

PagerDuty Terms of Service

Revised: March 22, 2022

THESE TERMS OF SERVICE (“AGREEMENT”) ARE A LEGAL AGREEMENT BETWEEN YOU OR THE COMPANY YOU REPRESENT INCLUDING ANY OF YOUR OR THEIR AFFILIATES (COLLECTIVELY “YOU” OR “YOUR”), AND PAGERDUTY, INC. (“US,” “WE” OR “OUR”) GOVERNING YOUR ACCESS TO OR USE OF OUR SERVICES.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT REQUIRES THE USE OF ARBITRATION TO RESOLVE DISPUTES ON AN INDIVIDUAL CLAIM BASIS ONLY AND WITHOUT A JURY TRIAL.

- 1. Use of the Services.** Our “Services” include for the purposes of this Agreement one or more of the following, depending on Your order: (i) Our cloud-based application, mobile app, and platform (collectively “**Platform**”) for IT on-call management, alerting, Incident tracking, automation, and Incident and alert analytics; (ii) Our stand-alone Software applications; (iii) Our support and maintenance services; and (iv) Our Professional Services. “**Software**” includes all updates, libraries, plugins, and any other components of the software We provide for Your on-site installation and use during the term of Your subscription specified in Your order (“**Subscription Term**”) that are made generally available to licensed users of the Software without additional fees; such Software may include code licensed under third-party terms, including open source software. “**Professional Services**” means any consulting, architecture, training, configuration, or other similar ancillary Services set forth in an order form and statement of work (“**SOW**”). An “**Incident**” is an event that triggers the Platform to alert Your personnel Using certain Contact Information. You must configure the Platform and provide and maintain accurate Contact Information, follow proper procedure in communicating alerts and triggering events for Incidents to Us, and submit alert requests through proper channels, including, without limitation, alternate channels if standard channels are unavailable, or the Platform may not function properly. “**Contact Information**” means the names, email addresses, telephone numbers, and other required personal information that You want the Platform to alert in the event of an Incident and who have consented to receive such messages via the Service (each a “**Contact Person**”). You will need to designate individuals authorized to maintain the Contact Information, configure the Services, and receive reports from the Services, as well as individuals authorized to use each Service ordered (each a “**User**”), subject to usage limits and restrictions herein and as specified in an order, such as limits on the number and types of Platform Users, numbers and types of Users of the Software, or limits on the number of copies of Software installed on servers (physical or virtual) within Your owned or controlled computing infrastructure (each and “**Instance**”). Instructions on how to configure the Platform, provide Contact Information, and otherwise get the full benefit of Services will be found in the readme and help files, knowledge base, and other documentation made available at <https://www.pagerduty.com/support/> for the Platform, and at <https://docs.rundeck.com/docs> for the Software (“**Documentation**”). We may suspend or terminate Your Use of a Service at any time if You breach any terms of this Agreement, including without limitation failing to timely pay Fees due.
- 2. Affiliates.** If any of Your Affiliates use the Service(s) under this Agreement, then all the terms and conditions of this Agreement that apply to You shall apply to such Affiliate and its activities hereunder. You will remain responsible for the acts and omissions of Your Affiliates in connection with each Affiliate’s use of the Service(s) during the Subscription Term of its/their orders, including, without limitation, breach of the terms of this Agreement applicable to such Affiliate, even if such Control is no longer maintained. Any claim from any Affiliate that uses the Service(s) under the terms of this Agreement shall only be brought against Us by You on behalf of such Affiliate. Notwithstanding the foregoing, We may refuse to provide the Service(s) to any Affiliate that fails to pass, in Our reasonable business judgement, a background check or financial history audit. “**Affiliate**” means any entity which directly or indirectly Controls, is Controlled by, or is under common Control with the party. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the party.

