

ISMS Applications, LLC

Enterprise Services General Terms and Conditions

DEFINITIONS

- **Affiliate:** Any entity that controls, is controlled by or is under common control with ISMS.
- **Agreement, Enterprise Services Master Services Agreement or MSA:** Consists of the Enterprise Master Services Agreement Cover Page executed by the Customer and accepted by ISMS, these Enterprise Services General Terms and Conditions ("General Terms and Conditions"), any written amendments to the Agreement executed by both Parties including any supplemental terms and conditions ("Amendment(s)"), and each Sales Order accepted by ISMS under the Agreement.
- **Amendment(s):** Any written amendment to the Agreement, executed by both Parties, including any supplemental terms and conditions.
- **ISMS:** The operating company affiliate or subsidiary of ISMS Applications, LLC that provides the Services under the Enterprise Services Master Service Agreement. References to ISMS in the Limitation of Liability, Disclaimer of Warranties and Indemnification Articles shall also include its directors, officers, employees, agents, Affiliates, suppliers, licensors, successors, and assigns, as the case may be.
- **ISMS Website or Website:** The ISMS website where the General Terms and Conditions, and other ISMS security and privacy policies applicable to the Agreement will be posted. The current URL for the Website is www.ismsapps.com/terms-of-service ISMS may update the Website documents and/or URL from time to time.
- **ISMS Equipment:** Any and all facilities, equipment or devices that are used to deliver any of the Services.
- **Confidential Information:** All information regarding either Party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential." or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the Parties' communications regarding such items.
- **Customer:** The company, corporation, or other entity named on the Enterprise Services Master Service Agreement Cover Page and a Sales Order.
- **Customer-Provided Equipment (CE):** Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.
- **General Terms and Conditions:** These Enterprise Services General Terms and Conditions.
- **Licensed Software:** Computer software or SaaS platform provided by ISMS or required to use the Services, including all updates thereto.
- **Network:** Consists of the ISMS Equipment, facilities, and other equipment used to provide the Services.
- **Party:** A reference to ISMS or the Customer; and in the plural, a reference to both companies.
- **Revenue Commitment:** A commitment by Customer to purchase a minimum volume of Service during an agreed term, as set forth in a Sales Order.

- Sales Order: A request for ISMS to provide the Services submitted by Customer to ISMS.
- Service(s): A service provided by ISMS pursuant to a Sales Order. All Services provided under the Agreement are for commercial use only.
- Service Commencement Date: The date(s) on which ISMS first makes Service available for use by Customer.
- Service Term: The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Sales Order.
- Supplier: Any company, corporation, or other entity the Customer licenses the Service on behalf of. Suppliers will be required to accept a Subscription Agreement prior to accessing the Service.

ARTICLE 1. CHANGES TO THE AGREEMENT TERMS

ISMS may change or modify the Agreement, and any related policies from time to time ("Revisions") by posting such Revisions to the ISMS Website. The Revisions are effective upon posting to the Website. Customer will receive notice of the Revisions in the next applicable invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide ISMS with written notice that the Revisions adversely affect Customer's use of the Service(s). If after such notice ISMS is able to verify such adverse effect but is unable to reasonably mitigate the Revision's impact on such Services, then Customer may terminate the impacted Service(s) without further obligation to ISMS beyond the termination date, including Termination Charges, if any. This shall be Customer's sole and exclusive remedy.

ARTICLE 2. DELIVERY OF SERVICE

2.1 Orders. Customer shall submit to ISMS a properly completed Sales Order to initiate Service. A Sales Order shall become binding on the Parties when (i) it is specifically accepted by ISMS either electronically or in writing or (ii) ISMS begins providing the Service described in the Sales Order. When a Sales Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

2.2 ISMS Equipment. At any time, ISMS may change ISMS Equipment in its sole discretion in connection with providing the Services. ISMS shall maintain ISMS Equipment in good operating condition during the term of this Agreement.

2.3 Ownership, Impairment and Removal of Network. The Network is and shall remain the property of ISMS. Customer agrees that it shall take no action that directly or indirectly impairs ISMS's title to the Network, or any portion thereof, or exposes ISMS to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude ISMS from using the Network for services provided to other ISMS customers.

2.4 Customer-Provided Equipment ("CE"). ISMS shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE. Neither ISMS nor its employees, Affiliates, agents or contractors will be liable for any damage, loss, or destruction to CE. CE shall at all times be compatible with the Network as determined by ISMS in its sole discretion.

