

General Terms and Conditions

1. TERMS AND CONDITIONS.

1.1 General Terms and Conditions. This General Terms and Conditions (“General Terms and Conditions”) sets forth the general terms and conditions for all of the equipment, hardware, products, software applications, documentation and other materials (“Deliverables”) to be delivered by International Consulting Group, Inc. (“ICG”) to the ICG Client (“Client”) that has entered into one or more of the following agreements with ICG and applies to all services to be performed for such Client by ICG (“Services”) pursuant to the following agreements by and between ICG and Client (each, an “Agreement” and collectively, the “Agreements”):

- Cloud Services Agreement
- Managed Services Agreement
- Product Sales Agreement
- Project Services Agreement
- Hourly Services Agreement
- Hardware as a Service Agreement
- Software as a Service Agreement
- Statements of Work to any of the above Agreements.
- Any other Agreement entered into by and between ICG and Client

1.2 Specific Terms and Conditions. Specific terms and conditions governing the delivery of Deliverables and performance of Services by ICG are set forth in one (1) or more specific terms and conditions referenced in the applicable Agreement (each, “Specific Terms and Conditions”).

1.3 Third Party Terms and Conditions. If third party Deliverables (“Third Party Deliverables”) are delivered to Client or third party Services (“Third Party Services”) are performed for Client, then additional third party terms, conditions and documents may also apply. ICG is not responsible for any Third Party Deliverables or Third Party Services provided for Client except as specifically set forth in an Agreement.

2. AGREEMENTS AND STATEMENTS OF WORK.

2.1 Agreements. ICG is only responsible for delivering the Deliverables and performing the Services as specifically identified and set forth in an Agreement executed by both Client and ICG.

2.2 Product Sales Agreement. A Product Sales Agreement includes a description of Deliverables to be delivered pursuant to such Agreement. A Product Sales Agreement may also include such additional terms and conditions as the parties agree to include. All dates for delivery by ICG are estimates only, and not guarantees, provided that ICG will use commercially reasonable efforts to achieve such dates. To be effective, a Product Sales Agreement must be executed by both parties. These General Terms and Conditions apply to each Product Sales Agreement, as well as to each Deliverable provided pursuant to a Product Sales Agreement.

2.3 Service Agreement. A Service Agreement includes a description of the Services to be performed and (if applicable) Deliverables to be delivered pursuant to such Agreement. A Service Agreement may also include such additional terms and conditions as the parties agree to include. All dates for performance or delivery by ICG are estimates only, and not guarantees, provided that ICG will use commercially reasonable efforts to achieve such dates. To be effective, a Service Agreement must be executed by both parties. These General Terms and Conditions apply to each Service Agreement, as well as to each Deliverable and/or Service provided pursuant to a Service Agreement.

2.4 Amendments and Statements of Work. If Client and ICG intend to amend or supplement an Agreement, then Client and ICG must execute a written amendment (“Amendment”) or statement of work (“Statement of Work”) to such Agreement reflecting such amendment or supplement. All references to Agreement include such Agreement as amended by any Amendments and supplemented by any Statements of Work. Each Amendment and each Statement of Work is incorporated into the applicable Agreement by this reference, and this General Terms and Conditions and the applicable Specific Terms and Conditions apply to each Amendment and each Statement of Work.

2.5 Conflict. If there is a conflict between an Agreement, this General Terms and Conditions, the Specific Terms and Conditions, an Amendment or a Statement of Work, then (unless the specific document specifically references the conflict and states that document shall govern) the order of precedence is this General Terms and Conditions, the Specific Terms and Conditions, the Agreement, an Amendment, and then a Statement of Work.

3. PRICING AND PAYMENT.

3.1 Pricing. Client shall pay ICG the fees (“Fees”) for Deliverables and Services as are set forth on the applicable Agreement. Unless otherwise specifically set forth in an Agreement, payment for all other services rendered by ICG will be at ICG’s then-current rates. ICG reserves the right to automatically increase the rate for all Fees on an annual basis for increases in third party costs, increases in the consumer price index for all urban consumers (“CPI”), or for any other reason; *provided, however*, such increases will not be more than five percent (5%) per year. All prices set forth in an Agreement are expressed in U.S. dollars.