- 3. Trial Period and Free Plan.** If You ordered a “trial” or other limited period no-charge plan, You may use the Service for a fourteen (14) day trial period, or as otherwise expressly set forth in the order (the “**Trial Period**”), solely for evaluation purposes, starting on the date that You registered with Our Service and accepted this Agreement, without charge or further commitment. *The Platform will automatically cease functioning at the end of the Trial Period unless (i) You supply Your payment card or other payment information and purchase a subscription to the Service; (ii) You elect to use the Service under the Free Plan (defined below); or (iii) PagerDuty extends Your Trial Period in its sole discretion.* After the end of the Trial Period, unless You purchase, prior to the end of the trial period, a subscription to the Service or elect to use the Service under the Free Plan, all hosted Contact Information and other data You provide to the Services (“**Customer Information**”) will no longer be available. During the Trial Period You are free to add and remove Users as needed for the evaluation. However, any Users included in a paid subscription to the Services or otherwise under the Free Plan, can only be added or removed in accordance with the terms of the specific plan or term You elect. If You elect to use the Platform under the limited free to use option, and We agree (the “**Free Plan**”), You acknowledge and accept that We may terminate Your use of the Services under the Free Plan for any reason or no reason at all and without any required prior notice. DURING THE TRIAL PERIOD AND USE UNDER THE FREE PLAN, WE WILL HAVE NO OBLIGATION WHATSOEVER TO CONTINUE PROVIDING THE SERVICES TO YOU, AND YOU WILL HAVE NO CLAIM OR REMEDY FOR THE FAILURE OF THE SERVICES. THESE LIMITATIONS ARE IN ADDITION TO THE WARRANTY DISCLAIMERS AND LIABILITY LIMITS IN THIS AGREEMENT.
- 4. Pre-Release Technology.** From time to time, We in Our sole discretion may make beta or otherwise pre-general release versions of Our Services (“**Pre-Release Technology**”) available to You at no additional charge. If You use any Pre-Release Technology, the terms of this Section will govern that use, and control over any conflicting provisions of this Agreement. Pre-Release Technology is Our Confidential Information, and notwithstanding anything to the contrary in this Agreement, You may not provide access to or disclose the existence of Pre-Release Technology to any third party. You may use the Pre-Release Technology only for internal testing and evaluation. We provide the Pre-Release Technology: (a) free of charge; (b) without support; (c) “AS IS”; and (d) WITHOUT INDEMNIFICATION, WARRANTY, OR OBLIGATION TO YOU OF ANY KIND. No service level commitment will apply to the Pre-Release Technology. Certain features or functionality of the Services may not be available in Pre-Release Technology. Our providing any Pre-Release Technology does not constitute Our commitment to offer the Pre-Release Technology on a generally available basis or to continue to provide You with access to the Pre-Release Technology. We may modify Pre-Release Technology or terminate Your access to it at any time in Our sole discretion, and any such modification or termination will not be deemed a material, detrimental change under this Agreement. The aggregate liability (excluding indirect, special, and consequential damages, for which We expressly disclaim all liability) of Us, Our affiliates and suppliers, for any claim arising from Your use of Pre-Release Technology will not exceed one-thousand U.S. dollars (\$1,000 USD). Feedback You provide with regard to Pre-Release Technology is subject to Section 7(c) (*Feedback*) below.
- 5. Subscription Terms.** Subject to payment of all Fees and the terms and conditions of this Agreement, We hereby grant You a limited, non-exclusive, non-sublicensable and nontransferable right during the Subscription Term of this Agreement to use the Services ordered only in accordance with the Documentation, solely for Your internal purposes. The Services may also be subject to certain limitations, such as on the number and types of Users, email alerts, phone call alerts, SMS alerts and other types of alerts, and Instances of the installed Software, each as specified on Our website or in Your order (“**Usage Limits**”). You will be charged the applicable Fees for any use in excess of the Usage Limits. You may add Platform Users from the Platform dashboard as needed, subject to paying applicable additional Fees. User subscriptions to Services cannot be shared or used by more than one (1) named User but may be reassigned to a new User replacing a person who no longer requires access to the Service. You are solely responsible for selecting secure account and User passwords, changing passwords frequently, maintaining the confidentiality of User logins and passwords, and restricting access to the Services. We assume no responsibility for damage or loss arising from unauthorized access to the Services and Your account due to Your failure to protect Your account through proper maintenance of User logins and passwords. The Services may be subject to other limitations as set forth in the Documentation, including, but not limited to, limits on disk storage space, the rate of incoming email requests, the number of inbound calls permitted to the API within a specified period of time, the number of outbound calls the Service will make to a client API within a specified

period of time, the number of alerts the Service will send to a Contact Person within a specified period of time, and the number of permitted Instances of installed Software. You acknowledge that exceeding these other limitations may cause the Service to malfunction, may accrue additional Fees, or may result in suspension of the Service until compliance has occurred.

