

## TELVISTAR TERMS AND CONDITIONS

Updated May 1, 2012

This is an agreement ("Agreement") between POSITION DATA CORPORATION ("PDC", "us", "our"), and you the customer ("Customer", "you", "your"). This Agreement applies to a GPS-based fleet management service provided by PDC ("Service"), which includes access to the Telvistar™ website ("Website"), use of the Telvistar™ software ("Software") and all other service provided by PDC to Customer.

BY AGREEING TO THIS AGREEMENT, ACCESSING THE WEBSITE AND/OR USING THE SERVICE, YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. PDC reserves the right to update and amend this Agreement at its sole discretion. In the event this Agreement is amended, by continuing to use the Service ten days after the amended Agreement has been made available through the Website, you agree to be bound by the amended Agreement. Please check the Website periodically for amendments to this Agreement.

### 1. Provision of Service and Grant of License

Subject to the terms and conditions herein, PDC will use commercially reasonable efforts to provide the Service to Customer, and PDC hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicenseable (other than to Customer's controlled subsidiaries) and terminable license to (i) internally display and perform the Website, (ii) access and execute Software on PDC's application server over the Internet in conjunction with third-party GPS hardware and software approved by PDC, and (iii) internally copy, display, and perform any documentation for the Service. PDC may change any part of the Service and its prices and specifications from time to time.

### 2. Use and Access

**A.** Subject to the restrictions on use as set forth herein, PDC shall provide Customer the Service and licenses in Section 1 solely for the purpose of using the same for its intended purpose in accordance with its documentation.

**B.** Customer will use the Service, Software and Website ("Offerings") only for its internal business operations and will not permit the Offerings to be used by or for the benefit of anyone other than Customer. Customer agrees not to copy, sell, resell, rent or sublicense (including offering the Offerings to third parties on an applications service provider, time-sharing or networked basis), lease, loan, redistribute, otherwise transfer, modify, translate, reverse engineer, decompile or create derivative works of any portion of the same, or any use or access to the same. Customer shall access and use the Offerings only by means of software, scripts or interfaces supplied or specified by PDC. Customer shall not access or use any Offering for the purpose of creating or offering any product or service having features, design or functionality similar to those of the Offerings. Customer may not access or use the Offerings (i) in violation of applicable law, (ii) with any infringing or otherwise unlawful or tortious device or material, or (iii)

with any device or material containing software viruses or other harmful matter. PDC reserves all rights not expressly granted to Customer herein.

**C.** If Customer is a corporation or other entity, Customer shall be responsible for compliance at all times with all of the terms and conditions of this Agreement by Customer's controlled subsidiaries, and its and their employees and subcontractors. Customer will not: (i) transmit or share login credentials or passwords to persons other than authorized users or (ii) permit access to any Offering through a single login or password being made available to multiple users on a network or from standalone locations.

**D.** Many PDC dealers provide first-level primary technical support to customers. PDC will use commercially reasonable efforts to provide technical support regarding the Offerings via the support methods provided through the Website. PDC may provide PDC dealer with administrator access to Customer account, unless Customer objects by notifying PDC in writing of the objection.

**E.** PDC may, at its sole discretion and without notice, modify, disable, or delete Customer data and/or features of the Customer's account including, but not limited to, scheduled email reports and email alerts that fail delivery due to invalid email addresses, email spam and security filtering systems, exceeding maximum email size limits, and/or full recipient email boxes.

### 3. Downtime

**A.** For purposes of this Agreement, an excessive downtime period ("Downtime Period") is one continuous period of at least 48 hours during which the Service is substantially unavailable because of problems with or the unscheduled maintenance of our hardware or system software. A Downtime Period does not include unavailability of the Service due to (i) Force Majeure, (ii) problems resulting from any actions or inactions by you or any third party, (iii) problems resulting from your

and/or third party equipment or connectivity not within our sole control, (iv) unavailability of data or services from the data hosting platform, or (v) network unavailability during scheduled maintenance of our network and/or servers.

