

INFINITRAK CUSTOMER TERMS OF SERVICE

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INFINITRAK CUSTOMER TERMS OF SERVICE

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY BEFORE USING INFINITRAK'S SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE CLOSE YOUR BROWSER AND DO NOT USE THE SERVICES.

BY CLICKING "I AGREE" AND/OR USING INFINITRAK'S SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS SERVICE AGREEMENT, INFINITRAK'S TERMS OF SERVICE AND PRIVACY POLICY, WHICH MAY BE FOUND AT [HTTP://WWW.INFINITRAK.US/LEGAL](http://www.infinitrak.us/legal) (COLLECTIVELY, THIS "AGREEMENT").

THIS SERVICE AGREEMENT DEFINES THE SERVICE LEVELS PROVIDED TO YOU BY INFINITRAK.

This is a contract between you (the Customer) and us (InfiniTrak). It describes the services we will provide to you, how we will work together, and other aspects of our business relationship. It is a legal document so some of the language is necessarily "legalese", but we have tried to make it as readable as possible. These terms are so important that we cannot provide our products and services to you unless you agree to them. By using the Subscription Service or receiving the Consulting Services, you are agreeing to these terms. We periodically update these terms. If you have an active InfiniTrak subscription, we will let you know when we do via an email or in-app notification.

Finally, we know legal terms can sometimes be difficult to navigate, so we wanted to give you a roadmap of the Agreement:

- **DEFINITIONS.** This is where we provide the detail on what the key defined terms in the Agreement mean. You can think of this kind of like a contractual dictionary.
- **GENERAL COMMERCIAL TERMS.** Here's where you can find the basics about how our Subscription Service and Consulting Services are provided. For example, you can find information on access and acceptable use. These terms apply to all of our products and service offerings.
- **SUBSCRIPTION TERMS.** Customers of ours subscribe to use our software (it's Software-as-a-Service (SaaS)), and there are some fundamental terms that apply to each subscription. There are some differences between the different types of subscriptions, and here's where you can find that detail.
- **PRODUCT DISCLOSURES.** We offer several different products and there are some important things to know before you use them. We've collected these important things to know and you can find them here. **GENERAL LEGAL TERMS.** As we mention

above, this is a contract, and contracts are filled with legal terms. In this section, we've collected the many of the remaining legal terms that make up our Customer Terms of Service.

- **JURISDICTION SPECIFIC TERMS.** With customers across the United States, this final section is where we address most of the differences in these terms that vary based on customer location.

DEFINITIONS

"Agreement" means these Customer Terms of Service and all materials referred or linked to in here. If you are keeping track, the Customer Terms of Service used to be called the Terms of Use.

"Billable Users" means those types of Users (defined below) for which we charge you fees as set forth on our Pricing Page.

"Billing Period" means the period for which you agree to pay fees on an agreed upon invoicing schedule. The invoice schedule will be the same as or shorter than the Subscription Term. For example, if you subscribe to the Subscription Service for a one (1) year Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.

"Company Data" means the updated information you submit to us as part of our license verification or company/user information. This updated information is submitted by you to InfiniTrak via the highlighted fields in our company database. Company Data will not be considered Customer Data or Confidential Information for purposes of this Agreement.

"Confidential Information" means all information provided by you or us ("Discloser") to the other ("Receiver"), whether orally or in writing that is designated as confidential. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser or (ii) was known to the Receiver before receipt from the Discloser.

"Contact" means a single customer, prospect, lead, or other individual (other than a User) whose Contact Information is stored by you in the Subscription Service.

"Contact Information" means the name, email address, phone number, online user name(s), telephone number, and similar information submitted by visitors to your landing pages on the Subscription Service or uploaded by you to the Subscription Service.

"Consulting Services" means the professional services provided to you by us, which may include training services, installation, integration or other consulting services.

"Customer Data" means all information that you submit or collect via the Subscription Service. Customer Data does not include Enrichment Data.