6. **Restrictions on Use.** You may not use the Services or Documentation except as permitted in this Agreement. You may not cause or permit any third party to: (i) alter, modify or create any derivative works of the Services, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) rent, lease, license, sublicense, encumber, sell, offer for sale, or otherwise transfer rights to the Services or Documentation, including for timesharing or as a service bureau; (iii) port, reverse compile, reverse assemble, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Services; (iv) copy, distribute, link, frame, mirror or otherwise make available any portion of the Services to any third party other than a third-party contractor who may only use the Services to support Your internal purposes; (v) remove or alter any logos, trademarks, links, copyright or other notices, legends or markings from the Services or Documentation; (vi) attempt to bypass or tamper with the security, operation, use limits, or access control technology of the Services; (vii) attempt to access the accounts or data of any other customer or User; (viii) use the Services for benchmarking purposes or otherwise to analyze its workings and features for competitive purposes or in a manner that imposes unusual demands on a Service outside of normal functions and operations; (ix) use, or allow the use of, the Service(s) by anyone located in, under the control of, or a national or resident of a U.S. embargoed country or territory or by a prohibited end user under export control laws (as described in Section 23 below); (x) use the Service(s) in a manner that interferes with the use or enjoyment of it by others, including using the Service(s) to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumventing or disclosing the user authentication or security of the Service(s) or any host, network, or account related thereto; or (xi) use the Service(s) or Documentation in a way that: violates applicable law or infringes upon the rights of a third party, including those pertaining to contract, intellectual property, privacy, or publicity; or that violates the PagerDuty's Acceptable Use Policy, which is incorporated herein by reference and available at <https://www.pagerduty.com/acceptable-use-policy/> (the "AUP"); or that effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene. Notwithstanding any other provision of this Agreement, in the event of Customer's breach of any restrictions in this Section 6, We shall have the right upon notice to immediately suspend Services until such breach is corrected.

7. Proprietary Rights.

- a. *Contact Information and Customer Materials.* You will retain all right, title and interest in and to the Contact Information and all intellectual property rights therein. Nothing in this Agreement will confer to Us any right of ownership or interest in the Contact Information, other than the limited license set forth herein. You agree to provide Us with reasonable access to Your Customer Materials as reasonably necessary for Our provision of Professional Services You have ordered. **"Customer Materials"** means Your materials, systems, personnel and other resources.
- b. *Company Intellectual Property.* We shall retain all right, title and interest in and to the Company Intellectual Property, and any changes, derivatives, corrections, developments, bug fixes, enhancements, updates and other modifications, improvements thereto, and as between the parties all such rights shall vest in and be assigned to Us. Nothing in this Agreement will confer on You any right of ownership or interest in any Company Intellectual Property, other than the limited license set forth herein. **"Company Intellectual Property"** means Our proprietary technology, including the Services and Documentation, websites, software tools, hardware designs, algorithms, software, APIs, user interface designs, architecture, documentation, network designs, know-how, and trade secrets, improvements, materials, methods, processes, formulas, techniques, deliverables and other information developed or otherwise made in whole or part by Us in the performance of the Services, and all intellectual property rights therein and thereto throughout the world (whether owned by Us or licensed to Us by a third party).

- c. *Feedback.* We encourage You to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the Services and related resources (“**Feedback**”). To the extent You provide Feedback, You grant Us a non-exclusive, royalty-free, fully paid, sub-licensable, transferable, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit Feedback (including by incorporation of such Feedback into the Services without restriction), provided that such Feedback does not identify You or Your Users or include any Contact Information without Your prior written consent.

8. Warranty Related to SMS Use in the United States.

By signing up to the Platform, You agree to receive SMS and other types of messages from Us (“Messaging”), and You represent and warrant that You shall (i) receive and will maintain consents from each Contact Person who will receive messages, (ii) maintain procedures for each Contact Person to opt out of participating in Messaging, and once opted-out, You will not re-enroll any Contact Person to Messaging until You have obtained renewed consent from Contact Person to receive Messaging through the Platform, and (iii) comply with all applicable law relating to Messaging in Your use of the Platform, including without limitation, the Telephone Consumer Protection Act and CAN-SPAM. You shall be responsible for compliance with Messaging and related data privacy laws.