3.2 **Payment.** ICG will invoice Client per the Fees and other terms and conditions set forth in the applicable Agreement; *provided, however*, ICG's failure to provide Client with an invoice will not relieve Client of its obligation to timely pay for Deliverables and Services. Except as otherwise specifically set forth in an Agreement (including in applicable Specific Terms and Conditions), payments for all (i) Deliverables are due in advance and upon receipt of invoice per the terms set forth in the applicable Agreement; and (ii) Services are due in advance and upon receipt of invoice on the first day of the month. Client agrees to timely submit all payments to ICG at ICG's place of business. ICG reconciles client accounts monthly and adjusts monthly invoices as needed. ICG will have no obligation to provide any Deliverables or perform any Services unless all Fees, Costs and Taxes for Deliverables delivered and/or Services rendered have been paid in full by Client when due. In the event of non-payment of any sum due and owing under an Agreement, ICG shall have the right to suspend or immediately terminate the delivery of Deliverables and/or providing of Services, without notice, and ICG may determine whether or not to resume delivery of any Deliverables and/or providing any Services upon receipt of payment in full of all sums owed. If Client fails to timely pay any payment(s), then ICG reserves the right to declare all invoice amounts due and payable without notice to Client. All amounts shall be payable by Client to ICG without any right of setoff, deduction or demand. All payments shall be made in U.S. dollars.

3.3 **Late Payment.** Any payment not received by ICG on or before thirty (30) days following the due date will bear interest from the due date until paid in full at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law. If ICG is required to use a collection agency or attorney to collect money owed by Client, Client agrees to pay the reasonable cost of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees and court costs. Client waives any right to dispute a charge that Client does not dispute in writing to ICG within thirty (30) days of the date on the applicable invoice.

3.4 **Costs and Taxes.** Fees are exclusive of any and all shipping, handling, insurance and other third party fees and costs ("**Costs**") and any and all sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated ("**Taxes**") which are levied or imposed by reason of delivery of Deliverables or performance of Services under an Agreement. All Costs and Taxes set forth in an Agreement are good faith estimates and may be adjusted to actual amounts at time of delivery or later as needed. Client will pay or reimburse ICG for any and all Costs and Taxes which are levied or imposed by reason of delivery of Deliverables or performance of Services under an Agreement; excluding, income taxes based on ICG's net income.

3.5 **Expenses.** In addition to the Fees, Costs and Taxes, Client will reimburse ICG for all expenses reasonably incurred by ICG in rendering Services to Client pursuant to an Agreement or any Statement(s) of Work ("**Expenses**"). Expenses will include, without limitation, reasonable travel expenses (including transportation, parking, tools, lodging, and meals) and the cost of any courier services, photocopying, facsimile, long distance telephone calls, video conferencing, and other expenses. Furthermore, if ICG needs to contact a third-party (e.g., Microsoft) on Client's behalf in order to deliver services, Client agrees to pay any charges arising therefrom. Expenses will be invoiced on a monthly basis. Client will also reimburse ICG for special or unusual expenses incurred at Client's specific request. ICG will not be responsible for delays caused in seeking and obtaining Client's approval of expenses.

4. **TERM AND TERMINATION.**

4.1 **Term.** An Agreement will commence upon acceptance of the Agreement by Client and ICG, or earlier if stated in an Agreement ("**Effective Date**"), and will continue so long as the Agreement is in effect or while Client continues to receive any Service from ICG pursuant to such Agreement ("**Term**").

4.2 **Termination.**

(a) Either party may terminate an Agreement by providing the other party with prior, written notice ("**Termination Notice**") per the terms and the notice period ("**Termination Notice Period**") set forth in the applicable Agreement. Each party also reserves the right to terminate an Agreement upon written notice to the other party if the other party (i) files for bankruptcy; (ii) becomes or is declared insolvent or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer; (iii) makes an assignment for the benefit of all or substantially all of its creditors; (iv) is unable to pay its debts generally as they come due; (v) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations; or (vi) begins a process of winding up all or a substantial part of its operations.

(b) Client may immediately terminate an Agreement upon written notice to ICG if ICG fails to cure a material breach of such Agreement within thirty (30) days of receipt of written notice of the alleged material breach, which written notice includes details of the alleged material breach.

(c) ICG may immediately terminate an Agreement upon written notice to Client if Client (i) fails to make any payment to ICG when due and such failure continues for a period of five (5) days following the date on which ICG provides written notice of such failure to Client; (ii) jeopardizes the security, credibility or reliability of the ICG network and Client's failure to cure such action or inaction continues for a period of five (5) days following the date on which ICG provides written notice of such action or inaction to Client; or (iii) breaches any other provision of an Agreement.

