

TERMS AND CONDITIONS

CUSTOMER'S USE OF THE PRODUCTS, INCLUDING ANY USE BY CUSTOMER'S PERSONNEL, CONSTITUTES CUSTOMER'S AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS.

These Terms and Conditions ("Agreement") supplement the Invoice delivered to Customer and set forth the terms and conditions under which Cost Data On Line, Inc. ("CDOL") will provide access to certain proprietary technology and products set forth on the Invoice to Customer. The Agreement sets forth the terms and conditions under which Customer may Use (as defined herein) CDOL's database products indicated on the applicable Invoice ("Products").

1. LICENSE GRANT AND RIGHT OF USE

1.1. **License Grant.** Subject to all limitations and restrictions contained herein and the Invoice, CDOL grants Customer a subscription, software as a service (SaaS), nonexclusive and nontransferable right to use the Products only on the Supported Computers as hosted by CDOL as described in the Invoice ("Use"). For the purposes of this Agreement, "Supported Computer(s)" shall mean one or more computers (if and as designated in the Invoice) owned or leased by Customer, under Customer's sole and exclusive control, of a manufacturer, model and operating system for which CDOL offers a current version of the Products. Subject to the restrictions set forth herein and in the Invoice, the Customer may access the Products from one Supported Computer to another Supported Computer at any time, provided Customer promptly notifies CDOL in writing.

1.2. **Use.** Customer shall not allow any web portal or website, that is not fully owned and controlled by CDOL, to frame, syndicate, distribute, replicate, or copy any portion of CDOL's web site that provides direct or indirect access to the Products. Customer is granted the right to create Derivatives of the Products subject to the terms of this Agreement. An "Estimate" is defined as any calculated work result that is directly derived from or generated from the Products or uses any portion of the Products during its creation either in printed form or in a machine-readable form. An Estimate is not a Derivative unless it is being used in an effort to circumvent this Agreement or the subscription

herein. A Derivative is created when: (i) any portion of the Product(s) is used to create a custom machine readable or printed form of the data. "Derivatives" are defined as results derived from the Products used to build or update an Estimate either as a reference or as a direct input to the Estimate and are the same as the Product. CDOL retains all right, title and interest to all Derivatives and any Derivative shall be subject to the terms of this Agreement. Customer may use and access the Estimates that are created by Customer as a data source so long as this Agreement is in effect. Customer may retain Estimates created using the supplied data solely for historical purposes. Any use of an Estimate as a data source to build a new Estimate without a CDOL's prior written consent is considered a violation of this Agreement, the United States copyright laws and international treaty provisions Customer may not use the Products or CDOL web site on a service bureau or time-sharing basis.

1.3. **Additional Restrictions.** In no event shall Customer disassemble, decompile, or reverse engineer the Products or Confidential Information (as defined herein) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (i) converting the Products from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Products by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Product's operation and creating the original source code or any approximation thereof by, for example, studying the Product's behavior in response to a variety of inputs; or (iv) performing any other activity related to the Products that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the

results thereof shall be deemed Confidential Information subject to the requirements of this Agreement. Customer may use CDOL's Confidential Information solely in connection with the Products and pursuant to the terms of this Agreement.

- 1.4. **Printing.** Customer may print or copy the PDF documents contained within the Products for the sole purpose of providing backup to pertinent data contained within estimates created using the cost information provided on the Products. Customer's right to maintain the copies printed for the purpose of maintaining one (1) backup copy to estimates shall survive termination of this Agreement. Upon termination or non-renewal of this Agreement, all copies of the pdf documents shall either be returned to the CDOL or destroyed by the Customer, as certified in writing by an officer of the Customer. No copies shall be retained by the Customer.

2. PAYMENT

- 2.1. **Fees.** Customer shall pay CDOL the fees indicated on the Invoice. Unless otherwise provided in an Invoice, all fees shall be paid to CDOL on the effective date of invoice ("Invoice Effective Date"). The initial payment for the Products must be made on the Invoice Effective Date. Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.
- 2.2. **Taxes.** The license, service fees, and other amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse, indemnify, defend, release, and hold CDOL harmless for all sales, use, VAT, excise, property or other taxes or levies which CDOL is required to collect or remit to applicable tax authorities. This provision does not apply to CDOL's income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished CDOL with a valid tax exemption certificate.

3. MAINTENANCE AND SUPPORT SERVICES

- 3.1. **Maintenance.** CDOL shall use commercially reasonable efforts to provide corrections to reported problems that (i) prevent the Products from conforming in material respects to its specifications, and (ii) are replicated and diagnosed by CDOL as defects in the Products ("Maintenance and Support Services"). CDOL shall use

commercially reasonable efforts to begin working on a resolution to Customer's written notice of reported problems within fourteen (14) days, provided corrections shall be prioritized in CDOL's reasonable discretion. A response is not a guaranty of a solution to the reported problem; however CDOL will keep Customer apprised of the resolution closure. Additional features and functions are not included as part of the maintenance and support services.

