



ENTERPRISE INFRASTRUCTURE PARTNERS

TERMS OF SERVICE

Welcome to Enterprise Infrastructure Partners. Please carefully review these “**Terms of Service**” (or “**Terms**”) as they contain important information about your legal rights, remedies and obligations. When these Terms of Service mention “Enterprise Infrastructure Partners,” “EIP,” “we,” “us” or “our,” it refers to Enterprise Infrastructure Partners LLC including its subsidiaries and affiliates, if any.

These Terms of Service constitute a legally binding agreement between you and EIP governing your access to and use of our end-to-end cloud-based technology solution that provides access to the “EIP Assured Data Connector,” the “EIP Verified Data Connector” and any related “**EIP Materials**” (as defined below) (collectively, “**SaaS Services**”). These Terms also govern our provision of certain technical support services and any other services related to the SaaS Services (collectively, with the SaaS Services, the “**Services**”).

When these Terms mention “you” or “your,” it refers to you as a “**Customer**” of the Services, in the capacity of an individual “**End User**” or a company customer (“**Organization**”).

When these Terms mention “**Organization**,” it means the inclusion of such Organization’s “**Representatives**” which means the Organization and its officers, directors, “**Personnel**” (which means such party’s employees, independent contractors, consultants, subcontractors, vendors, suppliers, agents and any other authorized representatives), legal advisors and any other authorized consultants, advisors or representatives. For the avoidance of doubt, an Organization’s affiliates and their Representatives are separately governed by the Terms since all such affiliates and their Representatives are not parties authorized to use the Accounts of the subject Organization or its Representatives.

Your access to and use of the Services are also governed by the following, each of which is incorporated by reference into and made a part of these Terms: (i) the terms set forth in a “**Purchase Order**” (as defined below), (ii) any additional terms from third-party providers described below or applicable to certain programs or services in which you may elect to participate (“**Additional Terms**”), and (iii) any other policies and procedures applicable to your use of the SaaS Services that we make available.

Further, any information we collect through your use of the Services, whether as an Organization or End User, is subject to our “**Privacy Policy**,” which can be requested at info@entisp, and also governs your use of the Services. The Privacy Policy, together with these Terms are collectively referred to as the “**Agreement**.”

All references to “**Party**” or “**Parties**” means you or us or both you and us. All capitalized terms not defined in these Terms are defined in our Privacy Policy.

IF YOU DO NOT AGREE WITH ALL OF THESE TERMS, DO NOT ACCESS AND/OR USE THESE SERVICES.

1. GENERAL RULES

As a condition of your use of our Services, you acknowledge and agree that as an individual End User:

- You are 18 years of age or older, or if other applicable Laws require you to be older in order to use our Services, then you are the older age under such applicable Law.
- You are able to create a binding legal obligation on behalf of yourself and/or your Organization (e.g., your company and/or employer).
- You are responsible for all information you provide and of your activities in your Account or when using our Services.
- You will use our Services in compliance with all applicable Laws.
- You will not use our Services to solicit the performance of any activity which infringes or violates our rights or the rights of others.
- You will not use our Services to upload, transmit, or otherwise distribute any objectionable or infringing content, as solely determined by us.
- You may only use the Services using your valid Account established and maintained by you and in accordance with the Agreement.

2. CHANGES TO THE TERMS

These Terms are subject to occasional revisions, and if we make any substantive changes, we may notify you by prominently posting a notice of the changes within our SaaS Services and/or within these Terms. Your continued use of our Services (in whole or in part)

following notice of any changes to our Terms or Privacy Policy, or any Additional Terms or other policies or guidelines, constitutes your acceptance of all such changes.

3. SCOPE OF SAAS SERVICES

SaaS Services. To subscribe to the SaaS Services, you must accept a quote and then an invoice from EIP or similar ordering document or form provided by an EIP-authorized third party (e.g., Salesforce, AWS, etc.), which identifies a subscription plan and the scope of the Services (including the SaaS Services) you selected, any additional subscription terms and the fees payable by you to EIP (or an EIP-authorized third party) for such Services (such quote and invoice or other ordering document or form are collectively referred to as the **"Purchase Order"**). The scope of and fees of the Services are described in the **"Summary of Service and Pricing for the EIP Assured Data Connector Service"** document which will be incorporated into and made a part of the Purchase Order. You are only entitled to use the Services for which you have subscribed and paid, and your use of the Services is subject to your compliance with these Terms of Use.

****For clarification purposes, your Organization's subscription to the Services (including the SaaS Services) is specific to your Organization and does not include any of your Organization's affiliates or subsidiaries, including any of their Representatives.**

Technical Support. We will use commercially reasonable efforts to provide complimentary technical support services to you. Our standard support is provided through email communications and available Monday through Friday from 8:00 a.m. to 5:00 p.m. Pacific Time, excluding major federal holidays. You may contact our technical support group by emailing us at support@entisp.com and we will respond via email.

***PLEASE NOTE that the scope of our complimentary technical support services is limited to assisting our helping End Users with questions about the results of our application to achieve expected results occurred in connection with the actual use of the SaaS Services.**

Kickoff Meeting. We provide a kickoff meeting with users nominated by the decisionmaker of purchasing the Services and signatory of the Agreement on behalf of the Organization (**"Executive Sponsor"**) (at a date and time mutually agreed to in writing) that includes a walkthrough of how to use the SaaS Services.