(d) Either party may terminate an Agreement by providing the other party with prior, written notice ("**Termination Notice**") at least ninety (90) days ("**Termination Notice Period**") prior to the end of the then-current term of the Agreement ("**Termination Date**").

4.3 **Cancellation / Early Termination.** If ICG terminates an Agreement due to Client's non-payment or other default before the end of the then-current term for the Service, or if Client cancels the Service prior to the end of the term for such Service (either through termination of the Agreement or by cancellation of the Service), then Client shall pay ICG on or before the Termination Date, in addition to all other amounts owed pursuant to the Agreement or by law, an early termination fee equal to the Total Monthly Fee as of the date the applicable party received the Termination Notice (based on an average of the Total Monthly Fee for the six (6) month period immediately preceding the date the applicable party received the Termination Notice) *multiplied by* the number of months remaining in the then-current Term of the Agreement (as of the notice of termination or cancellation) ("**Early Termination Fee**"). The Early Termination Fee is not a penalty, but rather a charge to compensate ICG for Client's failure to satisfy the service commitment on which Client's rate plan is based.

4.4 **Effect of Termination.** The termination of a specific Agreement only terminates that Agreement, and does not affect the rights and obligations of the parties with respect any other Agreement; *provided, however*, any breach of a term or condition of a specific Agreement by Client means ICG may, at ICG's sole option, suspend or terminate the obligation of ICG to deliver or perform pursuant to any other Agreement until such time as the breach is cured, if curable, or ICG otherwise agrees in writing to resume delivery or performance, as applicable.

4.5 **Termination Responsibilities.** Client acknowledges and agrees that Client is responsible to pay all Fees, Costs and Taxes during the Termination Notice Period, regardless if Client requests to receive the applicable Deliverables and/or Services during the Termination Notice Period. All Fees for Deliverables received prior to the receipt of the Termination Notice will be deemed earned by ICG, and ICG will only be required to deliver any outstanding Deliverables if payment in full is received by ICG. Immediately upon the termination of an Agreement, or upon the earlier request of ICG, Client shall (i) return to ICG any and all equipment provided by ICG to Client, which was not previously purchased by Client; and (ii) discontinue the use of and permanently delete from Client's computer systems any and all ICG software and other computer programs installed or provided by ICG.

5. RESPONSIBILITIES.

5.1 **General.** The parties will work together in a joint effort to accomplish the tasks and objectives set forth in an Agreement. Each party will use its reasonable efforts to accomplish the tasks assigned to such party in an Agreement, and to cooperate with the other party, on a timely basis and in a professional manner, subject to receipt of all necessary and appropriate cooperation and support from the other party.

5.2 **Client Responsibilities.** Client shall furnish a sufficient number of trained and experienced personnel and deliver all necessary access, information and materials in a timely fashion. ICG will not be responsible for any delays, cost overruns, or liability resulting from Client failing to meet such obligations or the obligations set forth below. To facilitate prompt and efficient delivery of Deliverables and performance of Services, Client and Client's personnel shall fully cooperate with ICG and its personnel in all respects, including, without limitation, providing information as to Client requirements, providing access to Client's facilities, systems, equipment and hardware on which the Deliverables are to be installed, and providing access to all necessary information regarding Client's facilities and systems, as well as providing space for ICG's personnel to work at Client's facility. If ICG determines that the Services require ICG to remotely access Client's computer systems, Client agrees that Client shall also provide ICG with all information reasonably requested by ICG for ICG to remotely access Client's computer systems. Client will be responsible for making, at its own expense, any changes or additions to Client's current systems, software, and hardware that may be required to support operation of the Deliverables and/or performance of the Services. Client acknowledges and agrees that the providing of the Services may in some circumstances result in the disruption of other services at Client's facility or on Client's computer systems or loss or damage to software or hardware. Client is strictly liable for the acts and omissions of each of Client's officers, employees, contractors, agents and other representatives with respect to an Agreement.

5.3 **ICG Responsibilities.** ICG agrees to use commercially reasonable efforts to timely deliver the Deliverables and/or perform the Services pursuant to an Agreement. All dates for performance by ICG are estimates only, and not guarantees, provided that ICG will use commercially reasonable efforts to achieve such dates.