9. Support, Security and Privacy.

- a. *Support.* We shall provide Support for the Services as selected by You, depending upon the applicable plan when You enroll in a Service. The applicable support policies can be found on the order form and Our website at <http://www.pagerduty.com/support-policy> for Platform Services and at <https://www.rundeck.com/support-policy> for Software (or such other location as We may designate in the future).
- b. *Security.* We shall maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Platform Contact Information, in accordance with PagerDuty Data Security Policy, available at <https://www.pagerduty.com/data-security-policy>. Without Your prior written consent or that of the Contact Person, We shall not (i) modify Contact Information, (ii) disclose Contact Information to a third party (except as needed to perform the Service or if required to do so by law or governmental process), or (iii) access Contact Information except to provide the Services and prevent or address Service or technical problems. In the event of an intrusion or other breach of the Platform security, Company shall use reasonable efforts to notify You of the breach, once a full investigation into the nature of the breach has been conducted and concluded, and sufficient steps to remediate or correct the breach have occurred to secure customer data and such steps would not be further jeopardized by such notification, and resolve the breach and recover any data disclosed as a result thereof.
- c. *Privacy.* You acknowledge that We will, and You permit Us to, collect, use, and disclose statistical or aggregate information about You and Your Users’ use of the Services, including information about the performance of the Services and other data derived from the use of the Services, for industry analysis, benchmarking, analytics, marketing, to improve or enhance the Services, and other business purposes; provided, that all data disclosed will be in statistical or aggregate form only and will not identify You, Affiliates or Users. We own all right, title, and interest in and to such derived anonymous data; provided, that You retain all of Your right, title, and interest in and to any underlying customer data. Contact Information shall be treated in accordance with Our Privacy Policy for each Service available at <https://www.pagerduty.com/privacy-policy/>. PagerDuty’s Platform processing of Contact Information on Your behalf shall be done in accordance with PagerDuty’s Data Processing Addendum (“**DPA**”), which is incorporated herein by reference, and available at <https://www.pagerduty.com/data-processing-addendum>.

10. Fees and Payment Terms.

- a. You shall pay all Fees associated with Your Use of the Services as set forth on Our website and/or order form (“Fees”). “Subscription Term” means the subscription period You contract for Your Use of the Services as set forth in the applicable order form or self-service check-out.
 - i. *Order Forms*: Except as set forth in the applicable order form, You will pay all Fees associated with an order form in accordance with the following: (a) Fees are invoiced in advance for annual plans; (b) the first invoice will coincide with the order start date; (c) payment will be due within thirty (30) days from the date of the invoice. Once accepted by Us, Your order is non-cancellable and nonrefundable except as provided in this Agreement, and the Subscription Term as set forth in the order form is a continuous and non-divisible commitment for the entire duration of the Subscription Term. The order form is incorporated in this Agreement by reference. Capitalized terms used herein but not defined shall have the meaning set forth in the order form. In the event of a conflict between an order form and this Agreement, the terms of the order form shall supersede the terms of this Agreement.
 - ii. *Self-Service*: For Services with self-service annual plans: (a) You must indicate an initial number of Users and other Usage Limits as applicable, and may not reduce the number during the Subscription Term of the plan; (b) for the first month, We will charge Your payment card a full year of Subscription Term Fees based on the order, which amount is not cancellable or refundable; (c) any Users added or Usage Limits increased during the Subscription Term of Your plan will have their subscription fees calculated at the rate then in effect and prorated for the remainder of the Subscription Term so that all subscriptions shall terminate on the same date, and We will charge the prorated amount to Your payment card in the month in which the changes are effective. For self-service month-to-month plans: (x) You must select a plan, which You can cancel at any time; (y) We will charge Your payment card monthly, in arrears, based on the largest number of Users active and Usage Limits amounts recorded on any day of the month; and (z) We reserve the right to change the Fees at any time. We will charge Your card on a monthly basis, but may change the date on which the charge is posted at any time. You will pay all applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.
- b. You are responsible for keeping all account information accurate and up-to-date, including payment card, address, and account contact information. You hereby represent that You have the right to provide Us with Your payment card information and authorize Us to charge the payment card for all Fees. You agree to pay all charges incurred by Users of Your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Services at the prices in effect when such charges are incurred. All Fees are payable in United States dollars and are non-cancelable and non-refundable except as otherwise set forth herein. You shall be responsible for paying all sales, use, value added or other taxes, except for taxes based on Our income. For unpaid payments, not properly disputed, We may without waiving or prejudicing any other rights or remedies available to Us, a) charge the lesser of 1% per month or the maximum rate permitted by applicable law, b) suspend the Services immediately until Your Fees is brought current, and/or c) where applicable, automatically accelerate all remaining payments such that the total Fees under the order become immediately due and payable. You will reimburse any costs or expenses (including, but not limited to, reasonable attorneys’ fees) incurred by Us to collect any amount that is not paid when due, and not properly disputed. If You are paying by a payment card, and if Your payment card is declined for any installment, beginning five (5) days after the unsuccessful charge, We may suspend the Services immediately until Your payment is brought current. If a PO number is required by You in order for an invoice to be paid, then You must provide such number by emailing accountsreceivable@pagerduty.com within three (3) days of execution of an order form. However, You agree that a failure to provide a PO does not relieve You of Your obligations to pay Your Fees. **California Residents.** The provider of Services is: PagerDuty, Inc., 600 Townsend Street #125, San Francisco, CA 94103. If You are a California

