

GENERAL COMMERCIAL TERMS

1. **Access.** During the Subscription Term, we will provide you access to use the Subscription Service as described in this Agreement and the applicable Order. We might provide some or all elements of the Subscription Service through third party service providers.

2. **Additional Features.** You may subscribe to additional features of the Subscription Service by placing an additional Order or activating the additional features from within your EIMS Tech portal (if this option is made available by us.). This Agreement will apply to all additional Order(s) and all additional features that you activate from within your EIMS Tech portal.

3. **Availability.** We try to make the Subscription Service available 24 hours a day, 7 days a week, except for planned down-time for maintenance.

5. Fees and Payments

a. Subscription Fees. The Subscription Fee will remain fixed during the Subscription Term unless you: (i) exceed your Maximum Consultations, User accounts or other applicable limits (see the 'Limits' section below), (ii) upgrade products or base packages, or (iii) subscribe to additional features or products,

including additional Consultations.

For our Estimator Products, once increased, your Subscription Fee will not decrease, even if there is a subsequent reduction in the number of Consultations or User Accounts. We will monitor or audit remotely the number of Consultations in the Subscription Service and the number of User accounts on the Subscription Service. This information is also made available to you in your EIMS Tech portal.

For our products that have applicable Consultation limits, you will be charged fees associated with all Consultations.

b. Fee Adjustments in Next Billing Period. For our Estimator Products, if you exceed your Maximum Consultations in a Billing Period, then you have the option of increasing either your Subscription Fee to the next tier price (as set forth on our Pricing Page) which corresponds with the maximum number of Consultations from the prior Billing Period or purchase blocks of additional Consultations. This aggregate fee will continue for each Billing Period during the Subscription Term.

c. Fee Adjustments During a Billing Period. For our Estimator Products, the Subscription Fee will increase during the course of a Billing Period if you exceed your Consultation Limit in a Billing Period. In this case, the Subscription Fee will increase to the tier price which corresponds with your maximum monthly

Consultations from the current Billing Period.

d. Fee Adjustments at Renewal. For our Estimator Product, upon renewal, your subscription will be adjusted to match the number of Consultations actually assigned at the end of your then-current Subscription Term.

e. Payment by credit card. If you are paying by credit card, you authorize us to charge your credit card or bank account for all fees payable during the Subscription Term. You further authorize us to use a third party to process payments, and consent to the disclosure of your payment information to such third party.

f. Payment against invoice. If you are paying by invoice, we will invoice you no more than forty-five (45) days before the beginning of the Subscription Term and each subsequent Billing Period, and other times during the Subscription Term when fees are payable. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order Form.

g. Payment Information. You will keep your contact information, billing information and credit card information (where applicable) up to date. Changes may be made on your Billing Page within your EIMS Tech portal. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due and

payable in advance throughout the Subscription Term. If you are a EIMS Tech Agency Partner that purchases on behalf of a client, you agree to be responsible for the Order Form and to guarantee payment of all fees.

6. Use and Limitations of Use

a. Prohibited and Unauthorized Use. You will not (i) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser; (ii) use the Subscription Service in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Subscription Service; (iii) attempt to gain unauthorized access to the Subscription Service; (iv) access the Subscription Service other than through our interface; or (v) use the Subscription Service for any purpose or in any manner that is unlawful or prohibited by this Agreement. You agree not to use data from the Subscription Service in legal proceedings or otherwise as evidence.

You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account by emailing us at support@eimstech.com

b. Third-Party Sites and Products. Third-Party Sites and

Products are not under our control. Third-Party Sites and Products are provided to you only as a convenience, and the availability of any Third-Party Site or Product does not mean we endorse, support or warrant the Third-Party Site or Product.

7. Subscription Term, Termination, Suspension

a. Term and Renewal. Your subscription period will be specified in your Order, and your subscription will automatically renew for the shorter of the subscription period, or one year. If you add products during the Subscription Term, the fees for these additional products will renew along with your subscription, unless otherwise indicated in your Order.

The renewal pricing set forth in your Order will apply, subject to adjustment as specified in the 'Fees and Payments' section above. If renewal pricing is not included in your Order, then our standard pricing available on our Pricing Page will apply.