6. POLICIES AND PROCEDURES.

Client acknowledges and agrees that ICG's network and the Services may only be used for lawful purposes. Transmission of any material in violation of any United States, state, or other governmental regulation is prohibited. This includes, but is not limited to, copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secret. Client also agrees to abide by ICG's Acceptable Use Policy, as amended by ICG from time to time, which is made available at www.icgi.com/legal ("Acceptable Use Policy"). Client acknowledges and agrees that ICG strictly prohibits any Internet traffic that could have a negative impact on IP routing and reserves the right to restrict the distribution of Internet traffic at any time pursuant to ICG's Acceptable Use Policy. This prohibition includes the distribution of SPAM or other technology features as may evolve on the Internet that either ICG's vendors, upstream carriers or private organizations deem unfit for the Internet and/or triggers a restrictive routing policy. Client further acknowledges and agrees that ICG may, in ICG's sole discretion and without any liability, suspend any Services for any reasonable cause, as determined at the sole discretion of ICG, including, but not limited to, the discovery by ICG of the use of any Services in a manner that violates applicable law, an Agreement, ICG's Acceptable Use Policy, or any third party intellectual property right(s).

7. INTELLECTUAL PROPERTY RIGHTS.

This is not a "work made for hire" (as that term is defined in Section 101 of Title 17 of the United States Code) agreement. All right, title, and interest in and to the (non-third party) Deliverables and Services, including all copyrights, patents, trademarks, trade secrets and other intellectual property rights (collectively "**ICG IP Rights**"), and the right to register applicable ICG IP Rights, are and will be held and owned exclusively by ICG, except as expressly provided in an Agreement. All right, title and interest in and to Third Party Deliverables, including the intellectual property rights of such Third Party Deliverables, is owned exclusively by the applicable third party. Upon payment of all Fees, Costs and Taxes due under an Agreement, ICG grants Client a non-exclusive, non-transferable license to use the (non-third party) Deliverables solely for Client's internal use for purposes consistent with the Agreement under which they were provided. Except for the foregoing license, ICG reserves all rights, title, and interest in and to the (non-third party) Deliverables, Services and ICG IP Rights. Client understands and acknowledges that the (non-third party) Deliverables are valuable trade secrets of ICG and constitute ICG Confidential Information. All Deliverables are proprietary and may not be reproduced, duplicated or disseminated for any purpose. All (non-third party) software installed or provided by ICG for Client's use is proprietary software and the exclusive property of ICG.

8. CONFIDENTIALITY.

8.1 Confidential Information. During the Term, one party (“Receiving Party”) may gain access to or receive Confidential Information of the other party (“Disclosing Party”). For purposes of an Agreement, “Confidential Information” means any and all information, and any derivatives thereof, which is confidential and proprietary in nature, including, but not limited to, past, present and future Disclosing Party: business and financial records; business and marketing plans; Agreements; pricing; sales; reports; billings; employees; customers; vendors; proof of concepts; products and/or services, in preliminary and final production form; intellectual property; source codes; object codes; technical knowledge; trade secrets; internal practices and procedures; feedback relating to any Confidential Information; other information relating to Disclosing Party’s business, including the terms and conditions of each Agreement; and any third-party confidential information which Disclosing Party may be authorized, from time to time, to review, have access to and/or use. Confidential Information does not include information which (i) is now or subsequently becomes generally available to the public without a breach of an Agreement by Receiving Party; (ii) Disclosing Party releases to third parties without confidentiality protections; (iii) Receiving Party can demonstrate in writing as having in Receiving Party’s lawful possession prior to disclosure by Disclosing Party; or (iv) Receiving Party can demonstrate in writing as having created independent from any Confidential Information disclosed to Receiving Party by or on behalf of Disclosing Party.

8.2 Non-Disclosure and Non-Use of Confidential Information. Receiving Party agrees that Receiving Party shall not, and shall cause Receiving Party’s shareholders, members, partners, directors, managers, officers, employees, affiliates, consultants, representatives, broker dealer representatives, broker dealer agency, and agents (collectively, the “Representatives”) not to, directly or indirectly, without the prior written consent of Disclosing Party (which consent may be withheld at the sole discretion of the Disclosing Party): (i) disclose, release or otherwise make available any Confidential Information to any third-party (person or entity); (ii) disclose, release or otherwise make available any Confidential Information (through idle gossip or dissemination) to individuals within the Disclosing Party who do not need to know such information; or (iii) use any Confidential Information, except specifically and solely related to meeting the Receiving Party’s obligations pursuant to an Agreement.