4. YOUR ACCOUNT

- 4.1 Once you have signed up for the SaaS Services on your Organization's behalf, the subscription plan you selected will include two (2) End User Accounts that will enable two End Users to have access to the Services, as further described below. EIP will provide you with a username and password for each of these two End User Accounts.
- 4.2 Since your Organization's subscription will be tied to specific individuals as the End Users, those seats must be used only by or for the designated End Users and cannot be shared or used by any other users or by more than the number of designated End Users. Such specific use and access, however, may be re-assigned at the direction of the Executive Sponsor, to new End Users. These will replace former End Users who are no longer using the SaaS Services. User assignment in your Organization is directed by the Executive Sponsor's written consent and authorization sent to EIP.
- 4.3 As an Account holder, whether you are responsible for your Organization's Account or your specific End User Account, you are responsible for: (a) submitting truthful and accurate registration information about your applicable Account; (b) updating and correcting any information you submitted to create or maintain your applicable Account; (c) maintaining the accuracy of all such information submitting; and (d) maintaining the confidentiality of your applicable Account and login information.
- 4.4 You are solely responsible for all activities and acts or omissions that occur under your Account, regardless of whether by such activities originated from you or another party. You acknowledge and agree that EIP (including its Representatives) is not responsible or liable in any way for any unauthorized access to your Account, lost or stolen Account information, etc. if such loss is not caused by EIP's (or its Representatives') acts or omissions in violation of the Agreement.
- 4.5 Your Account is solely for your specific individual use and is non-transferable. You cannot sell, transfer, combine, sublicense or otherwise share your Account with any other party.

5. SUBSCRIPTION PLAN, TERM AND END USERS

- 5.1 **Subscription Plan.** The Organization's subscription plan will provide two End User Accounts for use of the SaaS Services. Upon choosing a Subscription Plan, you will pay the applicable fee (**"Subscription Fee"**) which is payable at time of purchase and is non-refundable.
- 5.2 **Subscription Term.** The **"Initial Term"** of the Subscription begins on the date you submit payment of the Subscription Fee (**"Effective Date"**) and continues for twelve (12) months. At the end of the Initial Term, your Subscription will automatically renew every twelve (12) months (each a **"Renewal Term"**), unless you give at least thirty (30) days advance written notice of your request to cancel or change your then-existing subscription plan. The **"Term"** means the Initial Term and all Renewals Terms.

- 5.3 These Terms will remain in full force and effect during the Term and such Term will (notwithstanding anything to the contrary) automatically include (or be extended to cover) the entire time during which one or more End Users are using the Services.
- 5.4 **End Users.** You may purchase additional End User Accounts for your Organization by following the online instructions or contacting us. Any of your Organization's End User Accounts may be transferred from terminated End Users (e.g., the Organization's Representatives who are no longer working with projects related to our SaaS Services) to new Organization Representatives as described in Section 4.2.
- 5.5 **Payment and Fee Policies for All Subscription Plans.** You authorize us to charge you the applicable Subscription Fee and any other charges authorized by you (collectively, "**Fees**") for your use of the Services in accordance with the applicable Purchase Order. All such Fees must be paid in U.S. currency and are exclusive of any other charges you may incur in connection with such use, such as taxes, duties, and possible transaction fees. You acknowledge and agree that, depending on the tax regulations governing the state in which you are located, we may also charge you for state sales tax; therefore, in order for you to use the Services, you authorize us to charge you for the Fees plus any such sales tax when you purchase the Services.
- (a) **All Fees (including any applicable sales tax) for all Services selected by you are non-refundable. There are no refunds or credits for any changes to your Account or to the number of End User Accounts you purchase at any time during the Term.**
 - (b) Any late payment of Fees (if applicable) will be subject to all costs of collection (including reasonable attorneys' fees and related costs) and will bear interest at the rate of one and one-half percent (1.5%) per month or at the maximum rate permitted by law, whichever is less. If you are delinquent on a payment of Fees for five (5) days or more, EIP may suspend access to the Services or terminate your Account or subscription.
 - (c) Complaints or disputes concerning invoices must be made in writing within ten (10) days from the date of the invoice; otherwise, such invoices are deemed final and forever barred from dispute.
 - (d) We reserve the right to change our Fees for any of our Services, effective immediately upon notice, which may be provided by posting the changes within the Service or in these Terms.
- 5.6 **Payment Processors.** EIP may choose to utilize the services of third-party payment processors ("**Payment Processors**") to handle Customer's payment of Fees for certain Services, and in such cases, EIP does not store Customer's payment method information and any related information. Such Processors may require Customer to store credit card or Confidential Information. EIP makes no warranties or representation with respect to any Payment Processor and their ability to safeguard any Customer Data or Customer Confidential Information. **Customer is solely responsible for reviewing and complying with any applicable Payment Processor's terms of use and privacy policy prior to using their payment processing services.**

6. LICENSES AND USE RESTRICTIONS

- 6.1 **SaaS Services License.** Subject to and conditioned on Customer's payment of all Fees, and compliance with the terms of this Agreement, EIP grants to Customer (including End Users and applicable Representatives), during the Term, a worldwide, non-exclusive, non-transferable subscription license to use the SaaS Services and any related EIP Materials, solely for Customer's internal business purposes and only in accordance with the terms of this Agreement.
- 6.2 **Customer License.** Customer grants to EIP (including its applicable Representatives), during the Term and as necessary and appropriate for EIP to fulfill its duties and obligations under this Agreement, a worldwide, non-exclusive, royalty-free, perpetual, transferable and sublicensable license to: (a) process any and all "**Customer Data**" (as defined below), which includes without limitation the license to use, distribute, reproduce, display, publish, make derivative works of, etc. for the purpose of performing its duties and obligations under this Agreement; and (b) if applicable, to use and display Customer's trade name, trademarks, logos and all related marks and branding graphics (collectively, "**Customer Trademarks**") for purposes of providing the Services or as permitted in this Agreement.
- 6.3 **Restrictions.** All rights in the EIP Property and any other rights not expressly granted to Customer under this Agreement are specifically reserved by EIP. Except as otherwise specified in this Agreement, End Users shall not engage in any of the following acts, and as an Organization's Representative, shall not permit other End Users or any other Representatives of the Organization to engage in any of the following acts pertaining to the EIP Property (in whole or in part):
- (a) make the EIP Property available to any individual or entity other than authorized End Users;
 - (b) offer to sell, resell, rent or lease the EIP Property;
 - (c) directly or indirectly gain or give (or attempt to gain or give) unauthorized access to the EIP Property;
 - (d) directly or indirectly access, or attempt to directly or indirectly access, the EIP Property in order to (1) build a competitive product or service that is the same or similar, in whole or in part, or (2) copy any features, functions or graphics of the EIP Property, in whole or in part;
 - (e) access and/or engage in any use of the EIP Property in a manner that abuses or materially disrupts EIP or the property or systems of EIP's service providers;
 - (f) interfere with or disrupt the integrity or performance of the EIP Property;

