

IPS Software Services Terms and Conditions

THESE SOFTWARE SERVICES TERMS AND CONDITIONS, TOGETHER WITH YOUR EXECUTED PURCHASE ORDER, FORMS A BINDING AGREEMENT (THIS “**AGREEMENT**”) GOVERNING THE PROVISION AND USE OF THE SOFTWARE SERVICES AND SUPPORT SERVICES PURCHASED BY YOU (“**CUSTOMER**”) FROM IPS SOFTWARE LTD. (“**IPS**”).

1. **DEFINITIONS.** In this Agreement:

- (a) “**Activation Date**” means the first date that Customer’s computer system is enabled by IPS to connect to the Services.
- (b) “**Affiliate**” means, in respect of an entity, any entity which directly or indirectly controls, is controlled by, or is under common control with such entity. "Control" for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of an entity.
- (c) “**Agreement**” means these IPS Software Services Terms and Conditions, together with the Purchase Order.
- (d) “**Application**” means the “Innovative Pricing Solutions” software application, as amended, modified and revised from time to time.
- (e) “**Confidential Information**” means and includes any written or orally or visually disclosed information relating to the disclosing party's business identified as “confidential” or which the receiving party should reasonably know is confidential or not generally known to the public, including, without limitation:
 - (i) all proprietary information owned, licensed, used or developed by the disclosing party, including proprietary rights protected by any patents, trademarks, copyrights, trade secrets, know-how and all other intellectual property rights, and
 - (ii) all information relating to the disclosing party's business, the Services, and to all other aspects of the disclosing party's structure, personnel, operations, financial matters, marketing, commercial strategies, customer lists, customer data, contractual records, correspondence, programs, devices, concepts, inventions, designs, methods, data, know-how, and items provided to the disclosing party by third parties subject to restrictions on use or disclosure.
- (f) “**Defect**” means a failure or deficiency in the Software Services warranted by IPS other than a Non-Conformity.
- (g) “**Documentation**” means the documentation, help files, user manuals, handbooks and any other written or electronic material provided by IPS to its customers relating to the Software Services from time to time.
- (h) “**Effective Date**” means the date on which the Purchase Order has been executed by both Customer and IPS.
- (i) “**Fees**” means the fees for the Services as set out in the Purchase Order and any other fees payable under this Agreement, as calculated from the Activation Date.
- (j) “**Initial Term**” means the initial term set out in the Purchase Order.
- (k) “**IPS System**” means, in respect of the Software Services, the entire physical operation(s), located at the IPS facilities designated by IPS from time to time to host the Software Services, including all networks and servers, hardware and software utilized in the provision of the Software Services located behind the Point of Access.

- (ii) IPS may destroy, in its sole discretion, Customer's data remaining on the IPS System after either:
 - (A) receiving confirmation that Customer has a copy of any remaining data;
 - (B) providing Customer with a copy of any remaining data pursuant to Subsection 14(i)(i); or
 - (C) 60 days after the expiration or termination of this Agreement.
- (j) Notwithstanding the expiration or termination this Agreement, Sections 1, 4, 7, 8, 9, 10, 11, 12, 13, Subsections 14(f), 14(g), 14(h), 14(i) and 14(j) and Section 15 shall survive the expiration or termination of this Agreement until such time as the parties may agree to the release of the obligations contained therein.

