



INTELLICHECK STANDARD TERMS AND CONDITIONS

Effective Date: September 2023

Please read these Terms and Conditions ("**Terms**" or "**Terms and Conditions**") carefully. The Terms constitute an agreement between Intellicheck, Inc. ("**Intellicheck**,"), and the entity, organization or individual ("**Customer**") accessing or using our cloud-based software as a service (SaaS) ("**Intellicheck Platform**"). These Terms also govern the use of any applications, software, services, and other offerings made available through our platform ("**Intellicheck Services**").

BY CLICKING THE "ACCEPT" BOX, OR USING THE SERVICES, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THESE TERMS, PLEASE DO NOT ACCESS, BROWSE, OR OTHERWISE USE THE INTELLICHECK PLATFORM OR INTELLICHECK SERVICES. Intellicheck's collection and use of personal information in connection with the Intellicheck Platform is described in our Privacy Policy, found at [Privacy Policy](#).

1. Services

Subject to these Terms, Intellicheck will provide to Customer access to Intellicheck Services and third-party services via the Intellicheck Platform as identified on the Order Form signed by Customer and incorporated into these Terms ("**Order Form**") or through the Intellicheck Platform User Interface ("**PUI**"). Intellicheck's service level agreements for the Intellicheck Services and service level agreements for third party services are set forth in the PUI and are incorporated as part of these Terms. Any issues arising under the third-party service level agreements will relate solely to the applicable third-party service and are the responsibility of the third-party service provider.

The Intellicheck Platform provides users with the ability to analyze and authenticate components of identification cards and other government forms of identification containing magnetic stripe, barcode, and smart chip information, subject to any legal or governmental restrictions ("**Permitted Purpose**"). Conditioned upon Customer's full compliance with these Terms and obtaining an active subscription or other registration, Customer may access and use the Intellicheck Platform and Intellicheck Services solely for the Permitted Purpose.

If Customer is an entity or organization and has a valid subscription or other registration with Intellicheck to use the Intellicheck Platform and Intellicheck Services, Customer may authorize employees to access and use the Intellicheck services as part of Customer's subscription ("**Employee User**"). As noted below, certain provisions may not apply to an Employee User. Employee Users represent that they have the authority to enter into these Terms on behalf of their organization.

2. Updates

Included with the Intellicheck Platform are corrections, modifications, and enhancements ("**Updates**"). Intellicheck may incorporate the Updates or other changes to the Intellicheck Platform at any time and from time to time without prior notification to the Customer. Additional features to the Intellicheck Platform may be added by Intellicheck from time to time ("**Additional Features**"). Customer will have the option of accepting such Additional Features if such Additional Features involve additional fees or entering into a new agreement.

3. Supplemental Terms for Certain Intellicheck Services

Customer's use of the Intellicheck Services may be subject to additional terms separate from these Terms and Conditions including, but not limited to terms of the Apple App Store, Google Play Store, Amazon Appstore for Android, Windows Apps Microsoft Store, or other similar service that lawfully enables download of the Intellicheck Platform (each an "**App Store**" and collectively the "**App Stores**") (and the applicable terms for each, "**App Store Terms**"). In the event of a conflict between the App Store Terms

and these Terms and Conditions, the App Store Terms will govern Customer's use of the Intellicheck Platform and Intellicheck Services only to the extent of the conflict.

4. User Restrictions

Customer may not (i) rent, lease, sell, subcontract, sublicense, lend, assign, otherwise transfer, copy, distribute, reproduce, use, publicly perform, display, electronically distribute, "timeshare," make available over a network or allow access to the Intellicheck Platform; (ii) modify, adapt, alter, translate, prepare derivative works from (including translations, adaptations, arrangements, or any other alteration), decompile, reverse engineer, disassemble, or otherwise attempt to derive source code from any portion of the Intellicheck Platform; (iii) remove, obscure, or alter Intellicheck's or any provider of third party services' copyright notices, trademarks, or other proprietary rights notices or legends affixed to or contained within the Intellicheck Platform; (iv) make any attempt to unlock or bypass any initialization system or encryption technique within the Intellicheck Platform; (v) transmit viruses or any other malicious code to the Intellicheck Platform or overburden or interfere with the integrity or performance of the Intellicheck Platform; (vi) use the Intellicheck Platform for any purpose other than the scanning, parsing, analyzing, verifying, or authenticating of a government issued identification document or other identification document(s); (vii) except as expressly provided herein, provide, disclose, divulge, or make the Intellicheck Platform to, or permit use of the Intellicheck Platform by, any third party for any unlicensed use; or (viii) use or permit use of the Intellicheck Services for any purpose not authorized by law.

