

Elmo Anywhere Terms of Use

Last Modified: 11/27/2018

Independent Billing Services, Inc., d/b/a IBS Software (herein, “**IBS Software**”), has developed the Elmo Anywhere auto glass software package (“**Elmo Anywhere**”), an easy to use, Point-of-Sale cloud-based software program for windshield repair and replacement professionals. Elmo Anywhere is designed to gather the information necessary for accurate quoting, billing, and management reporting and to furnish management and other reports intuitively. Access to and use of Elmo Anywhere is available solely through and at the Website www.elmoanywhere.com and subject to acceptance of these Terms of Use.

1. **Acceptance of the Terms of Use:**

These terms of use (the “**Terms of Use**”) are entered into by and among, on the one hand, IBS Software and its Affiliates (collectively, the “**Company**”) and, on the other hand, you. For convenience, Company may be referred to in these Terms of Use with first person personal pronouns such as “we,” “us,” and “our,” and you may be referred to with second person personal pronouns such as “you,” “your,” and “yours.” You and we may also be referred to herein collectively as the “**Parties**,” or individually, as a “**Party**.” These Terms of Use will govern your access to and use of Elmo Anywhere; www.elmoanywhere.com, any content thereon, and any functionality therein; and any related services offered on or through www.elmoanywhere.com (collectively, either the “**Website**” or the “**Services**”), both in your capacity as a representative of your employer or your business or on your own behalf (in all cases, a “**User**”).

(a) **Deemed Acceptance.** Please read these Terms of Use carefully before you start to use the Website or the Services. By using the Website or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy (found at <https://www.elmoanywhere.com/terms>), incorporated herein by reference. If you do not agree to or want to be bound by these Terms of Use or the Privacy Policy, you must not access or use the Website or the Services. Continued access to or use of the Website or the Services will be deemed to be acceptance of both these Terms of Use and the Privacy Policy.

(b) **Eligibility.** The Website and the Services are offered and available to Users who reside in the United States or any of its territories or possessions. By using this Website or the Services, you represent and warrant that you are of legal age to form a binding contract with the Company and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Website or any of the Services, whether on your own behalf or on behalf of anyone else.

2. **Changes to the Terms of Use:**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them. Your continued use of the Website following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page each time you access the Website so you are aware of any changes, given that they are binding on you. If you object to, do not agree with, or do not agree to be bound by any changes or modifications to the Terms of use, you must cease use of the Website and the Services.

3. **Accessing the Website and Account Security:**

We reserve the right to withdraw or amend the Website, and any computer program or service or material we provide on the Website or through the Services, in our sole discretion without notice. We will not be liable if, for any reason, all or any part of the Website or the Services is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website or to the entire Website.

4. **Consideration:**

(a) **Monthly Fees.** Elmo Anywhere, the Website, and the Services are made available to you on a month-to-month basis with payment of the monthly access/use fee being due in advance. At present, the monthly access/use fee is \$115 for the first User and \$100 for the second and \$75 for each subsequent user, provided that all such Users are employed by the same person or by an Affiliate of such Person. Additional features may be added which require an additional monthly access/use fee and can be found at:

<https://www.elmoanywhere.com/SignUp/Index>

(b) **Changes in Monthly Fees.** We reserve the right to change the monthly access/use fee by furnishing to you notice (using the contact information in your profile) at least fourteen (14) days prior to the beginning of the month for which the adjusted monthly access/use fees will be due.

(c) **Timely Payment of Fees.** The entire amount of the access/use fee is due and payable on the first day of each month during the term for which you use the Website. If, for any reason, you fail to pay the full amount of the access/use fee when due, we may terminate or suspend your access to and use of Elmo Anywhere, the Website, or the Services, provided that, before such use/access is suspended or terminated, we first furnish to you notice (using the contact information provided in your profile) of the payment default and an opportunity to cure the payment default within ten (10) calendar days. If, at the end of the said cure period of ten (10) days, the payment default (in whole or in part) continues, we may immediately terminate or suspend your use of Elmo Anywhere and the Website without further notice or other action from us. If, however, you timely cure the noticed payment default, then your use of Elmo Anywhere and the Website may continue as though

there had been no payment default, provided that you are not otherwise in breach of any other of the provisions of these Terms of Use.

