



DATADIRECT NETWORKS, INC.

PROFESSIONAL SERVICES TERMS AND CONDITIONS

Professional Services: DataDirect Networks, Inc. ("DDN") will provide technical consulting services ("Professional Services") to you ("Customer") pursuant to the terms and conditions set forth herein ("PS T&C") and the applicable Attachment (as defined below) executed by the parties (collectively, "Agreement") unless you enter into a separate written professional services agreement with DDN. DDN may use contractors to provide such Professional Services to you under this Agreement ("Contractors"). This Agreement constitutes the sole and entire agreement between DDN and Customer regarding the provision of Professional Services and supersedes all prior and contemporaneous communications and agreements regarding same, all of which are merged herein. If any prior or contemporaneous communication from Customer includes any terms or conditions that are in addition to or inconsistent with those contained in this Agreement, such terms and conditions shall be void and of no effect unless specifically agreed to by DDN in writing. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties.

Attachment: The parties shall execute a DDN statement of work or DDN standard project attachment or other agreement in writing which shall set forth the technical and business details of the Professional Services to be performed, including but not limited to the following details thereof: nature, location, fees, dates of performance, Designated Contacts, additional obligations and conditions of performance, a change order process and such other technical and business details regarding the Professional Services as the parties may agree ("Attachment"). All Attachments shall be governed by these PS T&C. Any change to an Attachment shall not be binding on the parties unless it is made in accordance with the change order process set forth in the applicable Attachment. Each party agrees to appoint a principal point of contact, identified in the applicable Attachment as a party's "Designated Contact" for all matters relating to that Attachment. Designated Contacts shall be authorized to make all decisions relative to the Professional Services set forth in the attachment and readily available to the other party as needed to complete the Professional Service. A party may appoint a new Designated Contact by written notice to the other party hereunder.

Customer's Responsibilities: Completion of the Professional Services by DDN in compliance with this Agreement is contingent upon the Customer fulfilling the following responsibilities: (a) payment of applicable Fee and Expenses (as defined herein); (b) providing DDN with access to the Customer locations where Professional Services are to be performed during Customer's normal business hours and as otherwise reasonably required by DDN to perform under the Agreement, including but not limited to (i) security passes for DDN personnel to allow DDN access to, and the ability to enter and leave Customer sites, with laptop personal computers and any other material related to the Professional Services and (ii) adequate onsite access to office space and equipment, and to telephones with outside lines and standard Internet access; (c) completing all necessary facilities arrangements prior to the commencement of the Professional Services (and continuing to maintain the same for the duration of the Professional Services) including but not be limited to such items as power, network connections, floor space and cooling; (d) providing qualified personnel who are capable of performing Customer's duties and tasks under this Agreement who are available to DDN promptly upon a request via pager, telephone, or cell phone; (e) providing accurate, complete, and up to date information, documentation and any other materials required by DDN to perform this Agreement (collectively "Customer Materials") upon which DDN may rely to enable it to perform the Professional Services and (f) participate in any testing requested by DDN for the performance of the Professional Services.

BACKUP OF CUSTOMER DATA, INFORMATION, APPLICATIONS OR SOURCES: DDN SHALL NOT BE RESPONSIBLE FOR BACKING UP, MAINTAINING ANY BACKUP OR RECOVERY OF ANY CUSTOMER DATA, INFORMATION, APPLICATIONS OR SOURCES AND SHALL HAVE NO LIABILITY FOR ANY LOSS, CORRUPTION, UNAVAILABILITY OR LOSS OF CONFIDENTIALITY OR SECURITY OF SUCH CUSTOMER DATA, INFORMATION, APPLICATIONS OR SOURCES THAT MAY OCCUR DURING THE PERFORMANCE OF PROFESSIONAL SERVICES. CUSTOMER REPRESENTS AND WARRANTS THAT IT SHALL BACKUP, MAINTAIN SUCH BACKUP AND HAVE A RECOVERY SYSTEM IN PLACE FOR THE DURATION OF THE AGREEMENT FOR ALL CUSTOMER DATA, INFORMATION, APPLICATIONS OR SOURCES TO ENSURE AGAINST LOSS, CORRUPTION, AVAILABILITY AND SECURITY OF SUCH CUSTOMER DATA, INFORMATION, APPLICATIONS OR SOURCES.

Third Party Licenses: Customer represents and warrants that it has obtained all permissions and license rights and has paid and will pay all fees and royalties for third party proprietary rights and technologies that are necessary for DDN or a DDN Contractor to successfully perform the Professional Services.

Relationship of the Parties: DDN is performing the Professional Services as an independent contractor and nothing in this Agreement will be construed as establishing an employment, agency, partnership, or joint venture relationship between Customer and DDN or any DDN personnel.