ARTICLE 3. BILLING AND PAYMENT

3.1 Charges. Customer agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Sales Order(s) or invoice from ISMS. These charges will include annual

recurring Service charges. Except as otherwise indicated herein charges identified in the Sales Order(s) shall not increase during the Service Term. Should Customer exceed the number of Suppliers Customer purchases in the Sales Order to use Licensed Services, ISMS shall invoice Customer \$10,000 for every 1,000 Suppliers or portion thereof above the number in the Sales Order.

3.2 Payment of Bills. Except as otherwise indicated herein, ISMS will invoice Customer in advance on an annual basis for all charges and fees arising under the Agreement. Payment is due upon presentation of an invoice. Payment will be considered timely made to ISMS if received within thirty (30) days after the invoice date. Any charges not paid to ISMS within such period will be considered past due.

3.3 Partial Payment. Partial payment of any bill will be applied to the Customer's outstanding charges in amounts and proportions solely determined by ISMS. No acceptance of partial payment(s) by ISMS shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

3.4 Taxes and Fees. Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer also will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

3.5 Other Government-Related Costs and Fees. ISMS reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, regardless of whether ISMS or its Affiliates pay the fees directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. Taxes and other government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases ISMS's costs of providing Services, Customer shall pay ISMS's additional costs of providing Services under the new law, rule, regulation or judgment.

3.6 Disputed Invoice. If Customer disputes any portion of an invoice, Customer must pay fifty percent (50%) of the disputed charges, in addition to the undisputed portion of the invoice and submit a written claim, including all substantiating documentation, to ISMS for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve any billing dispute. ISMS will refund/credit all valid disputes resolved in Customer's favor as of the date the disputed charges first appeared on the Customer's invoice. Under no circumstances may Customer submit a billing dispute to ISMS later than ninety (90) days following Customer's receipt of the applicable invoice.

3.7 Past-Due Amounts. Any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower. If Customer's account is delinquent, ISMS may refer the account to a collection agency or attorney that may pursue collection of the past due amount in accordance with the Agreement. If ISMS is required to use a collection agency or attorney to collect any amount owed by Customer, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to ISMS under the Agreement or at law or in equity.

3.8 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

3.9 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer with respect to the Service(s), even if incurred as the result of fraudulent or unauthorized use of the Service. ISMS may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. ISMS reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use of Customer's Service whether by Customer or Customer's suppliers.

ARTICLE 4. TERM; REVENUE COMMITMENT

4.1 Agreement Term. Upon execution of the Agreement, Customer shall be allowed to submit Sales Orders to ISMS during the term referenced on the Master Service Agreement Cover Page ("MSA Term"). After the expiration of the initial MSA Term, ISMS may continue to accept Sales Orders from Customer under the Agreement, or require the Parties to execute a new agreement. This Agreement shall continue in effect until the expiration or termination date of the last Sales Order entered under the Agreement, unless terminated earlier in accordance with the Agreement.

4.2 Sales Order Term/Revenue Commitment. The applicable Service Term and Revenue Commitment (if any) shall be set forth in the Sales Order. Unless otherwise stated in these terms and conditions, if a Sales Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date. In the event Customer fails to satisfy a Revenue Commitment, Customer will be billed a shortfall charge.

4.3 Sales Order Renewal. Upon the expiration of the Service Term, and unless otherwise agreed to by the Parties in the Sales Order, each Sales Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless otherwise stated in these terms and conditions or prior written notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after the end of the Service Term and from time to time thereafter, ISMS may, modify the charges for Services. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.

ARTICLE 5. TERMINATION WITHOUT FAULT; DEFAULT

5.1 Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right, in its sole discretion, to terminate any or all Sales Order(s) at any time during the Service Term(s), upon thirty (30) days prior written notice to ISMS and subject to payment to ISMS of all outstanding amounts due for the Services. Customer shall not be entitled to any refund of fees paid. If Customer terminates any or all Sales Order(s) within thirty (30) days of the Sales Order(s), Customer shall receive a refund of any amount paid to ISMS for that annual term. ISMS may terminate the Agreement if Customer does not take any Service under a Sales Order for twelve (12) consecutive months or longer.