- (g) modify, distribute, prepare derivative works of, copy, frame, mirror, reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code, in whole or in part, used in connection with the EIP Property; or
- (h) use the EIP Property for fraudulent purposes or otherwise in violation of applicable "Law" (which means any statute, law, regulation, rule, code, order, common law, judgment or other requirement of any federal, state, local or foreign government, arbitrator, court or tribunal of competent jurisdiction).

7. CUSTOMER DATA

- 7.1 **Extracted Data from Customer.** The SaaS Services will enable Customer to authorize EIP through the SaaS Services to extract from within all or some of the Customer Systems certain information, content and data related to the Organization or any of its Representatives (collectively, "**Customer Data**" with such term including "**End User Data**" which is data and content entered by Customer's End Users, if any). The SaaS Services will then extract, transform, and load such Customer Data into the Customer Systems, as permitted or instructed by Customer. "**Customer Systems**" means the Customer-authorized platform (e.g., designated repository for extracted data) that receives the Customer Data transferred from the SaaS Services. Usage data and related analytics data resulting from or relating to Customer and its End Users' use of the SaaS Services (but excluding any Customer Data) is referred to in these Terms as "**Resultant Data**."
- 7.2 You acknowledge and agree that, except as otherwise expressly provided in these Terms: (i) you are responsible for any lost or unrecoverable Customer Data residing on Customer Systems; and (ii) EIP is not responsible for the accuracy of Customer Data when extracted, transformed, and loaded. Extracted and transformed files of any of your Customer Data that you or your End Users submit through the SaaS Services are retained for comparison purposes.
- 7.3 **Content Restrictions.** You agree not to use, nor permit any of your Representatives or End Users or any other third party to use, the Services to upload, post, distribute, link to, publish, reproduce, engage in, promote or transmit any of the following:
- (a) Illegal, fraudulent, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information or communications of any kind, including without limitation conduct that is excessively violent, incites or threatens violence, encourages "flaming" others or criminal or civil liability under any local, state, federal or foreign law;
 - (b) Content that would impersonate someone else or falsely represent your identity or qualifications, or that may constitute a breach of any individual's privacy; is illegally unfair or deceptive, or creates a safety or health risk to an individual or the public;
 - (c) Investment opportunities, solicitations, chain letters, pyramid schemes, other unsolicited commercial communication or spamming or flooding;
 - (d) Virus, Trojan horse, worm or other disruptive or harmful software or content; and
 - (e) Content that you do not own or have the right to use without permission from the intellectual property rights owners thereof.
- 7.4 EXCEPT AS MUTUALLY AGREED UPON IN WRITING BY THE PARTIES, YOU AGREE NOT TO (AND YOU AGREE TO CAUSE YOUR END USERS NOT TO) USE THE SERVICES TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION (as defined below). EIP SHALL NOT HAVE ANY LIABILITY THAT MAY RESULT FROM YOUR OR YOUR END USERS' USE OF THE SERVICES TO COLLECT OR MANAGE SENSITIVE INFORMATION.
- 7.5 "**Sensitive Information**" means credit or debit card numbers; personal financial account information; Social Security numbers; passport numbers; driver's license numbers or similar identifiers; racial or ethnic origin; physical or mental health condition or information; or other employment, financial or health information, including any information subject to regulations, laws or industry standards designed to protect data privacy and security, such as, but not limited to, the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act and the Payment Card Industry Data Security Standards.

8. EIP AND CUSTOMER PROPERTY

- 8.1 **EIP Property.** All right, title and interest (including without limitation all Intellectual Property Rights and all other proprietary and related rights) in and to the EIP Materials, EIP's Confidential Information, Deliverables, Resultant Data, Feedback, EIP names, trademarks and logos, Trade Secrets, any information (including marketing and promotional materials) related to EIP and its business, and all other information, materials, program files, deliverables, technology including that of the SaaS Services) and the like, in any form or medium and that is owned or licensed by EIP and/or its licensors and provided to Customer, or any of its Representatives, clients, End Users, suppliers, partners, agents, or Affiliates, or any other third parties doing business in any way with Customer, are owned solely by EIP and/or its licensors (collectively, "**EIP Property**").
- 8.2 Customer acknowledges and agrees that, except for the "**Customer Property**": (a) it has no ownership rights of any kind and agrees not to challenge EIP's rights in the EIP Property, even to the extent such EIP Property includes usage information, Feedback or Resultant Data created as a result of Customer; and (b) it has no rights of any kind with respect to the same except as are specifically granted by EIP in this Agreement.
- 8.3 **Customer Property.** All right, title and interest (including without limitation all Intellectual Property Rights and all other proprietary and related rights) in and to the Customer Data, Customer's Confidential Information, Customer names, trademarks and logos, Customer's Trade Secrets, Customer Applications, Third-Party Content, any information related to Customer and its business, and all other information, materials, program files, deliverables, technology and the like, in any form or medium and that is owned

or licensed by Customer and/or its licensors and provided to EIP or submitted through the SaaS Services are owned solely by Customer, End Users, Representatives and/or its licensors (collectively, "**Customer Property**"). Except as otherwise specified in this Agreement, EIP has no right, title, interest, license or authorization with respect to any of the Customer Property.