5. Registration

Any user of the Intellicheck Platform must register in order to access or use the Intellicheck Services. The number of authorized users, the duration of Customer's use, and the availability of Intellicheck Services or functionality and features within the Intellicheck Platform are subject to the type of registration Customer has made or subscription Customer purchases and Customer's payment of applicable subscription fees.

If Customer is accessing or using the Intellicheck Platform as an Employee User, Customer agrees and acknowledges that Customer's ability to access and use the Intellicheck Platform and the availability of Intellicheck Services and features or functionalities in the Intellicheck Platform are subject to the type of registration or subscription selected by that entity or organization and both their compliance and Customer's compliance with these Terms.

6. Account

To use the Intellicheck Platform, Customer will be required to establish a user account ("**Account**"). In order to establish an Account, Customer may need to provide certain personal information about themselves, including their first and last names. All information provided during Account registration by Customer must be true and accurate. Collection and use of Customer's personal information is subject to Intellicheck's Privacy Policy.

Customer is entirely responsible for the security and confidentiality of their Account and password (including an Employee User's Accounts if Customer is an entity or organization). Further, Customer is entirely responsible for any and all activities that occur under their Account, even where their username, password, and other access information or codes are used by someone else (including an Employer User's Accounts if Customer is an entity or organization).

Customer agrees to immediately notify Intellicheck of any unauthorized use of their Account or any other breach of security of which Customer becomes aware of or suspect (including an Employer User's Account if Customer is an entity or organization). Customer is responsible for taking precautions and providing security measures best suited for their situation and intended use of the Intellicheck Platform. Please note that anyone able to provide Customer's personally identifiable information will be able to access Customer's Account, so Customer should take reasonable steps to protect their information.

7. Intellectual Property Rights

Customer acknowledges that, as between Customer and Intellicheck, Intellicheck and its suppliers own all Intellectual Property Rights in the Intellicheck Platform and Intellicheck Services. “**Intellectual Property Rights**” means: (i) copyrights and other rights associated with works of authorship; (ii) trademarks, service marks, trade names and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; and (v) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force, and all similar rights throughout the world. Intellicheck acknowledges, however, that Intellicheck has no proprietary interest or license in trade names, service marks, data, or information, supplied or input to the Intellicheck Platform by or on behalf of Customer except for the limited license hereby granted to use any such information and materials solely and as reasonably required to perform Intellicheck’s obligations under these Terms or enhance Intellicheck products and services. Customer may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify any intellectual property that will infringe on Intellicheck’s Intellectual Property Rights. Intellicheck and its licensors retain full copyright ownership and protection in all material contained in or on the Intellicheck Platform and Intellicheck Services (including all digital images, software, HTML code and other code, or business methods) with the exception of third-party content. Intellicheck does not condone copyright infringement in connection with the Intellicheck Platform or Intellicheck Services and will remove allegedly infringing content if properly notified of the infringement. Intellicheck reserves the right to terminate Customer’s account if Customer or their Authorized Employee infringe or violate the intellectual property, proprietary or legal rights of others.

8. Data Rights

Any content or information provided to Intellicheck by Customer that may be used to provide or improve the Intellicheck Services (“**Customer Data**”) is and will remain the property of Customer or its suppliers or licensors. Customer hereby grants Intellicheck a non-exclusive right and license to use and reproduce any content or information provided to Intellicheck by Customer in connection with performance of services for Customer and to enhance Intellicheck’s products and services. Customer is responsible for obtaining all necessary rights to the Customer Data. Nothing in these Terms restricts Intellicheck from collecting, using and analyzing general information and data from its customers (including Customer) for purposes of improving and enhancing the quality and nature of services offered by Intellicheck, or to market or publish general information and statistics, provided that Intellicheck does not specifically identify Customer or disclose any personally identifiable information in the course of collecting, using, analyzing, marketing or publishing such information or data.

