Web Terms for Services, Software and Equipment as of April 13, 2018

These Website Terms for Services, Software and Equipment apply to sales made by West Safety Solutions Corp. and West Safety Services, Inc. (if in the United States) or West Safety Services Canada, Inc. (if not in the United States) (as applicable, “West”) to the customer issuing a purchase order to West (“Customer”), as of the date of such purchase order (“Effective Date”). These terms consist of these terms and conditions and any orders or statements of work referencing these terms or issued by Customer to West, and any quotes from West to Customer on which a purchase order is based (each, an “Order”) describing the West services (“Services”), software object code and accompanying documentation (“Software”) and/or hardware or other equipment (“Equipment”) that West agrees to provide to Customer. “Affiliate” has the meaning in Rule 405 of the U.S. Securities Act of 1933, as amended.

The terms of any separate agreement executed by the parties and applicable to a purchase will supersede these Terms.

1. Term
These Terms will continue from the Effective Date until the expiration or termination of the latest-ending Order.

2. Software
2.1. License Grant. Subject to these Terms, West grants to Customer a personal, nonexclusive, nontransferable, non-sublicensable, license to use the Software at the location (“Site”) and on the number of servers, workstations and users or other applicable metric set forth in the Order, solely for Customer’s internal purposes, to copy the Software onto a storage device and to make one copy solely for backup and disaster recovery purposes.

2.2. Restrictions. Customer will not itself, or through any Affiliate, agent or other third party: (a) sell, lease or sublicense or otherwise transfer the Software; (b) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from the Software; (c) modify or enhance the Software or write or develop any derivative software or any other functionally compatible, substantially similar or competitive products; (d) network the Software or use the Software to provide processing services to third parties, commercial timesharing, rental or sharing arrangements or otherwise use the Software on a service bureau basis; (f) provide, disclose, divulge or make available to, or permit use of the Software by any third party without West’s prior written consent; or (g) use or copy the Software except as permitted hereunder.

2.3. Audit. On 45 days written notice, West may audit Customer’s use of the Software. Customer agrees to cooperate with West’s audit and provide reasonable assistance and access to information. Any such audit will not unreasonably interfere with Customer’s normal business operations. Customer agrees to pay within 30 days of written notification any fees applicable to Customer’s use of the programs in excess of Customer’s license rights. If Customer does not pay, West can end Customer’s maintenance and support, licenses and these Terms. Customer agrees that West will not be responsible for any of Customer’s costs incurred in cooperating with the audit.

3. Maintenance and Support Services
To the extent that an Order provides for maintenance and support Services for the Equipment and Software, such Services will be provided in accordance with West’s then-current Maintenance and Support Services terms located at https://www.west.com/legal-privacy/terms-conditions/.

4. Limited Warranty
4.1. Software and Equipment Limited Warranty. West warrants that the West Software and Equipment will perform substantially in accordance with West’s specifications for 12 months from the Acceptance Date (see Section 11 below). West will, at its sole discretion and as Customer’s sole remedy, repair or replace the problem Software and Equipment, provided that the problem can be reproduced on either West’s or Customer’s systems. Replacement parts are warranted to be free from defects in material and workmanship for 90 days or for the remainder of the limited warranty period of the West Equipment they are replacing, whichever is longer. The limited warranty includes remote support services (help desk) during the warranty period. Freight costs to ship defective Equipment to West are borne by Customer, with return at West’s expense. West will pass through to Customer any third party manufacturer warranties for products supplied by West. Customer’s access to and use of third party Equipment and Software will be and remain subject to all terms, conditions and licenses imposed by the manufacturers and/or third party licensors of such third party Equipment or Software.

4.2. Services Limited Warranty. West warrants that Services will be provided in a workmanlike manner, in accordance with industry standards and by individuals with suitable skills and abilities.

4.3. Disclaimer. West will not be obligated to repair or replace any Software or Equipment which (i) has been repaired by others; (ii) has been abused or improperly handled, stored, altered, or used with third party material or equipment; (iii) has been subject to power failures or surges, lightning, fire, flood or accident; or (iv) has not been installed by West or a West authorized technician. EXCEPT AS STATED IN THIS SECTION, WEST DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY OR CONDITION OR LOSS OF DATA, NETWORK CONNECTIVITY, INTEROPERABILITY OR THAT THE SOFTWARE, EQUIPMENT, SERVICES OR RELATED SYSTEMS WILL BE UNINTERRUPTED OR ERROR-FREE.