**B.** PDC will, upon your written request, make a credit allowance ("Downtime Credit") in the amount equal to the pro-rata price for Service during the Downtime Period. To receive a Downtime Credit, you must request such credit by sending an email to support@positiondata.com within seven days after the Downtime Period begins. Except as provided in this Section 3(B), PDC shall incur no liability for unavailability or limited availability of the Offerings, and the Downtime Credit shall be your sole remedy.

#### **4. Price and Payment**

**A.** Customer will pay fees to the PDC authorized billing dealer, or to PDC directly, as set forth in, and in the amount of and according to the billing cycle specified in the relevant dealer documentation. Unless otherwise specified therein, Service is billed in advance and is due and payable on the first day of the billing cycle. All amounts are indicated and due in US dollars. Customer will be in default of this Agreement if Customer fails to pay invoice amounts in full within 30 days after the date of the invoice. Invoice amounts not paid within 30 days after the date of invoice are subject to interest of 1.5% of the unpaid amount, or the maximum amount under applicable law, whichever is less, for each month that the amount is unpaid. If Customer fails to make payments according to the terms of this Agreement, Customer agrees to pay all costs (including reasonable attorney's fees and costs) of collecting or attempting to collect amounts due.

**B.** As additional Customer GPS units are activated by a third party on the data hosting platform, each such additional activation shall be subject to the same terms and conditions set forth herein, and Customer shall be responsible for all applicable fees and other expenses related to such additional GPS units.

**C.** The fees for the Offerings do not include taxes or duties. If PDC is required to pay or collect any federal, state, local, or value-added tax on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, or if Customer is required to withhold any taxes, excluding taxes levied on PDC's net income, then such taxes and/or duties will be billed to and paid by Customer immediately upon receipt of PDC's invoice and supporting documentation for the taxes or duties charged.

#### **5. Term and Termination**

**A.** The initial term of this Agreement commences on the Service activation date and extends to the end of that month. Thereafter this Agreement will automatically renew for successive one month periods unless either party gives the other party not fewer than thirty (30) days written notice of its intent not to renew, or unless terminated earlier under this Agreement.

**B.** Either party may terminate this Agreement for material breach, provided, however, that the terminating party has given the other party at least twenty-one (21) days written notice of and the opportunity to cure the breach. Termination for breach will not preclude the terminating party from exercising any other remedies for breach.

#### **6. Ownership of Intellectual Property**

The Offerings, and all worldwide patents, copyrights, trademarks, trade secrets and other intellectual property rights therein, are and will be the sole and exclusive property of PDC and its suppliers. Such rights are protected under the laws of the United States, Canada and other jurisdictions. The Offerings are licensed, not sold. All rights not expressly granted by PDC are reserved to PDC.

#### **7. Confidentiality**

**A.** Customer shall hold in strict confidence, and shall not use except in performance of this Agreement, all non-public information, know-how and trade secrets of PDC (which include but are not limited to the Service, Software and password-protected pages of the Website, and all data used in the Telvistar Service, other than data identifiable to Customer) disclosed to, or acquired by, Customer in connection with this Agreement. Customer acknowledges that breach of this Section by it or its agents would result in irreparable harm to PDC, for which money damages would not be sufficient, and that PDC shall be entitled to injunctive relief to enforce this Section.

**B.** All data identifiable to Customer that is disclosed to PDC in connection with the performance of this Agreement and residing on PDC's application server will be held in strict confidence by PDC and will not, without the prior written consent of Customer, be disclosed or used for any purposes other than the performance of this Agreement. PDC will safeguard the confidentiality of such data using the same standard of care that PDC uses for its own confidential materials. This obligation does not apply to data that: (i) is or becomes, through no act or failure to act on the part of PDC, generally known or

available; (ii) is known by PDC at the time of receiving such information; (iii) is hereafter furnished to PDC by a third party who PDC reasonably believes has the right to disclose it; (iv) is independently developed by PDC; or (v) is the subject of a written permission to disclose provided by Customer. In addition, disclosure of data will not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body of the United States; (ii) is otherwise required by law; or (iii) is otherwise necessary to enforce this Agreement, but only to the extent that any such disclosure is necessary.

