

## STANDARD TERMS AND CONDITIONS

The following are the terms and conditions (the "Terms") under which Porsche Financial Services, Inc. ("PFS") agrees to engage Contractor (as defined in a purchase order or scope of work), and Contractor agrees to be engaged by PFS, to perform the Services (as defined in a purchase order or scope of work) as provided in the Agreement.

### Article I. The Agreement

**Section 1.01 Acceptance of the Agreement.** Contractor's assent to these Terms shall be conclusively presumed by Contractor's execution of a scope of work (such "Scope of Work", together with these Terms and any addendums or additional documentation, the "Agreement") or by Contractor's commencement of the Services. No provision of any order form, invoice or expression of acceptance of Contractor that conflicts with these Terms or that would create any additional obligation or liability for PFS shall have any force unless explicitly countersigned by PFS.

**Section 1.02 Services and Non-contracted Services.** Contractor shall provide all labor, materials, equipment, and other items necessary for the proper execution and completion of the Services. Services not covered by the Agreement shall not be performed by the Contractor. Contractor shall not make any claim for services rendered that are outside the scope of work specified in the Agreement. Additional services may only be added by an amendment signed by both parties.

### Article II. Contractor Representations, Warranties and Covenants

**Section 2.01 Compliance with Laws.** Contractor represents and warrants to PFS that it has complied, and will continue to comply, with all applicable local, state, and federal laws including, without limitation, those related to business permits and licenses that may be required in connection with the performance of the Services and those related to employment law including, without limitation, the Federal Social Security Act, State and Federal Unemployment Insurance Act, Wage and Hour Laws, the "e-verify" provisions of all federal and state laws, and all immigration laws. Contractor shall take all necessary and appropriate measures to combat corruption and avoid any other violation of the law, in particular violations of antitrust law, competition law, and environmental protection law. Contractor shall take the appropriate organizational (including, but not limited to, appropriate legal or contractual) measures to prevent its legal representatives, employees, subcontractors, consultants or other third parties acting on its behalf from becoming liable to prosecution for committing or failing to act in light of, for example, bribery, corruptibility, granting of undue benefits, acceptance of undue benefits, money laundering, fraud or embezzlement. In the event sufficient reason exists to suspect a violation of law in relation to the Agreement, Contractor must inform PFS without undue delay and identify which measures it is taking to remedy such violation and prevent future violations. Failure to inform of or remedy any violation shall be cause for termination of the Agreement by PFS.

**Section 2.02 Protection of Services, Property, and Persons.** Contractor will adequately protect its own property from damage, will protect PFS's property from damage or loss, and will take all necessary precautions during the progress of the Services to protect all persons and the property of others from injury or damage. Contractor will take all precautions for the safety of employees, and will comply with all applicable provisions of federal, state, and local safety laws, building codes, and any restrictions of PFS to prevent accidents or injury to persons on, about, or adjacent to the premises where Services are being performed. Contractor will also keep all computers that it uses for the Services, and all data contained on all such computers, safe and secure at all times.

**Section 2.03 Warranty.** Contractor represents and warrants to PFS (a) that all Services (i) will be performed in a prompt, professional, and workmanlike manner in accordance with the requirements and specifications (including timeframes) set forth in the Agreement, (ii) will otherwise be performed in accordance with industry standards, and (iii) will conform in all material aspects with all applicable laws and regulations in force at the time the Services are performed and (b) that Contractor has the expertise

and resources necessary to undertake and complete the Services in accordance with the requirements and specifications (including timeframes) set forth in the Agreement.

**Section 2.04 Lawful Owner; No Violation.** Contractor represents and warrants that Contractor is the lawful owner or licensee of any software programs or other materials used by Contractor (and not furnished by PFS) in the performance of the Services and has all rights necessary to convey to PFS the unencumbered ownership of materials generated or developed hereunder and that title to such materials transferred hereunder shall be good and free and clear of all liens, claims, and encumbrances. Contractor further represents and warrants that its Services will not violate the terms of any contracts with or other obligations to third parties, or any third-party rights in any patent, trademark, service mark, copyright, trade secret, or similar right.

