

PROGRAM TERMS OF USE

Version 1 - Sept 2023

1. Scope. As set forth in the signed Order, ISC shall provide Customer with: (a) instruments/devices, hardware, consumables, and related parts/accessories (“Equipment”); (b) installation, training, monitoring, maintenance, repair, and/or other services (“Services”); and/or (c) SaaS and/or software (“Platform(s)”). The applicable Equipment, Services, and/or Platform(s) constitute the “Program.” The Program is governed by the Order and these Program Terms of Use (“TOU”).

2. Term. ISC will deliver the Program to Customer during the Initial Subscription Term identified in the Order. Unless a party provides written notice of termination at least sixty (60) days before the end of the Initial Subscription Term, the Order shall automatically renew for a term equal in length to the Initial Subscription Term (a “Renewal Term”). Additional Renewal Terms shall follow under the same sixty-day-notice requirement for termination. The Initial Subscription Term and any Renewal Term(s) shall constitute the “Term” of the Order.

3. Termination. Either party may terminate the Order for a material breach that remains uncured for fifteen (15) business days after receipt of the non-breaching party’s written notice. Customer may terminate the Order for its convenience by providing ISC at least sixty (60) days’ prior written notice and paying ISC’s final invoice which will include an “Early Termination Fee” as follows: Early Termination Fee = [Total Monthly Usage Fee] x [Months Remaining in Term] x [Factor]. If terminated with 36-48 months remaining in the Term, the Factor is 0.245. If terminated with 24-35 months remaining in the Term, the Factor is 0.184. If terminated with 12-23 months remaining in the Term, the Factor is 0.123. If terminated with 0-11 months remaining in the Term, the Factor is 0.062. In the event of a reduction of the Monthly Usage Fee for Customer’s convenience, Customer shall pay an equitably adjusted portion of the Early Termination Fee based on the percentage of the Program that Customer will no longer use.

4. Fees. ISC bills the Monthly Usage Fee on the last day of each month, and Customer agrees to pay the same within thirty (30) days of the invoice date. Customer shall provide a purchase order(s) to contractadminus@indsci.com sufficient to cover all fees during the Term. For any Renewal Term, ISC may adjust the Monthly Usage Fee. Any change to pricing or terms for a Renewal Term will be provided by ISC in writing no less than 90 days prior to the end of the Initial Subscription Term or any Renewal Term(s). If Customer fails to pay any amount when due, ISC has the right to charge a late fee of 1.5% of the invoice value per month or the highest applicable rate allowed by law, whichever is lower, on all such overdue amounts. Customer shall be liable for all costs of collection, including attorneys’ fees and costs.

5. Equipment Delivery, Repair, and Return. Customer is leasing the Equipment, to which ISC retains all right and title. Customer shall keep the Equipment free of all liens, claims, and encumbrances. ISC will deliver Equipment to the site(s) identified in the Order. All Equipment shipped in the U.S. is DAP Destination (Incoterms® 2020). Using prepaid shipping packages, Customer shall promptly send malfunctioning or broken Equipment to ISC for repair or replacement (new or refurbished). Notwithstanding the foregoing: (a) Customer is responsible for Equipment that is lost or unrepairable for any reason or damaged due to unauthorized or negligent use; (b) Customer shall promptly return Equipment to ISC at the end of the Term; and (c) Customer shall pay ISC the fair-market-value for any such unreturned or damaged Equipment.

