

# LINDSEY MANUFACTURING COMPANY dba LINDSEY SYSTEMS

## TERMS AND CONDITIONS

**CONDITIONS OF SALE:** Unless otherwise stated in writing by LINDSEY MANUFACTURING COMPANY dba LINDSEY SYSTEMS ("Lindsey"), all transactions between Customer and Lindsey are subject to, and all sales, licenses and authorizations are expressly made conditional on, Customer's assent to the following terms and conditions (the "Terms"). Any acceptance of Lindsey's offer is expressly limited to acceptance of these Terms. Any terms or conditions (previously, contemporaneously, or hereafter) provided by Customer which add to, vary from, or conflict with these Terms are expressly objected to by Lindsey. Lindsey will not be bound by any terms proposed by Customer, whether in purchase orders or otherwise, which are additional to or different from these Terms.

**PAYMENT TERMS:** Terms of payment shall be net thirty (30) days from date of invoice unless otherwise specifically agreed to in writing by Lindsey's management. A service charge will be assessed on outstanding balances of past due accounts at a rate of 1.5% per month (18% percent per annum). If legal action is required to collect outstanding past due debt, Lindsey shall be entitled to collect from the Customer legal fees and other costs of collection.

**MINIMUM ORDER:** Minimum order is \$250.

**CREDIT INFORMATION, APPROVAL AND ACCEPTANCE:** All orders are subject to approval of Customer's credit and acceptance by Lindsey. As a condition of sale, Customer grants Lindsey the right to investigate Customer's credit, to exchange credit information with others, and to report to others about Customer's account and relationship with Lindsey, and Lindsey is released from any liability resulting therefrom.

**PRICE POLICY AND QUOTATIONS:** Unless otherwise noted, all quotations are made on the basis of an order being placed within thirty (30) days from the date of the quotation. Lindsey reserves the right to modify quotations prior to their expiration date if the Customer has not yet accepted them. Unless otherwise noted on the quotation, after thirty (30) days, the quotation shall be null and void. Orders placed on hold by Customer for more than thirty (30) days are subject to price review and price adjustments by Lindsey. Any clerical errors are subject to correction. All prices are subject to change without notice to reflect the impact of any tariffs, taxes, duties, etc. put into effect after the date of the quotation or placement of an order.

**NON-STANDARD OR SPECIAL ITEMS:** Orders for non-standard items or items built to Customer's special requirements, including items outlined in Lindsey's catalog, will be accepted on a non-cancelable, non-returnable basis only.

**TAXES:** Prices do not include any local, State, Federal, or International taxes, customs, import duties or other such fees. Such taxes and duties are the responsibility of and will be billed to the Customer.

**TRANSPORTATION POLICY:** No Transportation Allowance applies on any product. Orders will be shipped freight prepaid and added to the invoice, unless otherwise quoted, on a least expensive common carrier of Lindsey's choosing. In cases where the Customer has special carrier or routing or other special transportation requirements outside those provided above, additional charges, if any, will be billed to Customer. Title of goods and all risk of loss, damage, shortage or delay, shall pass to Customer upon delivery to the designated carrier.

**SHIPMENT ESTIMATES:** Delivery dates provided by Lindsey are estimated dates only. Lindsey will use commercially reasonable efforts within its control to meet the estimated delivery date. Lindsey shall not be held liable for delays due to any cause. Unless otherwise agreed by Lindsey, Lindsey reserves the right to ship up to thirty (30) days in advance of the acknowledged shipping date.

**ACCEPTANCE OF GOODS:** Customer shall inspect all goods immediately upon delivery. If Customer fails to notify Lindsey in writing within fifteen (15) calendar days of receiving the goods of any alleged shortage, damage, or other nonconformity with respect to the goods, the goods shall conclusively be deemed to have been irrevocably accepted by Customer.

**RETURN OF MATERIAL:** (1) Items are not returnable without the written consent of Lindsey even if outlined in Lindsey's catalog. Request for permission to return any item(s) must be made in writing within ninety (90) days from the date of shipment. (2) Special or made-to-order products are non-returnable. (3) Items which Lindsey may consent to return will be charged a restocking charge of forty percent (40%) of the price of the items. (4) Unauthorized returns will be refused and rejected.

**CANCELLATION AND PRICE ADJUSTMENT:** (1) Orders for special and non-standard goods are non-cancellable. (2) Cancellation of an order for standard goods prior to the start of production or order of material by Lindsey will be subject to a cancellation charge of \$250 or 5% of the value of the cancelled order, whichever is greater, unless the order is replaced by a new order for similar goods of equal or greater value. (3) When cancellation occurs after the start of production but before delivery, Customer shall pay Lindsey a cancellation charge of forty percent (40%) of the total order value of the cancelled product.