**Section 2.05 Business Continuity.** In order to ensure that Contractor is able to comply with the Agreement, Contractor shall maintain a comprehensive business continuity plan. Such plan shall include Contractor's detailed information technology disaster recovery tasks and ensure Contractor's critical business process continuity. The contents of such plan shall be made available to PFS promptly upon request.

**Section 2.06 Independent Contractor Relationship.** Contractor is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of PFS. PFS shall determine the Services to be done by Contractor, but Contractor shall determine the legal means by which Contractor accomplishes the Services. PFS is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payment it owes Contractor. Neither Contractor nor any of its employees, servants, or agents shall be entitled to receive any benefits which employees of PFS are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security for or related to performance of Services for PFS.

**Section 2.07 Taxes and Workforce.** Contractor shall pay and be solely responsible for all fees, assessments, sales, consumer, general excise, use, and other taxes required by federal, state, or local law related to the Services. Contractor shall be solely responsible for paying its employees, servants, and agents involved in performing the Services. Contractor shall be solely responsible for paying any and all taxes, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, and other benefits for Contractor and its employees, servants, and agents.

**Section 2.08 Contractor's Risk.** Contractor shall perform the Services at its own risk. Contractor assumes all responsibility for the condition of tools, equipment, materials, and job site. PFS will not reimburse Contractor for any expense incurred by Contractor in connection with the Services, including car-related expenses, telephone expenses, and any other expenses, unless PFS shall have given advance written approval for such expense to be reimbursed by PFS.

**Section 2.09 Subcontractors.** Contractor shall not subcontract any of its obligations or duties under the Agreement without the prior written consent of PFS. At all times Contractor will be responsible to PFS for the acts of such subcontractors and shall be liable for any claims such subcontractors may have arising out of their performance of services.

**Section 2.10 Authority.** Contractor represents and warrants that (i) it has all requisite power and authority to execute, deliver, and perform its obligations under the Agreement, (ii) the execution, delivery, and performance of the Agreement have been duly authorized and (iii) no approval, authorization, or consent of any governmental or regulatory authority is required for Contractor to enter into and perform its obligations under the Agreement.

## **Section 2.11 Indemnity.**

**(a)** Contractor will indemnify, defend, save, and hold harmless PFS, its affiliates, and their respective shareholders, directors, officers, partners, joint ventures, representatives, members, designees, agents, employees, volunteers, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims, causes of action, losses, damage, liabilities, awards, judgments, decrees, costs, and expenses (including but not limited to attorneys' fees and costs, and consequential damages) that arise or in any way grow out of or are connected with the breaches, acts, or omissions of Contractor, or the Contractor's employees or agents (collectively the "Claims"), including but not limited to those arising (i) from the death of or injury to any person, (ii) from damage to or destruction of property, (iii) from breach of any obligation under the Agreement, or (iv) from the provision of Services by Contractor or any of its employees, servants, contractors, subcontractors, volunteers, or agents. Notwithstanding the foregoing to the contrary, Contractor shall not be obligated to indemnify, defend, or hold harmless an Indemnified Party to the extent a claim is found to be due to the gross negligence or willful misconduct of PFS or anyone for whom PFS is responsible.

**(b)** Contractor shall also defend all suits or claims and shall hold and save all Indemnified Parties harmless from liability of any nature or kind, including costs or expenses, for or on account of any allegations by third parties of infringement of a copyright, patent, or trademark related to any of Services or to any deliverable under the Agreement that contains or was developed from information, specifications, ideas, work product, or other material furnished by Contractor or its agents, representatives, employees, or contractors.

**(c)** Contractor's indemnification and defense obligations hereunder shall extend to Claims occurring after the Agreement expires or is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters that are indemnified hereunder are fully and finally barred by applicable laws.