See the 'Limits' section below for the applicability of product limits on renewal. To prevent renewal of the subscription, the required notice must be provided within the timeframe as specified in the 'Subscription Types' section below.

b. Early Termination; No Refunds. The Subscription Term will end on the last billing cycle day in the month you terminated your account in. We do not provide refunds if you decide to stop using

the EIMS Tech subscription during your Subscription Term.

c. Termination for Cause. Either party may terminate this Agreement for cause, as to any or all Subscription Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors. We may also terminate this Agreement for cause on thirty (30) days' notice if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

d. Suspension for Prohibited Acts. We may suspend any User's access to any or all Subscription Services for: (i) use of the Subscription Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, (ii) repeated instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity.

e. Suspension for Non-Payment. We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the

Subscription Services ten (10) days after such notice. We will not suspend the Subscription Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If a Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Service.

f. Suspension for Present Harm. If your website on, or use of, the Subscription Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a security vulnerability for the Subscription Service or others, (iv) is consuming excessive bandwidth, or (v) is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the Subscription Service. We will try to limit the suspension to the affected portion of the Subscription Service and promptly resolve the issues causing the suspension of the Subscription Service.

g. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, you will stop all use of the affected Subscription Service and EIMS Tech Content. We may or may not provide you the opportunity to retrieve Customer Data after termination or expiration, depending on the type of applicable subscription as specified in the 'Retrieval of Customer Data' section below. If you terminate this Agreement for cause, we will

promptly refund any prepaid but unused fees covering use of the Subscription Service after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

SUBSCRIPTION TYPE TERMS

1. **Subscription Types.** We offer three main types of subscriptions: (1) INDIVIDUAL/STARTER Subscriptions, (2) SCHOOL/DISTRICT Subscriptions, and (3) LARGER DISTRICT/STATE. There are different terms that apply depending on the subscription you purchase, and we cover those differences in this section. Unless otherwise agreed to in an Order, the following subscription types apply to the products specified:

(1) INDIVIDUAL/STARTER and our Add-On products.

(2) SCHOOL/DISTRICT and our Add-On products.

(3) LARGER DISTRICT/STATE custom packages

2. **Limits.** The limits that apply to you will be specified in your Order Form, this Agreement or on our Pricing Page, and for our Free Subscriptions, these limits may also be designated only

from within the product itself. You must be 18 years of age or older to use the Subscription Service.

For our Individual/Starter Subscriptions, if we make modifications to the limits set forth on the Pricing Page that would negatively impact you, these modifications will not apply to you until the start of your next renewal Subscription Term. On renewal, the current product usage limits on our Pricing Page will apply to your subscription, unless you and we otherwise agree.

For our School/District Subscriptions, we may change the limits that apply to you at any time in our sole discretion.

For our Customer Subscriptions, we may change the limits that apply to your use at any time in our sole discretion without notice to you, regardless of whether or not these are used in conjunction with other products or services for which you pay us a fee.

3. Downgrades. For any of our Subscriptions, you may not downgrade your subscription and in order to avoid additional charges, you should purchase the appropriate tier of Subscription Service for your anticipated needs. For our School/District or Custom Subscriptions, you may downgrade your subscription at the start of your next renewal Subscription Term, as specified in the 'Fee Adjustments at Renewal' section

above.

4. **Modifications.** We modify the Subscription Service from time to time, including by adding or deleting features and functions, in an effort to improve your experience.

For our any of our Subscriptions, we will not make changes to the Subscription Service that materially reduce the functionality provided to you during the Subscription Term.

5. **Customer Support.** For our Subscriptions, email and webform support is included in your Subscription Fee. We accept webform support questions 24 Hours per Day x 7 Days per Week. Webform questions can be submitted through the help widget in the lower right hand corner of your portal or by following the link at <https://estimator.eimstech.com/#tf-contact>. We attempt to respond to email and webform support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

6. **Notice of Non-Renewal.** Your subscription will automatically renew according to the 'Term and Renewal' section above.

To prevent renewal of a Full-Service Subscription, you or we must give written notice of non-renewal and this written notice

must be received no more than ninety (90) days but no less than forty-five (45) days in advance of the end of the Subscription Term. If you decide not to renew, you may send the notice of non-renewal by email to info@eimstech.com.

To prevent renewal of a Limited Service Subscription, you or we must give written notice of non-renewal and this written notice must be received before the next renewal period begins. If you decide not to renew, you may send this non-renewal notice to us by indicating that you do not want to renew by accessing the billing details information in your EIMS Tech portal and terminating your account.

7. Retrieval of Customer Data. For all of our Subscriptions, as long as you have paid all fees owed to us, if you make a written request within thirty (30) days after termination or expiration of your subscription, we will provide you with temporary access to the Subscription Service to retrieve, or we will provide you with copies of, all Customer Data then in our possession or control. If we provide you with temporary access to the portal, we may charge a re-activation fee. We may withhold access to Customer Data until you pay any fees owed to us. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data and may, unless legally prohibited, delete all Customer Data in our systems or otherwise in our control.