(d) **Late charges.** Any payment not fully paid when due will bear a late charge, until fully paid (with all accrued late charges), computed at the rate of eighteen percent (18%) per year or the highest rate allowable by applicable law, whichever is less. Whenever used in these Terms of Use, a reference to payment in full or payment of the entire amount, such reference includes payment of all applicable late charges – determined in accordance with this Section 4(d).

5. **Your Responsibilities:**

You are responsible for:

- Paying, on the day of the month you registered for access, the applicable access/use fee, as provided for in Section 4 of these Terms of Use;
- Making all arrangements necessary for you to have access to the Website, including Internet or cloud connectivity; and
- Ensuring that all persons who access the Website through your Internet connection are aware of these Terms of Use and comply with them.

(a) **Basic Information.** To access the Website or certain of the resources or portions of the functionality it offers or the Services furnished by us, you may be asked to provide certain registration details or other information. It is a condition of your use of the Website that all the information you provide on the Website is correct, current, and complete. You agree that all information you provide to register with this Website or otherwise is governed by our Privacy Policy <https://www.elmoanywhere.com/terms>, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

(b) **Security Procedures.** If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person whatsoever. You also acknowledge that your account is personal to you, and unless you are an employer, you agree not to provide any other person with access to the Website or portions of it using your user name, password, or other security information.

(i) If you are an employer, you may allow access to the Website or portions of it using your Internet connection; however, each User is individually registered with Elmo Anywhere, has his/her own account, has his/her own user name and password, and is fully responsible for compliance with these Terms and Conditions (even though you, as such person's employer, are responsible for any breach of these Terms of Use by your employees).

(ii) If you are an employer, you must immediately revoke access when one of your employees who has been granted an Elmo Anywhere account separates or is separated from your employment so that such departed employee's access to the Website is terminated.

(c) **Unauthorized Use.** You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

(d) **Disabling Access.** We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any reason, including if, in our opinion, you have violated any provision of these Terms of Use.

6. **Intellectual Property Rights:**

(a) **Ownership.** Elmo Anywhere, The Services, and the Website and its entire contents, features, and functionality (including all information, computer programs, text, displays, images, video and audio, and the design, selection, and arrangement thereof) are owned by the Company, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

(b) **Trademarks.** The Company name, The name "Elmo Anywhere," and all related names, logos, product and service names, designs, slogans, advertising or commercial symbols, and other source identifiers are trademarks of the Company or its Affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs, and slogans on the Website are the trademarks of their respective owners.

(c) **Copyright Infringement.** If you believe that any User Contribution or other matter Posted by any User violates, infringes, or constitutes a misappropriation of your copyright, please contact us at customerserver@ibssoftware.com. It is the policy of the Company to terminate the User accounts of repeat infringers.

7. **Permitted Uses and Restrictions on Use:**

(a) **Permitted Uses.** These Terms of Use permit you to use the Website and the Services for your specific use as a windshield repair and replacement professional (the "**Permitted Purpose**") and for no other purpose whatsoever. You must not reproduce, distribute, modify, create derivative works of, publicly display,

publicly perform, republish, download, store or transmit any of the material on our Website, except as follows:

- Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the Website for the Permitted Purpose.

(b) **Prohibited Uses.** You may use the Website only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Website:

- In any way that violates any applicable federal, state, local, or international law, rule, ordinance, or regulation (including any laws regarding the export of data or software to and from the United States or other countries);
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, by asking for personally identifiable information, or by otherwise engaging in intrusive, abusive, or exploitive behavior;
- To send, knowingly receive, upload, download, use, or re-use any material which does not comply with the requirements of these Terms of Use;
- To transmit, or procure the transmission of, any advertising or promotional material without our prior written consent, including any "junk mail", "chain letter" or "spam" or any other similar solicitation;
- To impersonate or attempt to impersonate the Company, a Company employee, another User, or any other person or entity (including by using e-mail addresses or screen names associated with any of the foregoing);
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Website, or which, as determined by us in our sole discretion, may harm the Company or Users of the Website or expose them to liability; or
- In any manner that could disable, overburden, damage, or impair the Website or interfere with any other person's use of the Website, including their ability to engage in real time activities through the Website.

(c) **Other Prohibitions.** You may not:

- Use any robot, spider, or other automatic device, process, or means to access the Website for any purpose, including monitoring or copying any of the material on the Website;

- Use any device, computer program, or routine that interferes with the proper working of the Website;
- Introduce any viruses, Trojan horses, worms, logic bombs or other code or material that is malicious or harmful;
- Attempt to gain unauthorized access to, interfere with, damage, disable, or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer or database connected to the Website;
- Attack the Website via a denial-of-service attack, a distributed denial-of-service attack, or other similar disruptive measure;
- Otherwise attempt to interfere with or affect the proper working of the Website;
- Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text; or
- Delete or alter any copyright, patent, trademark registration, or other proprietary rights notices from copies of materials from the Website.

