



TERMS AND CONDITIONS OF SERVICE

The following terms and conditions shall apply to the provision of the **enversa**SM system (the "Service") provided pursuant to this Master Agreement, including the cover page of this Agreement (the "Cover Page"), and any amendment or modification hereof agreed to by the parties in writing. Client and any permitted users authorized by Client agree to be bound by these General Terms and Conditions Terms of Service by installing, copying, or otherwise using the Service

1.0 THE SERVICE

1.1 The Service shall include the **enversa**SM operating model and environment, including the **enversa**SM patent-pending process that is used, to establish and operate the **enversa**SM System, proprietary and/or third party software, applications and data that is integrated into or otherwise made a part of the **enversa**SM system, and any other equipment and software owned, leased, or licensed to Licensee hereunder for use in connection therewith. The Service shall be used by Client only for the purpose of providing and participating in on-line advertising bidding sessions for Client and its clients that are properly authorized by Client (each, a "Permitted User"). Client shall not use or permit the use of the System in any manner that would permit or allow the use of the System by anyone other than Client or its Permitted Users. Client shall under no circumstances assign or sublicense the rights hereunder to any other person and any purported attempt to do so shall be deemed to be a material breach of this Agreement.

1.2 "Software" means the software and all associated documentation and other materials provided to Client by **enversa**SM for accessing the Service and to initiate and participate in on-line media bidding sessions. **enversa**SM shall provide the Software and directions for installation. **enversa**SM personnel shall be available during normal business hours (8:30 a.m. to 5:30 a.m. Central Time) to provide technical assistance with the installation of the Software.

1.3 The **enversa**SM Fees for the System cover the provision and use of the Software, custom set-up, staff training, moderator services and session set-ups during normal business hours, all as set forth on the License Fee Schedule attached hereto.

1.4 **Notwithstanding any other agreement between the parties, Client acknowledges that the provision of the Service to the Client by **enversa**SM shall be on a non-exclusive basis (i.e., **enversa**SM shall be entitled to provide the Service to any other party, including direct or indirect competitors of Client), unless specifically agreed to the contrary in writing and signed by an authorized representative of imc² after the date hereof.**

1.5 As between Client and **enversa**SM, **enversa**SM shall own all right title and interest in and to the System, and the Software. The foregoing notwithstanding, Client shall be entitled to use the session information generated in each on-line bidding session as Client may see fit; provided, that in addition to any other indemnification found elsewhere herein, Client shall indemnify **enversa**SM for any misuse of such data or information, and shall hold **enversa**SM harmless from any liability or obligations created as a result of, or arising out of, Client's on-line advertising sessions. Client shall not reverse engineer, decompile, disassemble or otherwise seek to derive the source code or algorithms underlying the System or the Software.

2.0 PAYMENT OF **enversa**SM FEES AND TAXES.

2.1 The **enversa**SM Fees set forth on the Cover Page shall be payable as follows: (i) The Environment Set-up and Training Session and Materials Fees shall be due upon execution hereof. (ii) Each **enversa**SM Session Set-up and Session Fees shall be payable within thirty (30) days after completion of each online session performed by Client during the Term, regardless of whether **enversa**SM invoices Client for such use. (iii) The Software License Fee and any Technical Development and Support Fees

shall be due and payable within thirty (30) days of invoicing by **enversa**SM.

2.2. In addition to the foregoing Fees, the Client shall be liable for any sales, use or other tax that may be payable or required to be collected by **enversa**SM in respect of the license to use the System granted to Client herein.

2.3 In addition to any other rights and remedies available at law or in equity, **enversa**SM will have the following cumulative rights if Client fails to pay any Fees when due: **enversa**SM may (i) give notice of material breach pursuant to Article 6; and/or (ii) decline to provide Client access to the Service until the past due amounts (plus interest) have been paid in full. In addition, **enversa**SM may assess interest on any past due amounts equal to the lesser of 1.5% compounded monthly or the maximum rate permitted by law, whichever is less. Client will pay all collection expenses, including attorneys' fees, upon **enversa**SM's request.

3.0 PUBLICITY AND MARKS

3.1 No public statements or announcements relating to this Agreement shall be issued by Client without the prior written consent of **enversa**SM; except that either party may list the other as a client or service provider, as the case may be, on any of the parties' web sites and in sales or promotional materials.

3.2 Client acknowledges that the names, marks, trademarks and logos of **enversa**SM, including "**enversa**SM", any variations incorporating them ("Marks"), are the exclusive property of **enversa**SM, and Client has no and will acquire no proprietary rights to the Marks by reason of this Agreement. Client shall not display or use, in advertising or otherwise, any of the Marks without **enversa**SM's prior written consent, provided that such consent may be revoked at any time.

4.0 FORCE MAJEURE

4.1 Neither **enversa**SM nor Client shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control, whether or not similar to the foregoing.

5.0 LIMITATIONS OF LIABILITY

5.1 For purposes of all exclusive remedies and limitations of liability set forth in this Agreement or any Attachment, "**enversa**SM" shall mean **enversa**SM, any subsidiary and parent companies, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; and "Client" shall be defined as Client, Client's subsidiary and parent companies, and Client and their employees, directors, officers, agents, and representatives; and "Damages" will refer collectively to all injury, damage, liability, loss, penalty, interest and expense incurred.