9. Compliance with Applicable Law

Customer will comply with all applicable federal, state, and local laws, regulations and ordinances governing its use of the Intellicheck Platform, including applicable privacy laws, and Customer will not use the Intellicheck Platform to violate any applicable federal, state, or local law, regulation or ordinance.

10. Fair Credit Reporting Act

Customer acknowledges and agrees that Intellicheck does not assemble or evaluate any information whatsoever that will be collected, used, or is expected to be used in a consumer report. As such, the parties understand and believe that Intellicheck is not (i) a “consumer reporting agency” as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as amended (“**FCRA**”), and the Customer Data has not been collected by Intellicheck in whole or in part for the purpose of furnishing “consumer reports” as defined in the FCRA; or (ii) a furnisher of information to consumer reporting agencies as described in the FCRA. Customer certifies that it shall not use the data retrieved or generated through its use of the Intellicheck Platform to determine eligibility for (A) credit or insurance, (B) employment purposes, or (C) any other purpose authorized under Section 604 of the FCRA.

11. Intentionally left blank.

12. Fees and Payments

a. **Fees.** Customer will pay the fees set forth in the Order Form (“**Fees**”). After the first year of the Initial Term (as defined in Section 13), Intellicheck may increase the Fees for the Intellicheck Services annually by the greater of: a) five percent (5%); or (b) the percentage rate of increase equal to the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as reported by the United States Department of Labor, Bureau of Labor Statistics. The pricing information provided in the Order Form or otherwise provided to Customer by Intellicheck is Intellicheck’s confidential information.

b. **Payments.** Customer will be invoiced for the amounts and prices set forth in the Order Form. Payments to Intellicheck will be made in United States dollars to the address provided by Intellicheck to Customer. All payments are due upon receipt of the invoice. If Customer fails to pay the recurring subscription fee required to maintain their selected type of subscription, Customer will not be permitted to further use the Intellicheck Platform and Customer will lose access to Intellicheck Services. All payment obligations are non-cancellable and all amounts paid are non-refundable, except for amounts paid in error that are not actually due under the applicable Order Form.

c. **Past-Due Payments.** Past due payments will be subject to a late payment charge calculated at an annual rate of five percentage points (5%) over the prime rate (as provided by the U.S. Federal Reserve) during delinquency. If the amount of such charge exceeds the maximum permitted by law, such charge will be reduced to such maximum. If Intellicheck incurs any fees or expenses for collection of monies owed, Customer will be responsible for reimbursing Intellicheck for any such expenses. In any case such payment is not paid in full when due, in addition to any other remedy otherwise available to Intellicheck, Intellicheck may impose interest on overdue Fees and other charges at the rate of 1.5% per month (or, if less, the maximum amount permitted by law) until Customer is current on all payments. If payment is not received within 30 days after an invoice is sent to Customer by Intellicheck, Intellicheck reserves the right to terminate access to the Intellicheck Services, at its sole discretion, until payment is satisfied. In the event the account becomes delinquent and satisfactory arrangements have not been made for payment, Customer agrees to pay all collections costs and reasonable attorney fees.

d. **Taxes.** Customer will bear all taxes, duties, levies and similar charges (and any related interest and penalties), however designated, imposed as a result of the existence or operation of these Terms. Fees due to Intellicheck under these Terms do not include U.S. or foreign sales and use taxes. If Intellicheck is required by applicable law to collect and remit such taxes based on the Intellicheck Services provided to Customer under these Terms, Intellicheck will, to the extent reasonably feasible, include such taxes on the invoice to Customer in accordance with these Terms. Notwithstanding the exclusion of any U.S. or foreign sales and use tax from any invoice, Customer is solely responsible for all U.S. and foreign sales and use taxes imposed on the Intellicheck Services provided to Customer under these Terms. Customer shall indemnify Intellicheck for any claims against Intellicheck for all such taxes. Customer will not be responsible for or pay any penalties or interest imposed with respect to taxes Intellicheck collects from Customer but fails to properly calculate or remit, but will be responsible for the amount of any such taxes. Intellicheck will be responsible for all taxes based upon its net income.