- 3.2. **Service Availability.** CDOL's goal is to provide Product availability twenty-four hours per day, seven (7) days per week (referred to as "24x7 Availability") EXCEPT during times of scheduled updates. However, the parties recognize that 24x7 Availability is only a GOAL, and CDOL cannot represent or guarantee that such goal can be achieved. These response time goals apply only to public production servers (i.e. web servers, application servers, and database servers). The Product availability goal excludes any time Customer requests the site be taken down for scheduled updates. CDOL does not and cannot control the flow of data to or from CDOL's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Although CDOL will use reasonable efforts to take actions it deems appropriate to remedy and avoid such events, CDOL cannot guarantee that such events will not occur. Accordingly, CDOL disclaims any and all liability resulting from or related to such events.
- 3.3. **Exclusions.** CDOL shall not be obligated to provide Maintenance and Support Services for any software or products other than the generally available Products delivered to Customer pursuant to this Agreement (collectively the "Unsupported Code"). Any CDOL support services related to Unsupported Code shall be subject to execution of a mutually agreed upon assignment order issued under a separate professional services agreement.
- 3.4. **Third Parties.** CDOL shall have the right to use third parties, including employees of CDOL's affiliates and subsidiaries ("Subcontractors") in performance of its obligations and services hereunder and, for purposes of this Section, all references to CDOL or its employees shall be deemed to include such Subcontractors.

4. OWNERSHIP

4.1. **Reservation of Rights.** By signing the Invoice, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Products, or CDOL materials provided to Customer. CDOL shall own all right, title, and interest in such Products and CDOL materials, subject to any limitations associated with intellectual property rights of third parties. CDOL reserves all rights not specifically granted herein.

5. CONFIDENTIALITY

5.1. **Definition.** "Confidential Information" includes all information marked pursuant to this Section and disclosed by CDOL, before or after the Effective Date, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by CDOL that contains, reflects, or is derived from such information.

5.2. **Confidentiality of Products.** All Confidential Information in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure. Notwithstanding the foregoing, the following is deemed CDOL Confidential Information with or without such marking or written confirmation: (i) the Products, derivatives of the Products and other related materials furnished by CDOL; (ii) the oral and visual information relating to the Products or derivatives of the Products; and/or (iii) the terms and conditions of this Agreement.

5.3. **Ownership of Confidential Information.** Nothing in this Agreement shall be construed to convey any title or ownership rights to the Products or other Confidential Information to Customer or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest to the CDOL Confidential Information. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information. Furthermore, Customer agrees that certain underlying

algorithms, processes, and methods of operation, are the intellectual property of CDOL. CDOL retains title to the CDOL web site, derivatives, user documentation, data or any other information furnished by Products or CDOL web site to the Customer. Customer agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the content of the CDOL web site or any related materials or documentation derived from the CDOL web site.

5.4. **Non-Disclosure.** Customer agrees at all times to keep strictly confidential all Confidential Information belonging to CDOL. Customer agrees to restrict access to the other party's Confidential Information only to those employees who (i) require access in the course of their assigned duties and responsibilities; and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section.

5.5. **Injunctive Relief.** Customer acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the CDOL imminent irreparable injury and that CDOL shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.

5.6. **Suggestions/Improvements to Products.** Notwithstanding this Section, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Products or other CDOL materials provided to Customer shall be owned by CDOL, and Customer hereby agrees to assign any such rights to CDOL. Nothing in this Agreement shall preclude CDOL from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by CDOL in the performance of services hereunder.

6. WARRANTY

6.1. **Authorized Representative.** Customer and CDOL warrant that each has the right to enter into this Agreement and that the Agreement shall be executed by an authorized representative of each entity.

6.2. **Disclaimer of Warranties.** Customer acknowledges and agrees that it is not relying on any statement or warranty not expressly provided herein with respect to the Products or maintenance,

or other services provided hereunder. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, THE PRODUCTS ARE PROVIDED "AS IS" AND CDOL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

- 6.3. **No Modifications.** Notwithstanding anything to the contrary in this Section, any and all warranties under this Agreement are VOID if Customer has made changes to the Products or has permitted any changes to be made other than by or with the express, written approval of CDOL.

7. LIMITATION OF LIABILITY

- 7.1. **Liability Cap.** IN NO EVENT SHALL CDOL BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE PRODUCTS, SERVICES, COURSES, OR COURSE MATERIALS WHICH GAVE RISE TO SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

- 7.2. **Disclaimer of Damages.** IN NO EVENT SHALL CDOL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

8. TERM AND TERMINATION

- 8.1. **Termination by CDOL.** This Agreement and any license created hereunder may be terminated by CDOL (i) if Customer fails to make any payments due hereunder within fifteen (15) days of the due date; (ii) on thirty (30) days written notice to Customer if Customer fails to perform any other material obligation required of it hereunder, and such failure is not cured within such thirty (30) day period; or (iii) Customer files a petition for bankruptcy or insolvency, has an involuntary

petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

- 8.2. **Termination.** Upon termination of this Agreement, Customer shall no longer access the Products and Customer shall not circumvent any security mechanisms contained therein.
- 8.3. **Other Remedies.** Termination of this Agreement shall not limit CDOL from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.

