

## Terms of service

Please read the terms of service ("**Terms**") carefully. These Terms are a legally binding contract for the use of services, software through the website <https://asapy.com/> (the "**Site**") between Asapy Limited OY, a Finland legal entity with office located at Westendintie 99A3, Espoo, Finland, 02160 ("**Provider**") and you as a natural or legal person ("**Customer**").

By accessing or using the Site Customer is accepting these Terms (on behalf of himself/herself or the entity that he/she represents) and Customer represents and warrants that he/she has the right, authority, and capacity to enter into these Terms (on behalf of himself/herself or the entity that he/she represents and its affiliates).

By accepting these Terms Customer agrees to be bound by our privacy policy, available at <https://asapy.com/about/privacy-policy>.

### 1. AGREED TERMS

1.1. Capitalised terms used in these Terms shall have the meaning set forth in Clause 1.2.

1.2. Definitions and rules of interpretation in this clause apply in these Terms:

**Authorised Users** mean those employees, agents, and independent contractors of the Customer who are authorised by the Customer to use the Site and Services;

**Asapy SDK** means software to track the effectiveness of an advertising campaign in Apple Search Ads;

**Asapy Agency Services** means the service under which the Provider running advertising campaigns and strategies for Customers;

**Asapy Keyword Suggester** means software for the automatic selection of keywords and creation of advertising campaigns;

**ASO Builder** means software for creating a meta-data for App Store Optimization;

**Service Order** means any request for a single service with reference to these Terms;

**Customer Subscription** means the full cost of the Service within the selected Tariff available at <https://asapy.com/pricing>;

**Renewal Period** means the period described in Clause 10.1;

**Representatives** mean, in relation to a party, its employees, officers, contractors, subcontractors, representatives, and advisers;

**Tariffs** mean the range of capabilities of the Site with different systems of rates for the Customer Subscription depending on the scope of the Services;

**Initial Subscription Term** means the initial term of the legally binding contract;

**Effective Date** means the date of this legally binding contract;

**Services** means has the meaning given in Clause 2.1;

**Subscription Fees** means the fees payable by the Customer to the Provider for the Customer Subscription within the selected Tariff available at <https://asapy.com/pricing> or within the Service Order;

**Subscription Term** means being the Initial Subscription Term together with any subsequent Renewal Periods (has the meaning given in Clause 10.1);

**Normal Business Hours** means 9 pm to 9 am Helsinki time, each business day;

**Harmful Code** means any software, hardware, or other technology, device or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity,

confidentiality or use of any data processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services as intended by these Terms.

1.3. The following rules of interpretation will apply unless otherwise stipulated by these Terms:

1.3.1. clause, schedule, and paragraph headings shall not affect the interpretation of these Terms;

1.3.2. a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors, or permitted assigns;

1.3.3. unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular;

1.3.4. unless the context otherwise requires, a reference to one gender shall include a reference to the other gender;

1.3.5. references to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## 2. SERVICES

2.1. Subject to and conditioned on Customer's and its Authorized Users' compliance with these Terms, during the Subscription Term, the Provider provides to the Customer the Site designed to help Customers to set up API integration between the Site and the Apple Search Ads Account, create advertisement campaigns with keywords, use specific software Asapty SDK, Asapty Keyword Suggester, ASO Builder and other capabilities of Site software, Asapty Agency Services (hereinafter "**Services**"). The range of capabilities depends on the selected Tariff and/or Service Order.

2.2. Subject to the terms and conditions of these Terms, the Provider hereby grants to the Customer a non-exclusive, nonassignable, royalty free, worldwide limited right to access and use the Services, to permit the Customer and Authorised Users to use the Site and the Services during the Subscription Term solely for the Customer's internal business operations.

2.3. The Provider shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms and conditions of these Terms.

2.4. The Services (including Site software) is provided "as is" with no explicit or implied warranties in respect of its properties. The Provider is not liable if the reality does not meet the Customer's expectations.

2.5. The Provider shall use commercially reasonable endeavours to make the Site and Services available 24 hours a day, seven days a week, except for:

2.5.1. planned maintenance carried out during the maintenance window of 9 pm to 9 am Helsinki time; and

2.5.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Provider has used reasonable endeavours to give the Customer at least 2 Normal Business Hours' notice in advance.

2.6. The Provider will, as part of the Services and at no additional cost to the Customer provide the Customer with the Provider's standard customer support services during Normal Business Hours in effect at the time that the Services are provided. The Provider will provide the standard customer support services via e-mail support@asapty.com, chatbot on the Site or with the help of a special manager in Slack within the selected Tariff.

