

## Terms and Conditions

1. **Provision of Services, Acknowledgement and Cooperation.** Subject to the terms and conditions herein, including without limitation payment of all of the fees due hereunder, Pensa will provide Customer with access to the Data Service and perform the other Services set forth on the Invoice referencing these Terms and Conditions during the applicable Term.
2. **Pensa Intellectual Property.** Pensa reserves all rights in and to any intellectual property comprising or relating to the Data Service. This includes without limitation Pensa's intelligence dashboard, its software, its data collection system, and subject to Section 4, any Pensa-Provided Data (defined in Section 3)). In addition, if Customer submits comments, suggestions, or other feedback regarding the Services or the elements thereof ("Feedback"), Customer agrees that Pensa will be free to use such Feedback for any purpose without an accounting to Customer.
3. **Restrictions.** Customer may use the Data Service and any Pensa data and information accessed through the Data Service ("Pensa-Provided Data") solely in accordance with this Agreement and the license set forth in Section 4. Customer may not otherwise rent, lease, lend, sell, redistribute, reproduce or sublicense the Data Service, the Pensa-Provided Data or any element thereof. Customer may not otherwise copy, decompile, reverse-engineer, disassemble, or attempt to derive the source code of the Data Service, the Pensa-Provided Data, or any part thereof, or create derivative works of the Data Service, or any part thereof. Customer uses the Services and the Pensa-Provided Data at its own initiative and is responsible for compliance with any applicable laws, and/or regulations. The rights granted herein to use the Data Service and the Pensa-Provided Data are personal to Customer, and non-transferable. Customer is responsible for any supporting personnel's compliance with this Agreement and the applicable end user terms.
4. **Data Ownership and License.** Subject to the terms and conditions of this Agreement, Pensa hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to (i) allow its Authorized Users to view the Pensa-Provided Data, and use such data during the Term solely in the ordinary course of Customer's Internal Business Operations (defined below), provided that all attribution, copyright and other proprietary notices are kept intact in all instances, (ii) share the Pensa-Provided Data with Customer employees for use solely in the ordinary course of Customer's Internal Business Operations, and (iii) share the Pensa-Provided Data with Customer's Retailer Partners (defined below) for use for the benefit of Customer, provided that such Retailer Partners are under confidentiality restrictions consistent with the Agreement and such Data is limited solely to locations or channels owned or substantially controlled by that Retailer Partner. "Internal Business Operations" means use by Customer in performing analysis and planning only for its direct benefit and consumption. Internal Business Operations excludes, without limitation, any use that (X) except as allowed under subsection 4(iii) above, makes Pensa Provided Data or any derivative thereof available to any third party, e.g. through any publication or direct disclosure, or (Y) is undertaken for the benefit of a third party, e.g. any use appurtenant to the performance of a consulting or service capacity for a third party,

or any use that powers or enables a product offering delivered to any third party. “Retailer Partner” means a retailer or distributors that carries or distributes Customer’s products. Such license shall be perpetual as to the

Pensa-Provided Data accessed during the term unless revoked as a consequence of the termination of this Agreement by Pensa for Customer’s uncured breach of a term or condition set forth herein.

5. **Fees and Payment Terms.** Applicable fees and pricing for the Services (“Fees”) and payment terms shall be set forth on the Invoice and are exclusive of applicable sales, excise, use or similar taxes. Customer shall pay all such taxes directly or to us, unless otherwise required by applicable law. Should Customer not pay any amount when due, Pensa may (at its discretion and in addition to other remedies it may have) suspend Customer’s access to the Services.
6. **Support.** Pensa will use commercially reasonable efforts to provide Customer with support regarding use of the Data Service.
7. **Term.** This Agreement will commence on the Effective Date and will continue for the term specified on the Invoice (the “Term” of this Agreement).
8. **Termination.** In the event that either party is in material breach of this Agreement and the breaching party does not cure such breach within fifteen (15) days following notice detailing such breach, the non-breaching party may immediately terminate this Agreement by sending written notice to the breaching party.
9. **Effect of Termination.** Upon termination of the Agreement, Customer shall immediately cease all use of and all access to the Data Service and any Pensa Provided Data. Sections 2, 3, 4 (except to the extent otherwise specified therein), 5, and 9-17 shall survive any termination or expiration. All other rights and obligations shall be of no further force or effect.
10. **Confidentiality.** “Confidential Information” means all nonpublic information, including, without limitation, business, financial and technical information, reasonably considered by a party to be valuable and proprietary and disclosed by one party (the “Disclosing Party”) to the other (the “Receiving Party”) before, on or after the Effective Date. Customer specifically acknowledges that the Pensa-Provided Data, as defined herein, constitutes Confidential Information of Pensa. Confidential Information may also include proprietary or confidential information of third parties that have disclosed such information to a party hereto in the course of its business. Each party agrees not use the other party’s Confidential Information except as permitted herein, and will not disclose such Confidential Information to any third party except to supporting partners and personnel as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). However, each party may disclose Confidential Information of the other: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body,