15. GENERAL PROVISIONS.

- (a) Assignment. Customer may not assign or transfer its rights and obligations under this Agreement to any person without the prior written consent of IPS.
- (b) Entire Agreement. Customer acknowledges that this Agreement (including the Purchase Order) comprises the entire agreement between parties regarding the Services and supersedes all prior written or oral agreements, purchase orders, representations, understandings, promises, descriptions or other communications between the parties regarding the Services. In the event of a conflict between these Software Services Terms and Conditions and any Purchase Order, these Software Services Terms and Conditions shall govern. IPS may change, modify, add or remove portions of these Software Services Terms and Conditions at any time. IPS will notify Customer of any changes to these Software Services Terms and Conditions by posting notice of such changes on the IPS website, or by sending notice via email or postal mail. Customer's continued use of the Services following notice of such change means that Customer agrees to and accepts the Agreement as amended. If Customer does not agree to any modification of this Agreement, Customer must immediately stop using the Services and notify IPS that it is terminating this Agreement.
- (c) Enurement. This Agreement shall be binding upon and enure to the benefit of IPS, Customer and their respective successors and permitted assigns.
- (d) Force Majeure. Neither party shall be liable for delay or failure in performance (other than the making of payments) resulting from acts beyond the control of such party, including, but not limited to acts of God, acts of war, riot, fire, flood, or other disaster, acts of government, strike, lockout, power failures, or the inability to use or the failure of any third party telecommunications carrier or other services, which events or conditions prevent in whole or in part the performance by such party of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make performance commercially unreasonable. In such event, the party affected shall be excused from performance on a day-to-day basis to the extent of the delay, and the other party shall likewise be excused from the performance of its obligations on a day-for-day basis to the extent such party's obligations related to the performance are so delayed.
- (e) Dispute Resolution. In the event of any dispute arising out of this Agreement, the parties shall use commercially reasonable efforts to negotiate a settlement in good faith satisfactory to both parties. If they do not reach such solution within a period of 60 days (or such other longer period as the parties may agree), then either party may, on written notice to the other party, refer the dispute for settlement by arbitration before a single arbitrator in accordance with the Rules of the British Columbia International Commercial Arbitration Centre in the English language at Vancouver, British Columbia, Canada. The costs of the arbitrator will be borne equally by the parties, but they will otherwise bear their respective costs incurred in connection with the

arbitration. The parties shall select the arbitrator promptly and use commercially reasonable efforts to conduct the arbitration hearing no later than three (3) months after the arbitrator is selected. The arbitrator may not award punitive or exemplary damages against either party or any other relief in excess of the limitations set forth herein. The judgment and award of the arbitrator will be final and binding on each party. Judgment upon the award may be entered in any court having jurisdiction, or application may be made to such court for judicial acceptance of the award and/or an order of enforcement as the case may be.

- (f) Independent Contractors. The parties are independent contractors. Nothing herein shall be construed to create any legal partnership, joint venture, agency or any other relationship between the parties.
- (g) Notices. All communications and notices provided for herein shall be in writing and shall be deemed to have been given when delivered personally to the applicable party, or received by facsimile and followed by registered or certified mail with return receipt requested, postage prepaid, and addressed to the applicable signatory at the address appearing on the Purchase Order or at such other address as either party may designate by notice to the other.
- (h) No Waiver. No delay or failure to take any action or exercise any rights under this Agreement shall constitute a waiver or consent unless expressly waived or consented to in writing. A waiver of any event does not apply to any other or subsequent event, even if in relation to the same subject-matter.
- (i) Severability. If any provision contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, it shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall not be in any way affected or impaired thereby and shall continue in full force and effect.

- (l) **“Non-conformity”** means the failure of the Software Services to perform according to the Documentation.
- (m) **“Object Code”** means a computer instruction, substantially or entirely in binary form, which is directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly.
- (n) **“Point of Access”** means IPS's border router(s) used to establish connectivity from the IPS System to IPS's internet service provider and the public Internet.
- (o) **“Purchase Order”** means the purchase order form executed by the Customer and IPS setting out the details of the services subscribed to by Customer, including applicable fees, and which shall form an integral part of this Agreement.
- (p) **“Representatives”** means, in respect of a party, the directors, officers, employees, agents and contractors of such party.
- (q) **“Services”** means the Software Services, Support Services and any additional activities agreed by the parties in writing.
- (r) **“Software Services”** means the “Innovative Pricing Solutions” software services subscribed to by Customer as set out in the Purchase Order, as constituted and made available by IPS from time to time.
- (s) **“Source Code”** means the human-readable form of a computer instruction, including, but not limited to, related system documentation, all comments and any procedural code such as job control language.
- (t) **“Support Services”** means the basic application support services and technical support services purchased by Customer, as such services are constituted, communicated by IPS to Customer in writing and made available by IPS from time to time.
- (u) **“System Availability Period”** means, in respect of the Software Services, twenty-four (24) hours per day, seven (7) days per week excluding System Maintenance Periods.
- (v) **“System Maintenance Periods”** means, in respect of the Software Services, scheduled maintenance periods during which Software Services access will not be available to Customer due to required system maintenance, upgrades, and other hosting requirements for the IPS System.
- (w) **“Termination Effective Date”** means the last day of the month following the month in which notice of termination is provided.