"Customer Materials" means all materials that you provide or post, upload, input or submit for public display through the Subscription Service.

"Free Services" means the Subscription Service or other products or features made available by us to you on an unpaid trial or free basis.

"Order" or "Order Form" means the InfiniTrak-approved form or online subscription process by which you agree to subscribe to the Subscription Service and purchase Consulting Services. Most Orders are completed through our online payment process or via in-app purchase. The purchase form may be referred to as a "Statement of Work" if you are purchasing only Consulting Services.

"Pricing Page" means <https://app.infinitrak.us/Subscriber/SubscriptionManagement.aspx>.

"Sensitive Information" means credit or debit card numbers; or similar identifiers

"Site Visit" or "Visit" means interaction with your website by a single visitor in a single session.

"Subscription Fee" means the amount you pay for the Subscription Service.

"Subscription Service" means all of our web-based inbound marketing and sales applications, tools and platforms that you have subscribed to by an Order Form or that we otherwise make available to you, and are developed, operated, and maintained by us, accessible via <http://InfiniTrak.us> or another designated URL, and any ancillary products and services, including website hosting, that we provide to you.

"Subscription Term" means the initial term for the subscription to the applicable Subscription Service, as specified on your Order Form(s), and each subsequent renewal term (if any). For Free Services, the Subscription Term will be the period during which you have an account to access the Free Services.

"Third-Party Products" means non-embedded products and professional services that are provided by third parties which interoperate with or are used in connection with the Subscription Service. These products and services include non-InfiniTrak apps available from, for example, the following: our integrations products page, partner directory, template marketplace, links made available through the Subscription Service and non-InfiniTrak services listed on services.InfiniTrak.com.

"Third-Party Sites" means third-party websites linked to from within the Subscription Service, including Communications Services.

"Users" means your employees, representatives, consultants, contractors or agents who are authorized to use the Subscription Service for your benefit and have unique user identifications and passwords for the Subscription Service.

"InfiniTrak", "we", "us" or "our" means the applicable contracting entity as specified in the 'Contracting Entity and Applicable Law' section.

"You", "your" or "Customer" means the person or entity using the Subscription Service or receiving the Consulting Services and identified in the applicable account record, billing statement, online subscription process, or Order Form as the customer.

GENERAL COMMERCIAL TERMS

1. **Access.** During the Subscription Term, we will provide you access to use the Subscription Service as described in this Agreement and the applicable Order.
2. **Additional Features.** As applicable you may subscribe to additional features of the Subscription Service by placing an additional Order or activating the additional features from within your InfiniTrak portal (if this option is made available by us.). This Agreement will apply to all additional Order(s) and all additional features that you activate from within your InfiniTrak portal.
3. **Availability.** We try to make the Subscription Service available 24 hours a day, 7 days a week, except for planned down-time for maintenance.
4. **Consulting Services.** You may purchase Consulting Services by placing an Order with us. Unless we otherwise agree, the Consulting Services we provide will be delivered separately as requested by the customer. Fees for these Consulting Services are in addition to your Subscription Fee. If you purchase Consulting Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription. All Consulting Services are performed remotely, unless you and we otherwise agree. For Consulting Services performed on-site, you will reimburse us our reasonable costs for all expenses incurred in connection with the Consulting Services. Any invoices or other requests for reimbursements will be due and payable within thirty (30) days of the date of the invoice. If there are a specific number of hours included in the Consulting Services purchased, those hours will expire as indicated in the applicable description, which expiration period will commence upon purchase (the "Expiration Period"). If there are deliverables included in the Consulting Services purchased, it is estimated that those deliverables will be completed within the time period indicated as the delivery period in the applicable description, which delivery period will commence upon purchase (the "Delivery Period"). If the Consulting Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us or to perform your obligations, such Consulting Services will be deemed to be complete at the end of the Delivery Period. If the Consulting Services provided are not complete at the end of the Delivery Period due to our failure to make the necessary resources available to you or to perform our obligations, the Delivery Period will be extended to allow us to complete such Consulting Services. We might provide some or all elements of the Consulting Services through third party service providers. Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