**Section 2.12 Audit.** Contractor shall maintain, in accordance with generally accepted accounting principles and practices, such records as may be necessary to reflect (a) the accuracy of Contractor's charges and invoices under the Agreement, (b) Contractor's established business, (c) Contractor's compliance with all representations and warranties contained in the Agreement, and (d) such other additional records as PFS may require in connection with the Services. Contractor shall preserve such records for a minimum of 3 years after the date of final payment under the Agreement without additional reimbursement or compensation therefor. Promptly after PFS's request, Contractor shall provide PFS with copies of all such documents reasonably requested by PFS. PFS shall also have the right from time to time, at any time during the performance of the Services or at any time after completion of the same, upon reasonable notice, to inspect, audit, and verify all books and records kept by Contractor in connection with the Agreement. PFS shall have the right to visit, observe, audit, and inspect, during Contractor's normal business hours, Contractor's offices and production and related facilities utilized to provide the Services. The foregoing rights of PFS shall be specifically enforceable and in addition to, and not in limitation of, any of the remedies that PFS may have.

## **Article III. Consumer Financial Protection Compliance.**

**Section 3.01 Consumer Financial Protection Compliance.** Contractor acknowledges that PFS is subject to supervision by the Consumer Financial Protection Bureau ("CFPB") and other federal and state regulators (collectively, the "Regulations"). Contractor will support PFS compliance with the Regulations as they apply to the Services as follows:

**(a) Compliance, Due Diligence, Audit, and Notification.** At any time before or during the Agreement, Contractor will: (a) provide PFS with assurances and documentation evidencing that Contractor is familiar with, and will comply with the Regulations; (b) permit PFS to conduct due

diligence, including completion of questionnaires relating to Contractor's compliance with the Regulations, (c) permit PFS to conduct audits, both remote and on-site, related to the Regulations; and (d) notify PFS if Contractor learns that it is not, or that there is a significant risk that it may not be, in compliance with the Regulations at any time during the term of the Agreement (including notice of major litigation and regulatory actions).

**(b) Policies, Procedures and Training.** Upon request, PFS may review Contractor's compliance materials to ensure that Contractor is in compliance with applicable Regulations, and that Contractor conducts appropriate training and oversight of its employees and subcontractors who have consumer contact or compliance activities related to the Services. Contractor agrees to provide on-going and continuous employee training to ensure that its employees maintain familiarity with, and abide by, all appropriate Regulations. Contractor also agrees to review its compliance materials and revise them as necessary to ensure compliance with Regulations.

**(c) Complaints.** Contractor will permit PFS to review its process for handling customer complaints as they relate to the Services, including review of written complaints and taped telephone conversations; and Contractor will advise PFS in writing immediately of any complaint related to the Services. Contractor will promptly address legitimate customer complaints relating to the Services. Contractor will provide PFS with monthly updates regarding complaints involving the Services, provided that Contractor will notify PFS within 3 working days of any significant complaints.

#### **Article IV. Payments to Contractor**

**Section 4.01 Payments.** PFS will pay Contractor for Services within thirty (30) days of receipt of a correct and undisputed invoice, unless otherwise specified in a purchase order or scope of work. Subject to PFS prior approval, Contractor may seek reimbursement from PFS for pass through expenses incurred while performing Services by submitting supporting documentation (e.g., receipt or invoice) to PFS. PFS will not be obligated to pay for any invoices that are outside the scope of the Agreement. If Contractor is purchasing goods or services on PFS's behalf, Contractor agrees to abide by PFS's procurement rules listed in the Procurement Addendum, if any.

#### **Section 4.02 Payments Withheld.**

**(a)** PFS may decline to make a payment hereunder to the extent necessary to avoid loss because (1) Contractor is in default of the Agreement and has not remedied the default, (2) a third party claim is filed with respect to the Services, (3) damage to PFS's property, or (4) unsatisfactory delivery or performance of the Services by Contractor, as determined by PFS.

**(b)** When all the conditions to payment referred to in Section 4.02(a), above, are remedied to the reasonable satisfaction of PFS, then payment shall be made thereafter to the extent of amounts withheld as a result of such deficiencies.

