



END-USER LICENSE AGREEMENT AND TERMS OF SERVICE FOR MARKING SERVICES ONLINE BUSINESS APPLICATIONS

1. PLEASE READ CAREFULLY: THESE TERMS OF SERVICE (REFERRED TO AS EITHER “TERMS” OR “AGREEMENT”) CONSTITUTE A LEGAL AND BINDING AGREEMENT BETWEEN YOUR ORGANIZATION (“CUSTOMER”), AND MARKING SERVICES INSTALLATION, INC. (“MARKING SERVICES”) (COLLECTIVELY “THE PARTIES AND INDIVIDUALLY “A PARTY”) EITHER WHEN YOU ARE FIRST GIVEN ACCESS TO THE USE OF THE SOFTWARE (“SERVICE”) OR EXECUTE A WRITTEN DOCUMENT AGREEING TO THESE TERMS, WHICHEVER IS EARLIEST.

2. Terms of Service. MARKING SERVICES under the terms of this Agreement is providing to its Customer a proprietary platform for the input, organization and association process, storage, retrieval, and use of data and documents. The Customer owns the Customer Data while MARKING SERVICES owns all other intellectual property rights including, but not limited to, the application, the software, platform, data which is not defined as within “Customer Data”, and items related to the platform. “Customer Data” is defined as the inputs provided by the Customer related to its business. MARKING SERVICES hereby takes responsibility for the platform subject to these terms and conditions, while the Customer takes responsibility for the inputs and use of the inputs, including all conduct by the employees, independent contractors, and other agents of the Customer. Subject to the terms and conditions of the Agreement, MARKING SERVICES grants to Customer a limited non-exclusive, non-transferable (except in connection with an assignment as permitted in the Agreement) and terminable license to use the Service purchased by Customer as described in the applicable documentation solely for Customer’s internal operations unless explicitly stated otherwise. In addition, any new features that augment or enhance the Service, and/or any new service(s) subsequently purchased by the Customer will be subject to these Terms. The service is a cloud based secure application segmented for individual Customer’s and their inputs. However, the code base is shared, consistent, and collectively upgraded among Customers in order to help reduce the costs of the platform, support, and upgrades.

2.1 Customer Must Have Internet Access. Customer must have or must obtain acceptable and adequate access to the Internet and software that will access and display Web-based content. Customer must also use a platform supported by MARKING SERVICES and continue to use a supported platform during the life of this Agreement. The parties agree that the Customer is solely responsible for determining and providing the acceptable Internet access and adequate bandwidth for services utilization and software including, but not limited, to those items described in Sections 2.1 through 2.14 of these Terms.

2.2 Accuracy of Customer’s Contact Information. Customer shall provide accurate, current and complete information on Customer’s legal business name, address, email address, and phone number, and maintain and promptly update this information for both billing purposes and for service administration if they should change.

2.3 Passwords, Access, and Notification. Customer may designate a number of users under Customer’s account that corresponds to the number of authorized users purchased by Customer. Customer is responsible for controlling employee access and is prohibited from sharing passwords and/or user names



with any unauthorized user. Customer will be responsible for the confidentiality and use of Customer's user's passwords and user names. Customer will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Customer data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Any electronic communications that MARKING SERVICES receives via Customer's accounts will be deemed to have been sent by Customer. Customer agrees to immediately notify MARKING SERVICES if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's user names, password, and/or account number.

2.4 Customer's Conduct. Customer and Customer's employees, independent contractors, and other agents shall comply with all applicable local, state, federal, and foreign criminal and civil laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications, and anti-spam legislation. Customer shall not send any electronic communications from the Service that are unlawful, harassing, libelous, defamatory, or threatening. Except as expressly permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Further, Customer agrees that it nor its employees, independent contractors, or other agents shall try to reverse engineer or assist any third party in attempting to reverse engineer either the Service as provided or the functionality of the Service. Customer shall not access the Service by any means other than through the interfaces that are provided by MARKING SERVICES. Customer shall not license, rent, sell, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the Service available to any unauthorized user, including but not limited to, by "mirroring" or "framing" any part of the Service, or by creating Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including but not limited to rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Customer shall not in any way express or imply that any opinions contained in Customer's electronic communications are endorsed by MARKING SERVICES. Neither Customer, nor someone acting on Customer's behalf, shall use the Service to target for solicitation any MARKING SERVICES Customers for purposes of providing any competitive product. Customer shall ensure that any use of the Service by Customer's employees (or Customer's other authorized users) is in accordance with the terms and conditions of this Agreement.