**TOOLING:** Lindsey shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools and test equipment made for or obtained for the performance of any order including items paid for by the Customer.

**TESTING:** Unless otherwise stated in writing, prices include only Lindsey's standard test data. Any special testing required by the Customer shall be charged pursuant to Lindsey's standard fees for such testing unless otherwise provided in the written quotation.

**MODIFICATIONS:** Unless otherwise noted, Lindsey reserves the right to modify specifications, materials, or manufacturing methods of products if the modification will not materially affect the quality or performance of the product.

**WARRANTY:** Unless otherwise noted on the quotation, Lindsey warrants to the original Customer that its new goods are free from defects in material and workmanship when used in the prescribed manner for which they were designed and manufactured and as set forth in any applicable operating, installation and/or maintenance documentation, or if there are none, under good operating, maintenance and use conditions. This warranty shall be in effect for twelve (12) months from product installation or first use, or eighteen (18) months from date of shipment to Customer, whichever comes first. Customer must notify Lindsey promptly of any warranty claim. Customer's exclusive remedy and Lindsey's only liability for breach of this warranty shall be, at Lindsey's election, the repair or replacement of the defective goods with new or refurbished goods at Lindsey's discretion. Return of product shall be at Customer's expense. Repaired or replaced products are F.O.B. Factory. This warranty shall be of no force and effect if asserted by any party other than the original Customer.

Any field services performed by Lindsey on the goods are warranted to be performed in a workmanlike manner. This services warranty shall expire thirty (30) days after the date the service is performed. If any non-conformity with this service warranty is discovered within the thirty (30) day warranty period, Lindsey's exclusive obligation shall be to re-perform the non-conforming portion of the service.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (WRITTEN, ORAL, IMPLIED, OR OTHERWISE), AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED.

**FORCE MAJEURE:** Lindsey shall not be liable for loss, damage, or delay from causes beyond its reasonable control, including from fire, strike or other concerted action of workmen, pandemic, epidemic, act or omission of any governmental authority, compliance with import or export regulations, insurrection or riot, embargo, delays or shortages in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources. In the event of delay due to any of these causes, the date of performance will be postponed by the length of time reasonably necessary to compensate for the delay.

**INTELLECTUAL PROPERTY:** As between Lindsey and Customer, Lindsey shall retain and own any and all patents, copyright, trademarks, trade secrets, and other intellectual property embodied in or associated with the goods, services, Services, and/or Software. Without limiting the generality of the foregoing, Lindsey shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Lindsey or its employees in connection with the manufacture of the ordered goods or in connection with services, Services and/or Software. No drawings, designs, or anything else provided by Lindsey shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act.

**LIABILITY LIMITATION:** THE TOTAL LIABILITY OF LINDSEY ARISING OUT OF, RELATED TO, OR RESULTING FROM THIS ORDER OR THE PERFORMANCE OR BREACH THEREOF, OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, SERVICE, SOFTWARE, OPERATION OR USE OF ANY GOODS, SOFTWARE OR SERVICE SHALL BE LIMITED TO THE PURCHASE PRICE AMOUNT PAID BY CUSTOMER TO LINDSEY FOR THE SPECIFIC PRODUCT/SERVICE/SOFTWARE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).

LINDSEY SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF TOTAL OR PARTIAL USE OF THE GOODS OR SERVICES OR SOFTWARE, DOWNTIME COSTS, AND DELAY COSTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).

Customer acknowledges that the installation of Lindsey's goods requires specific training and expertise and that Lindsey's operating, installation and/or maintenance documentation must not to be relied on exclusively and to the exclusion of Customer's normal work practices. Customer releases and shall indemnify, defend and hold harmless Lindsey, its officers, directors, agents, and employees from and against any and all claims for injuries to Customer, its employees, servants, agents, and subcontractors or damage or loss to Customer's or its subcontractors' property that may arise out of or be caused by the improper installation of the goods.

**PROHIBITED USES:** Customer will not use the purchased goods, Services and/or Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right, privacy right, or other right of any person, or that violates any applicable law. Privacy and other laws in the applicable jurisdiction may impose certain responsibilities on Customer and Customer's use of the goods, Services and/or Software. Customer agrees that it is Customer's responsibility, and not the responsibility of Lindsey, to ensure compliance with any applicable laws when using Software, the purchased goods, and Services.