8.3 Additional Restrictions. Receiving Party agrees that Receiving Party is responsible for any breach of an Agreement by its Representatives. Receiving Party shall disclose the Confidential Information to a Representative if and only if the Representative needs to know the Confidential Information in the ordinary course of that Representative’s work for Receiving Party and solely related to meeting the Receiving Party’s obligations pursuant to an Agreement. Receiving Party represents that Representatives receiving the Confidential Information are bound by similar restrictions of confidentiality not to disclose or use the Confidential Information as Receiving Party is bound by an Agreement. Receiving Party may disclose the Confidential Information pursuant to a court order or request of law enforcement; *provided, however*, Receiving Party must provide Disclosing Party (unless prohibited by law, court order or request of law enforcement) with prompt notice of such order or request so Disclosing Party may challenge the order or request for disclosure of such Confidential Information prior to such disclosure. Receiving Party shall promptly notify Disclosing Party of any known unauthorized use or disclosure of Confidential Information, and Receiving Party shall promptly take any and all reasonable efforts to prevent further unauthorized use or disclosure of the Confidential Information.

8.4 Survival of Non-Disclosure and Non-Use of Confidential Information. The non-disclosure and non-use restrictions set forth in this section will survive the termination of each Agreement as follows (i) for a trade secret, so long as the trade secret remains a trade secret; (ii) for any other Confidential Information, for a period of five (5) years following the expiration or earlier termination of the Agreement.

8.5 Ownership of Confidential Information. Receiving Party agrees that all Confidential Information is, and shall remain, the exclusive property of Disclosing Party and Disclosing Party owns all Confidential Information, in tangible and intangible form, including, without limitation, any and all copies, reproductions and reductions to any media and all derivatives of such information, regardless of who created such Confidential Information.

8.6 Return of Confidential Information. Promptly upon the earlier of the termination of an Agreement or the request of Disclosing Party, Receiving Party shall promptly return to Disclosing Party, or certify to Disclosing Party as being destroyed, all originals, copies, reproductions and reductions to writing and/or an electronic format of any and all Confidential Information which Receiving Party has received, obtained and/or created.

9. NON-SOLICITATION OF EMPLOYEES.

In the absence of ICG’s prior written consent, and for a period of twelve (12) months following the expiration or termination of an Agreement, for any reason whatsoever, Client agrees not to hire or engage, directly or indirectly, any person who, at any time during the twelve (12) months immediately preceding such hiring or engagement, was an employee of ICG employed to perform the Services or other services similar to the Services for any customer of ICG. ICG and Client agree that the damages from a breach of this Section would be difficult to ascertain. Therefore, in the event Client breaches this provision, Client agrees to pay ICG, as liquidated damages and not as a penalty, a sum equal to twelve (12) months of pay for each former employee of ICG hired by Client, at the rate paid by ICG for the last full month of such employee’s employment with ICG. In addition, ICG shall be entitled to temporary and permanent injunctions in order to prevent or restrain any such violation of this Section by the Client or its partners, agents, representatives, servants, employers, employees and any and all persons directly or indirectly acting for or with the Client. These remedies shall be in addition to, and not in limitation of, any other rights or remedies afforded to ICG under an Agreement or available to ICG at law or in equity.

10. FORCE MAJEURE.

ICG shall not be responsible for failure to deliver any Deliverables or perform any Services due to causes beyond its reasonable control, including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, floods, war, acts of terrorism, delays in transportation, accident, failure of Client to provide a suitable operating environment for ICG, hardware malfunctions caused by defects in software or otherwise, failure of Client to allow ICG access to its computer system, acts of God and other similar occurrences (each, a “Force Majeure Event”). The obligations and rights of ICG shall be extended on a day-to-day basis for the duration of excusable delay.

11. REPRESENTATIONS AND WARRANTIES.

11.1 **General.** Client and ICG each represent and warrant to the other party that (i) it has the full right, power and authority to enter into and to perform an Agreement; (ii) the execution, delivery and performance of an Agreement has been duly authorized by all necessary corporate action; (iii) an Agreement constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally; and (iv) the execution, delivery and performance of an Agreement does not or will not violate or cause a breach or default under (a) the governing corporate or company documents of such party; (b) any agreement, lease, mortgage, license or other Agreement to which such party is a party; or (c) any law, rule, regulation, order, decree or consent action by which such party is bound or to which it is subject.