5. Limitation of Liability
5.1. Limitation. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA, OR PROFITS, OR COST OF
COVER. THE TOTAL LIABILITY OF WEST FOR ANY 
REASON WILL BE LIMITED TO THE AMOUNT PAID BY 
CUSTOMER UNDER THE RELEVANT ORDER IN THE SIX 
MONTHS PRIOR TO THE CLAIM.

5.2. Application. THESE LIMITS ON LIABILITY APPLY 
WHETHER THE CLAIM ARISES OUT OF BREACH OF 
WARRANTY, CONTRACT, TORT, OR STRICT LIABILITY, 
AND EVEN IF THE DAMAGES ARE POSSIBLE OR 
FORESEEABLE.

5.3. Time Limit. ANY SUIT MUST BE FILED WITHIN TWO 
YEARS AFTER THE CAUSE OF ACTION ACCRUES.

6. Indemnification

6.1. West Indemnity. West will indemnify, defend and hold 
harmless Customer from third-party claims, actions, suits, 
proceedings, costs, expenses, damages and liabilities, 
including reasonable attorney fees and expenses (collectively, 
“Claims”) for physical injury or death or tangible property 
damage to the extent caused by West’s gross negligence or 
willful misconduct.

6.2. Customer Indemnity. Except to the extent prohibited by 
applicable law, Customer will indemnify, defend and hold 
harmless West, its Affiliates and their officers, directors, 
employees and agents from Claims (a) relating to the 
Customer Materials (see Section 8.3 below); (b) relating to 
any Customer product or service; or (c) for physical injury or 
death or tangible property damage to the extent caused by 
Customer’s gross negligence or willful misconduct.

6.3. Procedures. The indemnified party will (a) notify the 
other party of any Claim; (b) relinquish control of the defense 
and settlement; and (c) assist the indemnifying party as 
reasonably requested. The indemnifying party may settle any 
Claim without the indemnified party’s consent if the settlement 
does not affect the rights of the indemnified party. The 
indemnified party may participate in the defense at its 
expense.

7. Termination

If either party fails to cure a material default within ten days 
for late payments, or 30 days for other default, after notice 
specifying the default, the non-defaulting party may terminate 
the applicable Order, and pursue any other available 
remedies at law or equity. The cure period will extend for 30 
more days if West uses good faith efforts to cure. Software 
licenses will remain in force until terminated, if at all, due to an 
uncured material default. On termination of a Software 
license, Customer will to the extent applicable (a) cease using the 
Software, and (b) certify to West within one month after 
termination that Customer has destroyed or has returned to 
West the Software and all copies. This requirement applies to 
copies in all forms, partial and complete, in all types of media 
and computer memory, and whether or not modified or 
merged into other materials.

8. Intellectual Property

8.1. West IP. West retains full and exclusive ownership of and 
all rights in, to and under its trademarks, service marks, 
tradenames and logos, and any design, data, specification, 
know-how, software, device, technique, algorithm, method, 
discovery or invention, whether or not reduced to practice, 
relating to the Services, Software and Equipment and any 
development, enhancement, improvement or derivative works 
thereto except for the Customer Materials (collectively, 
including all intellectual property rights, “West IP”). Customer 
receives no other right, title, or interest in, to, or under West 
IP. West IP is West’s confidential information. Customer will 
cooperate to take such actions reasonably requested to vest 
ownership of West IP in West.

8.2. Restrictions; Reservation of Rights. Customer will not 
disclose or allow access to West IP, including without 
limitation, software and systems, by anyone other than 
Customer’s employees and subcontractors who have a need 
to access the West IP and who are bound by law or written 
agreement to comply with Customer’s duties under these 
Terms. Neither party will reverse engineer, decompile, 
disassemble, or translate the other party’s intellectual 
property or confidential information. Each party reserves all 
rights to its intellectual property and confidential information.

8.3. Customer Materials. Customer will provide information 
reasonably requested by West to perform the Services 
(“Customer Materials”). Customer warrants that (a) Customer 
is solely responsible for the content and rights to the 
Customer Materials; (b) the Customer Materials will be 
accurate; and (c) West’s use of the Customer Materials will 
not violate the rights of any third party. Customer will retain 
ownership of all Customer Materials.

