

iCohere® Collaboration Platform and Related Services

TERMS AND CONDITIONS OF USE

This Service and License Agreement (hereinafter referred to as the Agreement) is made and effective the date referenced in your Service Order (the Effective Date) by and between iCohere, Inc. 1220 Oakland Blvd., Suite 210, Walnut Creek, CA 94596 and Your Organization (hereinafter referred to as You) located at the address stated in your Service Order.

Any exception(s) to this Agreement must be stated explicitly in the Service Order. Modifications to this Agreement may be made from time-to-time. Clients will be notified of any significant changes via the iCohere Users Group communication system.

This Software-as-a-Service (SaaS) annual subscription license includes:

- * Use of core iCohere Software features for one full year from Effective Date
- * Multiple iCohere sites for contracting organization
- * Application hosting services provided through RackSpace® Managed Hosting
- * 5GB RAID-5 storage & backup
- * System upgrades (patches, minor and major releases)
- * An initial site setup training and configuration course for up to five (5) site administrators (does not apply to site renewals)
- * Technical support for up to five (5) iCohere site administrators
- * Technical login support for iCohere site end-users

An Enabled User is defined as a unique login with the capability of accessing one or more sites. The same login can access multiple sites and is counted as a single enabled user. A login can be marked as disabled in the system and, though the user's previous posts and contributions remain accessible in the site, the disabled login is not counted as an active user for purposes of licensing. Disabled logins can be re-enabled.

Billing Terms

For Annual License Fees under \$10,000: Payment is due upon invoice. For Annual License Fees equal to or above \$10,000: 50% due upon invoice, 30 days after Agreement date. Balance due after 3 months. One time charges are due upon invoice.

All charges not paid within thirty (30) days of our invoice emailed to you shall be subject to a monthly FINANCE CHARGE of 1% per month, which is an annual FINANCE CHARGE of 12%. This FINANCE CHARGE will be computed on all outstanding balances at the end of each month.

Training and Technical Support

Training (up to six hours) and technical support (8am - 8pm Eastern, via email or phone) are provided for up to three (3) key administrator contacts. Coaching and assistance on initial site configuration is included with training. Free technical support is provided during normal business hours for end-users who experience problems logging into an iCohere site.

Confidentiality

The parties agree that they will not make use of, disseminate, or in any way disclose Confidential Information pursuant to this Agreement to any person, firm or business, except to the extent necessary for performance of this Agreement. The parties agree that they shall disclose Confidential Information only to those employees who need to know such information and who have previously agreed to be bound by the terms and conditions of this Agreement. The parties agree that they shall treat all Confidential Information with the same degree of care as they accord to their own confidential information and represent that they exercise reasonable care to protect their own confidential information. This agreement for confidentiality will survive termination of this Agreement for any reason. Information shall be considered confidential if it is either (a) marked at the time of disclosure to show its confidential nature, or (b) unmarked (for example, orally or visually disclosed) but treated as confidential at the time of disclosure, and designated to show its confidential nature in a written message sent to you within thirty days after disclosure, summarizing the disclosed confidential information sufficiently for identification.

Performance

You agree and acknowledges that iCohere does not own nor control the Local Circuit Link, Leased Co-Location Space, Leased Space Cross Connects, the networks providing connectivity to iCohere Services, other networks outside of the connectivity, the "Internet", nor is iCohere responsible for performance (non-performance) within such networks or within non-iCohere Services operated interconnection points between the connectivity and other networks. iCohere is not responsible for any consequences for any delay or failure in performance caused by acts or events beyond iCohere's reasonable control, including without limitation, acts of God, war, vandalism, sabotage, accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts or equipment, materials, labor or transportation, acts of subcontractors, interruption of utility services, acts of any unit of government or governmental agency, or any similar or dissimilar cause.

Hosting Standards

iCohere shall use commercially reasonable efforts to make the Website available to You with system availability of at least 99% up time excluding scheduled and/or emergency maintenance periods. The security mechanism implemented by the iCohere Software and iCohere's ASP Services has inherent limitations and Licensee is solely responsible for determining that the software sufficiently meets Licensee's security and operational needs.

Third-Party Software Components

iCohere includes several third-party applications that have been integrated with the iCohere platform and provided as a courtesy to You. Access to and use of these components -- including the Collaboration Room web conferencing module, HTML editor, and Media Player module -- are At Your Own Risk. iCohere supports these components on a best-effort basis. You understand and agree that these third-party software components are provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, ICOHERE AND ITS PARTNERS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, SECURITY OR RELIABILITY OF THIRD-PARTY COMPONENTS OR ANY CONTENT THEREON. ICOHERE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THESE COMPONENTS. YOU ALSO AGREE THAT ICOHERE HAS NO RESPONSIBILITY OR LIABILITY FOR THE DELETION OF, OR THE FAILURE TO STORE OR TO TRANSMIT, ANY CONTENT AND OTHER

COMMUNICATIONS MAINTAINED BY THESE COMPONENTS. WE MAKE NO WARRANTY THAT THESE COMPONENTS WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. No advice or information, whether oral or written, obtained from iCohere will create any warranty not expressly made herein.