8. **Local Applications:**

If we later provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for the Permitted Purpose, provided you agree to be bound by our end user license agreement then in effect for such applications.

9. **User Contributions:**

The Website may contain profiles, an emailing platform, and other interactive features (collectively, "**Interactive Services**") that allow Users to post, submit, display, or transmit to other Users or other persons (hereinafter, "**post**") content or materials (collectively, "**User Contributions**") on or through the Website.

(a) **Compliance.** All User Contributions must comply with the Content Standards set out in Section 9(g) of these Terms of Use.

(b) **Confidentiality.** Any and all User Contribution you Post will be considered non-confidential and non-proprietary. By Posting, uploading, or otherwise furnishing any User Contribution, you grant us and our Affiliates and service providers, and each of their and our respective licensees, successors and assigns the perpetual, worldwide, royalty free, and irrevocable right to use, reproduce, modify, perform, publish, display, distribute, and otherwise exploit and disclose to third parties any such User Contribution for any purpose.

(c) **Representations and Warranties.** You represent and warrant that:

(i) You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our Affiliates and service providers, and each of their and our respective licensees, successors, and assigns; and

(ii) All of your User Contributions do and will comply with these Terms of Use.

(d) **Responsibility.** You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible, or liable to any third party, for the content or accuracy of any User Contributions posted by you or any other user of the Website.

(e) **Monitoring and Enforcement; Termination.** We have the right (but not the obligation) to:

(i) Remove or refuse to post any User Contributions for any reason in our sole discretion;

(ii) Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion if we believe that such User Contribution violates the Terms of Use, including the Content Standards set forth at Section 9(g) of these Terms of Use (below); infringes any intellectual property right or other right of any person or entity; threatens the personal safety or wellbeing of Users of the Website or the public; or could create liability for the Company;

(iii) Disclose your identity or other information about you to any third party who claims that any material (including User Contribution) Posted by you violates their rights, including their intellectual property rights or their right to privacy or publicity;

(iv) Take appropriate legal action, including referral to law enforcement, for any illegal or unauthorized use of the Website or for any action or matter that violates these Terms of Use; and/or

(v) Terminate or suspend (with no advance notice) your access to or use of all or any part of the Website or the Services for any violation of these Terms of Use.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone Posting any materials on or through the Website.

(f) **No Monitoring Obligation.** Notwithstanding anything to the contrary in these Terms of Use or in the Privacy Policy, we cannot and do not undertake to review all material Posted on the Website, whether before or after Posting, and cannot ensure prompt removal of objectionable material after it has been Posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in section 9 of these Terms of Use.

(g) **Content Standards.** The below-specified content standards (the “**Content Standards**”) apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws, rules, ordinances, and regulations. Without limiting the foregoing, User Contributions must not:

(i) Contain any material that is defamatory, obscene, indecent, pornographic, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable, as determined by us in our sole discretion;

(ii) Promote violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, political views, or age;

(iii) Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person;

(iv) Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use or our Privacy Policy [INSERT URL].

(v) Be likely to deceive any person;

(vi) Promote any illegal activity, or advocate, promote, or assist any unlawful act;

(vii) Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person, as determined by us in our sole discretion;

(viii) Impersonate any person, or misrepresent the identity of or affiliation with any person or organization; or

(ix) Give the impression that any such User Contribution emanates from or is endorsed by us or any other person or entity, if this is not the case.

10. **Reliance on Information:**

(a) **No Warranty.** We do not warrant the accuracy, completeness, or usefulness of all information on the Website. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you, by any other User, or by any other visitor to the Website, or by anyone who may be informed of any of its contents.

(b) **Disclaimer.** The Website may include content provided by third parties, including materials provided by other Users and third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by the Company, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of the Company, its employees, or its owners. We are not responsible or liable to you or to any third party for the content or accuracy of any materials provided by any third parties.

11. **Changes to the Website:**

We may update the content on the Website from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the Website may be out of date at any given time, and we are under no obligation to update such material.