resident, in accordance with Cal. Civ. Code §1789.3, You may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

- c. You will notify Us in writing in the event You have a good faith dispute as to Fees or taxes payable by You under this Agreement by emailing accountsreceivable@pagerduty.com. You will provide such notice to Us prior to the due date of the invoice containing such Fees or taxes due that are in dispute and the parties will work together to resolve the applicable dispute promptly. You will pay all amounts that are determined to be payable by resolution of the dispute (by adversarial proceedings, agreement or otherwise) within ten (10) days following such resolution.

11. Confidentiality.

- a. *Definition of Confidential Information.* As used herein, “**Confidential Information**” means all confidential information disclosed by a party to this Agreement (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Contact Information and any ancillary information, such as account information, and alert priorities. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was or becomes known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party as evidenced by written records, or (iii) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information.
- b. *Protection of Confidential Information.* Receiving Party shall not disclose Disclosing Party’s Confidential Information to any third party except as permitted by this Agreement. Receiving Party shall only use Disclosing Party’s Confidential Information to fulfill its obligations under this Agreement. Receiving Party shall use the same degree of care to protect the confidentiality of the Confidential Information that it uses to protect its own confidential and proprietary information (but in no event less than reasonable care). Receiving Party may disclose Confidential Information to its employees, consultants and agents who reasonably need to know such Confidential Information for purposes of this Agreement, provided that Receiving Party shall ensure that such employees, consultants and agents are bound by obligations of confidentiality substantially the same as the obligations in this Section. Receiving Party shall be liable for any disclosures of Confidential Information by its employees, consultants and agents in violation of this Section.
- c. *Compelled Disclosure.* The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or governmental authority to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party shall limit any disclosure of Confidential Information pursuant to this Section to the extent strictly necessary to comply with the applicable request by such governmental entity. Any disclosure of Confidential Information pursuant to this Section shall not affect the confidential treatment of such disclosed Confidential Information.
- d. *Remedies.* Receiving Party agrees that a breach of this Section may result in immediate and irreparable harm to Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, Disclosing Party will be entitled to seek equitable relief, including but not limited to a temporary restraining order, temporary injunction or permanent injunction without the posting of a bond or other security.

12. Indemnification.

- a. *By Us.* We shall defend, indemnify and hold You harmless from and against all claims, losses and damages (including reasonable attorneys' fees) made by a third party against You that the Services infringes that third party's United States intellectual property rights, except to the extent such a claim arises from Your misuse of the Service. If We believe that any portion of a Service may be subject to such a claim, then We may, at Our sole option and expense, procure for You the right to continue using the Service, modify or replace the infringing portions of the Service to allow for continued use, or if these alternatives are not commercially reasonable, refund any unused, prepaid Fees and terminate this Agreement. Notwithstanding the foregoing, the Our indemnification obligations set forth in this Section 12(a) do not apply to, and We will have no obligation to You for, any claim that arises from (i) modifications to the Service by anyone other than Us or a third-party expressly instructed on Our behalf, (ii) modifications to the Service based upon specifications furnished by You (iii) You and/or any of Your Users' use of the Service other than as specified in this Agreement, the Order Form or in the applicable Documentation, (iv) use of the Service in conjunction with third-party software, hardware, data or any other combination other than that expressly approved by Us, or (v) any combination of the foregoing. THIS SECTION 12 STATES OUR ENTIRE LIABILITY FOR INFRINGEMENT RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND SHALL NOT APPLY DURING ANY TRIAL PERIOD OR UNDER ANY FREE PLAN. As a condition to being indemnified You shall promptly notify Us of any claim, and allow Us sole control of the defense and settlement of the claim.
- b. *By You.* You agree to defend, indemnify and hold Us harmless from and against all claims, losses and damages, suits, government investigations, fines, actions, damages, settlements, losses, liabilities, costs and expenses (including reasonable attorneys' fees) for any breach of Your representations, warranties and covenants set forth in Section 8 (*Warranty Related to SMS Use in the United States*) above.
- c. *Indemnification Procedures.* As a condition to being indemnified under this Section 12, the party seeking indemnification shall: (i) promptly notify the indemnifying party of the claim; (ii) allow the indemnifying party sole control of the defense and settlement of such claim; and (iii) provide assistance, at the indemnifying party's expense, in defending or settling the claim. The indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement, and not settle any such claim in a manner that does not unconditionally release the indemnified party without the indemnified party's written consent, not to be unreasonably withheld or delayed.