provided that the Disclosing Party gives reasonable notice to the other party to contest such order or requirement; and (ii) on a confidential basis to legal or financial advisors. Confidential Information does not include information that the Receiving Party proves: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the Receiving Party; (ii) is known to the Receiving Party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iv) the Receiving Party rightfully obtains from a third party without restriction on use or disclosure; or (v) is disclosed with the prior written approval of the Disclosing Party. The parties acknowledge that money damages may not be a sufficient remedy for any breach of Section 3 or this Section 10, and without prejudice to any rights or remedies at law or in equity otherwise available to the Disclosing Party, the Disclosing Party will, if the Receiving Party breaches any provision contained in Section 3 or this Section 10, be entitled to seek injunctive relief, specific performance or other appropriate equitable remedies for any such breach.

11. **Publicity.** Pensa is entitled to list Customer as a customer of its products and services.
12. **Warranties and Disclaimer of Warranties.** Pensa represents and warrants that the Data Services shall conform to any published specifications or documentation, and that any ancillary services (e.g. support) shall be performed in a professional and workmanlike manner. In the event that Pensa fails in any material respect to deliver the Services in accordance with the foregoing warranty, it will use commercially reasonable efforts to cure such failure and, if unable to effect such a cure, it will give Customer a pro-rata refund of fees paid for the affected portion of the Services, as Customer's sole and exclusive remedy for such failure. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SET FORTH ABOVE, THE SERVICES AND THE PENZA-PROVIDED DATA ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PENSA HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT THERETO, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. WE DO NOT WARRANT AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SERVICES, THAT THE FUNCTIONS CONTAINED IN OR PERFORMED OR PROVIDED WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE THAT WE GIVE SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY.
13. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY, OR THEIR AFFILIATES, BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF

OR RELATED TO CUSTOMER'S USE OR INABILITY TO USE THE SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall EITHER PARTY OR THEIR AFFILIATES HAVE liability to THE OTHER for damages IN EXCESS OF THE AMOUNT CUSTOMER PAID FOR THE SERVICES IN THE SIX (6) MONTHS PRECEDING THE CLAIM. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY OR EXCLUSION OF CERTAIN DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO CUSTOMER.

14. **Indemnification.** Pensa will defend any action brought against Customer to the extent that it is based upon a claim by a third party that the Data Service, as provided by Pensa to Customer under this Agreement and used within the scope of this Agreement, infringes any U.S. patent, copyright, or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer, provided that Customer (a) notifies Pensa in writing of the claim within thirty (30) days after becoming aware of such claim; (b) grants Pensa sole control of the defense and settlement of the claim; and (c) provides Pensa with all reasonable assistance, information and authority required for the defense and settlement of the claim. Notwithstanding the foregoing, Pensa will have no liability for any claim of any kind to the extent it results from: (i) modification of the Service; (ii) unauthorized or unlicensed use of the Service; or (iii) the combination, operation or use of the Service with equipment, devices or software not supplied by Pensa, to the extent such a claim would have been avoided if the Service was not used in such combination. If Customer's use of the Service is, or in Pensa's opinion is likely to be, enjoined, Pensa may terminate this Agreement. The provisions of this Section set forth Pensa's sole and exclusive obligations, and Customer's sole and exclusive remedies with respect to infringement of any industrial or intellectual property rights of any kind.
15. **Government Users.** The parties do not anticipate any government user of the Data Service but in the unlikely event of any such use or access, the Data Services and the related documentation are deemed to be "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. As such, 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 would be licensed to any U.S. Government 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.
16. **Amendments.** Any amendments to this Agreement shall only be valid if in writing and signed by an authorized representative of both parties.
17. **Miscellaneous.** Neither party shall be in default for failing to perform any obligation hereunder, other than the payment of monies, if such failure is caused solely by supervening conditions beyond the parties' respective control, including without limitation acts of God, civil commotion, epidemic, strikes, terrorism, failure of third party networking equipment, illegal acts of third

parties, failure of the public Internet or changes in the accessibility of third party websites, power outages, labor disputes or governmental demands or restrictions ("Force Majeure Event"). The laws of the State of Texas, excluding its conflicts of law rules, govern this license and Customer's use of the Services. This Agreement constitutes the entire agreement between Pensa and Customer regarding use of or access to the Services. Customer agrees and acknowledges that any conflicting terms on any PO it may issue are not part of the Agreement. There are no third-party beneficiaries of this Agreement. Any failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. This Agreement operates to the fullest extent permissible by law. We may freely transfer or assign this Agreement and any of our rights or obligations hereunder. Customer may not transfer or assign this Agreement or any of its rights or obligations hereunder without our prior written consent, and any attempt to do so shall be null and void. If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.