employed by the other Party in violation of the provisions of this Section, then the non-breaching Party will be entitled to liquidated damages equal to the amount of the solicited employee's salary paid by the non-breaching Party for a period of one (1) year.
- 15.8. Notices. Notices to PDI under this Agreement must be in writing and sent by electronic mail as agreed to by the Parties or by postage prepaid first-class mail or receipted courier service at the address below and will be effective upon the earlier of receipt or the fifth business day following mailing. Billing related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant account contact designated by Customer.

Notice Address for PDI:
Professional Datasolutions, Inc.
14241 Dallas Parkway, Suite 400
Dallas, Texas 75254

With a copy to:
Professional Datasolutions, Inc.
14241 Dallas Parkway, Suite 400
Dallas, TX 75254
Attn: Chief Legal Officer

This Section shall apply for formal contract notices only and shall not limit the Parties' ability to communicate via electronic mail or other methods as agreed to by the Parties for routine communication.

- 15.9. Force Majeure. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement (except for failure to make payments when due) on account of, any delay or failure to perform as required by this Agreement as a result of any war, insurrection, fire, flood, natural disaster, strike or other labor disturbance, epidemic, pandemic or other public health emergency, act of any governmental body or following any guidance, recommendation or order of any governmental body, or any other cause or condition beyond its reasonable control (each, a "Force Majeure Event").

- 15.10. Governing Law; Venue. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Texas, and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties agree that the Uniform Computer Information Transactions Act ("UCITA") or any version thereof, adopted by any state in any form, shall not apply to this Agreement; and, to the extent that UCITA is applicable, the Parties hereby disclaim its application and agree to opt out of pursuant to the opt-out provisions contained therein. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in Dallas County, Texas in connection with any action arising out of or in connection with this Agreement. Notwithstanding the foregoing, each Party shall be entitled to injunctive or other interim or conservatory relief from any court having jurisdiction in the event of any breach or violation (or threatened breach or violation) of its intellectual property rights or by the other Party of its obligations with respect to such Party's Confidential Information. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover costs of court and reasonable attorneys' fees from the other party or parties to such action in addition to any other relief that may be awarded.
- 15.11. Language. This Agreement is in the English language only, and the English language version shall control in all respects. In the event that this Agreement is translated into another language, such translation shall not be binding upon the Parties.
- 15.12. Waiver. No waiver of any rights will be effective unless agreed to in writing by the Party to be charged. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.
- 15.13. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, it will be deemed to be modified to the minimum extent necessary to be valid and enforceable. If it cannot be so modified, it will be deleted, and the deletion will not affect the validity or enforceability of any other provision.
- 15.14. Entire Agreement. This Agreement constitutes the entire and exclusive Agreement between the Parties hereto with respect to the subject matter hereof.