**(c)** PFS will notify Contractor in writing of any disputed charges on an invoice and shall not make payment on such invoice until such time as the dispute is resolved and if necessary, a replacement invoice is issued. If Contractor desires, it may in the interim issue a new invoice to reflect the undisputed amount for payment and then upon resolution of the dispute, if required, issue a second invoice for the remaining amount owing. PFS does not and cannot make partial payments of invoices.

#### **Article V. Insurance**

**Section 5.01 Types and Amounts.** Contractor shall procure and maintain, at its own cost and expense, insurance policies for the following types of insurance coverage with a United States insurance company having an A.M. Best Rating of A-X or higher:

- (a) Workers' Compensation insurance as required by the applicable workers' compensation acts of the states wherein the Services are to be performed or where jurisdiction could apply;
- (b) Employers Liability (including Occupational Disease) insurance coverage with limits of not less than \$1,000,000 that shall cover all of Contractor's employees engaged in the performance of the Services;
- (c) Commercial General Liability insurance, including contractual liability insurance, completed operations, personal injury, and any other type of liability applicable to the Services, with coverage on an "occurrence" basis and with limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate for each of bodily injury, property damage, and personal injury; and
- (d) Such other insurance listed in the Insurance Addendum, if any.

The costs of insurance, including any deductibles, shall be the responsibility of Contractor. The obligation of Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations, and it is understood that insurance in no way limits the liability of the Contractor whether or not the same is covered by insurance. If any subcontractor or assignee is engaged by Contractor to perform any portion of the Services, Contractor will ensure that such subcontractors or assignees maintain the same levels of insurance as required by Contractor under the Agreement.

**Section 5.02 Endorsements.** The Commercial General Liability policy shall include PFS as Additional Insured. The Commercial General Liability and Workers' Compensation policies shall include a provision requiring Notice of Cancellation at least thirty (30) days in advance, by endorsement using ISO form IL 70 35 06 08 or its equivalent naming PFS or providing coverage on a blanket basis per written contractual obligation. All Insurance coverages shall be primary in respect of PFS over any other insurance available to PFS and such policies shall waive all rights of subrogation against PFS.

**Section 5.03 Proof.** Contractor shall furnish PFS with certificates of insurance for all policies at or before commencement of the Term, and thereafter upon renewal of each policy. A copy of each endorsement shall be included with the Certificate of Insurance evidencing coverage. Contractor will also provide PFS with Certificates of Insurance or copies of the insurance policies within fifteen (15) days after PFS's request.

## **Article VI. Intellectual Property.**

### **Section 6.01 Works for Hire.**

(a) All inventions, designs, discoveries, methodologies, techniques, patents, trademarks, service marks, copyrights, trade secrets, and other intellectual property relating in any way to the business of PFS or its affiliates that Contractor (either alone or in conjunction with others) conceives, makes, or obtains (whether during or outside of working hours) during the Term and related to the Services shall be considered a "work made for hire" and shall be upon creation the sole and exclusive property of PFS. Contractor shall mark such materials with PFS's copyright or other proprietary notice as directed by PFS and shall take all actions deemed necessary by PFS to perfect PFS's rights therein. Notwithstanding the foregoing, to the extent that such materials cannot constitute a work made for hire under applicable law, or if Contractor should otherwise retain any rights to the materials, Contractor hereby irrevocably assigns and transfers to PFS, and upon creation thereof automatically assigns and transfers, and irrevocably agrees to assign and transfer to PFS from time to time, all right, title, and interest in and to the materials whenever created, including, without limitation, any and all copyright, trademark, service mark, patent, or other intellectual property rights and goodwill inherent therein or related thereto, all without any further consideration. Contractor will sign such other documentation as requested by PFS from time to time to affirm or affect the assignments and transfers required by this paragraph, and Contractor hereby appoints PFS as its attorney-in-fact, with power of substitution, to sign any and

all such documents on behalf of Contractor. This is a power coupled with an interest and may not be revoked.

**(b)** Contractor shall retain all right, title and interest to its pre-existing or other intellectual property that is created outside of the provision of Services and not for the benefit of PFS.