11.2 **Compliance with Laws.** Client and ICG each represent and warrant to the other party that, at all times, they will comply with all applicable laws and regulations of the United States of America and all other governmental entities governing, restricting or otherwise pertaining to the use, distribution, exporting or importing of data, products, services and/or technical data and the notification of any breach of the security of such data, as applicable to each party.

11.3 **ICG.** ICG represents and warrants to Client that throughout the term of an Agreement (i) all of the Services will be performed in accordance with all applicable laws, rules and regulations; (ii) all of the Services will be performed by qualified professionals; (iii) all of the Services will be performed in accordance with the terms and conditions of an Agreement; and (iv) ICG has and will maintain the infrastructure and personnel needed to timely and effectively provide the Services.

12. DISCLAIMER OF WARRANTIES.

ICG DOES NOT WARRANT THE UNINTERRUPTED OR ERROR-FREE OPERATION OR PROVISION OF THE DELIVERABLES OR SERVICES, THE SERVICES WILL BE SECURE FROM UNAUTHORIZED ACCESS, THE SERVICES WILL DETECT EVERY SECURITY OR OTHER VULNERABILITY OF CLIENT'S COMPUTER SYSTEMS, OR THAT RESULTS GENERATED BY THE SERVICES WILL BE ERROR-FREE, ACCURATE OR COMPLETE. EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT, ICG HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION, QUIET ENJOYMENT, SYSTEM INTEGRATION AND NON-INFRINGEMENT. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE DELIVERABLES AND SERVICES IS AT CLIENT'S SOLE RISK. ICG DOES NOT WARRANT THAT THE DELIVERABLES AND SERVICES WILL MEET CLIENT'S REQUIREMENTS, THE DELIVERABLES ARE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR DEFECTS IN THE DELIVERABLES WILL BE CORRECTED. THE TRANSMISSION, STORAGE, VIEWING AND RETRIEVAL OF DATA AND FILES THROUGH THE INTERNET ARE SUBJECT TO A VARIETY OF CONDITIONS BEYOND ICG'S CONTROL THAT MAKE SUCH TRANSMISSION, STORAGE, VIEWING AND RETRIEVAL POTENTIALLY UNRELIABLE. THE DELIVERABLES AND SERVICES, INCLUDING, BUT NOT LIMITED TO, ALL DATA, POWER, BACKUP POWER, FUNCTIONS, MATERIALS, AND INFORMATION ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ICG OR ICG'S AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. ICG MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO THIRD PARTY DELIVERABLES, THIRD PARTY SERVICES OR THIRD PARTY CONTENT (COLLECTIVELY, "THIRD PARTY ITEMS"). ICG EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION, QUIET ENJOYMENT, SYSTEM INTEGRATION AND NON-INFRINGEMENT WITH REGARD TO THIRD PARTY ITEMS. CLIENT SHOULD CONSULT THE RESPECTIVE VENDOR'S OR MANUFACTURER'S WARRANTY FOR THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN AN AGREEMENT SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY ICG THAT WOULD EXPAND IN ANY WAY A VENDOR'S OR MANUFACTURER'S STANDARD END-USER WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU. THE DISCLAIMERS OF WARRANTIES PROVIDED IN AN AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL CONTINUE TO APPLY EVEN IF ANY EXCLUSIVE REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE.

The Services may become unavailable due to any number of factors, including, without limitation, scheduled or unscheduled maintenance, technical failure of the software, telecommunications infrastructure, or the unavailability or interruption of access to the Internet. The disclaimers set forth in this Section shall apply regardless of whether (i) ICG determines that Client's computer systems are deemed secure; (ii) Client performs such modifications to its computer systems as ICG reasonably suggests in order for Client's computer systems to be deemed secure; or (iii) otherwise.

Client acknowledges that the disclaimers of warranties were specifically bargained for and are acceptable to Client. Client's willingness to agree to the disclaimer of warranties set forth in this Section was material to ICG's decision to enter into an Agreement. The disclaimer of warranties set forth in this Section shall be enforceable to the maximum extent permitted by applicable law.