2.5 Third-Party Software. Customer shall use third party software necessary for accessing the Service, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by MARKING SERVICES. Customer shall use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by MARKING SERVICES and to follow logon procedures for services that support such protocols. MARKING SERVICES is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software; or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet, which are not owned or operated by MARKING SERVICES.

2.6 Transmission of Data. Customer consents to MARKING SERVICES receipt and storage of electronic communications and/or Customer data, and Customer acknowledges and understands that Customer's



electronic communications may involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by MARKING SERVICES. Customer acknowledges and understands that changes to Customer's electronic communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. MARKING SERVICES is not responsible for any electronic communications and/or Customer data which are delayed, lost, altered, intercepted or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by MARKING SERVICES, including, but not limited to, the Internet.

2.7 Customer Data. All Customer Data shall be owned by the Customer. Customer grants MARKING SERVICES the right to use, store and modify the Customer Data solely for purposes of MARKING SERVICES performing the Services under this agreement. Customer hereby warrants to MARKING SERVICES that it either owns, or is a licensee, of the Customer Data and has the full requisite power and authority to grant MARKING SERVICES such usage rights in the Customer Data and that there are no additional consents or approvals required for granting such usage rights. During the term of this agreement, Customer may download the Customer Data from within the Service or schedule the Customer Data to be automatically downloaded, which in each case will only be provided in the available formats potentially without association with the other data elements or organizational structure. If a Customer needs to restore data that they were responsible for deleting, MARKING SERVICES will assist on a Time & Material billing to the Customer.

2.8 MARKING SERVICES Ownership of Technology. The application, workflow processes, user interface, designs, know-how, software, and other technologies provided by MARKING SERVICES as part of the Service are the proprietary property of MARKING SERVICES and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with MARKING SERVICES. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or software. MARKING SERVICES reserves all rights unless expressly granted in this Agreement. MARKING SERVICES may use during and after the Term all aggregate non-identifiable data in the Service for purposes of enhancing the Service, technical support and other business purposes. Customer agrees to cooperate with MARKING SERVICES to maintain MARKING SERVICES' ownership of the application and any software, and, to the extent that Customer become aware of any claims relating to the application or software, the Customer agrees to use reasonable efforts to promptly provide notice of any such claims to MARKING SERVICES. Any rights not expressly granted herein are reserved by MARKING SERVICES.

2.9 Links/Third-Party Data. The Service may provide, or third parties may provide, links to other websites or resources. Because MARKING SERVICES has no control over such websites and resources, MARKING SERVICES is not responsible for the availability of such external websites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such websites or resources. In addition, MARKING SERVICES is not responsible for any third-party information that may be provided to Customer through the Service (e.g., through the integration of the Service with a third party online application).



2.10 Trademarks and Service Marks. MARKING SERVICES, the MARKING SERVICES logo, AIM, AIM Lite, ATLAS, and other MARKING SERVICES service marks, logos and product and service names are marks of MARKING SERVICES. Customer agrees not to display or use the MARKING SERVICES marks in any manner without MARKING SERVICES express prior written permission.

2.11 Mutual Confidentiality. For purposes of this Agreement, confidential information shall include the terms of the Agreement, Customer data, and any information that is clearly identified in writing at the time of disclosure as confidential (“Confidential Information”). Each party shall: (a) keep confidential all Confidential Information disclosed to it by the other party; (b) not use the confidential Information of the other party except to the extent necessary to perform its obligations or exercise rights under this Agreement; (c) protect the confidentiality thereof to the same degree as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information); and (d) to make Confidential Information available to authorized persons only on a “need to know” basis. Either party may disclose Confidential Information on a need-to-know basis to its employees or contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of the Services. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; or (4) the recipient becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient. Notwithstanding the foregoing, this Section 2.11 will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

2.12 Storage Limits. MARKING SERVICES limits the average amount of database to 25MB per asset as a default. MARKING SERVICES shall notify the Customer when they exceed the average limit, to allow Customer to reduce or they may incur additional storage fees.