6. Installation & Use. Customer will provide the necessary cabling, wireless networking components, and technical assistance to facilitate installation. ISC will provide the installation and training on the Order. One day of on-site installation includes one visit of up to eight (8) hours. Customer is responsible for ongoing user training and network operability/connectivity, including maintaining electrical connectivity, Internet bandwidth, internal servers, and web browsers. Customer will use Equipment only as described in the relevant documentation and properly dock the Equipment. The parties acknowledge that improperly docking Equipment will prevent ISC from collecting and analyzing data, providing reports, or taking remedial action. Customer will promptly notify ISC, in writing, if Equipment is transferred from the site(s) identified in the Order. Customer will not transfer Equipment outside the country of initial installation without ISC’s prior written approval. With AutoReplenish Plus: (a) ISC will monitor Customer’s cal-gas usage and replenish as needed (ISC may modify gas concentration and/or cylinder size); (b) either party may request an audit of Customer’s cal-gas usage once during each twelve (12) month period of the Term; and (c) ISC may adjust the Monthly Usage Fee if Customer’s cal-gas usage varies from the initial estimate.

7. Platform Use. Customer shall provide ISC all information necessary to create the account(s). ISC grants Customer and its designated users the right to use the Platform(s) identified in the Order for its business purposes during the Term. ISC will provide logins/passwords for Customer’s designated users. Customer shall maintain confidentiality of the logins/passwords, which shall not be shared or transferred. Customer is responsible for all Platform activity stemming from use of the designated users’ logins/passwords. Customer shall immediately notify ISC of any unauthorized use.

8. Taxes. All prices are exclusive of, and Customer is responsible for, all government taxes and/or fees related to Customer’s use of the Program (“Taxes”). ISC is responsible for all taxes related to ISC’s income/profit from delivering the Program. If Customer is exempt from any Taxes, it shall furnish ISC a certificate of exemption prior to shipment.

9. Warranties. During the Term, Equipment shall be delivered substantially free of defects in material and workmanship, Platforms will substantially conform to ISC’s documentation, and Services shall be substantially free of defects in workmanship. If a nonconformity to the foregoing warranty is discovered in the Equipment, Platform, or Services under normal and proper use, ISC shall repair or replace the nonconforming portion of the Equipment or Platform or re-perform the nonconforming Services. If ISC is unable to do so, ISC may terminate the Order and return any prepaid Monthly Usage Fees for such allegedly defective Equipment, Platform, or Services for the period commencing from Customer’s notice of nonconformity. ISC will have no obligation for any Equipment which is: (i) improperly installed, operated, maintained, stored, repaired, or altered by a party other than ISC; (ii) misused, neglected, or accidentally damaged; (iii) used in a manner contrary to ISC’s instructions; or (iv) used in combination with unauthorized equipment or materials. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, OR IMPLIED, AND ISC HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THE REMEDIES STATED HEREIN CONSTITUTE CUSTOMER’S EXCLUSIVE REMEDIES AND ISC’S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

10. Data. "Customer Data" is electronic information that Customer uploads to or enters in the Equipment and/or Platform, excluding ISC's data and intellectual property. Customer shall own all right, title, and interest, including intellectual property rights, in and to Customer Data. ISC may compile cumulative electronic information derived from Customer's use of the Program ("Aggregated Data") and may utilize remote reporting functionality in its products and services to obtain Aggregated Data. ISC shall own all right, title, and interest, including all intellectual property rights, in and to Aggregated Data. Notwithstanding anything to the contrary, ISC and its parent and their affiliated entities may use, modify, and combine the Aggregated Data for purposes of improving products and services, creating statistical and/or benchmarking data, and providing products, services, and analytics. To the extent applicable, all Aggregated Data shall be de-identified and aggregated pursuant to applicable privacy laws and regulations.

11. Compliance with Laws. Customer is responsible for using the Program in a manner that complies with all applicable laws, sanctions, and regulations. Customer will not permit use of the Program in a manner: (a) violating export control regulations or economic sanctions, including the export and import laws of Canada, the United States, the European Union, and any other applicable country; or (b) supporting the development, production, handling, operation, maintenance, storage, detection, identification, or dissemination of chemical or biological weapons, nuclear explosive devices, missiles, or naval nuclear propulsion activities. ISC reserves the right to limit Customer access to the Program if providing the same would violate any applicable law, sanction, or regulation.

12. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, (A) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, CONTINGENT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES; AND (B) ISC'S MAXIMUM LIABILITY FOR ANY REASON, WILL NOT EXCEED THE PRICE ALLOCABLE TO THE EQUIPMENT, PLATFORM, OR SERVICES WHICH GIVES RISE TO THE RELATED CLAIM. THE FOREGOING LIMITATIONS APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. Inventions and Use. All right, title, and interest to any intellectual property, inventions, developments, trade secrets, confidential or proprietary information, improvements, or modifications related to the Program shall remain with and be exclusively owned by ISC. Any design, manufacturing drawings, or other information provided to Customer shall remain the exclusive property of ISC and shall be used solely for the operation or maintenance of the Program and not for any other purpose.

14. Platform Restrictions. Neither Customer nor its agent shall, whether directly or indirectly: (a) reproduce or modify the Program; (b) use any device, software, or routine to interfere with the proper working of the Program; (c) use any automated means to access, monitor, or copy the Program; or (d) use the Program in any manner other than as permitted hereunder. Without limiting the foregoing, Customer further agrees that it will not take any action that imposes an unreasonable or disproportionately large load on the Platforms' infrastructure, as reasonably determined by ISC. Unless otherwise provided as part of the Services, Customer shall be solely responsible for all actions of and agreements with third parties engaged by Customer to integrate any portion of the Program with Customer's infrastructure.

15. Risks. Except for payment obligations, neither party shall be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, pandemic, electrical interruption, server or related equipment failure and internet disturbance) that was beyond such party's reasonable control.

16. Assignment. Customer shall not sell, assign, delegate, nor transfer its rights and duties under this Agreement without providing prior written notice to ISC. This Agreement may be assigned by ISC to any subsidiary, affiliate, related company, or successor in interest without Customer's consent.

17. Communications. Neither party shall use the other's name in connection with advertising or publicity without said other party's prior written consent. Notwithstanding the foregoing, either party may include the other's name and logo on a supplier or customer list on its corporate website(s). Customer agrees not to make any representations about the Program not authorized by ISC in writing.

18. Choice of Law and Venue. All disputes between the parties shall be governed by the laws of the Commonwealth of Pennsylvania, excluding any conflicts of law considerations and the United Nations Convention on Contracts for the International Sale of Goods. Disputes shall be brought in Federal District Court for the Western District of Pennsylvania ("PAWD") or, to the extent jurisdiction cannot be established in PAWD, within Pennsylvania state court(s) located in Allegheny County, Pennsylvania. The parties agree that the notice provisions hereunder shall suffice for the purposes of satisfying service-of-process requirements arising under the Federal Civil Rules of Procedure or related state laws. THE PARTIES WAIVE ANY AND ALL DEFENSES BASED ON VENUE OR PERSONAL JURISDICTION AND THE RIGHT TO TRIAL BY JURY.

19. General. These TOU and the Order ("Agreement") constitute the parties complete and fully integrated agreement and supersede all prior or contemporaneous communications, writings, or understandings. The terms of the Order will control over any conflicting TOU terms. The Agreement shall not be changed or superseded by any different or additional terms proposed by Customer to which ISC objects. Any translation of the Agreement from English is for convenience and in the event of any ambiguity or conflict, the English version shall govern. The Agreement may only be amended by a written instrument. Sections 3-5, 8-15, and 17-20 of this TOU shall survive termination of the Agreement. A party's failure to exercise any of its rights under the Agreement on one occasion shall not waive its rights to enforce the same on another occasion.

20. Notice. Required notice(s) under the TOU shall be in writing and delivered by both: (a) courier and (b) email, as set forth below:

Customer's notice to ISC:

Industrial Scientific Corporation
ATTN: Legal Dept.
One Life Way, Pittsburgh, PA 15205-7500
isclegal@indsci.com

ISC's notice to Customer:

Customer's physical address identified on the Order
Customer's contact email address identified on the Order