

# General Terms

These General Terms (these "General Terms") are between FYIsoft, Inc. ("FYIsoft") and the individual or entity identified in the referencing Ordering Document. To place orders subject to these General Terms, at least one Schedule (as defined below) must be incorporated into these General Terms. If a term is relevant only to a specific Schedule, that term will apply only to that Schedule if and/or when that Schedule is incorporated into these General Terms.

## 1. DEFINITIONS

- 1.1. "**Master Agreement**" refers to these General Terms (including any amendments thereto) and all Schedule(s) incorporated into the Master Agreement (including any amendments to those incorporated Schedule(s)). The Master Agreement governs Your use of the Products ordered from FYIsoft or an authorized reseller.
- 1.2. "**Schedule**" refers to all FYIsoft Schedules to these General Terms as identified in Section 2.
- 1.3. "**Programs**" refers to (a) the software owned or distributed by FYIsoft that You have ordered under a Schedule, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include any software release prior to general availability (e.g., beta releases).
- 1.4. "**Program Documentation**" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation within the application.
- 1.5. "**Products**" refers to Programs and Program Documentation.
- 1.6. "**Service Offerings**" refers to technical support, education, hosted/outsourcing services, cloud services, consulting, advanced customer support services, or other services which You have ordered. Such Service Offerings are further described in the applicable Schedule.
- 1.7. "**Separate Terms**" refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.
- 1.8. "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of the Master Agreement.
- 1.9. "**You**" and "**Your**" refers to the individual or entity that has executed these General Terms.

## 2. MASTER AGREEMENT TERM AND APPLICABLE SCHEDULES

Orders may be placed under the Master Agreement and applicable schedules referenced in Orders and are incorporated into the Master Agreement. The term of this Master Agreement is ten (10) years.

The Schedules set forth terms and conditions that apply specifically to certain types of FYIsoft offerings which may be different than, or in addition to, these General Terms.

### **3. SEGMENTATION**

The purchase of any Products and related Service Offerings or other Service Offerings are all separate offers and separate from any other order for any Products and related Service Offerings or other Service Offerings You may receive or have received from FYIsoft. You understand that You may purchase any Products and related Service Offerings or other Service Offerings independently of any other Products or Service Offerings. Your obligation to pay for (a) any Products and related Service Offerings is not contingent on performance of any other Service Offerings or delivery of any other Products or (b) other Service Offerings is not contingent on delivery of any Products or performance of any additional/other Service Offerings. You acknowledge that You have entered into the purchase without reliance on any financing or leasing arrangement with FYIsoft or its affiliate.

### **4. OWNERSHIP**

FYIsoft or its licensors retain all ownership and intellectual property rights to the Programs and anything developed or delivered under the Master Agreement.

### **5. INDEMNIFICATION**

5.1. Subject to sections 5.4 and 5.5 below, if a third party makes a claim against either You or FYIsoft ("Recipient" which may refer to You or FYIsoft depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by either You or FYIsoft ("Provider" which may refer to You or FYIsoft depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- 5.1.1. notifies the Provider promptly in writing, not later than thirty (30) days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- 5.1.2. gives the Provider sole control of the defense and any settlement negotiations; and
- 5.1.3. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

5.2. If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if FYIsoft is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to FYIsoft for the license of the infringing Program. If such return materially affects FYIsoft's ability to meet its obligations under the relevant order, then FYIsoft may, at its option and upon thirty (30) days prior written notice, terminate the order.

5.3. In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, FYIsoft may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to FYIsoft for the Program license and any unused, prepaid technical support fees You have paid to FYIsoft for the Program license.

5.4. The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material

after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. FYIsoft will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by FYIsoft. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Master Agreement, FYIsoft will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as FYIsoft is required to provide infringement indemnification for the Program under the terms of the Master Agreement. FYIsoft will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of the Master Agreement would not otherwise infringe any third party intellectual property rights. FYIsoft will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

5.5. This section provides the parties' exclusive remedy for any infringement claims or damages.

## **6. TERMINATION**

- 6.1. If either of us breaches a material term of the Master Agreement and fails to correct the breach within thirty (30) days of written specification of the breach, then the breaching party is in default and the nonbreaching party may terminate the Master Agreement. If FYIsoft terminates the Master Agreement as specified in the preceding sentence, You must pay within thirty (30) days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the thirty (30) day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under the Master Agreement, You may not use those Products or Service Offerings ordered
- 6.2. If You have used a contract with FYIsoft or an affiliate of FYIsoft to pay for the fees due under an order and You are in default under that contract, You may not use the Products and/or Service Offerings that are subject to such contract.
- 6.3. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

## **7. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION**

- 7.1. All fees payable to FYIsoft are due within thirty (30) days from the invoice date. You agree to pay any sales, value added or other similar taxes imposed by applicable law that FYIsoft must pay based on the Products and/or Service Offerings You ordered, except for taxes based on FYIsoft's income. Also, You will reimburse FYIsoft for reasonable expenses related to providing Service Offerings.
- 7.2. You understand that You may receive multiple invoices for the Products and Service Offerings You ordered. Invoices will be submitted to You pursuant to FYIsoft's Invoicing Standards Policy.