13. **LIMITATION OF LIABILITY.**

ICG WILL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF AGREEMENT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY, ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR RELATING TO AN AGREEMENT, OR ANY DELIVERABLES AND/OR SERVICES, WHETHER OR NOT ICG IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR ANY LOSS OF PROFITS, LOSS OF DATA, EQUIPMENT DOWNTIME, OR LOSS OF GOODWILL. ICG'S AGGREGATE LIABILITY TO CLIENT FOR ANY DAMAGES, LOSSES, FEES, COSTS, TAXES AND/OR LIABILITIES ARISING OUT OF AN AGREEMENT, DELIVERABLES AND/OR SERVICES SHALL NOT EXCEED THE FEES PAID BY CLIENT PURSUANT TO SUCH AGREEMENT FOR THE THREE (3) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST OCCURRENCE OF THE APPLICABLE CLAIM AROSE.

Client acknowledges that the limitations on liability were specifically bargained for and are acceptable to Client. Client's willingness to agree to the limitations of liability set forth in this Section was material to ICG's decision to enter into an Agreement. The limitations on liability set forth in this Section shall be enforceable to the maximum extent permitted by applicable law.

14. **INDEMNIFICATION.**

Client shall indemnify, defend and hold ICG and each of ICG's shareholders, directors, officers, employees, affiliates, consultants and representatives (collectively with ICG, the "ICG Indemnified Parties") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses, including, without limitation, all reasonable attorneys' fees, and any other costs or disbursements of any kind or nature whatsoever, which may be asserted against or incurred by any of the ICG Indemnified Parties, in any way arising, directly or indirectly, out of or relating to any of the following by Client (including, without limitation, any officer, director, employee, contractor, agent, affiliate or representative of Client (each, a "Client Representative")): (i) the negligence or misconduct of Client or a Client Representative; (ii) infringement or misappropriation of any intellectual property rights by Client or a Client Representative; (iii) violation of the Acceptable Use Policy by Client or a Client Representative; (iv) violation of applicable law by Client or a Client Representative; (v) any damage or destruction to any appliance or equipment used to provide the Services by Client or a Client Representative; or (vi) any damage or destruction to any data center, hosting facility or other premise where an appliance or equipment used to provide the Services by Client or a Client Representative. Client's indemnification obligation is subject to (i) Client receiving reasonable notice of any such claim (provided failure to timely provide notice will not relieve Client of Client's indemnification obligation except to the extent such delayed notice has a material adverse effect on the defense of the claim); (ii) Client's right to control and direct the investigation, preparation, defense and settlement of each such claim (provided that, if Client materially fails to defend a claim, then ICG may (at Client's sole cost and expense) defend and settle such claim); and (iii) ICG (at Client's sole cost and expense) cooperating with Client in connection with the investigation, preparation, defense and settlement of each such claim.

15. **GENERAL.**

15.1 Entire Agreement. Each Agreement, including these General Terms and Conditions, the applicable Specific Terms and Conditions, the Acceptable Use Policy, and (if any) each Amendment and Statement of Work (each of which is hereby incorporated into and made a part of such Agreement), represents the entire agreement between ICG and Client, and supersedes any prior understandings or written or oral agreements between ICG and Client, with respect to the subject matter of the applicable Agreement.

15.2 Incorporation. This General Terms and Conditions is incorporated into and made a part of each Agreement by this reference. The Specific Terms and Conditions for the applicable Agreement is incorporated into and made a part of the applicable Agreement by this reference as well.

15.3 Definitions. Each capitalized term used, but not defined, in this General Terms and Conditions has the meaning ascribed to such capitalized term in the applicable Agreement.

15.4 Amendments and Waivers. An Agreement may only be amended or modified pursuant to a written document duly executed by both ICG and Client. No waiver of a breach of any provision of an Agreement by any party shall be construed as a waiver of a subsequent breach of the same or any other provision of an Agreement.

15.5 Invalidity. The invalidity of any provision of an Agreement shall not affect the enforceability of the remaining terms or conditions of an Agreement.

15.6 Assignability. An Agreement is not assignable by Client without the prior written consent of ICG. Any attempt, without the prior written consent of ICG, by Client to assign any rights, duties, or obligations under an Agreement will be void. Without notice to Client, ICG may assign its rights and obligations under an Agreement to any ICG parent, affiliate, subsidiary or joint venture, as well as to any successor of ICG by merger, consolidation or sale of all or substantially all of ICG's assets or stock. Some or all of the Services may be provided by ICG's affiliates, agents, subcontractors and vendors. The rights and obligations of ICG under an Agreement may be, in whole or in part, exercised or fulfilled by the foregoing entities.