5.2 Termination for Cause. If either Party breaches any material term of the Agreement, other than a payment term, and the breach continues un-remedied for thirty (30) days after written notice of default, the other Party may terminate for cause any Sales Order materially affected by the breach. If Customer is in breach of a payment obligation and fails to make payment in full within ten (10) days after receipt of written notice of default, ISMS may, at its option, terminate the Agreement, terminate the affected Sales Orders, suspend Service under the affected Sales Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Sales Orders as a condition of continuing to provide Service; except that ISMS will not take any such action as a result of Customer's non-payment of a charge subject to a timely billing dispute, unless ISMS has reviewed the dispute and determined in good faith that the charge is correct. A Sales Order may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors. Termination by either Party of a Sales Order does not waive any other rights or remedies that it may have under this Agreement. The non-defaulting Party shall be entitled to all available legal and equitable remedies for such breach.

5.3 Effect of Expiration/Termination of a Sales Order.

Upon the expiration or termination of a Sales Order for any reason:

- A. ISMS shall disconnect the applicable Service;
- B. ISMS may delete all applicable data, files, electronic messages, or other information stored on ISMS's servers or systems;
- C. If Customer has terminated the Sales Order prior to the expiration of the Service Term for convenience, or if ISMS has terminated the Sales Order prior to the expiration of the Service Term as a result of material breach by Customer, ISMS may assess and collect from Customer applicable Termination Charges (if any); and
- D. Customer's right to use applicable Licensed Software shall automatically terminate.

5.4 Resumption of Service. If a Service has been discontinued by ISMS for cause and Customer requests that the Service be restored, ISMS shall have the sole and absolute discretion to restore such Service. At ISMS's option, deposits, advanced payments, nonrecurring charges, and/or an extended Service Term may apply to restoration of Service.

5.5 Regulatory and Legal Changes. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on applicable law and regulations as they exist on the date of execution of this Agreement. The Parties agree that in the event of any subsequent decision by a legislative, regulatory or judicial body, including any regulatory or judicial order, rule, regulation, decision in any arbitration or other dispute resolution or other legal or regulatory action that materially affects the provisions or ability to provide Services on economic terms of the Agreement, ISMS may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties can't reach resolution on new Agreement terms, ISMS may, in its sole discretion, terminate this Agreement, in whole or in part, upon sixty (60) days written notice to Customer.

ARTICLE 6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; WARNINGS

6.1 Limitation of Liability.

- A. THE AGGREGATE LIABILITY OF ISMS FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO ISMS DURING THE ANNUAL RENEWAL IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED.
- B. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY SOFTWARE PROVIDED BY ISMS.

6.2 Disclaimer of Warranties.

- A. Services shall be provided pursuant to the terms and conditions in the applicable Sales Order(s), and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. TO THE MAXIMUM EXTENT ALLOWED BY LAW, ISMS EXPRESSLY DISCLAIMS ALL SUCH EXPRESS, IMPLIED AND STATUTORY WARRANTIES.
- B. Without limiting the generality of the foregoing, and except as otherwise identified in a Sales Order, ISMS does not warrant that the Services, ISMS Equipment, or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, ISMS Equipment, or Licensed Software will meet customer's requirements, or that the Services, ISMS Equipment, or Licensed Software will prevent unauthorized access by third parties.
- C. In no event shall ISMS, be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Customer, its users or third parties; (iii) interoperability, interaction or interconnection of the Services with applications, equipment, services or networks provided by Customer or third parties; or (iv) loss or destruction of any Customer hardware, software, files or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the use of Service and at regular intervals thereafter.

6.3 Disruption of Service. Notwithstanding anything to the contrary, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities").

6.4 Customer's sole and exclusive remedies are expressly set forth in the Agreement. Certain of the above exclusions may not apply if the country or state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of

incidental or consequential damages. In those countries or states, the liability of ISMS is limited to the maximum extent permitted by law.

ARTICLE 7. INDEMNIFICATION

7.1 ISMS's Indemnification Obligations. ISMS shall indemnify defend, and hold harmless Customer and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) ("Claims") incurred as a result of infringement of U.S. patent or copyright relating to the ISMS Licensed Software hereunder.

7.2 Customer's Indemnification Obligations. Customer shall indemnify, defend, and hold harmless ISMS from any and all Claims arising on account of or in connection with Customer's use or sharing of the Service provided under the Agreement, including with respect to: libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; for patent infringement arising from Customer's combining or connection of CE to use the Service; for damage arising out of the gross negligence or willful misconduct of Customer with respect to users of the Service.