5. **Fees and Payments**

- a. **Subscription Fees.** Subscription terms of one (1) year or less are subject to a change in subscription fees with sixty (60) days written notice.
- b. **Fee Adjustments at Renewal.** Upon renewal, your subscription will be adjusted as reported by the channel partner if you are receiving a special member rate. The rate will be adjusted to the number of locations assigned to your subscription based upon the new channel partner rate or advertised price assigned at the end of your then-current Subscription Term.
- c. **Payment by credit or debit cards.** If you are paying by credit card, you authorize us to charge your credit card or bank account for all fees payable during the Subscription Term. You further authorize us to use a third party to process payments, and consent to the disclosure of your payment information to such third party. ALL CREDIT CARD OR DEBIT CARD PAYMENTS MAY BE SUBJECT TO A THREE PERCENT (3%) PROCESSING FEE.
- d. **Payment against invoice.** If you are paying by invoice, we will invoice you no more than forty-five (45) days before the beginning of the Subscription Term and each subsequent Billing Period, and other times during the Subscription Term when fees are payable. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order Form.
- e. **Payment Information.** You will keep your contact information, billing information and credit card information (where applicable) up to date. Changes may be made on your Billing Page within your InfiniTrak portal. All payment obligations are non-cancelable, and all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due and payable in advance throughout the Subscription Term.
- f. **Sales Tax.** All fees are exclusive of taxes, which we will charge as applicable. You agree to pay any taxes applicable to your use of the Subscription Service and performance of Consulting Services.
- g. **Late Payment.** All payments that are overdue by more than sixty (60) days may be subject to a one percent (1%) late fee added monthly from the original due date.

6. **Use and Limitations of Use**

- a. **Prohibited and Unauthorized Use.** You will not (i) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a

human can reasonably produce in the same period by using a conventional browser; (ii) use the Subscription Service in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Subscription Service; (iii) attempt to gain unauthorized access to the Subscription Service; (iv) access the Subscription Service other than through our interface; or (v) use the Subscription Service for any purpose or in any manner that is unlawful or prohibited by this Agreement. You may not use the Subscription Service if you are legally prohibited from receiving or using the Subscription Service under the laws of the state or jurisdiction in which you are resident or from which you access or use the Subscription Service. The Subscription Service is designed to comply with industry-specific regulations such as the Drug Supply Chain Security Act (DSCSA) & the Controlled Substances Act you may not use the Subscription Service where your communications would be subject to such laws. You agree to use maintain the data as required by law and agree to its accuracy from the manner in which you use the Subscription Service not the Service its-self in any or all audits from regulators, any or all legal proceedings or otherwise used as evidence. You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account by following the instructions at <http://support.InfiniTrak.us>.

- b. **Third-Party Sites and Products.** Third-Party Sites and Products are not under our control. You may manually enter transaction data from Third-Party Sites and Products you purchase only as a convenience, and the availability of any Third-Party Site or Product does not mean we endorse, support or warrant or verify the license status of the Third-Party Site or Product.

7. **Subscription Term, Termination, Suspension**

- a. **Term and Renewal.** Your subscription period will be specified in your Order, and your subscription will automatically renew for the same subscription period unless written cancellation notice is given at least forty-five (45) days prior to expiration date. You will have sixty (60) days to add trading partners and get placed in our on-boarding queue. If you fail to invite trading partners and do not begin the on-boarding process, we will automatically charge your account 60 days from your subscription purchase. However, in the event of any delay in the on-boarding process by us you will not be charged until you are connected to at least one (1) trading partner and receiving electronic transactions which initiates the Subscription Term, the fees for any new location subscriptions or additional products will be pro-rated and they will

renew along with your subscription, unless otherwise indicated in your Order. The renewal pricing set forth in your Order will apply, subject to adjustment as specified in the 'Fees and Payments' section above. If renewal pricing is not included in your Order, then our standard pricing available on our Pricing Page will apply. If you use our Free Services, we will make the Free Services available to you free of charge until earlier of (a) the date on which your free subscription is terminated or (b) the start date of your paid subscription

