

Lyons Online Terms of Service

Revised: 30 November 2015

This Terms of Service agreement (“TOS”) is a contract between Lyons and your organization or entity (the “Client” or “You”).

Autoscribe Corporation, a Maryland corporation doing business as Lyons Commercial Data (“Lyons”), offers online information services (referred to either individually or collectively as the “Service”). The Lyons web pages, information and processes provided, the coordination and arrangement of the Service, and the procedures and documentation for using the Service are all “Proprietary Information”. The Service and the Proprietary Information constitute the “Licensed Service” under this agreement.

1. By clicking on the “accept” button, installing, or by otherwise receiving and using the Licensed Service, your organization agrees as follows:
2. **Applicable Agreements.** This TOS is binding on both Lyons and the Client. Client’s authorized representative will also accept an “Order Form” that contains certain terms, specifications and pricing for the Service. In case of any conflict between the terms of the Service Order and this TOS, the Service Order takes precedence. The terms of Lyons’ standard TOS shall have no effect, and the terms of this Custom Terms of Service will govern the provision of the Service.
3. **License Grant.** Conditioned on Client’s acceptance and compliance with the terms of this TOS and the Service Order and payment of the specified fees, Lyons grants to Client a limited, non-exclusive, non-transferable license to use the Licensed Service. The Licensed Service shall be used for Client’s own internal business operations, in compliance with any further use restrictions stated on the Service Order, and for no other purpose.
4. **Business Terms and Termination.**
 - a. **Payment.** Client will pay the fees stated on the Service Order. On or about the fifth business day of each calendar month Lyons will send to Client a detailed invoice for all charges incurred during the previous month. Unless contrary invoicing provisions are specifically set forth in the Service Order, Lyons will debit Client’s bank account in accordance with Client’s ACH Debit Authorization, if applicable, on or about the tenth (10th) day of each month. If an invoice is not paid by the 10th day of the month, or the balance of Client’s bank account is insufficient to cover Lyons’ presentment, Client shall pay the amount due within one business day of Lyons’ notice requesting payment or service may be interrupted. Invoices not paid when due shall accrue service charges at the rate of one and one half percent (1.5%) per month. Invoices submitted by Lyons shall be considered accurate unless Client details its dispute by written notice within 30 days of the invoice date.
 - b. **TOS and Other Terms.** The Licensed Service is provided under the terms of this TOS. By using the Service, Client expressly accepts and is bound by the then-current version of the TOS. Additional obligations may be imposed by specific third-party services offered through the Lyons portal; when Client uses these third party services, Client also accepts and is bound by their posted terms.
 - c. **Access and Equipment.** Client is responsible for providing all hardware, software, and other physical requirements for Client’s use of the Service, including, telecommunications and Internet access connections and links, web browsers, and other needed equipment. Client is responsible for securing its login information (username and password) and may be held responsible for services used via Client’s login information.
 - d. **Effective Date.** This Agreement takes effect on the Effective Date specified on the Service Order, or if no Effective Date is stated, on the date Client first signs in to the Licensed Service portal.
 - e. **Term.** The Agreement has an Initial Term as stated on the Service Order, and renews automatically for additional one-year Renewal Terms unless terminated as provided herein.
 - f. **Termination.** If any service provided hereunder or any fee being charged is found to violate any state or federal statute, rule or regulation, or rule of the National Clearing House Association (NACHA) or the Credit Card Associations, Lyons may immediately terminate this Agreement as to the violating service upon written notice to Client, without further obligation. If Client violates any provision of this Agreement, Lyons may terminate the Agreement by giving written notice specifying the breach.

Client may terminate this Agreement for cause if Lyons fails to cure a material breach within thirty (30) days after receiving written notice. Further, either Party may terminate without cause by providing sixty (60) days written notice.

- g. Effect of Termination.** Upon termination of this Agreement for any reason, Client shall immediately (i) discontinue use of the Licensed Service, (ii) destroy or delete all materials, software and any backup databases or other information provided to Client in connection with this Agreement, and (iii) confirm by written notice to Lyons that Client has destroyed or deleted such information. Upon termination, Lyons will promptly destroy or delete any of Client's customer information held by Lyons, and confirm by written notice to Client that such information has been destroyed or deleted; however, Lyons may maintain a secured, archival copy of such records for a period deemed reasonably necessary for forensic and evidentiary purposes. If Client elects a three (3) year term option and Client terminates the Agreement without cause prior to the end of the term, Client will pay an additional fee equal to the total discount received for all transactions processed under the three (3) year rate plan prior to termination.
- h. Continuing Obligations.** The following provisions shall continue in force after termination of this Agreement:

 - i. Any accrued payment obligations of Client;
 - ii. Section 5, Intellectual Property Rights;
 - iii. Section 6, Confidentiality;
 - iv. Section 7, Restrictions on Use;
 - v. Section 10, Warranties, Limitations of Liability, and Indemnification;
 - vi. Section 11, Regulatory Compliance Provisions; and
 - vii. Section 12, General Provisions.