9. CUSTOMER OBLIGATIONS

- 9.1. **Ancillary Agreements.** Customer agrees that no employees of CDOL shall be required to individually sign any agreement in order to perform any services hereunder including, but not limited to, access agreements, security agreements, facilities agreements or individual confidentiality agreements.

10. MISCELLANEOUS

- 10.1. **Compliance With Laws and Export.** Customer agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under this Agreement. The parties agree that the Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by UCITA, the application of which is expressly excluded. Customer acknowledges that the Products are subject to export and import control of the United States of America. Customer agrees that Products will be exported, re-exported or resold only in compliance with such laws. Customer represents and warrants that the Products shall not be used for any nuclear, chemical/biological warfare, missile end-use or training related thereto. Customer also agrees that it will not, without first procuring a BXA license or License Exception, (a) re-export or release the above Products to a national of a country in Country Code D:1 or E:2; nor (b) export to Country Groups D:1 or E:2 the direct product of the Products, if such foreign produced product is subject to national security controls as identified on the Commerce Control List (See General Prohibition Three Sec. 736.2(b)(3) of the Export Administration Regulations).
- 10.2. **Assignment.** Customer may not assign this Agreement or otherwise transfer any license created hereunder whether by operation of law,

change of control, or in any other manner, without the prior written consent of CDOL. Any assignment or transfer in violation of this Section shall be null and void.

- 10.3. **Survival.** The provisions set forth in Sections 2, ~~445~~, 6.2, 7, 8.3, and 10 of this Agreement shall survive termination or expiration of this Agreement and any applicable license hereunder.
- 10.4. **Notices.** Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified on the face page hereof or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to CDOL shall be sent to the attention of the CEO. Any notice of material breach shall clearly define the breach including the specific contractual obligation that has been breached.
- 10.5. **Force Majeure.** CDOL shall not be liable to Customer for any delay or failure of CDOL to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of CDOL. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder. This provision shall not apply to Customer's obligation to pay any sums due under this Agreement, which shall continue unabated.
- 10.6. **Restricted Rights.** Use of the Products by or for the United States Government is conditioned upon the Government agreeing that the Products are subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Products, when delivered to the Government, are correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.
- 10.7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) shall be considered an original. Any additional or conflicting provisions contained in Customer's purchase order shall not apply.
- 10.8. **Order of Precedence.** In the event of a conflict between the terms and conditions of this Agreement, an Invoice, or any applicable End User License Agreement, the terms and conditions of the Invoice, Agreement, or End User License Agreement shall prevail, in that order.
- 10.9. **Modifications.** CDOL reserves the right to change the terms and conditions of this Agreement at any time. Updated versions of the terms and conditions of this Agreement will appear on this web site and are effective immediately. Customer is responsible for regularly reviewing the Terms of Use. Continued use of the Products after any such changes constitutes Customer's consent to such changes.
- 10.10. **Nonsolicitation.** During the term of this Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of CDOL without the prior written consent of CDOL. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of CDOL for a period of one (1) year from such former employee's or Subcontractor's last date of service with CDOL. Violation of this provision shall entitle CDOL to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.
- 10.11. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.
- 10.12. **Severability and Reformation.** Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to comply with state law and remain in effect in accordance with its terms as modified by such reformation.
- 10.13. **Audit.** CDOL, at its expense, may inspect and audit, and/or may engage an independent third party ("Auditor") to inspect and audit, at any time, if CDOL reasonably believes Customer may have breached any of its obligations under this Agreement, Customer's books and records, Supported Computers, hardware components and software environment relating to, or otherwise connected with, Customer's performance of its obligations under this Agreement or that are reasonably required to determine Customer's compliance with Customer's obligations under this

Agreement. Customer will cooperate fully with all such inspection and audit requests

10.14. **Power and Authority; Due Authorization; No Conflict; Enforceability; Binding Effect.**

Customer represents and warrants to CDOL that (i) any Customer personnel, staff, or employee Using the Product has the power and authority to execute, deliver and perform Customer's obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by Customer and does not and shall not conflict with any agreement or instrument to which it is bound, (iii) this Agreement constitutes the legal, valid and binding obligation of Customer, enforceable against it in accordance with its terms, and (iv) this Agreement, and the

interests, rights, duties and obligations hereunder, shall be binding upon, and inure to the benefit of, Customer and their respective successors and permitted assigns.

10.15. **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION. ANY ACTION ARISING OUT OF, OR RELATED TO, THIS AGREEMENT SHALL BE BROUGHT IN THE STATE OR FEDERAL COURTS LOCATED IN HOUSTON, TEXAS AND EACH PARTY HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS.