



## Innovative Programming Systems, Inc.

Grand Blanc, Michigan

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www.ipsdev.com

# ScanIt Parts – Physical Inventory Terms of Service

These terms govern the use of the Services and are an agreement between you and Innovative Programming Systems.

## 1. Definitions

- **1.1 “Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with, the subject entity, where “control” is the direct or indirect ownership or control of at least a majority of the voting rights in the entity, or otherwise the power to direct the management and policies of the entity. An entity is an Affiliate only so long as such control continues.
- **1.2 “Agreement”** means these terms, your Order(s), any Statement(s) of Work between you and us, and any attachments, exhibits, and annexes hereto or to an Order or a Statement of Work.
- **1.3 “Documentation”** means the online or written user guides, specifications, and manuals regarding the Services made available by IPS, and any updates thereto.
- **1.4 “Effective Date”** (i) of the Agreement means the date when the first Order is signed by both you and us, and (ii) of an Order means when the Order is signed by both you and us.
- **1.5 “End Customer”** means your customers for which you provide inventory auditing services using the Services.
- **1.6 “Force Majeure”** means an act of God (e.g., a natural disaster, accident, or epidemic) or another event outside of reasonable control of the party seeking excuse of performance (e.g., acts of war, terrorism, government authority, or by another third party outside the party’s control).
- **1.7 “Intellectual Property Rights”** means rights recognized by any jurisdiction with respect to intellectual work product, such as patent rights (including priority rights), design rights, copyrights (including moral rights), mask work rights, trade secret rights, trademarks, service marks, know-how, and domain name rights.
- **1.8 “Order”** means an ordering document (such as an Order Schedule) executed by you and us for subscription to Services and/or, if applicable, for the provision of professional services by us.
- **1.9 “IPS” or “Innovative Programming Systems”** means Innovative Programming Systems, Inc.

- **1.10 “IPS Data”** means the information on the Order, data about the configuration and use of the Services, Usage Data, the Documentation, and other information provided to you via login in the Services or otherwise by IPS in the course of performance under this Agreement, other than Service Provider Data.
- **1.11 “Services”** means the products and services ordered by you under an Order and made available online by IPS, including any associated offline or mobile components, but excluding Third-Party Services. The Services include any modifications, enhancements, updates, revisions, and derivative works thereof.
- **1.12 “Service Provider Data”** means the data submitted by Users, or otherwise on your behalf, into the Services.
- **1.13 “Statement of Work”** means a statement of work between you and IPS for the provision of consulting or other professional services by IPS related to the Services.
- **1.14 “Third-Party Service”** means any product (e.g. software, cloud services, or forms), tool (e.g. integration or development tools), or service (e.g. implementation, configuration, development, or accounting) provided by a party other than IPS (a “Third-Party Provider”).
- **1.15 “User”** means a named individual authorized by you to use the Services, for whom you have purchased a subscription, and who has been supplied with user credentials for the Services by you or by us at your request.
- **1.16 “we”, “us” or “our”** means IPS.
- **1.17 “you” or “your”** means the person accepting this Agreement, provided that if such acceptance is on behalf of a company or other legal entity then: (i) the signatory represents that he/she has the authority to bind such entity to the terms of this Agreement; (ii) “you” and “your” refers to such entity; and (iii) you may be referred to as “Company” in Orders.

Other capitalized terms have the respective meanings given to them elsewhere in this Agreement.

## 2. Usage Rights

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### 2.1 Access to the Services

Subject to the terms and conditions of this Agreement and your payment of all applicable fees, we grant you a limited-term, non-exclusive, non-sublicensable, non-transferable (except as expressly permitted herein) right to access and use the Services specified in your Order(s) solely for providing inventory audits for your End Customers.

### 2.2 User Subscriptions

Unless otherwise noted on an Order, Services are purchased as time-based subscriptions. Each User must have a valid subscription for the Services. User subscriptions are for named Users and cannot be shared with other person(s) but may be reassigned to new named Users from Users who cease using the Services. We

reserve the right to monitor your use of the Services to effect this Agreement and/or verify compliance with any subscription limits and this Agreement. You must obtain our written approval, which may be given or withheld in our sole discretion, prior to entering into agreements with or otherwise engaging any person other than your employees, including all subcontractors and your Affiliates, to provide any Services to End Customers (each such approved subcontractor or other third party, a “**Permitted Subcontractor**”). Our approval shall not relieve you of your obligations under the Agreement, and you shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were your own employees. Nothing contained in this Agreement shall create any contractual relationship between us and any Permitted Subcontractors.