5. Intellectual Property Rights.

- a. Retention of Rights.** The Licensed Service is licensed, not sold, and is the property of Lyons. Client shall secure the Licensed Service in a manner consistent with industry norms for similar licensed information and shall use reasonable efforts to keep Lyons' rights in the Licensed Service in good stead.
- b. No Further Licenses Granted.** Other than the limited licensed use explicitly permitted herein, this TOS does not provide any express or implied rights in Lyons' patents, trademarks, copyrights or other intellectual property; as a non-limiting example, no rights of any kind are granted under U.S. Patents 7,117,171; 6,041,315; 5,966,698; 5,727,249; and 5,504,677 for checks-by-phone processes.

6. Confidentiality.

- a. Definitions.** "Confidential Information" includes but is not limited to the Licensed Service, any and all financial information, data, documents, files, methods, Client's customer information, and any other non-public information, whether written, electronic, or otherwise, of either Party or its Affiliates. Confidential Information may also include the information of a third party disclosed to the Disclosing Party under an obligation of confidentiality. "Affiliate(s)" means a corporation, a financial institution, or other entity that is controlled (directly or indirectly) by, controls, or is under common control with a Party.
- b. Treatment of Confidential Information.** All Confidential Information shall remain solely the property of the disclosing Party, and the recipient shall maintain and protect such Confidential Information with the same degree of care used to protect its own confidential and proprietary information, but in any event, no less than a reasonable degree of care. Each Party shall also cause its agents, contractors, employees and any other persons who come into contact with the Confidential Information to maintain it in strictest confidence and use it only as permitted under this Agreement. In the event a Party is required to disclose Confidential Information, that Party will use reasonable efforts to give the other Party notice of required disclosure, and will cooperate with any efforts by the other Party to contest or otherwise limit the disclosure.
- c. Non-Public Information.** In providing Services hereunder, Lyons' employees, agents, subcontractors, and/or third parties may come into contact with Client's confidential and proprietary information concerning its business (Client's "Confidential Information"), including, where applicable,

Client's customer's Non-Public Information as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq.; which may also be subject to the "Identity Theft" provisions of the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act. Names, addresses and other individually identifiable information or non-public personal information as defined by 12 CFR 40.3 that Lyons may come into contact with as the result of providing Services hereunder will be treated as confidential by Lyons, except where necessary to carry out the terms and conditions of this Agreement or to comply with law or legal process.

- d. Exceptions.** Notwithstanding anything herein to the contrary, the Parties shall not be prohibited from using or disclosing information which: (i) is already available to the public as of the date of this Agreement; (ii) becomes publicly available to the public through no fault of the disclosing Party or its employees or agents; or (iii) is available to both Parties from a third party who is not under any obligations of non-disclosure with respect to such information.

7. Restrictions.

- a. General.** Client may not do, or permit others to do, any of the following:

- (i) Make copies of all or part of the Licensed Service, except as required for installation. However, Client can make a backup copy of the Licensed Service for system recovery purposes.
- (ii) Provide access to, disclose, sell, lease, license, lend, distribute, assign, or otherwise transfer or allow the transfer of the Licensed Service, any part thereof, or any copies thereof to any third party.
- (iii) Use all or part of the Licensed Service to earn income or otherwise receive benefits in a third-party service capacity, or market any part of the Service in an information providing capacity.
- (iv) Modify, translate, or create a derivative work of part or all of the Licensed Service.
- (v) Directly or indirectly attempt to recompile, manipulate, or reverse engineer the Licensed Service, in whole or in part.
- (vi) Remove, alter, or tamper with copyright, trademark, patent or other intellectual property markings for the Licensed Service.

- b. Special Terms for Clients Using Account Verification Service.** Lyons may choose to grant qualified Clients access to an Account Verification Service ("AVS"). This service uses a national bank information database, access to which is conditioned on compliance with the restrictions herein. Client shall cause employees, customers, persons, and entities accessing the AVS through Client's account to be expressly obligated to comply with the provisions of this Section. Lyons provides AVS solely for the purpose of performing payment authorization and verification services to the Client in connection to payments presented to the Client in exchange for goods and services.