All other terms defined in this Agreement shall have the meanings ascribed thereto.

2. **TERM.** This Agreement shall commence on the Effective Date and remain in full force and effect for the Initial Term, and thereafter will automatically renew for successive periods of one (1) year each, unless terminated by either party as provided hereunder.

3. **SOFTWARE SERVICES.**

- (a) IPS will use commercially reasonable efforts to provide the Software Services to Customer and to host on the IPS System software and data necessary to provide the Software Services, in accordance with this Agreement, for access by Customer's employees for Customer's internal business purposes only.
- (b) IPS will provide Customer with the number of user login passwords set out in the Purchase Order to access the Software Services on the IPS System.
- (c) IPS will provide the Software Services in accordance with the following standards:

- (i) IPS will be responsible for delivery of access to the Software Services on the IPS System only up to and including the Point of Access, and is not responsible for any failure due to Customer's telecommunications connections, facilities (including internal local area networks (LAN)) or local infrastructure;
 - (ii) IPS will make commercially reasonable efforts to ensure the Software Services will be available during the System Availability Period;
 - (iii) IPS will provide Customer with at least 48 hours prior notice by electronic communications of any scheduled System Maintenance Periods;
 - (iv) IPS shall have the right to implement updates and upgrades to any software used in providing the Software Services, in its sole discretion, without notice to Customer;
 - (v) IPS will respond to incidents that have been reported by Customer within the response times provided under the Support Services;
 - (vi) in the event of an IPS System failure, IPS will use commercially reasonable efforts to complete data recovery requests using the most recent version of the backup data, databases, applications and configuration pieces required to restore Customer data, and
 - (vii) if IPS fails to fulfill its Software Services obligations, and fails to cure such breach within 30 days after receipt of notice from Customer, Customer's sole and exclusive remedy shall be to immediately terminate the Software Services. In such event, IPS will refund to Customer any Software Services Fees paid in advance by Customer for the period after the Termination Effective Date.
- (d) Customer agrees that it will:
- (i) at all times comply with and abide by all terms and conditions established by IPS from time to time for the use of and access to the Software Services and the IPS System, including those set out in the Documentation; and
 - (ii) use the Software Services in compliance with all applicable local, provincial, state, federal and international laws.

4. **RESTRICTIONS ON USE OF SOFTWARE SERVICES.**

- (a) Customer shall use the Software Services only for the automotive dealership(s) and only for the number of user login passwords identified in the Purchase Order. Customer must comply with the usage requirements set out in the Documentation to avoid accidental loss of data or data integrity. If Customer does not understand the requirements for the proper use of the Software Services, Customer must contact IPS for additional information.
- (b) Customer may copy or print copies of the Documentation solely for internal use with the Software Services. Customer may not remove any title, trademark, copyright and/or restricted rights or proprietary notices or labels from the Documentation and all copies of the Documentation must include all such notices and labels.
- (c) Customer shall restrict access to the Software Services to its employees or contractors for its internal business purposes only and may not sell, rent, loan, distribute, license, sublicense or otherwise grant any rights in or access to the Software Services to any other persons, nor may Customer cause or allow anyone else to do so.
- (d) Customer agrees not to do or attempt to do or permit others to do or attempt to do any of the following:
 - (i) introduce any kind of malware, including but not limited to viruses, worms, Trojan horses or other harmful code that may damage the operation of the Software Services or the IPS System;