2.7. The Provider reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers, (ii) the competitive strength of or market for Provider's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. No requested changes will be effective unless and until mutually agreed upon in a written change order.

2.8. The Provider may from time to time at its discretion engage third parties to perform Services.

2.9. The Provider may, directly or indirectly suspend, terminate, or otherwise deny Customer's, any Authorized User's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if:

2.9.1. The Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires the Provider to do so; or

2.9.2. The Provider believes, in its sole discretion, that:

- (a) The Customer or any Authorized User has failed to comply with these Terms, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under these Terms or in any manner that does not comply with any instruction or requirement of the agreed Service Order;
- (b) The Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or
- (c) these Terms expire or are terminated. This Section 2.9 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under these Terms.

2.10. This agreement shall not prevent the Provider from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing Service Order, products and/or services that are similar to those provided under these Terms.

### **3. AUTHORIZATION**

3.1. Subject to and conditioned on Customer's payment of the Customer Subscription and compliance and performance in accordance with all other terms and conditions of these Terms, the Provider hereby authorizes the Customer to access and use the Site in accordance with the conditions and limitations set forth in these Terms and/or the agreed Service Order.

3.2. Customer must be registered on the Site to access or use some Services. For registration the Customer shall provide the Provider with the following information:

3.2.1. E-mail address;

3.3. The Provider shall process the Customer's personal data in accordance with the privacy policy, available at <https://asapty.com/about/privacy-policy>.

3.4. Upon registration on the Site, the Provider shall assign a personal account. The Customer shall be solely responsible for maintaining the confidentiality and security of his/her login and password and for all use of and activities that occur under personal account. The Customer shall use all reasonable endeavours to prevent any unauthorised access to personal account and, in the event of any such unauthorised access or use, promptly notify to notify the Provider.

3.5. The Provider is not liable for third party access to the Customer's personal account as a result of the Customer losing their credentials.

### **4. CUSTOMER RESTRICTIONS**

4.1. Customer shall not, and shall not permit any other person to, access or use the Site with Customer's personal account except as expressly permitted by these Terms.

4.2. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as these Terms expressly permits:

4.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Site software in any form or media or by any means;

4.2.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to humanperceivable form all or any part of the Site software;

4.2.3. access all or any part of the Site and Services in order to provide a competitive analysis of the Site and Services and build a product or service which competes with the Site and Services;

4.2.4. bypass or breach any security device or protection used by the Site or access or use the Services other than by an Authorized User through the use of his or her own then valid access credentials;

4.2.5. use the Site and Services to provide services to third parties;

4.2.6. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Service Order available to any third party except the Authorised Users, or

- 4.2.7. attempt to obtain, or assist third parties in obtaining, access to the Site and Services, other than as provided under this Clause 2;
  - 4.2.8. input, upload, transmit, or otherwise provide to or through the Site, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
  - 4.2.9. access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other rights of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law;
  - 4.2.10. access or use the Services in any manner that may: be defamatory of any person; obscene, offensive, hateful or inflammatory; promote sexually explicit material; promote violence; promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; be likely to deceive any person; breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence; promote any illegal activity; be in contempt of court; be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety; be likely to harass, upset, embarrass, alarm or annoy any other person; impersonate any person, or misrepresent your identity or affiliation with any person; give the impression that the contribution emanates from Provider if this is not the case.
- 4.3. If Customer becomes aware of any actual or threatened activity prohibited by Clause 4.2, Customer shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Site and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

## **5. PROVIDER'S OBLIGATIONS**

- 5.1. The Provider undertakes that the Services will be performed substantially in accordance with the Terms and Service Order (if applicable) with reasonable skill and care.
- 5.2. The undertaking at Clause 5.1 shall not apply to the extent of any non-conformance which is caused by the use of the Services contrary to these Terms or Provider's instructions, or modification or alteration of the Services by any party other than the Provider or the Provider's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Provider will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 5.1.

## **6. CUSTOMER'S OBLIGATIONS**

- 6.1. The Customer shall:
  - 6.1.1. pay the Subscription Fee to the Provider in a timely manner every month;
  - 6.1.2. ensure the availability of funds in the account required for the automatic renewal of the Customer Subscription;
  - 6.1.3. ensure the security of access to the login and password of the personal account and not transfer the login and password of the personal account to third parties;
  - 6.1.4. provide the Provider with all necessary co-operation in relation to these Terms;
  - 6.1.5. without affecting its other obligations under these Terms, comply with all applicable laws and regulations with respect to its activities under these Terms;
  - 6.1.6. carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 6.1.7. ensure that the Authorised Users use the Services in accordance with the terms and conditions of these Terms and shall be responsible for any Authorised User's breach of these Terms.