- 8.4 **Feedback.** Any feedback, suggestions, ideas, questions, or other comments regarding the Services or EIP Materials provided by Customer to EIP ("**Feedback**") are the sole property of EIP. To the extent Customer owns any rights in the Feedback, Customer assigns to EIP of all of Customer's right, title, and interest in and to the Feedback.

9. **CUSTOMER OBLIGATIONS, REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS**

- 9.1 **Responsibility of End Users.** You, as an Organization, shall remain solely responsible and liable for each End User's compliance with and performance of all End User duties and obligations under these Terms. You must provide all required and appropriate warnings, information and disclosures to your End Users, including the rules in Section 7 regarding Customer Data. You, as an Organization, acknowledges and agrees that such organization shall require all End Users using the Services to be bound by and comply with the terms of this Agreement, including agreeing to the "**Privacy Policy**" that govern such End User's use of the Services. As an individual End User, you must agree to all applicable terms in these Terms of Service and the "**Privacy Policy**." Such online agreement may be accomplished with the End User (if applicable) clicking "I Agree" to the Terms and Privacy Policy prior to obtaining access to the applicable Services.

- 9.2 **Customer Representations and Warranties.** Customer represents and warrants that:

- (a) except for Personal Information provided during the Account registration process, Customer shall not provide EIP any other Personal Information nor authorize EIP to extract any other Personal Information as part of the Services;
- (b) all Customer Data provided directly or indirectly by Customer, or its Representatives or End Users, can be used by Customer, its Representatives and any other authorized clients and third parties of Customer, and can be processed by EIP and its Representatives in accordance with the terms of this Agreement;
- (c) Customer has or will have all necessary rights and consents (including the rights to grant the above-specified license to EIP) in and relating to the Customer Data so that, as received by EIP and processed in accordance with this Agreement, such Customer Data does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any contractual, privacy, publicity or other rights of any third party or violate any applicable Law;
- (d) all Customer Data that Customer directly or indirectly collects is legal to collect and for EIP to process through the Services based on regulatory or legal requirements in the Customer country of origin and the subject party of such Customer Data ("**Data Subject**") origin or location;
- (e) with respect to all Customer Data and if applicable, each applicable Data Subject has given consent to Customer for the processing of his/her/their personal data for one or more specific purposes established by Customer; and
- (f) neither Customer nor its Representatives are in the business of, or in the development stages of, creating or marketing any products or services that compete with EIP or its Services.

- 9.3 **Data Acknowledgement.** You agree and acknowledge that you shall be fully responsible to validate the accuracy of all Customer Data processed by and any resulting data produced (as a result of Customer Data) by the Services when used by you for your use of the Services, payment of Fees, or any other purposes related to the Services.

- 9.4 **Disagreements.** Except as expressly provided in these Terms, you, as either an End User or an Organization, and not EIP, shall be solely responsible and liable for any problems, issues or mistakes (including any claims or conflicts between you and the Organization, another End User or other Representative) that arise from Customer's use of the Services, any Customer Data inputted or processed, or any other Customer Property, including without limitation any disclosure, modification, deletion or loss of any Customer Data, or any other Customer Property, on account of Customer Systems or any acts or omissions of an End User or other Representative (including any devices, systems or software used by a particular End User or Representative in connection with the Services).

- 9.5 **Compliance with Laws.** You, and not EIP, shall be solely responsible for your compliance with all applicable Laws pertaining to: (a) your use of the Services and any other EIP Property; and (b) the processing of all Customer Data through the Services. You shall hold EIP harmless, defend and indemnify EIP from any and all payroll, tax and labor compliance liabilities in accordance with the indemnification section below.

- 9.6 EIP is not obligated to perform any other terms of the Agreement if Customer fails to comply with this Section 9 and may terminate the Agreement or suspend the Services upon written notice to Customer.

10. **UNAUTHORIZED ACCESS**

You acknowledge and agree that you will not allow any unauthorized access to or use of the Services, your Account (including End User accounts) or any other parts of the EIP Property. As an organization, you will ensure that only authorized Representatives and End Users have access to and can use your Account for the Services. You agree to immediately notify us of any actual or suspected unauthorized use of your Account or any other breach of security, including the loss or stealing of your Account or login information. You will, and will

cause your End Users and any other Representatives to, immediately: (a) take all reasonable and lawful measures within your/their respective control necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services, your Account and any other EIP Property); and (b) immediately notify EIP (via email and by telephone) of any such activity.

11. CUSTOMER SYSTEM OBLIGATIONS

11.1 Customer has and will, at all times during the Term, employ (and retain sole responsibility for) all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to:

(a) control the content and use of all Customer Data and any other information, instructions and materials provided by or on behalf of any Customer or related End User or other Representative, Customer's clients or such client's Representatives, regardless of whether Customer has direct knowledge of such party's use (collectively, "**Customer Party(ies)**");

(b) secure Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**");

(c) maintain and operate such Customer Systems in accordance with the applicable Documentation and any other applicable information, or in accordance with industry standards if no Documentation or other information available, for purposes of using the Services;

(d) securely administer the distribution and use of all Customer's and its End Users' login credentials and protect against any unauthorized access to such credentials; and

(e) ensure and monitor all access to and use of the Services and EIP Property by any Customer Party directly or indirectly by or through the Customer Systems.

11.2 Customer shall and will retain, at all times during the Term, sole control and responsibility over:

(a) the operation, maintenance and management of, and all access to and use of, the Customer Systems by Customer and any Customer Parties;

(b) for all access to and use of the Services and EIP Materials by any Customer Party by or through the Customer Systems or any other means controlled by Customer. Such control and responsibility obligations include those over:

(i) any information, instructions or materials provided by any Customer Party;

(ii) results obtained from any use of the Services or EIP Materials or processing of Customer Data; and

(iii) conclusions, decisions or actions based on such use of the Services and EIP Materials.

