

IMPROVING CSP

Program Terms and Conditions – 01.2020

The Improving CSP Terms and Conditions (“Agreement”) governs the Services provided to its Customers under the Improving CSP Program. This Agreement is in addition to other terms you may have agreed to through Improving, Vendors or third-party entities during participation in the Improving CSP Program.

1. General Terms and Conditions

- 1.1 **Agreement.** Any contract or purchase order referencing these terms and sets forth the complete agreement and supersedes all previous discussions and communications relating to the subject matter of this Agreement.
- 1.2 **Customer Master Consulting Agreement.** Should the Customer have a MCA (Master Consulting Agreement) with Improving, the terms of that agreement supersede this agreement.
- 1.3 **Value Added Benefits.** Improving may provide additional benefits and services in addition to Vendor Products as part of this Agreement. Improving reserves the right to modify or change the definition, description and scope of these benefits and services at any time. Customer will be notified of any changes through the support services provided within this Agreement as defined under the Improving CSP Support Agreement or by email or regular mail. Benefits and service provided and performed by Improving are non-transferrable.

2. Privacy and Confidentiality

- 2.1 **Collection of Information.** Improving may collect Customer Information as necessary to provide the services under this Agreement. This information may include Confidential Information and Personal Data as made available by Customer, from Products and services provided, or from Customer vendors, partners, affiliates or subsidiaries.
- 2.2 **Use of Information.** Improving collects Customer Information primarily for the setup, delivery and ongoing performance of Services offered under this Agreement. Improving may also use Customer Information to maintain, expand or improve Services or communicate with Customer pertaining to Services. Any Customer Information used for public marketing campaigns, communication with third-parties or any purpose for the benefit of Improving will be anonymized unless express consent is provided by Customer.

- 2.3 Information Sharing.** Improving may share Customer Information with any law enforcement, regulatory, government agency, court, government official, or other third-party when required under any applicable law or regulation, to exercise, establish or defend Improving's legal rights, or to protect Customer interests or those of any other person. Improving may also share Customer Information as necessary to complete any transaction or provide Services under this Agreement.
- 2.4 Protection of Confidential Information.** Improving takes all reasonable steps to protect Customer Information from misuse, interference and loss, as well as unauthorized access, modification or disclosure. Improving deploys strong user access controls, segmentation and isolation of storage of Confidential Information and comprehensive employee policies.
- 2.5 Disclosure of Confidential Information.** Improving will not disclose any Confidential Information to any third-party unless necessary for providing Services under this Agreement or as required by proper law enforcement requests. Improving requires all third-parties, Affiliates and partners associated with Improving and the Services under this Agreement are required to establish a Non-Disclosure Agreement before any Confidential Information may be disclosed to them.

3. Licensing, Subscriptions, Pricing and Payment

- 3.1 Licenses and Subscriptions.** The general terms for licensing and subscribing to each Vendor Product is governed by the Vendor's terms and conditions, customer agreements, and end user license agreements. Improving does not own or have any authority over each Vendor's terms and conditions and agreements pertaining to their Products.
- 3.2 Subsidiaries and Affiliates.** Customer subsidiaries and/or affiliates are not eligible for Benefits under this Agreement unless entire Customer organization is participating in the Improving CSP Program.
- 3.3 Pricing.** Improving will provide Customer with all service and subscription pricing. Improving, at its option, may change pricing for any services and subscriptions provided under this Agreement. Any change in pricing will take effect at the beginning of the new subscription term. Improving will notify Customer of any such changes by sending notice by e-mail or regular mail.
- 3.4 Payments and Invoices.** Improving will invoice Customer for all Services provided under this Agreement. Customer's ability to pay by invoice is subject to Improving's approval of Customer's financial condition. Customer authorizes Improving to obtain information about Customer's financial condition, which may include credit reports, to assess Customer's eligibility for invoicing. Unless the Customer's financial statements are publicly available, Customer may be required to provide their balance sheet, profit and loss and cash flow statements to Improving. Customer may be required to provide security in a form acceptable to Improving to be eligible for invoicing.

Improving may withdraw Customer's eligibility at any time and for any reason. Customer must promptly notify Improving of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.

3.5 Invoice Payment Terms. Each invoice will identify the amounts payable by Customer to Improving for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.

3.6 Late Payment. Improving may, at its option, assess a late fee on any payments to Improving that are past due at a rate of two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.