## **2.3 Equipment**

You are responsible for the full replacement cost of any equipment lost, stolen, or damaged while in your possession, regardless of fault or cause. Replacement cost shall be determined by the then-current list price for equivalent new equipment.

## **2.4 Your Responsibilities**

You are responsible for: (i) the confidentiality of User access credentials that are in your possession or control; (ii) setting up appropriate internal roles, permissions, policies, and procedures for the safe and secure use of the Services; (iii) the activity of your Users in the Services; and (iv) your Users’ compliance with this Agreement and the Documentation. You must notify us promptly if you become aware, or reasonably suspect, that your account’s security has been compromised.

## **2.5 Restrictions**

Except as expressly authorized by us prior to each instance, you shall not:

- (i) provide the Services to any third party other than your Users or otherwise violate or circumvent any use limitations or restrictions set forth in an Order, the Services, or the Documentation;
- (ii) de-compile, disassemble, reverse engineer, or derive the source code of, or use tools to observe the internal operation of, or scan, probe, or penetrate, the Services;
- (iii) copy, modify, or make derivative works of the Services;
- (iv) remove any proprietary markings or notices from any materials provided to you by us;
- (v) frame or mirror the Services or any part thereof; or
- (vi) use the Services: (a) to send spam, duplicative, or unsolicited messages in violation of applicable laws or regulations; (b) to store sensitive data such as bank account data, social security (or equivalent) numbers, and credit card data outside of the designated fields therefor; (c) to send or store material that violates the rights of a third party; (d) to send or store material containing viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; or (e) for any other illegal or unlawful purpose.

You may not knowingly facilitate or aid a third party in any of the foregoing activities.

## 3. Availability and Support

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### 3.1 Availability

We will endeavor to schedule planned maintenance affecting the availability of the Services at non-peak times, and you will receive reasonable advance notice (which may be posted within the Services or otherwise) of such planned maintenance. We will use commercially reasonable efforts to notify you as soon as reasonably practical of any unplanned downtime of the Services and resolve the issue as soon as practical.

### 3.2

In the event that your use of the Services interferes with or disrupts the integrity, security, availability, or performance of the Services, we may modify or temporarily restrict or suspend your use of the Services. The parties will cooperate in good faith to resolve the issue as soon as reasonably possible.

### 3.3

Your Users who have undergone training for use of the Services will receive technical support for the Services and/or upgraded support in accordance with the terms of the Order. Technical support may, at our discretion, include online help, FAQs, training guides, and templates and the use of email, chat, or live help. Live support hours will be from **8:00 AM to 5:00 PM ET, Monday through Friday** (excluding holidays). Any live support provided outside of these hours may be provided in our sole discretion and will incur a **\$200 support fee per incident**. We are not obligated to maintain or support any customization to the Services or any Third-Party Service, even if sold by us, except under a separate agreement signed by the parties.

### 3.4 Professional Services

We may also provide professional services, such as implementation, training, or consulting. Any such services are outside the scope of the Services and require a Statement of Work or a separate written agreement between the parties.

## 4. Fees and Payment

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### 4.1

All fees due hereunder must be paid within **30 days** of the date of our invoice to you. Fees are in the currency specified on the Order. We may increase Fees at any time during the Term in accordance with the then most-recently published consumer pricing index (CPI), provided that no increase in fees for any 12-month period will exceed **3%**. You will be notified at least 30 days in advance before we apply any fee changes to your Services subscriptions.

## 4.2 Add-Ons

If, during a then-current subscription term, (i) you add additional volume or licenses to items that you are already subscribed to, such increased subscriptions will be billed at a prorated amount at the price of the underlying preexisting subscription, and (ii) you add new subscriptions to items that you are not already subscribed to, such items will be billed at a prorated amount at the then-current list price.

## 4.3 Billing and Contact Information

You agree to provide us with complete and accurate billing and contact information, including a specific technical contact if applicable, for your account with us and shall promptly notify us of any change thereto.

## 4.4 Vendor Fees

We may engage one or more third-party vendors to provide additional equipment or services that are provided with or integrated in the Services we provide to you. Any fees associated with such vendors will be passed through to you at-cost. We will include vendor fees on our invoice to you, and you will pay all such amounts to us unless in accordance with the payment terms of this Agreement.