If Client uses AVS, Client warrants that it will:

- (i) use AVS Data solely for pending debit transactions;
- (ii) accurately report all information for each transaction;
- (iii) decline an AVS transaction only in response to Lyons Deny Codes 102, 103, or 104;
- (iv) comply with the obligations set forth in the FCRA describing obligations of users of consumer reports, and all other applicable federal, state and local laws, rules, and regulations, referring payer inquiries arising from an Adverse Action (as defined by the FCRA) to Lyons as required in this Agreement;

Client will not do, nor permit others to do, any of the following:

- i. reproduce, cache, compile, save, download, print, or make copies of the AVS, in whole or in part, except as may be authorized, in writing, by Lyons;
- ii. use the AVS in a manner that alters the technical accuracy of the information contained in it;
- iii. provide access to, disclose, sell, license, lend, distribute, or otherwise transfer or allow the transfer of the AVS or any part thereof, or any copies thereof, to any third party;
- iv. make modifications, translations, derivations or derivative works of or to the AVS;
- v. directly or indirectly attempt to recompile, manipulate, or reverse engineer the AVS or any part thereof and/or any of the information or compilations of the AVS;
- vi. remove, alter, violate or tamper with any notice of copyright, trademark, patent, or other rights relating to the AVS, or any parts thereof;
- vii. assign, sublicense, convey, transfer, pledge as security or otherwise encumber the rights and licenses granted hereunder;

- viii. use the AVS in any way to provide services to a third party entity (by way of example, creating a database out of the AVS for a third party entity's use, which is forbidden), nor allow any of its agents, employees, customers, contractors or subcontractors to do the same; or
 - ix. use the AVS to further any activity that is illegal under applicable U.S. federal, state or local law, including but not limited to: U.S. export control laws, laws regulating or prohibiting sales of particular goods and substances, the Fair Credit Reporting Act ("FCRA"), or the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA").
- c. **Special Terms for Services Including Mailing or other Deliveries.** Pricing of Lyons services that include delivery of items by U.S. Mail or other third party services may be adjusted to pass through postal rate increases and other delivery cost increases incurred by Lyons. Lyons will provide the Client with sixty (60) days before implementing such increases.
8. **Revisions to TOS and Operating Policies.** Lyons' goal is to provide state-of-the-art services and satisfy each Client. From time to time, in its discretion, Lyons may revise element(s) of the TOS and its posted formal operating policies in response to market or regulatory developments. The following procedures and Client protections apply to all such revisions:
- a. If a change in the TOS is required to comply with a law, regulation, rule, or other government or industry directive, these changes will take effect on a date specified in an e-mail notice to the notice address designated by the Client on the Order Form. Lyons will endeavor to provide as much notice as possible of any change in operations and to minimize the impact of any change on Client operations. However, we must comply with applicable regulations, regardless of whether we received as much advance notice as we would like.
9. **PCI-DSS and SAS70 Compliance.** Autoscribe/Lyons is a Level I PCI Compliant service provider and will maintain this compliance during the Term of this TOS.
10. **Warranties, Limitations of Liability, and Indemnification**
- a. **Malware Prohibited.** Lyons warrants that no virus, trojan horse, bomb, back door, worm, or other disabling or harmful device or malicious code designed to alter, erase, or render unusable any computer data, hardware, or software; to purposely disrupt the normal operation of a computer system or designed to permit unauthorized access by third parties, or disable, erase, or otherwise harm the Licensed Service, Client data, other Client software or Client hardware (collectively "Malware") will be introduced into any Client system or individual computer by the Licensed Service.
 - b. **Warranties of Parties.** Each Party represents and warrants to the other that as of the Effective Date of this Agreement: (a) it is an on-going business operation, duly organized, validly existing and in good standing in the place of its incorporation or recognition; (b) it has all requisite power and authority to enter into and perform its obligations under this Agreement; and (c) the person(s) signing or accepting the Service Order, this TOS, and any click-through agreements required to access third party services are authorized to bind the Client to the terms and conditions of such agreements. Lyons represents and warrants that: (a) the Licensed Service is provided to Client free and clear of claim of ownership by others; and (b) the provisions of this Agreement do not violate or infringe upon the rights of any third party with regard to copyrights, patent or other intellectual property rights.
 - c. **Acceptance As-Is.** Automated electronic services are, generally, a reliable and cost-effective approach to obtaining financial information. Lyons' goal is to provide the industry's premier online services and we have an excellent performance record. However, electronic systems operating over the Internet are inherently subject to a range of possible failure modes, many of which cannot be controlled by either Lyons or Client. Client accepts the Licensed Service with the knowledge that processing errors may occur.
 - d. **Warranty Disclaimer. Except for the specific limited warranties stated herein, the Licensed Service is provided "as is" without warranty of any kind, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose or any other warranty with respect to its quality, accuracy, or freedom from error.**
 - e. **Disclaimer of Liability.** If a transaction fails to process, Lyons will credit Client for the applicable transaction fee. However, neither Lyons nor any of its employees, directors, contractors, or third party providers, shall be otherwise liable to Client, Client's employees, contractors, consumers, customers or agents, or to any person claiming any loss or injury, arising out of or caused by Client's use of the Licensed Service and Service, including without limitation, any indirect, special, incidental, punitive, or consequential damages arising out of the use of, or inability to use, the Licensed Service. If despite