- (ii) use the Software Services in any manner which could damage, disable, overburden or impair any part of the IPS System, or interfere with other customer's ability to use the Software Services or the IPS System;
- (iii) violate or attempt to violate the security of the IPS System or servers or gain unauthorized access other customers' accounts through any manner of hacking or password mining or other means;
- (iv) attempt to embed the Software Services within another website;
- (v) attempt to use such methods as SQL Injection, Cross Site Scripting, Remote File Inclusion, Cross Site Request Forgery and any other methods not authorized by IPS to gain access to the IPS System or the Software Services;
- (vi) attempt a Denial of Service (DOS) attack of any kind;
- (vii) use the Software Services or the IPS System to transmit SPAM, junk email or other unsolicited email of any kind;
- (viii) possess, download or copy the Application;
- (ix) view, read, access or print any of the Application's Source Code or Object Code;
- (x) modify, port, adapt or create derivative works of the Application; or
- (xi) reverse compile, reverse assemble or disassemble the Application's Source Code or Object Code or other runtime objects or files related to the Application or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any portion of the Application or Software Services.

5. **SUPPORT SERVICES.**

IPS will provide the Support Services to Customer in accordance with the terms and conditions, and for the fees, set out in the Purchase Order, the Documentation and as otherwise communicated by IPS to Customer in writing from time to time. Customer acknowledges that the Support Services exclude any additions, modifications or adjustments to the Software Services to correct any Defect or Non-Conformity resulting from the causes described in Subsection 11(b).

6. **FEES AND PAYMENT.**

- (a) Customer shall pay to IPS all Fees, if any, plus all applicable taxes in accordance with this section.
- (b) All Fees are quoted in Canadian funds.
- (c) All Fees will be payable by pre-authorized debit (PAD) payment, unless otherwise expressly agreed by IPS. IPS will make PAD payments from Customer's designated bank account monthly in advance on the due date for such payment in accordance with the PAD Agreement agreed by Customer. Termination of any PAD Agreement with Customer shall not affect the validity of this Agreement nor any amounts due and payable hereunder.
- (d) Customer will promptly provide IPS with notice of any change to the Customer's designated bank account, banking information or address, and shall provide all information necessary to transfer the PAD to the new bank account. This notification must be received at least ten (10) business days before the next PAD is scheduled.
- (e) Without limiting any other rights and remedies which IPS may have, IPS shall have the right to suspend or terminate any or all of the Services without notice and without any liability of IPS to Customer if any Fees or Customer's account are 60 days or more overdue, including any charges for non-sufficient funds.

- (f) Customer shall pay interest on any amounts unpaid after 30 days at a rate of 18% per annum, or the maximum amount allowed by law, from the date such amounts become due and payable. Customer also agrees to pay all costs that IPS incurs to collect any unpaid amounts overdue.
- (g) All Fees are exclusive of all duties and sales tax, usage tax, excise tax, goods and services tax (GST), social services tax, value-added tax or like taxes, and any other governmental charges. Customer shall pay all duties, taxes and charges applicable to the Fees hereunder. If IPS pays any such amounts on behalf of Customer, Customer shall reimburse IPS upon presentation of proof thereof.

7. TITLE.

- (a) Except for the rights to use the Services expressly granted hereunder, the parties acknowledge that IPS reserves all right, title and interest in and to the Software Services, and nothing in this Agreement limits any rights that IPS may have under copyright, patent, trademark, trade secret or other laws.
- (b) The parties acknowledge that at all times IPS is the owner of the IPS System and any other hardware, servers, equipment, networks and software IPS uses in the performance of the Software Services.
- (c) The parties acknowledge that at all times Customer will remain the owner of its data. IPS shall not at any time use Customer's data or disclose Customer's data to any third parties, except that IPS may store, back-up and archive Customer's data. Customer represents to IPS that if Customer's data contains any personal information of Customer's clients, Customer shall have obtained the consent of such clients for Customer's use of their personal information.