9. Delivery

Equipment will be shipped FCA point of origin (Incoterms 2000) on completion of the manufacturing process, and 
Software will either be shipped using the above method or 
made available for download from a site designated by West. 
All shipping and handling charges will be prepaid by West and 
charged to Customer. For RMA requests or other returns, 
West’s Defective Equipment Return Policy or Project and 
Spare Equipment Return Policy will apply.

10. On-Site Services

10.1. West Obligations. If West performs Services at 
Customer’s premises, such as installation (“Installation”), site 
survey, project management, training or cutover services (as 
applicable, “On-Site Services”), West will:
• If Installation is purchased, install and perform acceptance 
testing on the Software and Equipment at the Site in 
accordance with West’s normal installation and testing 
practices.
• If training is purchased, perform training as specified in the 
Order.
• Designate a project manager with authority, competence, 
and responsibility to communicate information to West and 
to act as liaison between West and Customer.

10.2. Customer Obligations. If On-Site Services are ordered, 
Customer will, at its expense:
• Designate a general project coordinator, with authority, 
competence, and responsibility to communicate information 
to West and to act as liaison between Customer and West.
• Ensure that staff: (i) are available during nonstandard work 
times as necessary (early, late and weekends) (ii) monitor 
acceptance testing; and (iii) are on-site for technical 
training, if applicable.
• Provide unobstructed access for the installation and testing of the Software and Equipment and cabling, including obtaining any necessary consents from the landlord, building owner or others.
• Ensure that any Customer equipment meets West's specifications.
• Provide, within the Site, suitable and easily accessible secure storage of tools, test sets, lockers and employees’ personal effects.
• Ensure that the Site will meet all temperature, humidity controlled, air-conditioned, and other environmental requirements set forth in the applicable specifications and will be dry and free from dust.
• Provide all patching, painting, openings, conduits, floor reinforcements or other furniture or mechanical modifications pertinent to the installation.
• Provide ample electric current of proper voltage for any necessary purpose suitably terminated in a room where it is required, including properly grounded copper cold water pipe before meter ground as specified by West.
• Provide an exclusive VPN tunnel to allow for remote diagnostics and a modem for establishing the remote access by West.
• Dispose of all Equipment packing material.
• Maintain, at all times, a procedure, external to the Software and Equipment, for the reconstruction of lost or altered files, data, or programs deemed necessary by Customer.
• Ensure that West is promptly informed of any problems with the Software or Equipment.
• Ensure Customer’s third party vendors collaborate with West in a reasonable and timely manner.

10.3. Exclusions, Changes. If On-Site Services are prevented, interrupted or delayed due to Customer’s failure to meet its obligations stated above, or if Customer unexpectedly delays or changes the agreed-on schedule for On-Site Services, Customer will be responsible for applicable travel and lodging costs, charges at West’s standard hourly rates for the time during which such On-Site Services were prevented, interrupted or delayed, any other direct costs incurred by West, and West then-current rescheduling fees (currently $300 per person day of time scheduled to be On-Site). West will not be deemed to be in default nor be held responsible for any delays or failures resulting from an event of Force Majeure or for any delays resulting from Customer or any of Customer’s third party vendors or from Customer’s obligations stated above. Changes to the design or installation plan by Customer after the original Order will be considered a request for a change order. On receipt of a request for a change order, West will within ten business days either accept or refuse the request for a change order and will issue a new quote to cover any costs, if applicable, associated with the change order.

11. Acceptance
If West is not performing Installation, the Software and Equipment will be deemed accepted when West has completed its shipping obligations. If West is performing Installation, then Customer will provide West with a written notice of acceptance or rejection, based on a Severity Level 1 or 2 failure (as defined in the Maintenance and Support terms), within ten calendar days after West’s notice of System Cutover (“Notification Date”), which acceptance will not be unreasonably withheld or conditioned. If Customer does not accept the Software and Equipment, it will notify West in writing within ten calendar days of the Notification Date and will specify the Severity Level 1 or 2 failure. West will use commercially reasonable efforts to promptly diagnose and correct all identified failures and the acceptance process will be repeated until the System is accepted. If Customer fails to provide written notice of rejection as stated above within the time stated above, acceptance will be deemed to have occurred. “System Cutover” will mean the first date that the Software and Equipment is used for live call-taking or dispatching. If the Software and/or Equipment is being installed at multiple sites, the above acceptance process will apply to each site. The date of acceptance of the first site will be referred to as the “Acceptance Date”. Services will be deemed accepted when performed.