6.2. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under these Terms.

## 7. FEES; PAYMENT TERMS

7.1. Customer shall pay the Subscription Fees in accordance with selected Tariffs as indicated on Site or Service Order. The Customer shall on the Effective Date provide to the Provider valid, up-to-date, and complete credit card details or approved purchase order information acceptable to the Provider and any other relevant valid, up-to-date, and complete contact and billing details, and, if the Customer provides:

7.1.1. its credit card details to the Provider; the Customer hereby authorises the Provider to bill such credit card:

- (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to Clause 10.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

7.1.2. its approved purchase order information to the Provider, the Provider shall invoice the Customer:

- (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to Clause 10.1, at least 15 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
- (c) and the Customer shall pay each invoice within 15 days after the date of such invoice.

7.2. If the Provider has not received payment within 15 days after the due date, and without prejudice to any other rights and remedies of the Provider:

7.2.1. the Provider may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and the Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

7.2.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3 % over the then current base lending rate of the Provider's bankers from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.3. All amounts and fees stated or referred to in these Terms:

7.3.1. shall be payable in USD;

7.3.2. are non-cancellable and non-refundable;

7.3.3. are exclusive of taxes and similar assessments.

7.4. Notwithstanding anything to the contrary, fees for Services shall be non-refundable.

7.5. All amounts payable to Provider under these Terms shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

7.6. The Provider shall be entitled to increase the Subscription Fees, upon [30] days' prior notice to the Customer and these Terms shall be deemed to have been amended accordingly. In case Customer does not accept the increase, Customer may terminate the Terms as provided in Clause 10. If Customer agrees with such reconsideration, Customer will renew the Subscription Term, and the Term or Service Order will be deemed amended accordingly, and the reconsidered fees will apply. If Customer does not agree with Subscription Fees reconsideration, Customer will not renew Subscription term. Notwithstanding the abovementioned, the parties may reconsider Subscription Fees in a new Service Order applicable to renewed Subscription Term and with execution of it the previous one will be deemed replaced accordingly.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1. The Provider is the sole owner or lawful licensee of all the rights and interests in the Site. The Site embodies trade secrets and other intellectual property rights protected under worldwide copyright and other laws. All title, ownership, and intellectual property rights in the Site shall remain with Provider. All rights not otherwise claimed under the Terms or by Provider are hereby reserved.

## 9. CONFIDENTIALITY

9.1. Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives after the Effective Date in connection with a legally binding contract for the use of Site and Services, including but not limited to:

9.1.1. the existence and terms of a legally binding contract for the use of Site and Services or any agreement entered into in connection with these Terms;

9.1.2. any information that would be regarded as confidential by a reasonable business person relating to:

- (a) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and
- (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;

9.1.3. any information developed by the parties in the course of carrying out a legally binding contract and the parties agree that:

- (a) details of the Services, and the results of any performance tests of the Services, shall constitute Provider Confidential Information; and
- (b) Customer data shall constitute Customer Confidential Information;

9.1.4. any information detailed in the Service Order.

9.2. The provisions of this clause shall not apply to any Confidential Information that:

9.2.1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

9.2.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

9.2.3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

9.2.4. the parties agree in writing is not confidential or may be disclosed;

9.3. Each party shall keep the other party's Confidential Information secret and confidential and shall not:

9.3.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with a legally binding contract for the use of Site and Services; or

9.3.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 9.

9.4. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the exercising or performing its rights and obligations under or in connection with a legally binding contract for the use of Site and Services. The disclosing party shall ensure that its Representatives who receive Confidential Information are bound by an NDA or contract containing confidentiality terms.

## 10. TERM AND TERMINATION

- 10.1. These Terms shall, unless otherwise terminated as provided in this Clause 10, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of one month (each a **Renewal Period**), unless:
- 10.1.1. either party notifies the other party of termination in accordance with Clause 15.3, at least 1 day before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 10.1.2. otherwise terminated in accordance with the provisions of these Terms; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 10.2. Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving notice to the other party if:
- 10.2.1. the other party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;
  - 10.2.2. the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in accordance with Clause 15.3 to do so;
  - 10.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
  - 10.2.4. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - 10.2.5. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;
  - 10.2.6. there is a change of control of the other party.
- 10.3. Upon any expiration or termination of these Terms, except as expressly otherwise provided in these Terms all rights, licenses, consents and authorizations granted by the Provider hereunder will immediately terminate.