GENERAL LEGAL TERMS

1. Customer Data

a. Limits on EIMS Tech. We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Subscription Service to you and only as permitted by applicable law and this Agreement. We may monitor your activity within your EIMS Tech portal for the purposes of managing and improving the EIMS Tech Estimator Program.

b. Aggregate Data. We may monitor use of the Subscription Service by all of our customers and use the data gathered in an aggregate and anonymous manner. You agree that we may use and publish such information, provided that such information does not incorporate any Customer Data and/or identify you.

c. Safeguards. We will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. You consent to the processing of Customer Data in the United States.

2. EIMS Tech's Proprietary Rights. This is an Agreement for access to and use of the Subscription Service, and you are not

granted a license to any software by this Agreement. The Subscription Service is protected by intellectual property laws, they belong to and are the property of us or our licensors (if any), and we retain all ownership rights to them. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the EIMS Tech Content, or the Subscription Service in whole or in part, by any means, except as expressly authorized in writing by us. Our trademarks include, but aren't limited to, formulas and content on the Estimator platform (which we may update at any time without notice to you) and you may not use any of these without our prior written permission.

We encourage all customers to comment on the Subscription Service to provide suggestions for improving it, and vote on suggestions they like. You agree that all such comments and suggestions will be non-confidential and that we own all rights to use and incorporate them into the Subscription Service without payment or attribution to you.

4. **Confidentiality.** The Receiver will: (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party (except our third party service providers), and (iv) limit

access to Confidential Information to its employees, contractors, advisors and agents. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

5. **Publicity.** You grant us the right to add your name and school insignia to our customer list and website.

6. **Indemnification.** You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Subscription Service by you, (b) your noncompliance with or breach of this Agreement, (c) your use of Third-Party Products, or (d) the unauthorized use of the Subscription Service by any other person using your User information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii)

imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

7. Disclaimers; Limitations of Liability

a. Disclaimer of Warranties. WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE OR EIMS TECH CONTENT, FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE SUBSCRIPTION SERVICE AND EIMS TECH CONTENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBSCRIPTION SERVICE AND THE CONSULTING SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

b. No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL

DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES; PROVIDED THAT, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES.

c. Limitation of Liability. EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY WILL BE LIMITED TO THE LESSER OF FIVE THOUSAND U.S. DOLLARS OR THE TOTAL AMOUNTS YOU HAVE ACTUALLY PAID FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.

d. Third Party Products. WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

e. Agreement to Liability Limit. YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF

LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO YOU.

8. Miscellaneous

a. Amendment; No Waiver. We may update and change any part or all of these Customer Terms of Service, including the fees and charges associated with the use of the Subscription Service (but, your fees and charges won't change during the Subscription Term except as we explain in the 'Fees and Payments' section above.) If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted at <https://estimator.eimstech.com/faq> and we will let you know via email or in-app notification. The updated Customer Terms of Service will become effective and binding on the next business day after it is posted. When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review these Customer Terms of Service periodically.

If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Customer Terms of Service prior to modification for the remainder of your current term. Upon renewal, the

Customer Terms of Service published by us on our website will apply.

No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

b. Force Majeure. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

c. Actions Permitted. Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

d. Relationship of the Parties. You and we agree that no joint venture, partnership, employment, or agency relationship exists between us.

e. Compliance with Laws. We will comply with all U.S. state and

federal laws in our provision of the Subscription Service and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Subscription Service including any applicable export laws. You must comply with all laws related to the recording of phone calls and ensure all proper consent to record is obtained prior to making any such recording. You will not directly or indirectly export, re-export, or transfer the Subscription Service to prohibited countries or individuals or permit use of the Subscription Service by prohibited countries or individuals.

f. Severability. If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

g. Notices. Notice will be sent to the contact address set forth herein, and will be deemed delivered as of the date of actual receipt.

To EIMS Tech, LLC., 41 E 400 N, Suite 146, Logan UT 84321-4020, U.S.A., Attention: General Counsel.

To you: your address as provided in our EIMS Tech Subscription account information for you. We may give electronic notices by general notice via the Subscription Service and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Subscription Service. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you. You must keep all of your account information current.

h. Entire Agreement. This Agreement (including each Order), along with our Privacy Policy is the entire agreement between us for the Subscription Service and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Service or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Service.

i. Assignment. You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written

consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

j. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

k. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.