12. **Information About You and Your Visits to the Website:**

All information we collect on this Website is subject to our Privacy Policy <https://www.elmoanywhere.com/terms>. By using the Website, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

13. **Links from the Website and Information Gathered:**

(a) **Links.** If the Website contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the content of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party websites linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

(b) **Information Gathered.** The Website includes functionality that allows you to compare wholesale prices of competitive or comparable products from different glass suppliers/distributors (“**Vendors**”), provided you have properly set up accounts for such Vendors in the Elmo Anywhere software. This means that, using the authorization granted to you by such Vendors, Elmo

Anywhere will enter such Vendors' webpages and, using universally accepted serial number coding conventions, acquire comparable wholesale prices. Using the above-described process, Elmo Anywhere will display wholesale prices for comparable or competitive products from the Vendors you have set up in the Elmo Anywhere system. We are not responsible for the information gathered in this manner, and we are not responsible if one or more other Vendor's website is down, is inaccessible, contains inaccurate or erroneous information, or is functioning in error or improperly. We may use, share, and disclose the wholesale pricing and other information (including Vendor identity) gathered in the above-described manner (i) to allow one or more of our Affiliates to match (if they choose to do so) the wholesale prices and/or other terms of sale from other Vendors (and the price initially shown for our Affiliate may change depending on the prices available from other Vendors and other circumstances that may or may not be employed in our sole discretion) and (ii) for any other lawful purpose whatsoever.

(c) **Wholesale Prices.** You acknowledge that you recognize and understand that we may share wholesale pricing and other information gleaned from Vendors as provided herein for any lawful purpose. We do not intend to gather retail glass prices and request that retail prices not be shared with us. If, for any reason, retail prices are shared with us, we will not share them with other retailers.

(d) **Disclaimer.** Notwithstanding anything to the contrary, nothing herein or in any other document or other material from us constitutes a representation, warranty, promise, or guarantee that wholesale pricing from our Affiliates will always be equal to or less than the lowest price available from other Vendors.

14. **Geographic Restrictions:**

The owner of the Website is located in the state of Missouri in the United States. We host the services made available through Elmo Anywhere in Microsoft's Azure Cloud Service. The data is replicated across multiple states on the said Microsoft Azure platform. We provide the Website and Elmo Anywhere for use only by persons located in the United States. We make no claims that Elmo Anywhere or the Website or any of its content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If you access the Website from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

15. **Disclaimer of Warranties:**

(a) **No Guarantee.** You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the Website will be free of viruses or other destructive, disabling, or debilitating code. You are responsible for implementing sufficient procedures and checkpoints to

satisfy your particular requirements for anti-virus and malware protection; for accuracy and privacy of data input and output; and for maintaining a means external to the Website for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DENIAL-OF-SERVICE ATTACK (DISTRIBUTED OR OTHERWISE), VIRUSES, MALWARE, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL RESULTING FROM OR CAUSED BY YOUR USE OF THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR RESULTING FROM OR CAUSED BY YOUR DOWNLOADING OF ANY MATERIAL.

(b) **YOUR OWN RISK.** YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS FURNISHED BY US OR OBTAINED THROUGH THE WEBSITE ARE AT YOUR OWN RISK. THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS FURNISHED BY US OR OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY SERVICES OR ITEMS FURNISHED BY US OR OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; THAT THE WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES, MALWARE, OR OTHER HARMFUL COMPONENTS; OR THAT THE WEBSITE OR ANY SERVICES OR ITEMS FURNISHED BY US OR OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

(c) **WARRANTY DISCLAIMER.** THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR ANY PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

16. **Limitation on Liability:**

IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OR ITS OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL

THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

17. Indemnification:

You agree to indemnify, hold harmless, and (at our option) defend the Company, its Affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your Posting of User Contributions; your violation of these Terms of Use; your use of the Website, including any use of the Website's content or the Services other than as expressly authorized in these Terms of Use; or your misuse of any information obtained from the Website.

18. Governing Law and Jurisdiction:

(a) **Governing Law.** These Terms of Use shall be governed by and construed in accordance with the internal laws of the State of Missouri, without giving effect to any choice or conflict of law provision or rule (whether of the State of Missouri or any other jurisdiction).