11.3 Customer Applications, Third-Party Content and Customer Data. Customer Applications and other Third-Party Content obtained or licensed by Customer directly from third parties (and not provided or created by EIP), such as software applications Customer authorized third parties to provide, may be included within the Customer Data or operate within or in connection with the Customer Data or the Services, any of which may be subject to separate terms and conditions, including separate fees and charges.

(a) Except as specified in this Agreement, Customer's use of any Customer Applications, Third-Party Content and Customer Data is at Customer's sole risk and EIP shall have no obligations or liability with respect to such use or risks.

(b) Except as specified in this Agreement, Customer, and not EIP, shall be solely responsible for any problems or issues arising from use of any such Customer Applications, Customer Data or Third-Party Content, including without limitation any disclosure, modification, deletion or loss of any Customer Data on account of such Third-Party Content or any Customer Applications or any acts or omissions of an End User or other Representative.

12. EIP OBLIGATIONS

12.1 EIP reserves the right, in its sole discretion, but is not obligated in any way, to make any changes to the Services or EIP Property, that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of EIP's Services to its customers, (ii) the competitive strength of or market for EIP's Services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. EIP may, in its sole discretion and as it deems appropriate, make available to Customer any updates to the Services and related Documentation that EIP makes generally to its other similarly situated customers with similar implementations of the Services at no additional charge.

12.2 EIP has and will retain sole control over the operation, provision, maintenance and management of the Services and EIP Property, including the: (a) location(s) where any of the Services are performed; (b) selection, deployment, modification and replacement of any software; and (c) performance of maintenance, upgrades, corrections and repairs of the Services.

12.3 Customer is solely responsible for the provision and use of all Customer Data, the Customer System, and any computer hardware and system connectivity as necessary for Customer and related End Users to use the Services via such HTTPS access. Except as specified in this Agreement, Customer acknowledges and agrees that EIP shall not be responsible or liable for the acts or omissions of the hosting provider of the Services if such acts or omissions pertain to the hosting provider's duties and obligations.

13. DATA SECURITY

- 13.1 **Personal Information and Data Breach Procedures.** Other than during the Account registration process, Customer shall neither provide EIP any other Personal Information nor authorize EIP to knowingly extract any other Personal Information as part of the SaaS Services. In the event, however, that Customer does provide EIP any Personal Information as part of its use of the Services, it shall immediately notify EIP in writing of such Personal Information that was submitted through the Services. If EIP receives such written notice from Customer, then EIP shall make all reasonable efforts to comply with the requirements of all applicable Laws pertaining to the protection of such Personal Information.
- 13.2 In the event of any unauthorized access to, or use of or disclosure of, Personal Information stored in the Services or the EIP System that was improperly received by EIP (as described in Section 13.1), EIP shall: (i) report to Customer by email or telephone, such unauthorized access to, or use or disclosure of, Personal Information within seventy-two (72) hours of EIP's actual discovery or knowledge of such an event that pertains to Customer Data; (ii) mitigate, to the extent practicable (as solely determined by EIP), any harmful effect of such access to, or use or disclosure of, Personal Information that is known to EIP; and (iii) reasonably cooperate with Customer in providing any notices to affected individuals and taking such other reasonable actions that Customer and EIP both deem reasonably appropriate. Notwithstanding anything to the contrary in this Agreement, including without limitation EIP's obligations to comply with Sections 13.1 and 13.3 through 13.5 and applicable Laws, EIP shall not in any way be liable to Customer or the Data Subjects for any losses resulting from such unauthorized access described in this Section 13.2.
- 13.3 **Protection of Customer Data.** EIP has reasonably implemented and will reasonably maintain a data security program, in accordance with industry standards, that includes reasonable and appropriate technical, administrative, and physical security measures designed to detect, prevent, and mitigate the risk of identity theft and protect against the destruction, loss, and unauthorized access, disclosure, use, or alteration of information in EIP's possession, including Customer Data. This information security program is intended to reasonably meet the following objectives: (a) protect the security, integrity, and confidentiality of the Customer Data; and (ii) protect against any anticipated threats or hazards, or unauthorized access, to the security or integrity of the Customer Data.
- 13.4 **Business Continuity; Disaster Recovery.** EIP maintains a commercially reasonable business continuity and disaster recovery plan and, upon Customer's written request, EIP will make available a then-current executive summary of the business continuity and disaster recovery plan.
- 13.5 **Backup.** The EIP Systems are programmed to perform routine data backups at least daily, with ability to recover in 5-minute increments to any point within such day. Third party cloud server providers as well as third-party database providers also back up at least daily and on a transactional basis. During the Retention Period, EIP will make available to Customer its then most-current back-ups of Customer Data for download by Customer. EIP retains the daily back-ups for thirty (30) days ("**Retention Period**"). In the event of any loss, destruction, damage or corruption of Customer Data caused by the EIP Systems or Services, EIP will, (as its sole obligation and liability and as Customer's sole remedy) use commercially reasonable efforts to restore the Customer Data from EIP's then most current backup of such Customer Data. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Customer acknowledges and agrees that it is Customer's responsibility to maintain regular data backups and redundant data archives. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, EIP HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.
- 13.6 Notwithstanding anything to the contrary in this Section 13, EIP is not liable and not obligated to comply with the terms in this Section 13 if EIP's hosting provider has and maintains control of Customer's Personal Information submitted through the Services.

14. CHANGES TO THE SERVICES AND PRICING

We reserve the right, at any time, to modify, update, suspend, or discontinue any or all of the Services with or without notice to you. You acknowledge and agree that we will not be liable to you or to any third party for any modification, updates, suspension, or discontinuation of the Services or any part thereof. Unless otherwise indicated, any future release, update, or other addition to functionality of the Services shall be subject to these Terms.