## 4.5 Taxes

All fees are exclusive of all applicable taxes, levies, and duties, and you are responsible for their payment, excluding taxes on our net income. If we are obligated to collect applicable taxes, we will include them on our invoice to you, and you will pay all such amounts to us unless you timely provide us with a valid tax exemption certificate. Each party will timely provide the other with any documents and information as may be required under, or to comply with, applicable tax laws and regulations.

## 4.6 Late Payment; Non-Payment

If we do not receive any fees you owe us by the due date specified on your Order or the respective invoice, those fees shall accrue interest at the lower of **1.5% per month** or the maximum rate permitted by law. Non-payment of any fees for the Services (whether owed to IPS) or of any other amounts due by you to us is a material breach of this Agreement.

# 5. Proprietary Rights

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## 5.1 Services

Subject to the limited rights expressly granted hereunder, as between the parties IPS shall own all rights, title, and interest, including all Intellectual Property Rights, in and to the Services (including any configurations and customizations thereof), IPS Data, and the results of consulting and other professional services performed by IPS or on its behalf. All rights not expressly granted in this Agreement are reserved by IPS.

## 5.2 Service Provider Data

Subject to the limited rights expressly granted hereunder, as between the parties you own all rights, title, and interest, including all Intellectual Property Rights, in and to Service Provider Data. You grant IPS and its subcontractors a worldwide, royalty-free, non-exclusive license to host, copy, transmit, display, and use the Service Provider Data to provide, administer, and ensure the proper operation of the Services and related systems and to perform our rights and obligations under this Agreement.

## 5.3

You may, but are not required to, provide IPS or its VARs or subcontractors with ideas, suggestions, requests, recommendations, or feedback about the Services (“Feedback”). If you do so, you grant IPS a non-exclusive, worldwide, perpetual, irrevocable license to use, reproduce, incorporate, disclose, and sublicense the Feedback for any purpose.

## 5.4 Data Analytics; Product Development

IPS may collect data resulting from Users’ use of the Services, such as metadata, performance metrics, and usage trends or volume (“Usage Data”). IPS may use Usage Data for its legitimate business purposes, provided that, except to provide or bill for the Services, to assist with the administration of Third-Party Services subscribed by you, or as required by law, any external disclosure or use of Usage Data by IPS will be in an aggregated form that does not identify or otherwise permit the identification of you, any Users, or other persons, unless you consent otherwise or initiate the sharing of Usage Data yourself.

## 6. Confidentiality and Data Security

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### 6.1 Confidential Information

“**Confidential Information**” means all information of a party or its Affiliates (“Discloser”) disclosed to the other party or its Affiliates (“Recipient”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Services and IPS Data are our Confidential Information. Service Provider Data is your Confidential Information.

### 6.2 Exceptions

Confidential Information excludes:

- (i) information that was known to the Recipient without a confidentiality restriction prior to its disclosure by the Discloser;
- (ii) information that was or becomes publicly known through no wrongful act of the Recipient;

- (iii) information that the Recipient rightfully received from a third party authorized to make such disclosure without restriction;
- (iv) information that has been independently developed by the Recipient without use of the Discloser's Confidential Information; and
- (v) information that was authorized for release in writing by the Discloser.

### **6.3 Confidentiality Obligations**

The Recipient will use the same degree of care and resources as it uses for its own confidential information of like nature (but no less than reasonable care) to protect the Discloser's Confidential Information from any use or disclosure not permitted by this Agreement or authorized by the Discloser. The Recipient may disclose the Discloser's Confidential Information to its employees, Affiliates, and service providers who need access to such Confidential Information to effect the intent of this Agreement, provided that they are bound by confidentiality obligations no less restrictive than those herein. The Recipient shall be responsible for any breach of this section by its employees, Affiliates, and service providers.

### **6.4 Disclosure Required by Law**

The Recipient may disclose Confidential Information to the extent required by court or administrative order or law, provided that the Recipient provides advance notice thereof (unless requested or ordered not to do so by law enforcement or a court) and reasonable assistance, at the Discloser's cost, to enable the Discloser to seek a protective order or otherwise prevent or limit such disclosure.

### **6.5 Injunctive Relief**

A breach of the Recipient's confidentiality obligations may cause irreparable damage, which money cannot satisfactorily remedy, and therefore the Discloser may seek injunctive relief for any threatened or actual breach of section 6.3 without the need to prove damages or post a bond or other surety.