13. Term and Termination

a. **Term.** These Terms will commence the earlier of the date the Customer, or Employee User, first registers for or otherwise accesses or uses the Intellicheck Platform, or as otherwise specified in an order form, and will remain in full force and effect for an initial period of two (2) years (unless specified otherwise in an order form) or until terminated in accordance with this Section 13 (“Initial Term”). Thereafter, this Agreement will automatically renew for one successive year (“Renewal Term”) unless either party provides thirty (30) days written notice of termination prior to the end of the Initial Term or the Renewal Term, or until terminated in accordance with this Section 13.

b. **Termination.** Either party may terminate these Terms if any of the following events occur: (i) the other party materially breaches the Terms (after receiving written notice of such breach and fails to cure that breach within 30 days); (ii) the other party’s activities under these Terms violate applicable law; or (iii) the other party becomes insolvent, enters into bankruptcy or other similar proceedings, or attempts to make

an assignment for the benefit of creditors. In the event of a termination, subject to these Terms, either party will be eligible to seek those remedies available to it in accordance with applicable laws. Intellicheck may terminate this Agreement at any time, effective as of the date provided in the termination notice.

c. **Effect of Termination.** Upon termination or expiration of these Terms, (i) all of Customer's rights to use the Intellicheck Platform will immediately cease; (ii) Customer will immediately cease all use of the Intellicheck Platform and (iii) Customer must immediately un-install and delete or destroy all copies of the Intellicheck Platform that remain in the Customer's possession or control and cease using the Intellicheck Platform. Intellicheck will have no obligation to continue to store or permit Customer to retrieve any data, content, information, or any other materials that the Customer stores on the Intellicheck Platform following any termination of these Terms. Termination under this section does not excuse any of Customer's obligations to pay any Fees specified in Section 12.

d. **Survival.** The provisions regarding fees and payment obligations, licensing, feedback and market, terms and termination, disclaimer of warranties, limitations of liability, indemnification, and jurisdiction and applicable law will survive the expiration or termination of these Terms for any reason. All other rights and obligations of the parties will cease upon termination of these Terms.

14. Accurate Records

Customer will keep full, clear, and accurate records with respect to their use of the Intellicheck Platform and will furnish any information which Intellicheck may reasonably prescribe from time to time to enable Intellicheck to ascertain whether Customer is in full compliance with these Terms. Customer will retain such records for at least five (5) years. Intellicheck and its agents will have the right to make examinations, during normal business hours, of all records and accounts bearing upon the amounts of fees payable to it under these Terms. Prompt adjustment will be made by the proper party to compensate for any errors or omissions disclosed by any such examination. The cost of any examination will be paid for by Intellicheck unless the examination reveals an underpayment by Customer.

15. Feedback & Marketing License

By submitting any ideas, feedback, or proposals ("**Feedback**") to us through the Intellicheck Platform or other means, Customer acknowledges and agrees that: (a) Feedback provided to Intellicheck does not contain Customer or any third party's confidential or proprietary information; (b) Intellicheck is not under any obligations of confidentiality with respect to the Feedback; (c) Intellicheck may freely use, reproduce, distribute, and otherwise exploit the Feedback for any purpose; and (d) Customer is not entitled to any compensation of any kind from Intellicheck.

Customer grants to Intellicheck a nonexclusive royalty-free right and license to use Customer's name and logos to identify Customer as an Intellicheck customer on any physical or digital marketing materials, commercial presentations and on the Intellicheck website. This license will survive the termination of these Terms and does not apply to Employee Users.

16. Data Security

During the Term of this agreement, Intellicheck agrees to implement reasonable security measures to protect the Customer Data and will, at a minimum, utilize industry standard security procedures.

Customer and Intellicheck, each agree that at all times during the Term of this agreement, each will be in compliance with all prevailing local, state, or national laws in reference to general data protection and data privacy including those laws, policies and regulations dealing with the protection of personally identifiable information. Failure to comply with this undertaking will be deemed to be a material breach of these Terms.

17. Compliance with Laws

Customer will comply with all applicable federal, state, and local laws, regulations and ordinances governing its use of the Intellicheck Platform, including applicable privacy laws, and Customer will not use the Intellicheck Platform to violate any applicable federal, state, or local law, regulation or ordinance.