**Section 5.02 Items Delivered by PFS.** All right, title, and interest in and to any software programs, systems, data, databases, designs, processes, procedures, formulas, improvements, and materials delivered to Contractor by PFS are and shall remain the property of PFS, its affiliates, or its licensors, as the case may be, and Contractor will return all such items to PFS at the end of the Term and upon PFS's request from time to time.

## **Article VII. Restrictive Covenants.**

**Section 7.01 Confidential Information and Privacy.** A party may receive or have already received Confidential Information from the other party in discussions regarding the Agreement, and the transactions and other activities contemplated hereunder. The party disclosing its Confidential Information or making its Confidential Information available is the "Discloser," and the party receiving the Discloser's Confidential Information is the "Recipient."

**(a) Definitions.** "Confidential Information" means: (i) information that is valuable to Discloser and is not generally known by the public, (ii) information that is marked or disclosed as confidential in writing, (iii) Non-Public Personal Information ("NPI"), as defined below, (iv) information traditionally recognized as proprietary trade secrets or reasonably understood to be confidential, (v) all forms and types of financial, business, customer, scientific, technical, economic, or engineering information including, without limitation, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, and (vi) all copies thereof. "Confidential Information" as used herein does not include any information which (i) is already known to the public or Recipient before disclosure by Discloser, (ii) is subsequently made known to the public without any violation of this Agreement, (iii) is rightfully received by Recipient from a third party without similar restriction and without breach of this Agreement, or (iv) is independently developed by Recipient without breach of this Agreement.

**(b) Treatment and Retention of Confidential Information.** Recipient acknowledges, accepts, and agrees that (i) the Confidential Information is non-public and confidential and shall remain at all times the property of Discloser, (ii) the disclosure of the Confidential Information to Recipient is for the sole purpose of enabling Recipient to perform under the Agreement, (iii) Recipient shall not assert directly or indirectly any right with respect to the Confidential Information which may impair or be adverse to Discloser's ownership thereof, and (iv) Recipient will not make use of any portion of the Confidential Information or make reference in any way to the Agreement in any of its own sales, marketing, or product development efforts. Recipient shall take the same degree of care that it uses to protect its own Confidential Information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of the Confidential Information. Recipient understands that Discloser makes no representation or warranty, express or implied, as to the accuracy or completeness of its Confidential Information, and Recipient agrees that Discloser shall have no liability to Recipient or any other party resulting from any use or reliance on the Confidential Information, except as otherwise provided in the Agreement.

Recipient agrees that, until expiration or earlier termination of the Agreement and for three years thereafter with respect to Confidential Information, with respect to NPI, for so long as Recipient can access, store, transmit, receive, or disclose the NPI, and with respect to trade secrets, for so

long as such information remains a trade secret, Recipient will hold Discloser's Confidential Information, NPI and trade secrets in strict confidence and shall not disclose such information, in whole or in part, to any person (a) other than its representatives who need to know such information in connection with Recipient's performance under the Agreement, or (b) as otherwise required by regulatory or legal authority; provided, however, that the party being required by regulatory or legal authority to disclose such information shall first provide the other party written notice of such request for information requiring disclosure of Confidential Information (which could include the existence of or the terms of the Agreement). Recipient agrees to inform its representatives of the confidential nature of the Confidential Information and to require its representatives to keep such information confidential.

All Confidential Information (including tangible copies and computerized or electronic versions thereof), except for that portion which consists of work papers, analyses, compilations, comparisons, studies, or other similar documents prepared by Recipient, shall be returned to Discloser or destroyed by Recipient, as appropriate, if requested by Discloser. That portion of the Confidential Information that consists of work papers, analyses, compilations, comparisons, studies, or other similar documents prepared by Recipient shall be held by Recipient, as appropriate, and kept confidential as provided above, or shall be destroyed by Recipient, as appropriate.