13. Limited Warranties; Disclaimers.

- a. *Platform.* We warrant that the Platform will perform in accordance with the Service Level Agreement (SLA) set forth on Our website at <https://www.pagerduty.com/standard-service-level-agreement/>; provided, however, that the sole remedy for breach of this warranty or failure of the Service to perform shall be as set forth in that SLA.
- b. *Software.* We warrant for the first ninety (90) days of the Subscription Term that the Software will operate in substantial conformance with the Software Documentation when used in normal operating conditions. Your exclusive remedy for breach of this warranty is to notify Us in writing in reasonable detail of the non-conforming aspect of the Software during the warranty period, and upon receipt of such notice, We, at Our option, will either use commercially reasonable efforts to modify and provide an update to the Software so that it is in conformance with this warranty requirement, or provide a commercially reasonable work-around within a reasonable period of time. Notwithstanding any other provision of the Agreement, this Section sets forth Your exclusive rights and remedies and Our sole liability in connection with the warranty related to the performance of the Software.

- c. *Professional Services.* We warrant to You that the Professional Services will be performed in a competent and workmanlike manner in accordance with accepted industry practices and the terms and conditions herein. However, if You do not provide Us timely access to Your Customer Materials in Our performance of Professional Services, then Our performance will be excused until You do so. Your exclusive remedy for breach of this warranty is to notify Us in writing within thirty (30) days of the non-conforming Services. Upon receipt of such notice, at Our option, We will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services and will refund You the prorated amount of Fees for the unperformed and non-conforming Professional Services. This Section sets forth Your exclusive rights and remedies and Our sole liability in connection with the performance of Professional Services.
- d. EXCEPT FOR THE FOREGOING, WE PROVIDE THE SERVICES AND DOCUMENTATION “AS IS” WITHOUT ANY WARRANTY WHATSOEVER AND HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THAT THE SERVICES WILL BE FREE FROM ERRORS OR VIRUSES, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY, ACCURACY, SECURITY OF DATA, OR ACHIEVEMENT OF RESULTS.
- e. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT, SERVICE OR CONTENT ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE, SERVICE OR CONTENT, AND WE SHALL NOT BE A PARTY TO, LIABLE FOR NOR DO WE IN ANY WAY MONITOR, ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF OTHER PRODUCTS OR SERVICES.

14. Reseller Transactions. If any of Your purchases were made through an authorized reseller of Ours (“Reseller”):

- a. You will pay any owed amounts to the Reseller, as agreed between You and the Reseller. You agree that We may suspend or terminate Your use of the Services if We do not receive Our payment of Fees from the Reseller.
- b. You may place Your order through the Reseller via an order placed with Us, or through Your purchases via the self-service function in the Service. The Reseller will be invoiced for any orders placed via self-service for which You will be responsible to pay. The Reseller and You are responsible for the accuracy of the orders placed.
- c. Reseller may not modify this Agreement or make any commitments on Our behalf. Only this Agreement governs Our obligations to You.
- d. The amounts paid by the Reseller to Us for Your use of the Services under this Agreement will be deemed the amount actually paid under this Terms of Service for purposes of calculating Our liability under Section 15 (*General Limitation of Liability*).
- e. Your renewal pricing will be communicated to You by the Reseller in accordance with the terms You have with the Reseller or Us prior to the renewal Subscription Term, under Section 19 (*Term and Termination*).