15. TERMINATION

- 15.1 We may, without any liability to you whatsoever, suspend or terminate your rights to use the Services (including your Account) at any time for any reason in our sole discretion, including for any use of the Services in violation of these Terms. This means we have the right to revoke our consent to your use of the Services and/or any other permissions we previously granted to you.
- 15.2 Upon termination of your rights under this Agreement, your Account and right to access and use the Services will immediately terminate.
- 15.3 **You acknowledge and agree that ALL of Customer access to Customer Data or Customer Property and any related information and analyses will terminate immediately upon the expiration of the Term or termination of your Account, whichever earlier, as permitted under this Agreement.**

15.4 Survival. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect (e.g., survive the termination of the Terms): Sections 8 and 17 through 27, and any other right or obligation of the Parties in this Agreement that, by its nature, sense and context are intended or should survive termination or expiration of this Agreement.

16. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS

16.1 We take the protection of Intellectual Property seriously. We respect the rights of others' content and Intellectual Property, and we expect our End Users to do the same. You agree not to copy, distribute, display or otherwise reproduce any of the Services or any information available through the Services without obtaining our prior written permission in each such instance. We reserve the right (in our sole discretion) to terminate and/or disable the Accounts of any Customer or related End Users for materially or repeatedly infringing the intellectual property rights of ours, our suppliers and any other third parties in accordance with all applicable Laws.

Claims of copyright or other intellectual property infringement can be sent to our copyright agent at info@entisp.com.

16.2 Any claims of alleged copyright or other intellectual property infringement must include:

- Identification of the intellectual property works which are the subject of the claimed infringement.
- Identification of the claimed infringing activity, including the location within the applicable Services of the infringing copy.
- A statement with the signature of the person making the claim, which states that he/she is the owner, or authorized to act on behalf of the owner, of the infringed intellectual property, along with current contact information, which should include a mailing address, telephone number, and email address.
- A statement of a good faith belief that the subject use is not authorized by the intellectual property owner.
- A statement as follows: "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the intellectual property that is allegedly infringed."

16.3 If a statement does not include all required elements, it will **not** be treated as actual notice under the U.S. Digital Millennium Copyright Act (17 U.S.C. §512), or other applicable U.S. intellectual property law.

16.4 Although U.S. law does not provide for a similar procedure for trademark infringement, we recommend that you send us similar information as described above regarding any allegation of trademark infringement, and we will address it as soon as practicable.

16.5 In the event we receive a claim, which substantially complies with the complaint requirements detailed above, we may (in our sole discretion) decide to remove the alleged infringing material from our Services and if we do so, we will then notify you (with the contact information you provide us) that the material has been removed. If you are the recipient of a removal notice from us, you may provide us with a counter notice if you believe the claim is in error. If you are the subject of multiple claims of infringement, we may, in our sole discretion, terminate your Account without any notice to you.

17. CONFIDENTIALITY

17.1 Confidential Information. Each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). "**Confidential Information**" means non-public information in any form or medium (whether oral, written, electronic or other) that could reasonably be considered to be confidential or proprietary, including, but not limited to, confidential knowledge, inventions, works, ideas, processes, formulas, source and object codes, data, programs, works of authorship, know-how, improvements, discoveries, developments, designs and techniques, information consisting of or relating to the Disclosing Party's technology, Trade Secrets, know-how, business operations, plans, strategies, customers, vendors, licensors, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential," and including information disclosed before the execution of this Agreement. Without limiting the foregoing, all EIP Materials are the Confidential Information of EIP and the financial terms and existence of this Agreement are the Confidential Information of the Parties. Customer shall not disclose EIP Materials to any third party without EIP's prior written approval.

17.2 Confidentiality Obligations. Each Party shall protect the Disclosing Party's Confidential Information, using the same degree of care as it uses to protect its own confidential information, but no less than a reasonable degree of care. Each Party shall use a similar degree of care to ensure that Confidential Information is not disclosed or distributed by its Personnel or any other Representatives in violation of this Agreement. Neither Party will sell, transfer, publish, disclose, or otherwise make available any portion of the Confidential Information of the other Party to third parties, except as necessary to perform its obligations under this Agreement or as expressly authorized in this Agreement. Each Receiving Party shall disclose Confidential Information only to its Personnel or any other Representative who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 17; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 17. Each Party shall cause its Representatives to comply with and be responsible for any of its Representatives' non-compliance with the terms of this Section 17. The Parties agree to hold each other's Confidential Information in confidence during the Term of this Agreement and thereafter.

17.3 Non-Confidential Information. Notwithstanding the above, Confidential Information of a Party will not include information which: (a) is, as of the time of its disclosure or thereafter becomes part of the public domain through no breach of this Agreement by the Receiving Party; (b) was rightfully known to the Receiving Party as of the time of its disclosure; (c) is independently developed

by the Receiving Party; (d) is subsequently learned from a third party not known to the Receiving Party that the third party is under a confidentiality obligation to the Disclosing Party; or (e) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, whereupon the Receiving Party will provide prompt written notice to the Disclosing Party so that prior to such disclosure, the Disclosing Party may seek a protective order or other appropriate remedy, with Receiving Party's reasonable efforts to help preserve the confidence of such Confidential Information as much as reasonably possible.

- 17.4 **Duty to Notify and Mitigate.** The Receiving Party shall promptly notify the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, whether known or suspected, and shall use all reasonable efforts to mitigate any harm that may be caused by such unauthorized use or disclosure and reasonably cooperate with the Disclosing Party in any efforts by the Disclosing Party to mitigate any harm that may be caused by such unauthorized use or disclosure.