**GOVERNING LAW; JURISDICTION:** The interpretation and enforcement of the Terms shall be governed by and construed in accordance with the law of the State of California, without regard to its principles of conflicts of laws. The United Nations Convention on International Sale of Goods shall not apply. THE FEDERAL AND STATE COURTS LOCATED IN LOS ANGELES COUNTY, CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY DISPUTE ARISING OUT OF THIS ORDER OR ANY ACTION RELATING TO THE ENFORCEMENT OF ITS PROVISIONS, AND CUSTOMER HEREBY WAIVES ANY OBJECTION TO ANY ACTION BROUGHT IN LOS ANGELES COUNTY, CALIFORNIA ON THE GROUNDS THAT THE APPLICABLE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER CUSTOMER OR THAT A MORE CONVENIENT FORUM EXISTS.

IN ADDITION TO THE TERMS ABOVE, THE FOLLOWING PROVISIONS APPLY TO THE USE OF THE SMARTLINE-TCF, SMARTLINE-TAMPER AND PROSPOT SOFTWARE AND SERVICES BY CUSTOMER:

**DEFINITIONS:**

**"Customer's Content"** means all measurements, text, files, images, graphics, illustrations, specifications, information, data, audio, video, photographs, and other content and material in any format, provided by Customer or Customer's Users that reside in, or run on or through, the Hosting Services Environment.

**"Hosting Services Environment"** refers to the combination of hardware and software components owned, licensed, or managed by Lindsey to which Lindsey grants Customer and Customer's Users access as part of the Services which Customer has ordered.

**"Lindsey's Content"** means the Services, the documentation, and any and all intellectual property provided to Customer or any User in connection with the Software, Smartline-TCF System, Smartline-Tamper System, ProSpot and Services. For the avoidance of doubt, Lindsey Content includes Smartline-TCF Software, Smartline-Tamper Software, and ProSpot software products, aggregated statistics and any information, data, or other content derived from Lindsey's monitoring of Customer's access to or use of the Services, including Service Analyses derived from compilation of information, but does not include Customer's Content.

**"ProSpot"** refers to the ProSpot software product for configuring Lindsey Emergency Restoration System (ERS) structures.

**"Services"** means, collectively, the Lindsey cloud services (*i.e.*, Lindsey software as a service offerings utilizing the Smartline-TCF Software and/or Smartline-Tamper Software) listed in the order and defined in the Service Specifications.

**"Service Specifications"** means the software requirements applicable to Customer's order. Service Specifications may define or reference provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments) applicable to the Hosting Services Environment, functional and technical aspects of the Software, as well as any Services deliverables.

**"Software"** refers to any software included in any Lindsey sensor product including the TLM and TLSM hardware devices, web-portal based software applications including but not limited to Smartline, Smartline-TCF, and Smartline-Tamper, and personal computer-based software including ProSpot.

**"Smartline-Tamper Software"** refers to the Smartline-Tamper software products owned or licensed by Lindsey for monitoring, analyzing and detecting: intrusion, unauthorized access, vandalism, sabotage, sub-conductor breakage, vibrations, and other unauthorized activity occurring to, or in the vicinity of, lattice transmission tower installations based on the data from Lindsey's TLSM hardware devices, to which Lindsey grants Customer access as part of the Services.

**"Smartline-Tamper System"** refers to the TLSM hardware devices and software embodied within the devices and the Smartline-Tamper Software.

**“Smartline-TCF Software”** refers to the Smartline, Smartline-TCF, Smartline-DLR, and Smartline Transmission Line Rating Platform software products owned or licensed by Lindsey for monitoring, analyzing and developing dynamic line ratings (DLR), reliability-based ratings (RBR), forecast DLR ratings, and reliability based forecasts (RBF) based on the data from Lindsey’s TLM hardware devices, to which Lindsey grants Customer access as part of the Services.

**“Smartline-TCF System”** refers to the TLM hardware devices and the Smartline-TCF Software.

**“Users”** means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer’s behalf to use the Services in accordance with these Terms and Customer’s order.

**SERVICES PERIOD AND TERMINATION:** Services provided under these Terms shall be provided for the services period defined in Customer’s order unless earlier suspended or terminated in accordance with these Terms or the order (“Services Period”).

Upon the end of the Services Period, Customer shall no longer have rights to access or use the Services, including the associated Smartline-TCF Software and Smartline-Tamper Software and Hosting Services Environment; however, at Customer’s request, and for a period of up to 60 days after the end of the applicable Services Period, Lindsey will make available to Customer Customer’s Content as existing in the Hosting Services Environment on the date of termination. At the end of such 60-day period, and except as may be required by law, Lindsey will delete or otherwise render inaccessible any of Customer’s Content that remains in the Hosting Services Environment.