8. CONFIDENTIALITY.

- (a) Each party agrees to hold all Confidential Information of the other party in strictest confidence, not to make use thereof other than for the performance of this Agreement, to disclose such Confidential Information only to its Representatives who are under an obligation of confidentiality with respect thereto and who require such information for the performance of their duties, and not to disclose such Confidential Information to any third parties, except with the disclosing party's prior written consent, provided that the foregoing restrictions shall not apply to Confidential Information of the other party:
 - (i) that is now or hereafter in the public domain through no action or failure to act on the receiving party's part;
 - (ii) that was received by or was available to the receiving party from a third party without breach of any obligation of confidentiality to the disclosing party;
 - (iii) that is independently developed by the receiving party by persons who have not had access to the Confidential Information of the disclosing party;
 - (iv) that is disclosed with the written consent of the disclosing party; or
 - (v) is disclosed pursuant to the requirement of a governmental agency or is required by operation of law, regulation or court order, provided that prompt notice is given by the receiving party to the disclosing party prior to such disclosure so that the disclosing party may seek a protective order or other remedy.
- (b) Each party agrees to protect and safeguard Confidential Information of the other party from loss, theft, destruction or inadvertent disclosure with the same care that it protects its own confidential information, but in no event less than a reasonable standard of care.

- (c) Each party shall hold the other party's Confidential Information in trust for the other party and all right, title and interest in and to such Confidential Information shall remain with the disclosing party.
- (d) Each party acknowledges and agrees that a breach of the obligations under this Section 8 would cause irreparable harm and significant injury to the disclosing party that would not be adequately compensated by an award of money damages and, in addition to any other remedy available at law or in equity, the disclosing party will be entitled to seek and obtain temporary and permanent injunctive relief to prevent breaches hereunder, without showing or proving any actual or threatened damage.
- (e) Upon termination of the Services, or otherwise upon the request of a disclosing party, subject to the destruction of Customer data, the receiving party will promptly return to the disclosing party all original copies of the disclosing party's Confidential Information in its possession or control and destroy all additional copies thereof, provided that the receiving party may retain one (1) copy thereof for its internal archival purposes only.
- (f) Neither party shall have any right, express or implied, to use the name, logo, trade name or trademark of the other party, provided that:
 - (i) IPS may refer to Customer as a customer of IPS, and may use Customer's trade name and trademark in IPS's marketing materials and on IPS's website for such purpose; and
 - (ii) Customer may refer to IPS as a supplier of Customer, and may use IPS's trade name and trademark in Customer's marketing materials and on Customer's website for such purpose.

Any other reference to the other party by a party shall require the prior written consent of the other party.

9. **PERSONAL INFORMATION.**

Customer hereby consents to the use by IPS and its Affiliates of Customer's personal information, as applicable, for the purposes of providing the Services to the Customer, making PAD payments, and administering the Customer's account with IPS.

10. **CUSTOMER INDEMNITY.**

Customer shall be solely responsible for the inputs, selection and use of the Software Services and all items, transactions, statements or other content transmitted, posted, received or created on the IPS System through Customer's account, even if transmitted, posted, received or created by someone else and, to the extent permitted by applicable law, Customer agrees to defend, indemnify and hold IPS and its directors, officers, employees, agents, contractors and Affiliates, harmless from any loss, damage or liability which may result therefrom or from breach by Customer of any of the terms and conditions under this Agreement. This indemnity shall survive the termination of this Agreement.

11. **LIMITED WARRANTY.**

- (a) IPS represents and warrants to Customer that, for the duration of this Agreement, the Software Services will provide for Customer the functionality required to conform to the Documentation, in all material respects.
- (b) The foregoing warranty shall not apply to Defects or Non-conformities that result from:
 - (i) Customer's failure to:
 - (A) prepare and maintain in good repair a technical environment that meets the computing environment specified by IPS from time to time, or

- (B) provide necessary communications mechanisms (including connections to Customer's computer system) as specified by IPS from time to time,
 - (ii) the use of the Software Services in combination with apparatus, systems, products or services where such combination was not provided, proposed or recommended by IPS or contemplated in the Documentation; or
 - (iii) failures relating to Customer's computing environment including, without limitation, electrical failure, Internet connection problems, communications problems, or data or data input, output, integrity, storage, back-up, and other external and/or infrastructure problems, which, as between Customer and IPS, shall be deemed under Customer's exclusive control and sole responsibility.
- (c) IPS shall have no responsibility and provides no representations or warranties with respect to any third party software, which shall be warranted only under the applicable original supplier's warranty.
- (d) If Customer notifies IPS in writing of a breach of the foregoing limited warranty, IPS shall, at its cost and expense, promptly, diligently and in good faith continue to completion, using commercially reasonable efforts accounting for the circumstances, the correction or bypassing, in IPS's reasonable discretion, of the Defects or Non-conformity within the period required under the Support Services or such other period as may be mutually agreed by both parties depending on the nature and severity of the Defect or Non-conformity.