12. Payment

12.1. Payment Terms. If Installation is not purchased, then all fees will be invoiced on shipment. If Installation is purchased, Customer will be invoiced according to the following terms:
10%-on Acceptance Date
30%-on System Cutover
30%-on acceptance of Customer’s Order

12.2. Payment Method. Customer will pay all invoices within 30 days of invoice date, without setoff or deduction, preferably via electronic funds (ACH, EFT, or wire transfer). West will apply payments to the oldest outstanding invoice.

12.3. Taxes. Customer will bear all applicable taxes, duties, and other government charges relating to the Services (including applicable interest and penalties), except taxes based on West's income. Any tax exemption must be supported by appropriate documentation.

12.4. Late Payments. Invoices not paid when due will bear interest from the due date at the lower of two percent per month or the highest allowable rate. Customer will pay all reasonable costs of collection (including attorney fees). West may change payment terms or require a deposit on an adverse change in Customer’s financial condition or payment record.

12.5. Cancellation Fees. Cancellation of any element of an Order before shipment or performance of Services will result in cancellation charges equal to 25% of the price of the cancelled item. Anything that has been specifically developed for Customer, including any special order or custom Software or Equipment, is not cancellable. Cancellation or rescheduling is not permissible after shipment. Delays by Customer to delivery, Installation services, or acceptance testing that in the aggregate exceed six months may, in West’s discretion, be
treated as a cancellation of the order and be subject to the greater of the above fees or West’s total expenses allocated to the project through such date.

12.6. Payments Final. All amounts paid are final and nonrefundable. Equipment and Software may be returned only pursuant to a valid warranty claim or as permitted as part of Maintenance and Support Services.

13. Insurance

Each party will maintain: (a) Workers’ Compensation insurance required by law; (b) employer’s liability insurance with limits of at least $500,000 for each claim; (c) comprehensive automobile liability insurance with limits of at least $1,000,000 for each claim; (d) Commercial General Liability insurance with limits of at least $1,000,000 combined single limit for bodily injury and property damage for each claim; (e) Professional Liability or Errors and Omissions insurance of at least $1,000,000 for each claim; and (f) excess or umbrella liability at a limit of at least $5,000,000 per claim. The CGL, excess or umbrella liability and automobile liability policies will designate the other as an Additional Insured. On request, the other party will furnish certificates evidencing the foregoing insurance. Each party will strive to notify the other at least 30 days before any cancellation or termination of its policy.

14. Confidentiality

Exhibit A-Confidentiality and FOIA applies to disclosure and use of confidential information exchanged under these Terms and disclosures required by applicable freedom of information or public records laws.

15. Miscellaneous

15.1. Force Majeure. Neither party is liable for delays or defaults in its performance hereunder (except for its payment obligations) due to causes beyond its reasonable control, including: acts of God or government; war, terrorism, fire or explosion; flood; extreme weather; epidemic; riots; embargoes; viruses; technology attacks; labor disturbances; failure or unavailability of the Internet, telecommunications, transportation, utilities or suppliers.

15.2. Independent Contractors; Beneficiaries. The parties are independent contractors. No agency, joint venture, or partnership is created under these Terms. These Terms benefit Customer and West only; there are no third party beneficiaries.

15.3. Interpretation; Conflict; Severability. “Including” means including, without limitation. “Days” means calendar days. If any terms of these Terms and an Order conflict, the Order will govern for that Order only. No preprinted purchase order or other Customer form terms will apply. Any provision held unenforceable by a court will be enforced to the fullest extent permitted by law and will not affect the other provisions. No course of dealing or failure to exercise any right or obligation is an amendment or waiver. These Terms may be modified or amended only in a writing signed by the parties.

15.4. Assignment. These Terms will be binding on the permitted successors and assigns. Neither party may transfer or assign these Terms without the prior written consent of the other, not to be unreasonably withheld, except that West may assign these Terms to an Affiliate or to an acquirer of all or part of its business or assets without consent.

15.5. Applicable Law and Remedies. These Terms is governed by Colorado law, without regard to choice of law principles. Each party waives all rights to a jury trial. Injunctive relief will apply to any breach of Sections 2 or 8 above. All rights and remedies are in addition to any other rights or remedies at law or in equity, unless designated as an exclusive remedy in these Terms. Each party will be entitled to the same governmental or other immunity or other protections afforded by any law, rule, or regulation to the other party, and neither party will object to or interfere with the other party’s application of this sentence.