To the maximum extent permitted by applicable law, any Confidential Information supplied by Discloser to Recipient before the execution of the Agreement and which is subject to disclosure restrictions in a prior agreement between the parties hereto shall remain subject to such disclosure restrictions in any such prior agreement, or to the provisions of this Section, whichever is more protective of the Confidential Information. Otherwise, any previously disclosed Confidential Information shall be governed by the terms and conditions set forth in this Section.

**(c) Privacy Laws.** Recipient will comply with all privacy and data protection laws, rules and regulations which are or which may in the future be applicable to any information exchanged between the parties. Confidential Information may include "Non-Public Personal Information" as that term is defined in Section 6809(4) of the Gramm-Leach-Bliley Act (the "Act"), and Recipient agrees that it will maintain such Non-Public Personal Information in accordance with the Act and other applicable federal and state privacy laws. In the event of any actual or apparent theft, unauthorized use or disclosure of such Non-Public Personal Information, Recipient agrees to immediately commence all reasonable efforts to investigate and correct the causes and remediate the results thereof; and as soon as practicable following discovery of any such event, provide Discloser with notice thereof, and such further information and assistance as may be reasonably requested.

**Section 7.02 Publicity.** Contractor shall not at any time use PFS's name or the name of any PFS parent, subsidiary, or affiliate company or their respective trademarks, service marks, trade dress, or trade names in any advertising or publicity without the prior written consent of PFS.

**Section 7.03 Information Security.** PFS may, from time-to-time, through its employees or its authorized agents, conduct information security audits of Contractor, which may occur on a regular or special basis, at PFS's sole discretion. During each such audit, PFS may review any information security documents of Contractor (or of any person or entity employed, retained, or used by Contractor) which are related to Contractor's obligations or performance under the Agreement. During each such audit, Contractor shall promptly provide PFS full access to hardware and other information security-related items reasonably necessary for PFS to conduct such audit. PFS shall give Contractor advance notice of each audit and work with Contractor to schedule the audit to be conducted at a time or times mutually agreeable to PFS and Contractor. Depending on the nature of the Services, PFS may require Contractor to agree to its Data Security Addendum (the "Addendum"), which details PFS's data security requirements and shall be incorporated as part of the Agreement. Contractor agrees to comply with the Addendum if so requested.

by PFS. If there is any conflict between the confidentiality provisions of Section 7.01 and those in the Addendum, the Addendum controls with respect to PFS's Confidential Information.

**Section 7.04 Remedies for Breach.** Each party agrees that money damages would not be a sufficient remedy for any breach of this Article of the Agreement and that either party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or by the other or any of its Representatives. Such remedy shall not be the exclusive remedy for any breach of this Article the Agreement, but shall be in addition to all other rights and remedies available at law or in equity. Failure to exercise any right or remedy shall not be construed as a waiver or release thereof.

## **Article VIII. Termination**

**Section 8.01 Termination.** PFS may terminate the Agreement or the performance of any of the Services under the Agreement, in whole or in part, with or without cause and in PFS's sole discretion, with thirty (30) days' written notification to Contractor. PFS may terminate the Agreement immediately however, should Contractor fail to perform any of its obligations hereunder, including timely completion of the Services in a workmanlike manner. Upon notification of termination, and except as otherwise directed by PFS, Contractor shall (a) stop the terminated Services, (b) incur no further expenses in connection with the terminated Services; and (c) terminate all orders and subcontracts to the extent that they relate to the performance of the terminated Services.

**Section 8.02 Payment Obligations Upon Termination.** If PFS terminates the Agreement or any of the Services thereunder, PFS will pay Contractor for Services completed in compliance with the Agreement (as determined by PFS) to the extent not yet paid, subject to PFS's offset and redemption rights. If PFS has pre-paid for Services that were not completed at the time of termination, unless otherwise specified in the Agreement, Contractor shall refund PFS a pro-rata portion of the fees/price paid for Services for those Services not yet performed.

**Section 8.03 Offset.** PFS may offset or redeem against any sums due or to become due Contractor any amounts owed by Contractor to PFS together with all costs incurred by PFS, and all damages that result from Contractor's breach of the Agreement, in pursuing any of PFS's remedies against Contractor.