18. Infringement Claims

In the event of any third party claim that the Intellicheck Platform or Customer's use or possession of the Intellicheck Platform (i) infringes that third party's intellectual property rights, (ii) results in any product liability claims; (iii) results in any claims that the Intellicheck Platform fails to conform to any applicable legal or regulatory requirement; or (iv) results in any claims under consumer protection or similar legislation, Intellicheck, and not any App Store operator, will be solely responsible for responding to and resolving such claims. **Note that the warranty disclaimers and limitation of liability set forth in Sections 22 and 23 apply to any such claims.**

If a third party claims that any portion of the Intellicheck Platform or Intellicheck Services directly infringe or misappropriate any U.S. Intellectual Property Rights, Intellicheck will (as long as Customer is not in default under these Terms or any other agreement with Intellicheck) defend Customer against such claim at Intellicheck's expense and pay all damages that a court finally awards, provided that Customer promptly notifies Intellicheck in writing of the claim, allows Intellicheck to control response to the claim, and cooperates with Intellicheck in the defense of a claim and any related settlement negotiations. If such a claim is made or appears possible, Intellicheck may, at its option, secure for Customer the right to continue to use the affected portion of the Intellicheck Platform or Intellicheck Services, modify or replace the affected portion of the Intellicheck Platform or Intellicheck Services so that it is non-infringing, or, if neither of the foregoing options is reasonable in Intellicheck's judgment, require Customer to forego or return the affected portions of the Intellicheck Platform in its possession (if any) or cease use of the affected portions of the Intellicheck Services for a credit equal to the portion of previously paid fees allocable to the remaining term of the affected Intellicheck Platform or Intellicheck Services. However, Intellicheck has no obligation for any claim based on the combination, operation, or use of the Intellicheck Platform with any product, data or apparatus not provided by Intellicheck or the unauthorized or non-compliant use of the Intellicheck Platform. THIS PARAGRAPH STATES INTELlicHECK'S SOLE LIABILITY AND ENTIRE OBLIGATION TO CUSTOMER AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

19. Use of Information Collected by the Intellicheck Platform

Before submitting any third-party personal information to the Intellicheck Platform, Customer will obtain all permissions, consents, and authorizations necessary to provide such information to Intellicheck and for Intellicheck and Intellicheck's affiliates to use such information to perform the services within the Intellicheck Platform in accordance with Intellicheck's Privacy Policy, as required by law. If applicable law allows Customer to provide the information without doing the foregoing, Customer represents and warrants that Customer has abided by that law and that it allows Intellicheck to receive, use, and disclose the information to perform the services in the Intellicheck Platform in accordance with Intellicheck's Privacy Policy without any further action on Intellicheck's part.

Customer represents, warrants, and agrees that it will not sell, distribute, publish, transfer or otherwise make available any third-party personal information collected via the Intellicheck Platform, unless Customer has obtained prior consent from the third party concerned or is authorized or required to do so by applicable law or contract.

20. Customer's Conduct and Warranties

By using or accessing the Intellicheck Platform, Customer represents, warrants, and agrees that Customer will not do anything that is illegal, infringing, fraudulent, malicious or could expose Intellicheck or users of the Intellicheck Platform to harm or liability (including without limitation through transmission of harmful code or offensive content, or access to or transmission of proprietary information), and Customer will not attempt, encourage or facilitate any of the above.

If Customer is a Company, Customer represents and warrants that Customer has taken all necessary actions to authorize the Employee User to assent to these Terms and have granted the Employee User sufficient authority to bind the Employee User to these Terms.

Customer is solely responsible for their Authorized Employee's use of the Intellicheck Platform and Customer will ensure that they comply with these Terms. Customer is liable for all acts and omissions of their Authorized Employee in relation to the Authorized Employee's use of the Intellicheck Platform and the Authorized Employee's compliance with these Terms.

