



Terms & Conditions

ICMS End-User Agreement

Last reviewed and updated December 10, 2019

1. General

1.1 Relationship. This End-User Agreement ("EUA") is a legal agreement between you and ICMS, Inc. for the contents and information appearing on this website and all websites operated by ICMS, Inc. ("ICMS") that you access or use. Your use of this website constitutes acceptance of the terms and conditions contained within this EUA.

1.2 Usage. This EUA governs your use of this website and all websites operated by ICMS (the "Website" or "Site"). Additional terms and conditions of use applicable to specific areas of the Website may also be posted in such areas and, together with this EUA, govern your use of those areas. This EUA, together with any such additional terms and conditions, are referred to as this "Agreement." ICMS reserves the right to terminate or suspend access for failure to comply with this EUA.

1.3 Revisions. ICMS reserves the right, in its sole discretion, to change or modify all or any part of this Agreement at any time, effective immediately upon publication of revised terms to the Website and your subsequent access or use of the Website. Your continued use of the Website constitutes your binding



2. Use of Content

2.1 No Transfer of Rights or Ownership. Nothing contained in this Agreement shall confer upon a user any right, title, or interest in, or license to any software, written materials or intellectual property owned by ICMS or included on the Website.

2.2 Acknowledgment of Intellectual Property Rights. You acknowledge that the Website contains information, software, photographs, audio and video clips, graphics, links and other material (collectively, the "Content") that are protected by copyright, trademark or other proprietary rights of ICMS or third parties. You agree to comply with any guidelines or restrictions contained in any Content available on or accessed through the Website.

2.3 Use of Information. While the Website is intended to provide information regarding the subject matters covered, the information is provided to you based on your agreement and understanding that ICMS is not engaged in providing legal, accounting, or other professional services to you. Assistance of legal counsel or other appropriate experts should be sought when applying the law, rules, or regulations to a particular set of facts or circumstances. ICMS makes no representations, warranties, or guarantees whatsoever as to the correctness or accuracy of the Website and Content thereon. It is possible that the Website could include typographical errors, inaccuracies or other errors, and that unauthorized additions, deletions, and alterations could be made to the Website by third parties. In the event that an inaccuracy arises, please inform ICMS so that it can be corrected. ICMS reserves the right to unilaterally correct any inaccuracies on the Website without notice. Information contained on the Website may be changed or updated without notice. Additionally, ICMS shall have no responsibility or liability for information or Content posted to the Website from any non-ICMS affiliated third party.

2.4 Limitations of Use. You may not modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of the Content, in whole or in part, except as expressly permitted in this Agreement or as expressly authorized in a specific area of the Website. Content consisting of downloadable software may not be reverse engineered unless specifically authorized by the owner of the software. Subject to the restrictions set forth in this Agreement, you may post on the Website any Content owned by you (such as your original statements), Content for which you have received express permission from the owner to post, and Content in the public domain. You assume all risk and responsibility for determining whether any Content is in the public domain or is permitted to be posted by the owner of the Content. You may not frame or utilize framing techniques to enclose, or deep link to, any name, trademarks, service marks, logo, Content or other proprietary information (including images, text, page layout, or form) of ICMS without our express written consent.



You are prohibited from violating or attempting to violate the security of the Website, including, without limitation, (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; or (c) accessing or using the Website or any portion thereof without authorization, in violation of these EUA or in violation of applicable law.

You may not use any scraper, crawler, spider, robot or other automated means of any kind to access or copy data on the Website, deep-link to any feature or content on the Website, bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Website.

Violations of system or network security may result in civil or criminal liability. ICMS will investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of this Website or any activity being conducted on this Website.