this comprehensive disclaimer, Lyons is found liable for damages arising from the Licensed Service, its total liability is limited to Lyons' total invoices to Client for the Service in the three-month period before the claim arose.

- f. Indemnification by Client.** Client is responsible for using care and judgment in serving its customers and will avoid using the Service in a manner which could cause a meaningful loss to any third party and/or generate a claim for damages by a third party against Lyons. If a third party claim does arise from Client's use of the Licensed Service and/or Service (except as otherwise provided herein), Client shall indemnify and hold Lyons and its contractors, agents, officers, directors, and employees harmless from any and all costs, damages, losses, and expenses, including reasonable attorneys' fees, that they incur as a result of such third party claim.
- g. Indemnification by Lyons.** Notwithstanding any other provisions of this TOS, Lyons will indemnify and hold Client harmless against any and all costs, losses or expenses (including reasonable attorney's fees) that Client may incur by reason of any claim or suit arising out of any third party claim of infringement of intellectual property rights.
- h. Mutual Indemnification.** Notwithstanding any other provisions of this TOS, each Party shall indemnify the other against any and all costs, losses or expenses (including reasonable attorney's fees) arising from any breach of a Party's confidentiality obligations under Section 6.
- i. Indemnification Procedures.** If any Party claims indemnification pursuant to this TOS, such Party shall promptly notify the other Party in writing and provide full details. If the indemnification claim arises from the claim or demand of a third party, the indemnifying Party shall have the right, with the indemnified Party or Parties' prior consent, not to be unreasonably withheld, to compromise or, if appropriate, conduct and defend at their own cost and through counsel of their own choosing, reasonably acceptable to such indemnified Party, the claim or demand of any third party giving rise to such claim for indemnification. The opportunity to compromise or defend shall be a condition precedent to any asserted indemnification liability. After the assumption of the defense by the indemnifying Party and as long as the Party diligently pursues the defense, the indemnifying Party shall be liable only for its own legal expenses, and the indemnified Party may participate at its own expense if desired. Each Party shall reasonably cooperate with the other Party in the defense or compromise of the claim. The indemnifying Party shall not consent to a judgment or settlement that does not unconditionally release the indemnified Party from liability, does not make arrangements reasonably satisfactory to the indemnified Party(ies) for performance by the indemnifying Party, or that involves any admission of wrongdoing, payment, or performance by the indemnified Party.

11. Legal and Regulatory Compliance.

- a.** In performing their obligations under the Service Order and TOS, both Parties warrant that they will comply and cause their representatives and permitted contractors to comply with all applicable federal, provincial, state, and local laws, regulations and guidelines, including any licenses, permits or registrations necessary for the Party to fulfill its obligations under the Service Order and TOS, which shall include but is not limited to all privacy laws and data protection laws, regulations and guidelines.
- b.** Client shall not use the Licensed Service or Service in connection with any activities that violate applicable federal or state law (including, without limitation, the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. ("FCRA") and the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"), as they may be amended or superseded from time to time.
- c.** FCRA Notification. Lyons must ensure its compliance with all federal regulations applicable to Lyons business operations, including without limitation, the Fair Credit Reporting Act ("FCRA"). Therefore, if (i) the transaction of any one of Client's customers is declined, (ii) the cause of such decline is based in any part on information that originated from the AVS provided to Client by Lyons, and, (iii) Client's customer disputes the accuracy or any aspect of such decline, Client shall give such disputing customer Lyons' contact information (as set forth below) and advise the customer to contact Lyons directly. Lyons will work with Client's customer to obtain an investigation in accordance with the FCRA. Lyons' contact information for FCRA customer inquiries is:

Autoscribe Corporation
12276 San Jose Blvd, Suite 624
Jacksonville, Florida 32223
Phone number: 301-987-8131
Contact: FCRA Administrator