15.6. Compliance with Laws. Each party has or will timely obtain all consents, licenses, permits, and certificates required to perform under these Terms. Each party will comply with laws, rules, regulations, and court orders applicable to it or the Services. West may cease or modify the Services or the terms as reasonably required to comply with changes in law. Customer recognizes and agrees to comply with West’s Code of Ethical Business Conduct located at https://www.west.com/legal-privacy/terms-conditions/.

15.7. Advertising and Publicity. Neither party will use the other party’s name or marks in any press release, advertisement, promotion, speech or publicity, without the other party’s prior written consent, except that West may use Customer’s name and marks in its customer lists, sales or promotional materials without consent.

15.8. Affiliates; Changes. Services may be provided, in whole or part, by West or its Affiliates. West Safety Communications Inc. may provide regulated portions of the Services. West may modify or improve Services, Software, and Equipment during the term.

15.9. Notices; Entire Agreement; Survival; Signature. All notices must be in writing. Notices are effective on receipt when sent by certified or registered U.S. Mail, charges prepaid, return receipt requested or when delivered by hand, overnight courier or fax with confirmed receipt. These Terms constitutes the entire agreement and supersedes any prior written or oral agreements or understandings related to its subject matter. Sections titled Invoice and Payment, Confidentiality, Limited Warranty, Limitation of Liability, Indemnification, Intellectual Property and Miscellaneous will survive termination of these Terms.
Exhibit A-Confidentiality and FOIA

Except to the extent disclosures are required under applicable freedom of information or public records laws or regulations, the terms of this Exhibit A-Confidentiality and FOIA will apply to information disclosed under these Terms. Customer may disclose the West’s Confidential Information only to the extent required by applicable law or regulation. Customer will give sufficient notice to West to allow West to claim applicable exemptions, make applicable objections, or seek appropriate limits or restrictions on use and disclosure of its Confidential Information.

1. Definitions. “Confidential Information” means all information disclosed by or on behalf of either party (“Discloser”) to the other party (“Recipient”) that is marked as confidential or proprietary or that by its nature or context constitutes information that a reasonable business person would treat as proprietary, confidential, or private, even if not so marked. Confidential Information includes, but is not limited to a party’s financial, business, technical, marketing, sales, customer, product, pricing, strategy, personnel, software, systems, methods, processes, practices, intellectual property, trade secrets, software, data, contract terms or other business information.

2. Exclusions. Confidential Information does not include any information that: (a) was or becomes generally available to the public through no breach of these Terms; (b) was previously known by Recipient or is disclosed to Recipient by a third party without any obligation of confidentiality; or (c) is independently developed by the Recipient without the use of Discloser’s Confidential Information.

3. Use and Disclosure. Recipient and its employees, Affiliates, agents and contractors will: (a) use the Confidential Information only for the purpose of these Terms; (b) disclose the Confidential Information only to its employees, Affiliates, agents, and contractors with a “need to know” for these Terms; (d) use the same standard of care to protect Discloser’s Confidential Information as Recipient uses to protect its own similar confidential or proprietary information, but not less than reasonable care appropriate to the type of information; (e) reproduce Discloser’s confidentiality or proprietary notices, legends or markings on all copies or extracts of Confidential Information; and (f) use and disclose the Confidential Information as authorized in writing by the Discloser. Recipient is responsible for compliance with these Terms by its employees, Affiliates, agents and contractors.

4. Required Disclosure. If required to disclose any Confidential Information by law or court order, Recipient will promptly notify the Discloser (unless prohibited by law) and cooperate with Discloser, at Discloser’s expense, to seek protective orders or appropriate restrictions on use and disclosure. The Section titled Use and Disclosure does not apply to disclosure required under this Section.

5. Return or Destruction. Within 30 days after termination of these Terms or written request of Discloser, Recipient will return or destroy Discloser’s Confidential Information. Recipient will certify return or destruction if requested by Discloser. Recipient may retain Discloser’s Confidential Information to the extent required by law. This Exhibit A will survive and continue to apply to Discloser’s Confidential Information that is not reasonable to return or destroy (for example, retained in archive or backup systems) as long as it is retained by or for Recipient.