CORPORATE HEADQUARTERS

9351 Deering Avenue, Chatsworth, CA 91311

+1-800-837-2298

Fees and Expenses: Customer shall pay DDN the fees for the Professional Service in the amount and on the schedule set forth in the applicable Attachment or quote (“Fees”). Unless stated otherwise in the applicable Attachment, Customer will reimburse DDN for all actual out of pocket expenses, including travel, lodging, and other related expenses incurred by DDN or its personnel in connection with the performance of this Agreement including all Attachments (“Expenses”). At Customer’s request, DDN will provide Customer with documentation for all such Expenses. All Fees, Expenses, and other amounts payable to DDN hereunder do not include any sales, use, value-added, withholding or other applicable taxes, tariffs, or duties, payment of which (excluding any taxes based on DDN’s net income) will be the sole responsibility of Customer. Customer will promptly reimburse DDN for any such amounts that DDN pays on Customer’s behalf. All Fees and Expenses are stated in US currency.

Payment Terms: DDN will invoice Customer no more often than on a monthly basis for all applicable Fees and Expenses as set forth in the applicable Attachment or, if a specific schedule is not included in such Attachment, based on the portion of the Professional Services set forth in the applicable Attachments performed by DDN during the preceding period. Customer will pay each such invoice no later than thirty (30) days after date of invoice. DDN will have the right, among other remedies, to suspend further performance under this and/or other agreements with Customer in the event Customer fails to make any payment when due. Customer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts and/or DDN’s enforcement of this Agreement. Any invoice not paid within such thirty (30) day period will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower. Should Customer’s financial position become unsatisfactory to DDN, immediate cash payments or security satisfactory to DDN may be required by DDN.

Ownership: DDN will exclusively own all rights, title, and interest in and to any software programs, hardware, tools, utilities, processes, inventions, devices, methodologies, specifications, documentation, techniques, technology and materials of any kind owned by DDN prior to entering into this Agreement or used or developed by DDN or its personnel in connection with performing the Professional Services (collectively, “*DDN Materials*”), including all worldwide patent rights, copyright rights, trade secret rights, know-how, and all other intellectual property rights therein. Customer will exclusively own all rights, title, and interest in and to the Customer Materials, including all worldwide patent rights, copyright rights, trade secret rights, know-how, and all other intellectual property rights therein.

Right to Perform Professional Services for Others: Nothing in this Agreement will impair, restrict or limit DDN’s right to perform services, including services similar to or the same as the Professional Services performed under this Agreement, for any other party or to assign any employees or Contractors to perform such services for any other party; *provided* that DDN shall not use Customer Confidential Information to do so.

Licenses: Customer hereby grants to DDN a non-exclusive, worldwide, royalty-free, fully paid-up, with the right to sublicense to its Contractors, license to use Customer Materials for the purpose of performing or producing the Professional Services under this Agreement. Upon receipt of full payment of amounts due DDN under this Agreement, DDN grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the results of the Professional Services (“Professional Services Deliverables”) solely for Customer’s internal business operations. Customer shall not have the right to distribute the Professional Services Deliverable to anyone.

Confidential Information Defined: “*Confidential Information*” shall mean: (i) this Agreement (including all Attachments executed hereunder); (ii) Customer Materials and DDN Materials; (iii) Professional Services Deliverables (iv) any business, technical, financial or personnel information that a party discloses to the other party and designates as “confidential” or “proprietary” at the time of disclosure; and (v) any information that, due to its nature or the circumstances of its disclosure, the receiving party knows or has reason to know should be treated as confidential or proprietary. Confidential Information does not include information that: (i) is or becomes generally known to the public lawfully and through no fault or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without restrictions on use or disclosure; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) is rightfully received by the receiving party from a third party, who has the right to provide such information and who provides it without restrictions on use or disclosure.

Use and Disclosure Restrictions. Each party will refrain from using any Confidential Information disclosed by the other party except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and Contractors who have a *bona fide* need to know such Confidential Information for the performance or enforcement of this Agreement; *provided* that each such employee and Contractor is bound by a written agreement that contains use and nondisclosure restrictions at least as restrictive as the use and disclosure restrictions set forth in this Agreement. Each party will take reasonable steps to protect all Confidential Information disclosed by the other party from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance. The foregoing obligations will not restrict either party from disclosing such Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body; *provided* that the party required to make such a disclosure gives

reasonable notice to the other party, to the extent permitted by law, to contest such order or requirement; (ii) to its legal or financial advisors; (iii) as required under applicable securities regulations; and (iv) subject to customary restrictions, to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