7.3 Indemnification Procedures. The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of this Article 7. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 8. SOFTWARE & SERVICES

8.1 License. If and to the extent that Customer requires the use of Licensed Software in order to use the Service supplied under any Sales Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use such Licensed Software to use the applicable Service during the corresponding Service Term. All Licensed Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by ISMS only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by ISMS, including, without limitation, end-user license agreements for the Licensed Software. ISMS shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

8.2 Restrictions. Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials); (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

8.3 Updates. Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the ISMS Equipment.

8.5 Intellectual Property Rights in the Services. Title and intellectual property rights to the Services are owned by ISMS, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from ISMS or other owner of such material, is prohibited.

ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY

9.1 Disclosure and Use. All Confidential Information disclosed by either Party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing under this Agreement, using the Services and rendering the Services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

9.2 Exceptions. Notwithstanding the foregoing, each Party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation.

9.3 Publicity. The Agreement provides the right to use any Party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities. Neither Party shall issue any press release relating to the terms and conditions of any contractual relationship between ISMS and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party.

9.4 Passwords. ISMS may furnish Customer with user identifications and passwords for use in conjunction with certain Services, including, without limitation, for access to certain non-public ISMS website materials. Customer understands and agrees that such information shall be subject to ISMS's access policies and procedures located on ISMS's Web Site.

9.5 Remedies. Notwithstanding any other Article of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

9.6 Monitoring of Services. Except as otherwise expressly set forth herein, ISMS assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation postings and/or transmission. However, Customer acknowledges and agrees that ISMS and its

agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of ISMS, and that ISMS may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. ISMS shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall indemnify, defend, and hold ISMS and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users. For the avoidance of doubt, the monitoring of data described in this Section 9.6 refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). ISMS is granted the license right to use the Customer data for the purpose of improving or providing the Services or for any of ISMS's business purposes so long as it does not disclose personal information protectable by law.

9.7 Survival of Confidentiality Obligations. The obligations of confidentiality and limitation of use described in this Article 9 shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

ARTICLE 10. USE OF SERVICE; USE AND PRIVACY POLICIES

10.1 Prohibited Uses and ISMS Use Policies. Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of ISMS service by others or the operation of the Network. Customer is responsible for assuring that any and all of its users or Suppliers comply with the provisions of the Agreement. ISMS reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if ISMS determines that such use is prohibited as identified herein, or information does not conform with the requirements set or ISMS reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. ISMS's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information. ISMS reserves the right to terminate the Service for any Supplier that does not adhere to the Subscription Agreement the Supplier accepts.

10.2 Privacy Policy. In addition to the provisions of Article 9, ISMS's commercial privacy policy applies to ISMS's handling of Customer confidential information. ISMS's privacy policy is available on the Website.

10.3 Privacy Note Regarding Information Provided to Third Parties. ISMS is not responsible for any information provided by Customer to third parties. Such information is not subject to the privacy provisions of this Agreement. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

10.4 Prohibition on Resale. Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

10.5 Violation. Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, ISMS shall have the right to restrict, suspend, or terminate immediately any or all Sales Orders, without liability on the part of ISMS, and then to notify Customer of the action that ISMS has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

ARTICLE 11. MISCELLANEOUS TERMS

11.1 Force Majeure. Neither Party (and in the case of ISMS, ISMS affiliates and subsidiaries) shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, acts of regulatory or governmental agencies, or other causes beyond the Party's reasonable control, except that Customer's obligation to pay for Services provided under the Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

11.2 Assignment or Transfer. Customer shall not assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of ISMS, which shall not be unreasonably withheld. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit ISMS's use of third-party consultants and contractors to perform Services under a Sales Order.

11.3 Notices. Except as otherwise identified herein, any notice sent pursuant to the Agreement shall be deemed given and effective when sent by email (confirmed by first-class mail), or when delivered by overnight express or other express delivery service, with respect to Customer and ISMS, to the address set forth on any Sales Order. Each Party shall notify the other Party in writing of any changes in its address listed on any Sales Order.

11.4 Entire Understanding. The Agreement constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Agreement are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties. Terms or conditions contained in any Sales Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.

11.5 Construction. In the event that any portion of the Agreement is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of the Agreement shall remain in full force and effect.

11.6 Survival. The rights and obligations of either Party that by their nature would continue beyond the termination or expiration of a Sales Order shall survive termination or expiration of the Sales Order.

11.7 Choice of Law. The United States domestic law of the state in which the Service is provided shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by United States federal law.

11.8 No Third Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

11.9 Parties' Authority to Contract. The persons whose signatures appear below are duly authorized to enter into the Agreement on behalf of the Parties name therein.

11.10 No Waiver; Etc. No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

11.11 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

11.12 Article Headings. The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

11.13 Compliance with Laws. Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.