

other law, Client shall indemnify, defend and hold InfoSend and InfoSend's Affiliate(s) harmless from any and all claims, damages, awards, costs, fees, expenses, interest, and penalties related to or arising from Client's breach of any provision of this Agreement and/or any unlawful conduct of Client, including, without limitation, (a) Client failure to maintain security or confidentiality of data or access credentials and/or (b) Client violation of any applicable laws, regulations or industry standards.

### **11.2 Limitation of Liability**

In no event shall InfoSend, or its Affiliate(s) be liable for indirect or consequential damages even if InfoSend has been advised of the possibility of such potential claim, loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. The aggregate liability of InfoSend and its Affiliate(s) arising from or relating to this Agreement for any claim shall be limited to the fees that InfoSend received from Client in the preceding twelve (12) months prior to the accrual of the claim.

## **12 General**

### **12.1 Independent Contractor**

Client and InfoSend agree and understand that the relationship between both parties is that of an independent contractor. No joint venture, partnership, employment or agency relationship exists between Client and InfoSend as a result of this Agreement or use of the Service.

### **12.2 Governing Law**

This Agreement shall be governed by the substantive laws of the state of Georgia without regard to the choice or conflicts of law provisions of any jurisdiction.

### **12.3 Entire Contract; Amendment**

This Agreement (including its Exhibits) contains the entire agreement between the parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the parties, whether oral or written. Modifications or changes to this Agreement, other than as specified at Exhibit B, must be in writing and executed by the parties.

### **12.4 Severability**

If a word, sentence or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence or paragraph shall be severed from this

Agreement, and this Agreement shall be read as if said word, sentence or paragraph did not exist.

### **12.5 Assignment**

This Agreement may not be assigned by either party without the prior written approval of the other party, unless it is being assigned to (i) a parent or wholly owned subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

### **12.6 Survival**

All of the terms of this Agreement which by their nature extend beyond the expiration or termination of the Agreement, including but not limited to indemnification obligations, payment obligations, confidentiality obligations and limitations of liability, shall survive expiration or termination of the Agreement and remain in full force and effect.

### **12.7 Attachments**

The following documents are attached hereto as Exhibits, and are incorporated by reference in their entirety:

**Exhibit A: Scope of Primary Services**

**Exhibit B: InfoSend Fees**

**Exhibit C: Professional Services**

**Exhibit D: Illegal Immigration Act Addendum**

### **12.8 Cooperative Agreement ("Piggybacking")**

The parties agree that InfoSend may offer the prices, terms and conditions offered herein to other government agencies that wish to participate in a cooperative purchase program with Client. InfoSend will review these requests from other government agencies on a case-by-case basis to decide whether this Agreement can be extended to the new agency. At minimum, the following requirements must be met for the prices in this Agreement to be extended to the new agency:

- The new agency must require similar types of service for similar document types (i.e., statements, late notices);
- The monthly document volume that InfoSend will produce must be similar, or at a minimum, acceptable;
- The new agency must agree to use InfoSend's standard materials; and,
- The prices in this Agreement must still be profitable.

If the above conditions are not met then InfoSend will provide the new agency with revised pricing that it can elect to accept if it moves forward with the cooperative