3. Rules of Conduct

3.1 Nature of Postings. If you submit, upload, or post any comments, ideas, suggestions, information, files, videos, images or other materials to us or our Website ("User Generated Content"), you agree not to provide any User Generated Content that (1) is defamatory, abusive, libelous, unlawful, obscene, threatening, harassing, fraudulent, pornographic, or harmful, or that could encourage criminal or unethical behavior, (2) violates or infringes the privacy, copyright, trademark, trade dress, trade secrets or intellectual property rights of any person or entity, or (3) contains or transmits a virus or any other harmful component. You agree not to contact other Website users through unsolicited e-mail, telephone calls, mailings or any other method of communication. You represent and warrant to ICMS that you have the legal right and authorization to provide all User Generated Content to ICMS for the purposes and ICMS's use as set forth herein. ICMS shall have a royalty-free, irrevocable, transferable right and license to use the User Generated Content in whatever manner ICMS desires, including without limitation, to copy, modify, delete in its entirety, adapt, publish, translate, create derivative works from and/or sell and/or distribute such User Generated Content and/or incorporate such User Generated Content into any form, medium or technology throughout the world. ICMS is and shall be under no obligation (1) to maintain any User Generated Content in confidence; (2) to pay to you any compensation for any User Generated Content; or (3) to respond to any User Generated Content.



3.2 Passwords. In the event access to the Website or a portion thereof is limited requiring a user ID and password ("Protected Areas"), you agree to access Protected Areas using only your user ID and password as provided to you by ICMS. You agree to protect the confidentiality of your user ID and password, and not to share or disclose your user ID or password to any third party. You agree that you are fully responsible for all activity occurring under your user ID. Your access to the Website may be revoked by ICMS at any time with or without cause. You agree to defend, indemnify, and hold ICMS harmless from and against all third party claims, damages and expenses (including reasonable attorneys' fees) against or incurred by ICMS arising out of your breach of these EUA or violation of applicable law, your use or access of the Website, or access by anyone accessing the Website using your user ID and password. You agree to ensure the confidentiality and appropriately authorized use of all passwords assigned to you for use in accessing the Website. You agree to be responsible for any use or misuse of your username and/or password and to promptly notify ICMS of any breach of password security or the use or possession of your username and/or password by unauthorized individuals.

4. Managing Content

4.1 No Review. ICMS does not and cannot review the Content posted by users on the Website and is not responsible for such Content and you agree that ICMS will have no liability to you with respect to any Content posted on the Website. However, ICMS reserves the right, but not the obligation, to delete, move or edit any Content that it may determine, in its sole discretion, violates this Agreement or is otherwise inappropriate for posting. You agree to remain solely responsible for all Content posted by you. ICMS shall have the right, but not the obligation, to correct any errors or omissions in any Content, as it may determine in its sole discretion, and may edit the Content posted to the Website in its sole discretion.

4.2 Copyright Infringement. If you believe that your copyright-protected work has been copied and posted on the Site in a way that constitutes copyright infringement, then please contact ICMS's DMCA Agent with the following information (please consult your attorney to better understand your rights and obligations under Section 512(c) of the Copyright Act and other laws):

1. Reasonably sufficient details to enable us to identify the work claimed to be infringed or, if multiple works are claimed to be infringed, a representative list of such works (for example: title, author, any registration or tracking number, URL);
2. Reasonably sufficient detail to enable us to identify and locate the material that is claimed to be infringing (for example a link to the page that contains the material);
3. Your contact information so that we can contact you (for example, your address, telephone number, email address);



4. A statement that you have a good faith belief that the use of the material identified in sub-section ii above is not authorized by the copyright owner, its agent, or the law;
5. A written statement, under penalty of perjury, that the information in the notification is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is alleged to be infringed.
6. Your physical or electronic signature.

Please send this written notice to our designated agent as follows:

admin@icmsbenefits.com.

4.3 Counter-Notification. If material that you have posted to the Site has been taken down, you may file a counter-notification that contains the following details:

1. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or disabled;
2. A statement, under penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material in question;
3. Your name, address and telephone number;
4. A statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located or, if your address is outside of the USA, for any judicial district in which ICMS, may be found and that you will accept service of process from the person who submitted a notice in compliance with the section (c)(1)(C) of the DMCA, as generally described above;
5. Your physical or electronic signature.

Please send this written notice to our designated agent as follows:

admin@icmsbenefits.com.



4.4 Enforcement. Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing, or that the material or activity was removed or disabled by mistake may be subject to liability. Please also be advised that we enforce a policy of terminating the accounts of repeat infringers. A repeat infringer includes any user who has made two or more postings for which we receive a notice of infringement under this DMCA Notice and Takedown Procedure.