### **6.6 Data Security**

We will maintain and enforce an information security program for the protection of Service Provider Data, including commercially reasonable administrative, physical, and technical measures designed to (i) protect the confidentiality, availability, and integrity of Service Provider Data, (ii) restore the availability of Service Provider Data in a timely manner in the event of a physical or technical incident, and (iii) ensure the proper disposal and destruction of Service Provider Data. We will notify you, as required by applicable law, of any actual or reasonably suspected breach of security known to us that has resulted in, or creates a reasonable risk of, unauthorized access to Service Provider Data without undue delay, consistent with the legitimate needs of law enforcement and with any measures necessary to determine the scope of the breach and to restore the integrity of the Services.

## **6.7 Non-IPS Equipment**

The Services are provided over the internet via networks only part of which are within our control. Our obligations in section 6.6 apply only to networks and equipment within our control, and we are not responsible for any delay, loss, interception, or alteration of Service Provider Data on a network or infrastructure outside of our control.

## **7. Third-Party Services**

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### **7.1 No Endorsement or Warranty**

We may present to you, including on our websites, Third-Party Services. We do not endorse or make any representation, warranty, or promise regarding, and do not assume any responsibility for, any such Third-Party Service or a Third-Party Provider, regardless of whether it is described as “authorized,” “certified,” “recommended,” or the like and regardless of whether the Third-Party Service is included in your Order. You should review applicable terms and policies, including privacy and data-gathering practices, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with a Third-Party Provider or obtaining any Third-Party Service. We have no obligation to provide support for Third-Party Services and do not guarantee the initial or continuing interoperability of the Services with any Third-Party Services. If a Third-Party Provider ceases to make the Third-Party Services available for interoperation with any feature of the Services on reasonable terms, we may cease providing such feature without liability.

### **7.2 Data Sharing**

If you obtain a Third-Party Service that requires access to or transfer of Service Provider Data, you acknowledge that any such access or transfer is between you and the Third-Party Provider pursuant to the Third-Party Provider’s own privacy notices and policies, and that we are authorized to provide the Service Provider Data as requested by the Third-Party Service. We are not responsible for any modification, loss, damage, or deletion of Service Provider Data by any Third-Party Service obtained by you.

## **8. Term and Termination**

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### **8.1 Term**

All Services subscriptions specified in your initial Order will run for the Term set forth therein. If you add Services after the beginning of the Term, their initial term will be the remainder of the then-current Term, unless otherwise set forth in the Order. This Agreement will remain in effect until all User subscriptions have expired or the Agreement has been terminated as provided below.

## 8.2 Termination

Either party may terminate the Agreement for convenience during the term by providing **30 days written notice** to the other party. In the event of termination by you for convenience, in addition to all Service Fees owed, you will pay an early termination fee equal to the **\$2,400 for each year** (including partial years) remaining in the then-current term (e.g., canceling during year two of initial three-year term incurs \$4,800 early termination fee). Either party may terminate the Agreement: (i) by sending a notice of non-renewal as provided above; (ii) if the other party has materially breached this Agreement, upon written notice to the breaching party of the breach and, if such breach is curable, an opportunity to cure of at least **30 days**; or (iii) upon written notice to the other party if the other party becomes the subject of a petition in bankruptcy or another proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If you materially breach this agreement, we may, without limitation of other rights and remedies, temporarily suspend or terminate your access to the Services or withhold further performance of our obligations under this Agreement.

## 8.3 Effect of Termination

On expiration or termination of this Agreement: (i) all applicable User licenses and other rights granted to you will immediately terminate; (ii) a party's rights, remedies, obligations (including payment obligations), and liabilities that have accrued up to the date of termination shall not be affected; (iii) unless you have terminated the Agreement for our material breach as provided above, we will not be obligated to refund any prepaid and unused fees; and (iv) subject to section 8.5, Recipient shall, at the request of Discloser, delete or destroy Discloser's Confidential Information in its possession or control. Notwithstanding the foregoing, Recipient may retain Discloser's Confidential Information (a) to the extent required by law or governmental authority, or (b) that is automatically stored in accordance with Recipient's generally applicable backup policies ("Backup Media"). All Backup Media shall remain subject to the confidentiality obligations set forth herein, notwithstanding the expiration or termination of this Agreement, so long as it remains undeleted.

## 8.4 Survival

Sections 1, 5, 6, 8, 10, 11, and 12 will survive any expiration or termination of the Agreement.

## 8.5 Access to Service Provider Data

Service Provider Data may be exported at any time during the term of this Agreement. We will not delete Service Provider Data from our production environment for up to **90 days** after termination or expiration of the Agreement and may assist you with exporting Service Provider Data during such period at our standard hourly consulting rate. After that 90-day period, we will have the right to delete all Service Provider Data and will have no further obligation to make it available to you. Should you desire longer storage of Service Provider Data, paid archival Services may be available.