2.13 Data Back Up. MARKING SERVICES standard practice is to make nightly backups with a disaster recovery point objective of 24 hours and a two-week retention. The maximum business continuity recovery time objective is 48 hours. MARKING SERVICES makes no guarantees to the Customer concerning the adequacy or availability of the backups, and provides the backups without warranty or guarantee.

2.14 Penetrating Test. If required, MARKING SERVICES will conduct an independent, third party quarterly penetrating test and an annual security review at the Customer’s expense.

3. Payment. Product, set-up fees and subscription plans are invoiced and due Net 30 days from the invoice date. Subscription plans may be paid annually or in accordance with any different billing frequency on the applicable Order. ACH transfer, check, and credit cards are all acceptable methods of payment. Credit card orders will incur a 2.5% fee.

4. Disclaimer of Warranties. EXCEPT FOR ANY WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, MARKING SERVICES DOES NOT GRANT ANY WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, BY



STATUTE OR OTHERWISE, REGARDING THE SERVICE OR ANY OTHER SUPPORT, PRODUCTS, OR SERVICES RELATED THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARKING SERVICES SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE, ACCURACY OF DATA, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE. MARKING SERVICES DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED, OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5. Indemnification Obligations and Limitations of Liability.

5.1 INDEMNIFICATION. Each party shall indemnify the other party against third party claims arising from its or its agents' breach of this Agreement or the alleged violation of any civil or criminal law, rule, or regulation.

5.2 LIMITATION OF LIABILITY. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged for access to the Service and that, were MARKING SERVICES to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

MARKING SERVICES SHALL NOT BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTION, LOST BUSINESS INFORMATION, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF MARKING SERVICES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY. IN ADDITION, MARKING SERVICES CUMULATIVE LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, SHALL BE LIMITED TO AND SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO EITHER MARKING SERVICES OR AN AUTHORIZED MARKING SERVICES RESELLER FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE DISCLAIMER OF WARRANTIES AND THE LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS MAY NOT BE PERMITTED IN CERTAIN JURISDICTIONS. IN SUCH CASE, COMPANY'S AND MARKING SERVICES LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

6. Export Laws. The licenses granted to Customer and Customer's use of the Service is subject to all applicable export or import laws, regulations, orders, or other restrictions. Notwithstanding anything contained in these Terms or the Agreement to the contrary, Customer shall not export or import, directly or indirectly, any software or technical information to or from any country to which such export or import is restricted or prohibited or as to which such government or any agency thereof requires a license or other governmental approval at the time of export or import without first obtaining such license or



approval. Furthermore, Customer shall cooperate as requested by MARKING SERVICES to insure compliance with any such export or import restrictions.

7. Assignment. Customer shall not assign its rights under this Agreement without the permission of MARKING SERVICES, which shall be in MARKING SERVICES sole discretion. MARKING SERVICES may assign its rights and obligations under this Agreement to an affiliate of it or of MARKING SERVICES, INC.

8. Source Code in Escrow. The latest revision of the Source Code shall be delivered by MARKING SERVICES to a third party every six months. The Source Code shall be in human readable form to enable a programmer or analyst to understand, maintain, modify and update the Code. The third party shall keep the latest code in a safe and secure environment until such time a "Release Event" occurs. The following items qualify as "Release Events": MARKING SERVICES files for bankruptcy without posting adequate security to continue its contract responsibilities, enters into a compromise or arrangement with creditors which prevents its ability to continue its contract responsibilities, is wound up or dissolved, ceases to carry on its business other than the sale of substantially all of its assets to a successor, or any other similar event. The Customer and MARKING SERVICES will notify the third party that the Release Event has occurred and make a notarized "Declaration from the Customer to MARKING SERVICES" to request the release of the Source Code.