5. Permitted Uses of Health or Personal Information

The Website and/or its related tools or reports may contain or use health or personal information that is protected by federal privacy laws. This information may also be protected by state law. ICMS's policy governing permitted uses of information provided through the Website and/or related tools or reports is intended to comply, and to permit you to comply, with the restrictions imposed by federal privacy laws. ICMS intends that this information will not be used by a plan sponsor or other party in making employment-related actions or decisions and that you will not attempt to combine this information with any other information from any other source in an effort to identify a specific individual. You shall not receive, maintain, transmit or create Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA") using any ICMS Website, other than as specifically instructed by ICMS. You agree that ICMS is not responsible for ensuring your compliance with any such obligations or restrictions imposed on you by such federal privacy law.

This Website and the Content hereon is for informational purposes only and does not constitute professional medical advice, diagnosis, treatment or recommendations of any kind. You should always seek the advice of your qualified health care professionals with any questions or concerns you may have regarding your individual needs and any medical conditions. ICMS does not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be included on the Website. Reliance on any information appearing on the Website, whether provided by ICMS, its content providers, its clients, visitors to the Website or others, is solely at your own risk.

6. Mailing List

You agree and acknowledge that you will be added to the ICMS mailing list. You have the right to opt-out of receiving mailings from ICMS. For more information regarding use of your personal information, please review our Privacy Policy at: admin@icmsbenefits.com.



7. Locally Installed Applications and System Configuration

1. **Locally Installed Applications.** User is solely responsible for the decision to download any selected applications and for their function in the local environment. ICMS may provide limited trouble-shooting support from time to time. Locally installed applications which you use may automatically download and install updates from time to time from ICMS. These updates are designed to improve, enhance and further develop the applications and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates from ICMS.
2. **System Configuration and Requirements.** User is solely responsible for ensuring that User's computer and systems meet the minimum system requirements as stipulated by ICMS from time to time.

8. No Endorsement

ICMS does not represent or endorse the accuracy or reliability of any Content posted in the Website and you acknowledge that any reliance upon such Content shall be at your sole risk. You agree to carefully evaluate and review any Content prior to using or relying upon it. The Website may contain links to sites on the Internet which are operated by third parties (the "External Sites"). You acknowledge that ICMS is not responsible for the availability of, or the content located on or through, any External Site. You should contact the site administrator or Webmaster for those External Sites if you have any concerns regarding such links or the content located on such External Sites.

9. Indemnity

You agree to indemnify, defend and hold ICMS and its respective officers, directors, owners, agents, information providers and licensors (collectively, the "ICMS Parties") harmless from and against any and all demands, claims, liability, losses, costs and expenses (including attorneys' fees) incurred by any ICMS Party in connection with any use or alleged use of the Website and any activity, actions, or omissions on the Website conducted under your password by any person, whether or not authorized by you, including the posting of User Generated Content to the Website. ICMS reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with ICMS's defense of such claim.



10. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

10.1 DISCLAIMER OF WARRANTIES. NEITHER ICMS NOR ANY PROVIDER OF THIRD PARTY CONTENT OR THEIR RESPECTIVE AGENTS WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, OR ERROR FREE; NOR DOES ICMS, ANY THIRD PARTY CONTENT PROVIDER, OR THEIR RESPECTIVE AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE WEBSITE OR THE CONTENT. THE WEBSITE AND THE CONTENT ARE DISTRIBUTED ON AN “AS IS, AS AVAILABLE” BASIS. NEITHER ICMS NOR ANY OF ITS THIRD PARTY CONTENT PROVIDERS OR THEIR RESPECTIVE AGENTS MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, WITH RESPECT TO THE WEBSITE, ANY CONTENT OR ANY PRODUCTS OR SERVICES PROVIDED THROUGH THE WEBSITE. NEITHER ICMS NOR ANY THIRD PARTY CONTENT PROVIDER WARRANTS THAT ANY FILES AVAILABLE FOR DOWNLOADING THROUGH THE WEBSITE WILL BE FREE OF VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO THE QUALITY, SECURITY, AND PERFORMANCE OF THE WEBSITE AND THE ACCURACY OR COMPLETENESS OF THE CONTENT IS ASSUMED SOLELY BY YOU.

