

## **OrderMotion**

### **Terms of Use**

ATTENTION! THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING ON CUSTOMER UPON EXECUTION OF THE ORDERMOTION STANDARD SUBSCRIPTION SERVICES AGREEMENT. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF USE BEFORE EXECUTING SUCH AGREEMENT.

#### **Terms of Use.**

Customer acknowledges and agrees to these Terms of Use, which together with the terms of the OrderMotion Subscription Services Agreement entered into by and between Customer and OrderMotion (the "Service Agreement"), shall govern Customer's access and use of the Service (collectively, the "Agreement"). Capitalized terms not otherwise defined in these Terms of Use shall have the meaning given to them in the Service Agreement. For clarity, any reference in the Service Agreement to "Subscriber" shall be a reference to "Customer" and such terms are interchangeable. In addition, Customer agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently procured by the Customer will be subject to this Agreement. In the case of a conflict between these Terms of Use and the Service Agreement, the Service Agreement shall prevail.

#### **Customer Conduct**

As a condition of Customer's use of the Service, Customer warrants to OrderMotion that Customer will not use the Service for any purpose that is unlawful or prohibited by the terms, conditions, and notices set forth in these Terms of Use. Any unauthorized resale of the Service is expressly prohibited.

Customer agrees to abide by all applicable local, state, national and international laws and regulations and is solely responsible for all acts or omissions that occur under Customer's OrderMotion account or password, including the content of Customer's transmissions through the Service. By way of example, and not as a limitation, Customer agrees not to: (i) create a false identity for the purpose of misleading others as to the identity of the sender or the origin of a message, item, product or service whose delivery is processed through OrderMotion; (ii) use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not a User of the Service any information or any portion thereof other than in the context of Customer's use of the Service as permitted under these Terms of Use; (iii) transmit or upload any material that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs; (iv) put up for sale, sell, market, transmit or upload any material that contains software or other material protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless Customer

owns or controls the rights thereto or has received all necessary consents; (v) interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks; (vi) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means; and/or (vii) violate any applicable laws or regulations including, without limitation, laws regarding the transmission of technical data or software exported from the United States through the Service.

The Service allows Customer to send Electronic Communications directly to OrderMotion and to third parties. Customer is responsible for ensuring that its use of the Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall store credit card and social security data only in the designated fields for such data. In addition to Customer's other obligations set forth herein, Customer specifically acknowledges and agrees that: (i) OrderMotion is not acting on Customer's behalf as a Business Associate or subcontractor (as such terms are used, defined, or described in the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA")); (ii) the Service is not HIPAA-compliant; and (iii) Customer may not use the Service in any manner that would require OrderMotion or the Service to be HIPAA-compliant. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by OrderMotion. Customer shall not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by OrderMotion. Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement, including but not limited to those Users that are contractors and agents, and Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by Customer and Customer waives all of those defenses that Customer may have

as to why Customer should not be liable for Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

OrderMotion has no obligation to monitor the Service or any user's use thereof or retain the content of any user session. However, OrderMotion reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request.

### **Ownership of Customer Data**

As between OrderMotion and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with Service, OrderMotion as part of its standard Service offering makes daily backup copies of the Customer Data in Customer's account and stores and maintains such data for a period of time consistent with OrderMotion standard business processes, which period shall not be less than one year.

### **OrderMotion Intellectual Property Rights**

Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by OrderMotion are owned exclusively by OrderMotion or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. In addition, OrderMotion shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including users, relating to the operation of the Service. Any rights not expressly granted herein are reserved by OrderMotion. OrderMotion service marks, logos and product and service names are marks of OrderMotion (the "OrderMotion Marks"). Customer agrees not to display or use the OrderMotion Marks in any manner without OrderMotion's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party, which may own the Mark.

### **Links To Third Party Sites**

The links included within the Service may let Customer leave the service websites ("Linked Sites"). The linked sites are not under the control of OrderMotion and OrderMotion is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. OrderMotion is not responsible for Web casting or any other form of transmission received from any linked site. OrderMotion is providing these links

to Customer only as a convenience, and the inclusion of any link does not imply endorsement by OrderMotion of the site or any association with their operators.

### **Disclaimers/Limitation Of Liability**

The information and services included in or available through the Service may include inaccuracies or typographical errors. Changes are periodically added to the information therein. OrderMotion and/or its respective suppliers may make improvements and/or changes in the Service at any time. OrderMotion does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service or the server that makes it available, are free of viruses or other harmful components. Customer specifically agrees that OrderMotion shall not be responsible for unauthorized access to or alteration of Customer's transmissions or data, any material or data sent or received or not sent or received, or any transactions entered into through the Service. Customer specifically agrees that OrderMotion is not responsible or liable for any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another's rights. Customer specifically agrees that OrderMotion is not responsible for any content sent using and/or included in the Service by any third party.

ORDERMOTION AND/OR ITS RESPECTIVE SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SERVICE, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. IN NO EVENT SHALL ORDERMOTION AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SERVICE OR RELATED WEBSITES, WITH THE DELAY OR INABILITY TO USE THE SERVICE OR RELATED WEBSITES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES, INFORMATION, STATISTICS AND RELATED GRAPHICS OBTAINED THROUGH THE SERVICE, OR OTHERWISE ARISING OUT OF THE USE OF THE SERVICE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF ORDERMOTION OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IF CUSTOMER IS DISSATISFIED WITH ANY PORTION OF THE SERVICE, OR WITH ANY OF THESE TERMS OF USE, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND ITS RELATED WEBSITES.