18. **INDEMNIFICATION**

- 18.1 **Indemnification.** Each Party (as "**Indemnitor**") agrees to indemnify, defend and hold harmless the other Party and its Representatives (collectively, as "**Indemnitee**") from any claims, disputes, demands, liabilities, damages, losses and costs and expenses (including without limitation reasonable attorney' fees and costs) or demand ("**Claims**") made by third parties and any losses, costs and expenses ("**Losses**") incurred by Indemnitee to the extent caused by, resulting from or arising out of or in connection with: (a) Indemnitor's breach of its obligations under the Agreement; (b) Indemnitor's violation of applicable Law in connection with its performance of the Agreement; (c) Indemnitor's gross negligence, willful misconduct, fraud or fraudulent misrepresentations related to its performance of the Agreement; (d) the actions or inactions of Indemnitor's Representatives related to subsections (a) through (c) in this Section 18.1; or (d) an allegation that Indemnitee's use of some or all of Indemnitor's property (EIP Property for EIP as Indemnitor and Customer Property for Customer as Indemnitor), in accordance with the terms of the Agreement, constitutes an infringement, misappropriation or unlawful use or disclosure of any intellectual property or Personal Information, or other privacy or proprietary rights of a third party.

- 18.2 **Indemnification Procedure.** Each Party's obligations as the Indemnitor are conditioned upon the Indemnitee completing the following: (a) giving Indemnitor prompt written notice of any claim, action, suit or proceeding for which the Indemnitee is seeking indemnity; (b) granting complete control of the defense and settlement to the Indemnitor; and (c) reasonably cooperating with the Indemnitor at Indemnitor's expense. Notwithstanding anything to the contrary in this Section 18.2, any negotiations relative to the settlement of any such claim intended to bind the Indemnitee shall not be final without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. Indemnitee may participate in or observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitee's failure to promptly notify the Indemnitor as to the existence of an indemnifiable Claim will not relieve the Indemnitor's indemnification obligations under this Agreement, except to the extent that such failure or delay is prejudicial.

- 18.3 **Mitigation.** If any of the EIP Property are, or in EIP's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights, or if Customer's use of the EIP Property is enjoined or threatened to be enjoined by a court of competent jurisdiction, EIP may, in its sole discretion and its sole cost and expense: (a) obtain the right for Customer to continue to use the EIP Property materially as contemplated by this Agreement; (b) modify or replace the EIP Property, in whole or in part, to seek to make the EIP Property (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute EIP Property, as applicable, under this Agreement; or (c) by providing thirty (30) day's prior written notice to Customer, terminate this Agreement with respect to all or part of the EIP Property, and require Customer to immediately cease any use of the affected Services or any specified part or feature thereof. Accordingly, Customer will be entitled to a refund of any pre-paid Fees or Expenses attributable to the period of time after such termination.

- 18.4 Notwithstanding anything to the contrary in Sections 18.1 and 18.2, neither Party as Indemnitor shall be obligated to indemnify the Indemnitee as required if any Claim or Loss arises out of or relates to: (a) the negligent or culpable acts or omissions of Indemnitee; (b) any breach of this Agreement by Indemnitee to the extent such breach caused or created the Claim or Loss.

19. **REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants that: (a) it has all necessary authority to enter into and perform its obligations hereunder without the consent of any third party or breach of any contract or agreement with any third party; (b) this Agreement, when executed and delivered, will be a legal, valid and binding obligation of such Party enforceable in accordance with the terms of this Agreement; (c) it will comply in all material respects with applicable Law related to its duties and obligations under this Agreement; (d) it will obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and (e) other than as specified in this Agreement, it will not make any representation, warranty, or other legally binding commitments on behalf of the other Party or any of its third party providers.

20. **DISCLAIMERS**

- 20.1 THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND WE (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED,

TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE; OTHERWISE, THERE IS NO SUCH WARRANTY AVAILABLE.

20.2 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

20.3 WE DO NOT ENDORSE ANY SPECIFIC PRODUCTS, PROGRAMS, PROCEDURES, OPINIONS OR OTHER INFORMATION THAT MAY BE MENTIONED OR DESCRIBED THROUGH OUR SERVICES. IF YOU RELY ON ANY CONTENT OBTAINED BY YOU THROUGH THE SERVICES, YOU DO SO SOLELY AT YOUR OWN RISK. EIP ASSUMES NO RESPONSIBILITY FOR ANY ACT, OMISSION, ACTIVITY, PRODUCT OR SERVICE THROUGH INDIVIDUALS OR PROGRAMS PROVIDED THROUGH THE SERVICES.

21. **LIMITATION OF LIABILITY**

21.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EIP BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICES, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO AND USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

21.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR TOTAL, AGGREGATE LIABILITY FOR THE ENTIRE TERM OF THE AGREEMENT (INCLUDING FREE TRIAL, MONTHLY, YEARLY SUBSCRIPTIONS AND ANY RENEWALS) TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THESE TERMS (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE AMOUNTS YOU HAVE PAID TO EIP, IN THE IMMEDIATELY PRECEDING SIX-MONTH PERIOD PRIOR TO THE CLAIM, FOR USE OF THE SERVICES, PROVIDED YOU DO NOT HAVE ANY THEN-EXISTING PAYMENT OBLIGATIONS TO EIP. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

21.3 YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS SECTION 21 AND ANY OTHER RELEVANT TERMS IN THIS AGREEMENT.

21.4 SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

21.5 THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH IN THESE TERMS ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EIP AND YOU.

22. **CALIFORNIA RESIDENT WAIVER**

IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE ANY SIMILAR PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED RELEASE.

23. **FORCE MAJEURE**

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, pandemics, epidemics, labor shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control (collectively, "**Force Majeure**"). We reserve the right (in our sole discretion) to terminate any or all Services to any Organization or End Users due to any Force Majeure event.

24. **INFORMAL DISPUTE PROCEDURE**

Prior to formally filing any claim against EIP or any of its Representatives ("**Dispute**"), Customer shall use good faith efforts to attempt to resolve such Dispute informally by submitting to EIP a written notice of the Dispute describing the nature and basis of the Dispute and the requested relief ("**Dispute Notice**"). Upon receiving such Dispute Notice, EIP will use good faith efforts to resolve the Dispute informally by contacting Customer within thirty (30) days of such receipt. If a Dispute is not resolved within ninety (90) days after the date of EIP's first contact with Customer, then either Party may bring a formal proceeding through the arbitration procedures as described in Section 25 below.