**Section 8.04 Transition Services.** Upon expiration or termination of the Agreement or any of the Services for any reason, Contractor shall, at PFS's request and at no additional cost to PFS, provide transition assistance services as reasonably requested by PFS for a period of up to ninety (90) days after the Term to facilitate the orderly transfer of responsibility for the Services that were being provided under the Agreement.

## **Article IX. Limitation of Liability, and Consequential Damages.**

**Section 9.01 Limitation of Liability.** Other than its payment obligations hereunder, PFS's maximum liability under the Agreement shall be limited to the aggregate annual compensation payable by PFS to Contractor under the Agreement.

**Section 9.02 No Consequential Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXTRAORDINARY, OR CONSEQUENTIAL DAMAGES UNDER THE AGREEMENT.

## **Article X. Miscellaneous**

**Section 10.01 Supplier Diversity.** PFS is committed to diversity in its workforce and supplier base and expects the same commitment from its suppliers. Consistent with that commitment, Contractor agrees to use its best efforts to recruit, hire, train, and retain women and minority employees in conjunction with its performance of Services for PFS.



**Section 10.02 Time and Warranties.** Time is of the essence of the Agreement. The express warranties in the Agreement are in addition to any provided to PFS by applicable law.

**Section 10.03 Assignment and Subcontracting.** PFS may assign any or all of its rights and duties under the Agreement at any time and from time to time without Contractor's consent. Contractor may not assign, subcontract, or otherwise transfer any of its rights or duties, or delegate any of its obligations, under the Agreement without the prior written consent of PFS. Any purported subcontracting or assignment not in compliance with the Agreement shall be void. The Agreement shall inure to the benefit of PFS's successors and assigns.

**Section 10.04 Governing Law.** The Agreement, and the rights of the parties hereunder, shall be governed by and construed and enforced in accordance with the laws of the State of Georgia, USA, without regard to that State's conflicts of law provisions and without regard to any international concept of comity. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

**Section 10.05 Waiver.** None of the following is a waiver of a party's rights under the Agreement: failure to exercise any right, power, or remedy under the Agreement or otherwise; failure to insist on compliance by the other party; or custom or practice of the parties inconsistent with the Agreement. The party entitled to the benefit of any part of the Agreement may only waive it in writing. The provision of a waiver in one instance will not be construed as a waiver in, or as an obligation to provide a waiver for, any other instance. The rights and remedies available under the Agreement are in addition to, and not in limitation of, all other rights and remedies available to a party at law or in equity.

**Section 10.06 Notices.** All notices required or authorized hereunder (each a "Notice") shall be in writing. Notice is made by delivery to the other party at its address as set forth in the preamble to the Agreement, with receipt acknowledged (or refusal to accept delivery established), in person or by a next-day mail or delivery service. Notices shall be to the attention of the business owner identified in Exhibit A to the Agreement, and in the absence thereof, to the Legal Department. The party entitled to Notice may waive it in writing. Notice is effective when received (or when delivery acceptance is refused). Any party may change its Notice address by giving at least 10 days' notice to the other party.

**Section 10.07 Severability.** Whenever possible, each part of the Agreement shall be interpreted as effective and valid. If any provision of the Agreement is declared invalid, void, illegal, or unenforceable by an authority of competent jurisdiction, the Agreement shall be enforced in that jurisdiction as if the Agreement never contained the invalid, illegal, or unenforceable part; provided, however, that if a court of competent jurisdiction is permitted by applicable law to modify the invalid, void, illegal, or unenforceable provision to make it valid, legal, and enforceable, then the provision shall be so modified and enforced.

**Section 10.08 Amendments.** The Agreement may only be modified or amended by a written document signed by all parties.

**Section 10.09 No Exclusivity.** Nothing about the Agreement will prevent PFS from securing similar or competing Services or goods from a third party.

**Section 10.10 No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties and PFS's affiliates, and the Agreement is not intended to, and will not, confer any rights or benefits on any other third person.