12. **EXCLUSION OF WARRANTIES.**

- (a) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES, ARE DELIVERED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS REGARDING THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES AND IPS AND ITS LICENSORS HEREBY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY, FROM A COURSE OF DEALING OR USAGE OF TRADE OR OTHERWISE, REGARDING THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED OR FAILED TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCESSIBILITY, PRIVACY OF FILES OR SECURITY.
- (b) IPS DOES NOT WARRANT THAT THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL BE UNAFFECTED BY BUGS, VIRUSES, ERRORS OR OTHER PROGRAM LIMITATIONS, NOR DOES IPS WARRANT THAT CUSTOMER'S USE THEREOF WILL BE UNINTERRUPTED OR WILL MEET THE CUSTOMER'S REQUIREMENTS.
- (c) ALL RISK ASSOCIATED WITH USE OF THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT IS ASSUMED BY CUSTOMER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACCEPTS ALL RISK ASSOCIATED WITH THE USE AND INPUT OF DATA (INCLUDING ALL AMOUNTS, INTEREST RATES AND FINANCIAL INSTITUTION INFORMATION) WITH THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER.
- (d) NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, OR ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY IPS OR ITS REPRESENTATIVES, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING PERFORMANCE OF THE SOFTWARE SERVICES, SHALL MODIFY, EXTEND OR INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES OR CONDITIONS OR CREATE ANY NEW WARRANTY.

- (e) NOTHING IN THIS AGREEMENT SHALL RESTRICT IPS'S LIABILITY FOR DEATH OR PERSONAL INJURY FROM NEGLIGENCE BY IPS OR ITS EMPLOYEES AND AGENTS. THIS LIMITED WARRANTY GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS. THE CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM LOCATION TO LOCATION, DEPENDING UPON THE APPLICABLE LAW OF SUCH LOCATION.

13. LIMITATION OF LIABILITY AND DAMAGES.

- (a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL IPS NOR ITS LICENSORS NOR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE FOR ANY:
 - (i) PUNITIVE, EXEMPLARY, OR AGGRAVATED DAMAGES;
 - (ii) DAMAGES FOR LOSS OF PROFITS OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF USE OR LACK OF AVAILABILITY OF CUSTOMER MATERIALS OR FACILITIES, INCLUDING ITS COMPUTER RESOURCES, SOFTWARE AND ANY STORED DATA;
 - (iii) DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF USE, DATA, INCOME, BUSINESS, PROFIT, GOODWILL, ANTICIPATED REVENUE OR OTHER COMMERCIAL OR ECONOMIC DAMAGES OR LOSSES);
 - (iv) CONTRIBUTION, INDEMNITY OR SET-OFF IN RESPECT OF ANY CLAIMS AGAINST CUSTOMER;
 - (v) ANY DAMAGES WHATSOEVER RELATING TO THIRD-PARTY PRODUCTS, CUSTOMER'S MATERIALS OR ANY GOODS OR SERVICES NOT DEVELOPED OR PROVIDED BY IPS; OR
 - (vi) ANY DAMAGES WHATSOEVER RELATING TO INTERRUPTION, DELAYS, ERRORS OR OMISSIONS;