25. **MISCELLANEOUS TERMS**

- 25.1 Order of Precedence. In the event that the terms of the Privacy Policy, Additional Terms, and any other EIP Materials conflict with those terms in these Terms of Use, the order of precedence (with respect to the subject matter in conflict) will, unless otherwise expressly stated in these Terms only, be as follows: (a) Terms of Use, (b) Privacy Policy, (c) Additional Terms, and (d) any other EIP Materials.
- 25.2 Publicity. EIP may publicize that the Customer, as an organization, is a customer by including such Customer's name, trademarks or logos in EIP's marketing and promotional materials, including the website(s), mobile application(s) and other digital properties. For any press releases or other public announcements related to this Agreement, EIP will obtain Customer's prior written consent, which shall not be unreasonably withheld or delayed. EIP's use of Customer's trademarks, names, logos, as permitted in this Section must be in accordance with Customer's established guidelines, if any are provided by Customer.
- 25.3 Assignment. Either Party may, upon written notice to the other Party, assign this Agreement in its entirety, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the assigning Party's assets. Any other purported assignment shall be void and constitute a material breach of this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 25.4 Independent Contractors. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 25.5 Equitable Relief. Customer acknowledges and agrees that its obligations regarding non-competition, non-solicitation, Confidential Information and any intellectual property rights hereunder have a unique, very substantial and immeasurable value to EIP, and breach of such obligations would cause irreparable harm and unascertainable damages to EIP; entitling EIP to injunctive relief and any other available remedies, including reasonable attorneys' fees and costs, without posting a bond or security or proving any actual damages, and in addition to any monetary relief as may be recoverable by law.
- 25.6 Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS AGREEMENT MUST BE LITIGATED (AS PERMITTED IN THIS AGREEMENT) ON AN INDIVIDUAL PERSON OR ORGANIZATION BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER, END USER (WHETHER AN INDIVIDUAL OR AN ORGANIZATION) CANNOT BE LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER, END USER (WHETHER AN INDIVIDUAL OR ORGANIZATION).
- 25.7 Governing Law and Jurisdiction. The validity, construction and interpretation of the Agreement will be governed by the laws of the State of California, excluding its conflict of laws provisions, and will specifically not be governed by the United Nations Conventions on Contracts for the International Sale of Goods, if otherwise applicable. Except for either Party seeking equitable relief under Section 25.5 in any court having jurisdiction, the Parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the City of Coronado and in San Diego County, California for the interpretation of and resolution of all disputes, initiated by either of the Parties or any other party, under this Agreement.
- 25.8 Time Limit. Notwithstanding any to the contrary in this Agreement, except for those subject to Section 25.5 (Equitable Relief), any claim or cause of action arising out of or related to Customer's use of the Services must be filed within one (1) year after such claim or cause of action arose, or else such claim or cause of action will be barred forever.
- 25.9 Waiver of Jury Trial. When applicable under this Agreement, the Parties irrevocably waive any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement. Further, in the event any litigation should arise between the Parties in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, both Parties and their Representatives waive all rights to a trial by jury, instead electing that the dispute be resolved by a judge.
- 25.10 Attorneys' Fees. The prevailing Party in any action related to the interpretation, performance or breach of any provision of this Agreement will be entitled to seek to be reimbursed for any and all reasonable attorneys' fees, costs and expenses incurred in pursuing such remedy hereunder.
- 25.11 Notice Requirements. Except as otherwise specified in this Agreement including Section 26, all notices pertaining to any action related to the interpretation, disputed performance or breach of any provision of this Agreement must be in writing and must be sent via email and also delivered or sent by: (i) first class mail, registered or certified, return receipt requested, postage pre-paid; or (ii) express mail, or national express courier with a tracking system, to the addresses for each Party specified in this Agreement. All notices required under this Agreement will be deemed given on the day actually received by the Party to whom the notice is addressed, except receipt of emails will be deemed given based on the date that is automatically included in the email, provided such a day is a business day; otherwise, on the next business day after the email is sent. Notwithstanding anything to the contrary in this Section 25.11, we may but are not required to send to Customer any notices as described in subsections (i) and (ii) so long as we send such notices via email in accordance with this Section 25.11. For clarification, Customer must send to EIP any notices subject to this Section 25.11 in accordance with all the terms in this Section 25.11.
- 25.12 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole.
- 25.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be deleted and the remainder thereof shall remain in full force and effect. Upon such determination the Parties shall negotiate in good faith to substitute (to the greatest extent possible) the invalid

or voidable provision with a valid provision most closely approximating the economic effect and intent of the invalid provision that was originally contemplated by the Parties.

25.14 **Entire Agreement, Etc.** This Agreement embodies the entire agreement and understanding of the Parties and supersedes all prior or contemporaneous written or oral communications or agreements between the Parties regarding this Agreement. No amendments or additions to this Agreement will be binding unless in writing and signed by both Parties. Unless expressly provided in this Agreement, no remedy specified herein is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity. No delay or omission by either Party to exercise any right or power it has (in whole or in part) under this Agreement will be construed as a waiver of such right or power. A waiver by either Party of any breach by the other Party will not be construed to be a waiver of any succeeding breach or any other covenant by the other Party. All waivers must be in writing and signed by the Party waiving its rights. This Agreement is for the sole benefit of the Parties under this Agreement and such Parties' successors and permitted assigns, and nothing herein express or implied shall give or be construed to give any person or entity other than such Parties any legal or equitable rights hereunder.

26. **EIP ELECTRONIC COMMUNICATIONS TO YOU**

The communications between you and EIP use electronic means, whether you use the Services or send us emails, or whether we post notices on the Services or communicate with you via email. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in a hardcopy writing. The foregoing does not affect your non-waivable rights.

27. **CONTACT US**

PLEASE CONTACT US AT TOU@entisp.com IF YOU HAVE ANY QUESTIONS ABOUT THESE TERMS.