9. Suspension/Termination.

9.1 Termination. Either party may terminate this Agreement for cause upon providing the other party written notice of the alleged breach and a reasonable right to cure. Provided, however, that MARKING SERVICES shall have no obligation to perform under this Agreement should Customer be in a payment default until the Customer either makes all payments current or posts a financial security which is acceptable in MARKING SERVICES sole discretion. Should Customer file for legal protection arising out of its insolvency or inability to pay its creditors, all of MARKING SERVICES obligations to perform under this Agreement shall be suspended until such financial security is provided, secured, and guaranteed by a financial institution in the amount of 120% of the potential exposure.

9.2 Suspension for Ongoing Harm. MARKING SERVICES may, with reasonably contemporaneous oral or written notice to Customer, suspend Customer's access to the Service if MARKING SERVICES reasonably concludes that Customer is using the Service to engage in denial of service attacks, spamming, or using the Service to engage in illegal activity, and/or Customer's use of the Service is causing immediate, material and ongoing harm to MARKING SERVICES or others. If MARKING SERVICES suspends Customer's access to the Service, MARKING SERVICES will use commercially reasonable efforts to resolve the issues causing the suspension of Service. MARKING SERVICES shall not be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this Section 9.2.

10. Modification to or Discontinuation of the Service. MARKING SERVICES reserves the right at any time to modify, temporarily or permanently, the Service (or any part thereof). In the event that MARKING SERVICES modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, MARKING SERVICES, at Customer's written request, shall use commercially reasonable efforts to substantially restore such functionality to Customer immediately or in a future release. In the event that MARKING SERVICES is unable to substantially restore such functionality (unless enjoined from doing so by a court of competent jurisdiction or if restoring such functionality would cause



MARKING SERVICES to infringe upon the intellectual property rights of a third party), Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the license fees paid under the Agreement for the terminated portion of the Term. Customer acknowledges that MARKING SERVICES reserves the right to discontinue offering the Service at the conclusion of Customer's then current term. Customer agrees that MARKING SERVICES shall not be liable to Customer or to any third party for any modification of the Service as described in this Section 10. MARKING SERVICES will make a good faith effort to develop new features and functionalities requested by the Customer so long as the Customer assumes all risks and expenses involved in such development. Customer additionally acknowledges if a new feature or functionality is added to the Service at Customer's expense; MARKING SERVICES, has the immediate right at its sole decision to extent the features or functionalities to all Customers.

11. Third Party Beneficiary Rights. MARKING SERVICES INC., a Wisconsin Corporation, and its affiliates throughout the world shall be considered intended third party beneficiaries of this Agreement. As such, MARKING SERVICES, INC. and its affiliates throughout the world may enforce this Agreement as reasonably necessary to protect their rights.

12. Governing Law and Dispute Resolution. These Terms and your use of the Service shall be governed by the laws of the State of Wisconsin, USA, without regard to principles of conflict of laws. All lawsuits or disputes concerning this Agreement, its terms, its termination, or either Party's responsibility, liability, or rights shall be exclusively venued in either the State of Wisconsin courts venued in Milwaukee, Wisconsin or the United States District Court based in Eastern Wisconsin. All Parties hereby waive any personal jurisdictional or non-convenience argument in regard to such venues. Provided, however, that MARKING SERVICES may seek equitable relief and damages in any other venue which it deems appropriate should the Customer violate or attempt to violate any of MARKING SERVICES intellectual property or confidentiality rights in the Services, Products, application, software, or the platform which it provides to Customer under this Agreement. The Parties agree that MARKING SERVICES may obtain an injunction against such violations without the need to post a bond or other security.

13. Modification to the Terms of Service and Notice. These Terms may be amended by MARKING SERVICES in its discretion by providing thirty (30) days advance notice to a user designated as an administrator of your MARKING SERVICES account either: (a) as a note on the screen presented immediately after completion of the log in authentication credentials at the log in screen, or (b) by email to the registered email address provided for the administrator(s) for Customer's account.

14. Attorney Fees and Collection Costs. Should either party be required to retain a collection agency or an attorney upon the other party breaching their obligations under this Agreement, to enforce their rights under this Agreement, or to defend their rights under this Agreement, then such party shall be entitled to reimbursement from the other party of its reasonable expenses and attorney fees incurred in doing so.