## **8. WARRANTY DISCLAIMER**

THE OFFERINGS AND INTELLECTUAL PROPERTY THEREIN ("PDC ITEMS") ARE PROVIDED "AS-IS." PDC HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND NON-INFRINGEMENT. PDC MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. PDC SPECIFICALLY DISCLAIMS LIABILITY FOR ANY USE OF THE SERVICE IN CRITICAL MONITORING OR CONTROL APPLICATIONS (SUCH AS SAFETY, HEALTHCARE, NUCLEAR ENERGY, CORRECTIONS, AIR TRAFFIC, OR RAIL), AND SUCH USE IS ENTIRELY AT THE CUSTOMER'S RISK.

## **9. LIMITATION OF LIABILITY, INDEMNIFICATION**

PDC WILL NOT BE LIABLE TO CUSTOMER OR OTHERS FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOST REVENUES, PROFITS OR SAVINGS, INCURRED OR SUFFERED BY SUCH PERSONS ARISING OUT OF OR RELATED TO THE USE OF ANY OFFERINGS, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND SPECIFICALLY INCLUDING ANY LOSSES CLAIMED OR CAUSED BY UNAVAILABILITY OF SERVICE FOR ANY PERIOD OF TIME, EVEN IF THE OTHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. PDC'S TOTAL LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO THE OFFERINGS, REGARDLESS OF CAUSE OR THEORY OF RECOVERY, WILL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID TO PDC DURING THE TWO MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OR ACT OR OMISSION GIVING RISE TO THE CLAIM. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS PDC AND ITS DIRECTORS, OFFICERS, AND SHAREHOLDERS FROM ANY AND ALL CLAIMS, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES) ARISING FROM OR IN CONNECTION WITH ACTS OR OMISSIONS OF CUSTOMER FOR ITS USE OF THE OFFERINGS.

## **10. No Partnership or Agency**

PDC and Customer are independent contractors under this Agreement and neither party is a partner, joint venturer, fiduciary, employee, or agent of the other.

## **11. Non-assignment**

Customer shall not assign this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of PDC. Subject to the foregoing, this Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns.

## **13. Severability**

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will be enforced to the greatest extent possible.

## **14. Force Majeure**

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, interruptions in telecommunications or internet services, or other events or circumstances beyond the delayed party's reasonable control ("Force Majeure").

## **16. General Terms and Conditions**

**A. Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision of this Agreement, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**B. Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed. CUSTOMER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF, AND WAIVES ANY VENUE OBJECTION AGAINST, THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, USA.

**C. Privacy and Other Policies.** Your use of any Offering is subject to our Privacy Policy and other applicable policies, each as in effect from time to time, available at [www.positiondata.com](http://www.positiondata.com), which are incorporated herein by reference.

**D. Entire Agreement; Amendments.** This Agreement contains the entire understanding of the parties and supersedes any related prior or contemporaneous representations, understandings, or agreements, written or oral, with respect to its subject matter. It shall not be modified except in writing signed by both parties hereto.

**E. No Third Party Beneficiaries.** This Agreement is intended for the sole benefit of the parties hereto and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

**F. Notices.** All notices required or permitted under this Agreement will be in writing and delivered and effective: (a) upon confirmed transmission by facsimile, (b) upon delivery by courier, (c) one business day after dispatch by overnight delivery service, or (d) five days after dispatch by certified or registered mail. All notices will be sent to Customer at Customer's address of record at PDC, and to PDC at Position Data Corporation, PO Box 992222, Redding, CA 96099-2222, fax (530) 232-0133, or such other address as may be specified in writing by PDC.

**G. Counterparts.** This Agreement may be executed in counterparts.

**H. Export.** You agree that the Offerings will not be exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions, or regulations of any country.

**I. U.S. Government Rights.** The Software and the documentation which accompanies the Software are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government as end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

**J. Transaction Language.** The parties hereto agree that this Agreement and all correspondence and all documentation respecting this Agreement be written and interpreted in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.