3.7 Cancellation Fee. If a subscription permits early termination and Customer cancels the subscription before the end of the subscription or billing period, Customer may be charged a cancellation fee. Cancellation of any subscription may not result in any reimbursement of any prepayments made for the subscription or waive payments required under the subscription billing period.

3.8 Recurring Payments. For subscriptions that renew automatically, Customer authorizes Improving to invoice for each subscription or billing period until the subscription is terminated.

3.9 Taxes. Improving prices exclude applicable taxes unless identified as tax inclusive. If any amounts are paid to Improving, Customer shall also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Improving is permitted to collect from Customer.

4. Term and Termination

4.1 Term. This Agreement is effective until terminated by a party, as described below.

4.2 Termination Without Cause. Either party may terminate this Agreement without cause on sixty (60) days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period, subject to the terms of this Agreement.

4.3 Termination for Cause. Without limiting other remedies it may have, either party may terminate this Agreement on thirty (30) days' notice for material breach if the other party fails to cure the breach within the thirty-day notice period. Upon such termination, the following will apply:

- i. All licenses granted under this Agreement will terminate immediately except for fully-paid, perpetual licenses.
- ii. All amounts due under any unpaid invoices shall become due and payable immediately. For metered Products billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
- iii. If Improving is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

4.4 Termination from Vendor. Improving is a Reseller of Vendor Products and has no ownership, authority or influence on continued availability of such Products. Improving will passthrough, as its sole remedy, any credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date as awarded by Vendor or Provider. Improving bears no liability for reimbursement or credit of any for any such fees as a result of Vendor's actions to modify, discontinue or terminate any Product.

5. Warranties and Limitation of Liability

5.1 Product Warranties. Improving bears no ownership or authority over Vendor Products and therefore grants no warranties for such Products as Products are governed by the Vendor's terms and conditions, licensing agreements, or other agreements as stated by Vendor.

5.2 Indemnification. Customer agrees to defend, indemnify and hold harmless Improving, its affiliates, and their respective directors, officers, shareholders, employees, agents, contractors and advisors ("Indemnified Parties"), from and against any claim, demand, liability, damage, losses, judgements, suit, action or cause of action, costs and expenses (including, without limitation, reasonable legal fees) arising directly out of Customer use of services under this Agreement, including, but not limited to:

- i. Customer breach or violation of any provision of this Agreement, including reasonable attorneys and associated advisor fees and costs;
- ii. Customer use of any Product, including Customer publication or use of content that infringes the intellectual property rights of any third party, including, but not limited to, patent, copyright, and trade secrets;
- iii. Any action taken by Improving in investigating a suspected violation of this Agreement or as result or finding that a violation has occurred;
- iv. Customer activities and use of the services under this Agreement that attracts taxes and fees from government regulations including, without limitation, federal and/or state telecommunications regulations;

- v. Costs associated with document production, depositions, interrogatories and related demands arising out of private third party, governmental or regulatory claims in connection with the Products to the extent Improving is not a target.

5.3 Limitation of Liability. Improving and its Affiliates bear no liability for any direct, indirect, incidental, special, consequential or exemplary damages as a result of access to or performance of the Products and services under this Agreement. These damages include, but are not limited to, loss of profits or income, goodwill, use, data or other intangible losses. Customer agrees to indemnify Improving and their Affiliates from any damages or losses incurred by Customer, or any of Customer's Affiliates, partners, or related third-parties, as a result of disruption, use or the inability to use the services and Products under this Agreement. Furthermore, Customer acknowledges that Improving and its Affiliates are not liable for the defamatory, offensive or illegal conduct of third parties or any content distributed, obtained or downloaded from the services and Products under this Agreement.

6. Definitions

Confidential Information means any information disclosed between Customer and Improving that is not publicly known or made generally available in the public domain prior to the time of disclosure or becomes publicly available without breach of confidentiality obligations.

Customer means the entity identified as such on the account associated with this Agreement.

Customer Information includes all Confidential Information and Personal Data pertaining to Customer.

Personal Data means any information that relates to an identified or identifiable individual.

Product refers to any software, device or service that is manufactured and sold by a Vendor or Improving.

Provider is the entity in which Improving has partnered with and is the distributor of products made available from Vendor.

Reseller refers to Improving. Improving is an authorized reseller of Vendor's products through a designated Provider.

Services means technical and non-technical solutions, as well as advice and guidance, acquired by Customer from Improving under this Agreement.

Vendor means the manufacturer or developer of a specific product, service, application or device.