Lindsey may temporarily suspend Customer’s password, account, and access to or use of the Services if Customer or Customer’s Users violate any provision within these Terms, or if in Lindsey’s reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Lindsey will provide advance notice to Customer of any such suspension in Lindsey’s reasonable discretion based on the nature of the circumstances giving rise to the suspension. Lindsey will use reasonable efforts to reestablish the affected Services promptly after Lindsey determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured. Lindsey may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after Lindsey’s initial notice thereof. Any suspension or termination by Lindsey under this paragraph shall not excuse Customer from its obligation to make payment(s) under these Terms.

**RIGHTS GRANTED:** For the duration of the Services Period and subject to Customer’s payment obligations and compliance with these Terms, Lindsey grants to Customer a limited authorization comprising: (a) the non-exclusive, non-assignable, worldwide, limited right to access and use the Services that Customer ordered, including anything developed by Lindsey and delivered to Customer as part of the Services, solely for Customer’s internal business operations and subject to these Terms and Customer’s order, including the Service Specifications; and (b) the non-exclusive, non-assignable, worldwide, limited right under Lindsey Content to access and use the Services that Customer ordered. Customer may allow Customer’s Users to use the Services for this purpose, provided that Customer shall be responsible for Customer’s Users’ compliance with these Terms and the order.

Customer does not acquire under these Terms any right or license to use the Services in excess of the scope and/or duration of the Services stated in Customer’s order. Upon the end of the Services Period, Customer’s right to access and use the Services will terminate.

To enable Lindsey to provide Customer and Customer’s Users with the Services, Customer grants Lindsey the right to use, process and transmit, in accordance with these Terms and Customer’s order, Customer’s Content for the duration of the Services Period plus any additional post-termination period during which Lindsey provides Customer with access to retrieve an export file of Customer’s Content.

Except as otherwise expressly set forth in Customer’s order for Services, Customer acknowledges that Lindsey has no delivery obligation for Smartline-TCF Software or Smartline-Tamper Software and will not ship copies of such programs to Customer as part of the Services.

The Services may contain or require the use of separately licensed third-party technology (“Separately Licensed Third-Party Technology”), which includes technology sublicensed to Customer by Lindsey. Customer is responsible for complying with the separate terms specified by Lindsey that govern Customer’s use of Separately Licensed Third-Party Technology. Lindsey may provide certain notices to Customer in the Service Specifications, program documentation, readme or notice files in connection with such Separately Licensed Third-Party Technology. The third-party owner, author or provider of such Separately Licensed Third-Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third-Party Technology.

As part of certain Services offerings, Lindsey may provide Customer with access to third-party content (e.g. within the Hosting Services Environment). The type and scope of any third-party content is defined or referenced in the Service Specifications applicable to Customer’s order. The third-party owner, author or provider of such third-party content retains all ownership and intellectual property rights in and to that content, and Customer’s rights to use such third-party content are subject to, and governed by, the terms applicable to such content as specified by such third-party owner, author or provider.

**ACCESS AND USE:** Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords, and account information.

Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Customer’s Content. Customer agrees to defend, indemnify, and hold harmless Lindsey against any claim arising out of a violation of Customer’s obligations under this section.

Customer is required to accept all patches, bug fixes, updates, over-the-air updates, maintenance and service packs (collectively, “Patches”) necessary for the proper function and security of the Services, including, but not limited to, for the Smartline-TCF and Smartline-Tamper Software, as such Patches are generally released by Lindsey as described in the Service Specifications. Except for emergency or security related maintenance activities, Lindsey will coordinate with Customer the scheduling of application of Patches, where possible, based on Lindsey’s next available standard maintenance window.

Customer acknowledges that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. Lindsey may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of third-party content. The Service Specifications are subject to change at Lindsey’s discretion; however, Lindsey changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Services Period.

**INTELLECTUAL PROPERTY AND DATA OWNERSHIP:** Customer retains all ownership and intellectual property rights in and to Customer’s Content. Customer represents that it owns all intellectual property rights in Customer’s Content which it stores and accesses in the Hosting Service Environment. Lindsey acknowledges that, as between

Customer and Lindsey, Customer retains all ownership and intellectual property rights in and to Customer's Content. Customer hereby grants to Lindsey a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display Customer's Content and perform all acts with respect to Customer's Content as may be necessary for Lindsey to provide the Services to Customer.