15.7 Binding and No Third Party Beneficiaries. An Agreement shall be binding upon, inure to the benefit of, and be enforceable by ICG and Client and their successors and permitted assigns, and no other person or entity shall have or acquire any right by virtue of an Agreement unless otherwise specifically agreed to in writing by ICG and Client. An Agreement shall not be construed to give any person, other than ICG and the Client, any legal or equitable right, remedy or claim under or with respect to such Agreement.

15.8 Independent Parties. Each party will act as an independent entity and not as an agent of the other party for any purpose, and neither will have the authority to bind the other. An Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity.

15.9 Notices. All notices required pursuant to an Agreement shall be written and shall be delivered by (i) hand-delivery; (ii) nationally recognized overnight delivery service (such as FedEx, UPS, DHL or USPS Express Mail); or (iii) electronic mail with verification of receipt. All such notices and other communications shall be addressed to the other party at the address set forth in the last executed Agreement or to such other address as a party may designate by notice complying with the

terms of this Section. Each such notice shall be deemed delivered (i) on the date delivered if by hand-delivery; (ii) on the date delivered or the date delivery is refused by the recipient, if by nationally recognized overnight delivery service; or (iii) upon verification of receipt if by electronic mail.

15.10 Dispute Resolution. Except as otherwise specifically set forth in an Agreement, the parties hereby agree to resolve any and all controversies, claims and/or disputes arising, directly or indirectly, out of or relating to an Agreement (each, a "Dispute") solely pursuant to the terms of this section.

(a) Management Resolution. All Disputes shall first be discussed by the parties' authorized representatives ("Management Resolution"), which representatives are the individuals who have executed the last Agreement on behalf of their party or such person(s) designated representatives (including but not limited to the Client Representatives).

(b) Legal Proceeding. If Management Resolution fails to resolve the Dispute within ten (10) Business Days, then either party may file legal proceedings to resolve the Dispute. "Business Day" means as any weekday (not weekend day) which is not a U.S. federal holiday.

(c) Governing Law, Venue and Jurisdiction. Each Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida (without giving effect to principles of conflicts of laws). The venue for any legal proceedings arising, directly or indirectly, out of or related to an Agreement shall be exclusively in Miami-Dade County, Florida, and each party hereby expressly waives the right to challenge such venue based upon *forum non conveniens* or otherwise. The parties hereby expressly consent to the jurisdiction of the state and/or federal courts in and/or for Miami-Dade County, Florida.

(d) WAIVER OF JURY TRIAL. THE PARTIES EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY FOR ANY LEGAL PROCEEDING ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR RELATING TO AN AGREEMENT. BOTH OF THE PARTIES (i) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (ii) ACKNOWLEDGE THAT EACH OF THE PARTIES HAS BEEN INDUCED TO ENTER INTO AN AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS WAIVER OF JURY TRIAL.

(e) Prevailing Party Attorneys' Fees. In the event of any legal proceeding arising out of or relating, directly or indirectly, to an Agreement, the prevailing party will be entitled to an award of their reasonable attorneys' fees and costs (including, without limitation, all taxable and non-taxable costs, and all fees and costs to determine the amount of fees and costs to be awarded) incurred prior to and during trial and for all levels of appeal.

(f) Injunctive Relief and Cumulative Remedies. Each party agrees that a violation or breach of any of the ownership or non-disclosure provisions of an Agreement could cause irreparable harm to the non-breaching party for which monetary damages may be difficult to ascertain or an inadequate remedy. Therefore, each party will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of the ownership or non-disclosure provisions of an Agreement, and each party hereby expressly waives any objection, in any such equitable action, that the other party may have an adequate remedy at law. The rights and remedies set forth in this General Terms and Conditions are cumulative and concurrent and may be pursued separately, successively.

15.11 Survival. All payment obligations in an Agreement (including, without limitation, set forth in this General Terms and Conditions or in the applicable Specific Terms and Conditions) and the terms and conditions set forth in the following sections of this General Terms and Conditions will survive the expiration or earlier termination of such Agreement: Sections 1, 2, 3.2 through 3.5, 4.3 through 4.5, 7 through 9, and 12 through 15.

15.12 Counterparts and Electronic Versions. An Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect, and all of which taken together shall constitute one and the same instrument. The parties reserve the right to maintain an Agreement in electronic form only, and each party hereby agrees that a print-out of such electronic form of an Agreement will be deemed an original for all purposes relating to the enforceability of such Agreement.