ARISING FROM THE SUPPLY, USE, PERFORMANCE OR MISPERFORMANCE OF THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF IPS OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR FOR ANY CLAIMS FOR SUCH LOSS OR DAMAGE INSTITUTED AGAINST A PARTY OR ITS CUSTOMERS BY ANY THIRD PARTY.
- (b) IF, DESPITE THE FOREGOING LIMITATIONS, IPS OR ITS LICENSORS OR ANY OF THEIR RESPECTIVE REPRESENTATIVES IS HELD LIABLE TO CUSTOMER, THE ENTIRE AND SOLE LIABILITY OF IPS AND ITS LICENSORS AND THEIR RESPECTIVE REPRESENTATIVES FOR ANY REASON SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR THE PARTICULAR SERVICES TO WHICH THE LIABILITY RELATES. CUSTOMER AGREES THAT THE MAXIMUM AGGREGATE LIABILITY OF IPS AND ITS LICENSORS AND THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE SUM OF ALL FEES PAYABLE HEREUNDER DURING THE PERIOD OF TIME TO WHICH THE LIABILITY RELATES.
- (c) NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWELVE (12) MONTHS AFTER THE FACTS GIVING RISE TO THE CAUSE OF ACTION HAVE OCCURRED, REGARDLESS OF WHETHER THOSE FACTS BY THAT TIME ARE KNOWN TO, OR REASONABLY OUGHT TO HAVE BEEN DISCOVERED BY, CUSTOMER.
- (d) BECAUSE THE APPLICABLE LAWS OF SOME LOCATIONS DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY, THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO ALL CUSTOMERS.
- (e) THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT, INCLUDING THE FEES DUE HEREUNDER. CUSTOMER ACKNOWLEDGES THAT IPS

WOULD NOT BE ABLE TO PROVIDE CUSTOMER WITH THE SOFTWARE SERVICES, SUPPORT SERVICES OR ANY RELATED PRODUCTS OR SERVICES WITHOUT SUCH LIMITATIONS.

14. **TERMINATION.**

- (a) This Agreement, and Customer's rights and IPS's obligations under this Agreement will expire upon termination.
- (b) After the expiration of the Initial Term, either party may terminate this Agreement, upon at least 30 days prior written notice to the other party, effective as of the Termination Effective Date.
- (c) Either party may terminate this Agreement, upon written notice, if the other party makes an assignment for the benefit of creditors or becomes bankrupt or makes an application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors or if a receiving order or receivership order should be made against the other party, or any action whatsoever, legislative or otherwise be taken to effect the winding up, dissolution, suspension of operations or liquidation of the other party.
- (d) Customer may, on written notice to IPS:
 - (i) terminate the Support Services if IPS fails to diagnose and correct or otherwise resolve, pursuant to Support Services purchased by Customer, any Defect or Non-Conformity in the Software Services within 30 days after receipt of notice from Customer; or
 - (ii) terminate the Software Services if IPS breaches any of its obligations in respect of the Software Services hereunder and fails to cure such breach within 30 days after receipt of notice from Customer.
- (e) IPS may, in its sole discretion, suspend or terminate the Software Services and/or the Support Services, without notice to Customer, if Customer fails to perform or materially breaches any of its obligations under this Agreement or any other obligations to IPS.
- (f) The termination of this Agreement or any Services hereunder shall not discharge any obligation of Customer to make payment for Fees accrued up to and including the Termination Effective Date.
- (g) In the event of any suspension or termination of this Agreement or any Services hereunder, without limiting any other remedies available under this Agreement or at law or in equity:
 - (i) IPS may claim and Customer shall immediately pay to IPS all unpaid amounts due or payable under this Agreement in respect of the Fees accrued up to and including the Termination Effective Date; and
 - (ii) where such breach relates to an unauthorized use of the Software Services or a breach of any other provision of this Agreement, IPS may enjoin such unauthorized use and claim damages.
- (h) Upon expiration or termination of this Agreement:
 - (i) the Software Services shall automatically terminate, without notice from IPS; and
 - (ii) Customer must destroy any copies of the Documentation in Customer's possession in any form and on any media and certify to IPS in writing that it has done so;and upon termination of any particular Services hereunder, the Services so terminated shall automatically terminate, without notice from IPS.
- (i) Upon expiration or termination of this Agreement:
 - (i) Customer may request IPS to provide a copy of all of Customer's data in a CSV file format at IPS's standard fee therefor, as established by IPS from time to time; and