## 11. INDEMNITY

- 11.1. The Customer shall defend, indemnify and hold harmless the Provider, and each of its and their respective officers, directors, employees, agents, successors and assigns from and against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- 11.1.1. the Customer is given prompt notice of any such claim;
  - 11.1.2. the Provider provides reasonable co-operation to the Customer in the defence and settlement of a such claim, at the Customer's expense; and
  - 11.1.3. the Customer is given sole authority to defend or settle the claim.
- 11.2. The Provider shall defend the Customer, its officers, directors, and employees against any claim that the Customer's use of the Services or Service Order in accordance with these Terms infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 11.2.1. the Provider is given prompt notice of any such claim;
  - 11.2.2. the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Provider in the defence and settlement of a such claim, at the Provider's expense; and
  - 11.2.3. the Provider is given sole authority to defend or settle the claim.

- 11.3. In the defense or settlement of any claim, the Provider may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the legally binding contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4. In no event shall the Provider, its employees, agents, and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 11.4.1. a modification of the Services or Service Order by anyone other than the Provider; or
  - 11.4.2. the Customer's use of the Services or Service Order in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 11.4.3. the Customer's use of the Services or Service Order after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

## 12. LIMITATIONS OF LIABILITY

- 12.1. In no event shall Provider be liable to Customer or any third party for any loss of use, revenue, or profit, or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not Provider has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedies of its essential purpose.
- 12.2. In no event shall Provider's aggregate liability arising out of or related to these Terms, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the aggregate amounts paid or payable to Provider pursuant to these Terms in the twelve (12) months period preceding the event giving rise to the claim.
- 12.3. Certain laws and international laws do not allow limitations on the exclusion or limitation of certain damages. If these laws apply to Customer, some or all of the above disclaimers or limitations may not apply to Customer, and Customer may have additional rights.

## 13. FORCE MAJEURE

- 13.1. Neither party shall be liable or responsible for failure or delay in fulfilling or performing any term of these Terms, (except for any payment obligations), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including an act of war, hostility, or sabotage; an act of God; flood, fire, earthquake or explosion, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the effective date of these Terms, pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other licenses); or other events outside the reasonable control of the obligated party. Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such an event continues for more than 30 days, either party may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Consumer obligation to pay for the Services.

## 14. GOVERNING LAW AND JURISDICTION

- 14.1. These Terms shall be governed by the Law of Finland without regard to its conflict of law provisions and parties agree to submit to the exclusive jurisdiction of, and venue in, the courts in the Finland in any dispute arising out of or relating to these Terms, except as otherwise stipulated under applicable law.

## 15. MISCELLANEOUS

- 15.1. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other forms of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.
- 15.2. **Customer's Intellectual Property.** The Customer may grant to the Provider written permission to use Customer's trademarks, service marks, tradenames, and logos on Provider's websites and in the Provider's marketing materials in order to define the Customer as a client of the Provider.



- 15.3. **Notices.** Notices shall be sent by Customer by email info@aspty.com and by Provider by posting a notice on Customer's private account page or by sending an email to the Customer's email address. Each party may update its contact information by providing such a notice. Notice will be deemed given twenty-four hours after posting or after an email is sent to the most recent address provided by the other party.
- 15.4. **Entire Agreement.** These Terms, together with any other documents incorporated herein by reference (including reference to information contained in a URL or referenced policy), constitute the sole and entire agreement of the parties with respect to the subject matter of these Terms and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the such subject matter. In the event of any inconsistency between the statements made in the body of these Terms, the related Service Orders, exhibits, schedules, attachments and appendices and any other documents incorporated herein by reference, the following order of precedence governs:(a) first, these Terms, excluding Service Orders, exhibits, schedules, attachments and appendices; (b) second, unless they expressly amend these Terms, the Service Orders, exhibits, schedules, attachments and appendices to these Terms; and (c) third, any other documents incorporated herein by reference.
- 15.5. **No Third-party Beneficiaries.** These Terms are for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 15.6. **Amendment and Modification; Waiver.** Provider may modify these Terms from time to time, with [30] days' notice to Customer, by posting the modified Terms on its website. Such modifications will not apply retroactively. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15.7. **Severability.** If any provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify these Terms to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 15.8. **Assignment.** The Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under these Terms, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent, which consent that the Provider shall not unreasonably withhold or delay/may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving either party (regardless of whether that party is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under these Terms for which the Provider's prior written consent is required. No delegation or other transfer will relieve either party of any of its obligations or performance under these Terms. Any purported assignment, delegation or transfer in violation of this Clause 15.8 is void. These Terms are binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.