21. Indemnification

Customer agrees to release, discharge, defend, indemnify and hold harmless Intellicheck and its parents, subsidiaries, officers, directors, employees and agents, assigns, licensors and suppliers from and against any claims, actions or demands, liabilities and settlements, including, without limitation, legal and accounting fees, related to or arising out of use in any way of the Intellicheck Platform or Intellicheck Services, Customer's breach of these Terms, Customer's failure to comply with applicable law (including applicable privacy laws), Customer's failure to obtain the appropriate permissions, consents, and authorizations as required under these Terms or Customer's violations of any rights of another. Intellicheck will provide Customer with prompt notice of any such claim, suit or proceeding and reasonably cooperate with Customer, at Customer's expense, in Customer's defense of any such claim, suit or proceeding.

22. Warranty Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER ASSUMES ALL RISKS ARISING OUT OF CUSTOMER'S USE OF THE INTELlicHECK PLATFORM AND INTELlicHECK SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE INTELlicHECK PLATFORM, INTELlicHECK SERVICES AND ANY RELATED SUPPORT SERVICES (IF ANY) ARE PROVIDED "AS IS", "AS AVAILABLE", AND WITH ALL FAULTS AND WITHOUT ANY ASSURANCE, OR WARRANTY, CONDITION OR DUTY OF OR REGARDING: FUNCTIONALITY; PRIVACY; SECURITY; ACCURACY; AVAILABILITY; REPAIRS; OR LACK OF: NEGLIGENCE, INTERRUPTION, VIRUSES OR OTHER HARMFUL CODE, COMPONENTS, OR TRANSMISSIONS; OR THE NATURE OR CONSEQUENCES OF AVAILABLE CONTENT. THE INTELlicHECK PLATFORM AND INTELlicHECK SERVICES ARE PROVIDED FOR INFORMATION PURPOSES ONLY. THE CONTENT OR ANY OTHER INFORMATION MADE AVAILABLE THROUGH THE INTELlicHECK PLATFORM AND INTELlicHECK SERVICES DO NOT CONSTITUTE ADVICE OF ANY KIND AND SHOULD NOT BE RELIED UPON IN ANY WAY. INTELlicHECK IS NOT LIABLE FOR ANY OMISSIONS OR ERRORS OF THE INTELlicHECK PLATFORM. INTELlicHECK, OUR AFFILIATES, LICENSORS, AND SUPPLIERS MAKE NO WARRANTY AND HEREBY DISCLAIM ANY IMPLIED, STATUTORY OR OTHER WARRANTY, INCLUDING ANY WARRANTY OF TITLE, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABLE QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK (IN CONNECTION WITH THE INTELlicHECK PLATFORM) AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH CUSTOMER. SHOULD THE INTELlicHECK PLATFORM PROVE DEFECTIVE, CUSTOMER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INTELlicHECK SHALL CREATE A WARRANTY. CUSTOMER AGREES THAT CUSTOMER WILL OBTAIN (INCLUDING, WITHOUT LIMITATION, THROUGH DOWNLOAD) ANY CONTENT OR PRODUCTS ENTIRELY AT CUSTOMER'S OWN RISK, AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY RESULTING INFRINGEMENT, BREACH OF CONTRACT, CONSEQUENCE OR DAMAGE, INCLUDING (WITHOUT LIMITATION) DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS AS SPECIFIED HERE AND TO THE LEAST EXTENT AS ALLOWED BY LAW, SUCH EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO CUSTOMER.

23. Limitation and Exclusion of Remedies and Damages

CUSTOMER CANNOT RECOVER AND IN NO EVENT WILL INTELlicHECK, INTELlicHECK'S AFFILIATES, LICENSORS, OR SUPPLIERS BE LIABLE FOR, ANY COSTS, DAMAGES AND EXPENSES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, PUNITIVE, INCIDENTAL, SPECIAL, INDIRECT AND CONSEQUENTIAL DAMAGES, LOST PROFITS OR REVENUES OR DAMAGES RESULTING FROM LOST OR CORRUPTED DATA OR BUSINESS INTERRUPTION OR ANY LOSS OR DAMAGES RESULTING FROM LICENSED APPLICATION FAILURE, MALFUNCTION, SHUTDOWN, FAILURE TO ACCURATELY TRANSFER OR READ INFORMATION, FAILURE TO PROVIDE CORRECT INFORMATION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES) RESULTING FROM OR RELATED TO THE USE OR INABILITY TO USE THE INTELlicHECK PLATFORM OR INTELlicHECK SERVICES, HOWEVER CAUSED, OR THE CONTENT OF THE INTELlicHECK PLATFORM OR INTELlicHECK SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT INTELlicHECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTELlicHECK WILL BE LIABLE TO CUSTOMER ONLY FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND ONLY TO THE EXTENT OF ACTUAL DAMAGES INCURRED BY CUSTOMER, NOT TO EXCEED TWENTY-FIVE U.S. DOLLARS (US\$25.00), OR THE AMOUNT CUSTOMER PAID FOR THE INTELlicHECK SERVICES, WHICHEVER IS GREATER. THIS IS CUSTOMER'S EXCLUSIVE REMEDY. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THESE TERMS. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