## **Indemnification**

Customer agrees to indemnify and hold OrderMotion, its parents, subsidiaries, affiliates, officers and employees, harmless from any claim, demand, or damage, including reasonable attorneys' fees, asserted by any third party due to or arising out of Customer's use of or conduct on the Service.

## **Confidentiality**

For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, Customer Data, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the parties regarding the Service and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the receiving party; (4) the receiving party becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the receiving party; or (5) is aggregate data regarding use of OrderMotion's products and services that does not contain any personally identifiable or Customer-specific information.

Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information, including but not limited to inputting credit card data and social security numbers only in the fields designated for such data in the Service) and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

## **Participation In Promotions Of Advertisers**

Any dealings with advertisers on the Service or participation in promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between Customer and the advertiser or other third party. OrderMotion shall not be responsible or liable for any part of any such dealings or promotions.

### **Proprietary Rights To Content**

Customer acknowledges that content, including but not limited to text, software, music, sound, photographs, video, graphics or other material contained in either sponsor advertisements or electronically distributed, commercially produced information presented to Customer by the Service, by OrderMotion, or OrderMotion's advertisers, partners or other content providers, is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Customer may make a copy of this content for Customer's personal, non-commercial use only, provided that Customer keeps all copyright and other proprietary notices intact. Customer may not modify, copy, reproduce, republish, upload, post, transmit, or distribute in any way content available through the Service and its associated websites, including code and software.

### **Modifications To Terms of Use, Customer Policies**

OrderMotion reserves the right to change these Terms of Use or policies regarding the use of the Service at any time and to notify Customer by posting an updated version of the Terms of Use on the OrderMotion website. Customer is responsible for regularly reviewing the Terms of Use. Continued use of the Service after any such changes shall constitute Customer's consent to such changes.

### **Suspension/Termination**

#### **Suspension for Delinquent Account**

OrderMotion reserves the right to suspend Customer's and any Customer Affiliates' access to and/or use of the Service for any accounts for which any payment is due but unpaid but only after OrderMotion has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. The suspension is for the entire account and Customer understands that such suspension would therefore include Affiliate sub-accounts. Customer agrees that OrderMotion shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section.

#### **Suspension for Ongoing Harm**

Customer agrees that OrderMotion may with reasonably contemporaneous telephonic notice to Customer suspend access to the Service if OrderMotion reasonably concludes that Customer's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer's Service is causing immediate, material and ongoing harm to OrderMotion or others. In the extraordinary event that OrderMotion suspends Customer's access to the Service, OrderMotion will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and resolve the issues causing the suspension of Service. Customer further agrees that OrderMotion shall not

be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this section.

### **Termination for Cause, Expiration**

Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement that is not cured within thirty (30) days of written notice from the non-breaching party.

Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of the Service Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then OrderMotion shall be entitled to all of the fees due under this Agreement for the entire term. If this Agreement is terminated as a result of OrderMotion's breach of this Agreement, then Customer shall be entitled to a refund of the pro rata portion of any subscription fees paid by Customer to OrderMotion under this Agreement for the terminated portion of the term.

### **Handling of Customer Data In The Event Of Termination**

Customer agrees that following termination of Customer's account and/or use of the Service, OrderMotion may immediately deactivate Customer's account and that following a reasonable period of not less than 90 days shall be entitled to delete Customer's account from OrderMotion's "live" site. During this 90 day period and upon Customer's request, OrderMotion will grant Customer limited access to the Service for several days for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to OrderMotion. Customer further agrees that OrderMotion shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that OrderMotion is in compliance with the terms of this Section.

### **General**

Use of the Service is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. Customer agrees that no joint venture, partnership, employment or agency relationship exists between Customer and OrderMotion as a result of this Agreement or use of the Service. OrderMotion's performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement is in derogation of OrderMotion's right to comply with governmental, court and law enforcement requests or requirements relating to Customer's use

of the Service or information provided to or gathered by OrderMotion with respect to such use. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, 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 the Agreement shall continue in effect. Unless otherwise specified herein, these Terms of Use and the separate "Service Agreement" constitute the entire agreement between Customer and OrderMotion with respect to the Service (excluding the use of any software which may be subject to an end-user license agreement) and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Customer and OrderMotion with respect to the Service. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Customer and OrderMotion agree that any cause of action arising out of or related to this Service must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. The section titles in these Terms of Use are solely used for the convenience of the parties and have no legal or contractual significance.

### **Definitions**

"Affiliates" means any entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Customer.

"Customer Data" means all electronic data or information submitted to the Service by Customer or its Affiliates.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

"Estimate/Order Form" means an OrderMotion estimate, renewal notification or order form in the name of and executed by Customer or its Affiliate and accepted by OrderMotion which specifies the Service, and any support and/or Professional Services to be provided by OrderMotion subject to the terms of this Agreement. For clarity, any reference in the Agreement to "Service Summary" shall be a reference to "Estimate/Order Form" and such terms are interchangeable.

"User Guides" mean the OrderMotion online user guides describing the Service features, as updated from time to time.



“Service” means collectively, OrderMotion’s online business application suite (the “OrderMotion Service”) and modules as described in the applicable User Guides that is procured by Customer from OrderMotion in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated offline components, but excluding Third Party Applications, support and Professional Services.

“Third Party Applications” means online, Web-based applications or services and offline software products that are provided by third parties, and interoperate with the Service.

“Users” means individuals who are authorized by Customer to use the Service, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by OrderMotion at Customer’s request). Users may include but are not limited to Customer’s and Customer’s Affiliates’ employees, consultants, contractors and agents.

**Copyright And Trademark Notices:**

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