10.2 LIMITATION OF LIABILITY. NEITHER ICMS, ANY THIRD PARTY CONTENT PROVIDER NOR THEIR RESPECTIVE AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE WEBSITE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE WEBSITE, WEBSITE-RELATED SERVICES, OR LINKED WEBSITES IS TO STOP USING THE WEBSITE OR THOSE SERVICES. TO THE EXTENT ANY ASPECTS OF THE FOREGOING LIMITATIONS OF LIABILITY ARE NOT ENFORCEABLE, THE MAXIMUM AGGREGATE LIABILITY OF ICMS TO YOU WITH RESPECT TO YOUR USE OF THIS SITE IS \$500 (FIVE HUNDRED DOLLARS).

10.3 STATE LAW. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH STATES, THE LIABILITY OF ICMS, THIRD PARTY CONTENT PROVIDERS AND THEIR RESPECTIVE AGENTS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

10.4 EXTERNAL LINKS. CERTAIN LINKS AVAILABLE ON THE WEBSITE WILL LET YOU LEAVE ICMS’S SITE. THE LINKED SITES ARE NOT UNDER THE CONTROL OF ICMS AND ICMS IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY LINKED SITE OR ANY LINK CONTAINED IN A LINKED SITE, OR ANY CHANGES OR UPDATES TO SUCH SITES. ICMS IS PROVIDING THESE LINKS TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF ANY LINK DOES NOT IMPLY ENDORSEMENT BY ICMS OF THE SITE. IT IS UP TO YOU TO TAKE PRECAUTIONS TO ENSURE THAT WHATEVER YOU SELECT FOR YOUR USE OR DOWNLOAD IS FREE OF SUCH ITEMS AS VIRUSES, WORMS, TROJAN HORSES, AND OTHER ITEMS OF A DESTRUCTIVE NATURE. IF YOU DECIDE TO ACCESS ANY OF THE THIRD PARTY WEBSITES LINKED TO THIS WEBSITE, YOU DO THIS ENTIRELY AT YOUR OWN RISK.



11. Miscellaneous

This Agreement shall be construed in accordance with the laws of the State of California, and the parties irrevocably consent to exclusively bring any action to enforce this Agreement in the federal or state courts governing California. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous written or oral agreements between the parties with respect to such subject matter. If any inconsistency exists between the terms of this Agreement and any additional terms and conditions posted on the Website, such terms shall be interpreted as to eliminate any inconsistency, if possible, and otherwise, the additional terms and conditions shall control.

You acknowledge that the products and Content which are sold or licensed on the Website, which may include technology and software, are subject to the customs and export control laws and regulations of the United States of America and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured and/or received. By purchasing, downloading or using technology or software from the Website, you agree to abide by the applicable laws, rules and regulations – including, but not limited to the Export Administration Act and the Arms Export Control Act – and you represent and warrant that you will not transfer, by electronic transmission or otherwise, the software or technology to a foreign national or a foreign destination in violation of the law. By purchasing any products, you agree that you will not use any products, or provide products to any person, who is forbidden from receiving the product under the Export Administration Regulations or any economic sanctions maintained by the U.S. Department of Treasury, U.S. antiboycott regulations, or U.S. economic sanctions, including the export and antiboycott restrictions found in the Export Administration Regulations or the sanctions regulations administered by the U.S. Office of Foreign Assets Control. You shall indemnify and hold harmless ICMS from all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from your failure to comply with this provision and/or applicable export control, antiboycott, or economic sanctions laws and regulations. In the event that any of the EUA are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that these EUA shall otherwise remain in full force and effect. These EUA constitute the entire agreement between ICMS and you pertaining to the subject matter hereof.

12. Suspension of Services

ICMS reserves the right to suspend or terminate this Agreement and your access if the account associated with payment for your access falls into arrears. Without limiting the generality of the foregoing, ICMS reserves the right, in its sole discretion, to terminate your access to all or part of this Website, with or without cause, and with or without notice.

Contact Information

You may contact ICMS as follows:

95 S. Market Street Suite 600
San Jose, CA 95113
408.244.8535

www.icmsbenefits.com