(b) **Jurisdiction.** All disputes, claims, or controversies relating to the Services, the Website, and these Terms of Use, to the extent not covered by Section 19 of these Terms of Use, shall be instituted exclusively in the Federal District Court for the Western District of Missouri or the Circuit Court of and for Jackson County, Missouri, depending upon subject matter jurisdiction. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

19. Dispute Resolution:

(a) **Arbitration.** any controversy or claim arising out of or related to (i) these Terms of Use, use of the Website, or the furnishing of the Services, whether arising in contract, tort, or otherwise; the breach of the Terms of Use; or the enforceability of these Terms of Use shall be settled by arbitration to be

administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures as modified hereby.

(b) **Location.** The arbitration proceeding shall be held in the Kansas City, Missouri metropolitan area.

(c) **Arbitrator Selection.** The arbitration shall be conducted by a single JAMS arbitrator who has expertise in handling matters pertaining to the development and licensing of software products and who is mutually acceptable to the Parties. If the Parties are unable to agree on an arbitrator within thirty (30) days following submission of the matter to arbitration, at the request of either Party, JAMS shall appoint the arbitrator.

(d) **Procedure.** Each Party shall be entitled to be represented by counsel, to present written and oral evidence and arguments, to cross examine the other Party's witnesses, and to obtain a list of the other Party's witnesses and evidence not fewer than fourteen (14) days prior to the hearing. The formal rules of evidence shall not apply, but the arbitrator may be guided by the Federal Rules of Evidence in conducting the proceeding. The arbitrator shall permit and facilitate such disclosure and discovery of facts, documents, and tangible things as he or she shall determine is appropriate in the circumstances, taking into account the needs of the Parties and the desirability of making disclosure expeditious and cost effective. The arbitrator may issue an order to protect the confidentiality of proprietary information, trade secrets, and other sensitive information disclosed.

(e) **Rules to Follow.** The arbitrator shall decide in accordance with the express terms of these Terms of Use and the substantive law of the state of Missouri. The arbitrator will be empowered to award injunctive relief, specific performance, or other equitable remedy at the option of the Party seeking redress.

(f) **Costs.** Initially, each Party shall pay its own costs of the arbitration; however, the costs of the arbitration, including the cost of attorney and paralegal fees, may be awarded to or allocated among the Parties in accordance with the judgment of the arbitrator.

20. **Limitation on Time to File Claims:**

Any cause of action or claim you may have arising out of or relating to these Terms of Use, the Services, or the Website must be commenced within one (1) year after the cause of action accrues, otherwise, such cause of action or claim is permanently barred.

21. **General Matters:**

(a) **Waiver and Severability.** No waiver of or by the Company of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or

condition, and any failure of the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

(b) **Severability.** If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

(c) **Entire Agreement.** These Terms of Use and our Privacy Policy constitute the sole and entire agreement between you and IBS Software with respect to the use of Elmo Anywhere, the Website, and the Services, and collectively, they supersede all prior and contemporaneous understandings, agreements, representations, or warranties, both written and oral, with respect to Elmo Anywhere, the Website, and the Services.

(d) **Interpretation.** The following rules of construction shall govern the interpretation of these Terms of Use:

(i) The inclusion of headings in these Terms of Use is for convenience only and shall not affect the construction or interpretation hereof.

(ii) words in the singular will be deemed to include the plural and vice versa;

(iii) words of one gender will be deemed to include the other genders as the context requires;

(iv) "or" and "any" are not exclusive such that they are equivalent to the expressions "and/or" and "any and all," and the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation";

(v) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder;

(vi) (vii) a reference to a person includes all person/entity forms, e.g., individuals, natural persons, and artificial persons such as corporations, trusts, limited liability companies, and the like and shall include the person's permitted successors and assigns;

(viii) a reference in these Terms of Use to an Article, Section, Attachment, Annex, Exhibit or Schedule is to the referenced Article, Section, Annex, Exhibit or Schedule of these Terms of Use;

(ix) the terms "hereof," "herein," and "herewith" and words of similar import will, unless otherwise stated, be construed to refer to these Terms of Use as a whole (including all of the attachments hereto) and not to any particular provision of these Terms of Use; and

(x) the term "Affiliate" refers to any person who controls, is controlled by, or is under common control with another person, and "control" means the right to designate (regardless of the means) a majority of the members of the board of directors of a corporate person or, in the case of noncorporate persons, a majority of such person's similar governing body. Accordingly, IBS Software and Kryger Glass Co. are Affiliates.

The Website is operated by IBS Software, located at 1221 Harrison Street, Kansas City, Missouri 64106.

All notices, comments, feedback, requests for technical support, and other communications relating to the Website or the Services should be directed to: CustomerService@ibsoftware.com.