15. General Limitation of Liability. EXCEPT FOR CUSTOMER’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12(b), NEITHER PARTY SHALL BE LIABLE HEREUNDER TO THE OTHER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, WHETHER OR NOT FORESEEABLE AND EVEN IF SUCH PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12(b) AND WHERE OTHERWISE EXPLICITLY INDICATED, A PARTY’S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. WITHOUT LIMITING THE FOREGOING, WE SHALL HAVE NO LIABILITY

FOR ANY FAILURE OF A SERVICE ARISING FROM OR RELATED TO (I) ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS, (II) YOUR OR YOUR USERS' FAILURE TO CONFIGURE THE SERVICE IN CONFORMANCE WITH THE DOCUMENTATION, (III) YOUR OR YOUR USERS' FAILURE TO PROVIDE ACCURATE CONTACT INFORMATION TO THE SERVICE, OR (IV) ANY MESSAGING LAWS. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

- 16. Liability for Our Indemnification.** THE FOREGOING LIMITATION OF LIABILITY SET FORTH IN SECTION 15 ABOVE SHALL NOT APPLY TO OUR INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 12(a) IF, AND ONLY IF, THE TOTAL AGGREGATE FEES PAID AND PAYABLE BY YOU TO US WITH RESPECT TO YOUR PURCHASE OF THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM EXCEEDS TWENTY-FIVE THOUSAND UNITED STATES DOLLARS (US\$25,000). OTHERWISE, SECTION 15 SHALL APPLY TO OUR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12(a).
- 17. Modifications to this Agreement.** We reserve the right, at Our sole discretion, to modify or replace any part of this Agreement by (i) posting a revised Agreement on Our site or (ii) providing notice to You of the change. modifications will take effect at the start of the month following notice for self-service month-to-month plans, and at the end of the prepaid Subscription Term for all other plans.
- 18. Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US. For any dispute with Us, You agree to first contact Us at legal@pagerduty.com and attempt to resolve the dispute with Us informally. In the unlikely event that We have not been able to resolve a dispute with You after sixty (60) days, any controversy or claim arising out of or relating to this Agreement on an individual basis only and not on behalf of a class, or the breach hereof, shall be settled by arbitration in the city of San Francisco, California, by binding arbitration by JAMS, Inc. ("JAMS"), under the Optional Expedited Arbitration Procedures then in effect for JAMS. JAMS may be contacted and its rules reviewed at www.jamsadr.com. Any award shall be final, binding and conclusive. A judgment upon the award rendered may be entered in any court having jurisdiction thereof. Nothing in this Section shall be deemed as preventing either party from seeking preliminary injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of data security requirements, or intellectual property rights or other proprietary rights.
- 19. Term and Termination.** This Agreement commences when You accept the terms, and expires on the date of expiration or termination of all Subscription Terms ("**Term of Agreement**"). Each order will state the Subscription Term for the Services ordered. If none is stated the Subscription Term is one (1) year from the date of the order.

 - a. *Platform.* At the end of each Platform Subscription Term, the associated order shall automatically renew for an additional annual term at the prices communicated to You at least sixty (60) days prior to the end of that Platform Subscription Term (or the same prices as the prior Subscription Term if no new prices are provided), unless You notify Us of Your intent not to renew by sending an email to renewals@pagerduty.com at least thirty days (30) before the renewal date. We will send the Platform renewal notice to the contact email listed on the account unless You notify Us to use another email contact with Your account.
 - b. *Software.* Software Subscription orders will *not* automatically renew upon the expiration of a Software Subscription Term. As such, upon the expiration of orders for Software hereunder, such Software orders will automatically terminate unless renewed by mutual agreement of the parties. In the event of such expiration, Your access and use of the Software will terminate. In Our discretion, We may choose to allow You to continue to access and use the Software for an additional thirty days, as We both negotiate new terms. If We agree to a new Subscription Term, the Agreement will

renew, and the renewal Subscription Term will be effective from the expiration date of the prior Subscription Term.

- c. *Renewal Charges.* If You have Your payment card number on file, Your card will be charged for the Service renewal term in accordance with the billing terms set forth in these terms.
- d. *Termination.* You may choose to terminate this Agreement and all orders at any time for any reason with written notice, provided that upon such termination: (i) You will not be entitled to a refund of pre-paid Fees; and (ii) all remaining Fees for a then-current order or Subscription Term that are outstanding will become immediately due and payable. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party for a material breach that remains uncured at the expiration of such period. Immediately upon termination of this Agreement for any reason, You will cease use of the Services, pay in full all Fees due upon termination, and return or destroy all copies of Our Confidential Information and the Software. After the expiration or termination of this Agreement for any reason Your account shall be deactivated and all Contact Information deleted. All provisions of this Agreement which by their nature should survive cancellation or termination of this Agreement shall survive cancellation or termination.