Limited Services Warranty: DDN warrants that the Professional Services set forth in an Attachment will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of the Professional Services as set forth in the applicable Attachment. As Customer's sole and exclusive remedy and DDN's entire liability for any breach of the foregoing warranty, DDN will, at its sole option and expense, promptly re-perform any portion of the Professional Services set forth in such Attachment that fails to meet this limited warranty or refund to Customer the Fees paid for such portion. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL PROFESSIONAL SERVICES AND PROFESSIONAL SERVICES DELIVERABLES ARE PROVIDED TO CUSTOMER "AS IS", AND DDN DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO SUCH PROFESSIONAL SERVICES, THE PROFESSIONAL SERVICES DELIVERABLES AND/OR THE USE THEREOF (INCLUDING, WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND/OR NON-INFRINGEMENT)

LIMITATION OF LIABILITY: IN NO EVENT WILL DDN BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, LOSS OR CORRUPTION OF DATA, LOSS OF BUSINESS, OR LOSS OF PROFITS) OR FOR COSTS OF PROCURING SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DDN'S MAXIMUM AGREGATE LIABILITY ARISING OUT OF AND IN CONNECTION WITH THIS AGREEMENT AND THE PROFESSIONAL SERVICES AND PROFESSIONAL SERVICES DELIVERABLES, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO DDN BY CUSTOMER UNDER THIS AGREEMENT.

Term and Termination: This Agreement will commence on the date both parties have executed an Attachment and shall continue indefinitely thereafter unless and until terminated in accordance with this Agreement. Either party may terminate this Agreement at any time for its convenience upon thirty (30) days' advance written notice to the other party, *provided* that if Customer terminates this Agreement for convenience, all Attachments executed hereunder will remain in effect until completed according to their terms unless DDN agrees otherwise and shall continue to be governed by the terms of the Agreement. Either party may terminate this Agreement on written notice: (a) if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof or (b) upon the occurrence of any of the following events: (i) a receiver is appointed for the other party or its property; (ii) the other party makes a general assignment for the benefit of its creditors; (iii) the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) the other party is liquidating, dissolving or ceasing normal business operations. Upon the expiration or termination of this Agreement and upon request of the other party, each party will promptly return to the other party all Confidential Information of the other party in its possession or control and Customer will, within thirty (30) days after receipt of DDN's invoice, pay all accrued and unpaid Fees and Expenses. Upon the expiration or termination of this Agreement, the rights and obligations of the parties contained in the following Sections of this Agreement shall survive to the extent still applicable: No Backup of Customer Data, Information, Applications or Sources; Third Party Licenses; Relationship of the Parties, Fees and Expenses; Payment Terms; Ownership; Right to Perform Professional Services for Others; Licenses; Confidential Information; Use and Disclosure Restrictions; Limited Service Warranty; Limitation of Liability; Export Restrictions, Governing Law and Jurisdiction and Miscellaneous.

Export Restrictions: Customer shall not export, re-export, or transfer, directly or indirectly, any DataDirect Materials, Professional Services Deliverable, Confidential Information, product, item, or technical data received from DDN to any country or user to which such export, re-export, or transfer is restricted by U.S. laws or regulations (or by the applicable laws or regulations of another country) without first obtaining all required governmental licenses, authorizations, certifications, and approvals.

Governing Law and Jurisdiction: Any action arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. THE PARTIES HEREBY AGREE THAT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT SHALL NOT APPLY TO THIS AGREEMENT (INCLUDING ANY ATTACHMENTS) OR ANY PART HEREOF. Both parties further agree to the exclusive jurisdiction of the state and federal courts located in Santa Clara County with respect to any legal proceeding arising in connection with this Agreement.

Miscellaneous: Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God, or governmental action. This Agreement and all Attachments hereto may only be amended by a written instrument signed by both parties. Neither party's failure to exercise any of its rights under this Agreement will be deemed a waiver or forfeiture of those rights unless such waiver or forfeiture is set forth in a written instrument that has been signed by such party. In the event that any provision of this Agreement is held by a court of law or other government agency to be void, voidable, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Customer may not assign this Agreement in whole or in part, by operation of law or otherwise, without DDN's prior written consent, and any such purported assignment is void and of no effect. Subject to the limitations set forth herein, this Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, personal representatives, guardians, heirs and assigns. In the event of any inconsistency between the terms and conditions of the PS T&C and an Attachment, the terms and conditions of the PS T&C shall control. All typographical or clerical errors made by DDN in a related quotation or in any publication are subject to correction by DDN.

Notices: All notices required or permitted under this Agreement will be in writing, will reference this Agreement and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices will be sent to DDN at 9351 Deering Avenue, Chatsworth, CA 91311 or to Customer at the address set forth in the applicable Attachment or such other address as may be specified by either party to the other party in a written notice.