5.2 EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDIES, FOR ANY DAMAGES CAUSED BY ANY SERVICE DEFECT OR FAILURE, OR FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR OBLIGATIONS UNDER THIS AGREEMENT SHALL BE: (i) FOR BODILY INJURY OR DEATH TO ANY PERSON, OR REAL OR TANGIBLE PROPERTY DAMAGE, NEGLIGENCE CAUSED BY A PARTY, OR DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF A PARTY OR ANY BREACH, THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES; (iii) FOR INTELLECTUAL PROPERTY INFRINGEMENT, THE REMEDIES SET FORTH IN ARTICLE 7; (iv) FOR DAMAGES OTHER THAN THOSE SET FORTH ABOVE AND NOT EXCLUDED UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD) AN AMOUNT

EQUAL TO THE TOTAL NET PAYMENTS MADE BY CLIENT FOR THE SERVICE. THIS SHALL NOT LIMIT CLIENT'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

5.3 EXCEPT FOR THE PARTIES' ARTICLE 7 OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS.

5.4 **enversa**sm ALSO SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: LOST OR ALTERED TRANSMISSIONS; OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CLIENT'S, OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

5.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, **enversa**sm MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. **enversa**sm ALSO SHALL HAVE NO LIABILITY TO CLIENT (AND CLIENT SHALL HOLD **enversa**sm HARMLESS) FOR THE FAILURE OF ANY MEDIA PROPERTY TO PROVIDE THE ADVERTISING FOR WHICH SUCH MEDIA PROPERTY MAY HAVE BID IN ANY **enversa**sm SESSION.

5.6 THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT.

6.0 TERMINATION

6.1 If a party fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for thirty (30) days after receipt of written notice, (i) the other party may terminate for cause any Attachment affected by the breach, or (ii) where the failure is a non-payment by Client of any charge when due, **enversa**sm may, at its option, terminate or suspend System and/or require a deposit under affected Attachments.

6.2 Termination by either party of an Attachment does not waive any other rights or remedies it may have under this Agreement. Termination or suspension of an Attachment shall not affect the rights and obligations of the parties under any other Attachment.

7.0 FURTHER RESPONSIBILITIES

7.1 **enversa** agrees to defend or settle any claim against Client and to pay all Damages that a court may award against Client in any suit that alleges the System infringes any patent, trademark, copyright or trade secret, except where the claim or suit arises out of or results from: Client's content; modifications to the System or combinations of the System with other services or products, by Client or others; **enversa**sm's adherence to Client requirements; or, use of the System in violation of this Agreement. Client agree to defend or settle any claim against **enversa**sm and to pay all Damages that a court may award against **enversa**sm in any suit that alleges the System infringes any patent, trademark, copyright or trade secret, due to any of the exceptions in the preceding sentence.

7.2 Whenever **enversa**sm is responsible under Section 7.1, **enversa**sm may at its option either procure the right for Client to continue using, or may replace or modify the alleged infringing System so that the System becomes non-infringing, but if those alternatives are not reasonably achievable, **enversa**sm may terminate the affected Attachment without liability other than as stated in elsewhere herein.

7.3 The indemnified party under this Article: (i) must notify the other party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so

shall have no effect except to the extent the other party is prejudiced thereby; (ii) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the other party shall have control of the defense or settlement; and (iii) shall reasonably cooperate with the defense.

8.0 GENERAL PROVISIONS

8.1 Any supplement, modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement shall not operate as a waiver of any other breach of this Agreement.

8.2 No party may assign this Agreement without the prior written consent of the other party, which consent may be withheld in such other party's sole discretion; provided, however, that **enversa**sm may assign this Agreement without Client's consent to any entity that acquires (i) all or substantially all of the assets of **enversa**sm, or (ii) all or substantially all of the stock of **enversa**sm. Any assignment in violation of this provision shall be void *ab initio*. **enversa**sm may subcontract work to be performed under this Agreement, but shall retain responsibility for all such work.

8.3 If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.

8.4 All required notices under this Agreement shall be in writing and either mailed by certified or registered mail, postage prepaid return receipt requested, sent by express courier or hand delivered and addressed to each party at the address set forth on the cover page of this Agreement or, if the notice relates to a specific Attachment, the address set forth in such Attachment, or such other address that a party indicates in writing.

8.5 This Agreement shall be construed and enforced in accordance with the substantive laws of the State of Texas, excluding its choice of law rules. Each party agrees that any action or proceeding arising out of or related in any way to this Agreement may be brought in a court of competent jurisdiction sitting in Dallas County, Texas. Each party irrevocably and unconditionally consents to the jurisdiction of such court and irrevocably and unconditionally waives any defense of inconvenient forum to the maintenance of any action or proceeding in such court, any objection to venue with respect to any such action or proceeding, and any right of jurisdiction on account of the place of residence or domicile of any party to such action or proceeding. Each party irrevocably and unconditionally waives the right to a jury trial in connection with any claim arising out of or related to this Agreement or the System.

8.6 This Agreement does not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

8.7 The respective obligations of Client and **enversa**sm, which by their nature would continue beyond the termination or expiration of any Attachment or this Agreement, including, without limitation, the obligations regarding Publicity and Marks, Further Responsibilities and Limitations of Liability, shall survive termination or expiration.

8.8 This agreement constitutes the entire agreement between the parties with respect to the services. This agreement supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral concerning the services, or the rights and obligations relating to the services.

8.9 The parties hereto hereby represent and warrant that: (i) the persons executing this Agreement on behalf of such party has the authority to legally bind the respective party and has been duly authorized to execute this Agreement; and (ii) all necessary corporate actions and requirements for execution, if any, have been taken or have been satisfied, and (iii) neither it nor any of its respective businesses is under or subject to any contractual or other legal obligation that would in any way interfere with such party's full, prompt, and complete performance hereunder.