20. Publicity. Neither Party shall refer to the identity of the other Party in promotional material, publications or other forms of publicity relating to the Service unless the prior written consent of the other Party has been obtained; provided, however, that We may use Your name and logo for the limited purpose of identifying You as a customer of Our Services on Our websites, and in other marketing materials distributed by Us (which may include emails and other web and print materials), and We agree to comply with any trademark usage policies or brand guidelines You provide to Us for such purposes.

21. Professional Services. If You purchase Professional Services You will be responsible for certain obligations, and acknowledge that failure to fulfill Your obligations may result in a delay in performance hereunder. Any such delay caused by You may result in additional charges. If We terminate the Professional Services component of the Order Form for breach of this Section, no refunds of Professional Services fees will be provided. You will:

- a. provide access as needed for Us to fulfill the Professional Services.
- b. provide Us with reasonable support, including, for example, access to facilities, resources and employees, and timely decisions or approvals as necessary for Us to complete the tasks agreed to between the parties within ninety (90) days of the Order Form Effective Date.
- c. assign specific personnel ("**Project Sponsor**") who will serve as Our executive-level contact. The Project Sponsor will have full authority to act on behalf of You with respect to: (1) make major project decisions related to Professional Services; (2) identify and secure timely resources to perform responsibilities outlined in the order, subsequent project resource plans, or roles and responsibilities document; and (3) communicating the goals and benefits of the project to the organization.
- d. be responsible for configuration of Your management systems to send Customer Materials to Us.
- e. provide access to Your directory service or a list of Users for use in provisioning Users in Our Service platform.
- f. provide a list of services and teams that You wish to provision.
- g. work with Us to create and provide escalation policies including associated schedules.

22. U.S. Government End Users Restricted Rights. If You are a branch or agency of the United States Government, the following provision applies. The Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

- 23. Export laws.** You represent and warrant that (a) You are not located in or a national of a country subject to a United States Government embargo, (b) You will not access or use the Services (and will not permit any third parties including Your Users to do so either) in any country embargoed by the United States, (c) neither You, nor Your Users are a foreign military end-user, military-intelligence end-user or other foreign person or entity blocked or denied by the United States Government, (d) that You will not place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations, (e) You will not use the Services for any purpose prohibited by United States or applicable international import and export laws and regulations, including without limitation the development and creation of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned aerial vehicle systems, or military and military-intelligence end-uses, and (f) You are entirely responsible for Your compliance with all applicable United States laws and regulations and with all applicable local laws and regulations related to export and import.
- 24. Audits.** You agree that We shall have the right, at Our expense and on reasonable prior notice, to audit Your relevant books, records, and logs relating to use of the Services to confirm Your compliance with this Agreement. At Our discretion We may also conduct the audit by requesting Your certification in writing of compliance with the applicable Usage Limits. If any audit discloses an underpayment of fees for the period under review based on actual usage, then, without limiting Our remedies, You agree to immediately pay Us the amount of the underpayment. This Section 24 (*Audits*) will survive termination or expiration of this Agreement for two (2) years.
- 25. Miscellaneous.** You will only use the Services in accordance PagerDuty policies, including PagerDuty's Acceptable Use Policy, available at <https://www.pagerduty.com/acceptable-use-policy/>, ("AUP") and with applicable law, including without limitation all export control laws. This Agreement shall be governed by and interpreted in accordance with the laws of the state of California without regard to its conflict of laws provisions. You may not assign, sublicense, delegate or otherwise transfer any of Your rights or obligations under this Agreement without Our prior written consent. We may assign this Agreement at Our sole discretion. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be construed to reflect the parties' original intent, and the remainder of this Agreement shall remain in full force and effect. This Agreement constitutes the entire understanding and Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous Agreements or understandings. The failure of either party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. The parties to this Agreement are independent contractors and no agency, partnership, joint venture, employment or similar relationship exists between them. Neither party has the authority to bind the other or incur any obligation on its behalf. Notices required hereunder shall be effective upon their delivery by email, courier or delivery service, or first class United States mail, return receipt requested (effective upon receipt).