## 9. Warranties

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### 9.1 Authority

Each party represents to the other that it has the authority to enter into this Agreement, to carry out its obligations under it, and to give the rights and licenses granted herein.

### 9.2 DISCLAIMER OF ALL OTHER WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND ARE ONLY FOR COMMERCIAL USE, SUBJECT TO ANY RESTRICTIONS IN THIS AGREEMENT OR THE DOCUMENTATION. WE, ON BEHALF OF OURSELVES, OUR AFFILIATES, AND OUR LICENSORS, DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES, AND GUARANTEES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE (I) OF MERCHANTABILITY OR SATISFACTORY QUALITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT AND (IV) ARISING FROM CUSTOM, TRADE USAGE, COURSE OF PRIOR DEALING, OR COURSE OF PERFORMANCE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE, OUR AFFILIATES, AND OUR LICENSORS DO NOT WARRANT THAT YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVICES, DOCUMENTATION, AND/OR THE INFORMATION OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR REQUIREMENTS OR PRODUCE PARTICULAR OUTCOMES OR RESULTS, OR THAT THE SERVICES WILL PRODUCE ERROR-FREE MACHINE-GENERATED ANALYSES, BENCHMARKS, OR INSIGHTS. WE ARE NOT RESPONSIBLE FOR ANY ISSUES WITH THE SERVICES THAT ARISE FROM SERVICE PROVIDER DATA, THIRD-PARTY SERVICES, OR THIRD-PARTY PROVIDERS. YOU ACKNOWLEDGE THAT WE DO NOT PROVIDE ANY ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL, OR OTHER ADVICE TO YOU, USERS, OR ANY THIRD PARTY.

## 10. Indemnification

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You will indemnify and hold us and our Affiliates, officers, directors, employees, and agents harmless from and against any and all damages to the extent arising out of a third-party claim alleging that your collection or use of Service Provider Data or your use of the Services in breach of this Agreement infringes the rights of, or has caused harm to, a third party, or violates applicable law. Without the prior written consent of the us, you shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of, or imposes additional obligations on, the us.

## 11. Limitation of Liability

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### 11.1 Limitations

EXCEPT FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, THE PARTIES AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR YOUR OBLIGATIONS TO PAY FEES UNDER THIS AGREEMENT AND FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, EITHER PARTY'S AGGREGATE LIABILITY SHALL NOT EXCEED THE SUBSCRIPTION FEES FOR THE SERVICES PAID OR PAYABLE TO IPS IN THE **12-MONTH SUBSCRIPTION PERIOD IMMEDIATELY PRECEDING THE EVENT** GIVING RISE TO THE CLAIM, OR, IF SUCH CLAIM ARISES DURING THE FIRST 12-MONTH SUBSCRIPTION PERIOD OF THIS AGREEMENT, DURING SUCH PERIOD.

### 11.2 Scope

The exclusions and limitations above apply to all causes of action, whether arising from breach of contract, tort, breach of statutory duty, or otherwise, even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss, provided that nothing in this Agreement shall limit or exclude any liability which cannot be excluded or limited as a matter of law. The allocation of risk in this Agreement is reflected in the level of fees payable hereunder. A party may not circumvent the limitations of liability herein or receive multiple recovery under this Agreement by bringing separate claims or claims on behalf of its Affiliates.

## 12. General Provisions

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### 12.1 Compliance with Laws

Each party shall comply with all applicable laws and regulations in relation to the Services, including applicable sanctions (including those of the Office of Foreign Assets Control (OFAC)). The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it and its Affiliates are not named on any denied-party (or similar target sanctions) list. You shall not permit Users to access or use the Services in any country or territory that is subject to government-wide or comprehensive sanctions by the United States, the United Kingdom, or the European Union. Any breach of this section is a material breach of the Agreement.

### 12.2 U.S. Government Users

The Services and our Confidential Information are commercial items. If they are being used by or on behalf of the U.S. Government, then the U.S. Government's rights in them will be only those specified in this Agreement,

consistent with FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable.

### **12.3 Unfair Competition**

You may not use the Services or any materials provided by us to build a competitive product or service or to benchmark with a non-IPS product or service.