INTELlicHECK FULLY DISCLAIMS ANY LIABILITY FOR ANY LOSS, DAMAGES OR OTHER LIABILITY THAT MAY ARISE FROM (i) CUSTOMER'S NON-COMPLIANT USE OF THE INTELlicHECK PLATFORM OR (ii) THE DATA RETRIEVED OR GENERATED THROUGH ITS USE OF THE INTELlicHECK PLATFORM.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY AS SPECIFIED HERE AND TO THE LEAST EXTENT AS ALLOWED BY LAW, SUCH EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO CUSTOMER.

24. Miscellaneous

a. Headings. The headings of the sections used in these Terms are included for convenience only and are not to be used in construing or interpreting these Terms.

b. Assignment. Neither party may assign, delegate, or otherwise transfer these Terms or any of the rights or obligations expressed in these Terms without the other party's prior written approval, which will not be unreasonably withheld. However, either party may assign these Terms in their entirety to any of their affiliates or to a successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party.

c. Notices. All legal notices will be deemed effective when sent to the address set forth in the signature block below as follows: (i) if hand-delivered, upon delivery, (ii) if sent by a reputable overnight courier, three (3) days after sending; or (iii) if sent by email, immediately upon confirmation of the successful transmission to recipient.

Customer may give notice to Intellicheck at the following address:

Intellicheck, Inc.
200 Broad Hollow Road, Suite 207
Melville, NY 11747

d. Choice of Law and Venue. These Terms, including their formation, are governed by the laws of the State of New York, without giving effect to conflicts of laws principles that would require a different result. Any claim, action or judicial proceeding arising out of or related to these Terms will be brought in the state courts located in Central Islip (Suffolk County), NY, or a federal court in the Eastern District of New York. The parties agree to the exclusive jurisdiction of those courts for any such proceeding.

e. Force Majeure. Neither party will be liable or deemed to be in default for any delay or failure in performance of any obligation under the Terms or interruption of service to the extent resulting directly or indirectly from acts of God, civil or military authority, acts of the public enemy, acts of terrorism, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, or any other cause beyond the reasonable control of such party. The party claiming such force majeure event must give timely written notice to the other party and will use due diligence to mitigate the situation. Such force majeure does not relieve the non-performing party of liability in the event of its concurrent negligence, in the event of its failure to use due diligence to remove the cause of the force majeure in an adequate manner and with all reasonable dispatch, or in the event such default or delay could have been prevented by reasonable precautions or could have been circumvented by the non-performing party through the use of alternate sources, work around plans or other means.

f. Relationship of Parties. Intellicheck and Customer are independent contractors under these Terms, and nothing in these Terms will be construed to create a partnership, joint venture, franchise or Customer or fiduciary relationship between them. Neither party has any authority to enter into agreements of any kind on behalf of the other party and neither party will attempt to or create any warranty or other obligation, express or implied, on behalf of the other party.

g. Entire Agreement. These Terms sets forth the entire agreement and understanding between the parties as to the subject matter discussed and merges all prior discussions between them. For clarification, the terms of any confidentiality or non-disclosure agreement entered into between the parties will remain in full force and effect.

h. Severability. If any provision of these Terms is held by a court of competent jurisdiction to be contrary to law or unenforceable, the remaining provisions of these Terms will remain in full force and effect and these Terms will be construed without such provision.

i. Amendment. These Terms may only be amended by a writing of subsequent date signed by both parties.

j. Effect of Waiver. The waiver of a breach of any term included in these Terms will in no way be construed as a waiver of any other term or waiver of such breach on other occasions.