**Section 10.11 Dispute Resolution.**

(a) Negotiation. PFS and Contractor shall attempt in good faith through informal negotiations to resolve all disputes arising out of the Agreement. Such informal negotiations will not bar a party from exercising its rights under subsection (c) below.

**(b) Arbitration.** Except as provided in subsection (c) below, any dispute arising out of the Agreement that is not settled by informal negotiations by the parties shall be resolved only by binding arbitration in accordance with the following provisions. Either party may demand in writing such arbitration within 90 days after the controversy arises by sending a notice to arbitrate to the other party and to the American Arbitration Association (the "AAA"), which shall administer the arbitration under its Commercial Arbitration Rules then in effect. In no event may any demand for arbitration be filed after the running of any applicable statute of limitation. The arbitration shall be held at the AAA's offices located in Atlanta, Georgia. The law applicable to the arbitration, including the administration and enforcement thereof, shall be the Federal Arbitration Act (9 USC §§1-16), as amended. The Agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction. For any money dispute involving less than \$200,000, the parties shall together select one neutral arbitrator who shall be a one-person arbitral panel to arbitrate the dispute. For all other disputes, each party shall select a neutral third party arbitrator to the panel, and the two party-chosen arbitrators shall select a third neutral arbitrator who shall chair the three-person arbitral panel. The arbitral panel shall be governed by the express terms of the Agreement and the laws of the state of Georgia. English will be the required language in the arbitration. Any award or portion thereof, whether preliminary or final, shall be in writing, signed by the arbitral panel, and shall state the reasons upon which the award or portion thereof is based. The arbitral panel may, in its discretion and in addition to any rights to fees and costs (including attorneys' fees) contained in other parts of the Agreement, require the non-prevailing party to pay reasonable attorneys' fees and costs to the prevailing party (in proportion to the extent to which the prevailing party actually prevailed, given all of the claims included within such arbitration). The award rendered by the arbitral panel shall be final, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. The parties and arbitral panel shall treat all aspects of the arbitration proceedings, including discovery, testimony, other evidence, briefs, and the award, as strictly confidential, not subject to disclosure to any third party or entity, other than to the parties, the arbitral panel, and the AAA. These arbitration provisions shall survive the termination or expiration of the Agreement.

**(c) Injunctions.** Notwithstanding the preceding section to the contrary, PFS may obtain temporary, preliminary, and permanent injunctions to enforce its rights under the Agreement. Jurisdiction and venue for the enforcement of such rights shall be proper in the Superior Court for Fulton County, Georgia, USA. The parties hereby irrevocably submit to the jurisdiction and venue of said court and hereby irrevocably waive any defenses to such jurisdiction and venue, including inconvenient forum. PFS shall be entitled to an award of its reasonable attorneys' fees actually incurred in any such enforcement attempt, whether or not suit is brought.

**Section 10.12 Construction.** References to Articles and Sections are to corresponding parts of these Terms. The captions and headings of the Agreement are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. Unless expressly stated otherwise, the words "include" or "including" mean "including without limitation," the singular includes the plural, and the word "or" includes "and." Any rule of construction that a document is to be construed against the drafting party solely because that party drafted the Agreement shall not be used and is hereby irrevocably waived.

**Section 10.13 Battle of the Forms Not Applicable.** The battle of the forms described in Section 2-207 of the Uniform Commercial Code shall not apply to the Agreement or to any invoice or acceptance form of Contractor relating to the Agreement. It is the parties' intent that the Agreement will exclusively control the relationship of the parties, and if there is any inconsistency between any invoice or acceptance form sent by Contractor to PFS and the Agreement, the Agreement shall control.

**Section 10.14 Survival.** The following provisions of these Terms shall survive the expiration or termination of the Agreement: Section 2.01, Section 2.04, Section 2.11, Section 2.12, Section 5.01, Article 7, Article 9, and Section 10.11.

**Section 9.15 Supplier Management System.** Contractor is required to utilize PFS's supplier management system to contract with and perform services for PFS. Contractor agrees to maintain the accuracy of its supplier profile and to remove former employees in a timely fashion.