Email Address: support@lyonslive.com

Fax Number: (301) 987-0133

- d. Lyons warrants (i) that the Services called for by this Agreement do not and will not violate any applicable law, rule or regulation, (ii) that it will not use confidential information or trade secrets of any other person or entity and (iii) that it has not entered into nor will enter into any agreement in conflict with this Agreement.
- e. Lyons shall not employ or subcontract with any person or entity who is a “Specially Designated National” (“SDN”) as defined, from time to time, in regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury, and Lyons represents that it is not an SDN.
- f. Lyons warrants that it will not assign to perform services under this Agreement any individual who is an unauthorized alien under the Immigration Reform and Control Act of 1986 or its implementing regulations. In the event any Lyons agent is discovered to be an unauthorized alien, Lyons will immediately cause such individual to cease performing any services pursuant to this Agreement. Lyons will indemnify and hold harmless Client from and against any and all liabilities, damages, losses, claims or expenses, including reasonable attorneys’ fees, arising out of any breach by Lyons of this paragraph.
- g. If Client is a chartered financial institution subject to examination by the Office of the Comptroller of the Currency in the United States (“OCC”) and/or other regulatory bodies or agencies (a “Regulatory Body”), the following provisions apply:
 - (i) The Licensed Service provided under this Agreement, including but not limited to any services provided in conjunction therewith, may be subject to an examination by one or more of Client’s Regulatory Bodies and Lyons will cooperate fully with any examination or inquiry by such Regulatory Body.
 - ii. Pursuant to OCC Bulletin 2001-47 (November 1, 2001 United States), and associated rules and regulations promulgated there under or associated therewith, Client may be required to engage in ongoing oversight of its relationship with Lyons, including but not limited to, reviewing: (i) Lyons’ financial condition, (ii) compliance with privacy laws and regulations, (iii) insurance coverage, and (iv) performance under this Agreement. Lyons will cooperate with Client in required monitoring of Lyons and its performance under this Agreement, and will provide Client with relevant information in such form as Client may reasonably request.

12. General Provisions.

- a. Each of the terms and conditions in the Service Order and TOS are material.
- b. Each Party reserves the right to pursue all legal and/or equitable remedies upon a breach or violation of this Agreement.
- c. Any breach of Sections 5, 6, or 7 of this Agreement will cause irreparable injury, for which money damages are an inadequate remedy. Any actual or threatened breach in these Sections shall entitle the injured Party, without waiving any additional rights or remedies, to equitable relief. Each Party waives the posting of a bond for enforcement of injunctive remedies.
- d. This Agreement is not intended to benefit any third party. Client may not assign any rights under this Agreement without Lyons’ prior written approval, except incident to a sale of Client’s entire business unit using the Licensed Service. Any assignment in violation of this Section is null and void.
- e. For notice purposes, the mailing addresses and e-mail addresses of the Parties are as listed on the Service Order. Any Party hereto may change its mailing or notice e-mail address by giving written notification thereof to the other Party. All notices given pursuant to this Agreement shall be in writing and shall be delivered in person, by registered or certified United States mail, by express courier, by fax or by e-mail transmission. All such notices shall be deemed effectively given and delivered on the postmark date of mailing, or when received if delivered personally, by facsimile, or e-mail. Rejection or other refusal to accept or the inability to deliver because of a changed address for which no notice was given constitutes receipt of the notice. However, a change of address is effective only if received.
- f. The parties and their respective personnel are independent contractors and neither party has any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.
- g. No waiver is binding unless written and signed by the party making the waiver. No waiver of any provision of this Agreement, whether by conduct or otherwise, creates a waiver of another provision, or a continuing waiver of the provision.

- h.** If any provision of this Agreement is found to be unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain in force.
- i.** This Agreement is governed by the laws of the State of Florida without reference to conflicts of laws. All actions, claims or disputes arising under or relating to this Agreement shall be brought in the federal or state courts in the State of Florida and the parties consent to the subject matter and personal jurisdiction of those courts.
- j.** If any action in law or in equity is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable fees of attorneys, accountants and other professionals, and costs and expenses of litigation, in addition to any other relief granted.
- k.** The captions and headings of this Agreement are included for reference only and will be disregarded in interpreting or construing this Agreement.
- l.** If the performance of any part of this Agreement by either party is prevented or delayed by flood, riot, fire, judicial or governmental action, labor disputes, act of God or other causes beyond the control of either party, that party shall be excused to the extent that it is prevented or delayed from performance by such causes.
- m.** This TOS, together with the Service Order, constitutes the complete and exclusive statement of the agreement between the parties with respect to the Service and the Licensed Service, supersedes all other communications, written or oral, between the parties, and may be amended only in writing.

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