### **12.4 Assignment**

Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent, except that a party may assign the Agreement in its entirety in connection with a merger, acquisition, spin-off, corporate reorganization or restructuring, or sale of substantially all of its assets. Any attempted assignment in breach of this Agreement shall be void.

### **12.5 Effect of Assignment**

If you assign this Agreement or otherwise undergo a change of control after the effective date of the Order, in addition to all outstanding Service Fees, you will pay to us a one-time change of control fee equal to the greater of (i) the aggregate value of the Fees paid by you to us in the preceding twelve-month period of the Term or (ii) **\$1,200**.

### **12.6 Remedies Not Exclusive**

Except as expressly set forth herein, any remedy in this Agreement is not exclusive of any other available remedy.

### **12.7 Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous written and oral agreements, negotiations, and discussions between the parties regarding the subject matter herein. The parties acknowledge that in entering into this Agreement they have not relied on and will have no rights or remedies in respect of any statement, representation, assurance, or warranty other than as expressly set out in this Agreement. Nothing shall limit or exclude either party's liability for fraud.

### **12.8 Severability**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, then to the extent possible such provision shall be construed to reflect the intent of the original provision, with all other provisions in this Agreement remaining in full force and effect.

## **12.9 No Partnership or Agency**

Each party is an independent contractor, and neither party has any authority to act on behalf of the other. Neither party will represent itself as agent, servant, franchisee, joint venture, or legal partner of the other.

## **12.10 Waiver**

A party's failure or delay to exercise any right under this Agreement will not act as a waiver of such right. Rights may only be waived in writing signed by the waiving party.

## **12.11 Force Majeure**

Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent performance of any obligations under the Agreement is delayed or prevented by a Force Majeure event.

## **12.12 Order of Precedence**

In the event of any express conflict or inconsistency, the order of precedence shall be: (i) your Order; (ii) these terms (including any annexes or exhibits hereto); and (iii) the Documentation.

## **12.13 Updates**

From time to time, we may amend these terms. We may notify you of any material changes by promptly sending an email or posting a notice in the Services. By continuing to access or use the Services after such notice, you are indicating that you agree to be bound by the modified terms. Notwithstanding the foregoing, if the changes have a material adverse impact on and are not acceptable to you, then you must notify us within 30 days after receiving notice of the change. If we cannot accommodate your objection, then the prior terms shall remain in force until the expiration of your then-current subscription period. Any renewed subscription will be governed by our then-current terms.

## **12.14 No Publicity**

Neither party shall make any public statement about this Agreement or the relationship of the parties governed by this Agreement that identifies the other party without the other party's prior written consent, except that while you are a customer, IPS may use your name and logo in its customer list in a manner that does not suggest endorsement.

## **12.15 Governing Law**

This Agreement is governed by and construed in accordance with the internal laws of the **State of Michigan** without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Michigan. Any legal suit, action, or proceeding arising out of or related this Agreement or the licenses granted hereunder will be instituted exclusively in the courts of the State of Michigan, and each party irrevocably submits to the exclusive jurisdiction of such courts

in any such suit, action, or proceeding.

## **12.16 Litigation Costs and Expenses**

If either party institutes any legal suit, action, or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud, and statutory claims, and we are the prevailing party in such suit, action or proceeding, we are entitled to receive, and you must pay, in addition to all other remedies to which we may be entitled, the costs and expenses incurred by the us in conducting or defending the suit, action, or proceeding, including attorneys' fees and expenses, and court costs, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).

## **12.17 Notices**

Except as otherwise specified in this Agreement, any notice required under this Agreement will be in writing and sent by pre-paid mail, courier service or email to the contact address or email last provided in writing to the notifying party by the notified party. Any notice will be deemed received: (i) if sent by pre-paid mail, 48 hours after posting; (ii) if sent by courier, on the next business day; or (iii) if sent by email, at 9 a.m. recipient's local time on the next business day after the email is sent, or earlier if the intended recipient has confirmed receipt either expressly or by conduct.

## **12.18 Interpretation**

Headings are for convenience only and may not be used in interpretation. The words "such as" and "including" do not signify limitation. The Agreement shall not be interpreted against the drafter.

## **12.19 Special Product Terms**

Certain Services or modules may be governed by additional terms. When agreed to by you in writing, such terms will become part of this Agreement.

## **Contact Us**

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If you have questions about these Terms of Service, please contact us:

### **Innovative Programming Systems Inc.**

Email: [support@scanitparts.com](mailto:support@scanitparts.com)

Phone: (810) 695-9332

Location: Grand Blanc, Michigan