## **8. NONDISCLOSURE**

- 8.1. By virtue of the Master Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). We each agree to disclose only information that is required for the performance of obligations under the Master Agreement. Confidential Information shall be limited to the terms and pricing under the Master Agreement and all information clearly identified as confidential at the time of disclosure
- 8.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the

disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

- 8.3. We each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three (3) years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under the Master Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Master Agreement or orders submitted under the Master Agreement in any legal proceeding arising from or in connection with the Master Agreement or disclosing the Confidential Information to a governmental entity as required by law.

## **9. ENTIRE AGREEMENT**

- 9.1. You agree that the Master Agreement and the information which is incorporated into the Master Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Products and/or Service Offerings ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products and/or Service Offerings.
- 9.2. It is expressly agreed that the terms of the Master Agreement and any FYIsoft order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-FYIsoft document and no terms included in any such purchase order, portal or other non-FYIsoft document shall apply to the Products and/or Service Offerings ordered. In the event of inconsistencies between the terms of any Schedule and these General Terms, the Schedule shall take precedence. In the event of any inconsistencies between the terms of an order and the Master Agreement, the order shall take precedence. The Master Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the FYIsoft Store by authorized representatives of You and of FYIsoft. Any notice required under the Master Agreement shall be provided to the other party in writing.

## **10. LIMITATION OF LIABILITY**

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. FYISOFT'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID FYISOFT UNDER THE SCHEDULE GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PRODUCTS OR SERVICE OFFERINGS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID FYISOFT FOR THE DEFICIENT PRODUCT OR SERVICE OFFERINGS GIVING RISE TO THE LIABILITY.**

## **11. EXPORT**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. You agree that such export laws govern Your use of the Products (including technical data) and any Service Offerings deliverables provided under the Master Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, Product and/or materials resulting from Service Offerings (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## **12. FORCE MAJEURE**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed Service Offerings 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 Your obligation to pay for Products and Service Offerings ordered or delivered.

## **13. GOVERNING LAW AND JURISDICTION**

The Master Agreement is governed by the laws of United States of America. You and FYIsoft agree to submit to the exclusive jurisdiction of, and venue in, the courts in the city of Naples or Collier county in Florida in any dispute arising out of or relating to the Master Agreement.

## **14. NOTICE**

If You have a dispute with FYIsoft or if You wish to provide a notice under the Indemnification section of these General Terms, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Attn: President; FYIsoft, Inc.; 4850 Tamiami Trail N., Naples, FL 34103.

## **15. ASSIGNMENT**

You may not assign the Master Agreement or give or transfer the Programs and/or any Service Offerings or an interest in them to another individual or entity. If You grant a security interest in the Programs and/or any Service Offerings deliverables, the secured party has no right to use or transfer the Programs and/or any Service Offerings deliverables. The foregoing shall not be construed to limit the rights You may otherwise have with respect to the third-party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

## **16. OTHER**

- 16.1. FYIsoft is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.
- 16.2. If any term of the Master Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Master Agreement.
- 16.3. Except for actions for nonpayment or breach of FYIsoft's proprietary rights, no action, regardless of form, arising out of or relating to the Master Agreement may be brought by either party more than six (6) months after the cause of action has accrued.
- 16.4. Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.
- 16.5. If requested by an authorized reseller on Your behalf, You agree FYIsoft may provide a copy of the Master Agreement to the authorized reseller to enable the processing of Your order with that authorized reseller.
- 16.6. The Uniform Computer Information Transactions Act does not apply to the Master Agreement or orders placed under it.
- 16.7. You understand that FYIsoft's business partners, including any third-party firms retained by You to provide consulting services, are independent of FYIsoft and are not FYIsoft's agents. FYIsoft is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an

FYIsoft subcontractor in furtherance of an order placed under the Master Agreement and (ii) only to the same extent as FYIsoft would be responsible for the performance of FYIsoft resources under that order.

16.8. For software (i) that is part of Programs and (ii) that You receive from FYIsoft in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code on physical media by submitting a written request to FYIsoft.

16.9. FYIsoft may refer to You as an FYIsoft customer of the ordered Products and Service Offerings in sales presentations, marketing vehicles and activities.