- b. **No Early Termination; No Refunds.** The Subscription Term will end on the expiration date and you cannot cancel it before its expiration. We do not provide refunds if you decide to stop using the InfiniTrak subscription during your Subscription Term.
- c. **Data Maintenance Subscription.** Companies with multiple locations, who would like to cancel due to a location closing can do so at the end of their subscription period. The subscription for any closed location(s) will automatically be converted to a Data Maintenance subscription and billed at the current monthly rate for said subscription until the end of the new subscription period. The Data Maintenance Subscription, like all our subscriptions, are automatically renewed for the same time period unless written notice of cancellation is given at least forty-five (45) days prior to the end of the subscription period.
- d. **Termination for Cause.** Either party may terminate this Agreement for cause, as to any or all Subscription Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors. We may also terminate this Agreement for cause on thirty (30) days' notice if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.
- e. **Suspension for Prohibited Acts.** We may suspend any User's access to any or all Subscription Services for: (i) use of the Subscription Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement.
- f. **Suspension for Non-Payment.** We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may

suspend your access to any or all of the Subscription Services ten (10) days after such notice. We will not suspend the Subscription Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If a Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Service.

- g. **Suspension for Present Harm.** If your website on, or use of, the Subscription Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a security vulnerability for the Subscription Service or others, (iv) is consuming excessive bandwidth, or (v) is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the Subscription Service. We will try to limit the suspension to the affected portion of the Subscription Service and promptly resolve the issues causing the suspension of the Subscription Service.
- h. **Suspension and Termination of Free Services.** We may suspend, limit, or terminate the Free Services for any reason at any time without notice. We may terminate your subscription to the Free Services due to your inactivity.
- i. **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, you will stop all use of the affected Subscription Service and InfiniTrak Content, and if we request, you will provide us written confirmation that you have discontinued all use of Enrichment Data (unless, of course, you have a source other than the Subscription Service for such Enrichment Data.) We may or may not provide you the opportunity to retrieve Customer Data after termination or expiration, depending on the type of applicable subscription as specified in the 'Retrieval of Customer Data' section below. If you terminate this Agreement for cause, we will promptly refund any prepaid but unused fees covering use of the Subscription Service after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

SUBSCRIPTION TYPE TERMS

1. **Subscription Types.** We offer three main types of subscriptions: (1) Retail Pharmacy Subscriptions, (2) Hospital Pharmacy, (3) Wholesaler Subscriptions. There are different terms that apply depending on the subscription you purchase, and we cover those differences in this section.

2. **Limits.** The limits that apply to you will be specified in your Order Form, this Agreement or on our Pricing Page. You must be 18 years of age (or 20 years of age, if you are subject to the laws of Japan) or older to use the Subscription Service. For our Full-Service Subscriptions, if we make modifications to the limits set forth on the Pricing Page that would negatively impact you, these modifications will not apply to you until the start of your next renewal Subscription Term. On renewal, the current product usage limits on our Pricing Page will apply to your subscription, unless you and we otherwise agree. For our Limited-Service Subscriptions, we may change the limits that apply to you at any time in our sole discretion.
3. **Downgrades.** For our Full-Service Subscriptions, you may not downgrade your subscription. To avoid additional charges, you should purchase the appropriate number of Subscription Service for each of your locations or anticipated needs. For our Limited-Service Subscriptions, you may downgrade your subscription at the start of your next renewal Subscription Term, as specified in the 'Fee Adjustments at Renewal' section above. As mentioned previously, companies with multiple locations subscribed may have the option to convert a closed location to a Data Maintenance Subscription at a reduced rate at the end of their subscription period.
4. **Modifications.** We modify the Subscription Service from time to time, including by adding or deleting features and functions, in an effort to improve your experience. For our Full-Service Subscriptions, we will not make changes to the Subscription Service that materially reduce the functionality provided to you during the Subscription Term. For our Limited Service Subscriptions and Free Subscriptions, we may make changes that materially reduce the functionality provided to you during the Subscription Term.
5. **Customer Support.** For our Full-Service and Limited-Service Subscriptions, phone and webform support is included in your Subscription Fee. Customer support for these Subscriptions is available from 7am EST (Eastern Standard time) / EDT (Eastern Daylight Time) to 7pm EST (Eastern Standard time) / EDT (Eastern Daylight Time), Monday through Friday and more often in case of regulatory audits. We accept webform support questions 24 Hours per Day x 7 Days per Week. The webform questions can be submitted through the help widget in the lower right-hand corner of your portal or by following the link at <http://support.InfiniTrak.us>. Webform responses are provided during phone support hours only. We attempt to respond to webform support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

6. **Notice of Non-Renewal.** Your subscription will automatically renew according to the 'Term and Renewal' section above. To prevent renewal of a Full-Service Subscription, you or we must give written notice of non-renewal and this written notice must be received forty-five (45) days in advance of the end of the Subscription Term. If you decide not to renew, you may send the notice of non-renewal by email to support@InfiniTrak.us To prevent renewal of a Limited Service Subscription, you or we must give written notice of non-renewal and this written notice must be received before the next renewal period begins. If you decide not to renew, you may send this non-renewal notice to us by indicating that you do not want to renew. To prevent continuation of the Subscription Term of a Free Subscription, you or we may close your account. Written notice includes electronic format such as an email or a physical correspondence delivered by USPS, FedEx, UPS, or other such service and received within forty-five (45) days of the end of the subscription period. A message sent in the webform does not suffice as proper notice.
7. **Retrieval of Customer Data.** For our Full-Service Subscriptions, as long as you have paid all fees owed to us, if you make a written request within thirty (30) days after termination or expiration of your subscription, we will provide you with temporary access to the Subscription Service to retrieve data, or we will provide you with copies of, all Customer Data then in our possession or control. If we provide you with temporary access to the portal, we may charge a re-activation fee. We may withhold access to Customer Data until you pay any fees owed to us. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data and may, unless legally prohibited, delete all Customer Data in our systems or otherwise in our control. After thirty (30) days, if we can retrieve the data, an administration fee will be charged at the current rate. For our Limited Service we will not provide you with any access to Customer Data after termination or expiration of your subscription.

PRODUCT DISCLOSURES

1. **Responsibilities.** To realize the full value of the Subscription Service and Consulting Services, your participation and effort are needed. Resources that may be required from you include a Project Manager, one or more Content Creators, a Sales Sponsor, an Executive Sponsor and a Technical Resource. Responsibilities that may be required include planning of software integration, trading partner onboarding, compliance, or other tasks specific to your organization; it is often required that there be a Point of Contact (POC) that acts as internal liaison between your

organization and the trading partner you purchase from. We cannot be held liable for any denied requests to on-board your account with any trading partners.

2. **The Product** will allow you to update publicly- displayed information in your company profile. You agree that those updates will be non-confidential and maintained to ensure the most accurate information is represented.
3. **Company Documents Library.** The Product offers users the ability to upload Company Documents to an in-app 'Content Library'. This feature allows you to store policies, invoices or other sales content or Standard Operating Procedures (SOPs) to share with employees that are granted access to the system. Files that you upload using this feature are stored by us and shared with other users of your
4. **Alpha/Beta Services.** If we make alpha or beta access to some or all of the Subscription Service (the "Alpha/Beta Services") available to you (i) the Alpha/Beta Services are provided "as is" and without warranty of any kind, (ii) we may suspend, limit, or terminate the Alpha/Beta Services for any reason at any time without notice, and (iii) we will not be liable to you for damages of any kind related to your use of the Alpha/Beta Services. If we inform you of additional terms and conditions that apply to your use of the Alpha/Beta Services, those will apply as well. We might require your participation to be confidential, and we might also require you to provide feedback to us about your use of the Alpha/Beta Services. You agree that we own all rights to use and incorporate your feedback into our services and products, without payment or attribution to you.

GENERAL LEGAL TERMS

1. Customer Data

- a. **Limits on InfiniTrak.** We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Subscription Service and Consulting Services to you and only as permitted by applicable law, this Agreement, and our Privacy Policy, located at <http://legal.InfiniTrak.com/privacy-policy>. If you have engaged with a partner of ours that participates in our Agency Partner Program, we may monitor your partner's activity within your InfiniTrak portal and make information related to your subscription available to your partner for the purposes of managing and improving the InfiniTrak Agency Partner Program. We will not use Contact Information for our own marketing purposes.
- b. **Aggregate Data.** We may monitor use of the Subscription Service by all of our customers and use the data gathered in an aggregate and anonymous

manner. You agree that we may use and publish such information, provided that such information does not incorporate any Customer Data and/or identify you.

- c. **Safeguards.** We will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. You consent to the processing of Customer Data in the United States.

2. **InfiniTrak's Proprietary Rights.** This is an Agreement for access to and use of the Subscription Service, and you are not granted a license to any software by this Agreement. The Subscription Service and Consulting Services are protected by intellectual property laws, they belong to and are the property of us or our licensors (if any), and we retain all ownership rights to them. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the InfiniTrak Content, the Subscription Service, or the Consulting Services in whole or in part, by any means, except as expressly authorized in writing by us. Our trademarks include, but aren't limited to, those listed at <http://legal.InfiniTrak.com/trademarks> (which we may update at any time without notice to you) and you may not use any of these without our prior written permission. We encourage all customers to comment on the Subscription Service or Consulting Services, provide suggestions for improving it, and vote on suggestions they like. You agree that all such comments and suggestions will be non-confidential and that we own all rights to use and incorporate them into the Subscription Service or Consulting Services, without payment or attribution to you.
3. **Customer's Proprietary Rights.** As between the parties, you own and retain all rights to the Customer Materials and Customer Data. This Agreement does not grant us any ownership rights to Customer Materials or Customer Data. You grant permission to us and our licensors to use the Customer Materials and Customer Data only as necessary to provide the Subscription Service and Consulting Services to you and as permitted by this Agreement. If you are using the Subscription Service or receiving Consulting Services on behalf of another party, then you represent and warrant that you have all sufficient and necessary rights and permissions to do so.
4. **Confidentiality.** The Receiver will: (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party (except our third party service providers), and (iv) limit access to Confidential Information to its employees,

contractors, advisors and agents. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

5. **Publicity.** You grant us the right to add your name and company logo to our customer list and website.
6. **Indemnification.** You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Subscription Service by you, (b) your noncompliance with or breach of this Agreement, (c) your use of Third-Party Products, or (d) the unauthorized use of the Subscription Service by any other person using your User information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.
7. **Disclaimers; Limitations of Liability**
 - a. **Disclaimer of Warranties.** WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE, INFINITRAK CONTENT, OR THE CONSULTING SERVICES FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE SUBSCRIPTION SERVICE, INFINITRAK CONTENT AND CONSULTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBSCRIPTION SERVICE AND THE CONSULTING SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

- b. **No Indirect Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES; PROVIDED THAT, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES.
- c. **Limitation of Liability.** EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY WILL BE LIMITED TO THE LESSER OF FIVE THOUSAND U.S. DOLLARS OR THE TOTAL AMOUNTS YOU HAVE ACTUALLY PAID FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM; PROVIDED HOWEVER, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES, AND IN THIS CASE, IF WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM YOUR USE OF THE FREE SERVICES, THEN OUR AGGREGATE LIABILITY WILL BE LIMITED TO ONE HUNDRED U.S. DOLLARS.
- d. **Third Party Products.** WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.
- e. **Agreement to Liability Limit.** YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO YOU.

8. **Miscellaneous**

- a. **Amendment; No Waiver.** We may update and change any part or all of these Customer Terms of Service, including the fees and charges associated with the use of the Subscription Service (but, your fees and charges won't change during the Subscription Term except as we explain in the 'Fees and Payments' section above.) If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted at <http://InfiniTrak.us/terms-of-service> and we will let you know via email or in-app notification. The updated Customer Terms of Service will become effective and binding on the next business day after it is posted. When we change these

Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review these Customer Terms of Service periodically. If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within ten (10) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Customer Terms of Service prior to modification for the remainder of your current term. Upon renewal, the Customer Terms of Service published by us on our website will apply. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

- b. **Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.
- c. **Actions Permitted.** Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- d. **Relationship of the Parties.** You and we agree that no joint venture, partnership, employment, or agency relationship exists between us.
- e. **Compliance with Laws.** We will comply with all U.S. state and federal laws in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Subscription Service and Consulting Services.
- f. **Severability.** If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

- g. **Notices.** Notice will be sent to the contact address set forth herein, and will be deemed delivered as of the date of actual receipt. To InfiniTrak, LLC., 2400 N. Reynolds Road, Toledo, OH 43615, U.S.A., Attention: General Counsel. To you: your address as provided in our InfiniTrak Subscription account information for you. We may give electronic notices by general notice via the Subscription Service and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Subscription Service. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you. You must keep all of your account information current.
- h. **Entire Agreement.** This Agreement (including each Order), along with our Privacy Policy and AUP, is the entire agreement between us for the Subscription Service and Consulting Services and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Service or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Service. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.
- i. **Assignment.** You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.
- j. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

- k. **Contract for Services.** This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.
- l. **Authority.** Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.
- m. **Closure or Change of Ownership.** Closing of any location(s) or change of ownership does not void the agreement. You are still responsible for the charges until the end of the subscription period.
- n. **Survival.** The following sections shall survive the expiration or termination of this Agreement: 'Definitions', 'Fees and Payments', 'Prohibited and Unauthorized Use', 'No Early Termination; No Refunds', 'Termination for Cause', 'Suspension for Prohibited Acts', 'Suspension for Non-Payment', 'Suspension for Present Harm', 'Suspension and Termination of Free Services', 'Effect of Termination or Expiration', 'Retrieval of Customer Data', 'Company Data', 'Alpha/Beta Services', 'InfiniTrak's Proprietary Rights', 'Customer's Proprietary Rights', 'Confidentiality', 'Publicity', 'Indemnification', 'Disclaimers; Limitations of Liability', 'Miscellaneous' and 'Contracting Entity and Applicable Law'.
- o. **Precedence.** In the event of a conflict between the terms of this Agreement and an Order, the terms of the Order shall control, but only as to that Order.

JURISDICTION SPECIFIC TERMS

1. **Contracting Entity and Applicable Law.** Our physical address determines the InfiniTrak entity you are contracting with for the Subscription and Consulting Services. For this Agreement, "located in" means your shipping or physical address. InfiniTrak, Inc. and this Agreement is governed by the laws of the State of Ohio, U.S.A. without reference to conflicts of law principles. For contracts with InfiniTrak, LLC., both parties consent to the exclusive jurisdiction and venue of the courts in Toledo, Ohio, U.S.A. for all disputes arising out of or relating to the use of the Subscription Service or the Consulting Services.