Lindsey or its licensors, as applicable, retain all ownership and intellectual property rights to the Services, including, but not limited to, the Software and all other intellectual property that is part of the Services, and derivative works thereof, and to anything developed or delivered by or on behalf of Lindsey under these Terms. Customer acknowledges that as between Lindsey and Customer, Lindsey owns all right, title, and interest, including all intellectual property rights, in and to Lindsey's Content. Software shall remain the property of Lindsey (and/or Lindsey's licensors, if applicable), and in no event shall title to the software be sold or transferred to Customer.

**RESTRICTIONS ON USE:** Customer may not, or cause or permit other to:

- (a) remove or modify any program markings or any notice of Lindsey's or its licensors' proprietary rights;
- (b) copy, modify, make derivative works of, disassemble, decompile, decode, reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), access or use the Services or the Software in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Lindsey, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part;
- (c) take possession of a copy of any Software's object code or source code and seek to self-host the Software or outsource its hosting to a third-party service provider;
- (d) use the Services or Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right, privacy right, or other right of any person, or that violates any applicable law;
- (e) use the Software or Services in a manner that infringes the privacy rights of any individual or entity;
- (f) perform or disclose any benchmark or performance tests of the Services, including, but not limited to, the Software, without Lindsey's prior written consent; and/or
- (g) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Software, Hosting Services Environment or materials available, to any third party, other than as expressly permitted under the terms of the applicable order.

The rights granted to Customer under these Terms are also conditioned on the following:

- (a) except as expressly provided herein or in Customer's order, no part of the Services or Smartline-Tamper Software may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means;
- (b) Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Services.

Customer is responsible and liable for all uses of the Services resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of these Terms. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Users, and any act or omission by a User that would constitute a breach of these Terms if taken by Customer will be deemed a breach of these Terms by Customer. Customer shall use reasonable efforts to make all Users aware of these Terms as applicable to such User's use of the Services, and shall cause Authorized Users to comply with such provisions.

**WARRANTIES, DISCLAIMERS, AND EXCLUSIVE REMEDIES:** LINDSEY PROVIDES THE SERVICES, SMARTLINE-TAMPER SOFTWARE, AND CONTENT INCLUDED THEREIN FOR USE ON AN "AS IS" AND "AS AVAILABLE" BASIS. LINDSEY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, FEATURES, QUALITY, NON-INFRINGEMENT, TITLE, COMPATIBILITY, PERFORMANCE, SECURITY OR ACCURACY.

ADDITIONALLY, AND WITHOUT DEROGATING FROM THE ABOVE CLAUSE, LINDSEY DISCLAIMS ANY WARRANTIES RELATING TO THE ACCURACY OF THE INTRUSION DETECTION ALERTS FOR THE SMARTLINE-TAMPER SYSTEM AND OF THE LINE RATINGS AND FORECASTS FOR SMARTLINE-TCF SYSTEM AND OTHER RESULTS PRESENTED OR DISPLAYED IN OR BY THE SERVICE.

CUSTOMER AGREES AND ACKNOWLEDGES THAT IT ASSUMES FULL, EXCLUSIVE AND SOLE RESPONSIBILITY FOR THE USE OF AND RELIANCE ON THE SERVICE, AND FURTHER AGREES AND ACKNOWLEDGE THAT ITS USE OF OR RELIANCE ON THE SERVICE IS MADE ENTIRELY AT ITS OWN RISK.

LINDSEY DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT LINDSEY WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR THIRD-PARTY CONTENT, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY LINDSEY, AND (C) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT LINDSEY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. LINDSEY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. LINDSEY IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER'S CONTENT, CUSTOMER'S APPLICATIONS OR THIRD-PARTY CONTENT. LINDSEY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD-PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

FOR ANY BREACH OF THIS SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND LINDSEY'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF LINDSEY CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND LINDSEY WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO LINDSEY FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

**COMPILATION OF INFORMATION:** Lindsey may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Hosting Services Environment in aggregated or deidentified form for security and operations management, to create statistical analyses, for business development purposes, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Lindsey may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer's Content or confidential information in a form that could serve to identify Customer. Lindsey retains all intellectual property rights in Service Analyses.

**INDEMNIFICATION:** In the event a claim is asserted against Lindsey resulting from use of the Smartline-TCF System, Smartline-Tamper System, ProSpot, and/or Services by Customer, Customer will, at the Customer's sole cost and expense, defend Lindsey against the claim and indemnify the Lindsey from the damages, liabilities, costs and expenses awarded by the court to any third party or government entity asserting the claim, or any settlement agreed to by Lindsey.