Indemnification

iCohere Indemnity: iCohere agrees to defend, indemnify and hold You harmless from and against any liabilities, claims, suits, proceedings, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) made against or incurred by You as a result of

1. any injury or damage to person or property caused by iCohere or iCohere® Software,
2. (any negligence, misrepresentation, or error or omission by or on behalf of iCohere, and
3. any claim of infringement or misappropriation of any third party U.S. copyright or trade secret, as defined under the Uniform Trade Secrets Act, attributable to iCohere® Software; provided that You:
 1. provide iCohere prompt written notice of the existence of such claim;
 2. provides iCohere sole control of the defense or settlement of such claim; and
 3. (provides iCohere reasonable assistance upon iCohere's request and at iCohere's reasonable expense.

THE FOREGOING INDEMNITY STATES THE SOLE AND EXCLUSIVE REMEDY OF You AND THE ENTIRE LIABILITY AND OBLIGATION OF ICOHERE WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS BY ICOHERE, ICOHERE SOFTWARES OR ANY ICOHERE PERFORMANCE OF SERVICES HEREUNDER.

You Indemnity: You agree to defend, indemnify and hold iCohere harmless from and against any and all liabilities, claims, suits, proceedings, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) made against or incurred by iCohere as a result of

1. any injury or damage to person or property caused by Your acts or omissions, and
2. any negligence, misrepresentation, or error or omission by or on behalf of You; provided that iCohere
 1. provides You prompt written notice of the existence of such claim;
 2. provides You sole control of the defense or settlement of such claim if requested by You; and
 3. provides You reasonable assistance upon your request and at your reasonable expense.

THE FOREGOING INDEMNITY STATES THE SOLE AND EXCLUSIVE REMEDY OF ICOHERE AND THE ENTIRE LIABILITY AND OBLIGATION OF You WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS BY You, ICOHERE SOFTWARES OR ANY You PERFORMANCE OF SERVICES HEREUNDER.

Dispute Resolution

Each party agrees that any dispute between the parties relating to this Agreement will first be submitted in writing to a designated senior executive of both iCohere and You who will promptly confer and, if deemed necessary, meet in person to create a determination reduced to writing and signed by both parties. In the event the executives are unable to resolve any dispute within ten (10) days after submission to them such dispute shall be finally settled by arbitration before JAMS (Judicial Arbitration and Mediation Services, San Francisco, CA). The parties may agree on a retired judge from the JAMS

panel. If they are unable to agree, JAMS will provide a list of three available judges, and each party may strike one. The remaining judge will serve as the arbitrator. The parties agree that arbitration must be initiated within one year after the claimed breach occurred and that the failure to initiate arbitration within the one-year period from the date that executives from both parties failed to settle the dispute constitutes an absolute bar to the institution of any new proceedings.

The aggrieved party may initiate arbitration by sending written notice of an intention to arbitrate by registered or certified mail, return receipt requested, to all parties and to JAMS. The notice must contain a description of the dispute, the amount involved, and the remedy sought. If and when a demand for arbitration is made by either party, the parties agree to execute a submission agreement, in a form provided by JAMS, or if the parties cannot reach agreement have the arbitrator issue an order, setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing. Any arbitration award must be in writing, contain a concise statement of the reasons supporting the award, and be signed by the arbitrator. Any arbitration instituted under this section shall be conducted in the JAMS offices in the San Francisco, California metropolitan area. The prevailing party in arbitration shall have its costs, attorney's fees and the costs of the arbitrator paid by the losing party. If the arbitrator determines that neither party has substantially prevailed in its claim against the other party, then each party shall pay its own attorney's fees and shall equally share the cost of the arbitrator.

Term

This agreement shall be in effect for one year beginning on the Effective Date identified above and automatically renewed for successive twelve (12) month periods. Service will continue for as long as You continue to pay for services rendered.

Termination

This Agreement may be terminated immediately upon the material breach of this Agreement by either party, which breach is not cured to the reasonable satisfaction of the non-breaching party within five (5) days of written notice describing the breach. Upon termination of this Agreement for any reason, iCohere shall itemize the work performed to date and shall refund to You or receive from You an appropriate amount of money to cover the work performed up to the date of termination.

Software Cancellation Policy (upon written notice to iCohere)

Our cancellation policy is as follows: (a) Prior to site configuration and administrator training: Full refund. (b) Within first year of usage: Refund of remaining time on agreement, less \$3500 for site configuration/training and the value of optional services already provided. (c) After first year of usage: Refund of remaining time on agreement. (d) Exception: iCohere Collaboration Room charges are non-refundable, and our cost for this module (starting at base \$2000 /year) is deducted before calculation of Refund.

Ownership of Work Product

The parties agree that all work product created by You personnel shall be the exclusive intellectual property of You, and that all work product created by iCohere pursuant to this Agreement shall be a "work made for hire" within the meaning of U.S. copyright law and shall become the exclusive intellectual property of You. This work product ownership clause shall not extend to any proprietary or third party software used by iCohere nor to any enhancements or modifications to the iCohere platform. Upon termination of this Agreement for any reason, iCohere shall turn over to You all work product and other You intellectual property and shall keep no copies of the same. The work product pursuant to this

agreement does not include existing intellectual property developed by iCohere or the iCohere software platform.

Relationship of Parties

The relationship of iCohere shall be that of an independent contractor, and nothing herein shall be construed to create an employee, partnership or joint venture relationship.

LIMITATION OF LIABILITY

IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. LICENSOR'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE LICENSED SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF HOSTING FEES PAID TO LICENSOR HEREUNDER. LICENSEE ACKNOWLEDGES THAT THE HOSTING FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT LICENSOR WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.